

Request for Public Comments Regarding the Proposed Review of Business Combination Regulations (Investigation Procedures and Criteria)

March 4, 2011
Japan Fair Trade Commission

The Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947) (hereinafter, the “Act”) prohibits the acquisition of shares or the merger of companies where it creates a business combination that may substantially restrain competition in any particular field of trade, and requires the advance notification of the business combination plan to the Japan Fair Trade Commission (hereinafter, the “JFTC”) for any business combination exceeding a certain scale.

With respect to notified business combination plans or other business combination plans, the JFTC has been conducting reviews (hereinafter, “business combination reviews”) concerning whether that business combination plan may substantially restrain competition in any particular field of trade. However, based on “the New Growth Strategy” that was approved at a Cabinet meeting on June 18, 2010, verification has been undertaken regarding the business combination review. Based on the verification results, the following business combination regulations (review investigation procedures and criteria) will be reformed in order to further improve the swiftness, the transparency and the predictability of the business combination reviews.

1. Partial amendment of the Rules on Applications for Approval, Reporting, Notification, etc. Pursuant to the Provisions of Article 9 to 16 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Fair Trade Commission Rule No. 1 of 1953, hereinafter, the “Notification Rules”) (proposed)
2. Abolishment of the Prior Consultation Response Policy (December 11, 2002, JFTC) together with the creation of Policies concerning Procedures of Business Combination Reviews (hereinafter, the “Procedure Response Policy”) (proposed)
3. Partial amendment of the Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination (May 31, 2004, JFTC, hereinafter, the “Business Combination Guidelines”) (proposed)

Please see the following section for the summary of the review of the business combination regulations. We hereby request for public comments from various interested parties regarding the Proposed Amendment of the Notification Rules (Attachment 1), the Proposed Procedure Response Policy (Attachment 2), and the Proposed Amendment of the Business Combination Guidelines (Attachment 3).

1 Summary of Review of Business Combination Regulations (Investigation Procedures and Criteria)

The major points of this re-examination are as follows:

1. Related to Investigation Procedures

(1) Review of the positioning of Prior Consultation

To date, for any prior consultation which has been held with the JFTC regarding whether or not a specific business combination plan will create any problems with regard to the stipulations of the Act (hereinafter, the “Prior Consultation”), the JFTC has responded pursuant to the Prior Consultation Response Policy and responded with judgment under the Act. However, the competition authorities in the Europe and the US do not respond with judgment under their competition laws in their pre-notification consultations. Furthermore, the present Prior Consultation system does not have enough meaning now because the JFTC become to require the advance notification of the acquisitions of shares like other business combinations (e.g., mergers) based on the Amendment of the Act in 2010. Concerning these facts, with this re-examination, the judgment by the JFTC with regard to the notified business combination will be indicated in the procedures following the submission of the notification. If the notifying company desires so, it may consult JFTC regarding the method of completing the notification form before reporting (hereinafter, “Pre-notification Consultation”). As a result of this review, the business combination review by the JFTC will be expected to improve its swiftness and international conformity.

In addition, consultations regarding business combination plans that do not require statutory notification will be dealt with in the same manner as statutory procedures, based on the Proposed Procedure Response Policy.

(2) Enhancement of communications between the notifying company and the JFTC

To enhance communication between the notifying company and the JFTC and therefore, to provide predictability of business combination review, the JFTC will reform the investigation procedures as follows:

- A. When requesting reports, etc. from the notifying company, the reason why the reports are being requested will be indicated in the request for the reports, etc.
- B. When a request has been made by the notifying company or when it is required during the Review Period (the period from the receipt of the notification until notice before the Cease and Desist order (hereinafter, “Prior Notice”) or the Notification to the effect that the JFTC will not provide Prior Notice, hereinafter), the JFTC shall provide an explanation of the

issues in the business combination plan at this point in time.

- C. It has been made clear that the notifying company may submit opinions or whatever documents it considers to be necessary (including remedial measures for resolving the problems) to the JFTC at any time during the Review Period.

(3) Improvement of procedures at the end of the business combination review

To enhance the transparency and predictability of the business combination review, the procedures at the end of the business combination review will be organized and maintained as follows:

- (a) For cases where there are no issues under the Act and where no requests for reports, etc. are to be made, written notice is to be provided that prior notice will not be given.
- (b) For cases where the JFTC finds no problems under the Act when the JFTC has made requests for reports, etc., the JFTC shall notify the notifying company in writing that no Prior Notice will be given and the reason will be provided in the review results. In addition, such cases will be publicly disclosed as a rule.
- (c) In any case which would be of reference to other business operators, such as the cases where the JFTC has judged that the case poses no problems under the Act on the premise that the notifying company will take a remedy prior to making requests for the report, etc., the results of the review will be publicly announced.
- (d) Cases where the Waiting Period (30 days after the acceptance of the notification) will be reduced are to be expanded. Specifically, in a case where a request has been made by the notifying company to reduce the prohibition period, where the subject case poses no problems under the Act, notice of the fact that no prior notice will be given will be made promptly, together with the shortening of the prohibition period.

2. Related to Investigation Criteria

To improve the predictability of the business combination review, the Business Combination Guidelines have been partially amended as follows:

- (1) Clarification has been made of cases of shareholding that are not subject to business combination review.

- (2) The listing of how the geographical range for a particular field of trade is established has been organized, and further clarification has been made of the concept for the case where geographical range crossing borders are established. In addition, as an example, we have listed the case where world markets could be established.
- (3) Regarding imports, regardless of whether or not imports are currently being made, a clear indication has been provided that an assessment will be made as to whether or not import pressure is working sufficiently.
- (4) Regarding competitive pressure from neighboring markets, it has been decided to list any case, if the probability of the demand for the subject product being replaced by a competitor product is high, that may be assessed as an element to promote competition in the particular field of trade.
- (5) The listing in the part of Financial Conditions of the Company Group has been organized. In the case where the financial conditions of the company or the business division are to be considered, an example of a case where the possibility of exit from the market is high is to be added.

2 Request for Public Comments

1. How to obtain official documents:

- (1) From those listed on the e-Gov page of e-Government
- (2) From those listed on the website of the Japan Fair Trade Commission
- (3) The documents are available at the Head Office (Tokyo), Regional Offices (Sapporo, Sendai, Nagoya, Osaka and Fukuoka) and Branch Offices (Hiroshima and Takamatsu) of the Japan Fair Trade Commission and the Fair Trade Office of the Okinawa General Bureau, General Affairs Division, Cabinet Office (Naha)

2. How to submit comments

Please clearly state your address, full name (in kana), name of affiliation (organization or company), and contact details (e-mail address, fax or telephone number), and submit your comments in Japanese using either of the two following methods. Please note that no comments will be accepted by telephone.

<By e-mail>

The subject of the e-mail should be “Comments on the Review of the Business Combination Regulations (*Kigyo ketsugo kiseino minaoshini taisuru iken*).

E-mail address: minaoshi@jftc.go.jp

Note: Please submit your comments in either text format, as a Microsoft Word file, or as a Just Systems Ichitaro file. In these cases, the file name should be ■.doc or ■.jtd (the ■ part should be replaced by the name of the party submitting the comment (the name of either the organization or the individual)). If you wish to use any other file format, please contact the person in charge.

<By fax>

Clearly indicate “Person in Charge of Business Combination Review at the Mergers and Acquisitions Division” as the addressee. It should also state “Comments on the Review of the Business Combination Regulations (*Kigyo ketsugo kiseino minaoshini taisuru iken*) in the subject column of the fax cover sheet. Please note that comments sent without an addressee will not be accepted.

Fax number: +81-(0)3-3581-5771

<By postal mail>

Send to:

Person in Charge of Business Combination Review,
Mergers and Acquisitions Division, Economic Affairs Bureau, Secretariat,
Japan Fair Trade Commission.

Section B, No. 6 Central Joint Governmental Building,
1-1-1, Kasumigaseki, Chiyoda-ku, Tokyo 100-8987 Japan

3. Submission deadline

Comments must arrive by 18:00, April 4, 2011 (Monday).

4. Notes regarding the submission of comments

Comments that are submitted may be made public with the exception of the address, full name, affiliated group or company name and contact details (e-mail address, fax and telephone numbers). Please note that no individual responses will be provided to the submitted comments.

The address, full name, e-mail address, fax and telephone numbers will only be used to contact the author of the comments to clarify the content, if it is ambiguous. The personal information that is submitted will not be used for any purpose other than for this contact or clarification.