Attachment 3

The parts in red are amended.

Tentative Translation

GUIDELINES TO APPLICATION OF THE ANTIMONOPOLY ACT CONCERNING REVIEW OF BUSINESS COMBINATION

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Japan Fair Trade Commission
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Introduction

Chapter IV of the Antimonopoly Act (Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947), hereinafter referred to as “the Act”) prohibits the acquisition or possession (hereinafter referred to as “holding”) of the shares of a company (including shares of partnership, the same shall apply hereinafter) (Article 10 of the Act), interlocking directorates (Article 13 of the Act), shareholding by a person other than a company (Article 14 of the Act) or a merger of companies (Article 15 of the Act), joint incorporation-type split or absorption-type split (Article 15-2 of the Act), joint share transfer (Article 15-3 of the Act), or acquisition of businesses, etc. (Article 16 of the Act) (hereinafter referred to as "business combination"), where it creates a business combination that may be substantially to restrain competition in any particular field of trade, or where a business combination is created through an unfair trade practice. Prohibited business combinations are subject to elimination measures pursuant to Article 17-2 of the Act.

To review whether the effect of a business combination may be substantially to restrain competition in any particular field of trade (hereinafter referred to as a "review of business combination" or a "review"), the Japan Fair Trade Commission (hereinafter referred to as "JFTC") has already clarified the underlying principles through the "Guidelines for Interpretation on the Stipulation that ‗The Effect May Be Substantially to Restrain Competition in a Particular Field of Trade' Concerning M&A" on December 21, 1998. However, to improve transparency and predictability regarding the review of business combinations, the JFTC has prepared these "Guidelines to Application of the Antimonopoly Act concerning Review of Business Combination" (hereinafter referred to as the "Guidelines"), taking into account its experience in reviews to date.

The JFTC has also released summaries of the review of certain cases such as the cases in which notifications or other submissions were accepted, as a reference for business operators having a business combination plan because these may be useful for them. The JFTC continues to be ready to provide more information with the aim of ensuring predictability and regulatory transparency of the reviews. When planning a business combination, reference should be made not only to the Guidelines but also to the outline of past cases.

The Guidelines first indicate the categories of business combinations that are to be reviewed under the Act (Part I). Second, they set out the criteria for defining a particular field of trade (Part II). Third, they clarify the meaning of "may be substantially to restrain competition" (Part III). They then set out the analytical framework and the criteria for assessing whether a business combination may be substantially to restrain competition in accordance with the categories of business combinations (Parts IV and V). Finally, they illustrate remedial measures for resolving the problems associated with a business combination that may be substantially to restrain competition (Part VI).

The JFTC will review business combinations along with the Guidelines and determine whether or not a business combination may be substantially to restrain competition in any particular field of trade in light of the provision of Article 4 of the Act, irrespective of whether it is subject to the current reporting or notification requirement pursuant to Chapter IV of the Act. Meanwhile, with the formulation of the Guidelines, the Guidelines for Interpretation on the "Stipulation that The Effect May Be Substantially to Restrain Competition in a Particular Field of Trade'

Concerning M&A" (Japan Fair Trade Commission, December 21, 1998, including Supplement thereof dated April 1, 2001) is hereby abolished.

Part I. Subject of the Review of Business Combination

Chapter IV of the Act prohibits any business combination that may be substantially to restrain competition in a particular field of trade. The Chapter regulates business combinations because they can have an impact on competition in the market (a particular field of trade) through the forming, maintaining or strengthening of a relationship in which two or more companies operate a business in a united form, whether fully or partially by shareholding, mergers or other transactions (this relationship is hereinafter referred to as a "joint relationship").

Accordingly, if two or more companies continue to operate businesses as independent competitive units, even though they have interlocking shareholdings or directorates, and if these companies that are already in a joint relationship merely alter the form of an organization through a merger, there is little impact on competition. Thus, these types of arrangements should not be prohibited pursuant to Chapter IV.

This part clarifies the categories of business combinations whose impact on competition should be reviewed.

1. Shareholding

(1) Shareholding by a Company

A. The review considers whether a joint relationship is to be formed, maintained or strengthened between the company acquiring shares (hereinafter referred to as a "shareholding company") and the company whose shares are acquired (hereinafter referred to as the "share issuing company") in the following cases.

(a) When the ratio of the total number of voting rights pertaining to shares held by companies, etc. that belong to the group of combined companies (the group of combined companies prescribed in paragraph (2), Article 10 of the Act, the same shall apply hereinafter) to which the shareholding company belongs to all of the voting rights of the share issuing company exceeds 50%. However, if the shareholding company established the share issuing company and the former acquired all of the voting rights of the latter concurrently with the establishment, it usually does not require a review (see (4) A, infra).

(b) When the ratio of the total number of voting rights pertaining to shares held by companies, etc. that belong to the group of combined companies to which the shareholding company belongs to all of the voting rights of the share issuing company exceeds 20% and the said ratio stands alone as the top-ranked.

B. Excluding the cases described above, it is considered that most of the cases do not require business combination review in general but the following items will be taken into consideration to determine whether a joint relationship is formed, maintained or strengthened. Regarding such cases the ratio of voting rights held (the ratio of the voting rights pertaining to shares held by the shareholding company to all the voting rights of the share issuing company, the same shall apply hereinafter) is 10% or less , or and the shareholding company is not ranked among the top three holders of voting rights, a joint relationship is not formed , maintained or strengthened so that in general the case does not require a business combination review.

(a) The extent of the ratio of voting rights held

(b) The rank as a holder of voting rights, differences in and distribution of the ratios of voting rights held among the holders, and other relationships between holders

(c) Cross-holding of voting rights (the share issuing company concurrently holds voting rights of the shareholding company) and other mutual relationships between the companies involved (hereinafter referred to as "parties")

(d) Whether officers or employees of one of the parties are officers of the other parties

(e) Trading relationship between the parties (including financial relationship)

(f) Relationships between the parties based on business alliance, technical assistance and other agreements or agreements

(g) Items (a) through (f), when including companies that already have joint relationships with the parties

C. For a joint investment company (a company jointly established or acquired by two or more companies through an agreement to pursue operations necessary to achieve mutual benefits; the same shall apply hereinafter), trading relationships between the parties and relationships based on business alliances and agreements will be considered to determine whether the business combination should be reviewed. (As far as a joint relationship between the investing companies is concerned, a joint relationship is indirectly formed, maintained or strengthened through the joint investment company even if there is no direct shareholding relationship between the investing companies. Accordingly, if the business activities of the shareholding companies are integrated through the establishment of the joint investment company, this fact itself indicates that there will be an impact on competition. (See 2 (1) C and 3 (1) D in Part IV, infra))

(2) Shareholdings by a Person Other than a Company "A person other than a company" means a person other than a stock company, mutual company, general partnership company, limited partnership company, limited liability company or

foreign company as prescribed by the Companies Act and other laws and ordinances; it does not matter whether the person is a business operator or not. Specifically, incorporated foundations, incorporated associations, special corporations, local public entities, cooperatives, associations, natural persons and all other persons that can hold shares are included.
The existence of shareholdings by a person other than a company shall be examined in the same manner as (1) above.

(3) Scope of Joint Relationships

If a joint relationship is formed, maintained or strengthened between the parties concerned through the shareholdings, a joint relationship is also formed, maintained or strengthened among the parties and the companies which already have a joint relationship with the parties.

(4) Shareholdings Not Requiring a Review

In the case of A below, a joint relationship is not formed or strengthened so that, in general, it does not require a review. In addition, even in the case of item B below, a business combination is not formed or strengthened so that, in general, most do not require a review. However, if a joint relationship is formed or strengthened between companies, etc. that belongs to the relevant group of combined companies and other shareholders, this joint relationship will require a review.

A. The shareholding company establishes the share issuing company and the former acquires all of the voting rights of the latter concurrently with the establishment (See (1) A (a) above)

<u>B. The shareholding company and the share issuing company belong to the same group of combined companies</u>

2. Interlocking Directorates Joint investment company Investing Company A Investing Company B Capital Investment Capital investment

A joint relationship is formed, maintained or strengthened between the investing companies and between each of the investing companies and the joint investment company

(1) Scope of Officers

An "officer" is defined in paragraph (3), Article 2 of the Act as "a trustee, director, executive officer, managing member, auditor, company auditor or any person with an equivalent position, a manager or other employee in charge of business of the main or branch office." Thus, officers are directors and company auditors of stock companies and mutual companies; members who execute the business of a general partnership company, limited partnership company, or limited liability company; managers defined by the Companies Act (Article 10 of Companies Act) and other employees deemed to have executive power equivalent to that of managers under

the Companies Act (such as the general manager of a head office, a branch manager, the head of a business division) and the like.
A "person with an equivalent position means a person who is not a director or auditor but who has a title such as adviser, counselor or consultant who actually participates in the management of the company by attending meetings of the board of directors or through other measures.
A person who has only the title of division manager, department manager, section manager or supervisor is an employee and not an "officer."
Moreover, the restriction on interlocking directors will not apply if an officer or an employee of a company completes procedures for retirement and is then appointed as an officer of another company.

(Note 1) Paragraph (1), Article 13 of the Act defines in the parenthesis an "employee" as "a person other than an officer in the regular employ of a company."
While temporary employment is not included, temporary loan employees are considered employees.

(2) Joint Relationships through Interlocking Directorates

A. In the following cases, a joint relationship is formed, maintained or strengthened between interlocking companies when an officer or an employee of a company serves concurrently as an officer of another company and that interlocking requires a review.

(a) The officers or employees of one company comprise a majority of the total number of officers of another company.
(b) Interlocking directorates in which the directors have the authority to represent both companies.

B. Excluding item A above, the following items will be taken into consideration to determine whether a joint relationship is formed, maintained or strengthened.

(a) Whether an interlocking directorate is formed by full-time or representative directors
(b) The ratio of officers or employees of one of the interlocking companies to the total number of officers of one of the other interlocking companies
(c) Mutual holding of voting rights between the interlocking companies
(d) The trading relationships (including financial relationships), business alliance and other relationships between the interlocking companies

(3) Scope of Joint Relationships
When a joint relationship is formed, maintained or strengthened between interlocking companies through interlocking directorates, a joint relationship is formed, maintained and strengthened between companies, including companies that already have a joint relationship with the interlocking companies.

(4) Interlocking Directorates Not Requiring a Review

A. In cases such as the following, a joint relationship is not formed, maintained or strengthened so that in general the case does not require a review.

(a) Only persons without representation authority serve concurrently as officers, and in either of the interlocking companies the ratio of officers or employees of the other company to the total number of its officers is 10% or less.
(b) Only persons other than full-time officers serve concurrently in companies in which the voting rights held at 10% or less of the total, and in either of the inter locking companies the ratio of officers or employees of the other company to the total number of its officers is 25% or less.

B. When the interlocking companies belong to the same group of combined companies, a joint relationship is not formed or strengthened so that in general most are not considered to require a review. However, if a joint relationship is formed or strengthened with shareholders other than companies, etc. that belong to the same group of combined companies as the interlocking companies, this joint relationship will require a review.

3. Mergers

(1) Mergers
In a merger, two or more companies combine to form a single company. Therefore, a merger is the strongest joint relationship that can be formed between companies. Consequently, even if a certain joint relationship formed through shareholdings or interlocking directorates may be deemed not to have a strong impact on competition or to cause a problem, the joint relationship could be strengthened through a merger under the same set of circumstances, and the merger could present a problem.
(2) Scope of Joint Relationships
When a merger is conducted, a joint relationship is formed, maintained or strengthened between the parties and the companies that have already formed a joint relationship with the parties.

(3) Mergers Not Requiring a Review

In the case of item A below, a joint relationship is not formed or strengthened so that in general it does not require a review. In addition, even in the case of item B below, a business combination is not formed or strengthened so that in general most are not considered to require a review. However, if a joint relationship is formed or strengthened with shareholders other than companies, etc. that belong to the same groups of combined companies as the merging companies, this joint relationship requires a review.

A. Mergers that are solely for the purpose of converting a share company to a general partnership company, limited partnership company, limited liability company or mutual company; converting a general partnership company to a share company, limited partnership company or limited liability company; converting a limited partnership company to a share company, general partnership company or limited liability company; converting a limited liability company to a share company, general partnership company or limited partnership company or converting a mutual company to a share company

B. When all the companies intending to merge with each other belong to the same group of combined companies

4. Split

(1) Joint Incorporation-Type Split/Absorption-Type Split

A joint incorporation-type split or an absorption-type split (hereinafter referred to as a "split") has an impact on competition similar to a merger in the sense that a business (all or a substantial part of it) is spun off from one company are integrated with the succeeding company.

Whether or not a joint relationship is formed, maintained or strengthened between the succeeding company and a company that is to be allotted shares in the succeeding company and whether the joint relationship is required for a review are determined in light of the criteria of Article 1 ("Shareholding").

(2) Scope of Joint Relationships

If a joint relationship is formed, maintained or strengthened through a split between the succeeding company and the company that is to be allotted shares in the succeeding company, a joint relationship is formed, maintained and strengthened between the succeeding and the allotted company and companies that already have a joint relationship with them.

(3) Substantial Part of Business

The "substantial part" mentioned above does not mean a substantial part for the succeeding company but for the splitting company. Moreover, it is limited to a case in which the split portion of the business must function as a single business unit, and the portion is objectively deemed to have value to the business of the splitting company.

Consequently, whether a split business constitutes a "substantial part" or not is examined on a case-by-case basis according to the actual position of the split business in the market. However, if the annual sales (or turnover corresponding to sales; the same shall apply hereinafter.) of the split business is 5% or less of the total sales of the splitting company and one hundred million yen or less, this split business is generally not considered to be a "substantial part."

(4) Splits Not Requiring a Review

When all the companies intending to be involved in a joint incorporation-type split or an absorption-type split belong to the same group of combined companies, a joint relationship is not formed or strengthened so that in general most are not considered to require a review. However, if a joint relationship is formed or strengthened with shareholders other than companies, etc. that belong to the same group of combined companies as the companies involved in the split, this joint relationship requires a review.

5. Joint Share Transfer

(1) Joint Share Transfer

In a joint share transfer, a newly established company acquires all of the shares of multiple companies. Therefore a strong joint relationship is formed between parties to a joint share transfer, same as in the case of a merger.

Consequently, even if a certain joint relationship formed through shareholdings or interlocking directorates may be deemed not to have a strong impact on competition or to cause a problem, the joint relationship could be strengthened through a joint share transfer under the same set of circumstances, and the joint share transfer could present a problem.

(2) Scope of Joint Relationships

After a joint share transfer, a joint relationship is formed, maintained and strengthened between the multiple companies involved in the joint share transfer and companies that already have a joint relationship with them, via the company that is newly established through the joint share transfer.

(3) Joint Share Transfers Not Requiring a Review

When all the companies intending to undertake a joint share transfer belong to the same group of combined companies, a joint relationship is not formed or strengthened so that in general most are not considered to require a review. However, if a joint relationship is formed or strengthened with shareholders other than companies, etc. that belong to the same group of combined companies as the companies undertaking the joint share transfer, this joint relationship requires a review.

6. Acquisitions of Business, etc.

(1) Acquisitions of Business
The acquisition of an entire business has an impact on competition similar to a merger in the sense that the business activities of the transferring company are integrated with the acquiring company. Since the transferring company and the acquiring company are not related after the transfer, it is sufficient to examine conditions when the acquired business is added to the acquiring company. Acquisitions of a substantial part of a business or the fixed assets of business are examined in a similar manner.

(2) Scope of Joint Relationships
With respect to the acquired portion, a joint relationship is formed, maintained or strengthened between companies, including companies that already have a joint relationship with the acquiring company.

(3) Substantial Part of Business or Fixed Assets of Business
With respect to an acquisition of a substantial part of a business or the fixed assets of a business, the idea of the ―substantial part" is the same as mentioned in item 4 (3) above.

(4) Acquisitions of Businesses Not Requiring a Review
In the case of item A below, a joint relationship is not formed or strengthened so that in general it does not require a review. In addition, even in the case of item B below, a joint relationship is not formed or strengthened so that in general most are not considered to require a review. However, if a joint relationship is formed or strengthened with shareholders other than companies, etc. that belong to the same group of combined companies as the companies involved in the acquisition of business, this joint relationship requires a review.
A. Transfer of a business or the fixed assets of a business (hereinafter referred to as "acquisitions of a business") that is a corporate division spun off through a 100% capital investment)
B. When the company intending to acquire a business and the one intending to transfer the business belong to the same group of combined companies

(5) Leasing of Business

Leasing of a business (in which a lessee manages a leased business in its name and on its accounts, and pays leasing fees to the lessor in fulfillment of a leasing agreement), delegation of the management of a business (in which a company entrusts the management of a business to another company in fulfillment of an agreement), and agreements to share the total profits and losses of a business (agreements between two or more companies agreeing to share the total profits and losses of a business for a specific period) shall be dealt with in the same manner as acquisitions of a business.

Unlike the situation described in item (1) above, a joint relationship can be formed, maintained or strengthened between companies already in a joint relationship with them, depending on the nature of the agreements.

Part II. A Particular Field of Trade With respect to a business combination that would be subject to the review in relation to Part I, the business activities of all companies that would form, maintain, and strengthen the joint relationships by the business combination (hereinafter referred to as "the company group") are reviewed, so that the impact of the business combination on competition in a particular field of trade will be determined in accordance with the perspectives set forth in Parts III–V.

The following clarifies the criteria for judgment concerning the definition of a particular field of trade in this case:

1. Basic View on the Scope of a Particular Field of Trade

A particular field of trade denotes the scope for determining whether the effect of the business combination may be to restrain competition, and is determined, in principle, in terms of substitutability for users, such as the product range (including a service; the same shall apply hereinafter) that is the subject of a particular trade and the range of trading areas (hereinafter referred to as the "geographic range"). Further, when necessary, substitutability for suppliers is also considered.

When examining substitutability for users, the JFTC will suppose that a specific product is supplied by a monopolist in a specific region. Then, under this assumption, it considers the degree to which users can substitute an alternative product or region for the purchase of the product when a small but significant and non-transitory increase in price (Note 2) is implemented by the monopolist with the aim of maximizing profit. If the degree to which an alternative product or region can be substituted for the purchase of the product is small, and the monopolist succeeds in expanding its profits from the price increase, the scope can be defined as denoting that the effect of the business combination may have some impact on competition.

Regarding substitutability for suppliers, the JFTC will consider the degree to which other suppliers can switch, within a relatively short period of time (mostly within a year), without substantial cost or risk, from the manufacture and sale of another product or region to those of the product, if a small but significant and non-transitory increase in price is implemented for the product and region. If the degree is small, and so the monopolist is able to expand its profit as a result of the price increase, the scope would be such that the effect of the business combination may have some impact on competition.
In addition, in some forms of trade, a particular field of trade can sometimes be constituted by a product range (or geographic range) while another particular field of trade might be constituted by a wider (or narrower) product range (or geographic range), which overlaps. Moreover, when a company group is operating a wide range of businesses, the product range and the geographic range will be defined respectively for each of the businesses.

(Note 2) A "small but significant and non-transitory increase in price" is generally a price increase of between 5% and 10% that persists for about a year. However, these figures should only be used as a guide, and should be considered individually for each case.

2. Product Range
The product range is defined by the perspective of product substitutability for users, as previously described in Section 1. The degree of product substitutability very often matches the degree of similarity of utility for users, so that the latter criterion can often be applied to determine the degree of product substitutability.
Take for example, two products, Product X and Product Y. The more similar the utility of the two products for users, the more likely it is that users would purchase Product Y in place of Product X if the price of Product X is raised. It can thus be predicted that an increase in the price of Product X would not lead to an increase in the profits of the company that makes Product X, and it could be considered that the presence of Product Y will prevent an increase in the price of Product X. In such cases, Products X and Y are considered to be in the same product range.
In these cases, users mean those to whom the business activities of a company group are directed. If the group manufactures producer goods, users mean companies that process the goods into products at the next level. If the company group manufactures consumer goods, users mean general consumers. If the company group is a distributor, users mean companies at the succeeding distribution level.
If, for example, the utility of product X and product group Y appear similar for users in a certain usage and the utility of a product Z which belongs to the product group

Y shows especially strong similarity with those of the product X for a specific usage, then there is a case in which the product range consists of the product X and the product group Y and simultaneously of the product X and the product Z. In addition, when defining the product range, besides the substitutability for users, if necessary, consideration would also be given to whether suppliers are able to switch the manufacture and sale of one product to another without substantially added cost and risk within a short period of time. For example, as a result of assessing the differences in the facilities for supply or the level of the costs of switching supply between Product X and Product Y, if it is expected that a wide range of producers of Product Y are able to switch their production facilities and sales networks to those of Product X in a short period of time without substantial added cost and risk, had a price raise of Product X occurred, there would be a case in which the product range is defined by Product X and Product Y.

When assessing the degree of similarity of a product's utility for users, the following criterion will be considered.

(1) Usage

It is considered whether a product is, or has the potential to be, employed for the same usage as the product traded.

To determine whether both products are employed for the same usage, the following factors are considered: external features such as size and form, specific material characteristics such as strength, plasticity, heat-resistance and insulation, quality such as purity, and technical features such as standards and systems. (However, there may be a case in which two products are considered to be for the same usage even though the above factors differ to a certain extent. (See (3), infra))

When the product traded is employed for several usages, each usage is examined to determine whether any other products are being employed or may possibly be employed for the same usage. For instance, the products X and Y are deemed to provide similar utility for users in a certain usage and products X and Z are deemed to provide similar utility for another usage.

(2) Changes in Price, Quantity, etc.

There is a case in which differences in price levels or changes in price and quantity are considered.

For example, products X and Y can be used for the same usage, but since the price levels of the products differ, product Y is rarely used as a substitute for product X. In this case, products X and Y cannot be considered to provide similar utility, etc.

There is also a case in which products X and Y can be used for the same usage and their price levels do not differ, but in practice product Y is rarely used as a substitute for the product X because costs are involved in substituting product Y for X, to change the facilities or train employees. In this case, it cannot be considered that products X and Y provide similar utility, etc.

On the other hand, when products X and Y provide similar utility, etc., if the price of product X is increased, users tend to purchase product Y and as a result the price of product Y is likely to increase. Consequently, if sales or the price of product Y increases in response to an increase in the price of product X, it can be considered that products X and Y provide similar utility, etc.

(3) Recognition and Actions of Users

There is a case in which the recognition, etc. of users is considered.

For instance, even though the specific material characteristics of products X and Y are different, there could be a case in which users could use either of them as raw materials to produce product Z of the same quality. In this case, products X and Y are deemed to provide similar utility, etc.

Whether a user substituted product Y for X when the price of product X increased in the past is also considered.

3. Geographic range

(1) The basic concept

The geographic range, as well as the product range, is also determined from the perspective of substitutability for users between the products supplied in each area.

The degree of substitutability between the products supplied in each area can very often be determined by the behavior of users and suppliers, and the existence of issues in the transportation of the product.

For instance, when suppliers of a certain product in Region X seek to raise the price of the product, if the price increase in Region X could to be prevented because users in Region X are expected to be able to purchase the product from suppliers in Region Y without having troubles with transportation of the product, Region X and Region Y are deemed to belong to the same geographic range.

Accordingly, similar to the case of the determination of the product range, there is a case in which the geographic range is determined both as region X and as region Y, which is a part of the former, if users in region Y especially tend to purchase a certain product from suppliers in region Y.

Moreover, besides the substitutability for users, the substitutability for producers is determined based on the determination of the product range as described in Section 2.

To assess the behavior of users and suppliers and the existence of problems regarding the transportation of the product, the following factors are considered.

A. Business Area of Suppliers, the Area for Users to Purchase, etc.

In assessing the range of the region in which users can usually purchase the product, the area around which users purchase the product (such as the purchasing

behavior of consumers), the business area such as the distribution network of suppliers and their supply capacity are considered.
Consideration is also given to which region's suppliers the users purchased the product when the price of the product in a certain region was increased in the past.

B. Features of Goods
Features of goods such as perishability, heaviness and fragility affect the range of transportation or the degree of difficulty in transporting the goods. These features are taken into consideration in determining in which regions users can purchase the goods in general.

C. Type or Cost of Transportation
The range of regions in which users can normally purchase the goods is also considered based on the modes of transportation, the ratio of the transportation cost to the price of goods, and whether the transportation cost is larger than the regional price difference.
In addition, in assessing the factors that increase the transportation-related costs, regional differences in costs other than transportation-related costs will also be considered, including regional differences in raw material costs.

(2) The concept in case geographical range is determined across borders
The basic concept in (1) described above will also apply when crossing borders. That is to say that if users, both inside and outside Japan for a certain product are conducting business without segregating domestic and foreign suppliers, even if the prices have been raised in Japan, the users in Japan will be able to substitute the purchase of products from overseas suppliers, which may obstruct the raising of prices in Japan. In that case, a geographical range has been determined across the border.
For example, if a major domestic and overseas supplier is selling at a materially equivalent price in the sales areas worldwide (or in East Asia), and if the user is selecting their major supply source from suppliers around the world (or in East Asia), then a world (or East Asia) market will be determined.

4. Others
Depending on the reality of trade between a company group and its trading partners, distribution levels, the characteristics of the transaction with the specific trading partner and other factors are considered to delineate a particular field of trade based on the same criteria as those set out in Sections 2 and 3 above.
For example, there may be a case in which users who trade product X with the company group are divided into large customers and smaller customers, and specific

trade conditions apply for the respective customer groups. In this case, if the price of product X for the smaller customers is increased, they can not purchase product X for the large customers because of constraints on transportation and so product X for large customers cannot prevent the increase in the price of product X for the smaller customers. Consequently, particular fields of trade are determined for large customers and for small customers.

Part III. The Effect May Be Substantially to Restrain Competition

1. Interpretation of "The Effect May Be Substantially to Restrain Competition"

(1) Interpretation of "Substantially to Restrain Competition"

In a precedent (decision of the Tokyo High Court on December 7, 1953 concerning Toho Company, Limited, et al), the following interpretation concerning "substantially to restrain competition" was held.

(2)

A. Shin-Toho Company Limited (hereinafter referred to as "Shin-Toho") was capable of distributing the films it produced through its own network. However, an agreement with Toho Company, Limited (hereinafter referred to as "Toho") consigned all film distribution to Toho and limited Shin-Toho solely to the production of films. Shin-Toho continued to adhere to the terms of the agreement even after the agreement had expired. However, in November 1949 Shin-Toho stated that it would independently distribute the films it produced because of the expiration of the agreement, causing a dispute with Toho. As a result of this dispute, a hearing was initiated by the JFTC on the grounds that the agreement violated the Act. In conclusion, the JFTC ruled in its decision of June 5, 1951 that the agreement between Toho and Shin-Toho violated Article 3 (unreasonable restraint of trade) and item 3, paragraph (1), Article 4 (See Note 3) of the Act.

Note 3: Paragraph (1), Article 4 of the Act (this provision does not exist in the current Act)
"Entrepreneurs shall not jointly engage in the following particular concerted practice"

Item 3 "concerned actions to restrain technologies, products, distribution channels, or customers"

B. In response to the respondent's (Toho's) action to revoke the decision of the JFTC, the Tokyo High Court handed down a ruling on the substantial restraint of competition, in which it noted “substantially to restrain competition means to bring about a state in which competition itself has significantly decreased and a situation has been created in which a specific business operator or a group of business operators can control the market by determining price, quality, volume, and various other terms with some latitude at its or their own volition.”

(2) Interpretation of “The Effect May Be”

The provisions of Chapter IV of the Act differ from the provisions of Articles 3 and 8 of the Act, and prohibit business combinations where “the effect may be” substantially to restrain competition in any particular field of trade. This “the effect may be” does not mean that substantial restraint of competition will inevitably result from the business combinations. Rather, it means that it is probable that conditions that could easily lead to substantial restraint of competition are furthered by the business combination. Consequently, if the market structure is altered in a non-competitive way by the business combination, and if conditions are likely to emerge that would allow the company a certain latitude to manipulate price, quality, volume, and other conditions by acting unilaterally or coordinately with other companies, then the effect of the business combination may be substantially to restrain competition in a particular field of trade, and it is prohibited by Chapter IV of the Act.

2. Type of Business Combination and Substantial Restraint of Competition

There are various types of business combinations. They are divided into the following categories.

(1) Horizontal business combinations (Business combinations between companies with a competitive relationship in the same particular field of trade. The same shall apply hereinafter.)
(2) Vertical business combinations (Business combinations between companies which are in different trading positions, such as mergers between producers and its distributors. The same shall apply hereinafter.)
(3) Conglomerate business combinations (Business combinations that are neither horizontal nor vertical ones. For instance, mergers between companies that engage in different types of business, or shareholdings between companies whose product ranges are in the same particular field of trade but whose geographic ranges are different. The same shall apply hereinafter.)

Horizontal business combinations reduce the number of competing units in a particular field of trade. They consequently have the most direct effect on competition and are more likely than vertical and conglomerate business combinations to have an effect that may be substantially to restrain competition.

On the other hand, vertical and conglomerate business combinations do not reduce the number of units in a particular field of trade. They have less impact on competition than horizontal ones and, with certain exceptions, their effect may not be substantially to restrain competition in general.
Depending on the types of business combinations, the JFTC uses different frameworks or determining factors to consider whether the effect of business combinations may be substantially to restrain competition in a particular field of trade.
In the following Parts, the frameworks or the determining factors are explained for each type of business combination, horizontal, vertical and conglomerate.
In addition, if a business combination consists of, for example, the horizontal and vertical aspects, the effects of each aspect are examined based on the frameworks or the determining factors for the horizontal and vertical combinations respectively.

Part IV. Effect of Horizontal Business Combination May Be Substantially to Restrain Competition

1. Basic Framework

As mentioned above, horizontal business combinations reduce the number of competing units in a particular field of trade. They therefore have the most direct effect on competition and it is more likely that the effect of the combinations may be substantially to restrain competition.
There are two potential ways in which the effect of horizontal business combinations may be substantially to restrain competition in a particular field of trade: through unilateral conduct by the company group and through coordinated conduct between the company group and one or more of its competitors (hereinafter referred to as “competitors”). Individual cases should be reviewed in respect of these two conducts. There will be a case, for example, in which a business combination may be substantially to restrain competition from the viewpoint of coordinated conduct even though it will not have this effect from the viewpoint of a unilateral conduct.

(1) Substantial Restraint of Competition by Unilateral Conduct Typical cases in which the effect of horizontal business combinations may be substantially to restrain competition in a particular field of trade by means of unilateral conducts are as follows, depending on whether goods are homogenous or differentiated in the field.

A. When Goods Are Characterized as Homogenous

When goods are characterized as homogenous, if the company group raises the price

of the goods and the other business operators do not, users of the goods will switch suppliers to other business operators and, in general, sales of the company group will decrease and sales of the other business operators will increase. In many cases, then, it is difficult for the company group to control the price and other factors.
However, if, for example, the production or sales capacity of the company group is large whereas that of the other business operators are small, then when the company group raises the price of the goods, in some cases other business operators may be unable to increase their sales without raising their prices or users may be unable to switch suppliers to the other business operators.
In these cases, a situation is likely to emerge in which the company group has some ability to control the price and other factors. As a result, the effect of the horizontal business combination may be substantially to restrain competition.

B. When Goods Are Characterized as Differentiated
When goods are characterized as differentiated by brand, etc. and the price of the goods of one brand is increased, the users of the brand do not necessarily intend to buy goods of other brands indiscriminately as a substitute. On the other hand, users may buy goods of another brand that is next in their order of preference to the first brand; in other words, which has higher substitutability.
In this case, even though the company group increases the price of the first brand goods, if the group also sells the second brand goods that have high substitutability, the increase in sales of the second brand compensate for the loss of sales of the first. It is then possible for the company group to increase the price without decreasing total sales.
Therefore, when goods are differentiated by brands, etc., if business combinations are formed between business operators that sell substitutable goods, and other business operators do not sell such goods, a situation is likely to emerge in which the company group has some ability to control the price and other factors. As a result, the effect of the horizontal business combinations may be substantially to restrain competition.

(2) Substantial Restraint of Competition by Coordinated Conduct
A typical case in which the effect of horizontal business combinations may be substantially to restrain competition in a particular field of trade through coordinated conduct is as follows.
For instance, when company X raises its price, other business operators Y and Z will try to increase their sales without raising their prices. In response, business operator X, in general, will reduce its price to the previous level or lower, and will try to retrieve the sales from business operators Y and Z.
However, in addition to the reduction in the number of competitors by horizontal

business combinations, given the market structure, such as the concentration of the particular field of trade, the characteristics of the goods or trade practices, there may be cases in which the business operators will be able to anticipate each other's behavior with a high degree of accuracy and their coordinated conduct could bring profits to them. In such cases, when an increase in prices by business operator X is followed by an increase in prices by other business operators, even though business operator Y keeps the price at the original level in order to gain additional sales, the other business operators will be easily able to detect the deviation from the coordinated conduct of business operator Y and will likely reduce their price to the original level or lower in order to retrieve the sales that business operator Y had obtained. As a result, the expected profit that would otherwise be temporarily gained by business operator Y when it maintains its price is much less than the expected profits that would be gained if business operator Y were to raise its price following the price increase by business operator X.

If these circumstances are created by the business combination, a coordinated price increase is much more profitable for each business operator than trying to gain additional sales by keeping the price at the original level. As a consequence, a situation is likely to emerge in which the company group has some ability to control the price and other factors by coordinating its conduct with its competitors and the effect of the horizontal business combinations may be substantially to restrain competition in a particular field of trade.

(3) Effect may not be Substantially to Restrain Competition

It is decided by taking into consideration the factors described in Sections 2 and 3 below whether the effect of each horizontal business combination may be substantially to restrain competition in a particular field of trade. However, when the company group after the business combination falls under either of the following standard (a) to (c) below, it is normally considered that the effect of a horizontal business combination may not be substantially to restrain competition in a particular field of trade and consequently, analyses of each determining factor shown in Sections 2 and 3 of Part IV are generally not considered necessary.

(a) The Herfindahl-Herschmann Index (hereinafter referred to as "HHI") after the business combination is not more than 1,500. (Note 4)

(b) HHI after the business combination is more than 1,500 but not more than 2,500 while the increment of HHI is not more than 250. (Note 5)

(c) HHI after the business combination is more than 2,500 while the increment of HHI is not more than 150.

For clarity Even when a horizontal business combination does not meet the above-mentioned standards, it does not immediately mean that the effect of it may be substantially to restrain competition. This is rather decided based on the facts of each case. In light of past cases, if the HHI is not more than 2,500 and the market share of the company group after the business combination is not more than 35%, the possibility that a business combination may be substantially to restrain competition is usually thought to be small.

(Note 4) HHI is the sum of the squared market share of each business operator in a particular field of trade. The market share of each company is the percentage of its sales volume (in the case of manufacturers) to total sales volume in a particular field of trade. However, when it is not appropriate to calculate the share based on the volume because there are considerable price differences among goods and sales results are usually calculated on monetary bases, the market share is calculated by sales in monetary terms.
When there are imports for domestic users, the market shares of the imports are calculated as domestic supplies.
With respect to production capacity, the percentage of exports or in-house consumption, there are cases in which the excess supply capacity, exports or in-house consumption will be directed to sales for the domestic market, in turn expanding the market share in response to the domestic demand. In these cases, the excess supply capacities, etc. are taken into consideration if necessary.
If it becomes difficult to decide whether the figure of HHI exceeds the threshold above, because for instances the market shares of major business operators are only partially available, an approximation calculated from the formula below which was obtained from the Production Concentration Survey may be applied.
(HHI = squared market share of top company (%) x 0.75 + cumulative market shares of the top three companies (%) x 24.5 - 466.3)
(Note 5) The increment of HHI derived from a business combination can be calculated by doubling the multiplied value of each market share of the company group, if it only concerns two parties.

2. Determining Factors in Deciding Substantial Restraint of Competition through Unilateral Conduct
To decide whether the effect of a horizontal business combination may be substantially to restrain competition in a particular field of trade through unilateral conduct, the following determining factors are given comprehensive consideration.

(1) The Position of the Company Group and the Competitive Situation

A. Market Share and Ranking
The larger the market share of the company group after the combination, the more

difficult it is for other business operators to maintain a sufficient supply in place of the company group while keeping the same price level, in response to an attempt by the company group to raise the price. It could therefore be said that the ability of the other business operators to constrain the company group's price rise is weaker. As a result, the larger the market share of the company group or the larger the increment of market share after the business combination, the grater the impact of the business combination on competition.

Similarly, when the business combination raises the ranking of the company group in terms of market share to a high position or raises it to a great degree, the combination will have much more impact on competition.

For example, a business combination in which both companies involved have high rankings in terms of market share has much more impact on competition than a business combination involving companies with low rankings.

In calculating the change of market share by a business combination, the calculation should in principle be based on the most recently available market shares of the company group. However, if market shares after the business combination are expected to change significantly, taking into account a longer-term change in sales quantity and net sales, changes in user preferences, speed and the degree of technological innovation, state of product obsolescence and fluctuation in market share, or if competitors are no longer regarded as providing competitive pressure given declining investment, the impact on competition of a business combination is determined by considering these factors as well.

B. Competition among the Parties, etc. in the Past

There are cases in which vigorous competition among companies or actions by companies that increase market competition lead to a reduction in market prices or an improvement in the quality or variety of goods. In these cases, even though the combined market share of the parties or their combined rank is not high, a business combination would have a substantial impact on competition as it eliminates the possibility of the price reduction or quality improvement described above.

For example, there may have been vigorous competition between the parties of the company group before the combination, such that the expansion of the market share of one party would have caused a reduction in the market share of the other party. In this case, following the combination, as the loss of sales of one party in the company group would be offset by the increase in sales of the other, the parties will be able to raise the price of goods without a loss of overall group sales, and so this business combination will have a large impact on competition.

When goods are differentiated by brands and there is high substitutability between the goods sold by the parties, the loss of sales of one of goods would be offset by an increase in sales of the other good after the business combination. As a result, the company group will be able to raise the price of goods without an overall reduction in group sales, and so this business combination will have a large impact on competition.

C. Treatment of Joint Investment Company

If certain business departments of investing companies are completely spun off and consolidated into a joint investment company, the connection between the business of the investing companies and that of the joint investment company would be considered to be weak.

Therefore, when the entire business, including the production, sale, research and development of certain goods, is spun off and consolidated into a joint investment company, the market share of the joint investment company itself would be considered in the review.

On the other hand, if only part of the business departments of each investing company is transferred to joint investment company, there is a possibility that a coordinated relationship between the investing companies will arise through the operation of the joint investment company. To determine whether a coordinated relationship between the investing companies will emerge or not, the specific details of the joint investment agreement, the actual combination and the transactions between the companies, if any, are considered.

Suppose that, the production sections of goods are transferred to the joint investment company while each of the investing companies continues to sell the goods. When the possibility of a coordinated relationship between these investing companies occurring through the operation of the joint investment company is examined, the impact on competition is considered through such means as summing the market shares of the investing companies. On the other hand, even though the investing companies continue to sell goods after founding the joint investment company, if measures are taken to prevent a coordinated relationship from developing between these investing companies through the operation of the joint investment company, there will be much less impact on competition. (See 3 (1) D, infra)

D. Market Share Differences from Competitors

The larger the difference of the combined market share of the company group from the market shares of competitors, the more difficult it is for the competitors to maintain a sufficient supply of goods at the same price in place of the company group, in response to the company group’s attempt to raise the price. The ability of the competitors to constrain the company group’s price rise is therefore weaker.

In other words, the larger the differences in market share between the company group and the competitors, the bigger the impact of the business combination on the competition.

On the other hand, if there are competitors with market shares equal to or greater than those of the company group even after the business combination, these competitors could be factors that prevent the company group from controlling the price and other factors to a certain extent.

Concurrently, in considering the market share differences from the competitors, the excess capacity of competitors and the degree of substitutability between goods sold by the company group and those by the competitors are considered. (See E, infra)

E. Competitors' Excess Capacity and Degree of Differentiation

When the company group increases the price of goods, if the excess capacity of the competitors is not sufficient, it is not easy for the competitors to expand the sales of goods without increasing the price. The ability of the competitors to constrain the company group's price rise could therefore be weakened. As a consequence, even though the market share differences between the company group and the competitors are not large, it could be considered that the business combination's impact on competition would be significant when the excess capacity of competitors is not sufficient.

On the other hand, if demand for the product is continuously and structurally declining and if competitors' excess capacity is sufficient, it can act as a rein on attempts to raise prices by the company group.

When goods are differentiated by brands and there is high substitutability between goods sold by the parties, the degree of substitutability between goods sold by competitors and the company group is considered. When the substitutability is small, even though the market share differences between the company group and competitors are not large, it could be considered that the business combination's impact on competition would not be small.

F. Treatment of Products When Their Geographic Range Is Defined across National Borders

As a result of the examination of the criteria of a particular field of trade described in Part II, products whose geographic range may be defined across national borders would include those products with only small differences in domestic and international systems and transportation, so that domestic and overseas products are highly substitutable in terms of quality and there is an established international price indicator through a commodity exchange, equivalent to that for mineral resources like nonferrous metal. For such products, market shares and the position of the company group, competition among parties in the past, market share differences from competitors, and competitors' excess capacity and the degree of differentiation in the defined geographic range are considered together, to determine the impact on competition.

(2) Import

When there is sufficient competitive pressure from imports, the possibility that the effect of business combinations may be substantially to restrain competition in a

particular field of trade is usually considered to be small (Note 6).
If the users have the ability to easily switch from a product of the company group to an imported product and the switchover becomes more likely if the company group raises the price of the product, the company group would be unlikely to raise the price on the grounds of a potential loss of sales to the imported goods.
Whether import pressure is sufficient can be determined Regardless of whether imports are currently been conducted or not, by considering all of the conditions (i)-(iv) concerning imports, as described below. Whether the group can manipulate the price to a certain extent when an increase in imports occurs over a certain period (Note 7) is considered.

(i) Degree of institutional barriers
When assessing import pressures, what needs to be considered is whether or not institutional and legislative regulations such as tariffs and other import-related tax system are in place and whether they will operate as a barrier to import the product in the future. If there is no institutional barrier, import pressure tends to play a stronger role. However, even if there is an institutional barrier and the current level of imports is low, if the barrier is scheduled to be eliminated in the near future, importing will become easier and import pressure is likely to intensify.
In contrast, if the institutional barrier will be maintained, imports are less likely to increase and import pressure will remain low even if the company group raises the product price.
If the current import quantity is significant, the institutional barrier can usually be considered low enough to import products. However, it must be noted that if an import quota system limits any increase in imports, the effect of the import pressure will remain limited.
(ii) Degree of Import-Related Transportation Costs and Existence of Problems in Distribution
If import-related transportation costs are low and there is no distribution problem for importing, it is considered a favorable environment for imported goods when there is an increase in the price of the domestic product.
For products with high transportation costs such as heavy products with little added value, it is possible that the incentive to purchase imported goods will be small for users. When a stable supply of imported goods cannot be expected because the distribution network and other import-related necessities such as storage facilities inside Japan remains underdeveloped for the import of specific products, users may also refrain from purchasing imported goods. In these cases, import quantity does not increase when the company group raises the price of the products, and hence import pressure is unlikely to work.
An import volume that is currently large is considered to indicate that only a few

problems exist regarding transportation and/or distribution.

(iii) Degree of Substitutability between the Imported Product and the Company Group's Product

If the substitutability of the company group's product with imported products is high, it can provide a stronger incentive for users to purchase and use the imported product.

In contrast, if there is a quality difference between the company group's product and the imported product, and there are issues of quality or product range with the imported goods, or if users lack familiarity with the use of imported products, users may not choose imported goods. In these cases, it is considered that imports will not increase and import pressure will remain low even if the company group tries to raise a price.

To assess the degree of substitutability of the company group's product with an imported product, price difference between the company group's product and imported product as well as the history of price and quantity changes may be taken into account.

For instance, in a case in which there is a previous record of sales growth of imported goods when the company group increased the price of its product, the imported product can be considered to have substantial substitutability.

There are also cases in which the degree of substitutability can be determined from the experiences of main users in purchasing and using imported product, their evaluation of the imported product, and their intentions with respect to adopting imported goods.

(iv) Potential for Supply from Overseas

It is necessary to assess the likelihood of an increase in imports in the case of an increase in the price of the product by the company group.

If a foreign supplier has sufficient excess capacity with low production costs, an increase in imports is considered probable in response to the increase in domestic prices. If there is already a specific plan to import foreign products and/or export products to Japanese users by the foreign supplier, an increase in imports is more likely compared to a situation in which there is no specific plan. In addition, if a competitive foreign supplier already has a significant share of the market or has a specific and feasible plan to establish a distribution and marketing point to supply products in the near future, the effect of import pressure is considered to be strong.

In other cases, such as when there is either a foreign supplier who is ready to switch the export of products currently supplied to other foreign markets to Japan or a potential foreign supplier who is likely to enter the market by improving its facility capacity, depending on the domestic price, there is a strong possibility that imports will increase with a rise in domestic prices and this can become a factor for import pressure. Moreover, when there is an increase in supply abroad as a result of the

expansion of production capacity by competitive foreign suppliers, there will be a fall in the overseas market price that creates an international price difference between domestic and overseas prices. This can also serve as import pressure.
(Note 6) "Import" refers to product supply from outside the geographic range defined by Section 3 of Part II. If an area across national borders is determined as the geographic range, product supply from outside the geographic range to the relevant geographic range can be regarded as "imports" in this Section.
(Note 7) The period is generally considered to be two years, but it can be shorter or longer depending on the characteristics of the industry. This note also applies in subsection (3), below.

(3) Entry
When market entry is easy and it is likely that new entrants will appear and will generate profits by selling the products at a lower price if the company group raises the price, the company group will refrain from increasing the price on the grounds of a potential loss of sales to the new entrants. Therefore, if the entry pressure is sufficient, it will serve as a factor to prevent the company group from controlling the price and other factors to a certain extent.
To determine whether there is sufficient entry pressure, as in the analysis related to imports in subsection (2), all entry-related conditions (i)–(iv) must be taken into account to assess whether entry would occur in a certain period of time and become a factor to prevent the company group from controlling the price and other factors to a certain extent.
(i) Degree of Institutional Barriers to Entry
It is necessary to consider whether there is legislation regulating entry into the market for the product, whether these regulations work as an entry barrier and whether these regulations will persist. If there are none, then entry pressure is more likely to work. Moreover, even in cases in which the entry regulations are creating an entry barrier, if the regulations are expected to be removed in the near future, entry will become easier and the entry pressure will be more effective. However, if the entry regulations are in fact preventing entry and this condition is likely to be sustained, a price increase by the company group would not encourage entry and the entry pressure will remain low.
If there was a recent entry to some extent, it is generally considered that there is no entry regulation or the regulations did not work as an entry barrier in spite of their existence.
(ii) Degree of Barriers to Entry in Practice
If the scale of capital necessary for entry is small and there is no problem with technical issues, conditions for the purchase of raw materials and sales conditions, it is considered to be an environment conducive to entry. Also, companies that can

supply goods without a significant change in the production facilities will find it easier to enter the market.
In contrast, if a considerable amount of capital is required for entry, this would be taken into account in evaluating whether companies would be likely to enter the market if the company group raises the product price.
Moreover, if potential entrants are placed in a relatively disadvantageous situation for entry in terms of location, technical issues, purchasing conditions for raw materials or sales conditions, this will be considered to discourage entry.
If certain entries have recently been successful, it generally indicates that entry barriers are low in practice.
(iii) Degree of Substitutability between Entrants' Products and the Company Group's Products
If the product that the entrant is planning to supply and the company group's products are highly substitutable, users can purchase and use the entrants' product with less hesitation.
In contrast, if it is difficult for the entrant to produce and sell products with a quality and range equivalent to those of the group's products, or if the entrant's products confront familiarity issues, market entry is less likely, and even if it did occur, it is unlikely to apply sufficient competitive pressure against the group's products.
(iv) Potential for Market Entry
It is necessary to assess the potential for market entry when the company group increases the price of their product.
If other suppliers are already planning to enter the market with sufficient scale or if there are potential entrants who could build new facilities or renovate facilities and who are highly likely to become suppliers in the particular field of trade, depending on the price, entry pressure is considered to be higher.
Generally, products with a dynamic market structure—such as products supplied to a growing market with a high likelihood of significant demand expansion in the future, products subject to frequent technological innovation, products with short lifecycles, and products subject to active investment in the development of new replacement technologies—are subject to stronger entry pressure than products without a dynamic market structure.

(4) Competitive Pressure from Related Markets
Competitive conditions in markets related to the particular field of trade determined in Part II are also considered. Such markets are, for example, those geographically neighboring the defined particular field of trade and markets of the products that provide similar utility to users as the goods (hereinafter referred to as "competing goods").

For instance, if there is vigorous competition in neighboring markets, or when the probability of competitive products replacing demand for such goods is high in the near future, it will be evaluated as a factor stimulating competition in the particular field of trade.
The same is true when the probability of a competitive product replacing demand for a product whose market is shrinking due to decreasing demand.

A. Competing Goods
When competing goods provide utility to users similar to that offered by the product but comprise a separate market, these competing goods can be a factor that partly prevents the company group from controlling the price and other factors to a certain extent, depending on the comparability of utility with the product from the perspectives of users, price and distribution networks.
B. Geographically Neighboring Market
When a particular field of trade is limited geographically and there is another geographically neighboring market where the same goods are supplied, competition in the neighboring market can be a factor that partly prevents the company group from controlling the price and other factors to a certain extent, depending on the proximity of the location, distribution style, transportation and scale of the competitors.

(5) Competitive Pressure from Users
Competitive pressure in a particular field of trade may emerge from users who are positioned in the next stage. If users have a countervailing bargaining power against the company group through business relations, it can be a factor that partly prevents the company group from controlling the price and other factors to a certain extent. To determine whether there is competitive pressure from the users, the conditions listed below concerning business relations between the company group and users need to be considered.

A. Competition among Users
If competition in a users' product market is active, users would be likely to demand from suppliers the lowest prices possible to purchase the product.
For business combinations between raw materials producers, for instance, when the competition in the finished goods' markets is vigorous, the producers of finished goods—who are the users of the raw materials—try to purchase them as cheaply as possible to reduce the price of the finished goods. As the company group is likely to lose substantial sales if it raises the price in this situation, the competition in the next stage can be a factor that partly prevents the company group from controlling the price and other factors to a certain extent.

B. Ease of Changing Suppliers

If users can easily switch from one supplier to another and can gain bargaining power in price negotiations by raising the possibility of switching suppliers, it may be said that there is competitive pressure from users. For instance, when the bargaining power of users is strong in terms of the ways of procuring the product, the dispersion of suppliers or ease of switching, for example when users select suppliers through competitive means such e-commerce or bidding, when they can easily switch to a self-manufacturing alternative, when buyer pressure is created by the ease of changing among a broad range of suppliers, including suppliers of other products, or when the user purchases a large volume and deals with multiple suppliers, as large-scale mass merchandise stores do, it can be a factor that partly prevents the company group from controlling the price and other factors to a certain extent.

③ Market Shrink

If there is competitive pressure from customers deriving from the fact that the quantity of the product demanded is continuously and structurally falling well under the quantity supplied as a result of a decrease in demand for the product, it is possible that this will work as a factor to prevent the company group from freely exerting an influence on the price of the product, etc. to some extent.

(6) Overall Business Capabilities

After the business combination, if the overall business capabilities of the company group—including its ability to procure raw materials, technical capabilities, marketing capabilities, creditworthiness, brand popularity, and advertising capability—increases, and if the competitiveness of the company increases substantially as a result of the combination and competitors are expected to experience difficulty in taking competitive action as a result, this should also be taken into consideration when determining the company's impact on competition.

(7) Efficiency

When improvements in efficiency, whether through economies of scale, integration of production facilities, specialization of factories, reduction in transportation costs or efficiency in research and development, is deemed likely to make the company group take competitive action after the business combination, this factor will also be considered to determine the impact of the business combination on competition. Efficiencies to be considered in this case are determined from three aspects: (i) efficiencies should be improved as effects specific to the business combination; (ii) improvements in efficiencies should be materialized; and (iii) improvements in efficiency contribute to the interests of users.

Business combinations that create a state of monopoly or quasi-monopoly are hardly ever justified by their efficiency.

(i) Improvements in Efficiency Should Be Specific to the Business Combination

Improvements in efficiency should be specific to the business combination. Therefore, such factors related to the expected efficiency as economies of scale, integration of production facilities, specialization of factories, reduction in transportation costs, or efficiency in research and development such as next-generation technology and environmentally friendly capabilities cannot be achieved by other means that are less restrictive on competition.

(ii) Improvements in Efficiency Should Be Materialized

Improvements in efficiency should be materialized. This is analyzed, for example, using documents of internal procedures leading to the decision of the business combination, explanatory materials for shareholders and financial markets regarding the expected efficiency, and studies by external specialists concerning the improvement in efficiency.

(iii) Improvements in Efficiency Contribute to the Interests of Users

The outcome of improvements in efficiency through the business combination must be returned to users through reduced prices of products and services, improved quality, the supply of new products, or efficiencies in research and development, such as next-generation technology and environmentally friendly capabilities. In this regard, in addition to the materials listed in (ii), these are to be analyzed, for example, as information related to improved capabilities that will bring effects such as a price reduction and of the history of actual price reductions, quality improvement and supply of new products being realized through competitive pressure from the demand and supply side.

(8) Financial Conditions of the Company Group

A. Poor Results, etc.

To evaluate the business ability of the company group, the financial conditions, such as whether the results of part of the company group or the business section in question are poor or not, are also taken into consideration.

B. When the Possibility that the Business Combination May Be Substantially to Restrain Competition Is Usually Thought to Be Small

Whether or not a business combination has the potential to substantially restrain competition in a particular field of trade is determined by taking into comprehensive consideration all relevant determining factors in each of the specific cases. In the following cases, however, the possibility that the effect of a horizontal business combination may be substantially to restrain competition in a particular field of trade by unilateral conducts is usually thought to be small.

(a) A party to the combination has recorded continuous and significant ordinary losses or has excess debt or is unable to obtain finance for working capital and it is obvious that the party would be highly likely to go bankrupt and exit the market in the near future without the business combination.

Moreover, it is difficult to find any business operator that can rescue the party with a combination that would have less impact on competition than the business operator that is the other party to the combination.

(b) The performance of a business department of a party to the combination is extremely poor such as recording continuous and significant losses and it is obvious that the party would be highly likely to exit the market in the near future without the business combination. Moreover, it is difficult to find any business operator that can rescue the business department with a combination that would have less impact on competition than the business operator that is the other party to the combination.

3. Determining Factors in Deeming Substantial Restraint of Competition through Coordinated Conduct

In deciding whether the effect of horizontal business combinations may be substantially to restrain competition in a particular field of trade through the coordinated conduct, comprehensive consideration is given to the following factors.

(1) The Position of the Company Group and the Competitive Situation

A. Number of Competitors

When there are few competitors in the particular field of trade or the market share is concentrated on a few leading business operators, the behavior of the competitors can be forecast with high probability.

Moreover, when the companies sell homogeneous goods and have similar cost conditions, they tend to take coordinated conduct as they share common interests. In addition, it is easier to predict with high reliability whether competitors will take coordinated conduct or not.

Therefore, if the business combination creates the situation mentioned above, there will be large impact on competition.

B. Competition among the Parties in the Past, etc.

In cases where the parties have been competing for market share or one of these parties has been aggressive in cutting prices, the fact that the parties have competed vigorously or the fact that their conduct in the market has stimulated competition may be deemed to contribute to a reduction in prices, an improvement in quality or an extension of the range of goods throughout the market. If the business combination eliminates these conditions, it will have a serious impact on competition, even if the combined market share or the rank of the parties is not high.

C. Excess Capacity of Competitors

If a company does not have sufficient excess capacity, the opportunities to expand market share by cutting prices or depriving competitors of their market shares are limited. As a result, the company will not be able to generate substantial profits through such conduct, so that it is likely to commit to coordinated conduct with the competitors.

In contrast, if the excess capacity of a company is large while that of its competitors is small, when it reduces prices to gain sales, the sales it will lose to competitors through their price reduction in the near future is limited. There will therefore be less incentive to commit to coordinated conduct with competitors, since profits from expanded sales are expected through reducing prices.

D. Treatment of Joint Investment Company

If certain business departments of investing companies are completely spun off and consolidated into a joint investment company, the connection between the business of the investing companies and that of the joint investment company would be considered to be weak.

Therefore, when the entire business including the production, sale, research and development of certain goods is spun off and consolidated into a joint investment company, whether the joint investment company itself will commit to coordinated conduct with its competitors is examined.

If, however, only part of certain business departments of each investing companies is transferred to the joint investment company, whether the investing companies are committed to coordinated conduct with their competitors is examined as well.

To determine whether the coordinated conduct of investing companies with their competitors will emerge or not, the details of the investing agreement between the investing companies in terms of the joint investment, the actual conditions of the combination, and the transactions between the investing companies, if any, are considered.

For example, when only the production sections of the goods are integrated into the joint investment company and each of the investing companies continues to sell the goods, even though measures are taken to prevent a coordinated relationship between the investing companies through the operation of a joint investment company, the production costs will be shared. As a result, there will be less room for price competition and they will have the incentive to commit to coordinated conduct with their competitors, including the other investing company. In this case, whether the investing companies are expected to take coordinated conduct with their competitors, including each other, will be examined.

(2) Trade Realities, etc.

A. Conditions of Trade, etc.

When, for example, a trade association collects and provides such information as

the sales prices or production quantities of the member companies, and each company can readily obtain information on the competitors' trading conditions, such as price and quantity, it is possible for each company to forecast the behavior of its competitors with a high degree of accuracy, and it is also easy to observe whether the competitors are coordinating their conduct or not. Moreover, under these circumstances, if a company cuts its price to increase its sales, its competitors will quickly be aware of it and will likely try to recover the sales taken by the price cut of the company. As a result, the company has little incentive to take such action.
In contrast, when transactions are not on a regular basis and orders are in large units, significant profits can be expected by cutting prices and obtaining such transactions when opportunities for agreements are limited. Therefore, the party has little incentive to coordinate its conduct with its competitors and it is difficult to anticipate the behavior of competitors.
If, however, transactions are carried out regularly and the volume of orders is small, coordinated conduct with competitors is likely to occur.
B. Trends in Demand, Technological Innovation, etc.
When demand is changing significantly or technological innovation is frequent an the product lifecycle is short, substantial profits are more likely to accrue from cutting prices and increasing sales and from taking sales from competitors. As a result, there will be less incentive to coordinate conduct with competitors and it will be difficult to anticipate the behavior of competitors, so that coordinated conduct with competitors is not likely to occur.
C. Past Competitive Situation
To determine whether coordinated conduct will take place or not, past changes in market shares and prices are also considered.
For example, when these changes are substantial, coordinated conduct with competitors is not likely to occur because it is difficult to forecast competitors' behavior.
In contrast, if these changes are small, it will be easier to forecast competitors' behavior and there is a stronger possibility that coordinated conduct will occur.
And, for example, when there is coordinated conduct regarding the revision of prices of goods, there is a higher possibility that the market conditions for trade will be prone to coordinated conduct.

(3) Competitive Pressure from Import, Entry, Related Markets, etc.
When there is significant import pressure, if companies raise the domestic price through coordinated conduct, they will lose sales to greater imports. There will therefore be less chance of coordinated conduct.
If significant imports are currently flowing into the particular field of trade and production costs and business strategies of overseas suppliers differ from those of

domestic suppliers, it will be difficult for them to share common interests, and there will be less likelihood of coordinated conduct. If prices of domestic products are raised in this situation, imports will increase and it would be difficult for the company group and its competitors to control the price and other factors, through coordinated conduct. However, in cases in which the foreign company has already established a position in the domestic market, it may be possible for the foreign company to take coordinated action with its competitors, including the company group.

In addition, even when the current import volume is small, if domestic market participants raise the price of the domestic product in a coordinated manner and imports readily increase as a result at the cost of sales of domestic products, the possibility of coordinated conduct will be less likely.

With respect to whether import pressure will work or not in case of a price increase by domestic companies, the degree of institutional barriers, the degree of import-related transportation costs and the existence of problems in distribution, the substitutability between imported products and domestic products, and the possibility of supply from overseas are examined from the same perspectives as those set forth in Section 2 (2) (i)–(iv), to determine whether a coordinated price increase would be prevented or not because users can readily switch from domestic products to imported goods and consequently imports will rise over a certain period of time (Note 8) when the company group and other domestic companies try to raise prices in a coordinated manner.

Entry pressures will have a similar influence on the possibility of coordinated conduct. In terms of the likelihood of entry, the degree of institutional entry barriers, the degree of barriers to entry in practice, the degree of substitutability between entrants' products and existing companies' products, and the potential for market entry are examined from the same perspectives as those set forth in Section 2 (3) (i)–(iv), to determine whether a coordinated price increase would be prevented or not because entries would occur over a certain period of time (Note 8) when the company group and other companies try to raise prices in a coordinated manner.

The competitive pressures from related markets and from users may also be a factor that prevents coordinated conduct from emerging or the company group and its competitors from controlling the price and other factors through coordinated conduct.

For example, when the bargaining power of the users in price negotiations is stronger because of the demand and supply conditions, major users' means of procurement, the degree of diversity of their suppliers and their ease with which they can switch trading partners, it will often be difficult for the company group and its competitors to commit to coordinated conduct.

(4) Efficiency and Financial Conditions of the Company Group
The efficiency and financial conditions of the company group are evaluated pursuant to Section 2 (7) and (8), above.

Part V. The Effect of Vertical and Conglomerate Business Combination May Be Substantially to Restrain Competition

1. Basic Framework
As mentioned above, vertical and conglomerate business combinations do not reduce the number of competitive units. They consequently have less impact on competition than horizontal combinations have, and their effect usually may not be substantially to restrain competition except in cases in which substantial restraint of competition is caused by closures of or exclusion from markets or coordinated conduct. Similar to horizontal business combinations, vertical and conglomerate combinations are also reviewed in terms of both unilateral conduct and coordinated conduct.

(1) Substantial Restraint of Competition by Unilateral Conduct
Typical cases in which the effect of vertical and conglomerate business combinations may be substantially to restrain competition in a particular field of trade by means of unilateral conducts are as follows.
When a vertical combination is completed, it would be profitable for the parties to trade within the company group. As a result, there could be cases in which other companies would in fact lose opportunities to actually trade and the transactions within the company group may create problems of closure or exclusivity. Assume a manufacturer of finished goods has a large market share and purchases raw materials from many suppliers. If this manufacturer merges with one of its suppliers and only uses raw materials from that supplier, other suppliers are likely to lose opportunities to do business with that manufacturer, which is a major customer. Now assume a supplier of a raw material has a large market share and supplies many manufacturers of finished goods. If this supplier merges with one of the manufacturers and only supplies raw materials to that manufacturer, the other manufacturers are likely to lose opportunities to do business with a major supplier of raw materials. Similarly, if a strong manufacturer merges with a strong distributor and it becomes difficult for the other manufacturers to enter the market unless they establish their own distribution network, the merger will have a major impact on competition.
In addition, even when the company group continues to do business with its competitors after the vertical combination, if the competitors are in a more disadvantageous position in their business with the group than before and effective

competition between them is no longer likely as a result, the impact on competition will be significant.
When the market share of the company group is large, a situation is likely to emerge in which the company group will have some ability to control the price and other factors, resulting from closure or exclusivity in trade within the company group through the vertical business combination. In this case, the effect of vertical business combination may be substantially to restrain competition.
A conglomerate business combination may raise the problem of closure or exclusivity when it increases the overall business capabilities of the company group. For example, if the combination increases the group's business capabilities, such as its ability to procure raw materials, its technical capabilities, its marketing capabilities, its creditworthiness, its brand popularity, or its advertising capabilities, and its competitiveness is greatly enhanced, its competitors may have difficulty in taking competitive actions and the problem of closure or exclusivity may arise.
(2) Substantial Restraint of Competition by Coordinated Conduct
Typical cases in which the effect of vertical and conglomerate business combinations may be substantially to restrain competition in a particular field of trade by means of coordinated conduct are as follows.
For example, when a manufacturer and a distributor become combined vertically, the manufacturer can obtain information on the prices of competitors that deal with the distributor. As a result, manufacturers including the manufacturer of the company group might be able to forecast each other's behavior with higher probability. In these cases, a situation is likely to emerge in which the company group and its competitors will have some ability to control the price and other factors; thus the effect of a vertical business combination may be substantially to restrain competition.
The same may be true for conglomerate business combinations.
(3) The Effect May Not Be Substantially to Restrain Competition
Taking into consideration the factors described in Section 2, below, a judgment is made as to whether the effect of each vertical or conglomerate business combination may be substantially to restrain competition in a particular field of trade or not. However, when the market share of the company group after the combination is described by A or B, below, the effect of the vertical or conglomerate business combination may not be substantially to restrain competition in a particular field of trade.

A. The market share of the company group after the combination is not more than 10% in all of the particular fields of trade where the company group is involved.
B. The HHI is not more than 2,500 and the market share of the company group after

the business combination is not more than 25% in all of the particular fields of trade where the company group is involved.

Even if a vertical or conglomerate business combination does not meet the above standards, it does not immediately indicate that the effect may be substantially to restrain competition. Rather, a decision is made based on the facts of each case. In light of past cases, if the HHI is not more than 2,500 and the market share of the company group after the business combination is not more than 35%, the possibility that a business combination may be substantially to restrain competition is usually thought to be small.

2. Determining Factors in Judging Substantial Restraint of Competition through Vertical and Conglomerate Business Combinations

(1) Determining Factors in Determining Substantial Restraint of Competition through Unilateral Conduct

To decide whether the effect of vertical and conglomerate business combinations may be substantially to restrain competition in a particular field of trade through unilateral conduct, the following factors are taken into overall consideration.

A. Position of the Company Group and the Competitive Situation

After the combination, if the size of the market share of the company group is small and it is also in a relatively low rank in terms of market share, there is less likelihood of the problems of closure or exclusivity arising.

Also when the difference in market shares between the company group and the competitors is small or when the excess capacities of competitors are large, it is relatively easy for buyers from or sellers to the company group to find alternative trade partners. There is therefore less likelihood of the problems of closure or exclusivity arising.

B. Import, Entry, Overall Business Capabilities, Efficiency, etc.

These factors are evaluated pursuant to Section 2 (2) to (8) in Part IV above.

C. Other Factors

It is also considered that the business combination will eliminate the possibility of potential new entries if some the parties are potential competitors of the other parties.

(2) Factors in Determining Substantial Restraint of Competition through Coordinated Conduct

This is evaluated pursuant to Section 3 (1) to (3), 2 (7) and (8) in Part IV above.

Part VI. Measures to Remedy Substantial Restraint of Competition

1. Basic Framework

Even though the effect of a business combination may be substantially to restrain competition in a particular field of trade, such restraint may be remedied by certain appropriate measures taken by the company group. (Such measures are referred to as "remedy(ies)" hereinafter.) Appropriate remedies are considered based on the facts of individual cases.

However, the remedies should, in principle, be structural measures such as the transfer of business and should basically be those that restore competition lost as a result of the combination in order to prevent the company group from controlling the price and other factors to a certain extent. However, in a market featuring a rapidly changing market structure through technological innovations, there may be cases where it is appropriate to take certain types of behavioral measures.

In addition, the remedies should be completed before the implementation of the combination in principle.

Even if the remedies are to be taken without fail after the implementation of the combination, then an appropriate and definite deadline for the remedies should be imposed. Moreover, to transfer all or part of the businesses as remedies, for example, it is desirable to select the transferee of the business in advance of the combination. Otherwise, the parties may be required to obtain permission in advance from the JFTC with respect to the transferee.

Based on a request from the company group, when the necessity of continuing the remedies is assessed in light of changes in the competitive conditions after the business combination, if it is determined that the effect of the business combination may not be substantially to restrain competition, the company group is sometimes permitted to change or terminate the remedies.

2. Types of the Remedies

Typical remedies are illustrated as follows. To ensure that the remedies appropriate, measures are taken independently or in combination.

(1) Transfer of Business, etc.

The most effective measures to solve issues of substantial restraint of competition by the business combinations are to establish new independent competitors, or to strengthen existing competitors so that they serve as an effective competitive constraint.

Such measures include a transfer of all or part of the business of the company group or a dissolution of the business combination (such as the disposition of voting rights, reduction in the percentage of voting rights held or termination of interlocking directorates in another company) and a dissolution of business alliances with a

third party.
When, as an exceptional example, it is difficult, because of declining demand, to find a transferee to take over all or part of the company group's business (for example, a production, sales or development division), and research and development or services such as the improvement of goods in response to user requests are of less importance because the goods are in the stage of maturity, effective remedies may involve giving competitors trading rights at a price equivalent to the production cost of the goods (in other words, to make long-term supply agreements.).

(2) Others
A. Measures to Promote Imports and Market Entry
When the transfer of a business could not be taken as a remedy because demand is declining and it is expected to be difficult to find a company to take over all or part of the company group's business, promoting import or market entry can be considered as extraordinary remedial measures to solve the problems of the substantial restraint of competition in a particular field of trade.
For example, when the company group holds storage facilities or distribution service divisions required for imports, the problems of the substantial restraint of competition in the particular field of trade would be solved by encouraging imports by means of making such facilities available to importers. Alternatively, the problem of a business combination substantially restraining competition in a particular field of trade could be resolved by granting licenses to the company group's patents under appropriate conditions to competitors or new market entrants at their request.
B. Measures Concerning Behavior of the Company Group
In addition to the cases in Item (1) and (2) A, above, measures concerning the behavior of the company group could be considered measures to resolve the problem of the substantial restraint of competition in the particular field of trade.
For example, when in a business combination goods are produced by the joint investment company but are sold by the respective investing companies, the problems of the substantial restraint of competition in a particular field of trade are solved by measures that make it possible to block the exchange of information on sales of the goods between the investing companies and between each investing company and the joint investment company and by measures that ensure their independence, for example through a prohibition on the joint procurement of materials. (However see 3 (1) D in Part IV.) The problems of closure or exclusivity in markets can be addressed by prohibiting discriminatory treatment of non-affiliated companies with respect to the use of essential facilities for the business.

(Attachment) Shortening of the Waiting Period

Paragraph (8), Article 10 of the Act (including cases where it is applied mutatis mutandis pursuant to paragraph (3), Article 15, paragraph (4), Article 15-2, paragraph (3), Article 15-3, and paragraph (3), Article 16 after deemed as a replacement) prohibits any company from undertaking share acquisition, etc. (including share acquisition, merger, joint incorporation-type split, absorption-type split, joint share transfer, or acquisition of business, etc., the same shall apply hereinafter) until the expiration of a 30-day waiting period from the date of the acceptance of the notification of the intended share acquisition, etc. However, the same paragraph authorizes the JFTC, when it deems it necessary, to shorten the waiting period. The shortening of the waiting period will be granted when the requirements of both A and B below are satisfied.

A. It is evident that the effect may not be substantially to restrain competition in any particular field of trade.
Regarding the case in which the aforementioned 1 (3) of Part IV or 1(3) of Part V applies, these guidelines are very likely to satisfy the requirement.

B. The notifying company requests in writing to shorten the waiting period.