

The JFTC Closed its Review on the Proposed Acquisition of Shares of SII NanoTechnology Inc. by
Hitachi High-Technologies Corporation

(Tentative Translation)

December 10, 2012
Japan Fair Trade Commission

Upon a notification regarding a proposed acquisition of shares of SII NanoTechnology Inc. (SIINT) by Hitachi High-Technologies Corporation (HHT), the Japan Fair Trade Commission (JFTC) had reviewed the planned acquisition and reached the conclusion that the deal would not substantially restrain competition in any particular fields of trade. Accordingly, the JFTC notified the parties that a cease and desist order will not be issued by the JFTC, resulting in the completion of its review.

I. Outlines of the transaction

HHT, a company that runs business of manufacturing and distributing analytical instruments*, etc. plans to acquire the entire stocks of SIINT, a company manufacturing and distributing analytical instruments as well.

*"Analytical instruments" mean those machines, instruments or devices that are used for qualitative and quantitative measures of composition, nature, structure or condition of substances.

II. Reviewing process

Receipt of the notification regarding the proposed acquisition of SIINT's shares by HHT on July 10, 2012 (start of the primary review)

Request for reports, etc. by the JFTC on August 9, 2012 (start of the secondary review)

Receipt of all requested reports from the parties on November 9, 2012 (the due date for a prior notice was set on February 8, 2013)

Notification to the parties that a cease and desist order will not be issued on December 10, 2012

III. Conclusion

As a result of its review, the JFTC concluded that the proposed acquisition of shares would not substantially restrain competition in the fields of trade on scanning electron microscopes (SEMs), focused ion beam systems (FIBs), FIB-SEMs etc. among analytical instruments which the parties handle.

(Foot Note)

The JFTC has been authorized to conduct reviews on whether business combination plans may be substantially to restrain competition in particular fields of trade by following procedures prescribed in the Antimonopoly Act. When a notifying corporation submits the notification form to the JFTC and the JFTC receives it, the notifying corporation is prohibited from effecting the planned business combination, in question until the expiration of the 30-day waiting period from the date of receipt of the said notification. During the waiting period, 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.

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 issue a cease and desist order.

In the case of (2) above, the period when the JFTC may give notice prior to cease and desist order 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. In case 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 issue a cease and desist order, same as the case of (1).

Main Analytical Instruments under Review

Product name	Photo
Scanning Electron Microscope (SEM)	
Focused Ion Beam System (FIB)	
FIB-SEM	

(Source: Hitachi High-Technologies Corporation website)

The JFTC Closed its Review on the Proposed Acquisition of Shares of SII Nano Technology Inc. by Hitachi High-Technologies Corporation

I. Parties

Hitachi High-Technologies Corporation (HHT) is a company that runs business of manufacturing and distributing analytical instruments, etc.

SII Nano Technology Inc. (SIINT) is also a company that runs business of manufacturing and distributing analytical instruments.

II. Outline of the case and the provision of applicable laws

HHT planned to acquire the entire stocks of SIINT (hereinafter “the Acquisition of Shares”).

The applicable provision applicable to the Acquisition of Shares is Article 10 of the Antimonopoly Act (hereinafter, “the AMA”).

III. Reviewing process and outline of the results

1. Reviewing process

Prior to submitting notification regarding the Acquisition of Shares, the parties concerned voluntarily submitted a written opinion and materials to the JFTC stating that the Acquisition of Shares would not substantially restrain competition in the field of trade on analytical instruments such as scanning electron microscopes (SEMs), focused ion beam systems (FIBs), and FIB-SEMs, in which the parties concerned compete with each other. In response to requests from the parties concerned, the JFTC held several meetings with them. Thereafter, on July 10, 2012, a notification regarding the Acquisition of Shares was submitted by HHT pursuant to the provisions of Article 10, Paragraph 2 of the AMA. The JFTC received the notification and commenced its primary review. The JFTC undertook this primary review based on the abovementioned notification, other materials submitted by the parties concerned, and interviews with their users and competitors, etc. As a result, the JFTC determined that it would require a further review. Accordingly, on August 9, 2012, the JFTC requested that HHT submit reports, etc., and commenced its secondary review. On the same day, the JFTC made a public announcement that it had commenced the secondary review of the Acquisition of Shares, and that it would seek written opinions from any third parties.

In its secondary review, the JFTC examined the effects on competition of the Acquisition of Shares based on interviews with, and questionnaire surveys of, users and competing companies, etc., as well as the individual reports, etc. submitted by the parties concerned. The JFTC also held meetings, etc. with the parties concerned as necessary during the period of the secondary review.

In response to the request for HHT to submit reports, etc., HHT submitted all such reports, by November 9, 2012.

2. Outline of the results of the review

As a result of its review, the JFTC concluded that the Acquisition of Shares would not substantially restrain competition in the fields of trade on SEMs, FIBs, and FIB-SEMs, in which the parties concerned compete with each other and which were deemed to raise a significant effect on competition. The JFTC also concluded that the Acquisition of Shares would not substantially restrain competition in any other fields of trade.

The detailed results of the review concerning the fields of trade on the abovementioned SEMs, FIBs, and FIB-SEMs are as described in parts IV through VI below.

IV. Scanning Electron Microscopes (SEMs)

1. Particular field of trade

(1) Product range

A SEM is an analytical instrument for observing samples, which accelerates and focuses electrons, radiates the electron beam to a sample, and produces an image of the sample using the secondary electron signals generated and reflection electrons from the sample. It is used to observe the surface of solid samples such as metals and semiconductors, biological samples including plants and cells, and others.

With regard to the performance of SEMs, the emphasis is placed on resolution.^{*1} One of the elements on which SEMs' resolution greatly depends is the electron gun.^{*2} The electron guns used in SEMs are mainly divided into thermionic-emission guns and field-emission electron guns. SEMs with field-emission electron guns (hereinafter, "FE-SEMs") have a higher resolution than those with thermionic-emission guns (hereinafter, "TE-SEMs").

While each analytical instrument is manufactured based on analytical technology, its users, such as local governments, universities, semiconductor manufacturers, and companies engaging in entrusted analysis, select the optimal instruments, respectively, in accordance with the purpose of the analysis, the sample to analyze, etc., and their analysis capabilities differ. Accordingly, there is no substitutability for users between different types of analytical instruments. Also, while there are two types of SEMs, or TE-SEMs and FE-SEMs, as stated above, users choose either type of instrument in accordance with the purpose of the analysis, the sample to analyze, etc. Therefore, there is no substitutability for users between TE-SEMs and FE-SEMs, either.

Therefore, the JFTC has defined "TE-SEMs" and "FE-SEMs" respectively as product ranges.

The following sections discuss the FE-SEMs that do not fall within the safe harbor standards for horizontal business combination.^{*3}

*1: Resolution means the minimum distance required to observe distinguishable

objects.

*2: An electron gun is a device that produces an electron beam.

*3: See IV-1-(3) of the "Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination" (JFTC, May 31, 2004)

(2) Geographic range

Most users procure analytical instruments from manufacturers that have head offices and sales agents, etc. in Japan. They generally do not deal with overseas analytical instrument manufacturers that do not have sales agents, etc. in Japan and that have not established a sales channel in Japan.

Therefore, "all of Japan" is defined as the geographic range for the product.

2. Review concerning substantial restraint of competition

(1) Changes in the market structure

As a result of the Acquisition of Shares, HHI will be approximately 4,200; the combined market share of the parties concerned will be approximately 55%; they will rank first in the market; and the increment of HHI will be approximately 500. Accordingly, the Acquisition of Shares does not fall within the safe harbor standards for horizontal business combination.

The FE-SEMs marketed by SIINT are manufactured by Company C, listed in the table below, and SIINT sells FE-SEMs to users the same way Company C does. SIINT has determined to quit selling the products manufactured by Company C by December 31, 2012.

[Market share of FE-SEMs in FY2010]

Rank	Company	Market share
1	HHT	Approx. 50%
2	Company A	Approx. 35%
3	Company B	Approx. 5%
4	SIINT	Approx. 5%
5	Company C	0-5%
Total		100%

(2) Perspectives of the review

As stated in (1) above, SIINT has determined to quit selling the FE-SEMs manufactured by Company C by December 31, 2012. As a result, the parties concerned will no longer compete with each other on FE-SEMs, and there is a low possibility that the Acquisition of Shares will raise a problem in terms of the AMA.

However, HHT will acquire the sales department of SIINT through the Acquisition of Shares, and it currently holds a market share of approximately 50%. Therefore, the JFTC undertook a review to see whether the Acquisition of Shares would result in a substantial restraint of competition, either through unilateral conduct by the parties concerned or through the coordinated conduct with one or more of their competitors, based on the assumption that SIINT will market HHT's products instead of those of Company C.

(3) Status of competitors

The competitors of the parties concerned include Company A, a leading competitor that holds a market share of approximately 35%, and multiple other companies, including Company C, which is expected to be influential in the future.

(4) Previous status of competitors

Because FE-SEMs are used for research and development, etc., users demand a high level of performance and quality, etc. from the products. When a user plans to purchase a FE-SEM, it selects a supplier after comparing the performance and quality of products from multiple suppliers through sample tests*, etc. If the user is a public agency, the number of analytical instrument manufacturers capable of offering products with specifications that meet the required level of performance, etc. may be limited, and accordingly, the number of companies able to participate in the bidding may be limited.

For example, semiconductor manufacturers analyze miniaturized and integrated semiconductors (such as wafers) as samples, and therefore need analytical instruments with higher resolutions than those demanded by other users. Analytical instrument manufacturers take the technological innovations of semiconductors, etc. into consideration and develop FE-SEMs with high resolutions, which enable the observation of miniaturized and integrated samples.

Moreover, the competitors of the parties concerned include overseas companies that have a high level of technological capability in the global market and a subsidiary, etc. in Japan. Thus the parties concerned are also engaging in a development race with these competitors.

Therefore, technological innovations are continually occurring in the FE-SEMs market, and it is recognized that active competition on performance and quality is taking place in the said market.

*A sample test is the process of testing the performance, quality, etc. of an analytical instrument in the showroom, etc. of an analytical instrument manufacturer in which demo units are installed by actually using the instrument to analyze samples which users would like to analyze.

(5) Supply capacity of each company

It is recognized that each company has a supply capacity to a certain degree.

(6) Entry pressure

A FE-SEM is composed of various components, and companies market these components. At the same time, the patent periods of basic patents have already been expired. Accordingly, it is considered that companies with a certain level of technologies, facilities, and human resources can enter the FE-SEMs market.

However, due to the fact that the domestic FE-SEMs market is not expected to expand significantly in the future, and the size of the market is limited, thus there is no incentive to actively enter the market; a high level of product technology is required to manufacture these high-performance products; and there have been virtually no new entries into the domestic market for the past 10 years, it is recognized that there is no market entry pressure.

(7) Competitive pressure from related markets

Analytical instruments (used for surface observations, etc. of samples) other than the FE-SEMs include the TE-SEMs, the transmission electron microscope (an instrument that radiates an electron beam to the sample and forms an image for observation from the interaction of the electrons transmitted through the sample; hereinafter the "TEMs"), and the helium ion microscope. While these analytical instruments can be partially substituted with each other to a certain degree for particular observations, the results of observations, the time required for observation, the price of the analytical instrument, and other elements vary among different types of analytical instruments. Therefore, users select the analytical instruments according to their necessities for the purposes of their analyses, etc.

For these reasons, it is recognized that there is no competitive pressure from related markets.

(8) Competitive pressure on price from users

Users planning to purchase FE-SEMs generally place more emphasis on the performance and quality of the instruments than on their prices. Accordingly, it is recognized that there is no competitive pressure on price for analytical instrument manufacturers from users.

(9) Sales capability of the parties concerned after the Acquisition of Shares

The domestic FE-SEMs market is limited in size. In addition, as stated in (4) above, users place emphasis on the performance and quality of the products. Therefore, increasing the sales personnel, etc. of the parties will not necessarily lead to an increase in their market share. Thus, HHT's market share is expected to increase only slightly due to

its acquisition of SIINT's sales department as a result of the Acquisition of Shares, and its impact on competition is considered to be small.

3. Assessments under the AMA

(1) Substantial restraint of competition by unilateral conduct

Because SIINT will quit selling SEMs by December 31, 2012, the parties concerned will no longer compete with each other on FE-SEMs.

In addition, due to the fact that there are multiple leading competitors; each company has an excess capacity to a certain degree; competition in performance and quality in FE-SEMs market is active; and it is unlikely that HHT's market share will be greater and or has an impact on competition although HHT will acquire SIINT's sales department following the Acquisition of Shares, there is little likelihood that the parties concerned will be able to manipulate prices, etc. to any extent through unilateral conduct, and the Acquisition of Shares is not considered to substantially restrain competition.

(2) Substantial restraint of competition by coordinated conduct

SIINT will quit selling SEMs by December 31, 2012, and as a result, Company C is expected to become a leading competitor. Therefore, the number of companies that market FE-SEMs will substantially be the same.

In addition, due to the fact that each company has an excess capacity to a certain degree; competition in performance and quality in the FE-SEMs market is active; and it is unlikely that HHT's market share will be greater or has an impact on competition although HHT will acquire SIINT's sales department following the Acquisition of Shares, there is little likelihood that the parties concerned and their competitors will be able to manipulate prices, etc. to any extent through coordinated conduct, and the Acquisition of Shares is not considered to substantially restrain competition.

V. Focused Ion Beam Systems (FIBs)

1. Particular field of trade

(1) Product range

A FIB is an analytical instrument with two functions that is, to observe a sample and to process it. A FIB radiates an ion beam to the sample, and its detector receives the secondary electrons or secondary ions released from the sample, thereby permitting surface observation of the sample. It is also capable of processing a sample by radiating an ion beam against it. While an FIB has these two functions, it is mainly used for processing samples, such as cutting out particular microscopic portions of samples—including the defective parts of semiconductor devices—with high precision, and creating samples to observe with SEMs or TEMs. Users who purchase FIBs also use SEMs and TEMs, etc. With regard to its observation function, FIBs generally have a lower resolution than that

of SEMs. They are also disadvantageous in that the sample is chipped off by the ion beam while it is being observed.

As stated later in Part VI, there is a type of FIBs that is called a FIB-SEM. To ensure higher performance and greater convenience, a FIB-SEM combines the functions of a FIB and a SEM, thereby permitting the user to process a sample with a FIB while using a SEM to check the microscopic parts to process and to observe a sample processed with a FIB without moving it and while retaining the vacuum state of the sample stage.

As stated in IV-1-(1) above, while each analytical instrument is manufactured based on analytical technology, its users, such as local governments, universities, semiconductor manufacturers, and companies engaging in entrusted analysis, select the optimal instruments, respectively, in accordance with the purpose of the analysis, the sample to analyze, etc., and their analysis capabilities differ. Accordingly, users have found no substitutability between different types of analytical instruments.

Therefore, the JFTC has defined "FIBs" as the product range.

(2) Geographic range

Since the situation is similar to that of IV-1-(2) above, "all of Japan" is defined as the geographical range for the product.

2. Review concerning substantial restraint of competition

(1) Changes in the market structure

As a result of the Acquisition of Shares HHI will be approximately 5,200; the combined market share of the parties concerned will be approximately 60%; they will rank first in the market; and the increment of HHI will be approximately 1,800. Accordingly, the Acquisition of Shares does not fall within the safe harbor standards for horizontal business combination.

[Market share of FIBs in FY2010]

Rank	Company	Market share
1	Company A	Approx. 40%
2	HHT	Approx. 35%
3	SIINT	Approx. 25%
4	Company B	0-5%
Total		100%

(2) Perspectives of the review

After the Acquisition of Shares, the parties concerned and Company A will essentially be the only companies in the FIBs market, and the combined market share of the parties

concerned will be approximately 60%. Therefore, the JFTC undertook a review to see whether the Acquisition of Shares would result in a substantial restraint of competition, either through unilateral conduct by the parties concerned or through the coordinated conduct with one or more of their competitors, in consideration of a competitor other than Company A and the FIB-SEMs, etc. in the related market.

(3) Status of competitors

The competitors of the parties concerned include Company A, a leading competitor that holds a market share of approximately 40%. There is another competitor, Company B, but the sales figures of this company are small.

(4) Previous status of competitors

A. Status of competitors

As stated in (3) above, the competitors of the parties concerned include Company B, whose sales figures in the domestic market are small. However, Company B has high technological capabilities in the market for FIBs and FIB-SEMs, and has a large share in terms of the global market.

On the other hand, the results of a questionnaire survey of users show that half of users who use FIBs other than those of Company B find that Company B's FIBs are substitutable with those of the parties concerned because their performances are equivalent to those of the parties concerned, etc. Some of these users actually obtained quotations from Company B.

B. Competition on performance and quality

As also stated in IV-2-(4) above, technological innovations are continually occurring in the FIBs market, and it is recognized that active competition on performance and quality is taking place in the market.

(5) Supply capacity of each company

It is recognized that each company has a supply capacity to a certain degree.

(6) Entry pressure

A FIB is composed of various components, and companies market these components. At the same time, the patent periods of basic patents have already been expired. Accordingly, it is believed that companies with a certain level of technologies, facilities, and human resources can enter the FIBs market.

However, due to the fact that the domestic FIBs market is not expected to expand significantly, and the size of the market is limited thus there is no incentive to actively enter the market; a high level of product technology is required to manufacture FIBs with

higher performances; and there have been no new entries into the domestic market for the past 10 years, it is recognized that there is no market entry pressure.

(7) Competitive pressure from related markets

Instruments called FIB-SEMs have been developed as a type of FIBs. To ensure higher performance and greater convenience, a FIB-SEM combines the functions of a FIB and a SEM, thereby permitting the user to process a sample with a FIB while using a SEM to check the microscopic parts and to observe a sample processed with a FIB without moving it, retaining the vacuum state of the sample stage. Currently, the majority of users use FIB-SEMs instead of FIBs. Therefore, in recent years, sales of FIB-SEMs have been larger than those of FIBs in terms of quantity. In FY2010, sales of FIB-SEMs accounted for approximately 70% of the total sales of FIBs and FIB-SEMs in terms of quantity.

Also, in a questionnaire survey of users, the majority of users who owned FIBs responded that they would consider purchasing FIB-SEMs when replacing their FIBs in the future. The FIBs market is therefore anticipated to shrink further.

The purchase price of FIB-SEM is lower than that to buy a FIB and a SEM separately, because a FIB-SEM combines a FIB and a SEM, and the chassis and other components are shared by these two instruments. Furthermore, FIB-SEMs that are cheaper than FIBs are also available in the market.

For these reasons, FIB-SEMs marketed by companies other than the parties concerned countervail price increases, etc. by the parties concerned in the FIBs market, and it is recognized that there is competitive pressure from a related market.

(8) Competitive pressure on price from users

Users planning to purchase FIBs generally place more emphasis on the performance and quality of the instruments than on their prices. Accordingly, it is recognized that there is no competitive pressure on price for analytical instrument manufacturers from users.

3. Assessments under the AMA

(1) Substantial restraint of competition by unilateral conduct

The parties concerned will hold a market share of approximately 60% as a result of the Acquisition of Shares. However, due to the fact that there is a leading competitor in the market, Company A, and Company B engages in the manufacturing and distribution, etc. of FIBs whose performance is equivalent to those of the parties concerned, etc.; each company has an excess capacity to a certain degree; there is competitive pressure from FIB-SEMs in a related market; and competition in performance and quality in the FIBs market is active, there is little likelihood that the parties concerned will be able to manipulate prices, etc. to any extent through unilateral conduct, and the Acquisition of Shares is not considered to substantially restrain competition.

(2) Substantial restraint of competition by coordinated conduct

The number of companies in the FIBs market will be reduced from four to three as a result of the Acquisition of Shares. However, due to the fact that each company has an excess capacity to a certain degree; there is competitive pressure from FIB-SEMs in a related market; and competition in performance and quality in the FIBs market is active, there is little likelihood that the parties concerned and their competitors will be able to manipulate prices, etc. to any extent through coordinated conduct, and the Acquisition of Shares is not considered to substantially restrain competition.

VI. FIB-SEMs

1. Particular field of trade

(1) Product range

As stated in Part V above, a FIB-SEM is an analytical instrument that combines an FIB which has a function to observe surface of a sample and to process a sample for an electron microscope, etc., with the functions of an SEM for higher performance and greater convenience.

A FIB-SEM allows users to process a sample with a FIB while using a SEM to check the microscopic parts and to observe a sample processed with an FIB without moving it, retaining the vacuum state of the sample stage. A FIB-SEM enables to record images of the samples being processed with an FIB by using an SEM, and creating three-dimensional images by superimposing images on each other.

As stated in IV-1-(1) above, while each analytical instrument is manufactured based on analytical technology, its users, such as local governments, universities, semiconductor manufacturers, and companies engaging in entrusted analysis, select the optimal instruments, respectively, in accordance with the purpose of the analysis, the sample to analyze, etc., and their analysis capabilities differ. Accordingly, users have found no substitutability between different types of analytical instruments. Also, similar to SEMs described in Part IV above, there are two types of SEMs for FIB-SEMs, or TE-SEMs and FE-SEMs, and users select either type of instrument in accordance with the purpose of the analysis, the sample to analyze, etc. Thus, there is no substitutability between TE-SEMs and FE-SEMs, either.

Therefore, the JFTC has defined "FIB-SEMs with TE-SEMs" and "FIB-SEMs with FE-SEMs" as product ranges respectively.

The following sections examine FIB-SEMs with FE-SEMs (hereinafter simply referred to as "FIB-SEMs"), in which the parties concerned compete with each other.

(2) Geographic range

Since the situation is similar to that of IV-1-(2) above, "all of Japan" is defined as the geographical range for the product.

2. Review concerning substantial restraint of competition

(1) Changes in the market structure

As a result of the Acquisition of Shares, HHI will be approximately 4,600; the combined market share of the parties concerned will be approximately 60%; they will rank first in the market; and the increment of HHI will be approximately 1,700. Accordingly, the Acquisition of Shares does not fall within the safe harbor standards for horizontal business combination.

The FIB-SEMs marketed by SIINT include those developed jointly with Company C, listed in the table below (hereinafter, the "jointly developed products"), and those manufactured by Company C. SIINT is the only distributor of the jointly developed products in Japan, and sells the FIB-SEMs manufactured by Company C to users in the same way that Company C does. SIINT has determined to quit selling the jointly developed products and FIB-SEMs manufactured by Company C by December 31, 2012.

[Market share of FIB-SEMs in FY2010]

Rank	Company	Market share
1	SIINT	Approx. 35%
2	Company B	Approx. 30%
3	HHT	Approx. 25%
4	Company A	Approx. 10%
5	Company C	0-5%
Total		100%

(2) Perspectives of the review

As stated in (1) above, SIINT has determined to quit selling the FIB-SEMs by December 31, 2012. As a result, the parties concerned will no longer compete with each other on FIB-SEMs, and there is a little possibility that the Acquisition of Shares will raise a problem in terms of the AMA.

However, even when SIINT has quit selling FIB-SEMs, HHT will acquire the sales department, etc. of SIINT related to FIB-SEMs as a result of the Acquisition of Shares. Therefore, the JFTC undertook a review to see whether the Acquisition of Shares would result in a substantial restraint of competition, either through unilateral conduct by the parties concerned or through the coordinated conduct with one or more of their competitors, which may take place if, for example, HHT sells the products it manufactures as alternatives to the jointly developed products, and the users of the jointly developed products will make the shift to become users of the products manufactured by HHT.

(3) Status of competitors

The competitors of the parties concerned include Company B and Company A, leading competitors which holds a market share of approximately 30% and 10% respectively. There is also another competitor, Company C.

(4) Previous status of competitors

Similar to the situation stated in IV-2-(4) above, technological innovations are continually occurring in the FIB-SEMs market, and it is recognized that active competition on performance and quality is taking place in the market.

(5) Supply capacity of each company

It is recognized that each company has a supply capacity to a certain degree.

(6) Entry pressure

The domestic market for FIB-SEMs is expected to see new demand in fields where FIB-SEMs were not previously used, etc.

However, due to the fact that the size of the market is limited, thus there is no incentive to actively enter the market; FIB-SEMs require the product technology for FE-SEMs; and there have been no new entries into the domestic market for the past 10 years, it is recognized that there is no market entry pressure.

(7) Competitive pressure on price from users

Users planning to purchase FIB-SEMs generally place more emphasis on the performance and quality of the instruments than on their prices. Accordingly, it is recognized that there is no competitive pressure on price for analytical instrument manufacturers from users.

(8) Users' responses to SIINT's discontinuing sales of jointly developed products

The jointly developed products that SIINT will quit selling by December 31, 2012 tend to be similar to the products of a specific competitor other than HHT. In a questionnaire survey of users, there were many similar responses that point out this fact.

Accordingly, there is a little possibility that the customers who use the jointly developed products will be customers of HHT, due to SIINT's discontinuing sales of the jointly developed products, and these customers are highly likely to switch to products of the specific competitor. Therefore, there is little concern that HHT's market share will increase significantly, or substantially to restrain competition as a result of the Acquisition of Shares.

(9) Sales capability, etc. of the parties concerned after the Acquisition of Shares

The FIB-SEMs market is limited in size. In addition, similar to the situation stated in IV-2-(4) above, users place emphasis on the performance and quality of the products. Therefore, increasing the sales personnel, etc. of the parties concerned will not necessarily lead to an increase in their market share. Also, according to the parties concerned, the development of new products by HHT and SIINT will take a certain amount of time after the Acquisition of Shares.

Thus, HHT's market share is expected to increase only slightly due to its acquisition of SIINT's sales department, etc., and its impact on competition is considered to be small as a result of the Acquisition of Shares.

3. Assessments under the AMA

(1) Substantial restraint of competition by unilateral conduct

Because SIINT will quit selling FIB-SEMs by December 31, 2012, the parties concerned will no longer compete with each other on FIB-SEMs.

In addition, due to the fact that there are multiple leading competitors; each company has an excess capacity to a certain degree; competition in performance and quality in the FIB-SEMs market is active; and users of the jointly developed products by SIINT and Company C are highly likely to switch to products from the other competitor, thus it is unlikely that HHT's market share will be greater and or has an impact on competition as a result of the Acquisition of Shares, there is little likelihood that the parties concerned will be able to manipulate prices, etc. to any extent through unilateral conduct, and the proposed share acquisition is not considered to substantially restrain competition.

(2) Substantial restraint of competition by coordinated conduct

SIINT will quit selling FIB-SEMs by December 31, 2012, and as a result, Company C will virtually become a new competitor. Therefore, the number of companies that market FIB-SEMs will substantially be the same.

In addition, due to the fact that each company has an excess capacity to a certain degree; competition in performance and quality in the FIB-SEMs market is active; users of the jointly developed products by SIINT and Company C are highly likely to switch to products of the specific competitor, thus it is unlikely that HHT's market share will be greater or has an impact competition as a result of the Acquisition of Shares, there is little likelihood that the parties concerned and their competitors will be able to manipulate prices, etc. to any extent through coordinated conduct, and the Acquisition of Shares is not considered to substantially restrain competition.

Flowchart of Business Combination Review (reference)

