

The JFTC Closed Its Reviews on the Proposed Business Combination between Tokyo Stock Exchange Group, Inc. and Osaka Securities Exchange Co., Ltd.

(Tentative Translation)

July 5, 2012
Japan Fair Trade Commission

Upon receipt of the notification on a proposed share acquisition between Tokyo Stock Exchange Group, Inc. and Osaka Securities Exchange Co., Ltd., the Japan Fair Trade Commission (hereinafter the “JFTC”) reviewed the proposed plan and found that, given the remedies proposed by the parties concerned, competition in any particular field of trade would not necessarily be substantially restrained. Accordingly, the JFTC notified the parties that a cease and desist order would not be issued, then completed its review.

I. Outline of the case

Tokyo Stock Exchange Group, Inc., which owns subsidiaries including Tokyo Stock Exchange Inc., establishing a financial instrument market with a license granted by the Prime Minister under the provisions of the Financial Instruments and Exchange Act, planned to acquire shares in Osaka Securities Exchange Co., Ltd., also establishing a financial instrument market with a license likewise and thereby to acquire more than half of the voting rights.

II. Process of the case

On January 4, 2012, receipt of the notification of a plan regarding the share acquisition (start of primary review)

On February 3, request for reports, etc. (start of secondary review)

On June 15, receipt of all reports, etc. (deadline for prior notice: September 14, 2012)

On June 26, report submission by the parties on the changes of the notification, in which the remedies were described

On July 5, notice to the effect that a cease and desist order will not be issued

III. Conclusion

Given the remedies concerning “Services related to listing stocks on emerging markets”, “Services related to trading stocks” and “Services related to trading Japanese stock index futures” (refer to IV, V and VI of the Attachment), which the parties submitted to the JFTC, the JFTC has concluded that the proposed business combination may not substantially restrain competition in any particular fields of trade (refer to the Attachment for the details of the review results).

Results of the Review on the Proposed Business Combination between Tokyo Stock Exchange Group, Inc. and Osaka Securities Exchange Co., Ltd.

I. Parties

Tokyo Stock Exchange Group, Inc. is a company that owns subsidiaries including Tokyo Stock Exchange Inc. (hereinafter “TSE”), establishing the financial instrument market with a license granted by the prime minister under the provisions of the Financial Instruments and Exchange Act (hereinafter “FIEA”).

Osaka Securities Exchange Co., Ltd. (hereinafter “OSE”) is a company also establishing the financial instrument market with a license.

II. Outline of the case and applicable provisions

Tokyo Stock Exchange Group, Inc. planned to acquire the shares in OSE, thereby, to acquire more than half of the voting rights (hereinafter the “Business Combination”).

The applicable provision is Article 10 of the Antimonopoly Act.

III. Process of the review and the outline of the results

1. Process of the review

Prior to submission of a notification of the plan for the Business Combination to the JFTC, the parties voluntarily submitted written opinions and materials to the JFTC. They are stating that with respect to the services related to listing stocks, services related to trading actuals, and services related to derivatives trading etc. in which the parties were competing with each other, the parties reckon that the Business Combination will not substantially restrain competition. The JFTC held several meetings with the parties at the parties’ request. On January 4, 2012, Tokyo Stock Exchange Group, Inc. then filed a notification of the plan regarding the Business Combination in accordance with the provisions of Paragraph 2 of Article 10 of the Antimonopoly Act. Accordingly, the JFTC received the notification and commenced the primary review. The JFTC conducted the primary review based on the above notification and other materials submitted by the parties and the hearings with users and competitors etc. As a result of the primary review, the JFTC found that further detailed review was necessary. Accordingly, on February 3, 2012, the JFTC requested Tokyo Stock Exchange Group, Inc. for reports etc. On the same day, the JFTC publicly announced that it had commenced secondary review of the Business Combination and that it sought written opinions from third parties.

In the secondary review, the JFTC conducted a further review on the impact on competition from the Business Combination based on the reports etc. submitted by the parties, the results of interviews with users and competitors etc., the results of questionnaire survey and the opinions etc. received from the general public. By around April 2012, Tokyo Stock Exchange Group, Inc. had submitted most of the reports, etc. that the JFTC had requested. As a result, the JFTC found that clarification of the points of issues etc. was necessary. Accordingly, the JFTC explained the points of issues etc. based on the results of reviews at the time of the explanations. The parties, in response to this, submitted additional arguments and additional materials, and the JFTC examined the arguments and the materials the parties additionally submitted. Thereafter, the JFTC pointed out that, with respect to services related to listing stocks on emerging markets, services related to trading stocks, and services related to trading Japanese stock index futures, the Business Combination may substantially restrain competition. In response, Tokyo Stock

Exchange Group, Inc. proposed the remedies to eliminate the competitive issues. The proposed remedies were scrutinized by the JFTC, thereafter. The parties then submitted a report on the changes of the notification in which the remedies were described.

Tokyo Stock Exchange Group, Inc. fulfilled the JFTC's request to submit reports etc. with the last report etc. submitted on June 15, 2012.

Between the JFTC and the parties, approximately 40 meetings were held from the time before the notification was submitted to the JFTC on the plan for the Business Combination and during the period of the review of the case.

2. Outline of review results

Regarding the case, with respect to services related to listing stocks on emerging markets, services related to trading stocks and services related to trading Japanese stock index futures, given the remedies that the parties presented to the JFTC, the JFTC has concluded that the Business Combination might not substantially restrain competition in any particular field of trade. The JFTC also concluded that the Business Combination might not substantially restrain competition with respect to the other fields of trade.

The details of the review results regarding the fields of trade for which the above remedies will be implemented are as shown in IV to VI below.

IV. Services related to listing stocks

1. Outline

Services related to listing are the duties to receive each listing application and to decide on whether clearance of eligibility for listing can be given to each application for actuals (share, bond, convertible bond, share option certificate, exchange traded funds (hereinafter “ETF”), real estate investment trust (hereinafter “REIT”), etc.) and to continuously manage and observe as to whether the eligibility of the actuals cleared to be listed is retained.

2. Particular field of trade

(1) Service range

a. Service range defined by type of actuals

Users of the services related to listing vary with the type of actuals. For example, users of the services related to shares are stock issuing companies, and users of the services related to ETFs are management companies. As a result, there is no substitutability for users between actuals. Accordingly, the JFTC defines a service range of services related to listing by actuals.

Below, we go on discussing the services related to listing stocks (excluding foreign shares; the same shall apply in IV and V below) that account for a large portion of the services related to listing provided by the parties.

b. Main market and emerging market

As the markets to apply for listing shares, there are main markets (Note 1) and emerging markets (Note 2). When a company that plans to list its shares chooses a market, there are two cases: Initial Public Offering and Market Alteration (alteration of the market on which a company’s shares are listed. This includes “reassignment” between the first and the second section of an exchange that adopts two section systems [meaning a financial instruments exchange and those who conduct the same type of business overseas as that conducted by a financial instruments exchange. The same shall apply hereinafter]). Initial Public Offering is conducted by a company whose shares have not been listed. Market Alteration is conducted by a listed company. In the case of Initial Public Offering, most companies choose emerging markets while in the case of market alteration most companies choose main markets.

Therefore, with respect to the services related to listing stocks, the JFTC defines the service range by type of market: main markets or emerging markets.

Note 1: Main markets mean the principal markets of each exchange. Each party, either TSE or OSE, establishes a First section and a Second section as its main markets of each. .

Note 2: Emerging markets mean markets established mainly for emerging companies to raise funds. Each party establishes emerging markets: Mothers in TSE and JASDAQ in OSE.

(2) Geographical range

The parties argue that the geographical range of their businesses is Asian region mainly because there have been cases in which Japanese companies listed their shares on

exchanges in Asia and because Asian exchanges are aggressively inviting Japanese companies to list their shares on their exchanges.

The number of the cases in which Japanese companies list their shares on Asian exchanges is, however, insignificant compared to that of the cases in which Japanese companies list their shares on domestic exchanges. Listing their shares on an Asian exchange places a considerable burden on Japanese companies because the costs for a Japanese company to list its shares on an Asian exchange are higher than those to list those on a domestic exchange and because they must abide by the local legal systems and disclosure regulations. According to the results of the interviews with and of the questionnaire survey on listed companies, companies that plan to list their shares, and related undertakings including securities companies, there is also no confirmed tendency among Japanese companies to positively list their shares on Asian exchanges.

Accordingly, the JFTC defines the geographical range as “all parts of Japan” both for main markets and emerging markets.

3. Review on substantial restraints of competition

(1) Changes in market structure

a. Main markets

With respect to the number of listings on the main markets for the past five-year period, which is an indicator of the status of each exchange in the field of trade in which users mainly listed companies choose the main markets through market alteration, the combined post-merger market share of the parties will be around 85% (ranked 1st). After the merger, HHI will increase by about 350 to around 7,000, which will not meet the safe harbor thresholds for horizontal business combination.

[Market shares of the main markets based on the number of listings for the past five-year period]

Rank	Company name	Market share
1	TSE	Around 80%
2	Company A	Around 10%
3	Company B	0%-5%
4	Company C	0%-5%
5	OSE	0%-5%
	Total	100%

Looking at the main markets based on market capitalization, which is generally used as an indicator of comparing the size of markets established by exchanges, market shares of the main markets are as shown in the following table. The combined post-merger market share of the parties will be around 70%, and they will rank first. After the merger, HHI will increase by about 2,200 to about 5,200, which will not meet the safe harbor thresholds for horizontal business combination.

[Market shares of the main markets based on market capitalization as of the end of 2011]

Rank	Company name	Market share
1	TSE	Around 45%
2	OSE	Around 25%
3	Company D	Around 15%
4	Company E	Around 10%
5	Company F	Around 5%
	Total	100%

b. Emerging market

In the emerging markets, competition is mainly centered on winning initial offerings. Based on the number of listings for the past five-year period, the combined post-merger market share of the parties will be around 95% (ranked 1st). After the merger, HHI will increase by about 3,700 to about 9,100, which will not meet the safe harbor thresholds for horizontal business combination.

[Market shares in the emerging markets based on the number of listings for the past five-year period]

Rank	Company name	Market share
1	OSE (JASDAQ)	Around 70%
2	TSE (Mothers)	Around 30%
3	Company G	0%-5%
4	Company H	0%-5%
5	Company I	0%-5%
	Total	100%

(2) Current competition between the parties in the main markets

Many companies choose the markets established by TSE irrespective of whether in the first or second section, for listing. Most of the companies listed on the main markets established by OSE had listed their shares before the abolishment of the territory system (the rule that a company wishing to be listed is required to first list its shares on a market established by an exchange that controls the relevant region), or are located in the Kinki region. It is also uncommon in recent years for a company to be willing to list its shares on the main markets of OSE. In the actual trade practices, a company that intends to make a market alteration does not consider any other choices but the main markets of TSE. The tendency to be delisted from OSE is noteworthy mainly among companies that are dual-listed on the main markets of TSE and OSE.

It is, therefore, considered that the Business Combination will not have any impact on competition in the services related to listing stocks on main markets.

Below, in IV-3, we go on considering the services related to listing stocks on emerging markets.

(3) Existing competition between the parties in the emerging markets

The parties argue that a clear “division of roles” exists between Mothers, the emerging market established by TSE, and JASDAQ, the emerging market established by OSE, therefore, Mothers and JASDAQ do not directly compete with each other on the ground that many companies that have high growth potential or that wish to make a market alteration to the main market of TSE in the future are willing to list their shares on Mothers, and companies with stable earnings are willing to list their shares on JASDAQ.

To a certain degree, such tendency the parties argued is confirmed. Differences are, however, not substantial in the characteristics between Mothers and JASDAQ because a number of companies listed on JASDAQ also have high growth potential and wish to make a market alteration to the main market of TSE in the future. Actually, some listed companies considered these two markets as substitutable alternatives for each other and chose one of them for listing. In addition, though it is not found that the parties aggressively use fees and services against listed companies as means to attract new listings, it is confirmed that they consciously conduct business activities reflecting their awareness of being competitors one another in the emerging markets. As a result, it cannot be deemed that the two do not directly compete with each other.

(4) Competitive pressures from users

The parties argue that the parties are exposed to competitive pressures from users because listed companies, users of their services, have their alternatives to listings such as delisting (by means of MBO, etc.), raising funds through indirect financing and bond issue.

Indeed, a listed company may delist its shares at any time. The JFTC, however, reckons that the purpose of listing shares for a company is not only the raising of funds but it also widely includes improvement of its public reputation, improvement of its credit strength, securing of outstanding human resources etc. Considering from those above perspectives, delisting is not a choice for many companies that intend to be newly listed and that wish to maintain their listing.

In addition, though companies may also raise funds through indirect financing or bond issue, the characteristics of fund-raising are greatly different between indirect financing, etc. and stock issues. Moreover, most of the purposes of listing shares stated above may not be achieved through indirect financing, etc.

Accordingly, it is not confirmed that users are exerting competitive pressures.

(5) Competitive pressure from neighboring markets

The parties argue that there is competitive pressure from Asian exchanges as neighboring markets, though “all parts of Japan” is defined as the geographical range.

The JFTC, however, reckons that any competitive pressures from neighboring markets cannot be recognized, as stated in 2(2) above because no tendency was found among Japanese companies to positively list their shares on Asian exchanges and because the number of such listings is also not expected to increase significantly in the future.

(6) Efficiency

The parties argue that the Business Combination can improve efficiency since an annual cost reduction of around seven billion yen is expected as a result of the integration of

systems following the Business Combination (meaning the prospective amount of the cost reduction achieved not only in services related to listing stocks but in all fields of trade).

As provided for in the Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination, efficiency is to be determined from the following aspects: (i) whether the improvement in efficiency is unique to a proposed business combination (specificity); (ii) whether the improvement in efficiency is feasible (feasibility); and (iii) whether the results from the improvement in efficiency contribute to users' interest (the likelihood of increase in users' interest).

The JFTC, however, reckons that the parties have not decided the timing, etc. when they will integrate the systems and achieve the cost reduction related to the systems. Explanations they have given about specificity and feasibility related to efficiency, and about the measures that increase interest of users are also not sufficient. The Business Combination will extremely boost up the market share of the parties in services related to listing stocks on the emerging markets to the extent which creates a state of quasi-monopoly. Even if the improvement of efficiency can be materialized as the parties argued, therefore, there is no reason to assume that the parties would take competitive action such as price reductions.

Thus, the improvement in efficiency cannot be taken into our consideration.

(7) Other arguments from the parties

a. Business model of the exchanges

The parties argue that since the business model of exchanges is generally to facilitate listing of attractive companies by keep fees for services related to listing stocks at a low level and then to build revenues from obtaining transaction fees for active trades of the listed products, such incentives to seek to maintain listing fees at a low level will be the same even following the Business Combination.

It is indeed considered, as the parties argue, that the increase in the number of stocks that are actively traded could lead to large revenue from the fees for services related to trading stocks.

The JFTC, however, reckons that there is no measure that has similar to the functions and effects listing has. In addition, the price elasticity of demand for services of listing shares is considered to be low. Therefore,, it is easy for the parties in a position of quasi-monopoly in the services related to listing on the emerging markets to raise fees related to listing stocks within the range where the number of companies wishing to list their shares will not decrease.

Thus, it cannot be recognized that the parties have no discretion to decide on whether or not the parties will raise fees for services related to listing stocks, even considering the business models of the exchanges that the parties argue.

b. Existence of public function of exchanges

The parties argue that they will not irrationally raise fees for services related to listing stocks following the Business Combination because exchanges have public functions and are in the position to take the central role in efforts to recover the credibility of the emerging markets and to revitalize the markets.

As the parties argued, exchanges have their public functions, and considering the fact that

the parties have not actually raised fees related to listing stocks despite the current state that allows them to do so, there is a possibility that the existence of the public functions of exchanges limits the parties' actions to a certain degree.

On the other hand, the parties are stock corporations and also have the objective of earning profits. Even considering the public functions of exchanges, therefore, it cannot be concluded that fees for services related to listing stocks is never raised in the future.

c. Regulations on the fees and supervision by the Financial Services Agency

The parties shall be subject to notification when they change the fees in accordance with the provisions of the FIEA. The parties argue that they will not irrationally raise fees even following the Business Combination because they hold prior consultation with the Financial Services Agency and submit a notification upon obtaining the Agency's consent. As the parties argued, according to the practical process for changing fees, there is a possibility that the raising of fees by the parties will be restricted, to a certain degree, from an effect of supervision by the Financial Services Agency.

On the other hand, it is also fact that the regulations concerning the fees under the provisions of the FIEA are a notification system, and their discretion over which type of fee they create is, in principle, being kept in their hands. Exchanges are therefore allowed to raise fees under the FIEA.

Even in light of the regulations concerning fees and supervision by the Financial Services Agency, therefore, the JFTC would not be convinced by the parties' such argument that the parties would not raise fees for services related to listing stocks following the Business Combination.

4. Assessment under the Antimonopoly Act

(1) Assessment concerning main markets

As stated in 3(2) above, as for the main markets, it is true that a company planning to make a market alteration considers no other choices than that of moving to the TSE main market. The tendency to delist shares from OSE is prominent among companies already listed on the OSE main market. Accordingly, it is considered that the Business Combination will have no impact on the competitive situation, and the JFTC thus concluded that the Business Combination may not substantially restrain competition in any particular field of trade.

(2) Assessment concerning emerging markets

With respect to the emerging markets, competition between the parties will be lost as a result of the Business Combination, which will create a state of quasi-monopoly. There will be no effective constraint on the market power of the parties to propel the fees.

In addition, with respect to services related to listing stocks on the emerging markets, it is not confirmed that the parties aggressively use fees as a method for attracting new listings. However, according to the results of interviews and questionnaire survey with users, fees related to listing stocks are not insignificant for a company that plans to list its shares on an emerging market. Given the present circumstances, if either of the parties raises fees related to listing stocks to a substantially high level, it will place the fee-raising party at a competitive disadvantage against the other party. Accordingly, it is confirmed that with respect to raising fees there is a certain degree of mutual constraint between the parties.

Considering the above, a situation may arise in which the parties, which will stand in a position of quasi-monopoly in services related to listing stocks on the emerging markets as a result of the Business Combination, may have some discretion to raise fees for services related to listing stocks. It is therefore considered that the Business Combination may substantially restrain competition in the field of trade for the services related to listing stocks on the emerging markets.

5. Proposal for remedies by the parties

As stated in 4(2) above, the Business Combination may substantially restrain competition in services related to listing stocks on the emerging markets. The parties therefore proposed adopting the following remedies so that decisions concerning fees related to listing stocks on the emerging markets will depend on the judgment of outside experts, and that the parties alone cannot decide such fees.

(i) While the establishment, abolishment and change, in the amount, of fees for services related to listing stocks on the emerging markets are matters subject to a resolution by the parties' boards of directors, each of them cannot conclude their resolution unless the respective standing advisory committee of the TSE standing advisory committee and the OSE standing advisory committee (both are currently named "Market Structure Committee") approves. A resolution by the advisory committee shall be made by a majority of the advisory committee members.

(ii) The TSE advisory committee shall, in accordance with the existing Advisory Committee Rules of TSE, consist of those who are appointed by the TSE board of directors from "people who are board members, executive officers or employees of trading participants" or "people who possess insights into the financial instruments exchange market, but are not those engaged in daily duties at a company carrying out business directly related to the financial instruments business".

(iii) The OSE advisory committee shall consist of "people who are board members, executive officers or employees of trading participants" or "academic experts other than trading participants", and those who are appointed by the president and CEO of OSE in accordance with the existing Advisory Committee Rules of OSE.

(iv) If the parties conduct consolidation, etc. of the operating companies of the emerging markets following the Business Combination, the parties shall establish an Advisory Committee in the board of directors that is substantively equivalent to the existing Market Structure Committee in size, member attributes, and function, thereby, to enforce the board of directors to have approval from the Advisory Committee before they proceed their resolution on establishment, abolishment of fees related to listing and the change of the amount of such fees.

(v) The implementation period of those remedies shall not be determined. The establishment or abolishment of fees, the change of fee amounts, the change of the Advisory Committee Rules (limited to the changes concerning fees related to listing stocks on the emerging markets), the change of the Rules on the Board of Directors (limited to the changes concerning fees related to listing stocks on the emerging markets), etc. shall be reported to the JFTC. The reporting period shall be ten (10) years following the Business Combination.

6. Assessment of remedies

(1) Pros and cons of measures other than structural ones

The remedies for competitive problems, in principle, are structural remedies such as

business transfer. The operation of an emerging market is not a business that is expected sure profits on its own. It is therefore difficult to find a transferee when, for example, the transfer of either Mothers or JASDAQ is sought. Even if a transferee is found, it is considered that many of the companies listed on the market subject to the transfer would have objections to becoming listed on a market other than those established by TSE or OSE. Accordingly, it is expected that there will be an increasing number of market alterations to be listed on other markets. Structural remedies are therefore not realistic.

Therefore, with regard to the case, it is difficult to transfer the business of the market of either Mothers or JASDAQ. If, however, there are remedies other than structural ones that are able to eliminate the problems concerning raising fees for services related to listing stocks stated in 4(2) above, we cannot say that structural remedies are essential as remedies.

(2) Appropriateness of remedies proposed by the parties

None of the members of the TSE advisory committee and the OSE advisory committee belongs to the parties. The JFTC assumes that this enables those members to express their opinions independently from the parties' policies on the changing of fees.

In addition, those currently dominate members in the advisory committees are board members, executive officers, or employees of securities companies that often become managing underwriters in the services related to listings stocks on the emerging markets or often become members of stock underwriting syndicates. This means that they are not only knowledgeable in the securities industry but also with IPO needs for enterprises to be fulfilled.. As a result, the members of the advisory committees tend to share common interests with their clients wishing to list their shares. They may, therefore, function as a constraint on inappropriate raise of fees.

With respect to those remedies proposed by the parties, in addition to the above, considering the public functions that exchanges have and an effect of supervision by the Financial Services Agency concerning the process of changing fees that are possibly restraining the parties' discretion to raise fees for services related to listing stocks to a certain extent, it is reckoned that such remedies that the parties proposed will be effective against the competitive concerns under the Antimonopoly Act arise following the Business Combination.

7. Conclusion

The JFTC reckons that the Business Combination may not substantially restrain competition in the field of trade for the services related to listing stocks on main markets and that, given the remedies the parties proposed, the Business Combination may not substantially restrain competition in the field of trade for the services related to listing stocks on emerging markets.

V. Services related to trading actuals

1. Outline

A service related to trading actuals means a service that allows investors to conduct a trade in actuals by establishing a financial instruments exchange market or by operating a Proprietary Trading System (hereinafter, a “PTS”), either of which are necessary for such trading. A domestic exchange can only handle stocks listed on its own markets in services related to trading stocks.

PTS is a system by using electronic data processing systems to make contracts of trading shares etc. PTS operation is permitted under the FIEA as part of the business of a Financial Instruments Business Operator. A PTS operator does not engage in services related to listing and can handle all stocks listed on exchanges. Despite such differences from exchanges, a PTS operator has the obligation to make public announcements of price information, etc. in the same manner as exchanges. With respect to services related to trading actuals, a PTS operator conducts operations similar to those conducted by exchanges.

2. Particular field of trade

(1) Service range

Actuals handled in services related to trading actuals are shares, government bonds, convertible bonds and ETFs etc. The characteristics of those instruments greatly differ from one another. As a result, there is no substitutability of demand between different actuals. Accordingly, the JFTC defines each service range for each of actuals.

Below, we discuss the services related to trading shares that account for a large portion of the services related to trading actuals conducted by the parties.

(2) Geographical range

The services related to trading shares are conducted by exchanges and PTS operators in Japan. Accordingly, its geographical range is defined as “all parts of Japan”.

3. Review on substantial restraint of competition

(1) Changes in market structure

The combined market share of the parties in the services related to trading shares is around 95%. Following the Business Combination, HHI will increase by about 1,000 to around 9,300, which will not meet the safe harbor thresholds for horizontal business combination. In addition, PTS operators (Company J and Company K in the table below) and local exchanges exist as competitors of the parties, but the market share of each is small.

[Market shares of trading share related services in 2011]

Rank	Company name	Market share
1	TSE	Around 90%
2	OSE	Around 5%
3	Company J	0%-5%
4	Company K	0%-5%
	Others	Marginal
	Total	100%

(2) Current competition between the parties

The parties argue that there is no direct competitive relationship between the parties because (i) no competitive relationship between the parties regarding single-listed shares (meaning shares listed only on one of the parties) exists, and with respect to trades of dual-listed shares (meaning shares listed on both of the parties; the same shall apply hereinafter), trading is concentrated in one of the two markets because of the characteristics of liquidity (liquidity means the size of the aggregate trading value of a market [depth of the market], and the larger the depth of the market, the more orders can be filled, and there is a tendency for liquidity to be concentrated in one place), and there is no effective measure to transfer liquidity from the market in which trading is mostly conducted to another market, (ii) there will be no significant change in competition between the parties following the Business Combination because TSE has an extremely large market share compared to OSE whose market share is small, and (iii) TSE does not view OSE as a competitor.

Currently, many securities companies take the best execution policies (this is a policy of a securities company in order to execute a customer order for securities transactions under the best terms and conditions, and a securities company must establish and publicly announce its best execution policy pursuant to the provisions of the FIEA) under which a securities company shall place emphasis on liquidity to choose a market for executing a customer order when there is no specific instruction from the customer. It is, therefore, not easy with respect to dual-listed stocks to transfer liquidity from a major market to another market. It is, however, found that the parties sought to capture more liquidity by improving its trading systems and measures for trading including seizing of liquidity from the other while recognizing themselves as competitors one another. Therefore, it is not recognized that there is no direct competitive relationship between the parties. Since TSE has an overwhelmingly large market share in the services related to trading shares, however, it is therefore not confirmed that OSE was exerting strong competitive pressure against TSE.

(3) Conditions of competitors

a. PTS operators

PTS operators have recently been growing within the services related to trading shares primarily because investors are highly likely to be able to perform transactions with more favorable terms and conditions with their highly sophisticated trading systems, low fees, and finely divided step values for bid and ask prices (prices for sales and purchases).

On the other hand, the market share of each PTS operator is 0%-5%, as stated in 3(1)

above. They, therefore, cannot be deemed as leading competitors of the parties. In addition, as stated below, there are regulations that are considered to place restrictions on new entries and growth of PTS operators.

b. Regulations on PTS

As one of the rules that are not applicable to exchanges but are applicable only to PTS's, the "5% rule" that concerns tender offer bids exists (a regulation that requires investors in a purchase of shares in private transactions etc. to launch a tender offer bid if they will own more than 5% of the share certificates, etc. of any company as a result of such private transaction etc.). Since this rule makes it impossible for them to purchase shares through a PTS if such acquisition meets the 5% threshold concerning share certificates etc., many institutional investors do not currently use PTS's. It is, therefore, considered that the regulation places restrictions on new entries and growth of PTS operators.

The Financial Services Agency, however, plans to amend the 5% rule. When the amendment is made, a trade through a PTS that meets specific requirements will become exempt from application of the 5% rule (see reference, below). As a result of the amendment, the use by institutional investors of PTS's that will be exempt from application of the rule is expected to increase. Accordingly, it is considered that competitive pressure from PTS operators against the parties will become stronger.

In the results of interviews and questionnaire survey with securities companies and investors, there were also numerous opinions that many institutional investors would use PTS's if PTS's became exempt from application of the 5% rule.

Reference: Financial Services Agency website

<http://www.fsa.go.jp/news/23/syouken/20120626-1.html>

(Public announcement of the "Cabinet Order on Partial Revision of the Order for Enforcement of the Financial Instruments and Exchange Act (bill)" and the "Cabinet Office Ordinance on Partial Revision of the Cabinet Office Ordinance on Disclosure Required for Tender Offer for Share Certificates, etc. by Person Other than Issuer (bill)")

(4) Competitive pressures from users

The parties argue that users are strongly exerting competitive pressure mainly because institutional investors can also trade on overseas exchanges.

Most of the shares listed on the markets established by the parties are, however, not listed on overseas exchanges. Even if shares are listed both on domestic and overseas exchanges, their liquidity on overseas exchanges is not sufficient. Non-Japanese shares listed on overseas exchanges are also generally considered different from shares listed on the markets established by the parties in terms of procedures etc. necessary for trading. For an investor planning to invest in shares listed on the markets established by the parties, therefore, an overseas exchange is not an option. Accordingly, it is not recognized that users are exerting competitive pressure.

(5) Competitive pressures from neighboring markets

The parties argue that there is competitive pressure from the neighboring markets of other financial instruments and overseas exchanges.

It is, however, not recognized that there is competitive pressure from other financial instruments mainly because the characteristics of those instruments are greatly different from the characteristics of shares and because even if there are instruments similar to shares, their liquidity is not sufficient compared to that of shares. It is also not recognized that there is competitive pressure from overseas exchanges as stated in (4) above.

(6) Efficiency

The parties argue that, as stated in IV-3(6), the Business Combination can improve efficiency also in the services related to trading shares because an annual cost reduction of around seven billion yen is expected from it as a result of the integration of systems following the Business Combination.

As stated in IV-3(6), however, the parties have not decided the timing, etc. when they will integrate the systems and by which they will achieve the cost reduction related to the systems, etc. Explanations they have given about specificity and feasibility related to efficiency and about the measures by which the interests of users will increase are also not sufficient. As a result of the Business Combination, the market share of the parties in services related to trading shares will become extremely large, creating a state of quasi-monopoly. Even if the improvement of efficiency can be materialized as they argued, therefore, there is no reason to assume that the parties would take competitive action such as price reductions.

Accordingly, we cannot take the improvement of efficiency into our consideration.

(7) Other arguments of the parties

The parties argue, as stated in IV-3(7) c, that they will not irrationally raise fees even following the Business Combination because exchanges' changes in fees shall be subject to notification in accordance with the provisions of the FIEA and because the Financial Services Agency supervises them. As stated in IV-3(7) c, as an effect of supervision by the Financial Services Agency, the parties' discretion to raise fees is possibly restrained to a certain degree. On the other hand, since the fee regulations under the provisions of the FIEA adopt the notification system, it cannot be considered that the parties would not raise fees. In addition that, whereas competitive measures in services related to trading shares are not limited only to differences in the amount of listing fees but also those in trading system competence and in the narrowness of each range of step value for bid and ask prices, etc., it cannot be considered that the Financial Services Agency's supervision based on the notification system can prevent competitive concerns from arising.

4. Japan Security Clearing Corporation taking clearing operations of PTS operators

When sales and purchase of shares are made, clearing operations such as assumption of obligations on transfer of shares and payment of consideration become necessary. Currently, Japan Security Clearing Corporation (hereinafter, "JSCC"), a subsidiary of Tokyo Stock Exchange Group, Inc., assumes obligations of clearing participants that conducted sale and purchase of shares not only on TSE and OSE but also on local exchanges and PTS operators under the same levels of terms and conditions. This forms the basis of the systematic structure that ensures the execution of sales and purchase of shares without counterparty risk (credit risk related to counterparty to trading stocks) also on local exchanges and PTS operators.

Accordingly, it is considered that the JSCC's assumption of obligations arising from the sales and purchase of shares through PTS's is necessary to promotion of new entry and growth of PTS operators.

If, however, the JSCC forecloses or gives discriminatory treatment to PTS operators; it would impede new entry and growth of PTS operators and result in a loss of competitive pressure from PTS operators against the parties. If, especially, PTS operators expand their market shares because of the amendment of the 5% rule as stated in 3(3)b and are brought to have strong competitive pressure against the parties, it is considered that JSCC may take such action.

5. Assessment under the Antimonopoly Act

TSE has held an overwhelmingly strong position in the market with respect to services related to trading shares even prior to the Business Combination. Then, whereas it is not recognized that OSE was exerting strong competitive pressure against TSE, due to the Business Combination, OSE will cease to be the only substantive competitor of TSE. As a result, the dominant position of TSE on the market will be maintained and reinforced.

On the other hand, there are PTS operators as competitors that are growing rapidly in recent years. As a result of amending the regulations, it is considered that the market share of the PTS operators will increase further and will exert a certain degree of braking power against the parties.

If, however, JSCC forecloses or gives discriminatory treatment to PTS operators; this could result in a loss of competitive pressure from the PTS operators against the parties. This could also give rise to a condition in which the parties may have some discretion over determining prices, etc. Accordingly, it is considered that the parties will substantially restrain competition in services related to trading shares.

6. Proposal for and assessment of remedy by the parties

The parties have proposed to the JFTC a remedy by which JSCC will continuously assume clearing operations concerning the sales and purchase of shares for competitors of the parties in the future on terms and conditions that are not substantially discriminatory and do not place competitors at a competitive disadvantage.

If the remedy the parties proposed is implemented, it is considered that a condition in which PTS operators can continue to entrust JSCC with the clearing operations will be ensured and that competitive pressure from the PTS operators against the parties will not be lost.

7. Conclusion

It is considered that, given the remedy the parties proposed, the Business Combination may not substantially restrain competition in the field of trade for services related to trading shares.

VI. Services related to trading concerning derivatives transactions

1. Outline

(1) Derivatives transaction

A derivatives transaction means a transaction whose economic value is derived from the economic value of some underlying assets. Underlying assets for derivatives transactions include shares, bonds, interest rates, foreign exchange, and various commodities (gold, grain, etc.). The underlying assets for derivatives transactions conducted on both TSE and OSE are shares (individual equities) or stock indexes. The main stock index used as underlying assets for derivatives transactions conducted on TSE is the Tokyo Stock Price Index (hereinafter, “TOPIX”) and that on OSE is the Nikkei Stock Average.

(2) Types of derivatives transactions

Derivatives transactions are categorized by type into futures transaction, option transaction, and swap transaction. Those currently conducted on TSE and OSE are futures transactions and option transactions.

A futures transaction means a transaction to conclude in advance a contract that specifies the transaction price, etc. of a specific underlying asset on the condition that the trade will be settled during a specified period in the future. Futures transactions currently conducted on both TSE and OSE are Japanese stock index futures. The main Japanese stock index futures transactions conducted on TSE are TOPIX futures transactions with TOPIX underlying, and those conducted on OSE are Nikkei 225 futures transactions with the Nikkei Stock Average underlying.

An option transaction means a transaction to buy or sell the right to buy or sell a specific underlying asset during a specified period in the future at a specific exercise price. Option transactions currently conducted on both TSE and OSE are stock index option transactions and individual stock option transactions.

(3) Services related to trading concerning derivatives transactions

Services related to trading concerning derivatives transactions mean services to establish a financial instruments exchange market in which derivatives transactions are conducted and to strike sales and purchases between investors.

Below, we discuss Japanese stock index futures transactions and stock index option transactions that account for a large portion of the services related to trading concerning derivatives transactions conducted by the parties.

2. Particular field of trade

(1) Service range

a. Types of underlying assets

The parties argue that their service ranges should be defined by the whole set of derivatives transactions or by the whole set of derivatives transactions with underlying assets of shares or stock indexes.

There are, however, in general, two purposes of derivatives transactions: risk hedging and speculation. In trades for risk-hedging purposes, especially, it is considered that these trades may not be substituted with another derivatives transaction with a completely different type of underlying asset.

In the results of interviews and questionnaire survey with securities companies and investors, there were also many opinions that derivatives transactions with the underlying assets of Japanese stock indexes may not be substituted with derivatives transactions with other types of underlying assets, no matter whether or not the trades are conducted for risk-hedging purposes.

Accordingly, it is considered to be no substitutability between derivatives transactions with the underlying assets of Japanese stock indexes and derivatives transactions with other types of underlying assets. Consequently, it is recognized that the service range for the derivatives transactions with the underlying assets of Japanese stock indexes is different from that for derivatives transactions with other types of underlying assets.

b. Futures transactions and option transactions

The parties argue that futures transactions and option transactions constitute the same service range.

According to the results of interviews with securities companies and investors, however, economic benefits from futures transactions and option transactions are not identical for many users, especially when these trades are conducted for risk-hedging purposes. It is, therefore, considered that, in principle, no substitutability exists between these transactions. Thus, it is recognized that futures transactions and option transactions constitute different service ranges.

c. Over-the-counter transactions of derivatives

Derivatives transactions are comprised of derivatives transactions traded on exchanges (market transactions of derivatives) and derivatives transactions traded outside the exchanges (over-the-counter transactions of derivatives). The parties argue that the service range market transactions of derivatives constitute and that over-the-counter transactions of derivatives constitute are the same.

When the two are compared, however, the results of interviews with securities companies and investors indicate that there are fundamental differences between them. Those include: a counterparty risk is associated with over-the-counter transactions of derivatives; over-the-counter transactions of derivatives lack price transparency because trade terms are not disclosed; parties to over-the-counter transactions of derivatives have some discretion between one another over setting the terms and conditions of trade; and market transactions of derivatives are conducted electronically and for large orders while over-the-counter transactions of derivatives are still conducted by order placement via phone and other means which lead to fundamental difference between them such as difficulty of processing large volumes of transactions on a real-time basis.

Considering the above, it is recognized that market transactions of derivatives and over-the-counter transactions of derivatives constitute different service ranges.

d. Summary

As mentioned above, with respect to derivatives transactions, the JFTC defines the service range as “services related to trading concerning Japanese stock index futures” and “services related to trading concerning Japanese stock index option transactions.” There is also a decision not to include over-the-counter transactions of derivatives in the service

range because the parties do not engage in services related to trading concerning over-the-counter transactions of derivatives.

(2) Geographical range

The parties argue that the geographical range for services related to trading concerning derivatives transactions is all parts of the world.

A large portion of users of services related to trading concerning Japanese stock index futures and services related to trading concerning Japanese stock index option transactions are foreign investors and securities companies (principal transactions). Of these two, most of securities companies (principal transactions) are certain type of securities companies such as major domestic securities companies and foreign owned securities companies. These foreign investors and securities companies can handle trading on overseas exchanges with a certain degree of ease.

Looking at domestic investors, institutional investors are offered services related to trading on overseas exchanges by major securities companies, etc., while individual investors are offered services related to trading on overseas exchanges by pure-internet-play securities companies with relatively low fees.

It is, therefore, found that users can participate in trading on overseas exchanges with a certain degree of ease. Accordingly, the JFTC sets the geographical range for either of the service ranges defined in (1) d above as “the entire world”.

Note that, despite the definition of the geographical range as being “the entire world,” the overseas exchanges that actually handle Japanese stock index futures and Japanese stock index option transactions are limited to only a few including Company L and Company M stated in 3(1) below.

3. Review of substantial restraint of competition

(1) Change in market structure

Regarding Japanese stock index futures transactions, the combined market share of the parties is around 70% and they rank first. After the Business Combination, HHI will increase by about 2,000 to around 5,300, which will not meet the safe harbor thresholds for horizontal business combination.

On the other hand, with respect to Japanese stock index option transactions, the combined market share of the parties is more than 95%. After the Business Combination, HHI will increase by less than 100 to around 9,600, which will meet the safe harbor thresholds for horizontal business combination. The JFTC concluded that competition in any particular field of trade would not be substantially restrained.

Below, we will discuss Japanese stock index futures transactions.

[Market shares in Japanese equities index futures transactions in 2011]

Rank	Company name	Market share
1	OSE	Around 45%
2	TSE	Around 20%
3	Company L	Around 20%
4	Company M	5%-10%
	Others	0%-5%
	Total	100%

[Market shares in Japanese stock index option transactions in 2011]

Rank	Company name	Market share
1	OSE	More than 95%
2	Company N	0%-5%
3	TSE	0%-5%
	Total	100%

(2) Current competition between the parties

a. Arguments by the parties

The parties argue that they do not directly compete with each another in services related to trading stocks concerning Japanese stock index futures transactions because of the following reason. According to their arguments, whereas TOPIX futures transactions and Nikkei 225 futures transactions are the market heavyweights in Japanese stock index futures transactions handled by the parties, underlying assets of TOPIX are different from those of Nikkei Stock Average. Due to such differences in these indexes' characteristics, there is a low level of substitutability between them.

b. Review

(a) Substitutability between TOPIX futures transactions and Nikkei 225 futures transactions

It is generally described that TOPIX futures transactions are frequently used for risk-hedging purposes by domestic institutional investors that implement asset management using TOPIX as a benchmark (a standard against which the investment performance of asset management can be evaluated) and that Nikkei 225 futures transactions are often used by foreign investors and individual investors that carry out short-term trading for speculative purposes. This description meets the parties' arguments. Investors, especially those of pension funds etc., who are obliged to use TOPIX as a benchmark under their general contractual conditions, investment policies etc. exist. , Such investors do not use Nikkei 225 futures transactions but rather TOPIX futures transactions.

A large portion of users of TOPIX futures transactions and of those of Nikkei 225 futures transactions are, however, foreign investors and securities companies (principal transactions). Apart from a few differences such as the fact that individual investors have a higher percentage as users of Nikkei 225 futures transactions, there is no crucial difference in users of these two types of transactions.

The parties have also admitted that institutional investors or securities companies (principal transactions) etc., other than domestic institutional investors that carry out asset management using TOPIX as a benchmark sometimes invest in both TOPIX futures transactions and Nikkei 225 futures transactions.

Moreover, according to the results of questionnaire survey conducted with securities companies and investors, the opinion were divided into the following two: one is that they use TOPIX futures transactions and Nikkei 225 futures transactions alternatively as taking their liquidity, correlativity and execution cost etc. into comprehensive consideration and the other is that they do not use these two types of transactions alternatively.

Considering the above, with respect to TOPIX futures transactions and Nikkei 225 futures transactions, it is reckoned that the users are varied from “those who are highly likely to selectively use both due to the high substitutability for the users between TOPIX futures transactions or Nikkei 225 futures transactions” to “those who see the substitutability between TOPIX futures transactions and Nikkei 225 futures transactions low and see themselves those not likely to selectively use either TOPIX futures transactions and Nikkei 225 futures transactions, then, are exclusively use either TOPIX futures transactions or Nikkei 225 futures transactions”.

(b) Competition between the parties with respect to Japanese stock index futures transactions

As stated in (a) above, there are some users that alternatively use TOPIX futures transactions and Nikkei 225 futures transactions. The parties compete with each other targeting such users. It is recognized that TSE especially aggressively acted to seize liquidity from Nikkei 225 futures transactions on OSE.

It is also recognized that the parties knowingly compete with each other in terms of fees, new product development, etc. in the entire range of services related to trading concerning Japanese stock index futures transactions.

(c) Summary

It is recognized that the parties compete with each other regarding Japanese stock index futures transactions.

(3) Status of competitors of the parties

With respect to Japanese stock index futures transactions, Company L and Company M are competitors of the parties. L and M are overseas undertakings and have certain degrees of market share in Japanese stock index futures transactions.

Company L handles Nikkei 225 futures transactions and exerts strong competitive pressure against OSE which also handles Nikkei 225 futures transactions. Company L has competitive strength in many respects such as the legal systems of the country in which it is located and the environment of the markets in which it operates.

It is, however, considered that Nikkei 225 futures transactions Company L deals with do not have effective competitive pressure against TOPIX futures transactions traded on TSE. According to the results of questionnaire survey conducted with securities companies and investors, there were some opinions that the substitutability between Nikkei 225 futures

transactions offered by Company L and TOPIX futures transactions traded on TSE is lower than that between Nikkei 225 futures transactions offered by Company L and Nikkei 225 futures transactions traded on OSE. While it is recognized that TSE is strongly aware of Nikkei 225 futures transactions traded on OSE as a competitive instrument against TOPIX futures transactions traded on TSE, according to the results of interviews conducted with securities companies and investors, there was no opinion that TSE and Company L competed with each other reflecting their strong awareness of being competitors. The JFTC could not confirm the fact that TSE is aware of Nikkei 225 futures transactions traded on Company L as a competitive instrument against TOPIX futures transactions traded on TSE. Considering the above, while we can assess Company L as a leading competitor of the parties, Nikkei 225 futures transactions traded on Company L do not exert effective competitive pressure against TOPIX futures transactions traded on TSE.

There is also Company M that handles Nikkei 225 futures transactions as a competitor of the parties. The market share it holds is, however, small and we could not find the fact that the parties were engaging in aggressive competition based on their awareness of Company M as a competitor. As a result, we cannot assess Company M as a leading competitor of the parties. In addition, as Company L, Company M does not handle TOPIX futures transactions and it is not thus considered that Company M exerts effective competitive pressure with respect to TOPIX futures transactions.

(4) Competitive pressure from neighboring markets

The parties argue that over-the-counter transactions of derivatives as a neighboring market exert competitive pressure.

As stated in 2(1) c, however, there are fundamental differences between market transactions of derivatives and over-the-counter transactions of derivatives including that over-the-counter transactions of derivatives, unlike with market transactions of derivatives, pose a counterparty risk, lack price transparency, and cannot process large volumes of orders because order placement via phone and other methods is still used for over-the-counter transactions. Accordingly, it is not considered that there is competitive pressure from over-the-counter transactions of derivatives as a neighboring market against market transactions of derivatives.

According to the results of interviews and questionnaire survey conducted with securities companies and investors, there was no opinion that over-the-counter transactions of derivatives as a neighboring market exert competitive pressure against Japanese stock index futures transactions.

(5) Efficiency

The parties argue that the Business Combination can improve efficiency in services related to trading concerning stock index futures transactions since an annual cost reduction of around seven billion yen is expected as a result of the integration of systems following the Business Combination, as stated in IV-3 (6).

As stated in IV-3 (6), however, the parties have not decided the timing, etc. when they will integrate the systems and by which they will achieve the cost reduction related to the systems. Explanations they have given about specificity and feasibility related to efficiency and about the means by which the interests of users will increase are also not sufficient.

Accordingly, we cannot take the improvement of efficiency into our consideration.

(6) Other arguments of the parties

The parties argue, as stated in IV-3(7) c, that they will not irrationally raise fees even following the Business Combination because they shall submit a notification and then be subject to the supervision of the Financial Services Agency under the provisions of the FIEA.

As stated in IV-3(7) c, it can be said that the parties' discretion to raise fees is being restrained to a certain extent as an effect of the supervision by the Financial Services Agency. On the other hand, since the regulation of the provisions of the FIEA is a notification system, it cannot be ensured that the parties would not raise their fees. In addition, with respect to Japanese stock index futures transactions, whereas the tools of competition such as fees, new product developments etc. exist, the Financial Services Agency's supervision based on the notification system cannot be deemed as those of such which can prevent competitive concerns from arising.

4. Assessment under the Antimonopoly Act

Following the Business Combination, the parties will have a market share of around 70% in Japanese stock index futures transactions. Company L will continue to be a leading competitor of the parties following the Business Combination. It is considered that Company L has strong competitive strength against OSE while the competitive pressure of Company L will not directly affect TOPIX futures transactions traded on TSE. There is no other decision factor that is considered as maintaining and promoting competition such as competitive pressures from neighboring markets.

Users of services relating to trading concerning TOPIX futures transactions are largely categorized into (i) users that are highly likely to selectively use TOPIX futures transactions and Nikkei 225 futures transactions because for such users substitutability between those two types of transactions is high (hereinafter "Selective Users") and (ii) users that exclusively use TOPIX futures transactions because for such users substitutability between TOPIX futures transactions and Nikkei 225 futures transactions is low (hereinafter "TOPIX Core Users"). Aggressive competitive actions of TSE against OSE that mainly focus on Selective Users will be lost as a result of the Business Combination.

For example, if the parties raise fees related to TOPIX futures transactions, there is a possibility for the Selective Users to switch to other instruments. The most promising alternative to be switched to is, however, Nikkei 225 futures transactions currently dealt with by OSE, therefore, switching to other instruments due to their raising of fees will be absorbed within the same company following the Business Combination. In addition to that, the TOPIX Core Users will also have no choice but to accept the fee raise related to TOPIX futures transactions. Accordingly, it is considered that the parties will be successful in raising fees related to TOPIX futures transactions following the Business Combination.

In addition, it is considered that incentives for the development of new products related to TOPIX, etc. will likely decline as a result of the Business Combination. Negative effects from such loss of competition will impact both on the TOPIX Core Users and on the Selective Users. Therefore, it is considered that a situation where the parties independently have some discretion to raise fees may arise following the Business Combination that may substantially restrain

competition.

5. Proposal for remedies by the parties

As stated in 4 above, the Business Combination may substantially restrain competition in services related to trading concerning Japanese stock index futures transactions. The parties, therefore, proposed adopting remedies regarding the license of TOPIX, etc. that centers on the extension of trading hours for TOPIX futures transactions permitted to NYSE Liffe.

(1) NYSE Liffe

NYSE Liffe is an exchange located in London and belonging to the NYSE Euronext Group. It handles the world's largest volumes of trades regarding interest futures transactions, interest rate option transactions and stock index futures transactions, etc.

NYSE Liffe is licensed the rights concerning TOPIX from TSE and has been handling TOPIX futures transactions since 2010.

(2) Content of the remedies the parties proposed

a. Extension of trading hours for TOPIX futures transactions on NYSE Liffe

In the contract with NYSE Liffe, TSE places restrictions on the trading hours for TOPIX futures transactions on NYSE Liffe so that they are traded from 3 p.m. to 6 a.m. JST (to 5 p.m. in the daylight savings season in the United Kingdom) to avoid trading hour overlaps with the time period of 9 a.m. to 3 p.m. JST where the trading volume of TOPIX futures transactions on TSE is comparatively large. TSE will provide NYSE Liffe with the license regarding the use of TOPIX on reasonable terms and conditions by the closing date of the Business Combination in order to allow the handling of TOPIX futures transactions by NYSE Liffe during the time period of 9 a.m. to 3 p.m. JST (10 a.m. to 3 p.m. JST excluding the daylight savings season in the United Kingdom) where the trading volume of TOPIX futures transactions on TSE is comparatively large.

b. Reduction of license fees for TOPIX for NYSE Liffe

TSE collects license fees from NYSE Liffe concerning the use of TOPIX. TSE will make the license fees below the current levels in response to NYSE Liffe's request.

c. Granting of a license for indexes other than TOPIX

Upon request from NYSE Liffe, TSE will newly provide NYSE Liffe with a license on the use of TOPIX-related indexes other than TOPIX itself on reasonable terms and conditions.

6. Assessment of the remedies

When the remedy stated in 5(2) a is implemented, NYSE Liffe will have a direct competitive relationship with the parties during the hours the trading volume of TOPIX futures transactions on TSE is comparatively large. When the remedy stated in 5(2) b is implemented, NYSE Liffe's profitability with respect to TOPIX futures transactions will improve, thereby reinforcing NYSE Liffe's competitive strength in these transactions.

In addition, when the remedy stated in 5(2) c is implemented, incentives for the parties for development of new products will unlikely decline and should be maintained at the same level as those the parties have prior to the Business Combination.

Considering the above, since a party can conduct services related to trading concerning stock index futures transactions only if it has trading systems and a license on the use of stock shares indexes, licenses on TOPIX etc. granted to NYSE Liffe which handles the world's largest trading volumes with respect to derivatives transactions would strengthen the existing competitors in services related to trading concerning Japanese stock index future transactions so that they will acquire an effective constraint against the parties. Therefore, it is considered that the above would be effective remedies.

7. Conclusion

It is considered that the Business Combination may not substantially restrain competition in the field of trade for the services related to trading concerning Japanese stock index futures transactions if the remedies that the parties proposed are implemented.

(Reference) Flowchart of Business Combination Review

