

The JFTC Closed its Review on the Proposed Acquisition of Shares of BEST DENKI Co., Ltd. by
YAMADA DENKI Co., Ltd.

(Tentative Translation)

December 10, 2012
Japan Fair Trade Commission

Upon a notification regarding a proposed acquisition of shares of BEST DENKI Co., Ltd. (BEST DENKI) by YAMADA DENKI Co., Ltd. (YAMADA DENKI), the Japan Fair Trade Commission (JFTC) had reviewed the planned stock acquisition and reached the conclusion that, on the premise of the remedies offered by YAMADA DENKI, the deal would not substantially restrain competition in any particular fields of trade. Accordingly, the JFTC has notified YAMADA DENKI 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

An electric appliance retailer YAMADA DENKI plans to acquire the stocks of BEST DENKI, a company retailing electric appliances as well, and thereby to obtain more than half of BEST DENKI's voting rights.

II. Reviewing process

Receipt of the notification regarding the proposed acquisition of BEST DENKI's shares by YAMADA DENKI on June 7, 2012 (start of the primary review)

Request for reports, etc. by the JFTC on July 6, 2012 (start of the secondary review)

Receipt of all requested reports from YAMADA DENKI on December 4, 2012 (the due date for a prior notice was set on March 5, 2013)

Submission of a report on changes in the notification by YAMADA DENKI, in which the remedies were incorporated on December 7, 2012,

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

III. Conclusion

YAMADA DENKI and BEST DENKI are competing with each other in 253 geographical areas that are defined as the particular fields of trade by the JFTC. By examining the competition condition in respective areas, the JFTC had found that the planned stock acquisition initially notified to the JFTC would substantially restrain competition in 10 out of the 253 geographical areas. YAMADA DENKI thereafter offered remedies to address the JFTC's concern where YAMADA DENKI would divest 8 stores in the 10 areas. The JFTC

concluded that the remedies offered would be sufficient to eliminate the competitive concern that could arise by the share acquisition and that, given the remedies, the acquisition would not substantially restrain competition.

(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 share acquisition, etc. 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).

The JFTC Closed its Review on the Proposed Acquisition of Shares of BEST DENKI Co., Ltd. by YAMADA DENKI Co., Ltd.

I. Parties

Both YAMADA DENKI Co., Ltd. (YAMADA DENKI) and BEST DENKI Co., Ltd. (BEST DENKI) are companies engaged in the retailing of electrical appliances.

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

YAMADA DENKI planned to acquire the stock of BEST DENKI, thereby, to acquire more than half of BEST DENKI's voting rights.

The provision of applicable laws 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 pursuant to the provisions of Article 10, paragraph (2) of the AMA, YAMADA DENKI requested consultation with the JFTC regarding the company's plan to acquire BEST DENKI's shares, and the JFTC accepted its request. (See Section 2 of "Policies Concerning Procedures of Review of Business Combination", JFTC, June 14, 2011)

Thereafter, YAMADA DENKI submitted the abovementioned notification on June 7, 2012. The JFTC accepted this notification and began a primary review. The JFTC undertook this primary review based on the abovementioned notification, other materials submitted by the Parties, etc. As a result, a more detailed review was needed. Accordingly, on July 6, 2012, the JFTC requested that YAMADA DENKI submit reports, etc., thereby starting a secondary review. On July 13, 2012, the JFTC announced that it had started a secondary review and would accept written opinions from third parties.

In its secondary review, the JFTC held several meetings with the Parties in response to their requests. At the same time, the JFTC examined the effects on competition of the proposed acquisition of shares, in view of the results of interviews with competitors and opinions, etc. from the public, as well as the reports, etc. submitted by the Parties. YAMADA DENKI had submitted appreciable requested reports, etc. by October 2012, when explanations of the issues, etc. were recognized to be necessary. Accordingly, the JFTC provided explanations of the issues, etc. based on the results of its reviews that had

been obtained by that point. In response to these explanations, the Parties submitted additional allegations and materials. The JFTC reviewed these allegations and materials from the Parties. The JFTC later pointed out that the proposed acquisition of shares was likely to substantially restrain competition concerning the retailing of electrical appliances in certain geographic areas. In response, YAMADA DENKI provided remedies to address the problem concerning competition. After its proposal was reviewed by the JFTC, YAMADA DENKI submitted a revised report of the notification concerning its remedies to address the problem.

With regard to the request for YAMADA DENKI to submit reports, etc., the company submitted all such reports, etc., by December 4, 2012.

2. Outline of the results of the review

As a result of its review, the JFTC concluded that the proposed acquisition of shares would not substantially restrain competition in the particular field of trade, based on the remedies that YAMADA DENKI provided to the JFTC to address the concerns about the retailing of electrical appliances in certain geographic areas.

The detailed results of the review are as described in parts IV through IX below.

IV. Particular field of trade

1. Service range

Retailers dealing in electrical appliances include mass retailers, general merchandise stores (hereafter, "GMS"), home centers, discount stores (hereinafter, GMS, home centers, and discount stores will be collectively referred to as "GMS, etc."), and local electrical appliance retailers (including retailers affiliated with electrical appliance manufacturers and locally based retailers; the same applies hereinafter), which sell products at brick-and-mortar stores, as well as mail-order companies. The variety of electrical appliance products handled by local electrical appliance retailers and GMS, etc. is limited in many cases compared to the variety of products handled by mass retailers. In addition, mail-order companies have a different method of selling products from that used by mass retailers, and many of these companies do not offer the same level of after-sales service or the same variety of products as that offered by mass retailers.

Given these circumstances, mass retailers recognize other mass retailers to be their competitors when they formulate pricing strategies. In addition, consumers who use mass retailers also compare the prices, etc. offered by multiple mass retailers before deciding from which stores they will buy electrical appliances.

Accordingly, the degree of substitutability between the electrical appliance retail

business of mass retailers and that of other electrical appliance retailers is recognized to be low. Therefore, the JFTC has defined “electrical appliance retail business of mass retailers” to be the service range in this case.

2. Geographic range

In general, each mass retailer store monitors certain competing mass retailer stores and plans pricing strategies by checking the sales prices of the electrical appliance products offered at those stores, for example. Therefore, it is recognized that competition among mass retailers takes place on a store-by-store basis.

Each mass retailer establishes its trading area of each of its stores based on consumer shopping areas, etc. The Parties largely define the trading area of each of their stores as "the area within a 10 kilometers radius of the store." In interviews with mass retailers other than the Parties, many of them said that it is normal to establish the area within a 10 kilometers radius of the store as the trading area.

Therefore, the JFTC has defined "the area within a 10 kilometers radius of the store" as the geographic range in this case.

V. Review concerning substantial restraint of competition

1. Status of competition between the Parties

The Parties directly manage stores all over Japan. In addition, they also operate franchise stores under franchise agreements. Franchise stores of a certain size (500 square meters or larger) are capable of offering a variety of products comparable to those offered by the stores directly managed by mass retailers, and therefore are regarded as equivalent to the stores that are directly managed by the Parties.

In the particular field of trade defined in Part IV above, there are 253 areas in which the Parties compete with each other.

2. Overview of the status of competition in these areas

While it is technically difficult to calculate the market share of each mass retailer store in the 253 areas mentioned above (or to determine whether a case falls within the safe harbor rule applied to horizontal business combination, which is stipulated in IV-1-(3) "Effect may not be Substantially to Restrain Competition" of the Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination (JFTC, May 31, 2004)), it is considered that, in general, the more competitors there are in an area, the greater the competition will be in the area.

With regard to the impact of the proposed acquisition of shares on the competition in

each geographic range, this impact is considered to be greater in areas where there is a small number of competitors and the proposed acquisition of shares will result in a decrease of one competitor than in areas where there is a large number of competitors and a decrease of one competitor. As mentioned in section 1 above, the Parties compete with each other in 253 areas, and there are many competitors of the Parties in some of these areas, while there are no competitors at all in others.

In addition, as described in Part IV above, each mass retailer monitors certain competing mass retailer stores that are located close to its stores, and is very conscious of those competing stores when it sets prices. Therefore, it is considered that each mass retailer store strongly competes with the particular stores that it monitors, even where there are several competing mass retailers. YAMADA DENKI monitors mass retailer stores other than BEST DENKI in 212 of the 253 areas mentioned above, and monitors those of BEST DENKI in 41 of them.

3. Entry pressure

The Parties argue that there are no barriers to entry for mass retailers, either institutionally or practically. In principle, the only regulation on mass retailer entry is the fact that a store has to provide a notification when the store area exceeds a certain stipulated standard, pursuant to the Act on the Measures by Large-Scale Retail Stores for Preservation of Living Environment. It is therefore considered that institutional barriers to entry are low. In addition, the cost of opening a new store is not significantly higher than that for other industries.

On the other hand, the competitors interviewed by the JFTC said that the areas they are motivated to enter are limited according to their store-opening strategies. Therefore, entry pressure is not seen as equal in all areas.

It is recognized that entry pressure is evident in areas where the specific store-opening plans by competitors have been identified.

4. Competitive pressure from related markets (markets in geographically neighboring areas)

Many locations with a small number of mass retailers are located in rural areas, and many consumers in these areas use their cars to go shopping. In light of the purchasing behavior of these users, many mass retailers open their stores along main roads. As a result, users in rural areas can do their shopping over a wider area than those in urban areas. Based on these points, the Parties argue that there is competitive market pressure from geographically neighboring areas.

With regard to this point, the materials submitted by YAMADA DENKI describe

cases in which consumers will actually shop beyond the geographical range (the area within a 10 kilometers radius of the store), and cases in which the Parties monitor competitors' stores that are located outside the geographical range.

Accordingly, it is considered that there is competitive market pressure for some stores from geographically neighboring areas.

5. Competitive pressure from related markets (GMS, etc.)

The Parties argue that there is competitive pressure from GMS, etc. because GMS, etc., which are not mass retailers, also handle almost all kinds of electrical appliances, and among other things, deal with a large number of products emphasizing low prices, such as those produced in South Korea or China.

With regard to this point, the variety of electrical appliances handled by GMS, etc. is limited compared with mass retailers, and of the total sales of electrical appliances in Japan, the percentage of GMS, etc. sales is small. In addition, the results of interviews show that mass retailers and GMS, etc. do not see themselves as competing with each other in the electrical appliance retail business.

In addition, instances in which the existence of GMS, etc. in the same trading area resulted in competitive pressure were not generally recognized, either, according to the results of questionnaire surveys concerning the purchasing behavior of consumers, which are released by local governments, or the results of economic analyses (including a panel analysis of the impact that GMS, etc. stores in a particular trading area had on the profit rates, etc. of the Parties), which were undertaken based on the financial data of each store, and other information submitted by the Parties.

For these reasons, it is considered that GMS, etc. do not produce competitive pressure for mass retailers except under exceptional circumstances in which GMS, etc. are recognized as producing specific competitive pressure in a particular area.

6. Competitive pressure from related markets (mail-order companies)

The Parties argue that there is strong competitive pressure from mail-order companies for the following reasons: 1) the amount of mail-order sales of electrical appliances, mainly via the Internet, have been significantly increasing due to the spread and enhancement of the Internet environment and the resulting changes in consumers' purchasing behavior; 2) entry of the mail-order business is easy because it doesn't require the cost of managing stores, and it is easier for mail-order companies than for brick-and-mortar companies to lower product prices, and; 3) consumers can purchase electrical appliance products over the Internet without going to stores by searching for the mail-order company that offers the

lowest price through a price comparison site, etc.

With regard to this point, while it is recognized that sales of mail-order companies mainly via the Internet account for a certain percentage of the sales of electrical appliances and that this percentage has been increasing in recent years, it is also understood that, although it can't be denied that mail-order companies focusing on Internet retailing are producing a certain amount of competitive pressure for mass retailers, this can't be recognized to be strong competitive pressure, in light of the following points: 1) the materials submitted by YAMADA DENKI indicate that the number of customers who have visited its stores and who also consider mail-order companies as potential stores to buy products from is small; 2) according to the results of the interview with mass retailers, many of these retailers believe that mass retailers and mail-order companies are practically segregated from each other, and while mail-order companies can produce modest competitive pressure, it is not strong competitive pressure; 3) according to the results of the interview with mail-order companies, mass retailers and mail-order companies don't entirely compete with each other on price, and; 4) many mail-order companies don't offer the same level of after-sales service or the same variety of products that mass retailers do.

7. Financial conditions of the company group

The Parties argue that the proposed acquisition falls within cases where "the Possibility that the Business Combination May Be Substantially to Restrain Competition Is Usually Thought to Be Small" stipulated in section B-(a) of IV-2-(8) (Financial Conditions of the Company Group) of the Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination (JFTC, May 31, 2004), because the business performance of BEST DENKI has been poor. However, in light of the financial conditions of BEST DENKI and the selection process of the prospective third parties to which BEST DENKI would allocate new shares, etc., it is not recognized that the proposed acquisition immediately falls within the above cases.

On the other hand, it is understood that the business performance of BEST DENKI has been poor, and the business capabilities of BEST DENKI are limited compared with its competitors. Actually, in many areas it is understood that competition as severe as, or more severe than, the competition between the Parties is occurring between the Parties and other competitors.

8. Other arguments of the Parties

The Parties also argue that they cannot increase prices at specific stores after the proposed acquisition of shares, in light of the methods they apply for setting prices,

including the fact that the sales prices offered at their stores are the same all over Japan.

With regard to this point, it is not necessarily possible to recognize, based only on the above argument, that the Parties cannot raise prices at specific stores. The reasons for this include the following: 1) the results of economic analyses (including a comparative analysis and a variance analysis of the average price offered at each store, which are aimed at verifying the presence or absence of price differences among stores) ,which were based on the actual sales price data, etc. the parties submitted, showed that prices differed among individual stores to a certain degree, although no extreme differences were found among them, and; 2) the specific method to be applied for setting prices after the proposed acquisition of shares is unknown. Also, it is possible that the proposed acquisition of shares will restrain competition in terms of the variety of products, apart from prices.

VI. Assessments under the AMA

Whereas there are 253 areas in which the Parties compete with each other, it has been recognized as a result of detailed reviews of the status of competition in each area that competition that is as severe as, or more severe than, the competition between the Parties is taking place between the Parties and other competitors in many areas, partly because the business capabilities of BEST DENKI are limited due to its poor business performance. Specifically, there are a total of 243 areas where YAMADA DENKI monitors stores other than those of BEST DENKI, and competitive pressure from these stores is actually recognized to be strong in light of their location, size, etc. or where YAMADA DENKI monitors the stores of BEST DENKI but competitors' stores that are as competent as the stores of the Parties in terms of their location, size, etc. are recognized to exist in the same geographical range or in a geographically neighboring market (such stores include discount stores, etc., although these are limited in number, as well as mass retailer stores in some areas). In these areas, strong competition with competitors' stores is expected to continue after the proposed acquisition of shares. At the same time, in some of these areas, entry pressure is evidently recognized because it is known that there are specific entry plans and a certain amount of competitive pressure from mail-order companies is also recognized. When these points are considered together, it is determined that the proposed acquisition of shares will not substantially restrain competition through unilateral conduct by the Parties or through the coordinated conduct with competitors.

On the other hand, with regard to the 10 areas^(Note) other than the 243 areas mentioned above (hereinafter, "the 10 areas"), YAMADA DENKI monitors the stores of BEST DENKI, and it is recognized that there is no other competitor store in the same geographic range or in the geographically neighboring area that is as competitive as those of the Parties in light of

its location, size, etc., nor is there any apparent entry pressure, either. Accordingly, it is understood that the proposed acquisition of shares will substantially restrain competition in these said geographic ranges, although a certain amount of competitive pressure from mail-order companies is recognized there.

(Note) 1) The Amagi area (Fukuoka Prefecture), 2) the Karatsu area (Saga Prefecture), 3) the Shimabara area (Nagasaki Prefecture), 4) the Isahaya area (Nagasaki Prefecture), 5) the Omura area (Nagasaki Prefecture), 6) the Hitoyoshi area (Kumamoto Prefecture), 7) the Tanegashima area (Kagoshima Prefecture), 8) the Sukumo area (Kochi Prefecture), 9) the Shimanto area (Kochi Prefecture), 10) the Chichibu area (Saitama Prefecture). (All of these areas are within a 10 kilometers radius of certain YAMADA DENKI stores.)

VII. Remedies to address the problem provided by YAMADA DENKI

As mentioned in Part VI above, the proposed acquisition of shares will substantially restrain competition in the 10 areas. Therefore, YAMADA DENKI offered to the JFTC the following remedies that it would implement to address this issue.

1. In each of the 10 areas, YAMADA DENKI will transfer one of the stores of the Parties that is located in the area (regardless of whether it belongs to YAMADA DENKI or BEST DENKI) to a third party (excluding any that belong to a group of combined companies of either of the Parties or one that doesn't intend to manage an electrical appliance retail business in the store), and conclude a transfer agreement by June 30, 2013 (when a franchised store of the Parties located in the area chooses to become a franchised store of a third party, this measure will be regarded as a transfer). However, because 4) the Isahaya area, and 5) the Omura area are next to each other, one of the stores of the Parties located in these areas will be transferred. In the same way, one of the stores of the Parties located in 8) the Sukumo area, and 9) the Shimanto area will be transferred. (A total of eight stores will be transferred.)

In areas where a transfer agreement is not concluded by June 30, 2013, or where a transfer agreement was concluded by the said date but the transfer was not carried out thereafter, a bidding procedure concerning one of the stores of the Parties located in the area (excluding franchised stores) shall be promptly undertaken under appropriate, reasonable methods and conditions.

2. During the period until the store transfers are completed, YAMADA DENKI will not impair the business value of the subject stores and shall not set prices that are unreasonably

disadvantageous for consumers at the subject stores.

3. During the period until the store transfers are completed, YAMADA DENKI will regularly report to the JFTC the sales prices of the electrical appliances offered at each subject store, etc., and immediately report to the JFTC the status of the implementation, etc. of its store transfers.

VIII. Assessment of the remedies to address the issue

The remedies provided by YAMADA DENKI are structural remedies, and store transfers of the Parties in the 10 areas will create new independent competitors in those areas. Accordingly, the remedies can be assessed as being appropriate.

In addition, while the said remedies are to be carried out after the proposed acquisition of shares, the deadline for the conclusion of agreements concerning the transfer of these stores has been clearly defined, making it mandatory for all such agreements to be concluded within a period of approximately six months from the proposed acquisition of shares. In this regard, the remedies are determined to be appropriate. In addition, YAMADA DENKI will not impair the business value of the stores to be transferred, and will not set prices that are unreasonably disadvantageous for consumers at these stores during the period until the store transfers are completed. Therefore, it is considered that the mechanism is in place to eliminate the negative effects on competition while retaining the competitiveness of the stores to be transferred until the transfers are implemented.

Accordingly, the remedies to address the issue provided by YAMADA DENKI can be judged as being appropriate.

IX. Conclusion

The JFTC has concluded that, along with the remedies to address the issue provided by YAMADA DENKI, the proposed acquisition of shares will not substantially restrain competition in the 10 areas.

Flowchart of Business Combination Review (Reference)

