Major Business Combinations Cases in Fiscal Year 2018

(Tentative Translation)

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The Japan Fair Trade Commission

For the purpose of ensuring the transparency of business combination reviews by the Japan Fair Trade Commission (hereinafter referred to as "JFTC") and improving the predictability of the reviews, the JFTC has published "Guidelines to Application of the Antimonopoly Act concerning Review of Business Combination (May 31, 2004; JFTC; hereinafter referred to as the "Business Combination Guidelines")"in order to clarify its stance for applying the Antimonopoly Act (hereinafter referred to as the "AMA") to its business combination reviews. In addition, the JFTC has publicized the review results each fiscal year with respect to major business combination cases.

This year also, the JFTC is going to publicize the review results about major business combination cases of fiscal year 2018.

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.

Major Business Combination Cases in Fiscal Year 2018

Case 1 Transfer of the management of the middle-pressure gas pipeline engineering service business of Capty Co., Ltd. to Nippon Steel & Sumikin Pipeline & Engineering Co., Ltd.

Case 2 Result of Review on Acquisition of Stock of Mitsubishi Paper Mills Limited by Oji Holdings Corporation

Case 3 Acquisition of shares of Shire Plc by Takeda Pharmaceutical Company Limited

Case 4 Result of Review on Acquisition of Stock of Sanyo Special Steel Co., Ltd. By Nippon Steel & Sumitomo Metal Corporation

Case 5 Acquisition of shares of Asahi Industries Co., Ltd. By Godo Steel, Ltd.

Case 6 Acquisition of shares of H.C. Starck Tantalum and Niobium GmbH by JX Metals Deutschland GmbH

Case 7 Acquisition of shares of Cansystem Co., Ltd. by Usen-Next Holding Corporation

Case 8 Integration of The Walt Disney Company and Twenty-First Century Fox Inc.

Case 9 Acquisition of shares of Sagami Group Holdings Co., Ltd. by Belluna Co., Ltd.

Case 10 Review of the Proposed Acquisition of Shares of The Eighteenth Bank, Ltd. by Fukuoka Financial Group, Inc.

Case 11 Acquisition of shares of Abron Holdings Limited by ORIX Aviation Systems Limited

Case 12 Acquisition of shares of Humanic Holdings Co., Ltd. by Odakyu Electric Railway Co., Ltd.

Case 13 Merger of JFE Recycling Corporation and Tokyo Water Front Recycle Power Corporation

(Note 1) The order of the cases in this document complies with the order used in the Japan Standard Industry Classification, applied to business concerning products and services 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. Each competitor is represented by a random alphabet letter.

(Note 3) Market shares, HHI levels after business combinations, and number counts, e.g, the increment of the HHI after business combinations, are shown as approximate figures estimated by the JFTC based on the documents/materials submitted by the concerned companies (note that the term “HHI” in this context refers to the Herfindahl- Hirschman Index; the same shall be applied hereinafter). When it comes to market shares, in principle, these figures are shown at 5% intervals. (For example, any number that is 37.5% or larger and less than 42.5% is expressed as “around 40%.”) Accordingly, their total is not necessarily 100.

(Note 4) In each case, a horizontal business combination refers to a business combination between companies competing in the same particular field of trade; a vertical business combination refers to a business combination between companies operating at different transaction stages such as a merger between a manufacturer and a distributor selling the manufacturer’s products and ; a conglomerate business combination refers to a business combination that is neither a horizontal business combination nor a vertical business combination such as a merger between companies operating in different industries and the acquisition of shares between companies operating in a particular field of trade but in different geographic ranges.

Case 1 Transfer of the management of the middle-pressure gas pipeline engineering service business of Capty Co., Ltd. to Nippon Steel & Sumikin Pipeline & Engineering Co., Ltd.

Part I Outline of this case

This case concerns a plan in which Nippon Steel & Sumikin Pipeline & Engineering Co., Ltd. engaging in the engineering business of pipelines and related facilities (JCN6120101003660) (hereinafter referred to as "NSSPE"; a group of companies which have already built joint relationships with Nippon Steel & Sumitomo Metal Corporation (JCN 3010001008848), the parent company of NSSPE, referred to as "Nippon Steel & Sumitomo Metal Group") will acquire more than 20 % of voting rights based on stock ownership of Capty Co., Ltd. (JCN8010701019611) engaging in the business of middle-pressure gas pipeline engineering service(JCN8010701019611) (hereinafter referred to as "Capty" ; NSSPE and Capty shall be collectively referred to as "the Parties"), and NSSPE will undertake the management of the middle-pressure gas pipeline engineering service business of Capty (the acquisition of voting rights and the undertaking of management shall be collectively referred to as "the conduct of this case").

Legal provisions applicable to this case are Articles 10 and 16 of the AMA.

Part II Particular field of trade

1. Products/service range

(1) Middle-pressure gas pipeline engineering service

The middle-pressure gas pipeline engineering service is one type of gas pipeline engineering service. The gas pipeline engineering service is an engineering service specialized in gas pipelines including civil engineering works to lay or renew steel gas pipelines and, more specifically, provides the services of design, materials procurement, work execution management and work execution.

Steel gas pipelines are classified according to the pressure of gas running inside into the following: high-pressure gas pipeline (gas pressure of 1.0 MPa or above) and middle-pressure gas pipeline (0.1 MPa and above but below 1.0 MPa). And in response to the classification, there are high-pressure gas pipeline engineering service and middle-pressure gas pipeline engineering service. Gas service companies who are the users of those services turn to high-pressure gas pipeline engineering service when laying high-pressure gas pipelines, and to middle-pressure gas pipeline engineering service when laying middle-pressure gas pipelines. Accordingly, demand substitutability is not recognized between those two services.

High-pressure gas pipelines require high strength steel pipes since gas of higher pressure runs inside as compared to middle-pressure gas pipelines. Therefore, UO steel pipes[1] and seamless steel pipes[2] are used as their material. On the other hand, as material for middle-pressure gas pipelines are used ERW steel pipes[3] that are inferior in strength to UO steel pipes and seamless steel pipes. Gas service companies have set higher standards for the welding and inspection[4] of high-pressure gas pipeline engineering service as compare to middle-pressure gas pipeline engineering service. Accordingly, techniques and equipment required for the respective services are different. Therefore, supply substitutability is not recognized between high-pressure gas pipeline engineering service and middle-pressure gas pipeline engineering service.

In this case, both of the Parties are providing middle-pressure gas pipeline engineering service. Therefore, the service range was defined as "middle-pressure gas pipeline engineering service".

(2) ERW steel pipe of plain steel

A. Steel pipes of different materials

Steel pipes are classified according to materials used into normal steel

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[1] Steel pipes made by forming a steel plate into a cylindrical shape with U press and O press technique and by welding joints utilizing discharge phenomenon.
[2] Steel pipes made by drilling a hole through the center of a steel bar.
[3] Steel pipes made by rolling a steel band between rotating rolls into a cylindrical shape and by welding joints utilizing electrical resistance.
[4] High-pressure gas pipelines are required to receive X-ray examination on every welded point, but middle-pressure gas pipelines receive sample examination only.

pipes, Special steel pipes and stainless steel pipes[5]. Although either of those pipes can be used for providing middle-pressure gas pipeline engineering service, the price difference between normal steel pipes and other steel pipes is not marginal. Therefore, the fact is that only normal pipes are being used in providing middle-pressure gas pipeline engineering service. Accordingly, demand substitutability is not recognized between normal steel pipes and other steel pipes. Meanwhile, manufacturing facilities for normal steel pipes and those for other steel pipes are not the same. And, it is difficult for a company manufacturing one type of pipes to tool up production for other types in a short period of time and without incurring huge additional capital expenditures. Accordingly, supply substitutability is not recognized between those pipes.

B. ERW steel pipes, UO steel pipes and seamless steel pipes made of plain steel

For middle-pressure gas pipelines, ERW steel pipes of plain steel are used. As mentioned in (1) above, pipes of plain steel are classified according to manufacturing method into ERW steel pipes, UO steel pipes and seamless steel pipes. Among those pipe types, UO steel pipes and seamless steel pipes are superior in strength to ERW steel pipe and can sustain higher pressures. Accordingly, UO steel pipes are used for high-pressure gas pipelines, construction material and petroleum pipelines, while seamless steel pipes are used for oil well tubes, vessels, industrial machinery and automobiles. ERW steel pipes are not for the same applications as UO steel pipes and seamless steel pipes due to inferiority in strength. ERW steel pipes are used for middle pressure gas pipelines, construction material and civil engineering material. Further, ERW steel pipes are traded at lower prices than UO steel pipes and

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[5] Normal steel is defined as a steel which contains carbon not more than 2.14%, does not contain much of other elements and is without heat treatment. Special steel is defined as a steel whose main component is iron but is other than normal steel. Stainless steel is a steel whose main component is iron (not less than 50%) and is added chrome (not less than 10.5%) and carbon (not more than 1.2%). Stainless steel is treated differently from the other special steels because of its superiority on corrosion resistance, heat tolerance, etc.

seamless steel pipes. As seen above, there are distinct differences in terms of performance and prices between ERW steel pipes and other two pipes. Therefore, demand substitutability is limited.

In terms of supply, ERW steel pipes and other two pipes require different manufacturing facilities and knowhow. It is difficult for a company manufacturing one type of pipes to tool up production for other types in a short period of time and without incurring huge additional capital expenditures. Accordingly, supply substitutability is also limited.

C. Summary

Based on the above, the sproducts range for this case was defined as “ERW Steel pipes of plain steel” used for middle-pressure gas pipeline engineering service provided by the Parties.

2. Geographic range

(1) Middle-pressure gas pipeline engineering service

Middle-pressure gas pipeline engineering service also provides the service to execute gas pipeline works. Therefore, the business territory is usually defined to cover such geographic area as reachable by a company in providing its service by taking into consideration transportation costs of materials and travel time between its business site to work sites. And the company establishes its operating sites in respective regions of its territory.

In this case, while NSSPE, one of the Parties, has operating sites in respective regions of its territory covering the whole country in order to provide its middle-pressure gas pipeline engineering service nationwide, Capty has its business sites only in the Kanto region and are providing its middle-pressure gas pipeline engineering service to gas service companies in the region.

Based on the above, “the Kanto region” where the Parties are competing was defined as geographic range for this case.

(2) ERW steel pipe of plain steel

As for the domestic transportation of ERW steel pipe of plain steel, there is no constraints in terms of transportation difficulty and costs. In addition, the prices do not vary among regions.

Based on the above, “nationwide” was defined as geographic range.

Part III Impact to competition anticipated from the conduct of this case

This case falls under the definition of horizontal business combination since both of the Parties are providing middle-pressure gas pipeline engineering service in the Kanto region. While companies providing middle-pressure gas pipeline engineering service are using ERW steel pipes of plain steel for middle-pressure gas pipeline works, Nippon Steel & Sumitomo Metal Group is manufacturing/distributing ERW steel pipes of plain steel. Therefore, this case also falls under the definition of vertical business combination where the manufacture and distribution of ERW steel pipes of plain steel operated by Nippon Steel & Sumitomo Metal Group is regarded as upstream market and the business to provide middle-pressure gas pipeline engineering service operated by the Parties, as downstream market.

1. Horizontal business combination

(1) Substantial restriction of competition through unilateral conduct

A. Positions of the Parties and competing enterprises

The table below shows the shares of the Parties and their competitors in the market of middle-pressure gas pipeline engineering service in the Kanto regions. HHI after the conduct of this case would be around 3,400 and an increment in HII, around 1,100. Thus, the safe-harbor criteria for horizontal business combination are not met.

【Market shares concerning middle-pressure gas pipeline engineering service in the Kanto region in FY2017】

Rank	Company name	Market share
1	Company A	Approx. 30%
2	NSSPE	Approx. 30%
3	Capty	Approx. 20%
4	Company B	Approx. 10%
	Others	Approx. 10%
Total		100%
Combined market share/rank: approx. 50%/1st place		

As competing enterprises engaging in the middle-pressure gas pipeline engineering service, there are Company A with market share of about 30% and Company B with market share of about 10%.

In order to carry out middle-pressure gas pipeline works falling under the category of conduit works, it is required, under the Construction Business Act (Act No. 100 of 1949), to have a first-class pipe work operation and management engineer, etc. stationed at the work site who will serve as chief engineer (or technical supervisor in the case of a work exceeding a specific amount). Also, in order to carry out conduit works other than gas pipeline works, it is necessary to secure persons with the above qualification, and Companies A and B that are strong competitors for the Parties are also providing drinking water supply line engineering service and are employing a considerable number of persons with the said qualification. In addition, in carrying out middle-pressure gas pipeline works by connecting ERW steel pipes of plain steel through welding, it is necessary to employ welders. Companies providing middle-pressure gas pipeline engineering service are securing welders from inside and outside the companies. Therefore, it is not likely that competing enterprises will be prevented from acquiring orders due to the shortage of chief engineers (or technical supervisor) or welders. Thus, competing enterprises are considered to have excess supply capacity in that respect.

Based on the above, competitive pressure from competitors is recognized.

B. Entry

In order to operate the business of middle-pressure gas pipeline engineering service, it is necessary to obtain a pipe work license required under the Construction Business Act, but the acquisition is not difficult. Some technical similarities are observed between the drinking water supply line engineering service and the middle-pressure gas pipeline engineering service in that both requires civil engineering jobs including drilling, construction of retaining walls and backfilling as well as welding of steel pipes, etc. in order to lay pipelines. Thus, companies providing drinking water supply line engineering service may easily make an entry into the market of middle-pressure gas pipeline engineering service. In fact, NSSPE, Company A, and Company B are providing both middle-pressure gas pipeline engineering service and drinking water supply line engineering service. In addition, some companies engaging in other gas pipeline engineering service than middle-pressure gas pipeline engineering service such as low-pressure gas pipeline engineering service succeeded in making entry into the market of middle-pressure gas pipeline engineering service.

Accordingly, a certain degree of entry pressure is recognized.

C. Competitive pressure from users

Gas service companies, users of middle-pressure gas pipeline engineering service, are being exposed to some degree of competition with companies supplying electrical and other energies, whether they are dealing with institutional customers or retail customers. Therefore, it may be safe to say that they are somewhat interested in cutting down on their costs including those for gas pipeline works. Meanwhile, gas service companies may easily change service providers every time they plan a new gas pipeline work, and actually they have decided by bidding providers of middle-pressure gas pipeline engineering service.

Accordingly, a certain level of competitive pressure from users is recognized.

D. Summary

As discussed from A to C above, competitive pressure is recognized from competing enterprises including powerful competitors such as Company A and Company B. In addition, certain levels of entry pressure and pressure from users are recognized. Therefore the unilateral conduct may not be substantially to restrain competition in a particular field of trade.

(2) Substantial restriction of competition through coordinated conduct

Gas service companies have decided service providers by bidding, and three to five middle-pressure gas pipeline engineering service providers usually participated in the bidding. The conduct of this case would reduce the number of competing enterprises. However, since gas service companies have not publicized prices quoted by competing middle-pressure gas pipeline engineering service providers as well as final order prices, it would remain difficult for any of the middle-pressure gas pipeline engineering service providers to predict bid prices of their competitors. In addition, when and how often orders will occur is irregular. As elaborated in (1) A above, the companies seem to have excess supply capacity. Accordingly, it can be said that there exist incentives for them to compete with each other in order to win orders. Further, as elaborated in (1) B and C above, certain levels of entry pressure and pressure from users are recognized. Based on the above, it can be said that the conduct of this case may not be substantially to restrain competition in a particular field of trade through the coordinated conduct by the Parties and other competing enterprises.

(3) Summary

Based on the above, it may be concluded that the conduct of this case may not be substantially to restrain competition in a particular field of trade through the unilateral conduct of the Parties or coordinated conduct by the Parties and other competing enterprises.

2. Vertical business combination

(1) Positions of the Parties and competing enterprises

A. Upstream market

The following table shows market shares of Nippon Steel & Sumitomo Metal Group and competing enterprises concerning ERW steel pipes of plain steel. HHI is about 2,500 and Nippon Steel & Sumitomo Metal Group's market share is about 45%. Thus, the safe-harbor criteria for vertical business combination are not met.

[Shares of ERW steel pipes market in FY2017]

Rank	Company name	Market share
1	Nippon Steel & Sumitomo Metal Group	Approx. 45%
2	Company C	Approx. 20%
3	Company D	Approx. 15%
4	Company E	0－5%
5	Company F	0－5%
6	Company G	0－5%
	Others	Approx. 20%
Total		100%

B. Downstream market

The shares of the Parties and competing enterprises in the market of middle-pressure gas pipeline engineering service are as mentioned in 1 (1) A above. HHI is about 3,400 and the Parties' market share is about 50%. Thus, the safe-harbor criteria for vertical business combination are not met.

(2) Refusal by Nippon Steel & Sumitomo Metal Group to supply ERW steel pipes of plain steel to the providers of middle-pressure gas pipeline engineering service other than the Parties

Nippon Steel & Sumitomo Metal Group's supply of ERW steel pipes of plain steel to middle-pressure gas pipeline engineering service providers is limited to the Parties. Therefore, the conduct of this case would not give rise to input foreclosure.

(3) Refusal by the Parties to purchase ERW steel pipes of plain steel from the manufacturer of ERW steel pipes of plain steel other than Nippon Steel & Sumitomo Metal Group

The annual volume of ERW steel pipes of plain steel purchased by the Parties from the manufacturers of ERW steel pipes of plain steel other than Nippon Steel & Sumitomo Metal Group is small. Should the conduct of this case lead to refusal by the Parties to purchase ERW steel pipes of plain steel from the manufacturers other than Nippon Steel & Sumitomo Metal Group, the influence of the refusal on the market of the ERW steel pipes of plain steel would be marginal.

(4) Summary

Based on the above, the conduct of this case would not lead to problems of closure of and exclusion from the market.

Part IV Conclusion

It has been concluded that the conduct of this case would not substantially restrain competition in any particular field of trade.

Case 2 Result of Review on Acquisition of Stock of Mitsubishi Paper Mills Limited by Oji Holdings Corporation

Part I The Parties

Oji Holdings Corporation (hereinafter referred to as "Oji HD") is a holding company that has a corporation engaged in manufacturing and sales of paper and paperboard under it (hereinafter the group of enterprises that have formed joint relationships with Oji HD is referred to as "the Oji HD Group").

Mitsubishi Paper Mills Limited (hereinafter referred to as "Mitsubishi Paper Mills", and the group of enterprises that have formed joint relationships with the company is referred to as "the Mitsubishi Paper Mills Group") is a corporation engaged in manufacturing and sales of paper and paperboard.

Hereinafter Oji HD and Mitsubishi Paper Mills are collectively referred to as "the Parties", and the Oji HD Group and Mitsubishi Paper Mills Group are collectively referred to as "the Company Groups".

Part II Outline of this case and applicable provision

This case is about Oji HD planning to acquire 33% of the voting rights pertaining to the stock of Mitsubishi Paper Mills (hereinafter referred to as "the conduct of this case") .

The applicable provision is Article 10 of the Antimonopoly Act.

Part III Sequence of events, etc.

1. Sequence of events

Since May 2018, the Parties had voluntarily submitted written opinions and materials to the JFTC stating that the Conduct of this case would not substantially restrain competition, and the JFTC had several meetings with the Parties in response to requests by the Parties. Then, on July 13, 2018, a written notification of the plan of acquisition of stock based on the provisions of the Antimonopoly Act was submitted from Oji HD. The JFTC accepted it, and commenced the primary review. Based on the written notification above and other materials submitted from the Parties, the JFTC proceeded with the primary review. As a result, the JFTC found that in-depth review was required. Accordingly, on August 10, 2018, the JFTC requested Oji HD to provide reports etc. and commenced the secondary review. On the same day, the JFTC made it public that it commenced the secondary review and would accept public comments from third persons.

During the secondary review, in response to requests by the Parties, the JFTC had several meetings with the Parties to provide explanations on the points at issue etc. and to have discussions. The JFTC proceeded with the review on the effects of the Conduct of this case on competition based on the results of hearing from users, distributive traders, competing enterprises, etc., document analysis and other information, in addition to reports etc. submitted from Oji HD.

As for the request for provision of reports etc. to Oji HD, the reports etc. submitted on December 6, 2018 concluded submission of all reports etc.

2. Brief summary of the review

The JFTC conducted review on approximately 40 fields of trade that the Company Groups are in competition or have business relations, and as for the fields of trade of art paper, wallpaper base paper and press boards in which competition may be greatly affected by the Conduct of this case, the JFTC conducted focused review by, for example, conducting hearing survey to users etc.

Regarding the fields of trade of art paper, wallpaper base paper and press boards, as described in 5 or 7 below, although there is a circumstance that the market share of the Company Groups and the increase in HHI[1] are large, for the fact that competitive pressure from adjacent markets and import pressure are present and other reasons, the JFTC concluded that the Conduct of this case would not substantially restrain competition in any particular field of trade.

Also regarding other fields of trade, for the fact that competitive pressure from competing enterprises is present and other reasons, the JFTC concluded that the Conduct of this case would not substantially restrain competition in any particular field of trade.

Part IV Overview of the paper industry

1. Market trend

The shipment value in Japan in 2017 was approximately 1.72 trillion yen for paper and approximately 0.74 trillion yen for paperboards.

[1] Herfindahl-Herschman Index (an index expressing the degree of market concentration, which is calculated as the total sum of squared market share of each enterprise in a particular field of trade)

For paperboards, the market has been expanding backed by the trend of economic recovery, expansion of demands on cardboards for e-commerce, and other factors. Meanwhile, for paper, the domestic demand has been continuously sliding due to a decrease in demand for newsprint paper and printing and information paper[2] affected by digitization of information media, decreasing birthrate and aging population, and other factors. Among them, the demand for printing and information paper is declining at a rate of about 3% per year, and a decrease in demand is likely inevitable in the future as well.

The Company Groups both manufacture and sell paper and paperboards, but the Mitsubishi Paper Mills Group mainly focuses on paper, particularly printing and information paper, compared to the Oji HD Group widely dealing in both paper and paperboards. For that reason, competitive relationships are recognized between the Company Groups especially for printing and information paper.

2. Excess capacity of main paper manufactures

The core equipment in the production of paper and paperboards is paper machine, a machine for making paper from pulp. Usually, one paper machine is used for producing multiple types of paper and paperboards. However, depending on the type of paper machine, the types of paper the machine can produce become limited.

Looking at the capacity-output relations of production facilities for the entire paper industry in 2017, it was at a level over 90% for paperboards, while it remained at mid 80% for paper even amid ongoing capacity curbing.

The paper industry is a process industry, and the capacity-output relations of production facilities and the ratio of fixed cost to production cost greatly affect the operating profit margin. For that reason, paper manufacturers are attempting to maintain capacity-output relations by allocating produced paper for export especially for printing and information paper, and the portion assigned for export could be allocated for domestic shipping depending on the price situations.

Additionally, domestic demand for paper is expected to continue to decrease especially for printing and information paper.

[2] A generic term for paper used for printed matters such as books, magazines, catalogs, and leaflets (printing paper) and paper used for information systems such as PPC paper and form paper (information paper). It includes art paper and high-quality coated paper discussed in 5 below.

Considering the circumstances above, the JFTC understands that paper manufacturers have large excess capacity for the domestic market, for printing and information paper at least.

3. Commercial distribution

In general, paper and paperboards are sold through distributive traders, namely, agencies or wholesalers.

Among them, agencies are distributive traders who are specialized in wholesale of paper and paperboards mainly to large users or to wholesalers described below. Agencies usually deal in paper and paperboards produced by multiple manufacturers.

Meanwhile, wholesalers are distributive traders who are specialized in wholesale of paper and paperboards mainly to small- and medium-sized users. They rarely procure paper and paperboards directly from paper manufacturers; they procure products from agencies and sell them. Wholesalers also usually deal in paper and paperboards produced by multiple manufacturers, and they usually deal with multiple agencies.

4. Price trend

Announcement of price increase by paper manufacturers is characterized by all major paper manufacturers making the announcement almost at the same time and the markup and price increase time being almost the same.

However, usually, price increase is not realized as announced by paper manufacturers. The markup is often made smaller than the announced markup as a result of negotiations with agencies taking into account price negotiations with wholesalers and users, and the price increase time is often postponed by several months.

Additionally, for printing and information paper in particular, even if price increase was realized, backed by the market environment as described in 1 above, lively competition is taking place among distributive traders over trading with users, and sometimes prices are reduced back in the end including shipping prices from paper manufacturers.

Part V Art paper

1. Product description

Art paper is a kind of paper onto which a coating material is applied (coated paper) to improve the coloring of printing, where the raw material is woodfree paper using chemical pulp 100% and the coating material is applied at a density of about 50 g per 1 m2 of surface by both surfaces combined.

Since the quantity of coating is the largest among coated paper, art paper has high print reproducibility (degree of printed matter accurately expressing the color and texture of the actual object). Additionally, art paper has high smoothness and therefore high glossiness, which results in beautiful printing finish and gives an impression of luxury. For that reason, art paper is used for high-grade art books, catalogs of high price products, and cover pages of high price magazines.

On top of that, art paper is more flexible than other paper types, in addition to the properties mentioned above like beautiful printing finish. Therefore, art paper is also used for labeling of jars and bottles for beverages, condiments, etc. and for lids of cup containers.

2. Particular field of trade

(1) Product range

Coated paper is classified into art paper, high-quality coated paper, medium-quality coated paper, lightweight coated paper and ultra lightweight coated paper, depending on the base paper used and the quantity of coating.

Among them, high-quality coated paper has a coating quantity next to the quantities used in art paper, and used for magazine covers, posters, catalogs, and pamphlets; some of the uses overlap with the uses of art paper. In some cases, for the requests to reduce printing and binding costs associated with the downturn in the publishing industry or to reduce advertising expenses at enterprises, users who used to use art paper switched over to high-quality coated paper that is cheaper than art paper.

Meanwhile, art paper is used for printed matters that require high print reproducibility, and some users keep purchasing art paper although the price difference between art paper and high-quality coated paper is not small. Considering that, the JFTC finds that the demand substitutability between art paper and high-quality coated paper is limited.

Additionally, although coated paper including art paper can be produced at standard production facilities for coated paper without requiring special facility measures, a sales system to cover users with high quality requirements or a supply system for small-scale trades compared to other printing and information paper need to be established. Considering that the shipping volume of art paper is only about 1% of that of all coated paper, it is difficult for manufacturers that currently do not produce art paper to establish such systems. From the above, supply substitutability is also limited.

Further, looking at the results of economic analysis, the correlation between the price of art paper and that of high-quality coated paper is small, and no consistency is observed in the price ratio.

Therefore, the JFTC defined “art paper” as the product range.

(2) Geographic range

Users can procure art paper without any transportation problems no matter where the production base or sales base of paper manufacturer is located, and the JFTC did not find any particular circumstances such as sale prices varying depending on the regions either.

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

3. Examination on substantial restriction of competition

(1) Position of the company group and conditions of competing enterprises

The state of Japanese market of art paper in 2017 was as shown below, and the market share of the Company Groups after the Conduct of this case is approximately 90% (1st place), HHI is approximately 7,800, and the increase in HHI is approximately 2,500. Therefore, the safe-harbor criteria of horizontal business combination do not apply to this case.

The only competing enterprises are two enterprises with a market share of approx. 5%.

[Market share of art paper in 2017]

Ranking	Company name[3]	Market share[4]
1st	Oji HD Group	Approx. 70%
2nd	Mitsubishi Paper Mills Group	Approx. 15%
3rd	Company A	Approx. 5%
4th	Company B	0-5%
	Total	100%

(2) Import

Because art paper is used for high-grade art books etc., the level of quality requirements by users is high, and in no circumstances imported goods are used as a substitution. Even if domestic prices increase by the Company Groups raising prices in the future, the JFTC finds no reason for the import quantity of art paper to drastically increase.

Therefore, the JFTC finds no import pressure.

(3) Competitive pressure from adjacent markets

Some of uses overlap between art paper and high-quality coated paper that has a coating quantity next to the quantities used in art paper among coated paper, and as described in 2 (1) above, some users switched from art paper over to high-quality coated paper.

In addition, regarding high-quality coated paper that is the main product type for printing and information paper, lively competition is taking place among major paper manufacturers, and a reduction in demand at a faster rate than reduction of production capacity is expected due to digitization of information media etc. as described in 4-1 above. Therefore, the JFTC finds that paper manufacturers have adequate excess capacity, and the lively competition on high-quality coated paper will continue in the future.

Therefore, the JFTC finds that competitive pressure from the high-quality coated paper market, an adjacent market, is working to a certain

[3] For competing enterprises, mechanically selected alphabets are used to maintain their anonymity. The same shall apply hereinafter.

[4] Described in units of 5% (e.g., 67.5% and above and below 72.5% is shown as "Approx. 70%"). The same shall apply hereinafter.

degree.

(4) Competitive pressure from users

At the main users of art paper, namely publishers and printing companies, the procurement amount for other types of paper such as high-quality coated paper is overwhelmingly greater than that for art paper. For that reason, when a user overhauls procurement sources including other printing paper, that greatly affects paper manufacturers. Therefore, the JFTC understands that users have price bargaining power and it is difficult for paper manufacturers to raise prices of art paper, and therefore competitive pressure from users exists.

Additionally, compared to in the past, the number of cases in which art paper is used for periodicals such as magazines has been substantially reduced, and the use of art paper nowadays is mainly for one-off publications and commercial printed matters such as product catalogs and pamphlets. Trading of such art paper for printed matters is conducted at every planning of printed matter, but it is difficult for the art paper sellers to discern whether “high-quality coated paper etc. can be used as a substitution” or “only art paper is the option” for the inquired trading, and therefore it is difficult to raise the prices by identifying trading with users with “only art paper is the option”.

(5) Summary

As described above, the JFTC finds that competitive pressure from the high-quality coated paper market, an adjacent market, is working to a certain degree, and competitive pressure from users who procure paper other than art paper with a larger market size than art paper is working. Therefore, the JFTC concluded that, through the Conduct of this case, the Company Groups would not substantially restrain competition in the trading field of art paper by unilateral or coordinated conduct.

Part VI Wallpaper base paper

1. Product description

Wallpaper base paper is paper which is attached to the backside (backing) of decorative surface layer (front surface of wallpaper) and becomes the base of wallpaper used for buildings.

Wallpaper base paper is required to have various characteristics, such as strength to adhere to the wall and to support the decorative surface layer, dimensional stability to reduce generation of creases, sagging, etc. of the wallpaper due to changes in the humidity or temperature, permeability for glue to adhere to the wall, and detachability between paper layers to peel the wallpaper off.

2. Particular field of trade

(1) Product range

As described 1 above, wallpaper base paper is required to have characteristics not available in normal paper, and the JFTC finds no demand substitutability between wallpaper base paper and other types of paper.

Additionally, while wallpaper base paper can be produced using standard paper machines used for making printing and information paper and such without requiring special facility measures, making paper which has characteristics required for wallpaper base paper as described 1 above requires certain techniques and know-how. For that reason, the JFTC understands it is not easy to switch manufacturing and sales from printing and information paper etc. over to wallpaper base paper, and finds no supply substitutability between wallpaper base paper and other types of paper either.

Therefore, the JFTC defined “wallpaper base paper” as the product range.

(2) Geographic range

Users can procure wallpaper base paper without any transportation problems no matter where the production base or sales base of paper manufacturer is located, and the JFTC did not find any particular circumstances such as sale prices varying depending on the regions either.

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

3. Examination on substantial restriction of competition

(1) Position of the company group and conditions of competing enterprises

The state of Japanese market of wallpaper base paper in 2017 was as shown below, and the market share of the Company Groups after the

Conduct of this case is approximately 65% (1st place), HHI is approximately 5,300, and the increase in HHI is approximately 1,700. Therefore, the safe-harbor criteria of horizontal business combination do not apply to this case.

[Market share of wallpaper base paper in 2017]

Ranking	Company name	Market share
1st	Oji HD Group	Approx. 45%
2nd	Company C	Approx. 30%
3rd	Mitsubishi Paper Mills Group	Approx. 20%
	Other considerations	0-5%
	Total	100%

A. State of competition among competing enterprises of wallpaper base paper

Company C has approximately 30% of market share and is an influential competing enterprise with excess capacity, and the JFTC finds that competitive pressure from competing enterprises is working.

Additionally, while the Oji HD Group and Company C mainly trade in large lots, the Mitsubishi Paper Mills Group mainly trade in small lots, and the degree of competition between the Company Groups is limited.

B. Production state of wallpaper base paper

Wallpaper base paper is being made along with other types of paper, but for paper machines that are used for making wallpaper base paper, the ratio of production of wallpaper base paper to the whole production is high.

For that reason, the production of wallpaper base paper needs to be secured to avoid a reduction in capacity-output relations that lead to an increase in the production cost, and an increase in capacity-output relations through an increase in the production of wallpaper base paper enables raising the profit margin. Therefore, paper manufacturers are under an incentive to sell wallpaper base paper as much of as possible.

(2) Import

In overseas, paper with characteristics like those described in 1 above to be used as wallpaper base paper is not produced, and the JFTC finds no import pressure.

(3) Entry

While wallpaper base paper can be produced using standard paper machines used for making printing and information paper and such without requiring special facility measures, making wallpaper base paper requires certain techniques and know-how. In addition, expansion of the Japanese wallpaper base paper market cannot be expected in a mid- to long-term. Based on these, the JFTC finds that the incentive to actively switch over to production of wallpaper base paper is low.

Therefore, the JFTC finds no entry pressure.

(4) Competitive pressure from adjacent markets

In overseas, users often apply new wallpapers by themselves, and wallpapers backed by fleece (fleece wallpapers) with high dimensional stability for ease of application and peeling are well accepted and widely available. Meanwhile, in Japan, application of new wallpapers is often left to contracted specialists, and the characteristic of fleece wallpapers, the ease of application and peeling is hardly recognizable as benefits. Additionally, fleece is more expensive than wallpaper base paper. For these reasons, fleece wallpapers are not well accepted and thus seldom seen in Japan. Accordingly, wallpaper manufacturers do not use fleece in place of wallpaper base paper.

Therefore, the JFTC finds no competitive pressure from adjacent markets.

(5) Competitive pressure from users

The majority of wallpapers produced by wallpaper manufacturers, users of wallpaper base paper, are sold under brands of wallpaper distributors called “brand makers”. The number of brand makers is small, and the sales amount of top three brand makers accounts for a large majority of entire sales amount of wallpapers in Japan. For that reason, wallpaper manufacturers are in lively competition over trading with brand makers. To strengthen the price competitive power of their own wall papers, wallpaper manufacturers have been engaged in price negotiations with paper manufacturers by, for instance, drastically raising the procurement rate from a paper manufacturer that offered cheaper prices and requesting a monetary payment in exchange for raising the procurement rate, for the attempt of procuring wallpaper base paper, the main ingredient of wallpapers, as cheaply as possible. Pressed by their own desires to secure the sales volume and reduce the manufacturing cost, paper manufacturers have no choice but to respond to such requests from wallpaper manufacturers.

Therefore, the JFTC finds that competitive pressure from wallpaper manufacturers is working on paper manufacturers.

(6) Summary

As described above, the JFTC finds that the degree of competition between the Oji HD Group and Mitsubishi Paper Mills Group is limited, competitive pressure from an influential competing enterprise is working, and competitive pressure from users is working. Therefore, the JFTC concluded that, through the Conduct of this case, the Company Groups would not substantially restrain competition in the trading field of wallpaper base paper by unilateral conduct.

Further, competitive pressure from users is also working by the presence of an influential competing enterprise with excess capacity, and paper manufacturers are incentivized to sell as much volume as possible to maintain capacity-output relations of facilities that lead to reduced manufacturing costs, in addition to the expectation that the state of competition would not change greatly before and after the Conduct of this case due to the limited degree of competition between the Oji HD Group and Mitsubishi Paper Mills Group. Therefore, the JFTC concluded that the Conduct of this case would not substantially restrain competition in the trading field of wallpaper base paper by coordinated conduct of the Company Groups and competing enterprises.

Part VII Press boards

1. Product description

Press boards are thick electrical insulation paper manufactured by pressing and drying thick paper which was manufactured by laminating pulp.

Press boards excel in electrical insulation performance, strength and durability, and used for the purpose of supporting the iron cores and coils and forming a passage to circulate insulating oil inside oil-filled transformers in which insulating oil is used as an insulating medium.

2. Particular field of trade

(1) Product range

Since electrical insulation performance, strength and durability are required, paper products other than press boards cannot be used as a substitution of press boards.

A product type that has similar functions as press boards is heat-resistant press boards made of aramid fibers that are used in gas-insulated transformers. However, heat-resistant press boards are more expensive than press boards and are not used in place of press boards.

Therefore, the JFTC finds no demand substitutability between press boards and other paper products or heat-resistant press boards.

Additionally, manufacturing of press boards requires special facilities, and a huge amount of additional expenses are required for a paper manufacturer without press board manufacturing facilities to start manufacturing press boards. For that reason, the JFTC understands it is not easy to switch manufacturing and sales from other paper types over to press boards, and finds no supply substitutability between press boards and other types of paper either.

Therefore, the JFTC defined “press boards” as the product range.

(2) Geographic range

Users can procure press boards without any transportation problems no matter where the production base or sales base of paper manufacturer is located, and the JFTC did not find any particular circumstances such as sale prices varying depending on the regions either.

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

3. Examination on substantial restriction of competition

(1) Position of the company group and conditions of competing enterprises

The state of Japanese market of press boards in 2017 was as shown below, and the market share of the Company Groups after the Conduct of this case is approximately 95% (1st place), HHI is approximately 9,100, and the increase in HHI is approximately 3,900. Therefore, the safe-harbor criteria of horizontal business combination do not apply to this case.

Also, no enterprise in a competitive relationship with the Company Groups exists in Japan.

[Market share of art press boards in 2017]

Ranking	Company name	Market share
1st	Mitsubishi Paper Mills Group	Approx. 65%
2nd	Oji HD Group	Approx. 30%
	Import	0-5%
	Total	100%

(1) Import

The procurement ratio of imported press boards to the entire demand for press boards in Japan remains at around 5%.

However, while the usage of transformers can be broadly classified into industrial use (e.g., power receiving equipment in factories and buildings, step-up transformers for mega solar) and for electric power (to be installed in power plants, substations and transmission facilities built by power companies), according to transformer manufacturers, they have no feeling of hesitation to use imported press boards for users of industrial transformers. Also about power transformers, the users, power companies state that they will not prevent transformer manufacturers from using imported press boards, and actually imported press boards are employed in some transformers delivered to power companies, indicating that transformer manufacturers are under the circumstances that allow them to adopt imported press boards in place of domestic products. Additionally, importing incurs transportation costs, and reaping the price benefit of using imported press boards requires importing in large lots. To address that, some transformer manufacturers import by reducing the variety of press board thickness used in transformers and thereby increasing the quantity used per product type. Further, there are trading companies that accept all imported press boards first, manage the inventory by themselves and supply the products to transformer manufacturers in small lots. As such, the size of ordering lot for importing does not serve as an import barrier.

Therefore, the JFTC finds that import pressure is working to a certain degree.

(3) Entry

The development of power infrastructure in Japan has come to an end, and the future demand for transformers will be limited to replacement of transformers installed in the past. That automatically means expansion of the press board market cannot be expected, and the JFTC finds no entry pressure.

(4) Competitive pressure from users

The users of press boards, Japanese transformer manufacturers manufacture transformers not only for Japanese power companies but also for overseas power companies both in Japan and overseas. When a request for price revision is submitted from the Company Groups, price negotiations are held on press boards used in transformers for overseas with referencing prices of press boards in overseas to secure reception of orders in overseas transformer markets, and then price negotiations on press boards used in transformers for Japan are held referencing the thereby determined prices of press boards used in transformers for overseas.

As such, users engage in price negotiations on press boards manufactured in Japan based on the prices of overseas press boards. Therefore, the JFTC finds that users have price bargaining power and competitive pressure from users is working.

(5) Summary

As described above, the JFTC finds that import pressure is working to a certain degree, and competitive pressure from users who are familiar with the situation of overseas press board market is working. Therefore, the JFTC concluded that, through the Conduct of this case, the Company Groups would not substantially restrain competition in the trading field of press boards by unilateral conduct.

Part VIII Conclusion

The JFTC concluded that the Conduct of this case would not substantially restrain competition in any particular field of trade.

Case 3 Acquisition of shares of Shire Plc by Takeda Pharmaceutical Company Limited

Part I Outline of this case

This case concerns a plan in which Takeda Pharmaceutical Company Limited mainly manufacturing and selling prescription drugs (JCN2120001077461)(hereinafter referred to as "Takeda Pharmaceutical"; a group of companies which have already built joint relationships with Takeda Pharmaceutical shall be referred to as "Takeda Pharmaceutical Group") intends to acquire all voting rights based on stock ownership of Shire Plc (a holding company headquartered in Jersey, one of crown dependencies; hereinafter referred to as "Shire"; a group of companies which have already built joint relationships with Shire shall be referred to as "Shire Group"; Takeda Pharmaceutical and Shire shall be collectively referred to as "the Parties" and ;Takeda Pharmaceutical Group and Shire Group shall be collectively referred to as "the Parties Group") (hereinafter referred to as "the conduct of this case").

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

Part II Particular field of trade

1. Products range

(1) Pharmaceutical products

As for the classification of pharmaceutical products, the ATC Classification[10] System established by European Pharmaceutical Market Research Association (EphMRA) is widely used. Under the ATC Classification System, a pharmaceutical product is assigned with a code for classification (so-called ATC code) comprised of four different levels (the first level to the fourth level).

In prior business combination reviews, competing products were identified based on the digits and letters on the first three levels according to the ATC Classification System, and in cases where two products had the same ATC code up to the third level, the product range was defined by referring to the fourth-level letter or more detailed classification if they are not deemed to have the same type of functions/effects from the perspective of medical institutions, etc. (e.g., two drugs were not substitutable in light of actual administration to patients or doctors' opinions)[11] Therefore, also for this case, the same method was applied in defining the product range.

The Parties manufacture and sell various drugs. In the following section, focus is placed on prescription drugs ("Intravenous multivalent immunoglobulin preparation" and "Drugs for Inflammatory bowel disease") concerning which the

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[10] It stands for "Anatomical Therapeutic Chemical Classification System". The classification is based on the anatomical site of action, the indication, the usage, the chemical formula, and the action mechanism of pharmaceutical products.

[11] For example, this method was applied to define the product range in "Acquisition of business by Novartis AG from GlaxoSmithKline K.K. " (Case 4 of Major Business Combination Cases in Fiscal Year 2014) and "Business swap by Sanofi Group and Boehringer Ingelheim Group" (Case 4 of Major Business Combination Cases in Fiscal Year 2016).

conduct of this case is considered to exert a relatively large impact on competition.

(2) Intravenous multivalent immunoglobulin preparation(J6C)

A. Outline

Of the Parties Group, Takeda Pharmaceutical Group manufactures and sells "Kenketsu Glovenin-I for I.V.injection" and Shire Group manufactures and sells "Gammagard for I.V.injection". These products are used for the treatment of immune deficiency and severe infectious diseases and fall under the category of "Intravenous multivalent immunoglobulin[12] preparation(J6C)" according to the ATC Code Level 3 classification. There is no Level 4 classification to provide more detailed categorization of Intravenous multivalent immunoglobulin preparation(J6C).

B. Examination of product range concerning Intravenous multivalent immunoglobulin preparation(J6C)

Intravenous multivalent immunoglobulin preparations are manufactured by extracting immunoglobulin from blood plasma of (donated) human blood, and are classified into products made of Japanese blood and those made of non-Japanese blood.

Among products manufactured by the Parties Group, those manufactured by Takeda Pharmaceutical Group are made of Japanese blood and those by Shire Group are of non-Japanese blood. Since the government has promoted the self-sufficiency of blood products, Japanese blood is more often used as material for blood products. However, both products have identical effects and there is no regulation to restrict their use. A certain level of demand substitutability is recognized.

Accordingly, "Intravenous multivalent immunoglobulin preparation(J6C)" was defined as the product range for this case.

(3) Drugs for inflammatory bowel disease(A7E)

A. Outline

The Parties Group manufactures and sells products falling under the category of "Drugs for inflammatory bowel disease (A7E)" according to the ATC Code Level 3 classification. Drugs falling under the category of "Drugs for inflammatory bowel disease （A7E)" according to the ATC Code Level 3 classification are mainly used for the treatment of Ulcerative colitis and[13] Crohn's disease[14]. Both Ulcerative colitis and Crohn's disease are designated

[12] Immunoglobulin found in blood and interstitial fluid is usually called "antibody" and is capable of detecting and combining with antigen such as virus.
[13] Diffuse nonspecific inflammation of colon where mucous membrane is mainly damaged due to unknown cause and sores and ulcers are developed.
[14] Unexplained disease where inflammatory changes are seen in the entire layers of digestive tract walls of colon and small intestine and discontinuous and deep ulcers are developed.

intractable diseases acknowledged by the Ministry of Health, Labor and Welfare, and, recently, the number of patients of those diseases are increasing in Japan.

In Japan, low molecular drugs[15] such as Aminosalicylic acid preparation have been commonly used for the treatment of Ulcerative colitis and Crohn's disease. However, those drugs did not work well for patients having moderate to severe diseases or patients resistant to those drugs. Therefore, efforts have been made for the development of biopharmaceuticals[16] that can be used as drugs for patients having moderate to severe diseases.

Under the Level 4 class defining in more detail "Drugs for inflammatory bowel disease （A7E)", there are following three categories: "aminosalicylic acid preparation (A7E1)" the Parities Group manufactures and sells, "Adrenocortical hormone preparation (A7E2)" and "Other drugs for inflammatory bowel disease (A7E9)[17]".

B. Products of the Parties Group

Drugs manufactured and sold by the Parties Group are all classified into "A7E1"category of the ATC Code Level 4. While Takeda Pharmaceutical Group is selling the products mentioned in ① of the table below, the group is planning to launch the products mentioned in ② of the table below. On the other hand, Shire Group has a license agreement with X Company, a Japanese manufacturer/seller of prescription drugs, and said X Company is selling the products mentioned in ③ of the table below. Shire Group is also developing the products mentioned in ④ of the table below (presently under Phase III clinical trial[18]). The products mentioned in ④ of the table below were developed for European and American markets according to its business strategy. No clinical trial has been made in Japan and, at present, there is no plan to launch them in Japan.

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[15] Medicines produced through stepwise chemosynthesis processing. They are organic compounds of small molecular size and of relatively simple structure consisting of a very small number of functional molecules.

[16] Medicines containing active elements made of substances originating from protein and organism, whose molecular size is larger and whose structure is more complex than those of low molecular drugs. Their characteristics and performance are usually dependent on the manufacturing process.

[17] Mainly are classified into this category such drugs for inflammatory bowel disease as whose classification has not yet been determined.

[18] Both non-clinical trials and clinical trials are required for the development of a new medicine. Clinical trials are composed of the first phase, the second phase and the third phase trials, requiring lots of time and costs. After the successful completion of the third phase clinical trial, a new-drug application is filed. The examination process takes some one to two years. If approval is issued after the said examination, the new drug is ready for launch. Generally speaking, the issuance of approval for the launch of a new medicine is highly likely at the stage of the third clinical trial. Accordingly, we have taken up those under the third clinical trial for our examination.

	Manufacturers/ sellers	Name of products/ products under development	Indications	Low molecular/ biotechnology-based	ATC Code Level 4
①	Takeda Pharmaceutical Group	Mesalazine	Ulcerative colitis (excluding severe conditions), Crohn's disease	low molecular drugs	A7E1
		Salazosulfapyridine	Ulcerative colitis, regional enteritis, regional segmental colitis		
		Salazosulfapyridine	Rheumatoid arthritis		
②	Takeda Pharmaceutical Group	Entyvio for I.V. infusion	Ulcerative colitis (moderate to severe conditions) (not yet launched after acquisition of the marketing approval from the Ministry of Health, Labor and Welfare), Crohn's disease (marketing approval not yet issued)[19]	Biopharmaceuticals	A7E1
③	Company X * Products licensed by Shire Group	Product X	Ulcerative colitis (excluding severe condition)	low molecular drugs	A7E1
④	Shire Group	SHP647	Moderate to severe conditions of Ulcerative colitis, Crohn's disease	Biopharmaceuticals	No yet assigned

C. Examination of products range concerning drugs for inflammatory bowel disease(A7E)

(a) Low molecular drugs (Aminosalicylic acid preparation (A7E1)) and Adrenocortical hormone preparation (A7E2)

Under the treatment guidelines[20] for inflammatory bowel diseases (such as Ulcerative colitis and Crohn's disease), patients are classified according to clinical severity into patients of slight, moderate and severe condition and pharmacological treatment according to the severity level is recommended. Aminosalicylic acid preparations (A7E1) available in Japan are low molecular drugs including those mentioned in ①, ③ of the above table and administered to patients of slight to moderate conditions. Adrenocortical hormone preparation (A7E2) is also a low molecular drug and administered to patients of severe condition and those of moderate condition who experienced no improvement in moderate condition with

[19] The above status of marketing approval for Entyvio for I.V. Infusion is as of the review of the conduct of this case with respect to both "moderate to severe conditions of Ulcerative colitis" and "Crohn's disease".
[20] The Japanese Society of Gastroenterology Guideline

another low molecular drug of Aminosalicylic acid preparation (A7E1).

Accordingly, low molecular drugs (Aminosalicylic acid preparation (A7E1) and Adrenocortical hormone preparation (A7E2)) cannot be alternatively used in an exchangeable way in light of their functions, effects, and actual uses. Therefore, they so not come under the same products range.

(b) Low molecular drugs and biopharmaceuticals

The product of ② of the above table is not yet on the market and expected to fall under the category of Low aminosalicylic acid preparation (A7E1). However, it is a biomedicine with different medicinal properties and action mechanism[21] from those of conventional low molecular drugs. Under the above-mentioned treatment guidelines for inflammatory bowel diseases, biomedicines are to be used for patients of Ulcerative colitis and Crohn’s disease in moderate to severe conditions experiencing no satisfactory improvement and resistant to conventional low molecular drugs (including Adrenocortical hormone preparation (A7E2)). Further, the one mentioned in ④ of the above table is also a biomedicine to be used for patients of Ulcerative colitis or Crohn’s disease in moderate to severe conditions and resistant to conventional drugs.

Accordingly, in light of function, effect, and actual use, low molecular drugs mentioned in ① and ③ of the above table and biomedicines mentioned in ② and ④ of the said table cannot be alternatively used in an exchangeable way. Therefore, it can be said they do not come under the same products range.

Either of the biopharmaceuticals mentioned in ② and ④ of the above table is not yet on the market. However, as for some of the products falling under the category of ②, marketing approval from the Ministry of Health, Labor and Welfare has been obtained. And the medicine mentioned in ④ is likely to be launched in the Japanese market in future since it is now under the III phase clinical trial in Europe and America. Therefore, in a bid to examine this case more carefully, biopharmaceuticals were also covered by the review.

As for low molecular drugs, the one mentioned in ③ of the above table is likely to be distributed by the Parties after the expiry of the relevant license. Considering the contents, etc. of the license contract, no major change in the competition is expected for the time being. Therefore, for the purpose of this case, the review covered biopharmaceuticals only.

(c) Biopharmaceuticals

Biopharmaceuticals for the moderate to severe conditions of Ulcerative colitis and Crohn’s disease are classified according to action mechanism into

[21] A pharmacology term meaning a system or mechanism for medicine to produce a certain effect in an organism.

Anti-integrin inhibitor[22] , Anti-TNF alpha inhibitor[23] ,and Anti- IL inhibitor[24] . These have basically similar effects and a certain level of demand substitutability is recognized. However, those mentioned in ② and ④ of the above table are both Anti-integrin inhibitors that are somewhat different from other biopharmaceuticals in terms of pharmacological action and side effect. Therefore, for this case, the products range was defined based on action mechanism[25].

(d) Summary

Based on the above, the products range was defined as “Anti-integrin inhibitors” for moderate to severe conditions of Ulcerative colitis and Crohn’s disease.

2. Geographic range

With respect to all the products ranges mentioned in 1 above, the manufacturers have systems and capacities to supply prescription drugs to any part of the nation. Medical institutions or users of those drugs are capable of procuring products from any national manufacturers at almost the same prices. In addition, in order to sell prescription drugs in Japan, it is required to obtain the authorization of the Minister of Health, labor and Welfare. Based on the above, the geographic range for this case was defined as “nationwide”.

Part III Impact to competition anticipated from the conduct of this case

1. Intravenous multivalent immunoglobulin preparation(J6C)

After the conduct of this case, the Parties Group would occupy, in total, about 35% share of the market for Intravenous multivalent immunoglobulin preparations. HHI after the conducto of this case would be around 3,700 and the increment in HII, around 30. Thus, the safe-harbor criteria for horizontal business combination are met.

[22] Medicine work to alleviate inflammation by inhibiting a cell membrane protein called Integrin.

[23] Medicine capable of inhibiting TNF alpha helping cellular signal transduction (one kind of cytokine also referred to as tumor necrosis factor).

[24] Medicine capable of inhibiting a cell membrane protein secreted by a lymphocyte called Interleukin (in short “IL”) or by macrophage from combining with acceptor complex on the surface of immune cells.

[25] Many of the concerned medicines are used to treat both Ulcerative colitis and Crohn’s disease and it may not be so important to carry out separate examinations as to those two diseases. Therefore, the range was defined to cover both Ulcerative colitis and Crohn’s disease.

[Market shares for Intravenous multivalent immunoglobulin preparation(J6C)]

Rank	Company name	Market share
1	Company A	Approx. 45%
2	Takeda Group	Approx. 35%
3	Company B	Approx. 15%
4	Company C	0−5%
5	Shire Group	0−5%
6	Company D	0−5%
Total		100%
Combined market share/rank: approx. 35%/2nd		

2. Anti-integrin inhibitors

(1) Position of the Parties Group

The position of the Parties Group cannot be confirmed since any of the products of the Parties Group has not yet been put into market. The Anti-integrin inhibitor under development by Shire Group is in the process of the III phase clinical trial targeted at the European and U.S. Markets. However, no development activities targeted at the Japanese market are seen at the time of this review and there seems to be no specific plan for such development. Therefore, the level of potential competition in the Parties Group is not high.

(2) Competing enterprises and conditions of entry

There are several Anti-integrin inhibitor products expected to be launched in the Japanese market. Since all of them are in the process of the III phase clinical trial, a certain level of likelihood that the products will be put into the market is recognized. Therefore, they are anticipated to exert competitive pressure against the products of the Parties Group

(3) Competitive pressure from adjacent markets

As mentioned in Part II, 1(3)C(c) above, as drugs for moderate to severe conditions of Ulcerative colitis or Crohn's disease, can also be used other biopharmaceuticals such as Anti-TNF alpha inhibitor and Anti-IL inhibitor with basically similar effect to that of Anti-integrin inhibitor. Several products are already marketed in adjacent markets and it is highly likely that several others will follow.

Accordingly, competitive pressure from adjacent markets is recognized.

(4) Summary

Based on the above, it can be said that the conduct of this case is not likely to give rise to substantial restraint of competition concerning Anti-integrin inhibitor through the unilateral conduct of the Parties Group or the coordinated conducts by the Parties Group and competitors.

Part IV Conclusion

It has been concluded that the conduct of this case would not substantially to restrain competition in any particular field of trade.

Case 4 Result of Review on Acquisition of Stock of Sanyo Special Steel Co., Ltd. By Nippon Steel & Sumitomo Metal Corporation

Part I The Parties

The Nippon Steel & Sumitomo Metal Corporation (hereinafter referred to as “Nippon Steel & Sumitomo Metal”, and the group of enterprises that have formed joint relationships with the company is referred to as “the Nippon Steel & Sumitomo Metal Group”) and the Sanyo Special Steel Co., Ltd. (hereinafter referred to as “Sanyo Special Steel”, and the group of enterprises that have formed joint relationships with the company is referred to as “the Sanyo Special Steel Group”) (hereinafter Nippon Steel & Sumitomo Metal and Sanyo Special Steel are collectively referred to as “the Parties”, and the Nippon Steel & Sumitomo Metal Group and Sanyo Special Steel Group are collectively referred to as “the Company Groups”) are corporations that conduct manufacture, sales, etc. of steel products.

Part II Outline of this case and applicable provision

This case is about Nippon Steel & Sumitomo Metal planning to acquire 51.5% of the voting rights pertaining to the stock of Sanyo Special Steel (hereinafter referred to as “the conduct of this case”) .

The applicable provision is Article 10 of the Antimonopoly Act.

Part III Sequence of events, etc.

1. Sequence of events

Since March 2018, the Parties had voluntarily submitted written opinions and materials to the JFTC stating that the conduct of this case would not substantially restrain competition, and the JFTC had several meetings with the Parties in response to requests by the Parties. Then, on July 20, 2018, a written notification of the plan of acquisition of stock based on the provisions of the Antimonopoly Act was submitted from Nippon Steel & Sumitomo Metal. The JFTC accepted it, and commenced the primary review. Based on the written notification above and other materials submitted from the Parties, the JFTC proceeded with the primary review. As a result, the JFTC found that in-depth review was required. Accordingly, on August 17, 2018, the JFTC requested Nippon Steel & Sumitomo Metal to provide reports etc. and commenced the secondary review. On the same day, the JFTC made it public that it commenced the secondary review and would accept public comments from third persons.

During the secondary review, in response to requests by the Parties, the JFTC had several meetings with the Parties to provide explanations on the points at issue etc. and to have discussions. The JFTC proceeded with the review on the effects of the conduct of this case on competition based on the results of hearing from users, distributive traders, competing enterprises, etc., document analysis, economic analysis and other information, in addition to reports etc. submitted from Nippon Steel & Sumitomo Metal.

As for the request for provision of reports etc. to Nippon Steel & Sumitomo Metal, the reports etc. submitted on December 14, 2018 concluded submission of all reports etc.

2. Brief summary of the review

The JFTC conducted review on approximately 10 fields of trade that the Company Groups are in competition or have business relations, and as for small-diameter seamless steel pipes and tubes for bearings among them, as described in 4 to 7 below, the JFTC concluded that the conduct of this case would not substantially restrain competition on the premise of the remedy proposed by the Parties to the JFTC.

Regarding the fields of trade for other than small-diameter seamless steel pipes and tubes for bearings, for the fact that competitive pressure from competing enterprises is present and other reasons, the JFTC concluded that the conduct of this case would not substantially restrain competition in any particular field of trade.

Part IV Small-diameter seamless steel pipes and tubes for bearings

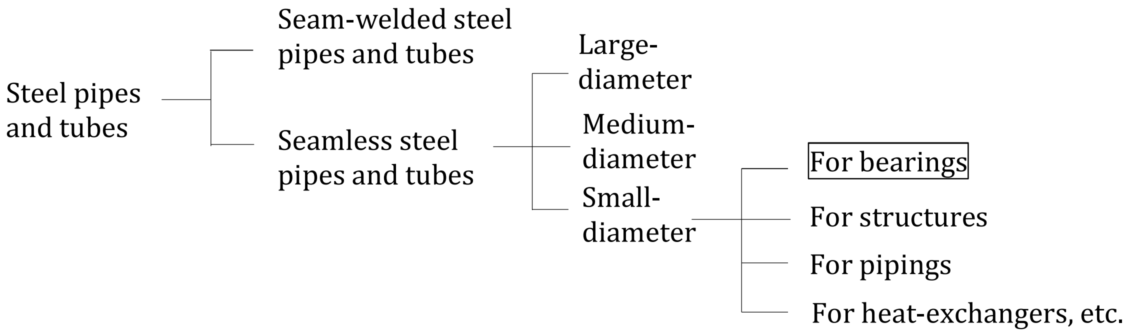
1. Product description

Steel pipes and tubes refer to thin steel products with a circular cross-section in general, produced by rolling steel or by joining steel plates.

By the manufacturing method, steel pipes and tubes are classified into seamless steel pipes and tubes manufactured by making a hole at the center of bar-shaped steel material and seam-welded steel pipes and tubes manufactured by rolling a steel plate into a tube and welding the joining edges. Additionally, by the outer diameter, they are classified into small-diameter (generally with an outer diameter of up to 175 mm), medium-diameter (generally with an outer diameter of more than 175 mm and up to 426 mm), and large-diameter (generally with an outer diameter of more than 426 mm).

Among those above, only small-diameter seamless steel pipes and tubes compete between the Parties.

Further, by the usage, small-diameter seamless steel pipes and tubes are classified into for bearings, for structures, for pipings, for heat-exchangers, etc., and by the material, they are classified into normal steel, special steel and stainless steel[1].



2. Particular field of trade

(1) Product range

A. Seamless steel pipes and tubes versus seam-welded steel pipes and tubes

Seamless steel pipes and tubes have no risk of corrosion or breaking from a seam and are used under a high-temperature and/or high-pressure environment in which seam-welded steel pipes and tubes cannot be used. For their prices being about 30% higher than seam-welded steel pipes and tubes, seamless steel pipes and tubes are not usually used under an environment in which seam-welded steel pipes and tubes can be used. For that reason, the JFTC finds no demand substitutability between seamless steel pipes and tubes and seam-welded steel pipes and tubes. Additionally, the manufacturing facilities and methods are different between seamless steel pipes and tubes and seam-welded steel pipes and tubes, and it is not easy to switch manufacturing from one to another. The JFTC finds no supply substitutability between

[1] Normal steel refers to steel materials with carbon content of 2.14% or less, little content of other elements, and without special heat treatment, and special steel refers to steel materials other than normal steel, with iron being the main ingredient. Stainless steel is a material in which 10.5% or more of chromium and 1.2% or less of carbon are added to iron, the main ingredient (50% or more). For its superior corrosion-resistance, heat-tolerance, etc., stainless steel is handled separately from other special steels.

them.

Therefore, seamless steel pipes and tubes form a different product range from seam-welded steel pipes and tubes.

B. Small-diameter seamless steel pipes and tubes versus medium- and large-diameter seamless steel pipes and tubes

Users use small-diameter seamless steel pipes or medium- and large-diameter seamless steel pipes and tubes depending on the purpose of use, and medium- and large-diameter seamless steel pipes and tubes cannot be used in place of small-diameter seamless steel pipes and tubes. The JFTC finds no supply substitutability between them. Additionally, the manufacturing facilities and methods are different between small-diameter seamless steel pipes and tubes and medium- and large-diameter seamless steel pipes and tubes, and it is not easy to switch manufacturing from one to another. The JFTC finds no supply substitutability between them.

Therefore, small-diameter seamless steel pipes and tubes form a different product range from medium- and large-diameter seamless steel pipes and tubes.

C. Steel pipes and tubes with different usage

The composition etc. of small-diameter seamless steel pipes and tubes varies depending on the usage, which results in different wear-resistance, strength, etc., and under normal circumstances users do not use small-diameter seamless steel pipes and tubes with different usage interchangeably. Additionally, regarding small-diameter seamless steel pipes and tubes for bearings, their manufacturing facilities and methods are different from those for pipes and tubes for different usage to a certain degree, and the supply substitutability is limited.

Therefore, the JFTC finds that seamless steel pipes and tubes for bearings form an independent product range[2], [3].

[2] The majority of small-diameter seamless steel pipes and tubes for bearings use special steel as the material, and only a small percentage of them use normal steel or stainless steel as the material.

[3] Regarding the usage substitutability, the JFTC conducted price analysis by calculating average prices of small-diameter seamless steel pipes and tubes with different chemical composition etc., in accordance with the classification by the Parties, using the sales result data of the Parties. As a result, the difference between the prices of small-diameter seamless steel pipes and tubes for bearings and that of small-diameter seamless steel

D. Summary

As described above, the JFTC defined "small-diameter seamless steel pipes and tubes for bearings" as the product range[4].

(2) Geographic range

For small-diameter seamless steel pipes and tubes for bearings, there is no specific restriction on their transportation in Japan in terms of the difficulty of transportation or transportation cost, and suppliers sell them in all regions of Japan. The JFTC did not find any particular circumstances such as sale prices varying depending on the regions either.

Therefore, the JFTC defined "all regions of Japan" as the geographic range.

3. Examination on substantial restriction of competition

(1) Position of the Parties and state of competition

Both of the Parties manufacture and sell small-diameter seamless steel pipes and tubes for bearings, and therefore this case falls into horizontal business combination.

The state of Japanese market of small-diameter seamless steel pipes and tubes for bearings in FY2016 was as shown in the table below, and the market share of the Parties after the conduct of this case is approximately 100% (1st place), HHI[5] is approximately 10,000, and the increase in HHI is approximately 4,200. Therefore, the safe-harbor criteria of horizontal business combination do not apply to this case.

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pipes and tubes for other applications was not small, and the price correlation was weak. Therefore, the JFTC did not obtain any results that uphold the hypothesis that small-diameter seamless steel pipes and tubes for bearings form the same product range with small-diameter seamless steel pipes and tubes for other applications.

[4] The market size of small-diameter seamless steel pipes and tubes for bearings is approximately 12 billion yen.

[5] Herfindahl-Herschman Index (an index expressing the degree of market concentration, which is calculated as the total sum of squared market share of each enterprise in a particular field of trade)

[Market share of small-diameter seamless steel pipes and tubes for bearings in FY2016]

Ranking	Company name	Market share[6]
1st	Sanyo Special Steel	Approx. 70%
2nd	Nippon Steel & Sumitomo Metal	Approx. 30%
1st	Total of the Parties	Approx. 100%

(2) Import

The import quantity of small-diameter seamless steel pipes and tubes for bearings is unknown, but the main users of the said products have no use history of imported goods and have no plan to procure imported goods either, as the JFTC was told.

Therefore, the JFTC finds no import pressure.

(3) Entry

Manufacture and sale of small-diameter seamless steel pipes and tubes require preparing special facilities, which requires a large amount of capital investment. There has been no case of new entry into the small-diameter seamless steel pipes and tubes manufacture and sales industry in the last 10 years, and no major increase in the demand for the said products in the future is anticipated. The JFTC finds no probability of new entry in the near future.

Additionally, also for existing steel manufacturers who are manufacturing and selling small-diameter seamless steel pipes and tubes other than the Parties, newly entering into the manufacture and sales industry of small-diameter seamless steel pipes and tubes for bearings requires a large amount of capital investment, and the JFTC finds no probability of them entering.

Therefore, the JFTC finds no entry pressure.

(4) Competitive pressure from adjacent markets

Commodity markets adjacent to small-diameter seamless steel pipes and tubes for bearings include special steel bars[7], but the users, bearing

[6] Described in units of 5% (e.g., 67.5% and above and below 72.5% is shown as “Approx. 70%”).
[7] Steel bars are steel materials rolled into bars. By the material, they are classified into normal steel bars, special steel bars and stainless steel bars, and by the shape, they are classified into round bars (the cross-

manufacturers have been using them differently, namely, manufacture using special steel bars if so possible, and manufacture using relatively expensive small-diameter seamless steel pipes and tubes for bearings if manufacturing using special steel bars is difficult. For that reason, the JFTC finds that the possibility of switching from small-diameter seamless steel pipes and tubes for bearings to special steel bars is limited[8].

Therefore, competitive pressure from adjacent markets is limited.

(5) Competitive pressure from users

Small-diameter seamless steel pipes and tubes for bearings are manufactured only by the Parties, and using imported goods is not an option. For that reason, the users, bearing manufacturers have no options other than to use products of the Parties, and their price bargaining power is limited. Additionally, in general, while the end users, automobile manufacturers etc. have price bargaining power backed by centralized purchasing[9], they do not have options other than small-diameter seamless steel pipes and tubes for bearings either, and competitive pressure from end users is also limited.

Therefore, competitive pressure from users is limited.

4. Legal assessment based on the Antimonopoly Act

The conduct of this case results in the Parties monopolizing the trading field of small-diameter seamless steel pipes and tubes for bearings, and competitive pressure from adjacent markets and users is limited, in addition to the fact that no import pressure nor entry pressure can be recognized. This could lead to a situation where the Parties alone can freely control the prices etc. to a certain degree, and the JFTC recognizes that the conduct of this case results in substantially restraining competition in the trading field of small-

section is circular), square bars (the cross-section is square), etc. By processing round bars made of special steel into cylindrical, for some usages, it becomes possible to use them in a similar manner as small-diameter seamless steel pipes and tubes.

8 Regarding the degree of switching between small-diameter seamless steel pipes and tubes for bearings and special steel bars, the JFTC conducted analysis on the impact on the sales quantity and price of steel pipes and tubes for bearings during the period of approximately three months from the explosion accident of a heating furnace occurred at Company A in January 2016 to March 2016 where the production capacity of special steel bars including bars for bearings was reduced, based on the concept of natural experiment. While a certain level of reservations are required for the limitation in the availability of data, the JFTC could not find any result that upholds the hypothesis that the sales quantity of steel pipes and tubes for bearings of the Parties was increased during the period Company A lost the production capacity.

9 A purchasing method in which an end user collectively conducts procurement of materials.

diameter seamless steel pipes and tubes for bearings in Japan.

Part V Proposal of remedy by the Parties

To the Parties, as described in 4 above, the JFTC indicated that the conduct of this case would substantially restrain competition in a particular field of trade pertaining to small-diameter seamless steel pipes and tubes for bearings. In response, the JFTC received a proposal of remedy below (hereinafter referred to as “the Remedy”) .

1. Transfer of facilities

The Parties will transfer a certain percentage of shares pertaining to rolling facilities for small-diameter seamless steel pipes and tubes for bearings (hereinafter referred to as “the Product”) owned by Sanyo Special Steel to Kobe Steel, Ltd. (JCN 6140001005714; hereinafter referred to as “Kobe Steel”), and Kobe Steel will hold the right to use the relevant facilities for 15,000 tons per year. The Parties will be entrusted with operation and production of the Product with the upper limit of 15,000 tons (additional 1,000 tons if desired by Kobe Steel) per year. If Kobe Steel desires to entrust operation and production for a quantity exceeding the upper limit, all the parties will faithfully consult and make a decision.

The Parties will provide Kobe Steel with technical and quality information necessary for Kobe Steel to sell the Product, and provide Kobe Steel with support on technical services for new specification needs, product development needs, etc. of the Product.

2. Transfer of commercial rights

Regarding the Product, a part of commercial rights pertaining to the Product owned by the Parties (equivalent to a total of approximately 14,000 tons per year) will be transferred to Kobe Steel. For three years from the date of transfer of commercial rights, the Parties will recommend users of the transferred commercial rights sourced from the Parties to use the Product sold by Kobe Steel in the matter of transconduct of this cases pertaining to the transferred commercial rights.

3. Information blocking

The Parties will implement appropriate information blocking measures within the Parties to prevent sensitive information (e.g., cost information, sales information, customer information) pertaining to Kobe Steel from being disclosed, etc., to the sales department, etc. of the Parties associated with entrustment of operation and production of the Product. For the detailed content, the Parties will seek confirmation by the JFTC in advance.

4. Reporting to the JFTC

The Parties will provide the JFTC with periodic annual reports on the implementation status of the Remedy for over five years, in principle, from the date of execution of the conduct of this case. Additionally, the Parties provide the JFTC with necessary reports etc. in compliance with requests from the JFTC.

Part VI Assessment of the Remedy

1. Assessment of the content of the Remedy

A third party that receives facilities etc. by the Remedy will, through transfer of facilities, acquire a certain percentage of shares for rolling facilities of the Product owned by Sanyo Special Steel and the right to use the relevant facilities for 15,000 tons per year, and will be able to entrust the Parties with operation and production of the Product for 15,000 tons (additional 1,000 tons if desired by the third party) per year. Additionally, through transfer of commercial rights, the third party will acquire commercial rights equivalent to a total of approximately 14,000 tons per year. Further, the third party will be able to receive support on technical services necessary for product development, etc. of the Product.

Therefore, the JFTC finds that, if such transfer of facilities etc. is made to an appropriate third party, an influential enterprise with a maximum market share of 25% newly enters into the market, and competitive pressure from the enterprise will work.

2. Assessment of Kobe Steel

Same as Nippon Steel & Sumitomo Metal, Kobe Steel is an enterprise that manufactures iron and steel products by the blast furnace method[10], and placed the third in the production capacity of crude steel in Japan.

[10] A manufacturing method that utilizes buried resources such as iron ore. A typical steel production method other than the blast furnace method is electric furnace steelmaking that utilizes steel scraps.

Additionally, Kobe Steel sells special steel bars to bearing manufacturers, and has established a commercial distribution network for bearing manufacturers.

For that reason, the JFTC finds that, if transfer of facilities etc. is made in accordance with the Remedy, Kobe Steel will become able to sell the Product within a short period of time, for the portion of the transfer of commercial rights at least.

Therefore, the JFTC finds that Kobe Steel is appropriate as the third party to receive the facilities etc.

3. Other considerations

The JFTC finds that the Parties introducing information blocking measures within themselves and seeking confirmation by the JFTC on the content in advance is appropriate from the viewpoint of preventing a cooperative relationship from being established by, for instance, the Parties acquiring sales information etc. of Kobe Steel, and from the viewpoint of preventing the Parties from unjustly using the information acquired from Kobe Steel to their own advantages.

Additionally, regarding the implementation status of the Remedy, the JFTC finds that the Parties providing the JFTC with periodic reports and other necessary reports is appropriate from the viewpoint of monitoring execution of the Remedy.

4. Summary

As described above, on the premise of the Remedy, the JFTC assesses that a competition environment equivalent to that prior to the conduct of this case will be maintained by Kobe Steel newly entering the market as an influential competing enterprise, and the JFTC finds that the conduct of this case would not substantially restrain competition in the trading field of small-diameter seamless steel pipes and tubes for bearings in Japan.

Part VII Conclusion

The JFTC concluded that the conduct of this case would not substantially restrain competition in any particular field of trade on the premise that the Parties introduce the Remedy.

Case 5 Acquisition of shares of Asahi Industries Co., Ltd. By Godo Steel, Ltd.

Part I Outline of this case

This case concerns a plan in which Godo Steel, Ltd. manufacturing and selling steel mill products (JCN6120001049614)(hereinafter referred to as “Godo Steel”; a group of companies which have already built joint relationships with Godo Steel shall be referred to as “Godo Steel Group”) intends to acquire all voting rights based on stock ownership of Asahi Industries Co., Ltd. manufacturing and selling steel mill products (JCN 2013301000418) (; hereinafter referred to as “Asahi Industries”; a group of companies which have already built joint relationships with Asahi Industries shall be referred to as “Asahi Industries Group”; Godo Steel and Asahi Industries shall be collectively referred to as “the Parties” and; Godo Steel Group and Asahi Industries Group shall be collectively referred to as “the Parties Group”) (hereinafter referred to as “the conduct of this case”).

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

Both of the Parties are manufacturing and selling steel mill products, and among such products, there are many products concerning which the Parties are in a horizontal relationship with each other. In the following section, the focus of our review is placed on general reinforcement rod concerning which the conduct of this case is expected to exert a relatively large impact on competitions.

Part II Particular field of trade

1. Product outline

(1) Reinforcement rod

Reinforcement rods are deformed steel bars[1] used to reinforce concrete by placing them in concrete. They are used as civil engineering and construction material in buildings of reinforced concrete structure.

Since reinforcement rods are manufactured in a specific length and distributed as such, it is necessary to weld those rods into a required length. Reinforcement rods are connected by artisans qualified for gas pressure welding carried out typically in the following procedures: the ends of rods are butted and heated by flame while applying pressure to form a knot connecting rods. However, a special type of reinforcement rod with threads formed on its surface (hereinafter referred to as “thread knot reinforcement rod”; other types of

[1] Steel bar means bar-shaped steel material. In addition to round bar having circular section and square bar having square section, there is, as construction material, deformed steel bar with projections such as knots are formed on its surface to increase adhesion with concrete.

reinforcement rod shall be referred to as "general reinforcement rod"; thread knot reinforcement rod and general reinforcement rod shall be collectively referred to as "reinforcement rods") has been developed for the ease of welding. Thread knot reinforcement rods can be efficiently connected with each other by using tubular parts with threads compatible[2] with those of tread knot reinforcement rods formed on its inside surface (hereinafter referred to as "joint for thread knot reinforcement rod").

As welding methods for reinforcement rods used as main reinforcement rod[3] for a reinforced concrete structure, there are the following three types: gas pressure welded joint[4], welded joint[5] and mechanical joint[6]. As for mechanical joint, the most commonly used is the method using a thread knot reinforcement rod and a compatible joint.

Mechanical joint can guarantee a certain level of reliability irrespective of the skill of persons to carry out the job. Its reliability for jointing high strength reinforcement rods is confirmed. It entails no shrinkage. It can be used in rainy time work, resulting in potential reduction in construction period. Therefore, mechanical joint is the choice for construction works of skyscrapers requiring high reliability and for any work of a short construction period. And in other cases, gas pressure welded joint and welded joint tend to be selected. Thus, a certain level of choice depending on occasions is seen. More specifically, thread knot reinforcement rods tend to be used for mechanical joint, and general reinforcement rods, for gas pressure welded joint.

(2) Standards for reinforcement rod

Reinforcement rods are standardized as "JIS G3112 Steel Rods for Reinforced Concrete", and are classified according to diameter into thin, base and thick rods and further according to strength into five categories. As for thread knot reinforcement rods, in addition to those classified under the JIS Standards, there are five categories of high-strength steel rods called Minister certified

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[2] Compatibility means that the threads on the surface of a thread knot reinforcement rod precisely engages with the threads formed inside a tubular joint for thread knot reinforcement rod and they can be screwed together firmly. In the case of thread knot reinforcement rods, it is important to ensure the precise engagement of the threads of a thread knot reinforcement rod with those of a joint for thread knot reinforcement rod in order to ensure the said compatibility. On the other hand, general reinforcement rods have asperity on its surface but such asperity is for improving adhesion with concrete but not for screw-like function.

[3] Main reinforcement rod means a reinforcement rod placed in pillars and beams of a reinforced concrete structure to sustain the weight of the structure.

[4] Gas pressure welded joint means such method where the ends of rods are butted and heated by flame while applying pressure to form a knot connecting the rods.

[5] Welded joint means such method where a welding rod is inserted between the ends of rods and then melted to connect the rods.

[6] Mechanical joint means such method where a dedicated joint part is engaged with parts to be jointed together.

products[7].

While a thin reinforcement rod is used as supplementary reinforcement[8] in a vertical direction against a main reinforcement rod in order to prevent shear fractures[9], a base reinforcement rod and thick reinforcement rod are used as main reinforcement to prevent bending fractures[10].

2. Product range

(1) General reinforcement rod and thread knot reinforcement rod

There are five kinds of general reinforcement rods according the JIS Standards. In the case of thread knot reinforcement rods, there are steel rods of ultra-high strength above JIS Standards in addition to five steel rods according to the JIS Standards. Thread knot reinforcement rods are suitable for such construction methods as selected to construct high-storied reinforced-concrete buildings from the viewpoint of safety and construction period. Accordingly, thread knot reinforcement rods tend to be used for constructing high-storied buildings. Especially in the case of a high-storied building requiring enforcement rods of ultrahigh strength steel, thread knot reinforcement rod is the only choice. For this reason, demand substitutability between thread knot reinforcement rod and general reinforcement rods is limited.

Meanwhile, it would be necessary for manufacturers/distributors of general reinforcement rods to develop joints for thread knot reinforcement rods having threads compatible with those of thread knot reinforcement rods if they intend to expand their field to thread knot reinforcement rods production. In this connection, small, thin and easy-to-install joints are preferred by workers, it would take some time to develop joints satisfying both of those needs and safety. It is said that it takes two years or so for manufacturers to verify through tests the safety of their thread knot reinforcement rods and joints for those rods and then obtain some public performance certification. In addition, since considerable technical capabilities and know-how is required in order to make an entry into the thread knot reinforcement rod market, it is said that it would take several years before they can market new thread knot reinforcement rods. As seen above, it is difficult for companies not engaging in the manufacture of thread

7 Products certified by the Minister of Land, Infrastructure, Transport and Tourism according to the Building Standards Act.

8 Supplementary reinforcement rod means a reinforcement rod used in a vertical direction against a main reinforcement rod to prevent the deformation of a building structure.

9 Shear fracture means fracture caused by a shearing force. For example, a beam under shearing force may be cracked in a diagonal direction and slides to collapse.

10 Bending fracture is destruction caused by a bending force. For example, if a pillar receives on its top and bottom large pressure caused by an earthquake and can no longer sustain bending force exerted on its top and bottom, bending fractures are caused.

knot reinforcement rods to manufacture and market thread knot reinforcement rods in no time. Considering that, in fact, enterprises competing in the general reinforcement rod market and those in the thread knot reinforcement rod market are not the same, the supply substitutability between thread knot reinforcement rods and general reinforcement rods is limited from the perspective of the suppliers of general reinforcement rods. On the other hand, since it is relatively easy for companies engaging in the manufacture of thread knot reinforcement rods to change their business to manufacturing and selling of general reinforcement rods, a certain level of supply substitutability between general reinforcement rods and thread knot reinforcement rods is recognized by the suppliers of thread knot reinforcement rods.

Considering that the Parties Group is engaging only in the general reinforcement rod business and that a certain level of supply substitutability with general reinforcement rods is recognized by thread knot reinforcement rod suppliers, it may be possible to define the product range to include both general reinforcement rods and thread knot reinforcement rods. In order to ensure careful examination, general reinforcement rods and thread knot reinforcement rods were defined into different product ranges and changing business from thread knot reinforcement rods to general reinforcement rods was examined as entry pressure.

(2) Thin, base and thick rods

As elaborated in 1 (2) above, general enforcement rods are roughly classified into thin, base and thick rods. Thin rods are used as supplementary enforcement and base and thick rods are used as main reinforcement, so their uses are different. Therefore no demand substitutability is recognized between thin general reinforcement rod (hereinafter referred to as “general reinforcement rod (thin)”) and base and thick general reinforcement rod (hereinafter referred to as “general reinforcement rods (base/thick)”). Since a large amount of capital investment would be required in order for companies manufacturing/distributing general reinforcement rod (thin) to anufacture general reinforcement rods (base/thick), and since business switching would not be easy, no supply substitutability is recognized either. On the other hand, as for between base general reinforcement rod and thick general reinforcement rod, supply substitutability is recognized since business switching would be possible without incurring huge additional expenses and costs by using the same facilities and only by changing rolling mill rolls.

Accordingly, general reinforcement rod (thin) and general reinforcement rods (base/thick) come under different product range. Companies of the Parties

Group are competing in the market of general reinforcement rods (base/thick) only.

(3) General reinforcement rods (base/thick) of different strength

As discussed in 1 (2) above, there are several types of general reinforcement rods having different strength. Since strength required of general reinforcement rods varies depending on the type of structure and what part of the structure rods are to be used, no demand substitutability is recognized among rods of different strength.

On the other hand, it may be possible for manufacturers and sellers of general reinforcement rods (base/thick) in the Kanto region where the Parties Group is operating to manufacture and sell various types of steel rods of different strength without incurring additional capital investment. Therefore, supply substitutability is recognized.

Accordingly, general reinforcement rods of different strength (base/thick) come under the same product range.

(4) Summary

Based on the above, the product range for this case was defined as “general reinforcement rods (base/thick)”.

3. Geographic range

Building constructors including general construction firms, major users of general reinforcement rods (base/thick) are usually procuring such rods within such geographic area as Hokkaido, Tohoku and Kanto mainly due to the Reinforcement Rod Designation System[11] and the price varies among those areas.

Based on the above, the geographic range was defined as “the Kanto region” where companies of the Parties Group are competing with each other.

It should be pointed out that, in the Kanto region, the flow of general reinforcement rods (base/thick) from other areas is recognized. This shall be examined as competitive pressure from adjacent markets.

[11] Under the system, reinforcement rod fabrication companies are obligated to use enforcement rods of a specified manufacturer. For example, reinforcement rod fabrication companies in the Kanto region are usually obligated to use the products of reinforcement rod manufacturers operating in the Kanto region.

Part III Impact to competition anticipated from the conduct of this case

1. Substantial restriction of competition through unilateral conduct

(1) Position of the Parties Group and competing enterprises

The aggregated share of the Parties Group in the market for general reinforcement rod (base/thick) after the conduct of this case would be about 60%. HHI would be around 4,500 and the increment in HII, around 1,900. Thus, the safe-harbor criteria for horizontal business combination are not met.

[Market shares for general reinforcement rod (base/thick) in 2017]

Rank	Company name	Market share
1	Godo Steel Group	Approx. 35%
2	Asahi Industries Group	Approx. 25%
3	Company A	Approx. 25%
4	Company B	Approx. 5%
5	Company C	Approx. 5%
	Imports	0—5%
Total		100%
Combined market share/rank: approx. 60%/1st place		

After the conduct of this case, the combined market share of the Parties Group would be around 60% (first place). However, there is an influential competitor, Company A holding around 25% share of the market.

For this case, economic analysis applying the idea of critical loss analysis was conducted to assess the excess supply capacity of competing enterprises. More specifically, critical loss to be faced by the Parties after merger was estimated and with the said loss was compared the excess supply capacity of competing enterprises[12].

Comparison with the critical loss obtained from our analysis indicated that competitors have a certain degree of excess supply capacity. Based on the above, a certain degree of competitive pressure from competitors is recognized.

12 (Breakeven) critical loss means the reduction in demands which represents the point where profits after some price increase (e.g. 5% to 10%) by a company facing a certain demand become equal to those earned by the company before the price increase. If quantity demanded decreases below the critical loss point, the company would suffer profit reduction because of price increase. Therefore, the said price increase is not reasonable. Accordingly, critical loss may be considered as the maximum demand shifting to competitors of the company if the company makes reasonable price increase.

(2) Import

The import percentage of general reinforcement rods (base/thick) in 2017 was marginal, 0 to 5%. From the survey with users of the rods was obtained almost no reply arguing that imports would provide a substitutive option for general reinforcement rods (base/thick) of the Parties Group.

Accordingly, import pressure is not recognized.

(3) Entry

In order to manufacture general reinforcement rods (base/thick), it is necessary to construct or obtain some facilities. Even if the company is already manufacturing general reinforcement rods (thin), a large amount of capital investment would be required. In fact, cases of entry into the market of general reinforcement rods (base/thick) are very few, and the likelihood of any entry in near future is not recognized.

On the other hand, as pointed out in Part II, 2(1) above, it is relatively easy for companies manufacturing thread knot reinforcement rods to make a business shift to general reinforcement rod business. Although the market size of the thread knot reinforcement rod industry is considerably small compared to that of the general reinforcement rod industry, it can be said that a certain degree of entry pressure from manufacturers of thread knot reinforcement rods is in place.

Based on the above, a certain degree of entry pressure is recognized.

(4) Competitive pressure from adjacent markets

A. Competitive pressure from thread knot reinforcement rod business

As pointed out in Part II, 1(1) above, as welding methods for reinforcement rods, gas pressure welded joint, welded joint and mechanical joint are used depending on application. However, in some cases any of the method is usable. Therefore, thread knot reinforcement rods and general reinforcement rods can be alternatively used. Although the market size of the thread knot reinforcement rod industry is considerably small compared to that of the general reinforcement rod industry, in fact, there are some cases where price competition is seen between the manufacturers of thread knot reinforcement rods and those of general reinforcement rods.

Based on the above, a certain degree of competitive pressure from adjacent markets (thread knot reinforcement rod industry) is recognized.

B. Competitive pressure from adjacent regions

As for reinforcement rods used in the main building structure covered by the Reinforcement Rod Designation System, reinforcement rod companies in the Kanto region are usually designated as suppliers. Therefore, no competitive pressure from reinforcement rod companies of other regions is recognized. On the other hand, as for foundation piles not covered by the Reinforcement Rod Designation System, general reinforcement rods (base/thick) of reinforcement rod companies in other regions are being used and are considered to exert a certain degree of restraint on competition.

Based on the above, a certain degree of competitive pressure from adjacent areas is recognized.

(5) Competitive pressure from users

Since building constructors including general construction firms, major users of general reinforcement rods (base/thick) have been forced by owners to compete on price, they, in turn, have exerted price reduction pressure on the manufacturers of general reinforcement rods (base/thick). As for general reinforcement rods (base/thick), prices only are compared with little regard to their quality if they are satisfying certain requirements of the JIS Standards and Minister Certification. As such, users of general reinforcement rods (base/thick) can easily change suppliers depending on price.

Based on the above, competitive pressure from users is recognized.

(6) Summary

As seen above, this conduct of this case would not substantially restrain competition in the field of the trade of general reinforcement rods (base/thick) in the Kanto region through the unilateral conduct of the Parties Group.

2. Substantial restriction of competition through coordinated conducts

All the competitors of the Parties Group have a certain degree of excess supply capacity and they may take away sales opportunities from other competing enterprises by reducing prices. In addition, there exist several competitors and certain degrees of entry pressure and pressure from adjacent markets are in place and competitive pressure from users is recognized. Based on the foregoing, it is difficult for those enterprises to predict with high accuracy potential conducts of their competitors. Based on the above, the conduct of this case would not substantially restrain competition in the field of the trade of general reinforcement rods (base/thick) in the Kanto region through the coordinated conducts by the Parties Group and their competitors.

Part IV Conclusion

It has been concluded that the conduct of this case would not substantially restrain competition in any particular field of trade.

Case 6 Acquisition of shares of H.C. Starck Tantalum and Niobium GmbH by JX Metals Deutschland GmbH

Part I Outline of this case

This case concerns a plan in which JX Metals Deutschland GmbH manufacturing and selling of tantalum target material, etc. (headquartered in Germany; hereinafter referred to as “JXMD”; a group of companies which have already formed joint relationships with JXMD’s ultimate parent company, JXTG Holdings Inc. (JCN 9010001131743) (hereinafter referred to as “JXTG”) shall be referred to as “JXTG Group”) intends to acquire 100 % of voting rights based on stock ownership of H.C. Starck Tantalum and Niobium GmbH manufacturing and selling tantalum powder, etc. (headquartered in Germany; hereinafter referred to as “Starck TaNb” ; Starck TaNb and its subsidiaries shall be collectively referred to as “Starck TaNb Group”; JXMD and Starck TaNb shall be collectively referred to as “the Parties”; JXTG Group and Starck TaNb Group shall be collectively referred to as “the Parties Group”)(hereinafter referred to as “the conduct of this case”).

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

Part II Particular field of trade

1. Product outline, etc.

(1) Tantalum target material

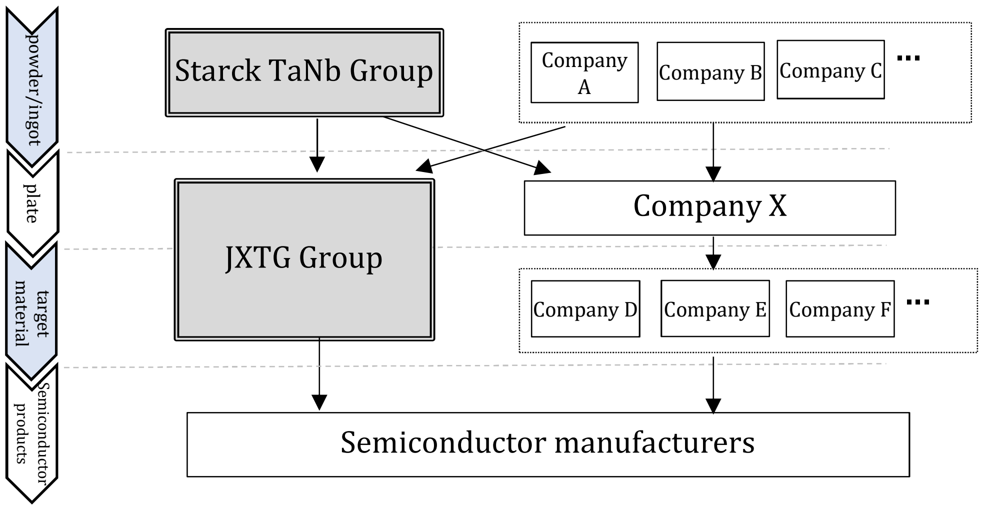
Tantalum target material is one of materials used in the manufacturing process of semiconductors. Tantalum is a chemical element with the atomic number 73 and has superior corrosion-resistance, acid-resistance, processability, conductivity and thermal conductivity. It is one of so-called rare metals.

In the process of manufacturing semiconductors, a technique called sputtering is used to form a membrane over the substrate. This technique is that membrane material called sputtering target material (hereinafter referred to as “target material”) and a substrate on which a membrane is to be formed are placed in a space filled with inert gas such as argon (Ar), and then high voltage is applied to make the inert gas collide with the target material and thereby to knock atoms out of the target material and ultimately to attach the knocked out atoms onto the substrate to form a membrane.

Semiconductor manufacturers select materials for wiring usually depending on the characteristics of semiconductors to be manufactured. Wiring materials currently most commonly used are copper and aluminum. Irrespective of materials used for wiring, the above-mentioned process of forming membranes is required in order to prevent wiring material from diffusing over a silicon wafer. In the process, tantalum is used as membrane for semiconductors with copper wiring and titanium is used for semiconductors with aluminum wiring. As seen above, semiconductor manufacturers decide which target material they will use depending on which wiring material they will use. Target material made of tantalum is tantalum target material.

(2) Flow of the manufacturing process of tantalum target material

Chart Flow of the manufacturing process of tantalum target material at the time of the review of the conduct of this case



The manufacturing process of tantalum target material is as follows: tantalum powder is produced by separating and refining tantalum from raw materials such as ores and scraps and from the refined tantalum powder tantalum ingots are produced. Tantalum ingots are cut into circular plates. By applying forging, rolling and heat treatment to the plate, tantalum plates are produced. The tantalum plates are further subjected to machining and processing, and after some final finish process tantalum target material is obtained. Tantalum target material manufactured as such is supplied to semiconductor manufacturers.

Starck TaNb Group is supplying tantalum powder for target material to ingot manufacturers trading with JXTG Group [1] and also to a specific company

[1] JXTG Group is procuring ingots made of tantalum powder from a specific manufacturer of tantalum ingots, and

manufacturing and selling tantalum ingot plates (Company X) [2]. And other manufacturers of tantalum powder and tantalum ingots (including Company A) are also supplying tantalum powder and tantalum ingots to JXTG Group and Company X. Company X is selling tantalum plates to other companies manufacturing and selling tantalum target material (including Company D) than JXTG Group.

2. Product range

(1) Tantalum powder, etc.

A. Tantalum powder for target material and that for other applications

Tantalum powder and tantalum ingots (hereinafter collectively referred to as "tantalum powder, etc.") are used not only for the manufacture of target material but also for other applications including the manufacture of capacitors [3]. Tantalum powder, etc. for target material has different product characteristics such as purity from those of tantalum powder, etc. for other applications. And the price range is also different. Accordingly, there is no demand substitutability between tantalum powder, etc. for target material and those for other applications.

In addition, it cannot be argued that suppliers of tantalum powder, etc. for other applications are capable of easily making a business shift to the manufacture of tantalum powder, etc. for target material. Therefore, supply substitutability is also limited.

Based on the above, tantalum powder, etc. for target material and those for other applications come under different product range.

B. Tantalum powder, etc. for target materials of varying purity

Depending on the level of impurity content, tantalum powder, etc. for target material can be classified into standard products and high-purity products. However, there is no general criteria for differentiating between high-purity products and standard products. In addition, it may be possible to some extent that users interchangeably use both products.

Based on the above, tantalum powder, etc. for target materials of varying

except for marginal amount of tantalum powder, have no direct business relationship with Starck TaNb Group. However, putting into account that the said specific manufacturer of tantalum ingots is procuring tantalum powder from Starck TaNb Group, our review was made assuming that tantalum powder is in fact traded between JXTG Group and Starck TaNb Group.

[2] Starck TaNb Group is not manufacturing tantalum ingots.

[3] Tantalum ingots are not used for capacitors.

purity come under the same product range.

Incidentally, Starck TaNb Group is good at manufacturing tantalum powder of relatively high purity. In Part III “Impact to competition anticipated from the conduct of this case” below, the possibility of market closure or exclusivity is examined by taking into account the above-mentioned characteristic of the tantalum powder manufactured by Starck TaNb Group.

C. Summary

Based on the above, the product range was defined as “tantalum powder, etc. for target material”.

(2) Tantalum target material

As discussed in 1(1) above, the choice of metals used in target material is dependent on the choice of wiring material used in semiconductors. No demand substitutability is recognized between tantalum target material and target material of other materials.

In addition, it cannot be argued that suppliers of tantalum material of other materials would be able to easily switch to the production of tantalum target material. Therefore, supply substitutability is also limited.

Based on the above, the product range was defined as “tantalum target material”.

3. Geographic range

Tantalum is a rare metal. There is no restriction on the transportation of tantalum powder, etc. for target material, and the price per weight is high. Therefore, transportation costs account for the small percentage of the total costs and do not work as trade barrier, resulting in marginal price difference between domestic and import products. In addition, suppliers are distributing their products no matter what countries the users are based in, and users are also procuring tantalum regardless of whether the suppliers are based in or outside Japan.

The same can be said about tantalum target material.

Based on the above, the geographic range was defined as “worldwide” for both tantalum powder, etc. for target material and tantalum target material.

Part III Impact to competition anticipated from the conduct of this case

Starck TaNb Group is manufacturing and selling tantalum powder for target material, and JXTG Group is manufacturing and selling tantalum target material by using tantalum powder, etc. for target material. Accordingly, this case falls under the definition of vertical business combination where tantalum powder, etc. for target material are regarded as upstream market and tantalum target material is regarded as downstream market.

1. Position of the Parties Group and competing enterprises

(1) Upstream market

The shares of the Parties Group and their competitors in the market of tantalum powder, etc. for target material in 2017 are as mentioned in the table below according to the situations at the time of the review of the conduct of this case. HHI is around 5,500 and the market share of the Parties Group is around 75%. Therefore, the safe-harbor criteria for vertical business combinations are not met.

Apart from Starck TaNb Group, Company A is holding around 20% share of the market and, thus, an influential competitor supplying tantalum powder, etc. for target material.

[Market shares concerning tantalum powder, etc. for target material in 2017]

Rank	Company name	Market share
1	Starck TaNb Group	Approx. 75%
2	Company A	Approx. 20%
3	Company B	0−5%
4	Company C	0−5%
	Others	0−5%
Total		100%

(2) Downstream market

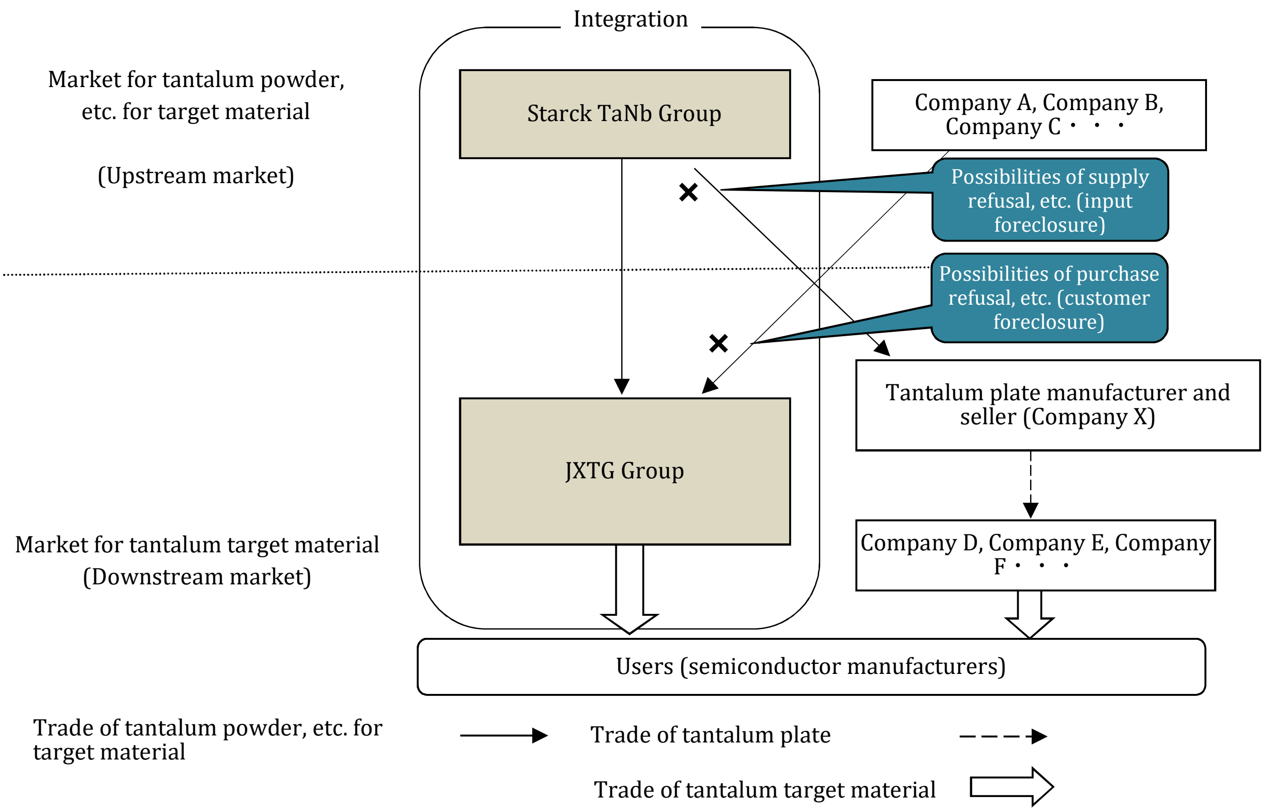
The shares of the Parties Group and their competitors in the market of tantalum target material in 2017 are as mentioned in the table below according to the situations at the time of the review of the conduct of this case. HHI is around 3,600 and the market share of the Parties Group is around 55%. Therefore, the safe harbor criteria for vertical business combinations are not met.

Apart from JXTG Group, there are influential competitors, Company D and Company E, holding around 15% share of the market respectively.

[Market shares concerning tantalum target material in 2017]

Rank	Company name	Market share
1	JXTG Group	Approx. 55%
2	Company D	Approx. 15%
3	Company E	Approx. 15%
4	Company F	0−5%
	Others	Approx. 10%
Total		100%

Figure: Outline figure of the conduct of this case



2. Supply refusal, etc. of tantalum powder

(1) Capabilities to implement input foreclosure

Examination is made about the possibility of market closure or exclusivity that may occur in the tantalum target material market if Starck TaNb Group refuses to supply tantalum powder, etc. for target material to a specific company manufacturing and selling tantalum plate (Company X) or supplies such tantalum powder, etc. to the company only under unfavorable conditions compared to those offered to JXTG Group (such an acts hereinafter referred to as "supply refusal, etc.")

Starck TaNb Group is holding about 75% share in the tantalum powder, etc. for target material market. Therefore, should supply refusal, etc. occur, it would not be easy for the said specific company manufacturing and selling tantalum plate (Company X) to procure tantalum powder, etc. for target material of the same kind and in the same amount. Especially, with regard to tantalum powder for target material of high purity in which Starck TaNb Group is strong, it would take several years to develop and manufacture the products. Therefore, it is considered that some time would be required to change suppliers to a company other than Starck TaNb Group (such as Company A) even after production request is made to the company.

Therefore, it would require some time for competitors in the downstream market (such as Company D) procuring tantalum plates from the said tantalum plate manufacturer and seller (Company X) to secure required volume of tantalum plates. If supply refusal, etc. occurs, the competitor in the downstream market (such as Company D) may experience a decline in its competitive power. Therefore, the Parties Group is considered to be capable of implementing input foreclosure.

(2) Incentives to implement input foreclosure

It could be anticipated that Parties Group may implement supply refusal, etc. of tantalum powder, etc. for target material and then increase their production of tantalum target material in order to increase their profits. It can be said that the Parties Group is considered to have incentives to implement input foreclosure.

(3) Summary

Based on the above, it can be said that the Parties Group is capable of implementing input foreclosure and there exist incentives for them to do so.

Accordingly, the probability of market closure or exclusivity resulting from input foreclosure is recognized.

3. Purchase refusal, etc. of Tantalum powder, etc. for target materials

Examination is made about the possibility of market closure or exclusivity that may occur in the tantalum powder, etc. for target materials if JXTG Group refuses to purchase tantalum powder, etc. for target material from companies other than Starck TaNb Group (such as Company A) or purchases such tantalum powder, etc. from the company only under unfavorable conditions compared to those with Starck TaNb Group (such an act shall be hereinafter referred to as “purchase refusal, etc.”)

Currently JXTG Group is procuring most of the tantalum powder, etc. for target material required for their production from Starck TaNb Group, and the procurement volume of the said tantalum powder, etc. from other companies accounts for only 0 to around 5% of the upstream market as a whole. Therefore, the Parties Group is not considered to have capabilities of implementing customer foreclosure.

Part IV Proposal for remedial measures by the Parties

In response to our conclusion that the potential input disclosure after the conduct of this case is likely to cause the problem of the closure or exclusivity of the tantalum target material market (downstream market), the Parties have proposed remedial measures as summarized below (hereinafter referred to as the “remedial measures”).

1. Measures to ensure continued transactions

Starck TaNb will amend the long-term supply agreement with a specific company manufacturing and selling tantalum plate (Company X) concerning tantalum powder for target material (hereinafter referred to as the “Long-term supply agreement”) as follows:

- The term of the Long-term supply agreement shall be extended by a considerable period of time. Unless Starck TaNb or the specific company manufacturing and selling tantalum plate (Company X) notifies the other party of its intention not to renew the agreement not later than one year before the expiry, the agreement will be automatically renewed.
- Starck TaNb will be obligated, during the term of the Long-term supply agreement,

to supply to the specific company manufacturing and selling tantalum plate (Company X) the similar amount of tantalum powder for target material as compared to the amount Starck TaNb may be supplying at the time of the conduct of this case.

- Starck TaNb Group will supply to the specific company manufacturing and selling tantalum plate (Company X) tantalum powder for target material at the price agreed on in the current Long-term supply agreement till an agreed date. After the said date, negotiations on the price applicable to the next year and the method for determining the said price will be started and agreement will be reached by an agreed date of the previous year. If both parties fail to reach on any agreement within three months, it will be resolved by arbitral proceedings.

2. Periodic report

The Parties will provide to the JFTC the annual report of transactions with the specific company manufacturing and selling tantalum plate (Company X) for the period as from the implementation of the conduct of this case till the end of 2023.

Part V Assessment of the remedial measures

Based on the results of the interview with the specific company manufacturing and selling tantalum plate (Company X) and the competitors in the downstream market (such as Company D), if the measures to ensure continued transactions mentioned in Part IV-1 is introduced, the specific company manufacturing and selling tantalum plate (Company X) will be able to procure tantalum powder for target material from Starck TaNb Group at a reasonable price and in satisfactory volume as long as the above-mentioned measures are in place, and thereby the competitiveness of the competitors in the downstream market (such as Company D) procuring tantalum plates for target material from the specific company manufacturing and selling tantalum plate (Company X) would be maintained. Accordingly, enough time will be secured for competitors in the upstream market in develop and manufacture tantalum powder for target material of high purity. And if Starck TaNb Group refuses to supply the material after the expiry of the above measures, it will be possible for the specific company manufacturing and selling tantalum plate (Company X) to change to any other supplier of tantalum powder, etc. for target material. Therefore, the problem of market closure or exclusivity is not likely to arise, and, thus, the above-mentioned measures are considered as effective.

In addition, periodic reporting is considered as effective measure for the purpose of the monitoring of the remedial measures.

As described above, the remedial measures will prevent market closure or exclusivity.

Part VI Conclusion

It has been concluded that the conduct of this case would not substantially restrain competition in any particular field of trade if the proposed remedial measures are put into place.

Case 7 Acquisition of shares of Cansystem Co., Ltd. by Usen-Next Holding Corporation

Part I Outline of this case

This case concerns a plan in which Usen-Next Holding Corporation (JCN3011001067132), an ultimate parent company of Usen Corporation engaging in the business of broadcasting/online distribution of music (JCN8010401132177)(hereinafter referred to as "USEN"; a group of companies which have already built joint relationships with USEN shall be referred to as "USEN Group") intends to acquire all voting rights based on stock ownership of Cansystem Co., Ltd. likewise engaging in the business of broadcasting/online distribution of music (JCN 2011101005323) (hereinafter referred to as "Cansystem"; a group of companies which have already built joint relationships with Cansystem shall be referred to as "Cansystem Group"; USEN and Cansystem shall be collectively referred to as "the Parties"; USEN Group and Cansystem Group shall be collectively referred to as "the Parties Group") (hereinafter referred to as "the conduct of this case").

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

While the companies of the Parties Group are in a horizontal relationship with each other in connection with the business of broadcasting/online distribution of music for commercial users and for private users, the Parties Group is mainly engaging in the broadcasting/online distribution service of music for commercial users and is considered to have significant influence on the competition in that field. Therefore, there will be detailed description about the field of broadcasting/online distribution service of music for commercial users in the following parts.

Part II Particular field of trade

1. Service outline

Broadcasting/online distribution service of music for commercial users is to allow restaurants, retail stores and other business facilities a direct access to music through the use of telecommunications cables, satellites or Internet communication line.

Usually, under a contract concerning broadcasting/online distribution service of music for commercial users, users are obligated to keep using the service for a prescribe period of time. Any user terminating the use before the expiry of the contract term would be required to pay a prescribed amount of penalty. According to their contracts concerning broadcasting/online distribution service of music for commercial users, the Parties Group obligate the users, in principle, two years of continuous use. Any user intending to terminate the contract is required to notify the intention not later than the last day of the month before the month in which the intended termination date falls (the said requirement shall be hereinafter referred to as “two month notice requirement”). If the period of use is below two years, the user would be required to pay as penalty such amount as equal to the service charges for the remaining period (hereinafter the said requirement shall be referred to as “termination penalty requirement”). It is further provided for that, unless a user notify its intention not to renew the contract not later than one month before the expiry of the said two year term, the contract shall be automatically renewed for another two year period.

2. Service range

Music made available to commercial users through the broadcasting/online distribution service of music is mainly used as BGM for creating shop atmosphere. Music is a work protected by the Copyright Act. Any user (shop/store) intending to use any music piece for any commercial purpose is required to obtain consent from the copyright owner (hereinafter referred to as “copyright clearance”)[1] . Therefore, providers of the broadcasting/online distribution service of music are also providing agency service to obtain copyright clearance for users (shops/stores).

On the other hand, music made available by the broadcasting/online distribution service of music for private users is used for personal enjoyment and users (private persons) are not required to undergo copyright clearance. Thus, providers of the broadcasting/online distribution service of music for private users are providing no copyright clearance service to users (private person). Further, between the broadcasting/online distribution service of music for commercial users and that for private users, the price range settings are different. In addition, the use of music made available by the broadcasting/online distribution service of music for private users is usually restricted to personal use and it is prohibited to use the music for any commercial purpose.

In light of the above, it is difficult for shops/stores to use the broadcasting/online distribution service of music for private users and the broadcasting/online distribution service of music for commercial users in an interchangeable manner.

[1] Refer to Article 22 (musical performance right) etc. of the Copyright Act.

Further, between the broadcasting/online distribution service of music for commercial users and that for private users, competing enterprises are different. If providers of the broadcasting/online distribution service of music for private users intend to start the business of the broadcasting/online distribution service of music for commercial users, it would be necessary to acquire knowhow concerning copyright clearance. Therefore, it would not be easy for them to make an entry into the business.

Accordingly, the service range was defined as “the broadcasting/online distribution service of music for commercial users”.

3. Geographic range

Providers of the broadcasting/online distribution service of music for commercial users have made available music at similar prices, in similar quality and contents in any part of the nation, and users have gained access to music at similar prices, in similar quality and contents from any of the national providers of the broadcasting/online distribution service of music for commercial users irrespective of where they are located.

Accordingly, the geographic range was defined as “nationwide”.

Part III Impact to competition anticipated from the conduct of this case

1. Positions of the Parties and competing enterprises

The following table shows market share distribution among the providers of the broadcasting/online distribution service of music for commercial users. HHI after the conduct of this case would be around 8，600 and the increment, around 2，500. Therefore, the safe-harbor criteria for horizontal business combinations are not met.

[Market shares concerning broadcasting/online distribution service of music for commercial users in 2016]

Rank	Company name	Market share
1	USEN Group	Approx. 75%
2	Cansystem Group	Approx. 15%
3	Company A	Approx. 5%
4	Company B	0－5%
5	Company C	0－5%
6	Company D	0－5%
7	Company E	0－5%
8	Company F	0－5%
9	Company G	0－5%
10	Company H	0－5%
11	Company I	0－5%
Total		100%
Combined market share/rank: approx. 90%/1st place		

After the conduct of this case, while the combined market share of the Parties Group would be around 90% (1st place), as for market shares of competitors, the largest would be about 5% held by Company A. Therefore, the difference of market shares between competitors and the Parties Group would be large.

The Parties Group is providing full-line services (broadcasting/online distribution service of music for commercial users providing access to wide varieties of music from popular and major music pieces to minor music pieces; hereinafter the same shall apply) and charging higher prices compared to competitors. While the companies of the Parties Group are providing similar services, music pieces available from competitors are limited and popular and major music pieces are not always available from them. In addition, they are offering lower prices than the Parties Group. Accordingly, there are certain differences between the services provided by the Parties Group and those by competitors. Most of users interviewed replied they had chosen their service providers only out of the providers of the broadcasting/online distribution service of music for commercial users of the Parties Group.

Based on the above, competitive pressure from competitors is limited.

2. Entry

In connection with the broadcasting/online distribution service of music for commercial users, it would require large investment including telephone pole fees and satellite channel fees to enter into the music broadcasting service for commercial users. On the other hand, as for the music online distribution service for commercial users, not so large investment would not be required in order to make an entry into the industry. In fact, several companies have entered into the industry during a past few years.

However, in order to provide such full-line services as provided by the Parties Group, it would be necessary to conclude a license contract with major record companies and pay music licensing fees to them. Since there already exist companies occupying large market shares like the Parties Group and it is highly likely that users are reluctant to trade with more than one suppliers, it would not be easy for a new comer to acquire enough customers to recover the large amount of music license fees it has paid. In fact, companies that entered into the industry during past years are dealing with music pieces requiring no copyright royalty payment (so-called “copyright-free” pieces) only. The contents of services provided by those companies are, in many cases, different from those of the Parties Group and competitive pressure is limited. Therefore, it can be said that, in near future, any company is not likely to plan an entry with considerable business size and service range.

Accordingly, entry pressure is limited.

3. Competitive pressure from users

Music made available by the broadcasting/online distribution service of music for commercial users is not a must-have element for business operation from the perspective of business operators. If the price, service level or other elements become less favorable, they may stop using the service. In fact, looking at the businesses of the Parties Group, a considerable number of customers have chosen to terminate their contracts in the past few years in order to cut on their costs.

Accordingly, a certain level of competitive pressure from users is recognized.

4. Economic analysis

In order to assess the level of incentives after the conduct of this case for the Parties Group to unilaterally increase the price of their broadcasting/online distribution service of music, GUPPI[2] was calculated. As a result, the GUPPI of Cansystem was a relatively high value of more than 10%.

5. Summary

All the companies of the Parties Group are providing full-line services at higher prices compared to their competitors. Thus the contents of the services provided by the Parties Group are very much similar and no competitor is providing services similar to those services. Therefore, the Parties Group would be almost the only provider of full-line services if the conduct of this case is put into implementation. Meanwhile, a certain level of competitive pressure from users is recognized, but entry pressure is limited. The economic analysis shows the GUPPI of Cansystem is high.

Part IV Proposal for remedial measures by the Parties

1. Financial conditions, etc. of Cansystem alleged by the Parties Group and the JFTC's view on that

The Parties are alleging as follows: ① Cansystem is substantially in the state of insolvency, and without the business combination it is highly likely that the company will go bankrupt in near future and be forced to leave the market; and ② There is no third party that can help Cansystem out of those situations than USEN Group. Therefore, the conduct of this case is alleged not to substantial restraint competition in the field of broadcasting/online distribution service of music for commercial users. Such allegation is examined in the following section.

As for allegation ①, Cansystem is deemed to be substantially in the state of insolvency. In addition, in light of the results of safety analysis[3] conducted based on

[2] GUPPI is an acronym for Gross Upward Pricing Pressure Index. The concept of the index is as follows: If one party of the Parties Group (Company I) makes small price increase and part of its customers switches their suppliers to the other party of the Parties Group (Company II), then Company II would gain additional profits. The additional profits are calculated by the following formula: (additional profits earned by Company II) = (rate of switching from Company I to Company II) x (marginal profit of Company II) Here," rate of switching from Company I to Company II" means the percentage of the sales quantity of Company II against that of Company I if small price increase is made by Company I. "Marginal profit of Company II" means such profits as may be earned from additional sale of one unit of products of Company II. "Additional profits earned by Company II" would be calculated into the profits of the Parties Group after the business combination. Accordingly, it can be said that the magnitude of the additional profits represents the magnitude of the price increase pressure from Company I after the business combination. And the GUPPI of Company I is defined as the value obtained by dividing "additional profits earned by Company II" with "price of products of Company I". Likewise, the GUPPI of Company II is defined as the value obtained by dividing "additional profits earned by Company I" with "price of products of Company II". Accordingly, it can be said that the larger is the GUPPI of Company I (Company II), the stronger would be the incentive for Company I (Company II) to increase the prices. It should be noted that the switching rate was estimated mainly based on the data on contract termination provided by the Parties Group and the marginal profits of the Parties Group, on financial data provided by the Parties.

[3] Safety analysis intends to assess the ability of a company to pay its current liabilities and long-term liabilities.

the company's financial data and the business forecast by the company, it can be said that it is highly likely that the company will go bankrupt in near future and be forced to leave the market.

As for ②, based on the above-mentioned business conditions, etc. of Cansystem, it can be said that it is unlikely that any third party other than USEN Group would come forward to help Cansystem through business combination. However, in light of the efforts made by Cansystem in seeking a partner for business combination, it cannot be said that the company has investigated thoroughly into the possibility of business combination with any third party other than USEN Group. Therefore, it cannot be concluded that there is no other company capable of rescuing Cansystem through business combination and at the same time causing less impact on competition than the conduct of this case.

In this respect, if the conduct of this case is not put into implementation, as discussed above, it is highly likely that Cansystem will leave the market in near future. And should it leave, users of Cansystem would turn to any of the services provided by competitors. In that case, taking into account the similarities of the contents of the services provided by the companies of the Parties Group, it can be said that most of the users would turn to the services of USEN Group and very little of them would choose services provided by companies other than USEN Group.

Accordingly, whether or not the conduct of this case is put into implementation, most of the users of Cansystem would turn to the services of USEN Group. However, some of the users who may wish to use services provided by other companies than USEN Group in the case the conduct of this case is not carried out and Cansystem is forced to leave the market would have to pay termination penalty to Cansystem continuing the provision of service before switching to services provided by any competitor should the conduct of this case be put into place. Therefore, they might become hesitant to make the switch and it might be more difficult for competitors to acquire new customers. Users and competitors interviewed were saying that the termination penalty requirement and the two month notice requirement in their contracts with Cansystem were working as obstacles for them to switch to competitors' services.

As seen above, because of the termination penalty requirement and the two month notice requirement, it cannot be said that whether or not the conduct of this case is put in place would not lead to substantial difference in competition in the industry of broadcasting/online distribution service for commercial users.

2. Proposal for remedial measures by the Parties

In response to our examination results as described in 1 above, the Parties proposed the following measures to alleviate the impact of the conduct of this case in connection with transactions concerning the broadcasting/online distribution service of music for commercial users provided by Cansystem (hereinafter referred to as the “transactions”) (hereinafter referred to as the “remedial measures”).

(1) Elimination of termination penalty requirement, etc.

Cansystem will nullify the termination penalty requirement and the two month notice requirement during the period as from October, 2018 till September, 2020. During the said period, if any request for termination is received from any of the users of the company in connection with the transactions, no termination penalty will be charged and users will be able to terminate their contract with the company effective on the last day of the month when their intention to terminate is notified.

(2) Notification to users

Cansystem will notify its existing users and users entering into the transactions of (1) above. The said notification will be made in writing and will be subjected to the check by JFTC.

(3) Others

The Parties will provide to the JFTC a report on the transactions every business year for three years from the date of the implementation of the conduct of this case.

Part V Assessment of the remedial measures proposed

Since the remedial measure is to nullify the termination penalty requirement and the two month notice requirement for two years, it can be said that the measure will work to eliminate the obstacle for the users of Cansystem to change their service providers and for competitors to acquire new customers. Further, since all the users of the company will be notified in advance of the said measure, it can be said that the users will be able to have enough opportunities and time for considering whether or not they will change their service providers.

Accordingly, presupposing the remedial measure is to be taken, it is not unlikely that the conduct of this case would make it difficult for the users of

Cansystem to switch to competitor's services, and whether or not the conduct of this case is put in place would not lead to substantial difference in competition in the industry of broadcasting/online distribution service for commercial users.

Based on the above, it cannot be said that the conduct of this case would substantially restrain competition.

Part VI Conclusion

It has been concluded that the conduct of this case would not substantially restrain competition if the proposed remedial measures are in place.

Case 8 Integration of The Walt Disney Company and Twenty-First Century Fox Inc.

Part I Outline of this case

This case concerns a plan in which one of the subsidiaries of The Walt Disney Company engaging in the business of film and videogram distribution (headquartered in the U.S.; hereinafter referred to as “TWDC”; a group of companies which have already built joint relationships with TWDC shall be referred to as “TWDC Group”) intends to merge with Twenty-First Century Fox Inc. engaging in the business of film and videogram distribution (headquartered in the U.S.; hereinafter referred to as “21CF”; a group of companies which have already built joint relationships with 21CF shall be referred to as “21CF Group”; TWDC and 21CF shall be collectively referred to as “the Parties”; TWDC Group and 21CF Group shall be collectively referred to as “the Parties Group”) with 21CF as surviving company, and then the other subsidiary of TWDC will acquire all voting rights based on stock ownership of 21CF (hereinafter referred to as “the conduct of this case”).

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

There are several services, including film and videogram distribution, provided by the Parties Group and that are in horizontal relationship with each other. Among those, there will be detailed description about the film distribution service in the following parts considered to have relatively large impact on competition.

Part II Particular field of trade

1. Service outline

The film distribution service means a business to distribute movie films to commercial movie theater operators (hereinafter referred to as “theater operators”).

In order to distribute movie films, it is necessary, with respect to each film to be distributed, to obtain a right to distribute the film to theater operators (hereinafter referred to as “distribution right”). In principle, one distribution right is created for each film and granted to a single distributor. While a film distributor obtains the distribution right of a movie in which the distributor or its subsidiary has been engaged from the production stage, sometimes it negotiate to obtain the distribution right of a film produced by a non-affiliated company. A film distributor concludes a contract with theater operators for each movie whose distribution right it has obtained, and a theater operator put the movie on screen of the theater the operator is operating in accordance with the said contract.

Film distributors receive from theater operators, as their revenues, such amount as obtained by multiplying the sum of the movie ticket price paid by audience with an agreed rate. As seen above, the greater success a film achieves, the more a film distributor earns. Therefore, film distributors are trying to obtain distribution rights of movies expected to be a major hit and are trying to persuade as many theater operators as possible to put on screen those films whose distribution right they have obtained. In addition, distributors are conducting advertising activities in order to attract as many people as possible to movies they are distributing.

2. Service range

(1) Demand substitutability

In addition to the classification of movies into Japanese, foreign, live action and animation, the classification according to categories such as action, SF, comedy and suspense. Further, movies in the same category are not at all the same. As seen above, movies are diverse in their contents.

Usually people choose a movie from many movies of various categories. Few people choose movies of a particular category only. Since people choose a movie out of movies, they think interesting by taking into account time and budget available to them, with respect to the end users of movies, a certain degree of demand substitutability is recognized among movies of different categories.

In view of the above-described behavior of the users, theater operators have not focused on movies of a particular category, but have bought from distributors and put on screen those movies expected to be a major hit irrespective of categories. With respect to theater operators that are direct users of the film distribution service, a certain degree of demand substitutability is recognized among movies of different categories.

(2) Supply substitutability

It is important for film distributors or suppliers to distribute movies expected to attract as many people as possible and become a major hit. In this respect, distributors are competing with each other to obtain distribution rights to those films. Techniques and knowhow concerning the film distribution service are basically the same without regard to the categories of movies they are entitled to distribute. Film distributors may distribute movies of any category.

Accordingly, supply substitutability is recognized among movies of different categories.

(3) Summary

Based on the above, the service range was defined as “film distribution service”.

3. Geographic range

The business territory of film distributors extends across the country, and theater operators, the users of the film distribution service, may obtain screen presentation rights from any of those distributors without geographic constraint. Accordingly, any particular circumstances such as trading conditions varying among regions are not recognized.

Accordingly, the geographic range was defined as “nationwide”.

Part III Impact to competition anticipated from the conduct of this case

The following table shows the market shares of film distributors. HHI after the conduct of this case would be around 1,900 and the increment in HHI would be around 100. Therefore, the safe-harbor criteria for horizontal business combinations are met.

[Market shares concerning film distribution business in 2017]

Rank	Company name	Market share
1	Company A	Approx. 40%
2	TWDC Group	Approx. 15%
3	Company B	Approx. 10%
4	Company C	Approx. 5%
5	Company D	0－5%
6	Company E	0－5%
7	21CF Group	0－5%
	Others	Approx. 15%
Total		100%
Combined market share/rank: approx. 20%/2nd place		

Part IV Conclusion

We have concluded that the conduct of this case would not substantially restrain competition in any particular field of trade.

Case 9 Acquisition of shares of Sagami Group Holdings Co., Ltd. by Belluna Co., Ltd.

Part I Outline of this case

This case concerns a plan in which Belluna Co., Ltd. (JCN 5030001041663) engaging in store retailing business (a business to sell goods to consumers in a store) of kimono and obi belts, Japanese sandals (hereinafter referred to as "kimono and kimono accessories ") intends to acquire all voting rights based on stock ownership of Sagami Group Holdings Co., Ltd. (JCN3020001035263) engaging in the business of store retailing of kimono and kimono accessories (a group of companies which have already built joint relationships with Belluna Co., Ltd. and a group of companies which have already built joint relationships with Sagami Group Holdings Co., Ltd. shall be collectively referred to as "the Parties Group") (hereinafter referred to as "the conduct of this case").

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

Part II Particular field of trade

1. Product/service range

(1) Kimono and kimono accessories

How to wear kimono and kimono accessories is rather complicated. Most people do not wear kimono in daily-life situations but only on special occasions such as coming-of-age, graduation and wedding or funeral ceremonies. And, people buy kimono and kimono accessories from kimono shops not from ordinary clothing stores. Accordingly, demand substitutability between the store retailing of kimono and kimono accessories and the store retailing of other clothing is limited.

In addition, the store retailing of kimono and kimono accessories is carried out at a shop specializing in those clothing and accessories. If a store retailer not dealing with kimono and kimono accessories (such as store retailer of ordinary clothing) intends to start the business of the store retailing of kimono and kimono accessories, it would be necessary to employ staff having knowhow about kimono dressing and to learn attractive product display and appropriate storing method for kimono products. It would not be easy to acquire such knowhow in a short period of time. Accordingly, supply substitutability between the store retailer business of kimono and kimono accessories and that of other clothing is limited.

(2) Substitutability between store retailing business and mail-order retailing business

Kimono and kimono accessories are sold to consumers not only by store retailers but also by a mail-order retailer. The store retailing business is characterized in that customers are able to see and feel actual kimonos, try on some of them and order a kimono by specifying the fabrics. On the other hand, mail-order retailing business is characterized in that it is possible buy a product without geographical and time constraint. As seen above, store retailing and mail-order retailing have their respective characteristics, and consumers choose which to use depending on their needs. Accordingly, demand substitutability between store retailing and mail-order retailing is not so high.

Further, while it is necessary not only to secure a physical store but also to acquire some know-how about product display, etc. in order to operate a store retailing business, it is necessary to have a warehouse to store goods and know-how about order handling procedures, etc. in order to operate a mail-order retailing business. Therefore, supply substitutability between those two is limited.

(3) Substitutability between store retailing business and rental business

Kimono and kimono accessories are supplied to consumers also through the rental business in addition to through the store retailing business. The store retailing business is characterized in that customers can enjoy kimonos they bought at any times and order a kimono by specifying the fabrics. On the other hand, rental business is characterized in that the cost for renting a kimono is cheaper than that for buying one and cleaning and repair costs as well as a place for storing kimonos are unnecessary. As seen above, the store retailing business and the rental business have their own characteristics, and consumers compare those characteristics and choose which to use depending on their needs. Accordingly, demand substitutability between the store retailing business and the rental business is not so high.

Further, in order to operate a sore retailing business, certain risks associated with the maintenance of appropriate stock levels, and sales know-how and after-sale service are required to cater for the needs of customers concerning the maintenance of kimonos. On the other hand, in order to operate a rental business, know-how about the maintenance and management of the quality of kimonos they have in their stock in order to use them as long as possible. Therefore, supply substitutability between those two is limited.

(4) Summary

Based on the above, the product range was defined as the “store retailing business of kimono and kimono accessories”.

2. Geographic range

Competition among companies operating the store retailing business of kimono and kimono accessories is seen at store level. More specifically, companies have deployed their sales outlets mainly in station buildings and commercial facilities such as shopping malls under a tenancy contract, and, in some cases, they have opened street stores in shopping districts and underground shopping centers. These stores have defined their sales territory based on data on where their customers live, etc. Accordingly, their sales territory vary according to the location and scale of relevant commercial facilities and shopping districts. Accordingly, the territory for a tenant shop in a shopping mall in suburbs tends to be larger and that for a street shop tends to be smaller.

The geographic range for this case was defined as “within a 3 km to 20 km radius from a store”, which is considered to be the sales territory of respective stores of the Parties Group.

Part III Impact to competition anticipated from the conduct of this case

1. Impact to competing enterprises

According to the geographic range defined in Part II-2 above, the stores of the Parties Group are competing in 23 areas (the areas in which the stores of the Parties Group are competing shall be hereinafter referred to as “23 competition areas”). Since it is technically difficult to obtain detailed data on competitors’ sales, etc. in each of the 23 competition areas, it is not possible to calculate the market share of each store retailing kimono and kimono accessories (hence, to judge whether the safe-harbor criteria for horizontal business combinations are met). However, in principle, the more stores in a particular geographic range, the more intense the competition. Therefore, it can be said the fewer stores in the geographic range, the greater the impact on competition from the conduct of this case.

In each of 23 competition areas, there are 2 to 5 stores of the companies engaging in the retailing of kimono and kimono accessories other than the Parties

Group. Therefore, competitive pressure from these stores of competitors is recognized.

2. Competitive pressure from adjacent markets

(1) Competitive pressure from the mail-order retailing business and the rental business

Kimono and kimono accessories sold by the store retailers are also sold by the mail-order retailers. The mail-order retailers are selling kimono and kimono accessories nationwide and somewhat competing with the store retailers of kimono and kimono accessories in terms of price and service. Therefore, a certain degree of competitive pressure from mail-order retailers is recognized.

In addition, since kimono and kimono accessories are worn on special occasions such as coming-of-age, graduation and wedding or funeral ceremonies, some consumers may choose to use the service of the kimono rental business. Based on the above, a certain degree of competitive pressure from the rental business is recognized.

(2) Competitive pressure from geographically adjacent markets

Consumers visiting the stores of the retailing business of kimono and kimono accessories may use other stores located outside the geographic range of Part II-2 above.

Therefore, in order to ensure more careful review with respect to some areas where only two companies are competing out of the 23 competition areas, the scope of our examination was extended to cover competitors' stores in adjacent areas. As a result, several stores of competing companies engaging in the store retailing of kimono and kimono accessories other than the Parties Group were found in the said areas, and a certain degree of competition in terms of price and service is seen between the stores of the Parties Group and those of the competitors. Therefore, a certain degree of competitive pressure from geographically adjacent markets is recognized.

3. Summary

As described above, it can be said with respect to the 23 competition areas, that the conduct of this case would not substantially restrain competition in the field of trade of the store retailing business of kimono and kimono accessories through the unilateral conduct of the Parties Group or the coordinated conduct with competitors.

Part IV　Conclusion

We have concluded that the conduct of this case would not substantially restrain competition in any particular field of trade.

Case 10 Review of the Proposed Acquisition of Shares of The Eighteenth Bank, Ltd. by Fukuoka Financial Group, Inc.

Part I The Parties

Fukuoka Financial Group, Inc. (hereinafter referred to as FFG, and a group of companies which have already formed joint relationships with FFG is called "FFG Group") has its head office in Fukuoka, and manages its subsidiaries which run banking business etc. The Shinwa Bank, Ltd., which is a subsidiary of FFG (hereinafter referred to as "The Shinwa Bank") and The Eighteenth Bank, Ltd. (hereinafter referred to as "The Eighteenth Bank" and a group of companies which have already formed joint relationships with The Eighteenth Bank is called "The Eighteenth Bank Group", and FFG and The Eighteenth Bank are collectively referred to as "the Parties", and FFG Group and The Eighteenth Bank Group are collectively referred to as "the Parties Groups"), has its head office in Nagasaki, and runs banking business.

Part II Outline of this case and its applicable provision

FFG plans to acquire the shares of The Eighteenth Bank and thereby to obtain more than 50% of The Eighteenth Bank's voting rights (hereinafter referred to as "the consolidation of this case").

An applicable provision is Article 10 of the Antimonopoly Act.

Part III Sequence of events etc.

1. Sequence of events

The Parties published their plan of the consolidation of this case in February 2016, and before that, they voluntarily submitted the written opinions and materials to the JFTC indicating that the consolidation of this case would not substantially restrain competition. The JFTC had several meetings with the Parties in response to requests by the Parties. Since February 2016 when the Parties published their plan of the consolidation of this case, the JFTC interviewed competing enterprises and conducted a questionnaire to users[1] (hereinafter referred to as "the Users Questionnaire 1"). After that, on June 8th, 2016, FFG submitted the notification regarding the proposed acquisition of shares relating to the consolidation of this case in

[1] In order to generally understand the actual borrowing status of users and their knowledge relating to use of financial institutions in Nagasaki, the JFTC conducted a questionnaire to approximately 3,000 users located in Nagasaki in May 2016 (valid response rate was about 20 %).

accordance with the provisions of the Antimonopoly Act. The JFTC received it and started the preliminary review. Conducted the preliminary review considering the above notification and other materials submitted by the Parties and the results of the interviews etc. with the competing enterprises, users etc., the JFTC thought that more detailed review was necessary. Accordingly, on July 8th, 2016, the JFTC requested for provision of reports etc. to FFG and started the secondary review. On the same day, the JFTC announced the start of the secondary review and called for public comments from third persons.

In the early stage of the secondary review, according to the result of the previous review, the JFTC explained points etc. to the Parties and pointed that the consolidation of this case would possibly substantially restrain competition. In response to the points from the JFTC, the Parties submitted an argument etc. In order to examine such argument etc., the JFTC had several meetings with the Parties. During the secondary review, on the receipt of the report etc. in series from the Parties, the JFTC interviewed competing enterprises and users etc., and conducted a second questionnaire to users [2] (hereinafter referred to as “the Users Questionnaire 2”). In consideration of the result of these interviews and the questionnaire, the JFTC pointed again that the consolidation of this case would possibly substantially restrain competition.

Since May 2018, the Parties externally published that they would provide remedies such as assignment of obligations, and in August 2018, the Parties made a proposal of remedy by submitting a change report.

As to the request for provision of reports etc., the JFTC received all requested reports, etc. on August 15th.

2. Brief summary of the review

In the field of trade in which the Parties Groups are in a competitive relationship, there are pressures from the competing enterprises in the field of trade relating to non-business lending, deposits, exchange, investment trust sales, sales of public bonds, insurance agents and credit cards, thereby the JFTC concluded that the consolidation of this case would not substantially restrain competition in the particular field of trade.

On the other hand, as to the field of trade relating to business lending,

[2] From the similar viewpoint to the Users Questionnaire 1, the JFTC conducted a questionnaire to approximately 4,400 users located in Nagasaki from February to March 2018 (valid response rate was about 40%).

which seem to have the biggest competitive influence by the consolidation of this case, the JFTC focused its review on the standpoint whether the consolidation of this case would substantially restrain competition from the situation such that users of mainly small- and medium-sized enterprises cannot secure sufficient choices of lenders because of the consolidation of this case. Accordingly, as described later in Nos. 4 and 5, it is deemed to substantially restrain competition by the consolidation of this case in the particular field of trade relating to lending to small- and medium-sized enterprises in Nagasaki etc. However, as described later in Nos. 6 and 7, based on the premise that the Parties will implement their proposed remedies, the JFTC concluded that the consolidation of this case would not substantially restrain competition in the particular field of trade.

Part IV The particular field of trade relating to business lending

1. Scope of services

(1) Business lending and non-business lending

Lending services such as loan of funds by financial institutions including the Parties Groups is categorized into two types: business lending for enterprises and non-business lending for general consumers. While business lending is for enterprises to raise necessary funds for their business such as operating capital and equipment capital etc., non-business lending is for general consumers to raise necessary funds for their consumer life such as housing and education etc. These two types have different users and usages. Therefore, there is no substitutability for uses in these two types.

Because it is necessary for business lending to set lending conditions in accordance with each user's business and financial condition, financial institutions need a sales base and certain numbers of sales staffs as well as expertise to collect and evaluate information relating to credit standing of the users by visiting them regularly and to reflect such information to loan conditions. On the other hand, as to non-business lending, certain lending conditions are set in advance, and lending screening is held by guarantee companies in many cases, thereby financial institutions do not need expertise and organization with a sales base and staffs as required in business lending. Therefore, there is limited substitutability for suppliers in these two types.

Accordingly, the JFTC reviewed substantial restriction of competition of business lending and non-business lending, each of which establish a different scope of services.

(2) Scope of services of business lending

The Parties Groups offer business lending to big business, mid-tier enterprises, small- and medium-sized enterprises[3] and local governments. Since each user has a different size, scope and characteristic etc. of the business, the amount of borrowings and transaction methods etc. of each user vary. In addition, these users conduct business with different financial institutions because the restriction regarding loan eligibility varies according to business categories of financial institutions as lenders. As to business lending, because actual conditions of business differ according to counterparties of the business, the JFTC reviewed substantial restriction of competition, dividing into three different scope of services: “lending for big business and mid-tier enterprises”, “lending for small- and medium-sized enterprises” and “lending for local governments”.

In Nagasaki, the market size of lending for big business and mid-tier enterprises is a little over 100 billion yen, that of lending for small- and medium-sized enterprises is a little under 1,300 billion yen, and that of lending for local government is a little over 500 billion yen.

As to lending for local government in the above three scope of services, they basically borrow from designated financial institutions etc. in Nagasaki, which would not cause any special change in competition before or after the consolidation of this case. The JFTC concluded that the consolidation of this case would not substantially restrain competition in the particular field of trade.

Therefore, the cases of lending for big business and mid-tier enterprises and lending for small- and medium-sized enterprises are described hereinafter.

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[3] In accordance with the provision of Article 2, Paragraph 1 of the Small and Medium-sized Enterprise Basic Act, “small- and medium-sized enterprises” means enterprises with the amount of capital etc. is not more than 300 million yen or the number of employees is not more than 300 people for manufacturing industries etc., with the amount of capital etc. is not more than 100 million yen or the number of employees is not more than 100 people for wholesale business, with the amount of capital etc. is not more than 50 million yen or the number of employees is not more than 100 people for service business, and with the amount of capital etc. is not more than 50 million yen or the number of employees is not more than 50 people for retail business, and enterprises not falling under the above conditions are called big business and mid-tier enterprises”.

(3) Scope of competing enterprises

A. Lending for big business and mid-tier enterprises

Since big business and mid-tier enterprises have relatively big size of business and need large amounts of capital, their loan amounts tend to be large. Considering this point, banks do not have legal restrictions relating to the size and categories etc. of borrowers, and their credit limit is high under the lending limit to a single borrower, thereby it is possible for big business and mid-tier enterprises to have each bank as an alternative lender.[4]

As to Development Bank of Japan Inc. (hereinafter referred to as "DBJ"), since it is used for complementing funding from private financial institutions when long-term and large amount of funds are needed, big business and mid-tier enterprises are limited to use DBJ as an alternative lender.

As to Shinkin Banks, credit union, the Shoko Chukin Bank, Ltd. (hereinafter referred to as "Shoko Chukin"), and Japan Finance Corporation (hereinafter referred to as "JFC"), since they limit borrowers basically to small- and medium-sized enterprises under laws and ordinances, big business and mid-tier enterprises cannot use these financial institutions as an alternative lender. As to agricultural cooperative association etc. (hereinafter referred to as "Agricultural Cooperative etc."), since they limit borrowers basically to farmers under laws and ordinances, there is no performance record of business lending for big business and mid-tier enterprises in Nagasaki.

In addition, including lending for small- and medium-sized enterprises as described later in B, there is no performance record of new methods using so-called Fintech other than borrowings from usual financial institutions (including social lending, crowdfunding etc.), and it is not expected to work as competitive pressure for the time being.

Accordingly, when reviewing substantial restriction of competition of lending for big business and mid-tier enterprises, the JFTC reviewed competitive pressure from competing enterprises for banks, and competitive pressure from adjacent markets for DBJ.

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[4] In Nagasaki, there is no performance record of business lending by direct banks which make transactions mainly via communication terminals such as Internet and telephone (including business lending for small- and medium-sized enterprises, as described later in B).

B. Lending for small- and medium-sized enterprises

Small- and medium-sized enterprises have relatively small size of business and need relatively small amounts of capital. Considering of this point, small- and medium-sized enterprises are eligible for lending by Shinkin Banks and credit union as well as banks, which means it is possible for small- and medium-sized enterprises to have banks, Shinkin Banks and credit union as an alternative lender.

On the other hand, Agricultural Cooperative etc. limit borrowers basically to farmers as described in the above A. Shoko Chukin and JFC, as government financial institutions, under laws and ordinances, limit borrowers basically to enterprises which have difficulty in borrowing from private financial institutions from the viewpoint of complement of private sectors. The users use these government financial institutions separately from private financial institutions in accordance with characteristics of capital requirements. Therefore, small- and medium-sized enterprises have restriction in using Agricultural Cooperative etc., Shoko Chukin and JFC as an alternative lender.

Accordingly, when reviewing substantial restriction of competition of lending for small- and medium-sized enterprises, the JFTC reviewed competitive pressure from competing enterprises for banks, Shinkin Banks and credit union, and competitive pressure from adjacent markets for Agricultural Cooperative etc., Shoko Chukin and JFC.

2. Geographic range

The Parties alleged that it is appropriate to set geographic range at least as “Nagasaki”, wider as “entire Kyushu” without dividing lending for big business and mid-tier enterprises from lending for small- and medium-sized enterprises. For detailed review, splitting into smaller areas, the Parties described that it is possible to split economic zones into “South”, “North”, “Central” and “Remote Islands”[5]. Regarding this point, considering the actual conditions of the scope of borrowing of enterprises as the users of business lending and the scope of business of banks etc. as suppliers, the JFTC reviewed substantial restriction of competition, divided geographic range as follows, for each of “lending for big business and mid-tier enterprises”, and “lending for

[5] As to the remote islands area, the JFTC divided it into the following 5 economic zones in view of the geographic distribution: “Tsushima”, “Iki”, “Goto”, “Ojika” and “Shinkamigoto”.

small- and medium-sized enterprises”.

(1) Lending for big business and mid-tier enterprises

According to the Users Questionnaires 1 and 2, approximately 70% of big business and mid-tier enterprises borrow only from bank branches located in Nagasaki. Banks as suppliers have systems and capacities to lend big business and mid-tier enterprises in the entire Nagasaki, and their business scope of lending for big business and mid-tier enterprises is the entire Nagasaki.

Accordingly, when reviewing substantial restriction of competition of lending for big business and mid-tier enterprises, the JFTC set the geographic range to “Nagasaki” and reviewed competitive pressure from competing enterprises for banks having branches in Nagasaki including banks whose head offices are located outside Nagasaki. As to banks which do not have branches in Nagasaki, the JFTC reviewed competitive pressure from adjacent markets.

(2) Lending for small- and medium-sized enterprises

According to the Users Questionnaires 1 and 2, only about 10% of small- and medium-sized enterprises borrow from branches of banks, Shinkin Banks and credit union located outside of their own economic zone (table below). However, when they think of loans from other financial institutions supposing the loan conditions of the financial institution from which they currently borrow get worse, approximately 50% of them think that they will look for a new lender from wider economic zone than its own zone, such as the entire Nagasaki etc. Accordingly, regarding lending for small- and medium-sized enterprises, as with lending for big business and mid-tier enterprises described in the above (1), the JFTC set the geographic range to “Nagasaki” and reviewed competitive pressure from competing enterprises for banks, Shinkin Banks and credit union having branches in Nagasaki including banks whose head offices are located outside Nagasaki. As to banks, Shinkin Banks and credit union which do not have branches in Nagasaki, the JFTC reviewed competitive pressure from adjacent markets.

According to the Users Questionnaires 1 and 2, approximately 90% of small- and medium-sized enterprises borrow only from branches of banks, Shinkin Banks and credit union located in their own economic zone, and banks, Shinkin Banks and credit union as suppliers lend to small- and medium-sized enterprises of relatively small amount of loans from branches around the area wherein these enterprises located from the viewpoint of costs relating to operation, credit management etc.

Therefore, in order to review whether the competitive influence by the consolidation of this case differs depending on areas, the JFTC reviewed substantial restriction of competition of lending for small- and medium-sized enterprises in the economic zones described in the table below in addition to the above "Nagasaki".

	Economic Zone	Cities and towns included in the economic zone
1	South Economic Zone	Nagasaki-shi, Nagayo-cho and Togitsu-cho
2	North Economic Zone	Sasebo-shi, Hirado-shi, Matsuura-shi, Saikai-shi, Higashisonogi-cho, Kawatana-cho, Hasami-cho and Saza-cho
3	Central Economic Zone	Shimabara-shi, Isahaya-shi, Omura-shi, Unzen-shi and Minamishimabara-shi
4	Tsushima Economic Zone	Tsushima-shi
5	Iki Economic Zone	Iki-shi
6	Goto Economic Zone	Goto-shi
7	Ojika Economic Zone	Ojika-cho
8	Shinkamigoto Economic Zone	Shinkamigoto-cho

Part V Review of substantial restriction of competition relating to business lending

1. Lending for big business and mid-tier enterprises

(1) Position of the Parties Groups and conditions of competing enterprises

The circumstances of the market share of lending for big business and mid-tier enterprises in Nagasaki at the end of January 2018 is shown in the table below, and the consolidation of this case does not fall under the safe-harbor criteria of the horizontal business combination.

[Market share of lending for big business and mid-tier enterprises]

Rank	Name of the financial institution[6]	Market share[7]
1	FFG Group	Approx. 40%
2	The Eighteenth Bank	Approx. 30%
3	A	Approx. 15%
4	B	Approx. 5%
5	C	Approx. 5%
	Others	Approx. 10%
Total		100%
Total market share/ Rank: Approx. 70%/ the first		
Increment in market share: Approx. 30%		
HHI after the Consolidation of this case[8]: Approx. 5,200		
Increment in HHI: Approx. 2,400		

The market share of FFG Group is approx. 40%, the first rank, and the total market share of the Parties Groups becomes approx. 70% by the consolidation of this case and the increment in the market share reaches approx. 30%.

As competing enterprises of the Parties Groups, there are A having the market share of approx. 15%, and B and C having the market share of approx. 5% each. According to the Users Questionnaires 1 and 2, approx. 60% of big business and mid-tier enterprises recognize that the Parties Groups are alternative lenders each other, and approx. 50% of big business and mid-tier enterprises recognize that there are competing enterprises which are alternative lenders to the Parties Groups.

The competing enterprises have sufficient excess capacities on the funding side, and according to the interviews with the competing enterprises, they have good systems enough to visit distant users, setting their business scope for big business and mid-tier enterprises to the entire Nagasaki. Therefore, the competing enterprises have sufficient excess capacities on the funding side and their systems.

[6] As to competing enterprises, arbitrary alphabets are used on an anonymous basis, and institutions whose market share is more than about 5% (limited to the rank of fifth) are listed in the table. The same applies hereinafter.

[7] It is written with 37.5% unit, for example, “approx. 40%” means 5% or more to less than 42.5%. The same applies hereinafter.

[8] Herfindahl-Hirschman Index (Index of degree of market concentration. It is calculated by squaring the market share of each enterprise in a particular field of trade, and then summing the resulting numbers.)

In Nagasaki, many of big business and mid-tier enterprises are with high credit rating to which banks are willing to lend. According to the interviews with the competing enterprises, as to lending for big business and mid-tier enterprises, there are certain chances for the competing enterprises to compete with the Parties Groups. It shows that, as to lending for big business and mid-tier enterprises, there are some active competition not only between the Parties Groups but also between the Parties Groups and the competing enterprises.

From the above, there is a certain competitive pressure from the competing enterprises.

(2) Competitive pressure from adjacent markets

A. Competitive pressure from DBJ

As DBJ is used to supplement loans from private financial institutions in cases where a large long-term loan is required, the competitive pressure from DBJ is limited.

B. Competitive pressure from geographically adjacent markets

According to the Users Questionnaires 1 and 2, approx. 30% of big business and mid-tier enterprises borrow from branches of banks located outside of Nagasaki. When they consider loans from other financial institutions supposing the loan conditions of the financial institution from which they currently borrow get worse, approx. 60% of them answered that they would look for a new lender from wider area including outside Nagasaki. As described in the above (1), many of big business and mid-tier enterprises are with high credit rating to which banks are willing to lend.

Therefore, there is a certain competitive pressure from the banks without branches in Nagasaki.

C. Summary

From the above, there is a certain competitive pressure from adjacent markets.

(3) Entry

Although there are no barriers to entry in regulations, according to the interviews with the competing enterprises, there is only one competing enterprise which set up a new branch in Nagasaki in the last 5 years. There is no enterprise which plans to set up a new branch because banks etc. promote rationalization of branches etc. Thus, there is no entry pressure recognized.

(4) Ease of changing suppliers[9] for users

According to the Users Questionnaires 1 and 2, if the Parties Groups increase certain interest rates after the consolidation of this case, a little over 50% of big business and mid-tier enterprises said they would consider borrowing from a financial institution other than the Parties Groups.

Regarding this point, according to the Users Questionnaires 1 and 2, among big business and mid-tier enterprises which borrow from the Parties Groups, approx. 50% also borrow from the competing enterprises. It would be relatively easy especially for them to change lenders to the competing enterprises. As described in the above (1), many of big business and mid-tier enterprises are with high credit rating to which banks are willing to lend, and the competing enterprises have sufficient excess capacities.

Therefore, it is recognized that big business and mid-tier enterprises could change lenders easily.

(5) General Overview

From the above, the JFTC recognized the ease of changing suppliers for users, competitive pressure from competing enterprises, and competitive pressure from adjacent markets in a certain level. The consolidation of this case would not cause the situation where big business and mid-tier enterprises could not secure sufficient choices of lenders, thereby the JFTC recognized that the Parties Groups, by its unilateral conduct, would not substantially restrain competition relating to lending for big business and mid-tier enterprises in Nagasaki in a particular field of trade.

As described in the above No. 4-1, (1), for business lending, loan conditions are set in accordance with each user's business and financial condition, and it would be difficult to predict activities of the competing enterprises. Therefore, the JFTC recognized that, by coordinated conduct of the Parties Groups and the competing enterprises, the consolidation of this

[9] When users reduce borrowings from the Parties Groups and increase borrowings of the reduced amount from a competing enterprise, there are cases where the users choose an enterprise from which they have borrowed in the past as well as from which they have never borrowed before. The same applies hereinafter.

case would not substantially restrain competition relating to lending for big business and mid-tier enterprises in Nagasaki in a particular field of trade.

2. Lending for small- and medium-sized enterprises

(1) Nagasaki

A. Position of the Parties Groups and conditions of competing enterprises

The circumstances of the market share of lending for small- and medium-sized enterprises in Nagasaki at the end of January 2018 is shown in the table below, and the consolidation of this case does not fall under the safe-harbor criteria of the horizontal business combination.

[Market share of lending for small- and medium-sized enterprises]

Rank	Name of the financial institution	Market share
1	FFG Group	Approx. 40%
2	The Eighteenth Bank	Approx. 35%
3	D	Approx. 10%
4	E	Approx. 5%
5	F	Approx. 5%
	Others	Approx. 10%
Total		100%
Total market share/ Rank: Approx. 75%/ the first		
Increment in market share: Approx. 35%		
HHI after the consolidation of this case: Approx. 5,400		
Increment in HHI: Approx. 2,600		

The market share of FFG Group is approx. 40%, the first rank, and the total market share of the Parties Groups becomes approx. 75% by the consolidation of this case and the increment in the market share reaches approx. 35%. As to lending for small- and medium-sized enterprises, either one of Parties Groups encourages refunding (so-called assumption) by lending funds for repayment of credited loans of the other one of Parties Groups, which shows the active competition solely between the Parties Groups.

As competing enterprises of the Parties Groups, there are D having the market share of approx. 10%, and E and F having the market share of approx. 5% each. According to the Users Questionnaire 1, less than 10%

of the small- and medium-sized enterprises answered that they were offered services from any competing enterprises in the last 3 years. However, according to the Users Questionnaire 2, the percentage of the small- and medium-sized enterprises which were offered services from such competing enterprises in the last 3 years increased from 10% to 40%, which shows that, after the publication of the plan of the consolidation of this case, sales activities of the competing enterprises have been energized in a certain level. According to the Users Questionnaires 1 and 2, while approx. 60% of the small- and medium-sized enterprises recognize that the Parties Groups are alternative lenders each other, a little over 20% at most of the small- and medium-sized enterprises recognize that these competing enterprises are alternative lenders to the Parties Groups. In addition, the competing enterprises have sufficient excess capacities on the funding side but not on their systems.

From the above, competitive pressure from the competing enterprises is recognized as limited.

B. Competitive pressure from adjacent markets

(a) Competitive pressure from Agricultural Cooperative etc.

Since Agricultural Cooperative etc. have little performance records of lending for other than farmers etc., their competitive pressure is limited to business lending for small- and medium-sized enterprises other than farmers etc.

(b) Competitive pressure from Shoko Chukin and JFC

As described in B of the above No. 4-1, (3), Shoko Chukin and JFC, as government financial institutions, under laws and ordinances, limit borrowers basically to enterprises which have difficulty in borrowing from private financial institutions from the viewpoint of complement of private sectors. According to the interviews with the competing enterprises, they compete with these government financial institutions only in a part of equipment capital etc.

Therefore, competitive pressure from Shoko Chukin and JFC is recognized as limited.

(c) Competitive pressure from geographically adjacent markets

According to the Users Questionnaires 1 and 2, only approx. 5% of the small- and medium-sized enterprises borrow from branches of banks etc. located outside of Nagasaki.

As described in the above No. 4-2, (2), because banks etc. lend to small- and medium-sized enterprises of relatively small amount of loans from their branches around the area wherein these enterprises located from the viewpoint of costs relating to operation, credit management etc., it is not easy for the small- and medium-sized enterprises located in Nagasaki to borrow from branches of banks etc. located outside of Nagasaki.

Therefore, competitive pressure from banks without branches in Nagasaki is recognized as limited.

(d) Summary

From the above, competitive pressure from adjacent markets is recognized as limited.

C. Entry

As similar to the above 1, (3), the JFTC does not recognize entry pressure.

D. Ease of changing suppliers for users

According to the Users Questionnaires 1 and 2, if the Parties Groups increase a certain degree of interest rates after the consolidation of this case, a certain amount, namely a little less than 40% of the small- and medium-sized enterprises said they would consider borrowing from a financial institution other than the Parties Groups. According to the Users Questionnaires 1 and 2, among the small- and medium-sized enterprises which borrow from the Parties Groups, approx. 30% also borrow from the competing enterprises. It would be relatively easy for them to change lenders to the competing enterprises.

On the other hand, approx. 70% of the small- and medium-sized enterprises do not borrow from the competing enterprises and there are relatively small number of the small- and medium-sized enterprises which recognize the competing enterprises as alternative lenders to the Parties Groups. It would be difficult for them to change lenders to the competing enterprises.

E. General Overview

From the above, competitive pressure from the competing enterprises and adjacent markets are limited, and the JFTC does not recognize entry pressure. Therefore, the JFTC recognized the consolidation of this case would cause the situation where the small- and medium-sized enterprises could not secure sufficient choices of lenders, thereby the JFTC recognized that the Parties Groups, by its unilateral conduct, would substantially restrain competition relating to lending for the small- and medium-sized enterprises in Nagasaki in the particular field of trade.

(2) Respective Economic Zone

A. Application etc. of the safe-harbor criteria

The circumstances of the market share of lending for small- and medium-sized enterprises in each economic zone at the end of January 2018 is shown in the table below. The Ojika economic zone is the area wherein only FFG Group has branches and lends to small- and medium-sized enterprises, and the increment in HHI by the consolidation of this case is approx. 0. It falls under the safe-harbor criteria of the horizontal business combination.

For each economic zone other than Ojika, the consolidation of this case does not fall under the safe-harbor criteria of the horizontal business combination. In Goto economic zone, there is a competing enterprise which has larger market share than FFG Group before the consolidation of this case, and has sufficient excess capacity both on the funding side and the systems, which shows that the consolidation of this case would not substantially restrain competition.

Therefore, in below, the JFTC reviews each economic zone other than Ojika and Goto economic zones depending on its situation of competition, dividing into South economic zone, North economic zone and Central economic zone (hereinafter collectively referred to as “South etc. 3 economic zones”), and Tsushima economic zone, Iki economic zone and Shinkamigoto economic zone (hereinafter collectively referred to as “Tsushima etc. 3 economic zones”).

[South Economic Zone]

Rank	Name of the financial institution	Market share
1	The Eighteenth Bank	Approx. 40%
2	FFG Group	Approx. 35%
3	G	Approx. 10%
4	H	Approx. 5%
5	I	Approx. 5%
	Others	Approx. 5%
Total		100%
Total market share/ Rank: Approx. 75%/ the first		
Increment in market share: Approx. 35%		
HHI after the consolidation of this case: Approx. 5,600		
Increment in HHI: Approx. 2,700		

[North Economic Zone]

Rank	Name of the financial institution	Market share
1	FFG Group	Approx. 50%
2	The Eighteenth Bank	Approx. 20%
3	J	Approx. 10%
4	K	Approx. 5%
5	L	Approx. 5%
	Others	Approx. 10%
Total		100%
Total market share/ Rank: Approx. 70%/ the first		
Increment in market share: Approx. 20%		
HHI after the consolidation of this case: Approx. 5,300		
Increment in HHI: Approx. 2,200		

[Central Economic Zone]

Rank	Name of the financial institution	Market share
1	The Eighteenth Bank	Approx. 40%
2	FFG Group	Approx. 30%
3	M	Approx. 10%
4	N	Approx. 10%
	Others	Approx. 10%
Total		100%
Total market share/ Rank: Approx. 70%/ the first		
Increment in market share: Approx. 30%		
HHI after the consolidation of this case: Approx. 5,100		
Increment in HHI: Approx. 2,400		

[Tsushima Economic Zone]

Rank	Name of the financial institution	Market share
1	The Eighteenth Bank	Approx. 75%
2	FFG Group	Approx. 20%
	Others	Approx. 5%
Total		100%
Total market share/ Rank: Approx. 95%/ the first		
Increment in market share: Approx. 20%		
HHI after the consolidation of this case: Approx. 9,500		
Increment in HHI: Approx. 3,200		

[Iki Economic Zone]

Rank	Name of the financial institution	Market share
1	The Eighteenth Bank	Approx. 60%
2	FFG Group	Approx. 40%
	Others	Approx. 5%
Total		100%
Total market share/ Rank: Approx. 95%/ the first		
Increment in market share: Approx. 40%		
HHI after the consolidation of this case: Approx. 9,100		
Increment in HHI: Approx. 4,400		

[Goto Economic Zone]

Rank	Name of the financial institution	Market share
1	The Eighteenth Bank	Approx. 50%
2	O	Approx. 30%
3	FFG Group	Approx. 20%
	Others	Approx. 0%
Total		100%
Total market share/ Rank: Approx. 70%/ the first		
Increment in market share: Approx. 20%		
HHI after the consolidation of this case: Approx. 5,700		
Increment in HHI: Approx. 2,000		

[Ojika Economic Zone]

Rank	Name of the financial institution	Market share
1	FFG Group	Approx. 100%
	Others	Approx. 0%
Total		100%
Total market share/ Rank: Approx. 100%/ the first		
Increment in market share: Approx. 0%		
HHI after the consolidation of this case: Approx. 10,000		
Increment in HHI: Approx. 0		

[Shinkamigoto Economic Zone]

Rank	Name of the financial institution	Market share
1	FFG Group	Approx. 60%
2	The Eighteenth Bank	Approx. 20%
3	P	Approx. 20%
	Others	Approx. 0%
Total		100%
Total market share/ Rank: Approx. 80%/ the first		
Increment in market share: Approx. 20%		
HHI after the consolidation of this case: Approx. 6,800		
Increment in HHI: Approx. 2,600		

B. South etc. 3 Economic Zones

As to South etc. 3 economic zones, the total market share of the Parties Groups will be approx. 70 to 75% by the consolidation of this case and the increment in the market share will be approx. 20 to 35%. Similar to the situation of Nagasaki in the above (1) A, in these economic zones, it is recognized that there are active competition solely between the Parties Groups.

As the competing enterprises of the Parties Groups, there are some financial institutions with the market share of approx. 10% or less, and similar to the situation of Nagasaki in the above (1) A, it is recognized that the sales activities of the competing enterprises have activated in a certain level after the publication of the plan of the consolidation of this case. However, there are relatively small number of the small- and medium-sized enterprises which recognize the competing enterprises as alternative lenders to the Parties Groups, and the competing enterprises do not have sufficient excess capacities in their systems.

From the above, competitive pressure from the competing enterprises is recognized as limited.

As to competitive pressure from adjacent markets and entry pressure etc., the situation is similar to the situation in Nagasaki in the above (1) B to D.

Accordingly, similar to Nagasaki of the above (1), the JFTC recognized the consolidation of this case would cause the situation where the small- and medium-sized enterprises could not secure sufficient choices of lenders, thereby the Parties Groups, by its unilateral conduct, would substantially restrain competition relating to lending for the small- and medium-sized enterprises in South etc. 3 economic zones in the particular field of trade.

C. Tsushima etc. 3 Economic Zones

In Tsushima etc. 3 economic zones, there is no competing enterprises which have branches to lend other than the Parties. In Tsushima and Iki economic zones, the market share of the Parties Groups will be approx. 95% after the consolidation of this case. P in Shinkamigoto economic zone has the market share of approx. 20%. It is because the market size of this economic zone is extremely small, and the figure reflected the fact that P lent a large amount to a specific small- and medium-sized enterprise. From the above, in Tsushima etc. 3 economic zones, there is neither substantial competing enterprise nor competitive pressure from competing enterprises.

Generally, there are cases where the market size is not sufficiently big in a particular field of trade in relation to the most efficient supply volume for each enterprise (minimum optimal scale: supply volume with the lowest average cost for enterprises) and where even multiple enterprises share demand effectively but cannot pay for themselves and it is difficult to maintain competition with multiple enterprises (in such cases, it is considered that they want to create a competing enterprise by acquisition of business but cannot find an assignee due to unprofitable business). Even if such multiple enterprises combine to become one company, the JFTC recognizes that the consolidation of this case would not substantially restrain competition in the particular field of trade.

Tsushima etc. 3 economic zones have an extremely small market size[10], and the Parties Groups are in the situation where they have rationalized their branches etc. but cannot pay for themselves, thereby it is difficult to maintain competition with multiple enterprises. According to the interviews with the competing enterprises, if the branches in Tsushima etc. 3 economic zones are assigned to them in order to create a competing enterprise, they do not want to acquire the business of such branches.

From the above, in Tsushima etc. 3 economic zones, the consolidation of this case would not substantially restrain competition. Since it would be almost monopoly situation, it is recommended to take necessary measures not to cause negative effect.

Part VI Proposal of remedies from the Parties

As the above Part Ⅴ, the JFTC pointed out to the Parties that the Parties Groups, by its unilateral conduct, would possibly substantially restrain competition in the particular field of trade relating to lending for the small- and medium-sized enterprises in Nagasaki and South etc. 3 economic zones by

[10] The percentage of the market size of each of Tsushima etc. 3 economic zones to the market size of lending for small- and medium-sized enterprises in Nagasaki is 1% or less.

the consolidation of this case. As to lending for the small- and medium-sized enterprises in Tsushima etc. 3 economic zones, it would be almost monopoly situation by the consolidation of this case, the JFTC recommended to take necessary measures not to cause negative effect. In response, the Parties proposed of the following remedies (hereinafter referred to as "the Remedies").

1. Assignment of Obligations

As to obligations relating to business lending of the Parties Groups in South etc. 3 economic zones, by the implementation of the consolidation of this case in principle, the Parties Groups assign obligations to other financial institutions, which are equivalent to the amount of a little less than 100 billion yen in total of which borrowers want refunding to the other financial institutions and such institutions accept the refunding (including refunding to the other institutions after borrowers' repayment of obligations to the Parties Groups, hereinafter referred to as "the Assignment of Obligations"). When the amount of the Assignment of Obligations are less than the above amount of moneys by the implementation of the consolidation of this case, the Parties Groups additionally assign obligations equivalent to such shortage to other financial institutions within one year from the consolidation of this case.

2. Monitoring of interest rates etc.

The Parties Groups check whether interest rates are raised without reasonable excuse before executing respective loans, preventing unreasonable raise of interest rates. If there is no reasonable excuse, the Parties Groups reconsider the interest rates. In order to prevent curbs on new loans and forcible collection of outstanding loans, the Parties Groups entrust the monitoring to a third party, and establish a consultation counter to provide advice for users. In addition, the Parties Groups subsequently monitor newly executed interest rates and outstanding balances relating to lending for small- and medium-sized enterprises, creating a specific index.

The implementation of the status of these measures (hereinafter referred to as "the Monitoring etc.") will be monitored by preparing governance systems such as a commission in the Parties Groups and a third party committee, and checked by financial authorities on its inspection and supervision.

In Tsushima etc. 3 economic zones which will be almost monopoly situation by the consolidation of this case, the Parties Groups will implement the Monitoring etc. steadily not to cause negative effect due to the consolidation of this case, for example, the Parties Groups check interest rates relating to the users located in this economic zones in advance, and receive consultation requests from the users located in this economic zones relating to curbs on new loans etc.

3. Regular Report

The Parties report regularly to the JFTC about the Assignment of Obligations and the Monitoring etc.

Part VII Assessment of the Remedies

1. Assignment of Obligations

When the Assignment of Obligations are executed, as the table below, the total market share and the increment in the market share of the Parties Groups are decreased, thereby the influence to the competition becomes small. The market share of the competing enterprise to which the obligation is assigned becomes larger, resulting in the situation where there is the competing enterprise having a certain level of the market share even compared to the increment in the market share of the Parties (after the Assignment of Obligations) by the consolidation of this case. Then competing enterprises having a certain level of the market share increase such as Q in Nagasaki, R in South economic zone and S in Central economic zone.

It would be relatively easier for the competing enterprises to lend additional moneys to the relevant small- and medium-sized enterprises of the Assignment of Obligations because they start their business relationship at the time of the Assignment of Obligations. For the competing enterprises, making achievements in lending in a certain level in Nagasaki, the small- and medium-sized enterprises recognize them as alternative lenders to the Parties Groups. As a result, it would be easier for them to lend to small- and medium-sized enterprises with which they do not have business relationship yet. Thus, it is considered that the competing enterprises can build a certain range of customer bases in Nagasaki and South etc. 3 economic zones by the Assignment of Obligations. As described in the above No. 5-2, (1), A, the sales activities of the competing enterprises have activated in a certain level after the publication of the plan of the consolidation of this case, causing the increase of loans outstanding in a certain level. As described in the above No. 5-2, (1), D, a certain ratio of the small- and medium-sized enterprises consider refunding to the competing enterprises. In this situation, if the competing enterprises build a certain range of customer bases as the above and are recognized as alternative lenders to the Parties Groups, it is considered that the number of the small- and medium-sized enterprises which execute refunding to the competing enterprises will further increase. In this regard, there are a number of competing enterprises who consider the Assignment of Obligations as a chance to expand their business in Nagasaki and South etc. 3 economic zones, and who have intention to do so hereafter.

Due to the Assignment of Obligations, the competing enterprises to which the obligations are assigned need to increase the number of salespersons to maintain and expand their business with the relevant small- and medium-sized enterprises of the Assignment of Obligations. Corresponding to the situation as stated above, to further increase the number of the small- and medium-sized enterprises which execute refunding, the Assignment of Obligations will be an incentive to strengthen their systems. In this regard, there are a number of competing enterprises who strengthen their systems by increasing, for example, the number of salespersons of the branches in Nagasaki to correspond to the Assignment of Obligations and to further expand their business.

Based on the above, it is recognized that the competing enterprises, especially those who have a certain degree of the market share, will have a certain degree of competitive pressure to the Parties Groups in Nagasaki and South etc. 3 economic zones by the Assignment of Obligations. Accordingly, based on the premise of the Assignment of Obligations, the JFTC recognized that the Parties Groups, by its unilateral conduct, would not substantially restrain competition in the particular field of trade relating to lending for the small- and medium-sized enterprises in Nagasaki and South etc. 3 economic zones.

[Market share of lending for small- and medium-sized enterprises in Nagasaki]

(Before the Assignment of Obligations)

Rank	Name of the financial institution	Market share
1	The Parties in total FFG Group The Eighteenth Bank	Approx. 75% Approx. 40% Approx. 35%
2	D	Approx. 10%
3	E	Approx. 5%
4	F	Approx. 5%
	Others	Approx. 10%
Total		100%
Increment in market share		Approx. 35%
HHI after the consolidation of this case		Approx. 5,400
Increment in HHI		Approx. 2,600

(After the Assignment of Obligations)

Rank	Name of the financial institution	Market share
1	The Parties in total	Approx. 65%
2	D	Approx. 10%
3	E	Approx. 5%
4	F	Approx. 5%
5	Q	Approx. 5%
	Others	Approx. 10%
Total		100%
Increment in market share		Approx. 25%
HHI after the consolidation of this case		Approx. 4,700
Increment in HHI		Approx. 2,300

[Market share of lending for small- and medium-sized enterprises in South economic zone]

(Before the Assignment of Obligations)

Rank	Name of the financial institution	Market share
1	The Parties in total The Eighteenth Bank FFG Group	Approx. 75% Approx. 40% Approx. 35%
2	G	Approx. 10%
3	H	Approx. 5%
4	I	Approx. 5%
	Others	Approx. 5%
Total		100%
Increment in market share		Approx. 35%
HHI after the consolidation of this case		Approx. 5,600
Increment in HHI		Approx. 2,700

(After the Assignment of Obligations)

Rank	Name of the financial institution	Market share
1	The Parties in total	Approx. 65%
2	G	Approx. 15%
3	H	Approx. 5%
4	I	Approx. 5%
5	R	Approx. 5%
	Others	Approx. 5%
Total		100%
Increment in market share		Approx. 25%
HHI after the consolidation of this case		Approx. 4,800
Increment in HHI		Approx. 2,300

[Market share of lending for small- and medium-sized enterprises in North economic zone]

(Before the Assignment of Obligations)

Rank	Name of the financial institution	Market share
1	The Parties in total FFG Group The Eighteenth Bank	Approx. 70% Approx. 50% Approx. 20%
2	J	Approx. 10%
3	K	Approx. 5%
4	L	Approx. 5%
	Others	Approx. 10%
Total		100%
Increment in market share		Approx. 20%
HHI after the consolidation of this case		Approx. 5,300
Increment in HHI		Approx. 2,200

(After the Assignment of Obligations)

Rank	Name of the financial institution	Market share
1	The Parties in total	Approx. 65%
2	J	Approx. 10%
3	K	Approx. 10%
4	L	Approx. 5%
	Others	Approx. 10%
Total		100%
Increment in market share		Approx. 15%
HHI after the consolidation of this case		Approx. 4,500
Increment in HHI		Approx. 1,800

[Market share of lending for small- and medium-sized enterprises in Central economic zone]

(Before the Assignment of Obligations)

Rank	Name of the financial institution	Market share
1	The Parties in total The Eighteenth Bank FFG Group	Approx. 70% Approx. 40% Approx. 30%
2	M	Approx. 10%
3	N	Approx. 10%
	Others	Approx. 10%
Total		100%
Increment in market share		Approx. 30%
HHI after the consolidation of this case		Approx. 5,100
Increment in HHI		Approx. 2,400

(After the Assignment of Obligations)

Rank	Name of the financial institution	Market share
1	The Parties in total	Approx. 65%
2	M	Approx. 10%
3	N	Approx. 10%
4	S	Approx. 5%
	Others	Approx. 10%
Total		100%
Increment in market share		Approx. 25%
HHI after the consolidation of this case		Approx. 4,700
Increment in HHI		Approx. 2,200

2. Monitoring of interest rates etc.

As described in No. 6-1 above, it is planned to complete the Assignment of Obligations within one year after the consolidation of this case at the latest, the Monitoring etc. is recognized as an appropriate measure because it is effective to prevent the Parties Groups from exercising the market power until the completion of the Assignment of Obligations.

As described in No. 5-2, (2), C above, in Tsushima etc. 3 economic zones, since the consolidation of this case will cause an almost monopoly situation, it is recommended to take necessary measures not to cause negative effect. In this regard, the Monitoring etc. implemented in Tsushima etc. 3 economic zones, is recognized as an appropriate measure because it is effective to prevent interest rates to be raised without reasonable excuse resulted from the almost monopoly situation.

3. Regular Report

The Parties report regularly to the JFTC about the Assignment of Obligations and the Monitoring etc., which is recognized as an appropriate measure from the viewpoint of securing reliable performance of the remedies.

Part VIII Conclusion

From the above, based on the premise of the Parties' implementation of their proposed remedies, the JFTC judged that the consolidation of this case would not substantially restrain competition in the particular field of trade.

Case 11 Acquisition of shares of Abron Holdings Limited by ORIX Aviation Systems Limited

Part I Outline of this case

This case concerns a plan in which ORIX Aviation Systems Limited, a subsidiary of ORIX Corporation engaging in the business of aircraft leasing (headquartered in Ireland; a group of companies whose ultimate parent company is ORIX Corporation and which have already built joint relationships with ORIX Corporation shall be referred to as “ORIX Group”) intends to acquire more than 20% of voting rights based on stock ownership of Abron Holdings Limited engaging in the business of aircraft leasing (headquartered in Ireland; hereinafter referred to as “Abron”; ORIX Group and Abron shall be collectively referred to as “the Parties Group”) (hereinafter referred to as “the conduct of this case”).

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

Part II Particular field of trade

1. Service range

A leasing business is a business to acquire articles customers need from suppliers on behalf of customers and lease them to customers for a prefixed period of time with the ownership retained by the leasing company.

In the case of a leasing business dealing with aircrafts, the users of the service are mainly airline companies. Aircrafts are classified according to the application (passenger or cargo aircraft), aircraft size, seats number, maximum loading capacity, cruising range, aircraft maker, and other elements. In addition, they are classified between new and used. Usually, the aircraft leasing companies purchase new aircrafts from aircraft makers if customers prefer to use new one, and purchase used aircrafts mainly from airline companies if customers prefer used ones(aircraft makers and airline companies hereinafter collectively referred to as “aircraft makers, etc.”), and then lease those aircrafts to their customers.

For such reasons, in the aircraft leasing industry, basically there is no company specialized in only one type of aircrafts not to mention new or used ones. Rather, the companies are usually dealing with all types of aircrafts. Further, since there is no similar business to the aircraft leasing business, no demand substitutability and supply substitutability are recognized between the aircraft leasing business and any other businesses.

Based on the above, the service range was defined as the “aircraft leasing business".

2. Geographic range

Articles to be dealt by leasing companies are usually delivered from suppliers directly to the users without involving leasing companies. Also in the aircraft leasing industry, aircrafts are directly delivered from aircraft manufacturers, etc. to the users. Therefore, users are able to choose aircraft leasing companies without regard to their location, and users in and outside Japan are leasing aircrafts from aircraft leasing companies in and outside Japan. Further, no meaningful difference in lease fees can be seen between domestic and foreign lease companies.

Based on the above, the geographic range for this case was defined as "worldwide".

Part III Impact to competition anticipated from the conduct of this case

Since both of the Parties Group are operating the aircraft leasing business, this case falls under horizontal business combination. The table below shows the market shares of the Parties Group and their competitors in the field of the aircraft leasing business. HHI after the conduct of this case would be around 500 and the increment in HII, around 30. Thus, the safe-harbor criteria for horizontal business combination are met.

[Market shares concerning the aircraft leasing business in 2017]

Rank	Company name	Market share
1	Company A	Approx. 15%
2	Company B	Approx. 10%
3	Abron	Approx. 5%
4	Company C	0－5%
⋮	⋮	⋮
12	ORIX Group	0－5%
	Others	Approx. 40%
Total		100%
Combined market share/rank: approx. 10%/3rd place		

Part IV Conclusion

We have concluded that the conduct of this case would not substantially restrain competition in any particular field of trade.

Case 12 Acquisition of shares of Humanic Holdings Co., Ltd. by Odakyu Electric Railway Co., Ltd.

Part I Outline of this case

This case concerns a plan in which Odakyu Electric Railway Co., Ltd. (JCN1011001005060), an ultimate parent company of a company engaging in hotel business (a group of companies which have already built joint relationships with Odakyu Electric Railway Co., Ltd. shall be referred to as "Odakyu Group") intends to acquire all voting rights based on stock ownership of Humanic Holdings Co. Ltd. (JCN 6010401116875), an ultimate parent company of a company engaging in worker dispatching service and fee-based employment placement service (a group of companies which have already built joint relationships with Humanic Holdings Co., Ltd. shall be referred to as "Humanic Group"; Odakyu Group and Humanic Group collectively referred to as "the Parties Group") (hereinafter referred to as "the conduct of this case").

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

Part II Particular field of trade

1. Service outline

(1) Worker dispatching service

Worker dispatching service is a service where a manpower agency dispatch workers to client companies (hereinafter referred to as the "dispatched companies")[1] under employment contract between the worker and the agency and have them work for the dispatched companies under the instructions of the dispatched companies. Manpower agencies are earning dispatching fees from the clients.

While so-called general manpower agencies[2] are catering to all needs of clients by covering all sorts of jobs, so-called specialized manpower agencies[3] are specialized in certain industries and/or job types. Specialized manpower

[1] There are two types of worker dispatching service: registration-based worker dispatching service where workers intending to work as temporary staff register themselves at manpower agencies and agencies enter into a fixed-term employment contract with the registered workers every time agencies dispatch workers to their clients and ; permanent employment-based worker dispatching service where workers are under a permanent employment contract with manpower agencies. Humanic Group is engaging in the registration-based worker dispatching service.

[2] General manpower agencies usually have, in their groups, subsidiaries engaging in the business of specialized worker dispatching service which is described in the following section.

[3] There are manpower agencies catering to needs for workers with sophisticated expertise and national qualifications and those targeting at industries of distinctive characters. For example, the former includes a manpower agency specialized in dispatching engineers and pharmacists and the latter includes those targeting at the advertisement and apparel industries.

agencies have job information about wide range of companies from large companies to ventures and SMEs of a particular industry. Humanic Group is a specialized manpower agency providing nationwide service and catering to the needs of the companies operating hotels, theme parks, skiing facilities and other tourist-related facilities (hereinafter referred to as “tourist facility companies”).

(2) Fee-based employment placement service

Fee-based employment placement service is a service to earn fees or commissions by mediating between clients offering jobs (hereinafter referred to as “introduced companies”) and job seekers to help establish employment relationship between them. Workers applying for employment placement service of a fee-based employment placement service company will be registered at the company as job seekers, and if the desired employment conditions of a introduced companies and the desired working conditions of a worker match, the company will introduce the job seeker to the introduced companies, and if the introduced companies and the job seeker agree on working/employment conditions after interviews, etc., an employment relationship will be created. Fee-based employment placement service companies earn commissions from introduced companies as compensation for their service to help create employment relationship.

Humanic Group is engaging in the business of fee-based employment placement service and providing the said service nationwide by targeting at tourist facility operators as in the case of its worker dispatching service.

(3) Hotel business

Hotels are for accommodating businesspersons on business trip and tourists, and classified according to services they provide into “full-service hotels” providing restaurant, banquet and wedding services in addition to accommodation service and “limited-service hotels” providing accommodation service only, and “Japanese-style hotels” with Japanese style rooms and facilities.

Odakyu Group is operating full-service hotels, limited-service hotels and Japanese-style hotels.

2. Service range

(1) Worker dispatching service and fee-based employment placement service

Worker dispatching service and fee-based employment placement service are similar in that they help secure necessary manpower for client companies. However, while in the worker dispatching service there is no employer-employee relationship is created between the dispatched companies and workers dispatched, in the fee-based employment placement service employer-employee relationship is created between the introduced companies using the service and workers. Since clients choose either of the services to secure necessary manpower, demand substitutability is limited between those two services. In addition, business licenses required for respective services are different and different management know-how is required according to whether or not employer-employment relationship exists. Thus, supply substitutability is limited between those two services.

Accordingly, based on the stance that manpower service and fee-based employment placement service do not come under the same service range, the review was conducted.

It should be noted that as the method for securing required manpower also available is a contracting service (outsourcing service) where a company entrusts the execution of part of its operations to a third party. Contracting service is characterized in that workers do not work under the instructions and direction of an outsourcing company. And jobs outsourced include minor jobs to the whole operation of a specific department. Therefore, companies choose among the worker dispatching service, the fee-based employment placement service and the contracting service, taking into account who will give instructions and directions to workers and who will assume legal responsibilities for jobs to be executed as well as the scope of jobs to be executed by using external resources. Accordingly, based on the stance that the worker dispatching service, the fee-based employment placement service and the contracting service do not come under the same service range, the review was conducted.

(2) Worker dispatching service targeted at tourist-related facility industry

Tourist-related facility operators have specific needs for securing manpower as they need to secure manpower only during busy seasons such as swimming season and skiing season and to find workers willing to work in places away from urban areas. Companies engaging in worker dispatching service targeting at other industries than tourist-related facility industry (hereinafter referred to as “other worker dispatching service) may recruit and dispatch workers satisfying those needs out of workers registering with them. However, tourist-related facility operators usually prefer to using worker dispatching service targeted at the tourist-related facility industry to other worker dispatching services from the viewpoint of the ease of securing manpower satisfying their needs. For the said reason, demand substitutability between worker dispatching service targeted at the tourist-related facility industry and other worker dispatching service is limited.

Worker dispatching service companies recruit workers through their own web pages and job magazines in order to secure workers they can dispatch to their clients. From the perspective of those workers who wish to find a job in the tourist-related facility industry, it is more likely for them to find a job at a facility offering more favorable working conditions including salary, workplace location and working hours if they use worker dispatching service companies more experienced in dispatching workers to tourist-related facilities and having more information about jobs allowing workers to work while staying at their workplaces or at nearby accommodation (so-called “live-in jobs”). Therefore, workers wishing to find a job in the tourist-related facility industry tend to register with companies offering worker dispatching service targeted at tourist-related facility industry. For the said reason, it would not be easy for other worker dispatching service companies to develop a system for dispatching workers to tourist-related facilities by securing manpower satisfying the needs of the industry. Likewise, it would not be easy for worker dispatching service targeted at tourist-related facility industry to develop a system for operating any other worker dispatching service. Accordingly, supply substitutability between worker dispatching service targeted at tourist-related facility industry and other worker dispatching service is limited.

Based on the above, the service range was defined as “worker dispatching service targeted at tourist-related facility industry”.

(3) Fee-based employment placement service targeted at tourist-related facility industry

As for substitutability between companies engaging in fee-based employment placement service targeted at tourist-related facility industry and those engaging in fee-based employment placement service targeted at other industries than tourist-related facility industry (hereinafter referred to as “other fee-based employment placement service”), the same circumstance as mentioned in (2) above can be seen. Therefore, both supply substitutability and demand substitutability between those two services are limited.

Based on the above, the service range was defined as “fee-based employment placement service targeted at tourist-related facility industry”.

(4) Hotel business

In general, while users of “limited-service hotels” such as business hotels tend to need accommodation only or accommodation and light meals, users of “full-service hotels” use, in addition to accommodation service, restaurant, banquet and wedding services and tend to demand higher-quality extraordinary space and experience in exchange for higher prices than those of limited-service hotels. As for Japanese-style hotels, usually they do not offer the service of meals only. However, they usually offer very exquisite dishes in addition to accommodation. Users tend to choose Japanese-style hotels for those services as well as relaxing atmosphere they offer. Users tend to choose their accommodations out of the above-mentioned types of hotels depending on the purpose of stay and personal preferences, etc. Therefore, demand substitutability among those types of hotels is limited.

Further, since there are significant differences in facilities and equipment and in management know-how among those types of hotels, supply substitutability among those hotel types is limited.

Based on the above, the service range was defined as “full-service hotel,” “limited-service hotel” and “Japanese-style hotel”.

3. Geographic range

(1) Worker dispatching service targeted at tourist-related facility industry

Worker dispatching service companies are required to obtain a business license to establish an office for receiving job information, carrying out personnel management of workers to be dispatched, and handling communication and negotiations with dispatched companies. Other worker dispatching service companies sometimes establish several offices in one prefecture. On the other hand, worker dispatching service targeted at tourist-related facility industry usually have their offices only in major cities, and some companies have headquarters only, and do not have any branch office in order to carry out required activities. Further, workers choosing to use worker dispatching service targeted at tourist-related facility industry are basically seeking live-in jobs, and such worker dispatching companies are receiving job offers and registering workers also online. Interviews with workers conducted prior to dispatch to client companies are also possible on videophone using telephone or Internet communication lines in the case of workers living far from their offices. Accordingly, it is not necessary for worker dispatching service targeted at tourist-related facility industry to establish offices in each area in order to provide nationwide service.

Based on the above, the geographic range was defined as “nationwide”.

(2) Fee-based employment placement service targeted at tourist-related facility industry

The geographic range was defined as “nationwide” since the same circumstances mentioned in (1) above with respect to worker dispatching service are also applicable to fee-based employment placement service targeted at tourist-related facility industry.

(3) Full-service hotel, limited-service hotel and Japanese-style hotel

Users of hotels usually choose where to stay among accommodations located in the same municipal unit of their (sightseeing, business) destination.

Based on the above, for all of full-service hotels, limited-service hotels and Japanese-style hotels, the geographic range was defined as “respective municipality”. In this case, examination was made about several municipalities where Odakyu Group is operating its hotels (hereinafter referred to as “the municipalities of this case”).

Part III Impact to competition anticipated from the conduct of this case

Odakyu Group is operating hotel business, and, in order to secure necessary manpower for the business, the Group may use worker dispatching service targeted at tourist-related facility industry and fee-based employment placement service targeted at tourist-related facility industry. Therefore, this case falls under vertical business combination where worker dispatching service targeted at tourist-related facility industry and fee-based employment placement service targeted at tourist-related facility industry are regarded as upstream market and full-service hotels, limited-service hotels and Japanese-style hotels, downstream market.

1. Position of the Parties Group and competing enterprises

(1) Upstream market

A. Worker dispatching service targeted at tourist-related facility industry

The following table shows the market shares of the Parties Group and competitors in the field of worker dispatching service targeted at tourist-related facility industry. HHI is around 3,300 and the market share of the Parties Group is around 45%. Therefore, the safe-harbor criteria for vertical business combinations are not met.

There are influential competitors, Company A holding around 35%, and Company B and Company C holding around 10% respectively.

[Market shares in the field of worker dispatching service targeted at tourist-related facility industry in 2017]

Rank	Company name	Market share
1	Humanic Group	Approx. 45%
2	Company A	Approx. 35%
3	Company B	Approx. 10%
4	Company C	Approx. 10%
Total		100%

B. Fee-based employment placement service targeted at tourist-related facility industry

As for fee-based employment placement service targeted at tourist-related facility industry, no specific market shares have been confirmed. Therefore, the review was made based on the premise that the safe-harbor criteria for vertical business combinations are not met.

It should be pointed out that all of the competitors mentioned in the table of A. above are engaging in fee-based employment placement service targeted at tourist-related facility industry.

(2) Downstream market

Since no specific market shares have been obtained for either of full-service hotels, limited-service hotels and Japanese-style hotels, the review was made based on the premise that the safe-harbor criteria for vertical business combinations are not met.

2. Refusal of provision, etc. of worker dispatching service targeted at tourist-related facility industry or fee-based employment placement service targeted at tourist-related facility industry

Examination is made about the possibility of market closure or exclusivity that may occur in the business of full-service hotels, limited-service hotels and Japanese-style hotels if Humanic Group refuses to provide worker dispatching service targeted at tourist-related facility industry or fee-based employment placement service targeted at tourist-related facility industry to competitors of Odakyu Group or provides such service to such competitors only under unfavorable conditions compared to those offered to Odakyu Group (such an act shall be hereinafter referred to as “provision refusal, etc.”)

Since matters to be examined are identical for both worker dispatching service targeted at tourist-related facility industry and fee-based employment placement service targeted at tourist-related facility industry, in the following section the situations around worker dispatching service targeted at tourist-related facility industry are examined.

There are several powerful competitors in the field of worker dispatching service targeted at tourist-related facility industry. So even if Humanic Group refuses to provide service to other operators of full-service hotels, limited-service hotels and Japanese-style hotels than Odakyu Group, those hotels would be able to turn to those competitors. Accordingly, Humanic Group is considered to have no capabilities of implementing input foreclosure. Therefore, it can be said that the problem of market closure or exclusivity is not likely to occur.

If Humanic Group do not refuse to provide and continue providing worker dispatching service targeted at tourist-related facility industry to competitors of Odakyu Group after the conduct of this case, Odakyu Group would be able to obtain through Humanic Group information about prices for the service offered to the competitors. However, since costs incurred in using the said service account for only marginal part of the overall operating costs of full-service hotels, limited-service hotels and Japanese-style hotels, it would not be possible for Odakyu Group to guess the operating costs of its competitors even if it succeed in obtaining through Humanic Group the information about prices for the service offered to the competitors. Therefore, it would not be easy for Odakyu Group and their competitors to predict each other’s operation cost at high accuracy. Based on the above, it can be said that the coordinated conducts by the Parties Group and their competitors is not likely to give rise to substantial restraint of competition in the field of full-service hotel, limited-service hotel and Japanese-style hotel businesses.

3. Refusal of use, etc. of worker dispatching service targeted at tourist-related facility industry or fee-based employment placement service targeted at tourist-related facility industry

Examination is made about the possibility of market closure or exclusivity that may occur in the field of full-service hotel, limited-service hotel and Japanese-style hotel businesses if Odakyu Group refuses to use worker dispatching service targeted at tourist-related facility industry or fee-based employment placement service targeted at tourist-related facility industry of the competitors of Humanic Group or use such service of such competitors only under unfavorable conditions compared to those with Humanic Group (such an act shall be hereinafter referred to as “use refusal, etc.”)

Since matters to be examined are identical for both worker dispatching service targeted at tourist-related facility operators and fee-based employment placement service targeted at tourist-related facility operators, in the following section the situations around worker dispatching service targeted at tourist-related facility operators are examined.

Hotels operated by Odakyu Group are located in the municipalities of this case. However, there are many other tourist resorts than the municipalities of this case in Japan, and in each of the said tourist resorts many tourist-related facilities including hotels are found. Therefore, the demands from Odakyu Group for worker dispatching service targeted at tourist-related facility industry occupy only marginal part of the nationwide demands for the service, and should Odakyu Group refuse to use the service of companies other than Humanic Group, those companies would be able to provide their service to tourist-related facility operators other than Odakyu Group. Accordingly, Odakyu Group is not considered to have capabilities of implementing customer foreclosure. Therefore, it can be said that the problem of market closure or exclusivity is not likely to occur.

If Odakyu Group do not refuse to use and continue using worker dispatching service targeted at tourist-related facility industry of the competitors of Humanic Group after the conduct of this case, Humanic Group would be able to obtain through Odakyu Group information about prices for the service offered to Odakyu Group by the competitors. However, since prices for providing the said service are decided by taking into account the intention of client companies and working conditions (including job type, workplace location, employment period and working hours), it would not be possible for Humanic Group to predict prices to be offered to client companies other than Odakyu Group even if it succeed in obtaining through Odakyu Group the information about prices offered to Odakyu Group by competitors. Therefore, it would not be easy for Humanic Group and their competitors to predict each other's conducts at high accuracy. Based on the above, it can be said that the coordinated conducts by the Parties Group and their competitors is not likely to give rise to substantial restraint of competition in the field of worker dispatching service targeted at tourist-related facility industry.

Part IV Conclusion

It has been concluded that the conduct of this case would not substantially restrain competition in any particular field of trade.

Case 13 Merger of JFE Recycling Corporation and Tokyo Water Front Recycle Power Corporation

Part I Outline of this case

This case concerns a plan in which JFE Recycling Corporation (JCN 8020001016738) engaging in the intermediate processing of industrial wastes (a group of companies which have already built joint relationships with JFE Holdings Inc. (JCN 6010001080308) shall be referred to as “JFE Group”) intends to merge with Tokyo Water Front Recycle Power Corporation (JCN7010601029059) engaging in the intermediate processing of industrial wastes (a group of companies which have already built joint relationships with JERA Co., Inc. (JCN 6010001167617) shall be referred to as “JERA Group”; JFE Group and JERA Group collectively referred to as “the Parties Group”) (hereinafter referred to as “the conduct of this case”).

The applicable provision to this case is Article 15 of the AMA.

Part II Particular field of trade

1. Service outline

Industrial wastes mean wastes arising out business activities of a company, and they are roughly classified into specially-controlled industrial wastes that are explosive, toxic, infectious and having any other natures affecting human health or living environments, and industrial wastes other than specially controlled industrial wastes (industrial wastes other than specially-controlled industrial wastes shall be hereinafter referred to as “industrial wastes”).

In general, industrial wastes and specially-controlled industrial wastes are finally disposed of in landfill or recycled after intermediate processing (reducing the volume through incineration, shredding, compression and other methods for the ease of final processing or sorting out those recyclable).

The companies of the Parties Group are competing in the field of the intermediate processing of industrial wastes and that of specially-controlled industrial wastes, out of which, in the following parts, there will be detailed description about the intermediate processing of industrial wastes that is considered to have relatively large impact on competition.

2. Service range

Industrial wastes are classified according to the Waste Management and Public Cleansing Act (Act no. 137 of 1970) into twenty items. For each of the said items, intermediate processing companies are required to obtain licenses in order to operate intermediate processing business and intermediate processing facilities. Accordingly, companies producing industrial wastes or users in this case need to select such intermediate processing service as suited to the industrial wastes they are producing. Therefore, no demand substitutability is recognized between intermediate processing companies licensed for different items.

In order to obtain a license for the intermediate processing business of industrial wastes, it is required to have intermediate processing facilities proved to be sufficient for processing the item for which the license is being sought by satisfying the standards specified by the ordinance of the Ministry of the Environment. Intermediate processing facilities for industrial wastes are classified into incineration facilities, shredding facilities, dehydration facilities, compression facilities, neutralization facilities, sorting-out facilities, etc. Intermediate processing companies of industrial wastes have facilities with functions and characteristics suited to the intermediate processing of the items they are to process. As described above, companies providing intermediate processing service of industrial wastes are only allowed to process those items for which they have obtained license. If they intend to process any item for which no license exists but have facilities capable of processing the item considering the functions of those facilities, the required license may be obtained in a short period of time without incurring significant additional costs. Accordingly, depending on the functions of facilities, supply substitutability is recognized among intermediate processing companies having the same type of facilities.

Since, in this case, both parties of the Parties Group have incineration facilities only, the service range was defined as the "intermediate processing of industrial wastes by incineration facilities".

3. Geographic range

When companies producing industrial wastes or users of the present service intend to outsource the intermediate processing to a third party, it is necessary for them to entrust companies licensed to collect and transport industrial wastes with the collection and transportation of their wastes from the origin of the wastes to intermediate processing facilities. And they have to pay prices for those operations to the industrial waste collectors and transporter.

Therefore, the fact is that users use the service of the intermediate processing companies having facilities capable of processing their industrial wastes as long as the costs for collecting and transporting the wastes are bearable to the users.

The Parties Group have their facilities for intermediate processing of industrial wastes in Chiba, Tokyo and Kanagawa, and most of the users of those facilities are located in the Kanto region.

Accordingly, the geographic range of this case was defined as the "Kanto region".

Part III Impact to competition anticipated from the conduct of this case

1. Substantial restriction of competition through unilateral conduct

(1) Positions of the Parties and competing enterprises

The following table shows the market shares concerning the industrial waste intermediate processing at incineration facilities in the Kanto region. HHI after the conduct of this case would be around 1，700 and the increment in HHI would be around 500. Therefore, the safe-harbor criteria for horizontal business combinations are not met.

[Market shares concerning the industrial waste intermediate processing at incineration facilities in 2017]

Rank	Company name	Market share
1	Company A	Approx. 20%
2	JFE Group	Approx. 20%
3	JERA Group	Approx. 15%
4	Company B	Approx. 10%
5	Company C	Approx. 10%
6	Company D	Approx. 5%
7	Company E	0－5%
8	Company F	0－5%
9	Company G	0－5%
10	Company H	0－5%
	Others	Approx. 10%
Total		100%
Combined market share/rank: approx. 30%/1st place		

As seen above, in the Kanto region, there are many companies competing in the field of the intermediate processing of industrial wastes by incineration facilities, which includes Company A holding around 20% and Companies B and C holding around 10% respectively.

The incineration facilities of those competitors have considerable surplus processing capacity. Therefore, competitors have considerable excess provision capacity.

Therefore, competitive pressure from competitors is recognized.

(2) Competitive pressure from adjacent markets

As described in Part II-3 above, the collection and transportation of industrial wastes from the places of their origin to intermediate processing facilities are entrusted to licensed industrial waste collectors and transporters. Therefore, it is the fact that companies producing those industrial wastes or the users of the processing service calculate their costs for disposing industrial wastes by adding intermediate processing charges and the collection and transportation charges. Accordingly, if it is cheaper in terms of the total of intermediate processing charges and the collection and transportation charges for users to entrust the intermediate processing of industrial wastes to incineration facilities located in other adjacent geographic range, they may use those facilities.

In fact, into the intermediate processing facilities of the Parties Group, industrial wastes are bought by users in other markets geographically adjacent to the Kanto region.

Accordingly, a certain degree of competitive pressure from adjacent markets is recognized.

(3) Competitive pressure from users

Companies producing industrial wastes or users in this case are anxious to reduce costs for the disposal of industrial wastes that are inseparable from their business operations. Services provided by competing intermediate processors of industrial wastes using incineration facilities are almost the same in their contents. Therefore, processors are determined through the comparison of quotations or bidding. In fact, the Parties Group have lost new customers because they have lost in price competition with competitors and faced reduction in existing transaction volume due to their inability to accept price reduction requests.

Further as describe in (1) above, competitors have considerable excess supply capacity and it is easy for users to change service suppliers.

Therefore, competitive pressure from users is recognized.

(4) Summary

There are many competitors having considerable excess supply capacity including the one with about 20 % market share. A certain level of pressure from geographical adjacent markets is recognized, and pressures from users is also recognized. Therefore, it can be said that the unilateral conduct of the Parties Group is not likely to give rise to substantial restraint of competition in a particular field of trade.

2. Substantial restraint of competition through coordinated conducts

There are many intermediate processors of industrial wastes using incineration facilities in the Kanto region. It is difficult to predict the conducts of those competitors, and they have considerable excess supply capacity. There can be seen incentives to increase the utilization rate of their facilities by offering lower prices. A certain level of pressure from geographical adjacent markets is recognized, and pressures from users is recognized. Therefore, it can be said that the coordinated conducts by the Parties Group and competitors would not substantially restrain competition in a particular field of trade.

Part IV Conclusion

It has been concluded that the conduct of this case would not substantially restrain competition in any particular field of trade.