

Policies Concerning Procedures of Review of Business Combination (proposed)
(Tentative Translation)

Japan Fair Trade Commission, MM DD, 2011

1. Purpose

With regard to plans for business combinations of share acquisition etc. (meaning acquisitions of shares, mergers, joint incorporation-type splits, absorption-type splits, joint share transfers, and acquisitions of business, etc.; the same shall apply hereafter) (hereinafter the “business combination plan”), the Japan Fair Trade Commission (hereinafter “JFTC”) applies an advance notification system based on the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947; hereinafter the “Antimonopoly Act”) and conducts reviews on whether business combination plans may be substantially to restrain competition in particular fields of trade (hereinafter “review of business combination”) by following procedures prescribed in the Antimonopoly Act. In recent years, the further improvement in both swiftness and transparency of review of business combination procedures has been required.

As a response, with the aim of improving predictability of review of business combination for entrepreneurs and ensuring further swiftness and transparency of procedures of review of business combination, the JFTC stipulates the “Policies Concerning Procedures of Review of Business Combination” (hereinafter “the Policies”).

The Policies will be applied on MM DD, 2011, and the “Policies Dealing with Prior Consultation Regarding Business Combination Plans” (December 11, 2002, Japan Fair Trade Commission; hereinafter the “Old Policies”) will be abolished.

2. Consultation Prior to Notification

A corporation planning to notify the JFTC concerning a business combination plan pursuant to Article 10, paragraph (2) (including cases where a deemed application is made pursuant to provisions of paragraph (5) of the said Article), Article 15, paragraph (2), Article 15-2, paragraph (2) or (3), Article 15-3, paragraph (2), or Article 16, paragraph (2) of the Antimonopoly Act (hereinafter “corporation planning to give notification”) may have consultation with the JFTC regarding the said business combination plan (hereinafter “consultation prior to notification”). In such consultation, a corporation planning to give notification may consult regarding how to make entries on the notification form, etc. (Consultations can be received at the offices where the notification forms should be submitted, which are listed in the Attachment.) (Note 1)

For example, the notification form has a section in which the positions of the notifying corporation, etc. in the domestic market should be described. If a corporation planning to give notification consults the JFTC about matters related to contents to be described in the said section of the notification form, such as the JFTC's view of a particular field of trade, the JFTC shall collect information necessary for giving explanations concerning the consultation from the said corporation planning to give notification, for example, and then provide whatever explanations it can based on the currently available information in light of the Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination (Japan Fair Trade Commission, May 31, 2004) (hereinafter the "Business Combination Guidelines") and views it presented in past cases.

Also, a corporation planning to give notification can submit to the JFTC materials that it believes necessary for receiving appropriate explanations concerning the consultation prior to notification.

The review after the notification is undertaken based on interactions between the corporation planning to give notification and the JFTC in the consultation prior to notification, though explanations given by the JFTC for the consultation may be corrected in the review after the notification.

Note 1: Even if a corporation planning to give notification does not have a consultation prior to notification, it will not be given disadvantageous treatment in the review after the notification.

3. Procedures after notification

When a notifying corporation submits the notification form to the JFTC and the JFTC receives it, the notifying corporation is prohibited from effecting the share acquisition, etc. in question until the expiration of the 30-day waiting period from the date of receipt of the said notification (period hereinafter referred to as the "waiting period"), as stipulated in the main clause of Article 10, paragraph (8) of the Antimonopoly Act (including cases where it is applied *mutatis mutandis* pursuant to Article 15, paragraph (3), Article 15-2, paragraph (4), Article 15-3, paragraph (3), and Article 16, paragraph (3) of the Antimonopoly Act after deemed replacements, respectively. The same shall apply hereinafter.); provided, however, that the JFTC may, when it finds it necessary, shorten the said period pursuant to the provisions of the proviso of Article 10, paragraph (8) of the Antimonopoly Act (see 5-(2) below).

During the waiting period (or during a shortened period pursuant to the provisions of the proviso of Article 10, paragraph (8) of the Antimonopoly Act, where applicable), concerning the business combination in question, the JFTC will normally either: (1) judge that the said business combination is not problematic in light of the Antimonopoly Act, or; (2) judge that more detailed review is necessary and request submission of the necessary reports, information or materials prescribed in Article 10, paragraph (9) of the Antimonopoly Act (including cases where it is applied *mutatis*

mutandis pursuant to Article 15, paragraph (3), Article 15-2, paragraph (4), Article 15-3, paragraph (3), and Article 16, paragraph (3) of the Antimonopoly Act after deeming replacements, respectively; the same shall apply hereinafter) (hereinafter the “reports, etc.”). (Note 2)

In the case of (1) above, to improve transparency of the review of business combination, the JFTC shall give notification to the effect that it will not provide notice prior to cease and desist orders (hereinafter “prior notice”) pursuant to the provisions of Article 9 of the Rules on Applications for Approval, Reporting, Notification, etc. Pursuant to the Provisions of Articles 9 to 16 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Fair Trade Commission Rule No. 1, 1953; hereinafter the “Notification Rules”).

In the case of (2) above, as stipulated in Article 10, paragraph (9) of the Antimonopoly Act, the period when the JFTC may give prior notice shall be extended until 120 days after the date of receipt of the notification or 90 days after the date of receipt of all reports etc., whichever is later (provided, however, that cases presented in the proviso of Article 10, paragraph (9) of the Antimonopoly Act are excluded). Even if the JFTC judges in this extended period that the business combination plan in question is not problematic in light of the Antimonopoly Act, it shall give notification to the effect that it will not give prior notice pursuant to the provisions of Article 9 of the Notification Rules, same as in the case of (1).

In the following sections, a review undertaken during a period from the date of receipt of the notification until the day preceding the day when a request for reports, etc. is made (or until the date of notification to the effect that the JFTC will not provide prior notice pursuant to provisions of Article 9 of the Notification Rules, which applies when a request for reports, etc. is not made) shall be referred to as the “primary review,” and a review undertaken during a period from the day when a request for reports, etc. is made until the date of prior notice (or until the date of notification to the effect that the JFTC will not provide prior notice pursuant to provisions of Article 9 of the Notification Rules, which applies when prior notice is not given) shall be referred to as the “secondary review.”

Note 2: Pursuant to Article 10, paragraph (9) of the Antimonopoly Act, prior notice may also be given without requesting reports, etc.

4. Explanation of issues and submission of written opinions and materials by the notifying corporation

Ensuring close communications between the JFTC and notifying corporations enables swift and highly transparent review of business combination and is thought to be beneficial both for the JFTC and notifying corporations. Therefore, when during the period of a primary or secondary review (hereinafter the “reviewing period”), a notifying corporation requests explanation about issues, etc. in a review of business combination or the JFTC finds such explanation necessary, the JFTC will explain the

current issues.

Also, pursuant to provisions of Article 7-2 of the Notification Rules, a notifying corporation can submit to the JFTC written opinions or any other materials it believes necessary for the review (including offers to take remedies in question [when a business combination may be substantially to restrain competition in a particular field of trade and such restraint may be remedied by certain appropriate measures taken by the notifying corporation, such measures solving the issues are called “remedy(ies)” ; the same shall apply hereinafter]) anytime during the reviewing period; provided, however, that the contents of a written opinion or material may not be sufficiently reflected in the contents, etc. of the prior notice depending on the time of its submission.

While the JFTC clarifies judgment criteria, etc. for review of business combination in the Business Combination Guidelines, it tends to refer to materials listed in the attached paper in review of business combination.

5. Primary review

(1) Receipt of a notification form

The format of the notification form of business combination plan and documents required for the notification is prescribed in Articles 2-6, 5, 5-2, 5-3 and 6 of the Notification Rules. On receipt of a notification form submitted pursuant to these provisions, the JFTC shall deliver to the notifying corporation a written receipt of notification form pursuant to the provisions of Article 7, paragraphs (1) and (2) of the Notification Rules.

(2) End of a primary review

As described in paragraph 3 above, as a result of a primary review, the JFTC will normally either: (1) judge that the business combination in question is not problematic in light of the Antimonopoly Act and give notification to the effect that it will not provide prior notice pursuant to the provisions of Article 9 of the Notification Rules, or; (2) judge that more detailed review is necessary and request reports, etc.

When the notifying corporation requests shortening of the waiting period and the JFTC’s judgment is (1) above, the JFTC promptly notifies to the effect that it will not provide prior notice pursuant to the provisions of Article 9 of the Notification Rules and shortens the waiting period until the date of the said notification (see the Attachment of the Business Combination Guidelines). (Note 3)

Also, any other cases that will be informative for other corporations judged during the phase of the primary review will be made public by the JFTC. Such cases include those deemed by the JFTC not to be problematic in light of the Antimonopoly Act on the condition that remedy should be taken by the notifying corporations in the phase of the primary review.

Note 3: The waiting period will also be shortened promptly when the JFTC's judgment is (1) above and the notifying corporation has requested shortening of the waiting period after the JFTC gave notification to the effect that it would not provide prior notice pursuant to the provisions of Article 9 of the Notification Rules.

6. Secondary review

(1) Request for reports, etc.

When the JFTC requests the notifying corporation to submit reports, etc., the JFTC will deliver to the notifying corporation a written request for reports, etc. as stipulated in Article 8, paragraph (1) of the Notification Rules, and when the JFTC receives all the reports, etc. from the notifying corporation, it will deliver a written receipt of reports, etc. as stipulated in paragraph (2) of the same article. When requesting a reports, etc. pursuant to the provisions of the second sentence of paragraph (1) of the same article, the JFTC will describe the points of requesting the reports, etc. in the written request for reports, etc.

When the JFTC requests the notifying corporation to submit reports, etc., the JFTC will make a release to the public to that effect.

(2) Hearing of third party opinions

Any party with an opinion about the business combination plan, about which the JFTC has publicized its request for a reports, etc. in accordance with (1) above, can submit a written opinion to the JFTC within 30 days after the said publication.

(3) End of secondary review

A. Notification, etc. concerning end of secondary review

As a result of a secondary review, the JFTC will either: (1) judge that the business combination in question is not problematic in light of the Antimonopoly Act and give notification to the effect that it will not provide prior notice pursuant to the provisions of Article 9 of the Notification Rules, or; (2) provide prior notice. In the case of (1), the JFTC will explain the result of the review including reasons for the result. In the case of (2), the procedures thereafter will be taken pursuant to the provisions of Chapter VIII, Section II of the Antimonopoly Act.

B. Publication of the end of secondary review

When the JFTC judges, as a result of a secondary review, that the business combination in question is not problematic in light of the Antimonopoly Act and give notification to the effect that it will not provide prior notice pursuant to the provisions of Article 9 of the Notification Rules, the JFTC will make public the said results of the review. (Note 4)

Note 4: The results of the review of business combination will be made public even when the JFTC decides not to issue a cease and desist order after it gave prior notice because the notifying

corporation has, for instance, offered to take remedy.

7. Consultation about business combination plans that do not require notification

When a corporation plans a business combination that does not require notification because the domestic sales, etc. do not meet the standards, or an interlocking directorate or any other business combination that does not require notification because it is not subject to notification, and the said corporation consults with the JFTC concerning the said business combination plan by showing specific contents of the plan, the JFTC shall respond pursuant to provisions of the above items 3 to 6.

The review concerning the said consultation will be discontinued in either of the following cases:

- (1) When the material requested by the JFTC to the corporation that consulted was not submitted
- (2) When the corporation that consulted requested discontinuance of the consultation

8. Handling of consultations based on the Old Policies

Consultations on whether business combination plans are problematic in light of the Antimonopoly Act, which were requested based on the Old Policies before the Policies were applied, will be handled by the JFTC as before based on the Old Policies when the JFTC has not responded to such consultations.

Offices Where Notification Forms Should be Submitted

	Contact	Jurisdictional area (prefecture)
General Secretariat, Japan Fair Trade Commission Central Government Bldg. No. 6-B 1-1-1 Kasumigaseki, Chiyoda-ku, Tokyo, 100-8987, Japan	Mergers and Acquisitions Division, Economic Affairs Bureau Phone: (03) 3581-3719 Fax: (03) 3581-5771	Ibaraki, Tochigi, Gunma, Saitama, Chiba, Tokyo, Kanagawa, Niigata, Nagano, Yamanashi
Hokkaido Office Sapporo Joint Government Bldg. No. 3 Odorinishi 12-chome, Chuo-ku, Sapporo-shi, Hokkaido, 060-0042 Japan	General Affairs Division Phone: (011) 231-6300 Fax: (011) 261-1719	Hokkaido
Tohoku Office Sendai Joint Government Bldg. No. 2, 3-2-23, Hon-cho, Aoba-ku, Sendai-shi, Miyagi, 980-0014, Japan	General Affairs Division Phone: (022) 225-7095 Fax: (022) 261-3548	Aomori, Iwate, Miyagi, Akita, Yamagata, Fukushima
Chubu Office Nagoya Joint Government Bldg. No. 2, 2-5-1, Sannomaru, Naka-ku, Nagoya-shi, Aichi, 460-0001, Japan	Director of Economic Affairs Phone: (052) 961-9422 Fax: (052) 971-5003	Toyama, Ishikawa, Gifu, Shizuoka, Aichi, Mie
Kinki-Chugoku-Shikoku Office Osaka Joint Government Bldg. No. 4, 4-1-76, Otemae, Chuo-ku, Osaka-shi, Osaka, 540-0008, Japan	Director of Economic Affairs Phone: (06) 6941-2174 Fax: (06) 6943-7214	Fukui, Shiga, Kyoto, Osaka, Hyogo, Nara, Wakayama
Chugoku Branch of Kinki-Chugoku-Shikoku Office Hiroshima Joint Government Bldg. No. 4, 6-30, Kamihacchobori, Naka-ku, Hiroshima-shi, Hiroshima, 730-0012, Japan	General Affairs Division Phone: (082) 228-1501 Fax: (082) 223-3123	Tottori, Shimane, Okayama, Hiroshima, Yamaguchi
Shikoku Branch of Kinki-Chugoku-Shikoku Office Takamatsu Local Government Bldg. No. 2, 1-17-33, Matsushima-cho, Takamatsu-shi, Kagawa, 760-0068, Japan	General Affairs Division Phone: (087) 834-1441 Fax: (087) 862-1994	Tokushima, Kagawa, Ehime, Kochi
Kyushu Office Fukuoka Joint Government Bldg. No. 2, Annex, 2-10-7, Hakataekihigashi, Hakata-ku, Fukuoka-shi, Fukuoka, 812-0013, Japan	Director of Economic Affairs Phone: (092) 431-5882 Fax: (092) 474-5465	Fukuoka, Saga, Nagasaki, Kumamoto, Oita, Miyazaki, Kagoshima
Fair Trade Office of General Affairs Department, Okinawa General Bureau, Cabinet Office Wing 2, Naha Local Government Bldg. No. 2, 2-1-1, Omoromachi, Naha-shi, Okinawa, 900-0006, Japan	Fair Trade Office Phone: (098) 866-0049 Fax: (098) 860-1110	Okinawa

Attachment: Examples of Materials Referred to by the Japan Fair Trade Commission in Business
Combination Reviews

Corresponding part of Business Combination Guidelines		Examples of materials
Part II – 2	A Particular Field of Trade (Product Range)	<ul style="list-style-type: none"> ▪ Product outline (form, characteristics, etc.) ▪ Raw materials, production method, production process chart ▪ Degree of difference among products in quality and performance, and standard and system ▪ Other products whose utilities are of the same, or similar, type ▪ Changes in price and traded quantity of each product ▪ Characteristics of recognition and actions of users ▪ Outline of production facilities of factories (switchability of production lines, etc.) ▪ Related documents, surveys, analyses, etc. (The same shall apply to all the below items.)
Part II - 3	A Particular Field of Trade (Geographic Range)	<ul style="list-style-type: none"> ▪ Countries and areas where businesses are operated (by the company and its competitors) ▪ Locations and business districts of factories and places of business (of the company and its competitors) ▪ The area around which users purchase the product, and their purchasing behaviors ▪ Features of goods ▪ Methods of transporting and supplying goods, and cost of transportation ▪ Changes in prices and traded quantities in each country and region ▪ Physical and commercial distribution
Part IV-2 (1)	The Position of the Company Group and the Situation of Competitors (including competitive situation in the market, etc.)	<ul style="list-style-type: none"> ▪ Changes in market size (in quantity and monetary terms) and demand forecast ▪ Changes in quantity of production and shipment at each company (and competitor) (as sorted out by usage, demand sector, or between captive consumption and sales, etc.) ▪ The company's sales quantity of the product traded (profit and cost) ▪ Fluctuation in market share and competition among the parties in the past ▪ Monthly changes of sales prices by product (as sorted out between negotiation transactions and market trend, by user group, by distribution channel, etc.) ▪ Method of determining price (sales promotion expenses, rebates, advertising expenses, etc.) ▪ Frequency of price negotiations, and timing and factors of price changes ▪ Distribution channel of each product, distribution in quantity and monetary terms in each channel, sales organizations and state of distributive integrations ▪ Outline of production facilities of factories (including facility details, changes in production capacity, production quantity, and excess capacity and method of calculating them, and details and production capacity of facilities under construction/plan, etc.) ▪ Changes in export quantity and export prices (pricing factors, difference in price from domestic products) ▪ Product lineup of the company (product brochure, etc.), outline of other companies' products (product lineups, grades, etc.) ▪ Characterization of products by differentiation (brand, grade, etc.) evaluation of the brand

		<ul style="list-style-type: none"> ▪ Patent rights held or ones for which authorization to exploit are held, and details of alliances concerning introduction of technologies ▪ Development status of new products, research and development, case examples of entries in terms of technology development, amount (in monetary terms), amount of investment (outline, etc. of personnel and equipment) ▪ Changes in the speed and degree of technological innovation, state of product obsolescence, and ratio of research and development expenses to sales in Japan and overseas concerning the product
Part IV-2 (2)	Import	<ul style="list-style-type: none"> ▪ Changes in import quantity and import prices (pricing factors, difference in price from domestic products) ▪ Presence or absence and details of tariffs and other tax and legislative regulations related to international trades ▪ Prices, quality, and technologies of imports, and expenses and facilities concerning import (distribution facilities, storage facilities, etc.) ▪ Demand trends and excess export capacity of exporting countries, outlines of powerful overseas entrepreneurs ▪ Forecasts of import and export in the future

Part IV-2 (3)	Entry	<ul style="list-style-type: none"> ▪ Presence or absence of legislation regulating the entry, such as license ▪ Presence or absence of barriers to entry in practice (including appropriate range of production facilities required for the entry, required amount of investment in the facilities, their locations, technical issues, purchasing conditions for raw materials and sales conditions, etc.) ▪ Past cases of entry and their effects ▪ Presence or absence of entrepreneurs who may make entries and of entry plans, and business plans of entrepreneurs intending to make entries
Part IV-2 (4)	Competitive Pressures from Related Markets	<ul style="list-style-type: none"> ▪ States of competition in related markets and the degree of the impact of competition in related markets on competition in particular fields of trade (competing goods and adjacent areas)
Part IV-2 (5)	Competitive Pressure from Users	<ul style="list-style-type: none"> ▪ Names of main users (locations and changes in sales in quantity and monetary terms) ▪ Sales destinations by size of main users (large- and small-lot users) and trading relationship (changes in sales in quantity [monetary] terms, trade practice, etc.) ▪ Competition among users ▪ Ease of changing suppliers (cost of switching suppliers, state of multiple purchases by users, examples of switching of suppliers, etc.)
Part IV-2 (7)	Efficiency	<ul style="list-style-type: none"> ▪ Rationalization and efficiency improvement plans related to the business combination, and details and calculation base of the economic effect (economies of scale, integration of production facilities, specialization of factories, reduction in transportation costs, efficiency in research and development, etc.) ▪ Documents of internal procedures leading to the decision of the business combination, explanatory materials for shareholders and financial markets regarding efficiency, etc. ▪ Past results of reduced prices, quality improvement, provision of new products, etc. due to efficiency improvement
Part IV-2 (8)	Financial Conditions of the Company Group	<ul style="list-style-type: none"> ▪ Financial conditions of company with poor results ▪ State of negotiations with other entrepreneurs capable of bailing out company with poor results

Note 1: The materials listed above are only examples, and materials are not limited to them.

Note 2: Concerning changes in market size, prices, quantity, market shares, etc., submission of data for three to five years is generally desirable, but the subject period may differ, for instance, depending on the details of the business combination, characteristics of the trade, and presence or absence of available data.

Possible sources of information for such data include government statistics, trade organization statistics, material from market research organizations, and POS data (in the case of a product intended for consumers).

Flowchart of Business Combination Review (reference)

