

Major Business Combination Cases in Fiscal Year 2011

June 20, 2012

Japan Fair Trade Commission

For the purpose of ensuring the transparency of reviews undertaken by the Japan Fair Trade Commission (hereinafter referred to as “JFTC”) on business combination cases, and for the purpose of improving the predictability of the JFTC’s reviews on cases, the JFTC has published “Guidelines to Application of the Antimonopoly Act concerning Review of Business Combination (hereinafter referred to as the “Business Combination Guidelines”)” in applying the Antimonopoly Act (hereinafter referred to as “the AMA”) to the JFTC’s reviews on business combinations. In addition, the JFTC has also published the results of the JFTC’s reviews of major business combination cases each fiscal year.

This year, the JFTC also publishes the results of reviews of major business combinations in fiscal year 2011 and provides the data associated with these reviews.

The JFTC sincerely hopes that companies planning business combinations will make use of the announced outcomes of the JFTC’s reviews of major business combination cases, as well as the Business Combination Guidelines.

Inquiries: Mergers and Acquisitions Division
Economic Affairs Bureau, General Secretariat
Japan Fair Trade Commission
Telephone: 03-3581-3719 (direct)
Website: <http://www.jftc.go.jp/>

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(*Note 1) The order of the cases in this document complies with the order used in the Japan Standard Industry Classification, applied to products subject to reviews of business combinations.

(*Note 2) Confidential information and competitor names, etc. associated with the parties concerned are not disclosed in the respective cases.

(*Note 3) Market size, market share, HHI levels after business combinations, and number counts, i.e. the increment, etc. of the HHI after business combinations, are shown as “approximate figures

estimated by the JFTC” based on the calculations according to the documents/materials submitted by the parties concerned (note that the term “HHI” in this context refers to the Herfindahl-Hirschman Index; the same shall be applied hereafter). When it comes to market share, in principle, these figures are shown at 5% intervals.

(*Note 4) Among the 275 cases notified to and received by the JFTC in 2011, the JFTC is publishing herein all three cases for which it completed reviews in 2011 upon the second review (Case 2 and the two cases in Case 6).

(*Note 5) Among these nine cases, the JFTC judged the following two cases not to be problematic in light of the AMA on the premise of implementing the remedies proposed by the parties concerned: Case 2, the merger of NIPPON STEEL CORPORATION and Sumitomo Metal Industries, Ltd.; and Case 6, the acquisition of shares of Viviti Technologies Ltd. by Western Digital Ireland, Ltd. in the integration of the businesses engaged in the manufacture and sale of hard disk drives (see Appendix 3).

Case 1 Acquisition of Shares of BATHCLIN CORPORATION by Earth Chemical Co., Ltd.

Part I Outline of the transaction

In this case, Earth Chemical Co., Ltd., which is engaged in the business of the manufacture and sale of bath additives, etc. (hereinafter referred to as “Earth Chemical”) planned to acquire all the shares of BATHCLIN CORPORATION, which is also engaged in the business of the manufacture and sale of bath additives, etc. (hereinafter referred to as “Bathclin”). The provision of the AMA, applied to the case, is Article 10 of the AMA.

Part II Particular field of trade

The product, thought to be the subject of competition between the parties, is bath additives.

1. Product range

There are various bath additives with warming, cleaning, relaxing, and skin moisturizing effects, etc. The forms, sale prices, and other factors are also different for each product. However, they are all made of a mixture of sodium bicarbonate, mirabilite, plant extracts, aromatics, and other raw materials. This means that various bath additives can basically be produced using the same manufacturing process. It can therefore be considered that substitutability in terms of supply is high.

For these reasons, the JFTC has defined the product range as “bath additives.”

2. Geographic range

With regard to the geographic range, the JFTC has defined the geographic range as “all over Japan” for the following reason:

Retailers, consumers of businesses engaged in the manufacture and sale of bath additives, basically procure bath additives from the manufactures of bath additives all over Japan without any geographical restrictions in terms of the shipment of bath additives.

PartIII Impact of the Business Combination on Competition

1. Domestic market size

The domestic market size of bath additives in fiscal year 2010 is approximately 47 billion yen.

The combined market share held by both parties concerned is approximately 40% and will be ranked in the 1st place after the acquisition. In addition, the HHI after the acquisition will

be approximately 2,300. The increment of the HHI will be approximately 700. These figures do not fall within the range of the horizontal safe-harbor.

Rank	Company Name	Market Share
2	Bathclin	Approximately 25%
3	Earth Chemical	Approximately 15%
(1)	Combined Market Share of Both Parties Concerned	Approximately 40%

2. Status of competitors

(1) Number of competitors

There is a leading competitor that holds market shares in excess of 10%, as well as several other competitors.

(2) Excess capacities of competitors

The main manufacturing process for bath additives is a mixture of raw materials, which makes manufacturers easy to expand and reinforce facilities to increase the supply volume. In addition, there are multiple suppliers of such raw materials including leading chemical producers, who can be considered to have a certain degree of excess capacity to supply. Consequently, few competitors will not have any problems procuring raw materials for bath additives following the production increase.

For these reasons, it is considered that each competitor has an excess supply capacity.

3. Import

With respect to regulations, the manufacture and sale of bath additives, which are divided into quasi-pharmaceutical products and cosmetics under the Pharmaceutical Affairs Act (Act No. 145 of 1960), are only subject to the approval of quasi-pharmaceutical products or notification as cosmetics. The approval can be readily obtained approximately six months after application. In addition, upon notification, manufacture and sale are immediately permitted. It can therefore be considered that the institutional barriers are low. In fact, the ratio of imports for the 2010 fiscal year is approximately 5%, and is on the rise.

For these reasons, it is considered that import pressure works to a certain degree.

4. Entry

As described in 3 of Part III above, the manufacture and sale of bath additives are only subject to approval or notification in terms of regulations. Consequently, it can be considered that the entry barriers within the system are low. In addition, the entry barriers regarding

facilities and technologies for the mixture of raw materials, packaging, and other manufacturing processes for bath additives can also be considered low.

For these reasons, it is considered that entry pressure works to a certain degree.

5. Competitive pressure from users

The bath additives manufactured and sold by the parties concerned are sold through drugstores, supermarkets, home-center stores and other retailers, which compete actively by offering bargain sale prices. They also negotiate wholesale prices with the manufactures of bath additives by proposing favorable conditions whereby the relevant products are to be displayed with better shelf placement, which is expected to increase manufacturers' sales. In addition, under the current circumstances, no retailers have any specific problems changing their suppliers, or the manufactures of bath additives.

For these reasons, it is considered that competitive pressure from users works to a certain degree.

6. Assessment under the AMA

In light of the above circumstances, the JFTC determined that the acquisition of shares between the parties concerned is unlikely to substantially restrain competition in any particular fields of trade through unilateral business behavior by the parties or coordinated business behavior between the parties and the other competitors.

Part VI Conclusion

Taking the above circumstances into account, the JFTC concluded that the acquisition of shares is unlikely to substantially restrain competition in any particular fields of trade.

Case 2 The Merger between Nippon Steel Corporation and Sumitomo Metal Industries, Ltd.

Part I Outline of the transaction

Nippon Steel Corporation which is a company engaged in the manufacture and sale of steel products, etc. (hereinafter “NSC”) and Sumitomo Metal Industries, Ltd. (hereinafter “SMI”) which is a company engaged in the manufacture and sale of steel products, etc. (hereinafter “SMI”) plan to merge on October 1, 2012 (hereinafter referred to as the “Merger”). The provision of applicable laws is Article 15 of the AMA.

(Note 1) After the review of this case has been closed, the parties concerned switched from the consolidation scheme to a scheme by which SMI as a wholly-owned subsidiary of NCS, rendered by means of share exchange as of October 1, 2012, will be merged with NSC on the same day. Due to this reason, NSC which would acquire 100% of the voting rights of SMI made a notification to the JFTC with the remedies to settle the issue in light of the AMA, which is the equivalent of the remedies stated hereinafter on April 4, 2012. In response to the notification, the JFTC notified to the effect that it will not issue a cease and desist order on 23rd of the same month.

As a result, this case was, in formality, one of share acquisitions and its relevant provision is Article 10 of the AMA. However, due to the fact that there was no substantial difference between the merger which had been planned on the outset and what has actually taken place, the decision under the AMA, of this case has been stated as a merger.

Part II Process of this investigation and outline of the results of the investigation

1. Process of this investigation and outline of the results of the investigation

From March 2011, the parties voluntarily submitted a written opinion to the JFTC stating that, with respect to the steel products, titanium products and engineering businesses in which the parties (including companies combined with the parties) compete, the parties consider that the Merger may not substantially restrain competition. The JFTC held several meetings with the parties at the request of the parties. Thereafter, on May 31, 2011, notification of a plan regarding the Merger was submitted. Accordingly, the JFTC received the notification and commenced the primary review and began to collect information from June 1, 2011, indicating the main goods/services (see “Reference2” undermentioned) in which the parties (including companies combined with the parties) compete. The JFTC conducted the primary review considering materials including the above notification and written opinions that were submitted by the parties, interviews with users and competitors, and information collected from the general public, etc. As a result, it was determined that more detailed review was necessary. Accordingly, on June 30, 2011, the JFTC requested that

the parties submit reports, etc., and commenced the secondary review.

In the secondary review, the JFTC received reports, etc. submitted by the parties one after another. In addition, the JFTC held several meetings with the parties at the request of the parties. The parties made assertions and submitted materials to clear up and resolve the questions raised in the meetings by the JFTC. The JFTC conducted a further investigation of the effects of the Merger on competition considering the assertions and materials submitted by the parties, the results of interviews with users and competitors and the results of investigations undertaken through questionnaires, and the information collected from the general public, etc. In August 2011, the majority of the reports, etc. that the JFTC requested had been submitted, and the parties requested an explanation regarding issues. Accordingly, the JFTC explained the current issues. The parties then made additional assertions and submitted additional materials, and the JFTC held several meetings with the parties to investigate their assertions. The JFTC also pointed out that there is a possibility that, with respect to non-oriented electrical steel sheets, which constitute one of the steel products, and the high-pressure gas pipeline engineering business, which is one of the engineering businesses, the Merger may substantially restrain competition. As a result, the parties offered to take measures to solve the problems regarding competition. The JFTC then held several meetings with the parties. The parties offered to take specific remedies thereafter.

2. Outline of the results of the investigation

As to the case, the JFTC examined the goods/services (see “Reference2” undermentioned) in which the parties (including companies combined with the parties) compete and determined approximate 30 fields of trade. With respect to non-oriented electrical steel sheets and the high-pressure gas pipeline engineering business, given the remedies that the parties presented to the JFTC, the JFTC has decided that the Merger may not substantially restrain competition. The JFTC also has decided that the Merger may not substantially restrain competition with respect to the other fields of trade.

Among the results of the investigation into the case: the results of investigation regarding (i) non-oriented electrical steel sheets and the high-pressure gas pipeline engineering business, for which remedies will be implemented; and (ii) among the fields of trade about which the JFTC has decided that the Merger may not substantially restrain competition, the results of investigation regarding (a) steel sheet piles and spiral welded pipes that the JFTC closely investigated by conducting investigations through questionnaires, and (b) hot-rolled steel sheets and H-section steel, which are representative steel products, are as shown in IV to IX below.

As to the point that, with respect to the companies in which the parties have a proportion

of voting rights that is greater than 10% and 50% or less (Topy Industries Ltd. (NSC is the single largest shareholder holding 20.5% of the voting rights; hereinafter “Topy Industries”), GODO STEEL, Ltd. (NSC is the single largest shareholder holding 15.7% of the voting rights; hereinafter “GODO STEEL”), etc.), the parties alleged that these companies have no joint relationship with the parties because these companies are competitors that are independent of the parties, in this investigation it is recognized that, for example, although Topy Industries and GODO STEEL have a relationship of combination with NSC, there is a certain degree of competitive relationship between such companies and NSC as stated in “IX H-section Steel” . The JFTC has decided that the Merger may not substantially restrain competition in consideration of the above circumstances. There are multiple such fields of trade including H-section steel. The JFTC will pay close attention in the future to check whether the parties will acquire the additional voting rights of such companies, or expand the range of interlocking directorates who serve concurrently to strengthen the joint relationship with such companies, thereby weaken the competitive relationship between the parties and such companies, and may, as a result, substantially restrain competition in the fields of trade concerned.

(Reference1) On May 31, 2011, receipt of notification of a plan regarding the merger (start of the primary review)

On June 30, request for reports, etc. (start of the secondary review)

On November 9, receipt of all reports (the deadline for prior notice: February 7, 2012)

On December 9, submission of a report on changes in the notification by the parties, in which the remedies were described

On December 14, notification to the effect that a cease and desist order will not be issued and publication of result of the review

On April 20, 2012, receipt of notification of a plan regarding the acquisition of shares, in which the remedies were described

On April 23, notification to the effect that a cease and desist order will not be issued

(Reference2)

- Steel Sheets (hot-rolled steel sheets, cold-rolled steel sheets, electro-galvanized steel sheets, hot-dip galvanized steel sheets, etc.)
- Non-oriented Electrical Steel Sheets
- Heavy and Medium Plates
- Sections (steel sheet piles, H-section steel, middle and small-sized sections, etc.)
- Steel Bars and Wire Rods (ordinary steel bars, deformed steel bars, ordinary steel wire rods, special steel bars, special steel wire rods, etc.)
- Steel Pipes (small-diameter seamless steel pipes, small and medium-diameter seamed steel pipes, large-diameter pipes, etc.)
- High-tensile Bolt
- Automobile Wheels
- Titanium Products
- Pipeline Engineering Business

Part III Non-oriented electrical steel sheets

1. Particular field of trade

(1) Product range

Non-oriented electrical steel sheets are a type of electrical steel sheets manufactured by adding silicon and other materials to steel. They have small core loss value (the value of the loss of electricity that is consumed as heat energy when a magnetic field is imparted to a core (iron core)), and excel in terms of magnetic properties. Non-oriented electrical steel sheets are punched out to a prescribed shape, laminated, and used for the cores of motors, etc. after press processing. Motors, etc. using non-oriented electrical steel sheets are chiefly used for home electrical appliances such as air-conditioners, refrigerators and washing machines.

Electrical steel sheets include non-oriented electrical steel sheets and grain-oriented electrical steel sheets. Non-oriented electrical steel sheets have uniform magnetic properties for all directions and are primarily used for the cores of motors, etc. as mentioned above. Meanwhile, grain-oriented electrical steel sheets have magnetic properties in a rolling direction, and are chiefly used for the cores of transformers. The manufacturing equipment for non-oriented electrical steel sheets and grain-oriented electrical steel sheets is different. As a result, there is a difference in the use and manufacturing methods of non-oriented electrical steel sheets and grain-oriented electrical steel sheets. They have no substitutability of supply and demand. It is therefore considered that non-oriented electrical steel sheets and grain-oriented electrical steel sheets form separate product ranges.

There are various standards in terms of thickness and core loss value for non-oriented electrical steel sheets. Non-oriented electrical steel sheets with less thickness and a smaller core loss value are high-grade products. Non-oriented electrical steel sheets with greater thickness and a larger core loss value are low-grade products. As to the substitutability of demand between non-oriented electrical steel sheets with the respective standards, according to the results of interviews with Japanese users such as Japanese electric machine makers (hereinafter the “Domestic Users” in IV below), there are many opinions indicating that there is no substitutability between standards. Considering also the results of an investigation through questionnaires that were conducted for the Domestic Users who purchased the products of the parties, the substitutability of demand is acknowledged as being low between standards.

Meanwhile, manufacturing equipment does not differ according to the standards, and the substitutability of supply is recognized.

As mentioned above, the substitutability of demand is low between different standards, but the substitutability of supply is recognized. “Non-oriented electrical steel sheets” are therefore determined as a product range.

(2) Geographic range

The parties assert that the geographic range is East Asia because (i) the Domestic Users promoted the local procurement of non-oriented electrical steel sheets in overseas manufacturing bases, reflecting their overseas business development centered on East Asia, and accelerated the adoption of products (hereinafter “the Overseas Makers’ Products” in IV below) manufactured by non-oriented electrical steel sheet makers in East Asia (hereinafter “the Overseas Makers” in IV below) even in domestic bases, (ii) the Domestic Users are well aware of the prices of the Overseas Makers’ Products through procurement at overseas bases and the overseas prices are reflected in domestic prices, etc..

However, according to the results of an investigation through questionnaires that were conducted for the Domestic Users, as stated in 2(4) below, the Domestic Users, both at domestic and overseas bases, procured most of the non-oriented electrical steel sheets from domestic makers. The volume of non-oriented electrical steel sheets procured from the Overseas Makers is relatively small. There are numerous opinions showing that no change will be made to the Overseas Maker’ Products even if the prices increase by 5% to 10% regarding non-oriented electrical steel sheets that the Domestic Users procure from domestic makers in domestic bases.

According to the results of interviews with the Domestic Users: market conditions including prices differ between Japan and East Asian countries, and therefore prices traded in East Asia countries are not linked to prices traded in Japan; and negotiations with domestic makers for procurement prices in domestic bases, referring to the prices of procurement from the Overseas Makers in overseas bases, are not realistic. According to data regarding prices, there is no necessary link between prices in Japan and prices in East Asia.

In addition, the market share of the domestic makers in Japan is high while the market share of the domestic makers in East Asia is low, and the distribution of market share is completely different between Japan and East Asia. Based on the foregoing, we consider that it is not proper to determine the geographic range as East Asia crossing a national boundary.

Meanwhile, there is no constraint on transport within Japan for non-oriented electrical steel sheets from the viewpoint of difficulties with transport and the cost of transport. The parties and competitors conduct sales all over Japan. Circumstances showing a difference

in selling prices according to region are not identified.

Accordingly, “all of Japan” is determined as being the geographic range.

2. Investigation into substantial restraint of competition

(1) Change in market structure due to the Merger and where problems exist

The companies that belong to the corporate group concerned, which sells non-oriented electrical steel sheets in the domestic market, are NSC (market share: approximately 40%) and SMI (market share: approximately 15%). The Merger will result in the formation of a new business combination between NSC and SMI. The combined market share of the parties will be approximately 55%, and they will rank first in the domestic market. After the Merger, HHI will increase by approximately 1,100 to approximately 4,600, which will not meet the safe harbor standards for horizontal business combinations.

In the domestic market of non-oriented electrical steel sheets, there is an effective competitor called Company A with a market share of approximately 40%. With the Merger, the parties will have a total market share of approximately 55%, and the difference between the market share of Company A and the parties will increase. Accordingly, there is a possibility that, based on the conditions of the excess capacity of Company A, the degree of import pressure and the degree of competitive pressure from the users, etc., a situation may arise in which the corporate group may solely have some latitude to determine prices, etc.

With the Merger, the number of companies in the domestic market of non-oriented electrical steel sheets will reduce from three to two. There is therefore a possibility that, depending on the conditions of the excess capacity of each company, the degree of import pressure and the degree of competitive pressure from the users, etc., if the corporate group concerned conducts business in a coordinated manner with its competitors, a situation may arise in which it may have some latitude to determine prices, etc.

Market share of non-oriented electrical steel sheets in fiscal year 2010

Rank	Company name	Market share
1	NSC	Approximately 40%
2	Company A	Approximately 40%
3	SMI	Approximately 15%
	Import	Approximately 5%
	Total	100%

(2) Competition in the past

NSC and Company A manufacture grain-oriented electrical steel sheets as well as non-oriented electrical steel sheets, while SMI manufactures only non-oriented electrical steel sheets. The Domestic Users may procure both non-oriented electrical steel sheets and grain-oriented electrical steel sheets at the same time. SMI, which handles only non-oriented electrical steel sheets, may not cope with such a case. In addition, SMI has fewer product lines than NSC and Company A, and a weak production base. As a result, SMI's position differs from those of the other two companies in the non-oriented electrical steel sheet market. In addition, according to information obtained from the Domestic Users and the trend of actual prices, it is recognized that the price strategy of SMI is different from that of the other two companies.

Based on the foregoing, it is recognized that SMI acts differently from the other two companies. However, the company after the Merger (denoting the parties after the Merger; this will apply similarly hereinafter) will become a company with the same nature as NSC. It is therefore considered that the price strategy adopted by SMI will not be adopted.

(3) Excess capacity of each company concerned

Each company concerned has high capacity utilization of the manufacturing facilities of non-oriented electrical steel sheets.

Each company concerned also exports in large quantities. Most of the exports are directed to the overseas bases of the Domestic Users. It is not easy to freely adjust the volume of supply to the Domestic Users, which seek stable procurement. It is therefore considered that it is difficult to divert export products freely to domestic sale.

Accordingly, it is recognized that each company concerned does not have sufficient excess capacity.

(4) Import pressure

If imports come from neighboring countries in East Asia, the transportation costs required for the imports are minimal, and no customs duties are levied. The ratio of imports in the domestic market has increased slightly in recent years. However, it is considered that low-grade products accounted for most of the imports.

According to the results of investigations undertaken by questionnaires that were conducted for the Domestic Users, the Domestic Users in overseas bases as well as domestic bases procured most non-oriented electrical steel sheets from domestic makers. The volume of non-oriented electrical steel sheets procured from the Overseas Makers is relatively small. We used a questionnaire to ask the Domestic Users about the likelihood that they would change to the Overseas Makers' Products if the prices of non-oriented

electrical steel sheets procured from domestic makers rose by 5% to 10%. There were numerous statements to the effect that the Domestic Users would not change to the Overseas Makers' Products. In addition, according to the results of the investigations undertaken by questionnaire, while there were some responses stating that some Overseas Makers' Products have the same quality as domestic makers' products and the Domestic Users evaluate the Overseas Makers' Products positively, there were responses stating that the quality of the Overseas Makers' Products is not sufficient and fails to meet the requirements of the Domestic Users because there is more considerable variation in thickness than in domestic makers' products (so lamination is difficult), there is a problem with stable procurement due to significant changes in prices, and there is no price advantage regarding Overseas Maker's Products which have the same quality as domestic makers' products. According to the results of interviews, there are also uncertainties regarding the prices, quality and delivery time of the Overseas Makers' Products, and a change to the Overseas Makers' Products would be difficult in domestic bases.

As to high-grade products, in particular, according to the results of investigations undertaken by questionnaire, the Overseas Makers do not manufacture products with the high quality required by the Domestic Users. The Domestic Users procure almost all their products from domestic makers. The tendency not to change to the Overseas Makers' Products, even in the event of a relative rise in domestic prices, was remarkable. As to low-grade products, there were a certain number of Domestic Users that would change to the Overseas Makers' Products if domestic prices rose somewhat. However, it is recognized that it would not necessarily be easy to change to the Overseas Makers' Products from the viewpoint of quality problems and stable supply, etc.

Accordingly, in terms of high-grade products, it is not recognized that import pressure is exerted. It is considered that import pressure on low-grade products is exerted to a certain degree, but it is recognized that the degree is not necessarily strong.

(5) Competitive pressure from users

Even if the standard of non-oriented electrical steel sheets is the same, there are subtle differences depending on the maker. It is not easy to change the maker. According to the results of investigations undertaken by questionnaire, there were many responses to the effect that it is necessary for the Domestic Users to evaluate and test characteristics by standard in order to change a supplier, and it is time consuming and costly. Most of the responses stated that it is difficult to change supplier makers for both high-grade products and low-grade products.

Accordingly, it is not recognized that competitive pressure is being exerted by users.

3. Assessment under the AMA

(1) Substantial restraint of competition by unilateral conduct

With the Merger, the parties will have a total market share of approximately 55%. There is one effective competitor, however it does not have sufficient excess capacity. It is therefore considered that, when the parties increase their prices, it will be difficult to increase the volume of supply sufficiently.

As to high-grade products, the Overseas Makers do not manufacture products with the high quality required by the Domestic Users at their domestic bases, and import pressure is not recognized. Some low-grade products are imported. There is a certain number of Domestic Users that would change to the Overseas Makers' Products if domestic prices rose. However, the Domestic Users showed concern that, as compared with domestic makers' products, the Overseas Makers' Products do not have sufficient quality that the Domestic Users would require at domestic bases, and there are uncertainties regarding stable procurement due to significant changes in prices. It is therefore acknowledged that import pressure is not necessarily strong.

In addition, it is not easy for the Domestic Users to change supplier makers, and competitive pressure from users is not recognized.

Accordingly, with the Merger, in terms of high-grade products, a situation could easily arise in which the corporate group may solely determine prices, etc. to a certain extent. It is therefore considered that the Merger may substantially restrain competition.

(2) Substantial restraint of competition through coordinated conduct

With the Merger, the number of companies in the domestic market for non-oriented electrical steel sheets will decline from three to two. It is recognized that it will be easier to conduct business in a coordinated manner than before the Merger.

SMI differs in the handling or non-handling of grain-oriented electrical steel sheets and the strength or weakness of the production base from NSC and Company A. The actual price strategy of SMI is recognized to differ from that of NSC and Company A. After the Merger, two companies with the same nature will divide the market almost in two. It is therefore considered that the behavior of both companies can be predicted with a high degree of probability.

Under such a situation, import pressure on high-grade products is not recognized. Import pressure on low-grade products is not necessarily strong. Competitive pressure from users is not recognized.

Accordingly, after the Merger, in terms of high-grade products, a situation could easily arise in which the corporate group may have some latitude to determine prices, etc. through coordinated conduct with their competitors. It is therefore considered that the Merger may substantially restrain competition.

4. Proposal for remedies by the parties

As stated in 3 above, the Merger may substantially restrain competition. The parties have therefore proposed adopting the following remedies.

- (i) The products of all grades that SMI currently sells to the Domestic Users will be supplied to Sumitomo Corporation (hereinafter “Sumitomo”) subject to the upper limit of the maximum domestic annual sales volume of SMI in the last five years (from fiscal year 2006 to fiscal year 2010) at a price equivalent to the average production cost (calculated based on the full cost) of non-oriented electrical steel sheets of the company after the Merger for five years after the Merger.
- (ii) The commercial rights relating to the sale of non-oriented electrical steel sheets of SMI to the Domestic Users will be transferred to Sumitomo. Specifically, in addition to taking over a list of customers, the relationship of transactions (including the contract relationship and agreed specifications) with the Domestic Users will be transferred. Utmost efforts will be made to obtain the Domestic Users’ understanding with regard to the transfer. Technical support for the decision regarding delivery specifications and the handling of complaints will be also provided. In addition, to secure quality after the slit, proper measures such as succession should be implemented so that Sumitomo can use the slit centers located all approximately Japan where the parties provided technical guidance.
- (iii) The status of the implementation of the above measures should be reported to the JFTC once every accounting term for five years after the Merger.

5. Assessment of remedies

- (1) Appropriateness of a measure to set trading rights at a price equivalent to the production cost

As stated in 3 above, it is considered as of now that the Merger may substantially restrain competition with regard to non-oriented electrical steel sheets. However, reflecting the movement of the Domestic Users’ diversification of procurement channels triggered by the Great East Japan Earthquake and the rapid appreciation of the yen as the recent conditions, it is recognized that import pressure on low-grade products is becoming strong, and a move to adopt the Overseas Makers’ Products has commenced with regard to

high-grade products. As a result, because it is considered that import pressure will increase considerably after a certain period of time, the conditions of substantial restraint of competition are not reasonably forecasted to continue, and we cannot say that permanent measures will be indispensable as remedies.

Thereafter, we investigated setting trading rights at a price equivalent to the production cost and found that SMI has a weaker production base than NSC and Company A, that it needs to bring in hot-rolled steel sheets, the material from which non-oriented electrical steel sheets are produced, from other steelworks because the operation of the hot-rolled steel sheets product line is suspended in Wakayama Steelworks with the product line, and that it naturally has a high cost structure. Meanwhile, companies for which trading rights are set will be supplied at a price equivalent to the average production cost of the company after the Merger. As a result, the measures proposed by the parties will result in the creation of more effective companies than SMI.

Accordingly, in the case, if trading rights at a price equivalent to the production cost are set based on proper conditions, it is considered that they will be appropriate remedies. Below, we will investigate the appropriateness of specific conditions regarding setting trading rights at a price equivalent to the production cost that are proposed by the parties.

(2) Appropriateness of specific conditions regarding setting trading rights at a price equivalent to the production cost

Sumitomo does not manufacture non-oriented electrical steel sheets by itself. However, as a trading firm, Sumitomo accompanied domestic makers, or acted on behalf of domestic makers, in price negotiations between domestic makers and the Domestic Users, was thus involved in the sales business, and therefore has no difficulties in terms of sales capability, including its commodity knowledge and sales know-how. The proportion of the voting rights of Sumitomo, which will be held by the company after the Merger, and the ratio of the voting rights of the company after the Merger, which will be held by Sumitomo, are planned to be several percent. No person will become a director or a corporate auditor for both Sumitomo and the company concurrently after the Merger. Sumitomo is therefore a company that is independent from the parties from the viewpoint of capital and human relationships, and can become an effective brake against the parties as a new market entrant.

The cost conditions of Sumitomo and the company after the Merger will become common. However, Sumitomo is not a maker, has original experience as a trading firm, and is different from the company after the Merger in terms of the handling or non-handling of grain-oriented electrical steel sheets and the holding or non-holding of

manufacturing facilities. Sumitomo therefore has an incentive to adopt a price strategy that differs from the price strategy of the company after the Merger.

As to the period for setting trading rights, which is five years after the Merger, import pressure especially on high-grade products is not currently recognized. However, at present there are Domestic Users that have begun to use the Overseas Makers' high-grade products in their overseas bases. There are also Domestic Users that obtained samples in their domestic bases and began to undertake evaluations aimed at adoption. Even after considering the time that the Domestic Users need to take before adoption after obtaining samples, it is considered that there is a high possibility that import pressure on those, including high-grade products, will be exerted after five years from the Merger as proposed by the parties.

Accordingly, it is considered that the specific conditions for setting trading rights at a price equivalent to the production cost that are proposed by the parties are appropriate.

6. Conclusion

As investigated above, in view of the remedies proposed by the parties, it is considered that the Merger may not substantially restrain competition in the field of trade of non-oriented electrical steel sheets.

Part VI High-pressure gas pipeline engineering business

1. Particular field of trade

(1) Service range

The high-pressure gas pipeline engineering business is one type of engineering businesses relating to steel gas pipelines, including work to install or replace steel gas pipelines (hereinafter the “steel gas pipeline engineering business”), and includes work such as design, procurement (procurement of pipe), construction management and construction (civil engineering, pipe laying, welding, coating and inspection).

Steel gas pipelines consist of two types: high-pressure gas pipelines (1.0MPa or more) and medium-pressure gas pipelines (0.1MPa or more and less than 1.0MPa), which are divided according to the gas pressure of pipelines. Accordingly, the steel gas pipeline engineering business is divided into the high-pressure gas pipeline engineering business and the medium-pressure gas pipeline engineering business. High-pressure gas pipelines require pipes with more strength (pressure resistance) than medium-pressure gas pipelines (electric resistance-welded pipes (ERW pipes) are mainly used for medium-pressure gas pipelines and UO pipes (UOE pipes) are mainly used for high-pressure gas pipelines). The welding of pipes and inspections are required to meet higher standards than those required for medium-pressure gas pipelines. Gas companies, etc. have established higher standards for the high-pressure gas pipeline engineering business than for the medium-pressure gas pipeline engineering business. Due to this there is no substitutability of demand between the high-pressure gas pipeline engineering business and the medium-pressure gas pipeline engineering business. It is therefore considered that the high-pressure gas pipeline engineering business forms a service range that differs from that for the medium-pressure gas pipeline engineering business.

Accordingly, the “high-pressure gas pipeline engineering business” is determined as being the service range.

(2) Geographic range

Major companies in the high-pressure gas pipeline engineering business receive orders for the high-pressure gas pipeline engineering business in all areas of the country. When they accept an order in an area in which they have no office, they will dispatch foremen and welders, etc. to the area.

Accordingly, “all of Japan” is determined as being the geographic range.

2. Investigation into substantial restraint of competition

(1) Change in market structure due to the Merger and where problems exist

The companies that belong to the corporate group concerned, which conducts the high-pressure gas pipeline engineering business in the domestic market, are Nippon Steel Pipeline Co., Ltd. (a wholly owned subsidiary with a market share of approximately 30% of Nippon Steel Engineering Co., Ltd. which is a wholly owned subsidiary of NSC; hereinafter “NSP”) and Sumitomo Metal Pipeline and Piping, Ltd. (a wholly owned subsidiary with a market share of approximately 30% of SMI; hereinafter “SMP”). The Merger will result in the formation of a new business combination between NSP and SMP. The combined market share of the parties will be approximately 60%, and they will rank first in the domestic market. After the Merger, HHI will increase by approximately 1,800 to approximately 4,900, which will not meet the safe harbor standards for horizontal business combinations.

In the domestic market of the high-pressure gas pipeline engineering business, in addition to NSP and SMP, there is an effective competitor called Company B with a market share of approximately 35%, which belongs to a corporate group of blast furnace steelmakers (these three companies will be hereinafter referred to as the “Blast Furnace-Related Engineering Companies”). With the Merger, the parties will hold a market share of approximately 60%, which will rank first in the market, surpassing Company B. The gas companies, etc. that are users decide on the parties who will receive each order using a bidding method. The number of Blast Furnace-Related Engineering Companies, which are the major companies that participate in the bids, will decline from three to two. There is therefore a possibility that a situation could arise in which the corporate group concerned may solely determine prices, etc. to a certain extent according to the degree of entry pressure and the degree of competitive pressure from users, etc.

There are also engineering companies affiliated with a gas company (denoting an engineering company that is a subsidiary of a gas company; the same shall apply similarly hereinafter) in the domestic market of the high-pressure gas pipeline engineering business. However, their market share is small. With this Merger, the number of Blast Furnace-Related Engineering Companies, which are the major companies in the high-pressure gas pipeline engineering business, will be reduced from three to two. There is therefore a possibility that a situation could arise in which the corporate group concerned may have some latitude to determine prices, etc. to a certain extent through coordinated conduct with its competitors according to the degree of entry pressure and the degree of competitive pressure from users, etc.

The amount of orders placed in the high-pressure gas pipeline engineering business varies greatly from year to year. As a result, we undertook our investigation based on the

market shares calculated from the total amount of orders received in the past five years from fiscal year 2006 to fiscal year 2010.

Market share of high-pressure gas pipeline engineering business for fiscal year 2006 to fiscal year 2010

Rank	Company name	Market share
1	Company B	Approximately 35%
2	NSP	Approximately 30%
3	SMP	Approximately 30%
	Others	0 to 5%
	Total	100%

Reference: Market share of high-pressure gas pipeline engineering business in fiscal year 2010

Rank	Company name	Market share
1	Company B	Approximately 55%
2	NSP	Approximately 30%
3	SMP	Approximately 15%
	Total	100%

(2) Conditions of each company

The companies in the high-pressure gas pipeline engineering business are the Blast Furnace-Related Engineering Companies and engineering companies affiliated with a gas company. In most order placements, engineering companies affiliated with a gas company did not participate in bids, and only the Blast Furnace-Related Engineering Companies competed in bids.

Foremen in the high-pressure gas pipeline engineering business need to be employees of an original contractor (engineering company). However, companies in the high-pressure gas pipeline engineering business do not employ more foremen than required. A foreman cannot work concurrently as a foreman on multiple construction sites. It takes considerable time to develop foremen. As a result, it is recognized that it is difficult to sharply increase the number of orders received because the number of foremen becomes a bottleneck.

Accordingly, it is considered that the excess capacity of each company is not necessarily large.

(3) Entry pressure

To conduct the high-pressure gas pipeline engineering business, approval is required under construction business laws. It is not difficult to obtain approval, and the barrier to entry created by laws and ordinances is not high.

However, no company has newly obtained eligibility for participation in bids from gas companies, etc. during the past five years. According to the results of interviews with gas companies, etc., it is acknowledged that the following barriers to entry exist in the material procurement and welding services of the high-pressure gas pipeline engineering business.

a. Material procurement

All gas companies, etc. need to issue orders for both material procurement and construction work as a package. Accordingly, a company that is able to procure UO pipes, the major material from which high-pressure gas pipelines are produced, from a group company of the company has an advantage in terms of competition in the high-pressure gas pipeline engineering business. In Japan, companies that are able to procure UO pipes from their group company are limited to the Blast Furnace-Related Engineering Companies. It is therefore acknowledged that it is difficult for a company other than the Blast Furnace-Related Engineering Companies to procure UO pipes with the same delivery time and for the same cost as the Blast Furnace-Related Engineering Companies. In actuality, some engineering companies affiliated with a gas company that are in the high-pressure gas pipeline engineering business carry out only work that does not use UO pipes. Accordingly, it is recognized that it is difficult for a company within the corporate group that does not produce UO pipes to enter the high-pressure gas pipeline engineering business on a full-scale basis.

b. Welding

According to the results of interviews with gas companies, etc., in the high-pressure gas pipeline engineering business, particularly in the case of work that uses pipes with a relatively large diameter, automatic welding is more advantageous than manual welding in terms of construction period, cost and quality. It is recognized that it is difficult for a company without an automatic welding machine to newly develop an automatic welding machine. In actuality, some engineering companies affiliated with a gas company that are in the high-pressure gas pipeline engineering business carry out only work that uses pipes with a relatively small outside diameter, for which automatic welding has no advantages. Accordingly, it is recognized that it is difficult for a company without an automatic welding machine to enter the high-pressure gas pipeline engineering business on a full-scale basis.

As mentioned above, the procurement of UO pipes with the same conditions as the Blast Furnace-Related Engineering Companies and the possession of an automatic welding machine are important for entry into the high-pressure gas pipeline engineering business on a full-scale basis. It is recognized that this has become a barrier to entry into the high-pressure gas pipeline engineering business.

Accordingly, entry pressure is not recognized.

(4) Competitive pressure from users

Gas companies, both those for small customers and those for large customers, are exposed to a certain amount of competition from other energy companies, including electric power companies. It is therefore acknowledged that gas companies are interested in reducing costs, including the cost of pipeline construction, to a certain extent. It is easy for a gas company to change the party that receives the order for each gas pipeline construction. Gas companies decide on the party that will receive the order for the high-pressure gas pipeline engineering business through bidding.

Accordingly, it is acknowledged that a certain amount of competitive pressure is exerted by users.

3. Assessment under the AMA

(1) Substantial restraint of competition by unilateral conduct

With the Merger, the parties will have a total market share of approximately 60% in the domestic market. The companies that participate in bids are basically limited to the Blast Furnace-Related Engineering Companies. After the Merger, the number of companies that will participate in bids will decline from three to two. In addition, entry pressure is not exerted in the high-pressure gas pipeline engineering business. A certain amount of competitive pressure from users is also recognized. However, gas companies, etc. do not necessarily have sufficient measures to bolster competitiveness.

Accordingly, a situation could easily arise in which the group of the parties may have some latitude to solely determine prices, etc. It is therefore considered that the Merger may substantially restrain competition.

(2) Substantial restraint of competition through coordinated conduct

Large orders for the high-pressure gas pipeline engineering business are issued on an irregular basis. However, the excess capacity of each company is not great. If, with the Merger, the number of Blast Furnace-Related Engineering Companies, the major

companies in the high-pressure gas pipeline engineering business, declines from three to two, it is considered that the statuses of construction and excess capacity of both companies can be understood very accurately, and that both companies' eagerness to receive orders and bidding behavior, etc. can be predicted with high probability.

In addition, entry pressure is not exerted in the high-pressure gas pipeline engineering business. A certain degree of competitive pressure from users is also recognized. However, gas companies, etc. do not necessarily have sufficient measures to bolster competitiveness.

Accordingly, a situation could easily arise in which the group of the parties may have some latitude to determine prices, etc. through coordinated conduct with their competitors. It is therefore considered that the Merger may substantially restrain competition.

4. Proposal for remedies by the parties

As stated in 3 above, the Merger may substantially restrain competition. The parties have therefore proposed adopting the following remedies.

(1) Stable supply of UO pipes

- (i) When a newcomer (including an engineering company affiliated with a gas company already in the high-pressure gas pipeline engineering business; the same shall apply hereinafter) requests that the parties supply UO pipes that will be used for domestic high-pressure gas pipeline engineering business, the parties shall supply the newcomer with UO pipes based on substantially the same and reasonable conditions with regard to the price, volume, delivery time, standard, size, special specifications, delivery and settlement as in the case of supply to the subsidiaries of the parties in the high-pressure gas pipeline engineering business (hereinafter "the Engineering Subsidiaries").
- (ii) The parties shall make the above measure, fully known to the public, by the date of the Merger, and shall notify the JFTC thereof. In addition, the parties shall notify the JFTC of the status of the implementation of the above measure once every accounting term for five years after the Merger.

(2) Supply of automatic welding machines and technical guidance regarding their operation

- (i) If requested by a newcomer for the purpose of using in work for which it will receive an order, the parties shall transfer new automatic welding machines, or transfer or lease used automatic welding machines, to the newcomer through the Engineering Subsidiaries, etc. based on reasonable conditions with regard to price, delivery and settlement. However, the price shall be equivalent to the actual cost.
- (ii) If requested by a newcomer, the parties shall provide the newcomer with the

necessary technical guidance through the Engineering Subsidiaries based on reasonable conditions with regard to price, man-hours, details, time and place of guidance and settlement so that the newcomer can operate the automatic welding machines. However, the price shall be equivalent to the actual cost involved in providing the above technical guidance.

- (iii) The parties shall make the above measures fully known to the public by the date of the Merger and notify the JFTC thereof. In addition, the parties shall notify the JFTC of the status of the implementation of the above measures once every accounting term for five years after the Merger.

5. Assessment of remedies

(1) Pros and cons of measures other than the transfer of business

The remedies for competition problems shall be structural measures such as the transfer of business, in principle. In terms of the case, the transfer of the high-pressure gas pipeline engineering business could be considered.

However, the market size of the high-pressure gas pipeline engineering business varies significantly depending on the fiscal year. It is difficult to continue the high-pressure gas pipeline engineering business unless it is conducted together with the medium-pressure gas pipeline engineering business. Companies that conduct the medium-pressure gas pipeline engineering business all over Japan are limited to the Blast Furnace-Related Engineering Companies. Therefore, to transfer the business to companies other than the Blast Furnace-Related Engineering Companies, it is necessary to divide the high-pressure gas pipeline engineering business into specified geographic areas. However, it is not realistic to divide only the high-pressure gas pipeline engineering business from the rest of the steel gas pipeline business. It is not also realistic to divide only the business in specified geographic areas.

Accordingly, with regard to the case, it is difficult to transfer the high-pressure gas pipeline engineering business. However, if the barrier to entry mentioned in 2(3) above can be eliminated through measures other than the transfer of business, we cannot say that the transfer of business is indispensable as a remedy.

(2) Appropriateness of specific conditions of remedies proposed by the parties

First of all, we have considered the stable supply of UO pipes. If the parties supply a newcomer with UO pipes based on substantially the same and reasonable conditions with regard to the price, delivery time, etc. of UO pipes as those for the Engineering Subsidiaries of the parties, the newcomer will be able to actually purchase UO pipes based

on the above conditions, and the barrier to entry in terms of material procurement will be eliminated.

As to the supply of automatic welding machines and technical guidance regarding the operation of automatic welding machines, if the parties transfer or lease automatic welding machines through the Engineering Subsidiaries, etc. based on reasonable conditions and provide the necessary technical guidance, a newcomer will be able to easily use automatic welding machines, and the barrier to entry relating to automatic welding machines will be eliminated.

As mentioned above, with the stable supply of UO pipes, the supply of automatic welding machines and technical guidance regarding the operation of automatic welding machines, the barrier to entry to the high-pressure gas pipeline engineering business will be eliminated. Accordingly, if the above measures are made fully known to the public, the probability of new entries will be increased. It is considered that such entry pressure will become an effective means of restraining price increases by the parties.

Accordingly, it is considered that the specific conditions of the remedies proposed by the parties are appropriate.

6. Conclusion

As investigated above, it is considered that the Merger may not substantially restrain competition in the field of trade of the high-pressure gas pipeline engineering business due to the remedies proposed by the parties.

Part V Steel sheet piles

1. Particular field of trade

(1) Product range

Steel sheet piles are a type of shaped steel that is manufactured by rolling slabs or blooms using a rolling machine with a rolling mill roll (a roll with a channel commensurate with the shape of the product). Interlocks are created so that a continuous wall can be formed at both edges of the steel plates after the forming process into an uneven state.

Shaped steel is divided into heavy sections and light sections according to the size of the cross-section, and into steel sheet piles, H-section steel, rails, angle steel, and channel steel, etc. according to the shape of the section. Steel sheet piles, H-section steel and rails are limited to heavy sections. The majority of angle steel and channel steel, etc. are light sections. Steel sheet piles are used for earth retaining and cut-off of water, etc. by connecting the joints. Accordingly, the use of steel sheet piles is different from other shaped steel. It is therefore acknowledged that the product range of steel sheet piles is different from that of other shaped steel.

The use of steel sheet piles is largely divided into temporary use for the purposes of temporary retaining and temporary cofferdam, etc., and permanent use as the construction materials of permanent structures. Steel sheet piles include those with different shapes, such as the U shape and the hat shape, and those with different sizes, such as widths of 400mm and 600mm. Steel sheet piles with a U shape and a width of 400mm are mainly used for temporary use as goods leased after sale to construction materials leasing companies. Other products are mainly used for permanent use. However, there are steel sheet piles with a U shape and a width of 400mm that are used for permanent use. There are other products that are used for temporary use. As above, the substitutability of demand is recognized to a certain extent. Steel sheet piles with different shapes and sizes are manufactured using the same manufacturing facility. The substitutability of supply exists.

Meanwhile, methods of construction that are used as an alternative to a method of construction using steel sheet piles are the concrete wall method, the soil cement wall method and the Berlin wall (braced wall with soldier beam and horizontal board) method, etc. There is a possibility that, in the event of a relative rise in the price of steel sheet piles, the method of construction using steel sheet piles will be changed to the concrete wall method or other methods. Accordingly, the possibility that the product range will be determined as the overall method of earth retaining including these methods of construction will not be denied. In this respect, based on the characteristics of the domestic

market whereby the method of construction using steel sheet piles as a means of earth retaining and cut-off water, etc. spreads widely and the Domestic Users' recognition of the substitutability between the method of construction using steel sheets and other methods of construction (2(5) below), the JFTC determines "steel sheet piles" as the product range, and will assess the concrete wall method and other method as competitive pressure from the related market.

(2) Geographic range

There is no restraint on the transport of steel sheet piles within Japan in terms of degree of difficulty and transportation cost. The group of the parties and competitors sell steel sheet piles throughout Japan. Circumstances showing a difference in selling price from region to region are not recognized.

Meanwhile, hardly any of the Overseas Makers' Products were imported into the domestic market. In addition, it is considered that the import volume of the Overseas Makers' Products would hardly increase even if domestic prices rose relatively. As a result, circumstances requiring the determination of a geographic range crossing a national boundary are not recognized.

Accordingly, "all of Japan" is determined as being the geographic range.

(3) Other

As to steel sheet piles, there is a considerable volume of leased goods that a construction materials leasing company will lease to construction companies for temporary use. The parties assert that leased goods are included in the same field of trade. In this respect, steel sheet piles sold by steel makers are sold to either construction companies for permanent use or construction materials leasing companies for temporary use. The use of steel sheet piles sold to construction companies for permanent use is different from the use of leased goods. Steel sheet piles sold to construction materials leasing companies for temporary use will be sold as products used for leased goods, and are different from leased goods in the stage of trade. There is therefore nothing competing with leased goods.

Accordingly, it is considered that it is not appropriate to include leased goods in the same field of trade.

2. Investigation into substantial restraint of competition

(1) Change in market structure due to the Merger and where problems exist

The companies that belong to the corporate group concerned and sell steel sheet piles in the domestic market are NSC (market share: approximately 40%) and SMI (market share:

approximately 25%). The Merger will result in the formation of a new business combination between NSC and SMI. The combined market share of the parties will be approximately 65%, and they will rank first. After the Merger, HHI will increase by approximately 1,900 to approximately 5,100. Consequently, the Merger does not meet the safe harbor standards for horizontal business combinations.

In the domestic market for steel sheet piles, there is also an effective competitor called Company C that has a market share of approximately 30%. As a result of the Merger, the corporate group concerned will hold a market share of approximately 65%, and the gap between the market share of the corporate group concerned and that of Company C will also widen. Therefore, depending on the supply potential of each of the competitors, the degree of import pressure or entry pressure, the degree of competitive pressure from related markets, the degree of competitive pressure from users, etc., there is a possibility that a situation could arise in which the corporate group concerned has some latitude to solely determine prices, etc.

With the completion of the Merger, the number of companies in the domestic market for steel sheet piles will be reduced from four to three. For this reason, depending on the supply potential of each company, the degree of import pressure or entry pressure, the degree of competitive pressure from related markets, and the degree of competitive pressure from users, etc., there is a possibility that a situation could arise in which the corporate group concerned and competitors have some latitude to determine prices, etc. through coordinated conduct.

Market share of steel sheet piles in fiscal year 2010

Rank	Company name	Market share
1	NSC	Approximately 40%
2	Company C	Approximately 30%
3	SMI	Approximately 25%
4	Company D	0-5%
	Import	0-5%
	Total	100%

(2) Status of each company

Steel sheet piles are manufactured on heavy section production lines. Due to a decrease in the order quantity of public works, the capacity utilization of these lines at each company has been diminishing. In addition, each company constantly exports a substantial amount of steel sheet piles to increase capacity utilization. If domestic sales become

favorable as a result of an improvement in domestic market conditions, a portion of the export volume can be shifted to the domestic market. Accordingly, it is recognized that each company has sufficient supply potential.

An electrical furnace steelmaker, Company D, also operates in the domestic market for steel sheet piles. The results of a questionnaire of users (construction companies and construction materials leasing companies) who purchase steel sheet piles from the parties show that many of the respondents made positive evaluations of the price and quality aspects of the products manufactured by the electrical furnace steelmaker. It is therefore recognized that products manufactured by the electrical furnace steelmaker are also an option for the users.

(3) Import pressure

Transportation costs are marginal for imports of steel sheet piles from East Asian countries, and no customs duties are levied. The import ratio of steel sheet piles is 0%-5%. Results of a questionnaire of users and information obtained from them show that, although there were certain positive respondents, many of the respondents made negative evaluations of the price and quality aspects of imported products.

Accordingly, it is recognized that there is little import pressure.

(4) Entry pressure

There is a company that was once a leading company in the domestic market for steel sheet piles, although it is not currently manufacturing steel sheet piles. This company continues to hold rolling mill rolls in stock, and would be able to enter the market immediately if the price of steel sheet piles rose or if there was stronger demand.

Accordingly, it is recognized that there is entry pressure.

(5) Competitive pressure from related markets

Alternative methods of construction using steel sheet piles include the concrete wall method, the soil cement mixing wall method and the Berlin wall method, etc.

According to the results of questionnaires and information obtained, there is a certain portion where the abovementioned alternative methods would be used in place of the steel sheet pile method, although it is difficult to measure the specific portion quantitatively, if the price of steel sheet piles was to increase by 5%-10%. Additionally, according to estimates made by the parties, the proportion of the steel sheet pile method among the overall method of earth retaining is currently approximately 20%. There are also some cases where the steel sheet pile method countervails other methods from an economic

viewpoint.

Accordingly, it is recognized that there is a certain degree of competitive pressure from related markets.

(6) Competitive pressure from users

Amidst a long-term weak trend in the order quantity of public works, the competition for orders among construction companies has been increasingly tough over the years, and we consider that pricing pressure from the users of steel sheet piles is strong.

Looking at recent price movements, the price of steel sheet piles has been declining as a result of decreasing of demand, due mainly to a decrease in the order quantity of public works, in spite of rising raw material and fuel prices. Under the circumstances, in which the growth of demand remains unlikely in the near future, we consider that pricing pressure will remain strong.

Accordingly, it is recognized that there is competitive pressure from users.

3. Assessment under the AMA

(1) Substantial restraint of competition by unilateral conduct

As a result of the Merger, the corporate group concerned will have a market share of approximately 65%. However, because (i) there are effective competitors and it is recognized that their supply potential is sufficient, (ii) it is recognized that there are certain degrees of entry pressure and competitive pressure from alternative methods that form related markets, and (iii) it is recognized that there is competitive pressure from users amidst contracting demand, there is little possibility that a situation could arise in which the corporate group concerned has a certain degree of latitude to solely determine prices, etc. Consequently, we consider that the Merger may not substantially restrain competition.

(2) Substantial restraint of competition through coordinated conduct

With the completion of the Merger, the number of companies in the domestic market for steel sheet piles will be reduced from four to three. However, because (i) it is recognized that each company has sufficient supply potential, (ii) it is recognized that there are certain degrees of entry pressure and competitive pressure from alternative methods that form related markets, and (iii) it is recognized that there is competitive pressure from users amidst contracting demand, there is little possibility that a situation could arise in which the corporate group concerned and competitors have, through coordinated conduct, some latitude to determine prices, etc. Consequently, we consider that the Merger may not substantially restrain competition.

Part VI Spiral welded pipes

1. Particular field of trade

(1) Product range

Spiral welded pipes are a type of large-diameter welded steel pipe or tube (meaning steel pipe with an outside diameter generally over 400 millimeters; the same shall apply hereinafter) manufactured by continually unwinding steel strips and bending them spirally using forming mill rolls to form a cylinder shape, and then by welding the seams. Spiral welded pipes are mainly used in steel pipe piles (including steel pipe sheet piles (steel pipes with welded interlocks)); the same shall apply hereinafter).

Other than spiral welded pipes, large-diameter welded steel pipes and tubes include UO pipes. Spiral welded pipes have long low-intensity welded seams and are not suitable for pipelines, etc. of which internal pressure is high. For this reason, spiral welded pipes are mainly used in steel pipe piles. The use of spiral welded pipes is different from other large-diameter welded steel pipes and tubes, which are also used for gas pipelines, etc. The substitutability of demand is not recognized between spiral welded pipes and other large-diameter welded steel pipes and tubes, nor is the substitutability of supply recognized, because the manufacturing facilities for spiral welded pipes differ from those for other large-diameter welded steel pipes and tubes.

Where spiral welded pipes are used as steel pipe piles, pre-cast concrete piles and cast-in-place concrete piles may be used in place of steel pipe piles. If the price of spiral welded pipes rose in comparison with these alternatives, there is a possibility that steel pipe piles would be replaced by pre-cast concrete piles, etc. Therefore, the possibility of including the overall foundation piles in the product range, together with these alternatives, is not rejected. Regarding this point, the JFTC determined the product range as being “spiral welded pipes” for the plan in question, based on the understanding (2(3) below) of Japanese users regarding the substitutability between steel pipe piles and other foundation piles, and to evaluate concrete piles, etc. as a competitive pressure from related markets.

(2) Geographic range

There is no restraint on the transport of spiral welded pipes within Japan in terms of the degree of difficulty of transportation and transportation cost. The parties and competitors conduct sales throughout Japan. No differences in selling prices are evident from region to region.

Meanwhile, hardly any of the overseas makers' products are imported into the domestic market. It is considered that the import volume of the overseas makers' products would

hardly increase even if the domestic price of spiral welded pipes rose compared to the price of the overseas makers' products. As a result, circumstances requiring the determination of a geographic range crossing a national boundary are not recognized.

Accordingly, "all of Japan" is determined as being the geographic range.

2. Investigation into substantial restraint of competition

(1) Change in market structure due to the Merger and where problems exist

The companies that belong to the corporate group concerned and sell spiral welded pipes in the domestic market are NSC (market share: approximately 40%) and SMI (market share: approximately 15%). The Merger will result in the formation of a new business combination between NSC and SMI. The combined market share of the parties will be approximately 55%, and they will rank first. After the Merger, HHI will increase by approximately 1,300 to approximately 4,000. Consequently, the Merger does not meet the safe harbor standards for horizontal business combinations.

In the domestic market for spiral welded pipes, there are multiple effective competitors with market shares of over 10%. As a result of the Merger, however, the corporate group concerned will hold a market share of approximately 55%, and the gap between the market share of the corporate group concerned and the market shares of the second tier companies will also widen. Therefore, depending on the supply potential of competitors, the degree of competitive pressure from related markets, the degree of competitive pressure from users, etc., there is a possibility that a situation could arise in which the corporate group concerned has some latitude to determine prices, etc. unilaterally.

Upon the completion of the Merger, the number of companies that supply spiral welded pipes will be reduced from four to three. For that reason, depending on the supply potential of each company, the degree of competitive pressure from related markets, the degree of competitive pressure from users, etc., there is a possibility that a situation could arise in which the corporate group concerned and competitors have some latitude to determine prices, etc. through coordinated conduct.

Market share for spiral welded pipes in fiscal year 2010

Rank	Company name	Market share
1	NSC	Approximately 40%
2	Company E	Approximately 30%
3	SMI	Approximately 15%
4	Company F	Approximately 15%
	Total	100%

(2) Status of each company

The capacity utilization of manufacturing facilities for spiral welded pipes within each company is not high, and it is recognized that each company has supply potential.

Of the companies that manufacture spiral welded pipes, some use internally manufactured hot-rolled steel sheets as the base material and some use products manufactured by electrical furnace steelmakers or imported products as the base material. The cost structures vary among these companies.

(3) Competitive pressure from related markets

Where spiral welded pipes are used as steel pipe piles, alternative methods for steel pipe piles include the pre-cast concrete piles and the cast-in-place concrete piles.

According to the results of a questionnaire to users (constructors) who purchase spiral welded pipes from the parties and results of interviews of users, etc., it is recognized that a method that uses other piles may be used in place of the method that uses steel pipe piles to a certain degree, although it would be difficult to quantitatively measure the concrete ratio of use of these methods, if the price of spiral welded pipes was to increase by 5%-10%.

Accordingly, it is recognized that there is a certain degree of competitive pressure from related markets.

(4) Competitive pressure from users

The users of spiral welded pipes are mainly constructors. Amidst a long-term weak trend in the order quantity of public works, the competition for orders among constructors has been increasingly tough over the years, and we consider that pricing pressure is strong. Accordingly, it is recognized that there is competitive pressure from users.

3. Assessment under the AMA

(1) Substantial restraint of competition by unilateral conduct

As a result of the Merger, the parties will have a market share of approximately 55%,

and the gap between the market share of the parties and market shares of the second tier companies will also widen. However, because (i) there are multiple effective competitors with market shares of over 10% and it is recognized that these companies have supply potential, (ii) it is recognized that there is a certain degree of competitive pressure from related markets, and (iii) it is recognized that there is competitive pressure from users, there is no possibility that a situation could arise in which the corporate group concerned has a certain degree of latitude to solely determine prices, etc. Consequently, it is considered that the Merger may not substantially restrain competition.

(2) Substantial restraint of competition through coordinated conduct

Upon completion of the Merger, the number of leading companies that supply spiral welded pipes will be reduced from four to three. However, because (i) it is recognized that each company has supply potential, (ii) it is recognized that there is a certain degree of competitive pressure from related markets, (iii) it is recognized that there is competitive pressure from users, and (iv) some of the companies that manufacture spiral welded pipes have different cost structures, there is no possibility that a situation could arise in which the corporate group concerned and competitors have, through coordinated conduct, some latitude to determine prices, etc. Consequently, it is considered that the Merger may not substantially restrain competition.

Part VII Hot-rolled steel sheets

1. Particular field of trade

(1) Product range

Hot-rolled steel sheets are a type of flat-rolled steel with a thickness of less than approximately three millimeters. Hot-rolled steel sheets are manufactured by continuously rolling out of semi-finished products (slabs), which are manufactured through the processes of pig iron making and steel making, with multiple rolling machines placed in line. Large volumes of hot-rolled steel sheets are used in automobiles. They are also used in electrical products and building materials.

Flat-rolled steel is classified roughly into hot-rolled steel sheets, cold-rolled steel sheets and surface-treated steel sheets (hot-rolled steel sheets or cold-rolled steel sheets whose surface is coated or painted). These flat-rolled steel sheets differ from each other in terms of their characteristics and major uses, and the substitutability of demand is not recognized. In addition, their manufacturing stages are different from each other, and the substitutability of supply is also not recognized. Accordingly, it is considered that each of these three categories of flat-rolled steel sheets constitutes a different product range.

Hot-rolled steel sheets include products with various characteristics depending on their chemical composition, and the heat treatment methods used, etc. Of these products, hot-rolled stainless steel sheets have characteristics such as corrosion resistance, etc., and the substitutability of demand is not recognized. In addition, hot-rolled stainless steel sheets are manufactured using exclusive manufacturing facilities and different technologies, and there is no substitutability of supply. Accordingly, we consider that hot-rolled stainless steel sheets constitute a different product range. On the other hand, a certain degree of substitutability of demand is recognized among products other than hot-rolled stainless steel sheets since it is recognized the fact that users determine which products they will use by considering the balance between various characteristics and economic benefit. These other products are manufactured using the same manufacturing facilities, and there is also substitutability of supply. As a result, it is considered that these other products constitute the same product range.

Accordingly, “hot-rolled steel sheets” (excluding hot-rolled stainless steel sheets; with the same to apply hereinafter) is determined as being the product range.

(2) Geographic range

There is no restraint on the transport of hot-rolled steel sheets within Japan in terms of the difficulty of transportation and transportation cost. The parties and competitors conduct sales throughout Japan. No difference in selling price is evident from region to region.

There are constant inflows into the Japanese market of hot-rolled steel sheets, mainly commodity products manufactured by Korean and Chinese makers. This is because large volumes of Overseas Makers' Products could flow into the domestic market in a short period of time if the domestic price of hot-rolled steel sheets rises compared to that of Overseas Makers' Products. So, there is a possibility that a cross-national geographic range may be determined. Regarding this point, the JFTC determined the geographic range as being "all of Japan", partly reflecting the fact that the parties submitted data in their written opinions, such as market share data for the Japanese market, based on all of Japan as the geographic range. We decided to evaluate Overseas Makers' Products as import pressure.

2. Investigation into substantial restraint of competition

(1) Change in market structure due to the Merger and where problems exist

The companies that belong to the corporate group concerned and sell hot-rolled steel sheets in the domestic market are NSC (market share: approximately 30%) and SMI (market share: approximately 10%). The Merger will result in the formation of a new business combination between NSC and SMI. The combined market share of the parties will be approximately 40%, and they will rank first. After the Merger, HHI will increase by approximately 500, to approximately 2,200, which will not meet the safe harbor standards for horizontal business combinations.

In the domestic market for hot-rolled steel sheets, there are also Nakayama Steel Works, Ltd. (hereinafter "Nakayama Steel Works") and Nisshin Steel Co., Ltd. (hereinafter "Nisshin Steel") and Daido Steel Co., Ltd. (hereinafter "Daido Steel"). NSC is the largest shareholder of each of these companies and independently holds more than 10% of the voting rights pertaining to each of these companies. However, NSC's voting rights in each of these companies is only slightly over 10%. Moreover, with respect to Nakayama Steel Works and Nisshin Steel, the gap between the proportion of the voting rights held by NSC in each of these two companies and the proportion of the voting rights held by other second tier shareholders of these two companies is not significant, and there is no interlocking director between NSC and each of these two companies. With respect to Daido Steel, there is an interlocking director with NSC. However, users of the products of Daido Steel have certain numbers of voting rights, and it is considered that such users do not share common interests with NSC, especially in terms of the exercise of voting rights. Accordingly, no business combination is recognized between NSC and Nakayama Steel Works, between NSC and Nisshin Steel, and between NSC and Daido Steel.

In the domestic market for hot-rolled steel sheets, there are multiple effective competitors with market shares of over 10%, and imported products account for approximately 15% of the market. As a result of the Merger, the parties will have a market share of approximately 40%, and the gap between the market share of the parties and market shares of the second tier companies will also widen. Therefore, depending on the supply potential of competitors, the degree of import pressure, and the degree of competitive pressure from users, etc., there is a possibility that a situation could arise in which the corporate group concerned has some latitude to determine prices, etc. unilaterally.

In addition to inflows of imported products that account for approximately 15% of the domestic market for hot-rolled steel sheets, there are multiple electrical furnace steelmakers in the market. However, the market shares of these companies are not necessarily large, and the number of leading blast furnace steelmakers that supply hot-rolled steel sheets will be reduced from four to three as a result of the Merger. Accordingly, depending on the supply potential of each company, the degree of import pressure, and the degree of competitive pressure from users, etc., there is a possibility that a situation could arise in which the corporate group concerned and competitors have, through coordinated conduct, some latitude to determine prices, etc.

Market share for hot-rolled steel sheets in fiscal year 2010

Rank	Company name	Market share
1	NSC	Approximately 30%
2	Company G	Approximately 20%
3	Company H	Approximately 10%
4	SMI	Approximately 10%
5	Company I	Approximately 5%
6	Company J	Approximately 5%
7	Company K	0-5%
8	Company L	0-5%
9	Company M	0-5%
10	Company N	0-5%
	Imports	Approximately 15%
	Total	100%

(2) Supply potential of each company

The capacity utilization of manufacturing facilities for hot-rolled steel sheets at each

company is not high, and it is recognized that each company has supply potential.

(3) Import pressure

In recent years, there has been a rush of construction in Korea and China of hot-rolled steel sheet production lines that have state-of-the-art facilities and equipment and huge supply capacities. The quality of their products is acceptable to Japanese users. Some of these Japanese users have adopted these products at their overseas bases. Transportation costs are marginal for imports of hot-rolled steel sheets from neighboring countries in East Asia, and no customs duties are levied. Moreover, according to the result of interviews with users, they consider products imported from Korea and China to be less expensive than products manufactured in Japan, which suggests that the price competitiveness of imported hot-rolled steel sheets is high. In addition, overseas manufacturers of hot-rolled steel sheets are selling their products through processors and distributors in Japan, including steel service centers. As a result, there are no problems in Japan in terms of the distribution of hot-rolled steel sheets manufactured in overseas.

As described above, there is no import barrier with respect to hot-rolled steel sheets, and there are constant inflows of hot-rolled steel sheets into the Japanese market, mainly commodity products manufactured in Korea and China. In fact, the import ratio for hot-rolled steel sheets has reached approximately 15%.

Major users are automobile manufacturers, electrical equipment producers and construction material producers. The results of the investigations into the status of import pressure with respect to each user are as follows:

A. Hot-rolled steel sheets for automobile manufacturers

Among products of steelmakers who have received the approval of automobile manufacturers for materials (meaning approval for materials that satisfy internal quality standards, which is granted based on evaluations of materials for the purpose of procuring only those materials that meet internal quality requirements), there is substitutability between imported products and domestic products. For example, Korean steelmakers have already been supplying their products to Japanese automobile manufacturers after obtaining approval for materials. In addition, according to the results of interviews with automobile manufacturers, they consider the quality and lineup of Korean products to be the same as those of Japanese blast furnace steelmakers, and may increase import volumes in the future.

B. Hot-rolled steel sheets for electrical equipment producers

A large part of hot-rolled steel sheets for electrical equipment producers are commodity products, and substitutability between imported products and domestic products is high. According to the results of interviews with electrical equipment producers, they intend to increase import volumes in the future, because there is little difference in the overall quality of flat-rolled steel products between products manufactured in Japan and those manufactured by Korean and Chinese steelmakers.

C. Hot-rolled steel sheets for construction material producers

Most hot-rolled steel sheets for construction material producers are commodity products, and substitutability between imported products and domestic products is high.

Based on the above, it is recognized that there is substantial import pressure.

(4) Competitive pressure from users

A. Hot-rolled steel sheets for automobile manufacturers

Among products of steelmakers who have received the approval of automobile manufacturers for materials, substitutability is high, and it is easy for automobile manufacturers to change suppliers. In addition, pricing pressure with regard to hot-rolled steel sheets is strong, reflecting intense competition between automobile manufacturers. Moreover, automobile manufacturers procure large volumes of steel products and use centralized purchasing systems (purchasing based on a method where a large user's purchasing department compiles a list of steel products used by each business division and each manufacturer who supplies components, and conducts collective negotiations with steelmakers to determine the quality, price, volume, etc. of the hot-rolled steel sheets to be purchased; with the same to apply hereinafter).

B. Hot-rolled steel sheets for electrical equipment producers

A large part of hot-rolled steel sheets for electrical equipment producers is commodity products, and switching to imported products, etc. is easy. In addition, electrical equipment producers do not have a proprietary material approval system, which makes it even easier to change suppliers. Furthermore, there is also vigorous competition between electrical equipment producers, and pricing pressure is strong. Moreover, electrical equipment producers also use centralized purchasing systems.

C. Hot-rolled steel sheets for construction materials producers

Most hot-rolled steel sheets for construction materials producers are commodity

products. They aggressively use products manufactured by electrical furnace steelmakers and imported products, and switching to less expensive steel products is easy. Due to lackluster demand for construction materials in Japan, there is intense competition between construction materials producers, and pricing pressure is strong.

Based on the above, it is recognized that there is substantial competitive pressure from users.

3. Assessment under the AMA

(1) Substantial restraint of competition by unilateral conduct

As a result of the Merger, the parties will have a market share of approximately 40% of the entire domestic market, and the gap between the market share of the parties and the market shares of the second tier companies will also widen. However, because (i) there are multiple effective competitors and it is recognized that they have supply potential, and (ii) it is recognized that there is sufficient import pressure and competitive pressure from users, there is little possibility that a situation could arise in which the corporate group concerned has a certain degree of latitude to solely determine prices, etc. Consequently, we consider that the Merger may not substantially restrain competition.

(2) Substantial restraint of competition through coordinated conduct

Upon the completion of the Merger, the number of leading blast furnace steelmakers that supply hot-rolled steel sheets will be reduced from four to three. However, because (i) it is recognized that each company has supply potential, and (ii) it is recognized that there is sufficient import pressure and competitive pressure from users, there is little possibility that a situation could arise in which the corporate group concerned and competitors have, through coordinated conduct, some latitude to determine prices, etc. Consequently, we consider that the Merger may not substantially restrain competition.

Part VIII H-section steel

1. Particular field of trade

(1) Product range

H-section steel is a type of shaped steel manufactured by rolling out steel to form the cross section of an “H.” It is used as the main component of framework in construction and civil engineering works.

H-section steel accounts for the majority of the market for shaped steel. Users recognize H-section steel as an independent product used as the main component of framework in construction and civil engineering works. Accordingly, it is recognized that it belongs to a different product range than other shaped steel products.

H-section steel includes products that meet the Japan Industrial Standards (“JIS”) and products that do not meet the JIS (H-section steel with fixed outside dimensions) as a result of improved usability. Users determine which of these products to use by considering the costs and areas of use, and the substitutability of demand is recognized. Different sizes of H-section steel are manufactured using the same manufacturing facilities, and there is also substitutability of supply.

Accordingly, we determined the product range as being “H-section steel”.

(2) Geographic range

There is no restraint on the transport of H-section steel within Japan in terms of the difficulty of transportation and transportation costs. The corporate group concerned and competitors conduct sales throughout Japan. No differences in selling prices are evident from region to region.

On the other hand, although there are currently a few inflows of Overseas Makers’ Products into the domestic market, it is not denied that there is a possibility that a geographic range which crosses national boundaries may be determined. This is because there could be a certain increase in the inflowing volumes of such Overseas Makers’ Products in a short period of time if the domestic price of H-section steel rises compared to that of Overseas Makers’ Products. Regarding this point, the JFTC determined the geographic range as being “all of Japan”, partly reflecting the fact that the parties submitted data in their written opinions, such as market share data for the Japanese market, based on all of Japan as the geographic range. We decided to evaluate Overseas Makers’ Products as import pressure.

2. Investigation into substantial restraint of competition

(1) Change in market structure due to the Merger and where problems exist

The companies that belong to the corporate group concerned and sell H-section steel in the domestic market are NSC, Topy Industries. (proportion of voting rights held by NSC: 20.5%, the largest and independent holder), GODO STEEL. (proportion of voting rights held by NSC: 15.7%, the largest and independent holder) (combined market share of the three companies described above: approximately 30%), and SMI and SUMIKIN STEEL & SHAPES, Inc. (a wholly owned subsidiary of SMI.; hereinafter, “SUMIKIN STEEL”; combined market share of these two companies: approximately 15%). The Merger will result in the formation of a new business combination between Nippon Steel Group and Sumitomo Metal Group. The combined market share of the corporate groups concerned will be approximately 40%, and they will rank first. After the Merger, HHI will increase by approximately 1,100, to approximately 2,800. Consequently, the Merger does not meet the safe harbor standards for horizontal business combinations.

It is acknowledged that there are business combinations between NSC and Topy Industries because NSC is the largest shareholder of Topy Industries and independently holds more than 20% of the voting rights pertaining thereto, and between NSC and GODO STEEL because (i) NSC is the largest shareholder of GODO STEEL and independently holds more than 10% of the voting rights pertaining thereto, (ii) employee of NSC also hold the roles of officer at GODO STEEL, and (iii) there are business alliances between NSC and GODO STEEL, including the manufacturing consignment of some products.

In the domestic market for H-section steel, there are effective competitors, including Company O and Company Q, which are independent electrical furnace steelmakers, and Company P, which is a blast furnace steelmaker. In light of the market share of the corporate group concerned after the Merger, depending on the status of the competitors’ supply potential, the degree of import pressure, and the degree of competitive pressure from users, etc., there is a possibility that a situation could arise in which the corporate group concerned has a certain degree of latitude to solely determine prices, etc.

Meanwhile, although the number of leading blast furnace steelmakers that supply H-section steel will be reduced from three to two as a result of the Merger, the two independent electrical furnace steelmakers will continue to exist after the Merger. Accordingly, there is a slight possibility that a situation could arise in which the corporate group concerned and competitors have, through coordinated conduct, some latitude to determine prices, etc.

Market share for H-section steel in fiscal year 2010

Rank	Company name	Market share
1	NSC * ¹	Approximately 30%
2	Company O	Approximately 20%
3	Company P	Approximately 20%
4	Company Q	Approximately 15%
5	SMI * ²	Approximately 15%
	Imports	0 - 5%
	Total	100%

* Including Topy Industries and GODO STEEL.

* Including SUMIKIN STEEL

(2) Competitive nature of the market in the past

In the domestic market for H-section steel, there is an effective competitor, Company O. There has always been intense competition between NSC and Company O, and this has not changed up until now. We consider that there will also be intense competition between the parties and Company O after the Merger.

Topy Industries and GODO STEEL have been determining their prices to cope with competition with other electrical furnace steelmakers. We consider that these two companies do not share common pricing strategies with NSC. Competition for customers is seen between NSC and Topy Industries, and between NSC and GODO STEEL . As a result, we consider that the business combinations between NSC and Topy Industries and between NSC and GODO STEEL are loose and not strong enough for the relevant parties to conduct business activities together as a completely integrated business, and that certain levels of competitive relationships are maintained. Certain levels of competitive relationships are likely to be maintained after the Merger between the merging companies and Topy Industries and between the merging companies and GODO STEEL

(3) Supply potential of each company

H-section steel is manufactured on heavy section product lines. Due to a decrease in the order quantity of public works, the capacity utilization of the heavy section product lines at each company has been diminishing. In addition, each company constantly exports a substantial amount of H-section steel to increase capacity utilization. If domestic sales become favorable as a result of an improvement in the domestic market conditions, a portion of the export volumes can be shifted to the domestic market.

Accordingly, it is recognized that each company has sufficient supply potential.

(4) Import pressure

Transportation costs are marginal for imports of H-section steel from East Asian countries, and no customs duties are levied. The import ratio of H-section steel is 0% - 5%. Some of the manufacturers in Korea and China have obtained JIS Certificates, and it is not difficult for a foreign manufacturer of H-section steel to obtain a JIS Certificate. In addition, the results of interviews with users suggests that they may import certain volumes of products if there are price advantages in importing.

Accordingly, it is recognized that there is a certain amount of import pressure.

(5) Competitive pressure from related markets

Products used for the same purposes as H-section steel include Built-up H-section steel, which is manufactured by welding steel plates and building a structure that has the same shape as H-section steel. Built-up H-section steel is used in large and high-rise buildings, and has a certain level of substitutability with H-section steel. Roll columns, which are manufactured by shaping flat-rolled steels into squares using roll forming machines, are sometimes used as post material for small to medium-sized buildings. Press columns, which are manufactured by shaping steel plates into squares using press forming machines, are sometimes used as post material for large and high-rise buildings. Roll columns and press columns have substitutability with H-section steel, although to limited degrees.

Accordingly, it is recognized that there is a certain amount of competitive pressure from related markets.

(6) Competitive pressure from users

The major users of H-section steel are construction companies and fabricators (steel frame processors). Construction companies who procure H-section steel from steelmakers are large general contractors who have a certain amount of purchasing power. Many of the fabricators who procure H-section steel directly from steelmakers are relatively large companies who have a certain amount of purchasing power. The costs of steel materials account for the majority of the costs involved in steel frame processing, so fabricators are considered to be sensitive to the price of H-section steel.

Accordingly, it is recognized that there is a certain amount of competitive pressure from users.

1. Assessment under the AMA

(1) Substantial restraint of competition by unilateral conduct

As a result of the Merger, the corporate groups concerned will have a combined market share of approximately 40%. However, because (i) there are multiple effective competitors and it is recognized that these companies have sufficient supply potential, (ii) there has always been intense competition between NSC and Company O and it is considered that this pattern will not change after the Merger, (iii) it is considered that there will be a certain level of competitive relationship between the merging companies, Topy Industries and GODO STEEL after the Merger, and (iv) it is recognized that there is a certain amount of import pressure, competitive pressure from related markets and competitive pressure from users, there is little possibility that a situation could arise in which the corporate group concerned has a certain degree of latitude to solely determine prices, etc. Consequently, we consider that the Merger may not substantially restrain competition.

(2) Substantial restraint of competition through coordinated conduct

Although the number of leading blast furnace steelmakers that supply H-section steel will be reduced from three to two as a result of the Merger, the two independent electrical furnace steelmakers will continue to exist after the Merger. It is acknowledged that intense competition between NSC and these leading independent electrical furnace steelmakers will continue to be maintained after the Merger. As a result, there is a slight possibility that a situation could arise in which the corporate group concerned and competitors have, through coordinated conduct, some latitude to determine prices, etc. The results of an investigation to confirm this conclusion show that in addition to the circumstances described above, it is recognized that there is a certain amount of import pressure, competitive pressure from related markets and competitive pressure from users. Consequently, we consider that the Merger may not substantially restrain competition.

CASE3 Integration of Management between Nisshin Steel Co., Ltd. and Nippon Metal Industry Co., Ltd.

Part I Outline of the transaction

In this case, Nisshin Steel Co., Ltd. which is engaged in the business of the manufacture and sale of stainless steel products (hereinafter referred to as “Nisshin Steel”), and Nippon Metal Industry Co., Ltd. which is engaged in the same business (hereinafter referred to as “Nippon Metal”) planned to integrate their management through a joint share transfer. The provision of the AMA, applied to the case, is Article 15-3 of the AMA.

Part II Particular field of trade

1. Product range

The stainless steel products are classified, according to their product forms, into the following categories: medium and heavy plate mill rolls, hot rolled steel strips, cold rolled steel strips, steel pipes, steel shapes, steel rods, wire rods etc.

The products, thought to be the subject of competition between the parties, are medium and heavy plate mill rolls, hot rolled stainless steel strips, cold rolled stainless steel strips and welded steel pipes. Concerning these products, they have no substitutability of supply and demand, since they differ in their product characteristics, usage and production methods.

For these reasons, the product ranges are defined as “medium and heavy plate mill rolls”, “hot rolled stainless steel strips”, “cold rolled stainless steel strips” and “welded stainless steel pipes.”

2. Geographic range

Concerning each product defined in the 1 above, as production bases of domestic major manufacturers are placed in east, center and west of Japan, and distribution network is developed, there is no limitation of shipment and cost in respect to shipment inside Japan and consumers severally shop around all over Japan. Moreover, no circumstance is recognized that sales prices are different depending on regions.

The geographic ranges for all products are therefore defined as “all over Japan.”

Part III Impact of the business combination on competition

Among the particular fields of trade defined in Part II above, the fields of trade that might have a significant impact on competition are cold rolled stainless steel strips and welded stainless steel pipes.

1. Market share

Market size of cold rolled stainless steel strips and welded stainless steel pipes was approximately 1,170,000 tons and 130,000 tons respectively in 2010.

Due to the said business combination, the combined market shares and the ranking of the companies concerned are as follows: Occupying approximately 35% of the combined market shares, cold rolled stainless steel strips ranked the first; occupying approximately 25% of the same, welded stainless steel pipes ranked the second. Moreover, the HHI after the business combination is approximately 2,500 and approximately 2,200 respectively and the incremental HHI is approximately 500 and approximately 300 respectively. Accordingly, these figures do not fall within the range of the horizontal safe-harbor.

[cold rolled stainless steel strips]			[welded stainless steel pipes]		
Rank	Company name	Market Share	Rank	Company name	Market Share
2	Nisshin Steel	Approximately 25%	3	Nisshin Steel	Approximately 20%
4	Nippon Metal	Approximately 10%	4	Nippon Metal	Approximately 10%
(1)	Combined Market Share	Approximately 35%	(2)	Combined Market Share	Approximately 25%

2. Status of competitors

There are leading competitors that hold market shares in excess of 10% in the respective fields of trade, all of which have excess supply capacities.

3. Import

The East Asian areas which we consider are the realistic places to ship products from due to the shipment costs have several leading stainless steel manufacturers.

Cold rolled stainless steel strips and welded stainless steel pipes imported from the countries where the stainless steel manufacturers are located are free from duty. Also, shipment costs are not great restriction on import and there is no significant difference in delivery time compared with domestic products. In addition, the overseas stainless steel manufacturers are aggressively establishing the sales offices in Japan as well as wholesalers in Japan are aggressively dealing with price-competitive imported goods. In fact, the import ratio in 2010 is about 5% and the ratio has been on the increase in recent years.

Therefore, it is considered that there is import pressure.

4. Competitive pressure from related market

Cold rolled stainless steel strips and welded stainless steel pipes are in competitive relationships with other multiple products for various purposes, if there is unreasonable price raise against users, it is considered to be converted to other products with comparative ease.

It is therefore considered that competitive pressure works to a certain degree.

5. Assessment under the AMA

In light of the above circumstances, the JFTC determined that the business combination is unlikely to substantially restrain competition in any particular fields of trade through unilateral business behavior by both parties or through coordinated business behavior by both parties and the other competitors.

Part IV Conclusion

For the reasons discussed above, the JFTC has concluded that the business combination may not be substantially to restrain competition in any particular fields of trade.

Case 4 Acquisition of Cryogenic Equipment Business of AIR LIQUIDE Japan Ltd. by Iwatani Corporation

Part I Outline of the transaction

A.TEC Corporation (hereinafter referred to as “ATEC”), a joint venture of AIR LIQUIDE Japan Ltd. (hereinafter referred to as “ALJ”), Iwatani Corporation (hereinafter referred to as “Iwatani”), and IWATANI INDUSTRIAL GASES CORPORATION, a subsidiary of Iwatani, (hereinafter referred to as “Iwatani Gas”), engages in the business of manufacturing containers used for the maintenance and shipment of industrial gases (Note 1) in liquid form (hereinafter referred to as “cryogenic equipment”). ALJ, Iwatani, and Iwatani Gas sell cryogenic equipment manufactured by ATEC.

In this case, it was planned that ATEC would succeed the cryogenic equipment sales business from ALG in an absorption-type company split, and that Iwatani and Iwatani Gas would receive from ALJ substantially all the shares of ATEC held by ALJ. The provisions of the AMA, applied to the case, are Article 10 and Article 15-2 of the AMA.

(Note 1) “Industrial gases” refers collectively to various gases used for business operations.

Part II Particular field of trade

1. Product range

Cryogenic equipment is used to contain the following industrial gases: air gas (which collectively refers to oxygen, nitrogen and argon; the same shall apply hereinafter), carbon dioxide gas, LNG (liquefied natural gas), and hydrogen gas. Cryogenic equipment for air gas, carbon dioxide gas, and LNG is generally treated as the same product since their materials, structures and manufacturing methods are substantially the same. On the other hand, cryogenic equipment for hydrogen gas is treated as a different product from those for other industrial gases. This is because although the basic structure and manufacturing method are the same as the other cryogenic equipments, a multilayer structure is adopted because the boiling point of hydrogen is extremely low compared with the other gases, which increases the probability of emission through evaporation; and the manufacturing costs of cryogenic equipment for hydrogen gas are higher than the other industrial gases.

In addition, cryogenic equipment is categorized according to capacity and portability as the PLC (a portable container whose capacity is less than 1,000 liters; the same shall apply hereinafter), the TL/TC (a portable container whose capacity is equal to or more than 1,000 liters; the same shall apply hereinafter), and the CE (a stationary storage tank; the same shall apply hereinafter).

The substitutability between the cryogenic equipment categorized above can be considered low, since users such as hospitals, transport companies, and chemical producers choose the required cryogenic equipment according to the types of gases used, the amounts of gases maintained or transported, the locations, and other factors.

Furthermore, in terms of the types of holding, cryogenic equipment can be divided into the “ownership transfer” type, in which the users of industrial gases own the cryogenic equipment, and the “ownership retention” type, in which the sellers of industrial gases retain the ownership of the cryogenic equipment that is installed in the properties of users. In the ownership transfer type, cryogenic equipment is sold to users of industrial gases separately from a transaction of industrial gases. On the other hand, in the ownership retention type, cryogenic equipment is leased at the time of the transaction of industrial gases. Accordingly, these forms of transaction are completely different in terms of their characteristics. In addition, the suppliers of cryogenic equipment are exclusively sellers of industrial gases in the ownership retention type, but in the ownership transfer type, the suppliers of cryogenic equipment include not only sellers of industrial gases but also sole manufacturers of cryogenic equipment.

For these reasons, it is appropriate to define particular fields of trade based on each of the following categories: (1) containing industrial gases; (2) capacity and portability; and (3) types of holding. Accordingly, in this case, the product range is defined as outlined in the table below.

	Industrial Gases	Capacity and Portability	Type of Holding
(1)	Air gas, carbon dioxide gas, and LNG	PLC	Ownership transfer
(2)			Ownership retention
(3)		TL/TC	Ownership transfer
(4)			Ownership retention
(5)		CE	Ownership transfer
(6)			Ownership retention
(7)	Hydrogen gas	TL/TC	Ownership transfer
(8)			Ownership retention
(9)		CE	Ownership transfer
(10)			Ownership retention

2. Geographic range

Sellers engaged in the business of the sale of cryogenic equipment sell their products all

over Japan. There are no differences in the transaction prices for cryogenic equipment according to regions. The geographic ranges for all products are therefore defined as “all over Japan.”

Part III Impact of the business combination on competition

Among the particular fields of trade defined in Part II above, the field of trade that might have a significant impact on competition is the (5) in the table shown in 1 of Part II above (the field in (5) in the table shown in 1 of Part II above is hereinafter described as “the CE for Air Gas, etc.”).

1. Market share

The market size of the CE for Air Gas, etc. in 2009 was approximately 6.3 billion yen.

The combined market share held by both parties as a result of the business combination will be approximately 45% and will be ranked in the 1st place. In addition, the HHI after the business acquisition will be approximately 2,800, and the increment of the HHI will be approximately 400. Accordingly, these figures do not fall within the range of the horizontal safe-harbor.

Rank	Company Name	Market Share
1	ALJ	Approximately 40%
4	Iwatani	Approximately 5%
(1)	Combined Market Share	Approximately 45%

2. Status of competitors

There are leading competitors that hold market shares in excess of 10% and several other competitors, all of which have an excess supply capacity.

3. Entry

The CE for Air Gas, etc. has a simple structure that does not require an advanced technology to manufacture. It is not subject to restrictions as patents, thus the technological entry barriers are low. In addition, the initial investment cost is low. It is therefore supposed that any businesses engaged in the manufacture of containers for gases, etc. other than industrial gases can readily enter the market for the CE for Air Gas, etc.

In consequence, it is considered that entry pressure works to a certain degree.

4. Competitive pressure from users

The CE for Air Gas, etc. is generally ordered as a result of comparative estimates. There are no differences in the quality of products between manufacturers. Consequently, the users choose sellers by taking price and other conditions into consideration. For these reasons, it can be considered that there will be a certain degree of price-cut pressure on the parties concerned after the said business combination.

It is therefore considered that competitive pressure works to a certain degree.

5. Assessment under the AMA

In light of the above circumstances, the JFTC determined that the business combination in question is unlikely to substantially restrain competition in any particular fields of trade through unilateral business behavior by both parties or through coordinated business behavior by both parties and the other competitors.

Part IV Conclusion

In light of the above circumstances, the JFTC concluded that the acquisition is unlikely to substantially restrain competition in any particular fields of trade.

Case 5 Integration of Sales Business of Intelligent Gas Meters for LP gas by RICOH ELEMEX CORPORATION and Aichi Tokei Denki Co., Ltd.

Part I Outline of the transaction

In this case, RICOH ELEMEX CORPORATION, which is engaged in the business of the manufacture and sale of intelligent gas meters for LP gas and other businesses (hereinafter referred to as “REX”), and Aichi Tokei Denki Co., Ltd., which is engaged in the same business (hereinafter referred to as “Aichi Tokei”) planned to establish a new company that would succeed the sales business of intelligent gas meters for LP gas from REX in an absorption-type company split and also succeed the business of Aichi Tokei. The provisions of the AMA, applied to the case, are Article 10, Article 15-2 and Article 16 of the AMA.

Part II Particular field of trade

1. Product range

Intelligent gas meters that measure gas volumes flowing through pipes are divided into those for LP gas and those for city gas. LP gas and city gas, which are measured by intelligent gas meters, differ in terms of their main ingredients and properties. Accordingly, it is impossible for intelligent gas meters for LP gas to measure the city gas flow rate, and vice versa. It is therefore considered that there is no substitutability of demand for intelligent gas meters for LP gas and city gas.

In addition, intelligent gas meters for LP gas are divided into those for business use and for home use according to the difference in the maximum gas flow rate used, etc., as shown in the table below. Intelligent gas meters for LP gas for home use are installed in ordinary households, and those for business use are installed in plants and other facilities that use high volumes of LP gas. Intelligent gas meters for business use are generally not installed in ordinary households. It is impossible for intelligent gas meters for home use to be installed in plants and facilities due to the maximum gas flow rate used. It is therefore considered that there is no substitutability of demand for intelligent gas meters for LP gas for home use and business use.

For these reasons, the product ranges are defined as “intelligent gas meters for LP gas (for home use)” and “intelligent gas meters for LP gas (for business use).”

Table: Types of Intelligent Gas Meters for LP Gas

Item	Home Use	Business Use
Maximum gas flow rate used ^(Note 1)	Equal to or below 4 m ³ per hour	Above 4 m ³ per hour and equal to or below 40 m ³ per hour
Intercepted gas flow rate beyond the aggregate fixed volume ^(Note 2)	Equal to or above 0.9 m ³ per hour Equal to or below 5.0 m ³ per hour	1.25 times the maximum gas flow rate used
Intercepted gas flow rate exceeding the reference volume ^(Note 3)	Equal to or above 0.9 m ³ per hour Equal to or below the maximum gas flow rate used	Equal to or above 2.0 m ³ per hour Equal to or below the maximum gas flow rate used

(Source: Notification providing details of technical standards, etc. for supply facilities, consumer plants, and specific supply facilities)

(Note 1) The maximum gas flow rate used means the maximum volume measured by an intelligent gas meter for LP gas.

(Note 2) When the aggregate gas consumption of an installed combustion appliance exceeds a certain volume of gas, which is fixed automatically, the gas flow is intercepted as if a large gas leak has occurred because a main tap was mistakenly turned on or a rubber hose has come loose. (Note

3) When the gas consumption of a certain combustion appliance among several installed appliances increases in a far greater volume than maximum gas volume of the other appliances, the gas flow is intercepted as if a gas leak has occurred because a main tap was mistakenly turned on or a rubber hose has come loose.

2. Geographic range

With regard to the geographic range, the JFTC has determined that the geographic range is “all over Japan” for the following reason:

Manufacturers of intelligent gas meters for LP gas deal with their users (sellers of LP gas) all over Japan, who also procure intelligent gas meters for LP gas from their manufacturers all over Japan.

Part III Impact of the Business Combination on Competition

1. Market share

The market size of intelligent gas meters for LP gas (for home use) was approximately 2,830,000 meters, and the market size of intelligent gas meters for LP gas (for business use) was approximately 80,000 meters in 2010.

The combined market share held by both parties concerned is approximately 30% and will be ranked in the 1st place after the integration in question, as shown in the table below. In addition, the HHI after the business combination will be approximately 2,400 and approximately 2,100 respectively. The increment of the HHI will be approximately 400 and approximately 300 respectively. These figures do not fall within the range of the horizontal safe-harbor.

Intelligent Gas Meters for LP Gas (for Home Use)			Intelligent Gas Meters for LP Gas (for Business Use)		
Rank	Company Name	Market Share	Rank	Company Name	Market Share
2	REX	Approximately 20%	2	Aichi Tokei	Approximately 20%
6	Aichi Tokei	Approximately 10%	6	REX	Approximately 10%
(1)	Combined Market Share	Approximately 30%	(1)	Combined Market Share	Approximately 30%

2. Status of competitors

(1) Leading competitors

There are several leading competitors in both markets, each of which holds a market share in excess of 10%.

(2) Excess capacities

The operation rates of the production facilities of the parties concerned are not high, and they have excess capacities to supply.

In addition, the excess supply capacities of the competitors are unknown. However, it is necessary for intelligent gas meters for LP gas (both for home use and business use) to be replaced generally with new ones every ten years pursuant to the provisions of the Measurement Act (Act No. 51 of 1992). Twenty years ago, old type meters were rapidly replaced with intelligent gas meters with a high degree of safety, thus a high demand for the replacement of intelligent gas meters occurs almost every ten years. It is currently a time for such demand for replacements to recede. It can therefore be considered that the competitors have the same level of excess capacities to supply as the parties concerned.

For these reasons, it is considered that the parties concerned and their competitors have

a certain level of excess capacities to supply.

3. Competitive pressure from users

Both users of intelligent gas meters for LP gas (for home use) and intelligent gas meters for LP gas (for business use) are sellers of LP gas who procure intelligent gas meters for LP gas from a number of manufacturers to diversify the risks, secure a stable supply, and provide for a well-stocked range of products. In addition, there are no substantial differences in the quality of intelligent gas meters for LP gas, which makes it possible for users to readily switch to other manufacturers or suppliers. In addition, in procuring intelligent gas meters for LP gas, users obtain comparative estimates to select the manufacturer offering the lowest estimate.

For these reasons, it is considered that there is a certain degree of competitive pressure from users.

4. Assessment under the AMA

In light of the above circumstances, the JFTC determined that the business combination in question is unlikely to substantially restrain competition in any particular fields of trade through unilateral business behavior by the parties or coordinated business behavior between the parties and the other competitors.

Part IV Conclusion

Taking the above circumstances into account, the JFTC concluded that the business combination in question is unlikely to substantially restrain competition in any particular fields of trade.

Case 6 Two M&As in the Sector of Manufacturing Hard Disc Drive (HDD)

Part I Outline of the transaction

This case is two plans of M&As in the sector on manufacturing Hard Disc Drive (HDD).

1. Acquisition of shares of Viviti Technologies Ltd. by Western Digital Ireland, Ltd.

Western Digital Ireland, Ltd. (headquartered in the Cayman Islands of the British Overseas Territory; hereinafter referred to as “WDI”) planned to acquire all the shares of Viviti Technologies Ltd. (hereinafter referred to as “the Acquisition of Shares”).

The provision applicable to the Acquisition of Shares is Article 10 of the AMA.

2. Acquisition of HDD business of Samsung Electronics Co., Ltd. by Seagate Technology International

Seagate Technology International (headquartered in the Cayman Islands of the British Overseas Territory; hereinafter referred to as “STI”) planned to acquire the HDD business of Samsung Electronics Co., Ltd. (hereinafter referred to as “the Acquisition of Business”).

The provision applicable to the Acquisition of Business is Article 16 of the AMA.

Part II Outline of the parties

1. Acquisition of the shares of Viviti Technologies Ltd. by Western Digital Ireland, Ltd.

(1) WDI is an entity engaged in the business of controlling subsidiaries (meaning the subsidiaries defined in Article 10, Paragraph 6 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (hereinafter referred to as “the AMA”) that manufacture HDDs.

WDI is a company that belongs to a group of combined companies (meaning the group of combined companies defined in Article 10, Paragraph 2 of the AMA; the same shall apply hereinafter) whose ultimate parent company (meaning the ultimate parent company defined in Article 2-2, Paragraph 3 of the Rules on Applications for Approval, Reporting, Notification, etc. Pursuant to the Provisions of Articles 9 to 16 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade; the same shall apply hereinafter) is Western Digital Corporation (headquartered in the United States of America). The subsidiaries of Western Digital Corporation are engaged in the business of manufacturing and selling HDDs (hereinafter, the companies that belong to the said group of combined companies and that are engaged in the business of manufacturing and selling HDDs shall be collectively referred to as “WD”).

(2) Viviti Technologies Ltd. (headquartered in Singapore; formerly known as Hitachi Global Storage Technologies Holdings Ltd.) is an entity engaged in the business of controlling subsidiaries that manufacture and sell HDDs.

The subsidiaries of Viviti Technologies Ltd. are engaged in manufacturing and selling HDDs (hereinafter, the subsidiary companies engaged in manufacturing and selling HDDs shall be collectively referred to as “HGST”).

2. Acquisition of the HDD business of Samsung Electronics Co., Ltd. by Seagate Technology International

(1) SSTI is an entity engaged in the business of controlling subsidiaries that manufacture and sell HDDs.

STI is a company that belongs to a group of combined companies whose ultimate parent company is Seagate Technology Public Limited Company (headquartered in Ireland). The subsidiaries of Seagate Technology Public Limited Company are engaged in manufacturing and selling HDDs (hereinafter, the companies that belong to the said group of combined companies and that are engaged in manufacturing and selling HDDs shall be collectively referred to as “STX”).

(2) Samsung Electronics Co., Ltd. (headquartered in Korea) is an entity engaged in the business of manufacturing and selling HDDs.

Samsung Electronics Co., Ltd. is engaged in the business of manufacturing and selling HDDs at the company and its subsidiaries (hereinafter, the companies, namely Samsung Electronics Co., Ltd. and its subsidiaries engaged in the business of manufacturing and selling HDDs shall be collectively referred to as “SEC”).

(Note 1) WD, HGST, STX and SEC are all business groups that include companies engaged in the business of manufacturing and selling HDDs. Hereinafter in this text, when the number of groups is described, expressions of “one company,” “two companies,” etc. shall be used in the same manner as for a company.

Part III Process of the reviews of the aAcquisition of Shares and the Acquisition of Business, and outline of the results of the reviews

1. Process of the reviews

(1) The Acquisition of Shares

After April 2011, WDI voluntarily submitted a written opinion to the JFTC stating that

WDI considered that the Acquisition of Shares would not substantially restrain competition, together with materials concerning the Acquisition of Shares. On June 10, 2011, a notification of a proposed plan regarding the Acquisition of Shares was submitted by WDI pursuant to the provisions of Article 10, Paragraph 2 of the AMA. Accordingly, the JFTC received the notification and commenced its primary review. The JFTC proceeded with the primary review in consideration of the materials the JFTC submitted by WDI including the above written opinion and notification. As a result, the JFTC determined that it would require a further detailed review. Accordingly, on July 4, 2011, the JFTC requested that WDI submit reports, etc., and then commenced its secondary review. On July 5, 2011, the JFTC made a public announcement that it had commenced the secondary review of the Acquisition of Shares together with the Acquisition of Business, and that it would accept written opinions from any third parties.

In the secondary review, the JFTC proceeded with its review of the effects of the Acquisition of Shares on competition in consideration of the reports and other materials submitted by WDI. In addition, the JFTC also considered the results of hearings and questionnaires, etc. conducted with users of HDDs, competitors and others. On August 26, 2011, the JFTC received all the reports, and related materials from WDI.

On October 13, 2011, during the secondary review, the JFTC explained to WDI the points at issue. The points the JFTC explained were that, with respect to the market for 3.5-inch PC/CE HDDs as stated in IV-3(1)A below, the Acquisition of Shares would be likely to substantially restrain competition, and that the Acquisition of Shares would be unlikely to substantially restrain competition in other fields of trade. Thereafter, WDI proposed to take remedies for solving those concerns, and the JFTC held several meetings with WDI on the said remedies proposed by WDI. On November 21, 2011, WDI submitted a change report on the changes, regarding remedies to the JFTC.

(2) The Acquisition of Business

On May 19, 2011, a notification of a proposed plan regarding the Acquisition of Business was submitted by STI pursuant to the provisions of Article 16, Paragraph 2 of the AMA. Accordingly, the JFTC received the notification and commenced its primary review. The JFTC proceeded with the primary review considering materials submitted by STI, including the notification. As a result, the JFTC determined that it would require further detailed review. Accordingly, on June 17, 2011, the JFTC requested that STI submit reports, etc., and then commenced the secondary review. On July 5, 2011, the JFTC made a public announcement that it had commenced the secondary review of the Acquisition of Business together with the review of the Acquisition of Shares, and that it would accept written

opinions from any third parties.

In the secondary review, the JFTC proceeded with its review of the effects of the Acquisition of Business on competition in consideration of the reports and other materials submitted by STI. In addition, the JFTC also considered the results of hearings and questionnaires, etc. conducted with users of HDDs and competing companies and others. On October 27, 2011, the JFTC received all the reports and related documents from STI. On October 28, 2011, during the secondary review, the JFTC explained to STI the points at issue. The points the JFTC explained were that, with respect to the market for 3.5-inch PC/CE HDDs as stated in IV-3(1)A below, the Acquisition of Business would be likely to substantially restrain competition, and that the Acquisition of Business would be unlikely to restrain competition in other fields of trade.

2. Outline of the results of the reviews

(1) The Acquisition of Shares

Given the remedies including the divestiture of the HDD business, etc., which WDI offered to the JFTC, the JFTC judged that the Acquisition of Shares might not be substantially restrained competition in any particular fields of trade.

(2) The Acquisition of Business

Given the remedies, etc. stated in (1) above, the JFTC judged that the Acquisition of Business might not be substantially restrained competition in any particular fields of trade.

The details of the results of the reviews are as stated in IV through VI below.

1. The acquisition of shares

On June 10, 2011, receipt of notification of a plan regarding the acquisition of shares by WDI

(start of the primary review)

On July 4, request for reports, etc. (start of the secondary review)

On August 26, receipt of all reports, etc. (the deadline for prior notice: November 24, 2011)

On November 21, submission of a report on changes in the notification by the parties, in which the remedies were described

On November 24, notification to WDI that a cease and desist order will not be issued

On November 25, publication of examination review result

2. The acquisition of business

On May 19, 2011, receipt of notification of a plan regarding the acquisition of business by STI

(start of the primary review)

On June 17, request for reports, etc. (start of the secondary review)

On October 27, receipt of all reports, etc. (the deadline for prior notice: January 25, 2012)

On December 15, notification to STI that a cease and desist order will not be issued

On November 25, publication of examination review result

(Reference 2) Coordination with the overseas competition authorities

The JFTC, having obtained the understanding of the companies concerned, conducted the review of this case while exchanging information with the European Commission, the Federal Trade Commission and the Korea Fair Trade Commission.

Part IV HDDs

1. Outline of HDDs

(1) HDDs are data storage devices to digitally and magnetically write data to or read data from disks with magnetic surfaces called “media” that rotate at high speeds, by electromagnets called “magnetic heads”.

(2) HDDs are used as data storage, mainly for companieservers and storages (meaning high capacity data storage devices; the same shall apply hereinafter), personal computers (hereinafter referred to as “PCs”), consumer electronics devices including DVD recorders, external HDDs for PCs and consumer electronics devices, etc. (refer to V below).

The format for media mounted on HDDs is called form factor, and the most common form factors today are media diameters of 3.5 inches and 2.5 inches. HDDs mounted with 2.5-inch media (hereinafter referred to as “2.5-inch HDDs”) are smaller in size and lighter in weight than HDDs mounted with 3.5-inch media (hereinafter referred to as “3.5-inch HDDs”), although 2.5-inch HDDs have a relatively small storage capacity in general.

The performance of HDDs (meaning data transfer rates, etc.; the same shall apply hereinafter) is determined by the rotational speed of the media (the number of rotations of the media per minute) and interfaces (the system to connect HDDs to other devices) and others.

(3) HDDs used for companieservers and storage (hereinafter referred to as “enterprise HDDs”) require high reliability such as lower rates of failure than HDDs used for PCs and

consumer electronics devices. Enterprise HDDs can be further divided into two types; high performance HDDs that do not have a large storage capacity (hereinafter, HDDs that require these characteristics shall be referred to as “mission critical HDDs”) and HDDs whose performance is lower compared to mission critical but that have a large storage capacity (hereinafter, HDDs that require these characteristics shall be referred to as “business critical HDDs”; Note 2).

Meanwhile, PCs and consumer electronics devices use basically the same HDDs. HDDs used for external HDDs, as stated in V below, have essentially similar levels of performance and reliability as those used for PCs and consumer electronics devices.

(Note 2) Almost all business critical HDDs are 3.5-inch HDDs.

(4) The prices of enterprise HDDs are higher than those of HDDs used for PCs and consumer electronics devices. Of enterprise HDDs, the prices of mission critical HDDs are higher than those of business critical HDDs.

For the same application, the prices of 2.5-inch HDDs per gigabyte (hereinafter referred to as “GB”) are higher than those of 3.5-inch HDDs.

2. Definition of particular fields of trade

(1) Product range

A. Demand substitutability

Basically the same HDDs are used for PCs and consumer electronics devices, and therefore there is a high degree of demand substitutability between HDDs for PCs and consumer electronics devices.

On the other hand, since enterprise HDDs have higher performance and reliability than HDDs for PCs and consumer electronics devices, and the prices of enterprise HDDs are higher than HDDs for PCs and consumer electronics devices, there is a low degree of demand substitutability between enterprise HDDs and HDDs for PCs and consumer electronics devices.

In addition, among enterprise HDDs, since there are differences in performance and price between business critical HDDs and mission critical HDDs, there is a low degree of demand substitutability between business critical HDDs and mission critical HDDs.

Pertaining to form factors, 2.5-inch HDDs are used mainly for applications when a large storage capacity is not required but small, lightweight HDDs are needed, while 3.5-inch HDDs are used mainly for applications when a large storage capacity are required and there are only a few limitations in terms of space and weight. In addition,

the prices of 2.5-inch HDDs per GB are higher than those of 3.5-inch HDDs. Consequently, there is a low degree of demand substitutability between 2.5-inch HDDs and 3.5-inch HDDs.

B. Definition of product range

Based on A above, the following five categories are defined as the product range:

- (i) HDDs for PCs and consumer electronics devices with a form factor of 3.5 inches (hereinafter referred to as “3.5-inch PC/CE HDDs”);
- (ii) HDDs for PCs and consumer electronics devices with a form factor of 2.5 inches (hereinafter referred to as “2.5-inch PC/CE HDDs”);
- (iii) Business critical HDDs with a form factor of 3.5 inches (hereinafter referred to as “3.5-inch business critical HDDs”);
- (iv) Mission critical HDDs with a form factor of 3.5 inches; and
- (v) Mission critical HDDs with a form factor of 2.5 inches (hereinafter referred to as “2.5-inch mission critical HDDs”);

(Note 3) Mission critical HDDs with a form factor of 3.5 inches are not considered since WD and SEC do not manufacture and sell such HDDs, therefore any competitive relationship does not exist with respect to the Acquisition of Shares and the Acquisition of Business.

(2) Geographic range

Manufacturers and sellers of HDDs (hereinafter referred to as “HDD manufacturers”) sell HDDs at substantially the same prices on a global basis, and domestic and international users conduct HDD transactions without any discriminatory treatment between domestic and international HDD manufacturers.

Accordingly, the entire world is defined as the geographic range for each HDD defined under (1)B above.

3. Impact of the Acquisition of Shares and the Acquisition of Business on competition

Since the Acquisition of Shares and the Acquisition of Business (hereinafter collectively referred to as the “the M&As”) are planned to take place at around the same time, the Acquisition of Shares was considered in light of the Acquisition of Business, and the Acquisition of Business was considered in light of the Acquisition of Shares.

(1) Change in market structure due to the M&As

A. The market for 3.5-inch PC/CE HDDs

As a result of the M&As, HHI will be approximately 5,000, the combined market share of WD and HGST will be approximately 50%, they will rank first in the market, and HHI will increase by approximately 900, while the combined market share of STX and SEC will be approximately 50%, they will rank second in the market, and HHI will increase by approximately 800. Therefore, neither the Acquisition of Shares nor the Acquisition of Business meets the safe harbor standards for horizontal business combinations.

In 2010, the size of the market (global market) for 3.5-inch PC/CE HDDs was approximately 283 million units. In recent years, the demand for 3.5-inch PC/CE HDDs has changed little and is unlikely to increase over the long term.

Market share of 3.5-inch PC/CE HDDs in 2010

Rank	Company name	Market share
1	WD	Approx. 40%
2	STX	Approx. 40%
3	HGST	Approx. 10%
4	SEC	Approx. 10%
(1)	The combination of the parties (WD and HGST)	Approx. 50%
(2)	The combination of the parties (STX and SEC)	Approx. 50%

B. The market for 2.5-inch PC/CE HDDs

As a result of the M&As, HHI will be approximately 3,800, the combined market share of WD and HGST will be approximately 50%, they will rank first in the market, and HHI will increase by approximately 1,200, while the combined market share of STX and SEC will be approximately 30%, they will rank second in the market, and HHI will increase by approximately 450. Therefore, neither the Acquisition of Shares nor the Acquisition of Business meets the safe harbor standards for horizontal business combinations.

In 2010, the size of the market (global market) for 2.5-inch PC/CE HDDs was approximately 314 million units.

Market share of 2.5-inch PC/CE HDDs in 2010

Rank	Company name	Market share
1	WD	Approx. 25%
2	HGST	Approx. 25%
3	Company A	Approx. 20%

4	STX	Approx. 20%
5	SEC	Approx. 10%
(1)	Combination of the parties (WD and HGST)	Approx. 50%
(2)	Combination of the parties (STX and SEC)	Approx. 30%

C. The market for 3.5-inch business critical HDDs

As a result of the M&As, HHI will be approximately 5,200, the combined market share of WD and HGST will be approximately 60%, they will rank first in the market, and HHI will increase by approximately 1,750, while the combined market share of STX and SEC will be approximately 40%, they will rank second in the market, and HHI will increase by approximately 50. Therefore, the Acquisition of Shares does not meet the safe harbor standards for horizontal business combinations, while the Acquisition of Business fall under the safe harbor standards for horizontal business combinations, and it was judged that the Acquisition of Business might not substantially restrain competition in any particular fields of trade.

In 2010, the size of the market (global market) for 3.5-inch business critical HDDs was approximately 18 million units.

Market share of 3.5-inch business critical HDDs for in 2010

Rank	Company name	Market share
1	STX	Approx. 40%
2	WD	Approx. 35%
3	HGST	Approx. 25%
4	SEC	Less than 5%
(1)	Combination of the parties (WD and HGST)	Approx. 60%
(2)	Combination of the parties (STX and SEC)	Approx. 40%

D The market for 2.5-inch mission critical HDDs

As a result of the Acquisition of Shares, the combined market share of WD and HGST will be approximately 25%, they will rank second in the market, HHI will be 4,300, and HHI will increase by approximately 100.

Therefore, 2.5-inch mission critical HDDs fall under the safe harbor standards for horizontal business combinations, and it was judged that the Acquisition of Shares might not substantially restrain competition in any particular fields of trade. With respect to the Acquisition of Business, 2.5-inch mission critical HDDs were not considered since SEC does not manufacture and sell such HDDs, therefore any

competitive relationship does not exist.

In 2010, the size of the market (global market) for 2.5-inch mission critical HDDs was approximately 15 million units.

Market share of 2.5-inch mission critical HDDs in 2010

Rank	Company name	Market share
1	STX	Approx. 60%
2	HGST	Approx. 25%
3	Company A	Approx. 15%
4	WD	Less than 5%
(2)	Combination of the parties (WD and HGST)	Approx. 25%

(2) Perspectives of consideration

The consideration of the market for 3.5-inch PC/CE HDDs, the market for 2.5-inch PC/CE HDDs, and the market for 3.5-inch business critical HDDs was made mainly from the perspectives described in A and B below.

- A. Regarding the market for 3.5-inch PC/CE HDDs where there will be two undertakings, with each having a market share of approximately 50% as a result of the M&As, whether or not competitive pressure, etc. from users will become a factor to prevent WD/HGST (meaning WD after the Acquisition of Shares; the same shall apply hereinafter) and STX/SEC (meaning STX after the Acquisition of Shares; the same shall apply hereinafter) from taking unilateral conduct respectively, or coordinated conduct with their competitors.

- B. Regarding the market for 2.5-inch PC/CE HDDs and the market for 3.5-inch business critical HDDs as a result of M&As, whether or not the existence of competitors other than WD/HGST and STX/SEC and new entrants, and competitive pressure, etc. from users will become factors to prevent WD/HGST and STX/SEC, from taking unilateral conduct respectively, or coordinated conduct with their competitors.

(3) Competitive Situations

A. The existence of competitors

(a) The market for 3.5-inch PC/CE HDDs market

Although WD/HGST and STX/SEC will be strong competitors against each other, there is no other competitor in the market.

(b) The market for 2.5-inch PC/CE HDDs

In addition to Company A, with a market share of approximately 20%, which is a strong competitor, WD/HGST and STX/SEC will be strong competitors against each other. There is no other competitor in the market.

(c) The market for 3.5-inch business critical HDDs

With respect to the Acquisition of Shares, STX/SEC will be a strong competitor with a market share of approximately 40%. In addition, Company A, which entered the market in 2011, is likely to become a strong competitor after a certain period of time, although its current market share is marginal. This is because Company A has a good track record of manufacturing and selling mission critical HDDs required more advanced technology compared to business critical HDDs, and because considering that most HDD users generally procure HDDs from around three companies, mainly in light of stable procurement and advantages in price negotiations, HDD users are expected to increase procurement from Company A, which is the only HDD manufacturer other than WD/HGST and STX/SEC. There is no other competitor in the market.

B. Excess capacity of competitors

(a) The market for 3.5-inch PC/CE HDDs

Neither WD/HGST nor STX/SEC has sufficient levels of excess supply capacity.

(b) The market for 2.5-inch PC/CE HDDs

Neither WD/HGST nor STX/SEC has sufficient levels of excess capacity, while Company A has a certain level of excess capacity.

(c) The market for 3.5-inch business critical HDDs

Neither WD/HGST nor STX/SEC has sufficient levels of excess capacity, while Company A is likely to have a certain level of excess capacity in the future.

(4) Entry pressure

Entry into the field of manufacture and sales of HDDs will require (i) the acquisition of intellectual property rights concerning HDDs or receipt of a permit for the use thereof, and (ii) substantial funds for the construction of HDDs manufacturing facilities. Therefore, new entry into the field from other fields of trade is extremely difficult.

In addition, there have not recently been any entrants from other fields of trade.

(5) Competitive pressure from related markets

Solid State Drives (hereinafter referred to as “SSDs”) are competing products with HDDs. However, the prices of SSDs per GB are much higher than those of HDDs. Accordingly, it is not recognized that there is competitive pressure from related markets.

(6) Competitive pressure from users

A. Competition among users

There exist great many manufacturers competing in the market for PCs and consumer electronics devices. Even if the prices of HDDs rise, it would be difficult for these manufacturers to shift the increase in the prices of HDDs to the prices of PCs and consumer electronics devices. As just described, there is a vigorous competition in the market for PCs and consumer electronics devices, which is a downstream market of 3.5-inch PC/CE HDDs and 2.5-inch PC/CE HDDs. Accordingly, a certain degree of competitive pressure from users is considered to exist with respect to the said HDDs.

B. Ease of switching suppliers

The products of each HDD manufacturer satisfy more than certain quality standards and are homogeneous within each product category. For this reason, it is acknowledged that switching suppliers is easy in the markets for 3.5-inch PC/CE HDDs, 2.5-inch PC/CE HDDs, and 3.5-inch business critical HDDs.

C. Multiple-source policies of HDD users

HDD users consider it desirable to procure HDDs from roughly three companies for each use in light of stable procurement, advantages in price negotiations and so forth. In practice, they generally procure HDDs from roughly three companies. It is considered that the impact of the M&As on such procurement behavior of HDD users is described as follows:

(a) 3.5-inch PC/CE HDDs

After the M&As, the number of HDD users’ procurement sources will be only two companies, namely WD/HGST and STX/SEC. It is therefore considered that HDD users will have difficulty in switching procurement sources or flexibly changing procurement ratios. Accordingly, it is considered that competitive pressure from users will not be exerted sufficiently.

(b) 2.5-inch PC/CE HDDs and 3.5-inch business critical HDDs

In the market for 2.5-inch PC/CE HDDs and 3.5-inch business critical HDDs, there will exist Company A in addition to WD/HGST and STX/SEC after M&As. Unlike the market for 3.5-inch PC/CE HDDs, therefore, it will be possible for HDD users to switch procurement sources and change ratios to certain degrees. Accordingly, it is considered that there will continue to be competitive pressure from users.

4. Assessment under the AMA

Based on 3(3)-(6) above, under the AMA the market for 3.5-inch PC/CE HDDs, the market for 2.5-inch PC/CE HDDs and the market for 3.5-inch business critical HDDs are assessed as follows:

(1) The market for 3.5-inch PC/CE HDDs

A. The Acquisition of Shares

(a) Substantial restraint of competition by unilateral conduct

- a. As a result of the Acquisition of Shares, WD/HGST would have a larger market share. It would therefore become easier for WD/HGST itself to exert an influence on the market for 3.5-inch PC/CE HDDs by decreasing the volume of supply of the said 3.5-inch HDDs.
- b. The level of excess capacity of STX/SEC as WD/HGST's competitor is not sufficient. Moreover, over the long term the demand for 3.5-inch PC/CE HDDs is unlikely to increase. For these reasons, an incentive for STX/SEC as WD/HGST's competitor to reinforce its production capacity would be small. Consequently, the constraint on the price increase by WD/HGST through restrictions of the volume of supply would not be imposed.
- c. Entry into the market for 3.5-inch PC/CE HDDs requires (i) the acquisition of intellectual property rights concerning HDDs or receipt of a permit for the use thereof, and (ii) substantial funds for the construction of HDD manufacturing facilities. Moreover, the demand over the long term for 3.5-inch PC/CE HDDs is unlikely to increase. Consequently, it is considered that there is no entry pressure.
- d. The prices of SSDs per GB are much higher than those of HDDs. Accordingly, it is considered unlikely that SSDs would, in a certain period of time, become competing products with 3.5-inch PC/CE HDDs and therefore a factor to prevent WD/HGST from determining prices freely, to a certain extent through restrictions of the volume of supply.

- e. With the Acquisition of Shares, the sources of procurement for HDD users would be limited to WD/HGST and its competitor, STX/SEC. Considering that this would make it difficult to switch the procurement sources or flexibly change the procurement ratios of 3.5-inch PC/CE HDDs, competitive pressure from users would not become sufficient.
- f. Based on the comprehensive consideration of the situations described in a. through e. above, a situation could easily arise in which WD/HGST might solely determine the prices of 3.5-inch PC/CE HDDs freely, to a certain extent through placing restrictions of the volume of supply. It was therefore judged that the Acquisition of Shares would substantially restrain competition in a particular field of trade.

(b) Substantial restraint of competition by coordinated conduct

- a. As a result of the Acquisition of Shares, the only competitor for WD/HGST in the market for 3.5-inch PC/CE HDDs would be STX/SEC, which means that both undertakings would be able to forecast each other's behaviors with high probability, and each will have a market share of approximately 50%, which means that common interests would likely be shared with WD/HGST and its competitor.
- b. With the Acquisition of Shares, there would be no HDD manufacturer other than WD/HGST itself to prevent STX/SEC as its competitor from raising prices through restrictions of the volume of supply. In addition, the excess capacity of WD/HGST is not large. It is therefore considered that there would be a high possibility that WD/HGST would, if STX/SEC as its competitor raises prices through restrictions of the volume of supply of 3.5-inch PC/CE HDDs, also raise the prices of 3.5-inch PC/CE HDDs in coordination with the competitor by such means as imposing restrictions on the volume of supply.
- c. Entry into the market for 3.5-inch PC/CE HDDs will require (i) the acquisition of intellectual property rights concerning HDDs or receipt of a permit for the use thereof, and (ii) substantial funds for the construction of HDD manufacturing facilities. Moreover, over the long term the demand for 3.5-inch PC/CE HDDs is unlikely to increase. Consequently, it is not considered that there is any entry pressure.
- d. The prices of SSDs per GB are much higher than those of HDDs. Accordingly, it is considered unlikely that SSDs would, in a certain period of time, become a competing products with 3.5-inch PC/CE HDDs and therefore a factor to prevent

WD/HGST and STX/SEC as its competitor from determining prices freely, to a certain extent through restrictions of the volume of supply.

- e. With the Acquisition of Shares, the sources of procurement for HDD users would be limited to WD/HGST and its competitor, STX/SEC. Considering that this would make it difficult to switch the procurement sources or flexibly change the procurement ratios of 3.5-inch PC/CE HDDs, substantial competitive pressure from users would not become sufficient.
- f. Based on the comprehensive consideration of the situations described in a. through e. above, a situation could easily arise, as a result of the Acquisition of Shares, in which WD/HGST might, in coordination with its competitor, STX/SEC, determine the prices of 3.5-inch PC/CE HDDs freely, to a certain extent through restrictions of the volume of supply. It was therefore judged that the Acquisition of Shares would substantially restrain competition in a particular field of trade.

B. The Acquisition of Business

(a) Substantial restraint of competition by unilateral conduct

- a. As a result of the Acquisition of Business, STX/SEC would have a larger market share. It would therefore become easier for STX/SEC itself to exert an influence on the market for 3.5-inch PC/CE HDDs by decreasing the volume of supply of the said 3.5-inch HDDs.
- b. The level of excess supply capacity of WD/HGST as its competitor is not sufficient. Moreover, over the long term the demand for 3.5-inch PC/CE HDDs is unlikely to increase. For these reasons, an incentive for WD/HGST as its competitor to reinforce its production capacity would be small. Consequently, the constraint on the price increase by STX/SEC through restrictions of the volume of supply would not be imposed.
- c. Entry into the market for 3.5-inch PC/CE HDDs requires (i) the acquisition of intellectual property rights concerning HDDs or receipt of a permit for the use thereof, and (ii) substantial funds for the construction of HDD manufacturing facilities. Moreover, over the long term the demand for 3.5-inch PC/CE HDDs is unlikely to increase. Consequently, it is considered that there is no entry pressure.
- d. The prices of SSDs per GB are much higher than those of HDDs. Accordingly, it is not considered that SSDs would, in a certain period of time, become competing products with 3.5-inch PC/CE HDDs and therefore a factor to prevent STX/SEC from determining prices freely, to a certain extent through restrictions of the volume of supply.

- e. With the Acquisition of Business, the sources of procurement for HDD users would be limited to STX/SEC and its competitor, WD/HGST. Considering that this would make it difficult to switch the procurement sources or flexibly change the procurement ratios of 3.5-inch PC/CE HDDs, competitive pressure from users would not become sufficient.
- f. Based on the comprehensive consideration of the situations described in a. through e. above, a situation could easily arise in which STX/SEC might solely determine the prices of 3.5-inch PC/CE HDDs freely, to a certain extent through placing restrictions of the volume of supply. It was therefore judged that the Acquisition of Business might be substantially restrain competition in a particular field of trade.

(b) Substantial restraint of competition by coordinated conduct

- a. As a result of the Acquisition of Business, the only competitor for STX/SEC in the market for 3.5-inch PC/CE HDDs would be WD/HGST, which means that both undertakings would be able to forecast each other's behaviors with high probability, and each will have a market share of approximately 50%, which means that common interests would likely be shared with STX/SEC and its competitor.
- b. With the Acquisition of Business, there would be no HDD manufacturer other than STX/SEC itself to prevent WD/HGST as its competitor from raising prices through restrictions of the volume of supply. In addition, the excess supply capacity of STX/SEC is not large. It is therefore considered that there would be a high possibility that STX/SEC would, if WD/HGST as its competitor raises prices through restrictions of the volume of supply of 3.5-inch PC/CE HDDs, also raise the prices of 3.5-inch PC/CE HDDs in coordination with the competitor by such means as imposing restrictions on the volume of supply.
- c. Entry into the market for 3.5-inch PC/CE HDDs will require (i) the acquisition of intellectual property rights concerning HDDs or receipt of a permit for the use thereof, and (ii) substantial funds for the construction of HDD manufacturing facilities. Moreover, over the long term the demand for 3.5-inch PC/CE HDDs is unlikely to increase. Consequently, it is not considered that there is any entry pressure.
- d. The prices of SSDs per GB are much higher than those of HDDs. Accordingly, it is not considered that SSDs would, in a certain period of time, become a competing products with 3.5-inch PC/CE HDDs and therefore a factor to prevent

STX/SEC and WD/HGST as its competitor from determining prices freely, to a certain extent through restrictions of the volume of supply.

- e. With the Acquisition of Business, the sources of procurement for HDD users would be limited to STX/SEC and its competitor, WD/HGST. Considering that this would make it difficult to switch the procurement sources or flexibly change the procurement ratios of 3.5-inch PC/CE HDDs, substantial competitive pressure from users would not become sufficient.
- f. Based on the comprehensive consideration of the situations described in a. through e. above, a situation could easily arise, as a result of the Acquisition of Business, in which STX/SEC might, in coordination with its competitor, WD/HGST, determine the prices of 3.5-inch PC/CE HDDs freely, to a certain extent through restrictions of the volume of supply. It was therefore judged that the Acquisition of Business would substantially restrain competition in a particular field of trade.

(2) The market for 2.5-inch PC/CE HDDs

A. The Acquisition of Shares

Regarding the market for 2.5-inch PC/CE HDDs, there is no entry pressure or competitive pressure from related markets. However, due to the following factors, it was judged that unilateral conduct by WD/HGST or coordinated conduct with its competitor would not substantially restrain competition in any particular fields of trade:

- (a) There are two strong competitors in the market;
- (b) Company A has a certain level of excess capacity; and
- (c) There are a total of three HDD manufacturers in the market. For this reason, HDD users could switch the procurement sources or flexibly change the procurement ratios of 2.5-inch PC/CE HDDs. Accordingly, there is a certain level of competitive pressure from users.

B. The Acquisition of Business

Regarding the market for 2.5-inch PC/CE HDDs, there is no entry pressure or competitive pressure from related markets. However, due to the following factors, it was judged that unilateral conduct by STX/SEC or coordinated conduct with its competitor would not substantially restrain competition in any particular fields of trade:

- (a) There are two strong competitors in the market;
- (b) Company A has a certain level of excess capacity; and
- (c) There are a total of three HDD manufacturers in the market, so HDD users could

switch the procurement sources or flexibly change the procurement ratios of 2.5-inch PC/CE HDDs. For this reason, there is a certain level of competitive pressure from users.

(3) The market for 3.5-inch business critical HDDs

When the Acquisition of Shares is implemented, there would be no entry pressure or competitive pressure from related markets in the market for 3.5-inch business critical HDDs. However, due to the following factors, it was judged that unilateral conduct by WD/HGST or coordinated conduct with its competitor would not substantially restrain competition in any particular fields of trade:

- A. There is one strong competitor. Company A is also likely to become a strong competitor in a certain period of time;
- B. Company A is likely to have a certain level of excess supply capacity; and
- C. There are a total of three HDD manufacturers in the market, so HDD users can switch the procurement sources or flexibly change the procurement ratios of 3.5-inch business critical HDDs. For this reason, there is a certain level of competitive pressure from users.

5. Proposal for remedies by WDI

JFTC explained the points at issue, etc. to WDI with respect to 4(1)A, (2)A and (3) above and to STI with respect to 4(1)B and (2)B. WDI then proposed the following remedies (hereinafter referred to as “the Remedies”) for the concerns under the AMA stated in 4(1)A above.

- (i) WDI’s facilities for manufacturing the volume of 3.5-inch PC/CE HDDs corresponding to approximately 10% of its market share in 2010 will be divested in terms of transfer.
- (ii) WDI will make it possible for the transferee to use the intellectual property required for the manufacture and sale of 3.5-inch PC/CE HDDs.
- (iii) Complying with the request of the transferee, WDI will supply HDD components to the transferee at competitive prices for a certain period of time.
- (iv) The transferee will be selected based on criteria, including but not limited to, independence from WD, sufficient financial resources, expertise and incentives to maintain and develop the transferred business. Regarding the actual transferee, WDI will report to the JFTC, upon the conclusion of a transfer agreement with the transferee, by submitting a copy of the transfer agreement.
- (v) The deadline for the closing of the transfer will be no later than 3 months from the date

when the copy of the transfer agreement is submitted to the JFTC. If, upon the conclusion of the transfer agreement, a copy thereof is not submitted to the JFTC, the Acquisition of Shares will not be implemented.

6. Assessment of the Remedies

(1) The Acquisition of Shares

Given the Remedies proposed by WDI, as a result of the Acquisition of Shares the combined market share of WD and HGST will be approximately 40%, they will rank second in the market for 3.5-inch PC/CE HDDs and HHI will be approximately 4,200 increased by approximately 50. Consequently, the Acquisition of Shares will meet the safe harbor standards for horizontal business combinations.

Regarding the transferee, it is considered that it will become a strong independent competitor in the market for 3.5-inch PC/CE HDDs, if the requirements stated in 5(iv) above are met. Whether or not the actual transferee satisfies the said requirements will be judged by the JFTC following the receipt of a copy of the transfer agreement from WDI.

Even if the transfer of business is implemented after the Acquisition of Shares, the deadline for the closing of the transfer will be no later than 3 months from the date when the copy of the transfer agreement is submitted to the JFTC. Considering this, the deadline for the implementation of the Remedies is appropriately and clearly determined.

Based on the above and given the Remedies, it was judged that unilateral conduct by WD/HGST or coordinated conduct with its competitor would not substantially restrain competition in any particular fields of trade.

(2) The Acquisition of Business

Even given the Remedies, as a result of the Acquisition of Business the combined market share of STX and SEC will still be approximately 50%, they will rank first in the market for 3.5-inch PC/CE HDDs and HHI will be approximately 4,200 increased by approximately 800. Consequently, the Acquisition of Business will not meet with the safe harbor standards for horizontal business combinations. However, by the review again as follows, based on a comprehensive consideration of the situations described in A through C below, it was judged that the unilateral conduct by STX/SEC or the coordinated conduct with its competitor as a result of the Acquisition of Business would not substantially restrain competition in any particular fields of trade.

A. As a result of the Acquisition of Business, there are two strong competitors for STX/SEC in the market, namely WD/HGST and the transferee as a result of the

Remedies, which means that it is not considered that any of these undertakings would be able to forecast the others' behaviors with a high probability, and there will also be variations in terms of market share (approximately 50% for STX/SEC, approximately 40% for WD/HGST, and approximately 10% for the transferee), which means that common interests is unlikely to be shared with STX/SEC and its competitor.

- B. One of the conditions of the transfer of part of WDI's HDD business is that the transferee, one of STX/SEC's competitors, has the intention and capability to develop the transferred business concerning 3.5-inch PC/CE HDDs. Accordingly, there is likely for the transferee to increase its production capacity.
- C. There are a total of three HDD manufacturers in the market, so HDD users can switch the procurement sources or flexibly change the procurement ratios of 3.5-inch PC/CE HDDs. For this reason, competitive pressure from users will continue.

Part V External HDDs

1. Outline of external HDDs

An external HDD is a device that contains an embedded HDD and allows connection to PCs and consumer electronics devices. It is used to reinforce the storage capacity of PCs and consumer electronics devices and make data backups.

There are two types of external HDDs; mainly those that mount 3.5-inch HDDs (hereinafter referred to as "3.5-inch external HDDs") and those that mount 2.5-inch HDDs (hereinafter referred to as "2.5-inch external HDDs").

2. Definition of particular fields of trade

(1) Product range

3.5-inch external HDDs and 2.5-inch external HDDs differ from each other in terms of their characteristics, including storage capacity and product size. For this reason, the degree of the demand substitutability is low.

Accordingly, 3.5-inch external HDDs and 2.5-inch external HDDs are defined as the product range of external HDDs respectively.

(2) Geographic range

The major purchasers of external HDDs are electronics retail stores. Domestic electronics retail stores procure almost all external HDDs from domestic manufacturers of external HDDs (meaning companies that manufacture and sell external HDDs by procuring HDDs from HDD manufacturers and selling agents, and; the same shall apply hereinafter) based on their brand power (recognition of consumers in general).

Accordingly, all of Japan is defined as the geographic range for each external HDD defined under (1) above.

3. Impact of the M&As on competition

The Acquisition of Shares and the Acquisition of Business are planned to take place at approximately the same time. For this reason, the Acquisition of Shares was considered in light of the Acquisition of Business, and the Acquisition of Business was considered in light of the Acquisition of Shares.

(1) Horizontal business combinations (changes in market structure due to the M&As)

A. The market for 3.5-inch external HDDs

As a result of the Acquisition of Shares and the Acquisition of Business, the combined market share of WD and HGST will be less than 5% in 2010, and they will rank fourth or lower in the market for 3.5-inch external HDDs. The combined market share of STX and SEC will also be less than 5%, and they will also rank fourth or lower in the market. HHI will be approximately 4,700 and HHI will increase by less than 50 for both business combinations.

Consequently, 3.5-inch external HDDs fall under the safe harbor standards for horizontal business combinations.

Market share for 3.5-inch external HDDs in 2010

Rank	Company name	Market share
Fourth or lower	WD	Less than 5%
Fourth or lower	HGST	Less than 5%
Fourth or lower	STX	Less than 5%
Fourth or lower	SEC	Less than 5%
(Fourth or lower)	Combination of the parties (WD and HGST)	Less than 5%
(Fourth or lower)	Combination of the parties (STX and SEC)	Less than 5%

B. The market for 2.5-inch external HDDs

As a result of the Acquisition of Shares and the Acquisition of Business, the combined market share of WD and HGST will be less than 5% in 2010, and they will rank fourth or lower in the market. The combined market share of STX and SEC will also be less than 5%, and they will also rank fourth or lower in the market. HHI will be

approximately 4,100 and HHI will increase by less than 50 for both business combinations.

Consequently, 2.5-inch external HDDs fall under the safe harbor standards for horizontal business combinations.

Market share for 2.5-inch external HDDs in 2010

Rank	Company name	Market share
Fourth or lower	WD	Less than 5%
Fourth or lower	HGST	Less than 5%
Fourth or lower	STX	Less than 5%
Fourth or lower	SEC	Less than 5%
(Fourth or lower)	Combination of the parties (WD and HGST)	Less than 5%
(Fourth or lower)	Combination of the parties (STX and SEC)	Less than 5%

(2) Vertical business combinations

There are vertical relationships between HDDs (3.5-inch PC/CE HDDs and 2.5-inch PC/CE HDDs) as an upstream market, and external HDDs that use HDDs (3.5-inch external HDDs and 2.5-inch external HDDs) as a downstream market.

A. Market share

The market share of HDDs (3.5-inch PC/CE HDDs and 2.5-inch PC/CE HDDs) as the upstream market is as stated in IV-3(1)A and B above. The market share of external HDDs (3.5-inch external HDDs and 2.5-inch external HDDs) as the downstream market is as stated in (1) above.

HDDs in the upstream market do not meet the safe harbor standards for vertical business combinations, while external HDDs in the downstream market fall under the safe harbor standards for vertical business combinations.

Accordingly, the restrictions of the volume of supply of HDDs in the upstream market imposed by WD/HGST and STX/SEC against manufacturers of external HDDs were considered.

B. Closure and exclusivity of the upstream market

WD and STX, which manufacture and sell HDDs, will continue to manufacture and sell HDDs before and after the M&As. It is therefore unlikely that they will take advantage of the M&As and impose restrictions of the volume of supply of HDDs on manufacturers of external HDDs.

As a result of the M&As, the number of HDD manufacturers will decrease. Due to this, there is some concern that it would become easier for WD/HGST and STX/SEC to restrict the supply of HDDs to manufacturers of external HDDs in a coordinated manner. However, manufacturers of external HDDs can purchase HDDs not only from WD/HGST and STX/SEC but also from selling agents, etc. of HDDs. By taking other factors into consideration as well, manufacturers of external HDDs would not have any difficulty in the procurement of HDDs. It is therefore unlikely that WD/HGST and STX/SEC would take such behavior.

4. Assessment under the AMA

(1) Horizontal business combinations

Based on 3(1) above, it was judged that neither the Acquisition of Shares nor the Acquisition of Business would substantially restrain competition in a particular field of trade.

(2) Vertical business combinations

Based on 3(2)B above, it was considered that no concern will arise relating to the closure and exclusivity of the market for HDDs after the M&As. Accordingly, it was judged that neither the Acquisition of Shares nor the Acquisition of Business would substantially restrain competition in any particular fields of trade .

Part VI HDD components

1. Outline of HDD components

(1) As stated in IV-1(1) above, HDDs are composed of many components, including magnetic heads and media. Of the many HDD components, magnetic heads and media have a major influence on HDDs' data writing and reading speed as well as their storage capacity.

(2) The three companies WD, HGST and STX internally produce almost all magnetic heads and media used in the manufacture of HDDs, while they procure some of these components from a manufacturer who manufactures magnetic heads and sells them to HDD manufacturers (hereinafter referred to as the "Independent magnetic heads manufacturer") and those who manufacture media and sell them to HDD manufacturers (hereinafter referred to as the "Independent media manufacturer"). In many cases, the performance of the HDD components manufactured and sold by Independent magnetic heads manufacturer

and Independent media manufacturer (hereinafter collectively referred to as “Independent HDD component manufacturers”) is superior to that of HDD components manufactured by HDD manufacturers. The prices of HDD components manufactured by Independent HDD component manufacturers tend to be high, reflecting their higher performance, etc.

There is only one Independent magnetic heads manufacturer in the world. In terms of the ratio of the in-house production of HDD components by WD, HGST and STX, the said ratio is generally higher for magnetic heads than for media.

On the other hand, SEC and Company A do not produce HDD components internally. They procure all the HDD components they use from Independent HDD component manufacturers.

2.Impact of the M&As on competition

As stated in 1 above, of HDD components, the ratio of in-house production is higher for magnetic heads, and there is only one Independent magnetic heads manufacturer in the world. Looking into the M&As, especially the Acquisition of Business, STX produces magnetic heads internally, while SEC procures all the magnetic heads it uses from the Independent magnetic heads manufacturer. For this reason, it is considered that, after the M&As, STX might begin to internally produce the portion of the magnetic heads that SEC has been procuring from the Independent magnetic heads manufacturer, in an attempt to reduce production costs. Consequently, it is considered that the volume of sales for the Independent magnetic heads manufacturer would decrease. Accordingly, the earnings of the Independent magnetic heads manufacturer is likely to decrease, which in turn would make it difficult for the said manufacturer to make sufficient investment in the research and development of magnetic heads. If that is the case, the magnetic heads produced by the Independent magnetic heads manufacturer would become technically backward. In addition, as a result of a decrease in the volume of sales leading to a higher production cost per unit, it is likely that the Independent magnetic heads manufacturer have to increase in price of magnetic heads. Moreover, the competitive power of Company A, which relies on the Independent magnetic heads manufacturer for the procurement of magnetic heads, would become weak. As a result, in the market for 2.5-inch PC/CE HDDs, etc the constraint on WD/HGST and STX/SEC by Company A is likely to be removed.

3.Assessment under the AMA

In response to the competitive concerns stated in 2 above, STX voluntarily concluded a contract with the Independent magnetic heads manufacturer for the purchase of a certain amount of magnetic heads on a continuous basis for a certain period of time. Based on this

contract, it was judged that the Acquisition of Business would not have a significant influence on the business activities of the Independent magnetic heads manufacturer, and that it is sufficiently possible for Company A to maintain its business and remain a strong competitive unit in the market for HDDs.

Case 7 Acquisition of Shares of Sony Mobile Display Corporation, Toshiba Mobile Display Co., Ltd., and Hitachi Displays, Ltd. by Japan Display Inc.

Part I Outline of the transaction

In this case, it was planned that the specified purpose company established by the Innovation Network Corporation of Japan (INCJ) (the stock company created under the provisions of the Act on Special Measures for Industrial Revitalization (Act No. 131 of 1999)) to integrate the TFT liquid crystal display (TFT LCD) businesses would acquire all the shares of Sony Mobile Display Corporation, Toshiba Mobile Display Co., Ltd., and Hitachi Displays, Ltd. respectively, each of which is engaged in the business of the manufacture and sale of TFT LCDs, in order to integrate the medium and small size TFT LCD businesses of the three companies. The provision of the AMA, applied to the case, is Article 10 of the AMA.

Part II Definition of particular field of trade

1. Product range

TFT LCDs are divided into large size ones equal to or more than 10.4 inches that are used for large screen displays such as TV screens, and medium and small size ones less than 10.4 inches that are used for the displays of portable products such as mobile phones and digital cameras.

Large size TFT LCDs and medium and small size TFT LCDs differ in terms of use and the users procuring thereof.

In addition, they are produced on different manufacturing lines, except for some overlapping in terms of the products able to be produced on such different lines and facilities (it is capable to manufacture large size products that are slightly larger than 10.4 inches on the medium and small size TFT LCD manufacturing line). As a result, there is basically no substitutability of supply between the two types of TFT LCDs.

In light of the above circumstances, the product range is defined as "medium and small size TFT LCDs."

2. Geographic range

There are no substantial differences in the performance and quality of medium and small size TFT LCDs between the major manufacturers of medium and small size TFT LCDs. Users indiscriminately deal with any domestic and foreign manufacturers of TFT LCDs.

Medium and small size TFT LCDs are light and easy to transport over long distances due to their characteristics. In addition, they are transported by air transport and truck, and the

transportation cost, whether by air or land, accounts for an insignificant percentage of the sales price. Furthermore, most countries do not impose duties on medium and small size TFT LCDs, resulting in no tariff barriers. Under these circumstances, major domestic and foreign manufacturers of medium and small size TFT LCDs sell their products at substantially the same prices in the global market. Users also choose their main suppliers from manufacturers of medium and small size TFT LCDs all around the world.

For these reasons, the geographic range is determined as "worldwide."

Part III Impact of the business combination on Competition

The entire global market size of medium and small size TFT LCDs in 2010 was approximately 1.8 billion displays.

The combined market share held by both parties as a result of the acquisition will be approximately 15% and it will be ranked in the 2nd place. In addition, the HHI after the acquisition will be approximately 1,100, and the increment of the HHI will be approximately 100. These figures therefore fall within the range of the horizontal safe-harbor. The JFTC thus determined that the acquisition in question is unlikely to substantially restrain competition in any particular fields of trade.

Rank	Company Name	Market Share
7	Hitachi Displays	Approximately 5%
10	Sony Mobile Display	0-5%
11	Toshiba Mobile Display	0-5%
(2)	Combined Market Share	Approximately 15%

Part IV Conclusion

In light of the above circumstances, the JFTC concluded that the acquisition in question is unlikely to substantially restrain competition in any particular fields of trade.

Case 8 Establishment of the Joint Venture by the Qantas/Jetstar Group and Japan Airlines Co., Ltd.

Part I Outline of the transaction

In this case, the Qantas/Jetstar Group (Australia) and Japan Airlines Co., Ltd. (hereinafter referred to as "JAL") planned to establish a new joint venture to enter the business market for providing aviation services at a low price on domestic routes in Japan and international routes that include incoming to and outgoing from Japan (a company engaged in this business is known as a Low Cost Carrier (LCC); such business shall be hereinafter referred to as the "LCC Business"). The provision of the AMA, applied to the case, is Article 10 of the AMA.

1. Outline of the parties concerned

Qantas Airways Limited (hereinafter referred to as "Qantas") is an airline company engaged in the so-called full service airline business (Full Service Airline; hereinafter referred to as the "FSA"). Jetstar Airways (hereinafter referred to as "Jetstar") is a wholly-owned subsidiary of Qantas that is engaged in the LCC Business. The Qantas/Jetstar Group contributes capital to Jetstar Asia Airways, which is also engaged in the LCC Business and other airline companies.

Currently, JAL has no subsidiaries engaged in the LCC Business.

2. Relationship between Qantas/Jetstar Group and JAL

There is neither capital relationship nor personnel relationship between the parties.

Qantas and JAL belong to the same airline alliance, "oneworld," and operate flights on certain routes under a codeshare agreement. Jetstar and JAL also operate flights on certain routes under a codeshare agreement.

3. Outline of the joint venture

The joint venture is being established in order for the Qantas/Jetstar Group and JAL to enter the LCC Business market on domestic routes in Japan and international routes that include incoming to and outgoing from Japan. It will not engage in any businesses that are provided under the FSA services of JAL and Qantas.

The investment ratio of the joint venture will be 33% for the Qantas Jetstar Group, 33% for JAL, and 34% for the other two Japanese companies.

Part II Impact of the business combination on competition

1. Joint Relationship/Coordinated Relationship between the Parties

The establishment of the joint venture forms an indirect joint relationship between the contributing companies, Qantas Jetstar Group and JAL.

In this case, the joint venture is established to engage in the LCC Business without conjunction in all or part of the existing businesses of the parties concerned. However, there is relevance between the operations of the parties concerned and those of the joint venture. Consequently, the parties may share information on the individual aviation services provided by them (e.g., wholesale fare prices) through the management of the joint venture, which could result in a coordinated relationship between the parties.

2. Definition of particular field of trade

Since users choose and use aviation services to travel between cities, nonstop flight routes between cities are defined as a particular field of trade. The parties concerned compete on seven international routes that include incoming to and outgoing from Japan (including the routes subject to the codeshare agreement).

3. Assessment under the AMA

(1) Domestic Routes in Japan

The Qantas/Jetstar Group does not operate any flights on domestic routes in Japan, thus there is no competitive relationship between the parties concerned. In addition, it is practically impossible for foreign airline companies including the Qantas/Jetstar Group to enter the aviation services on domestic routes in Japan without the cooperation of a Japanese FSA, since foreign airline companies are generally not permitted to operate flights on domestic routes in Japan. It is considered that the Qantas/Jetstar Group would require the cooperation of Japanese airline companies to enter the aviation service on domestic routes in Japan.

In addition, customers will have more choices when selecting aviation services when the joint venture provides the LCC Business on domestic routes in Japan.

The JFTC therefore determined that the establishment of the joint venture in question is unlikely to substantially restrain competition in any particular fields of trade.

(2) International Routes

On international routes, customers will have more choices when the joint venture operates flights. However, among the seven routes on which the parties concerned compete with each other, only the parties operate flights on the following five routes: (1) Narita-Sydney, (2) Narita-Cairns, (3) Narita-Gold Coast, (4) Kanku-Cairns, and (5) Kanku-Gold Coast (hereinafter referred to as the "Five Routes"). When the joint venture

operates flights on these routes, there will be a major impact on competition if a coordinated relationship arises between the parties concerned.

For example, the parties concerned may share information on the individual aviation services offered on the Five Routes respectively through the management of the joint venture, which might result in a coordinated relationship between the parties, and, when no factors prevent the parties from forming, maintaining, or strengthening their market power, this might substantially restrain competition.

It is considered, however, that there is no possibility that the parties concerned will share information on the individual aviation services offered by the parties respectively on the air routes on which they compete, including the Five Routes, through the management of the joint venture, since the parties have not planned any operation of flights by the joint venture on those routes.

The JFTC therefore determined that the establishment of the joint venture in question is unlikely to substantially restrain competition in any particular fields of trade.

Part III Conclusion

From the above, the JFTC concluded that the establishment of the joint venture in question and the operation of the LCC Business on domestic routes in Japan and international routes by the joint venture, given that the joint venture will not operate any flights on the routes on which the parties compete, is unlikely to substantially restrain competition in any particular fields of trade.

Case 9 Acquisition of the shares of MARUNAKA Co., Ltd. and SANYO MARUNAKA by AEON Co., Ltd.

Part I Outline of the transaction

In this case, AEON Co., Ltd., which is engaged in the supermarket business throughout Japan and has businesses engaged in the supermarket business under its control (hereinafter referred to as "AEON"), planned to acquire shares of MARUNAKA Co., Ltd., which is engaged in the supermarket business in Hyogo (exclusively in Awaji-sima area), Kagawa, Tokushima, Ehime and Kochi prefectures (hereinafter referred to as "MARUNAKA") and SANYO MARUNAKA, which is engaged in the supermarket business in Osaka, Hyogo (excluding Awaji-sima area), Okayama and Hiroshima prefectures (hereinafter referred to as "SANYO MARUNAKA") (MARUNAKA and SANYO MARUNAKA are under the control of the same parent company) respectively. The provision of the AMA, applied to the case, is Article 10 of the AMA.

Part II Definition of particular field of trade

1. Service range

AEON, MARUNAKA and SANYO MARUNAKA compete with each other in the supermarket business. Generally, supermarkets are divided into the general superstore, which offers a wide range of merchandise such as clothing, everyday items and foodstuffs, and the foods supermarket, which offers mainly foodstuffs. It is considered that consumers choose a supermarket store from which to purchase without differentiating between the types of supermarket in their purchase behaviors. The range of service is therefore defined as the "supermarket business."

2. Geographic range

It is considered that each store competes individually with other supermarket stores. In this case, it is considered that the parties concerned compete in the trading area within a five-kilometer radius from each store, in which consumers shop around, subject to some differences in the range due to the conditions of the location.

In light of the above, the geographic range is defined as the area within a five-kilometer radius from each store.

With respect to AEON stores which are located within a five-kilometer radius from MARUNAKA or SANYO MARUNAKA stores, AEON stores compete with MARUNAKA stores in approximately 40 areas, and with SANYO MARUNAKA stores in approximately 30 areas.

Part III Impact of the business combination on competition

1. Status of Competitors

In each area in which the stores of the parties concerned compete with each other, there are local competitors' stores offering services toward the local community, and nationwide competitors offering services throughout Japan.

2. Entry

To engage in the supermarket business, it is necessary for businesses to obtain a number of permits and authorizations under various laws and ordinances, e.g., the permit for meat sales under the Food Sanitation Act (Act No. 233 of 1947). These permits and authorizations may be obtained when no defect is found in written applications for them. It is therefore considered that the entry barriers under the system are low.

In addition, when opening a standard-sized store, the necessary investment is a few hundred million yen, which is generally said to be recovered within a few years. It is therefore not considered that the necessary investment constitutes one of the entry barriers.

For these reasons, it is considered that entry pressure works to a certain degree.

3. Competitive pressure from related markets

(1) Competitive pressure from related markets e.g., home centers

Although it is considered that there are some differences in product lines among the items offered by supermarkets, they are also sold by other retailers, including home centers, convenience stores, and drugstores. These retailers compete with each other in terms of prices and services offered through bargain sales, the development of low-priced private brand products, a wide assortment of merchandise, and convenient services, etc.

It is therefore considered that competitive pressure from other types of retailers also works to a certain degree.

(2) Competitive pressure from geographically neighboring areas

Consumers might use supermarkets located outside the area in which they usually shop around. In the areas contiguous to the field of trade defined in 2 of Part II above, there are competitors engaged in the supermarket business.

It is therefore considered that competitive pressure from competitors located in the geographically neighboring areas works to a certain degree.

4. Assessment under the AMA

In light of the respective determining factors in the respective fields of trade defined in Part II above, the JFTC determined that the acquisition of shares in question is unlikely to substantially restrain competition in any particular fields of trade through unilateral business behavior by the parties or coordinated business behavior between the parties and the other competitors.

Part IV Conclusion

As described above, the JFTC concluded that the acquisition of shares in question is unlikely to substantially restrain competition in any particular fields of trade.

Appendix 1

Regulations on Business Combinations

1. Regulations on business combinations

The AMA prohibits acquisition or possession of the shares of a company, the merger of companies, the split of a company, joint-share transfer or the acquisition of business where it creates a business combination that is likely to substantially restrain competition in any particular fields of trade. In response thereto, the Japan Fair Trade Commission (hereinafter referred to as "the JFTC") has been conducting reviews of business combinations pursuant to the provisions of the AMA.

2. Notification system regarding business combination plans pursuant to the AMA (for a flowchart on reviews of business combinations, see paragraph 2, Appendix 2)

When a business combination is implemented between companies that satisfy certain requirements, the AMA requires such companies to make a notification on their business combination plan in advance to the JFTC (for a summary of the conditions requiring notification, see paragraph 1, Appendix 2).

The JFTC conducts a review of whether or not the business combination regarding which prior notification has been made needs a detailed review within 30 days after receiving the notification. When the case in question does not raise any issues in light of the provisions of the AMA, the JFTC concludes its review within the prescribed period. If the JFTC judges that the case requires further review, it requests that the companies submit reports, etc. and determines whether or not the business combination in question may raise any issues, in light of the provisions of the AMA, within 90 days after receiving all the reports, etc.

In a case where the JFTC judges that the business combination raises an issue in light of the provisions of the AMA, the JFTC notifies the person(s) to be designated as the addressee of the order of the possible contents, etc. of the cease and desist order, and then the JFTC provides the person(s)/addressee(s) with an opportunity to deliver opinions and provide evidence, and finally the JFTC issues a cease and desist order against the person(s)/addressee(s). Moreover, the person(s)/addressee(s) is capable of requesting a hearing by the JFTC and a judgment by a court if the person(s)/addressee(s) is dissatisfied with the cease and desist order issued.

3. Review of the regulations on business combinations

In accordance with the results, etc. of the verification of the regulations on business combinations under the "New Growth Strategy" (approved by the cabinet on June 18, 2010), the JFTC reviewed the procedures and standards for the review of business combinations, and publicly announced on June 14, 2011 that the rules of the JFTC would be partially amended and

other appropriate measures would be taken, and enforced the revised rules on July 1, 2011, in order to improve the swiftness, transparency and predictability of the review of business combinations while enhancing international conformity (for details of the revised rules, see the statements published on June 14, 2011).

The procedures and standards for the review of business combinations are amended as described below.

(1) Revised procedures for the review

- a. Abolishment of the prior consultation system;
- b. Improvement of communication between the notifying companies and the JFTC, including explanations of the points at issue, etc.; and
- c. Improvement of the procedures upon completion of the review, including the notification to the effect that it will not issue a cease and desist order.

(2) Revised standards for the review

- a. Clarification of the conditions under which companies shall not be subject to the review of business combinations;
- b. Addition of examples to define the world market or East Asia market for reference to identify a particular field of trade;
- c. Additional statement to identify the case of declining demand;
- d. Indication of the JFTC's attitude toward the assessment of import pressure, irrespective of whether or not imports are currently undertaken;
- e. Indication of the JFTC's attitude toward competitive pressure from competing goods in the near future that shall be taken into consideration; and
- f. Addition of examples of poor results, etc., such as the case when either of the parties concerned record continuous and significant losses.

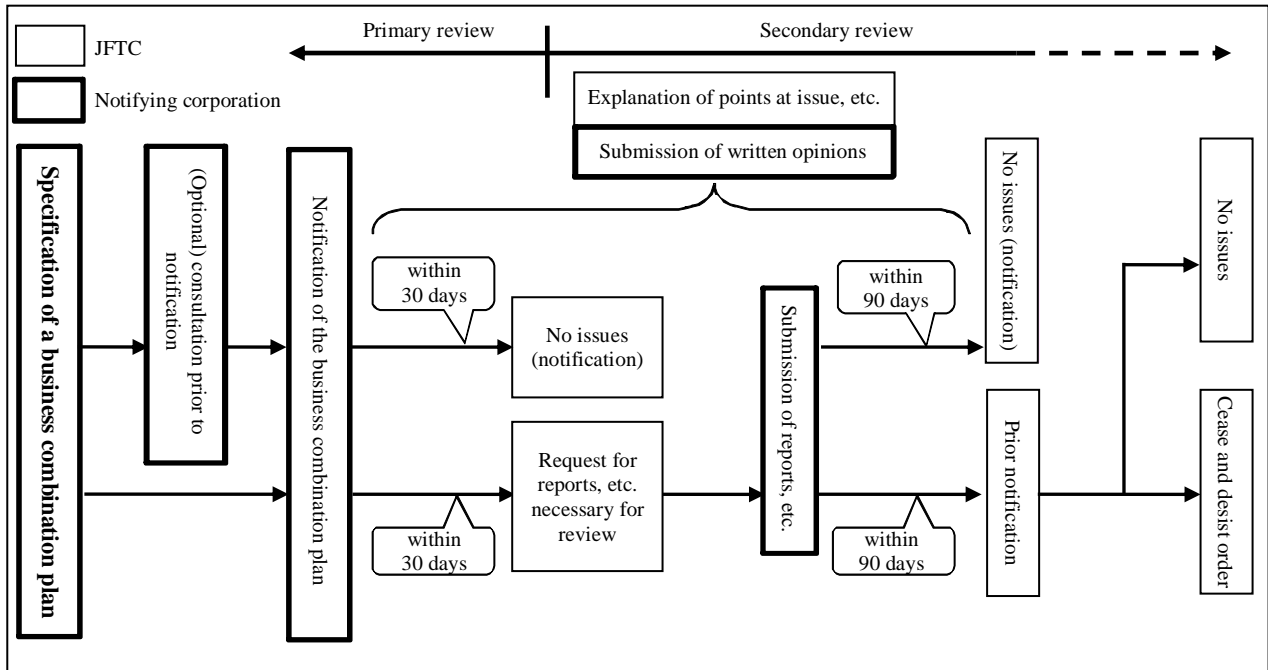
1. Summary of conditions requiring notification for business combinations

Type of business combination (the provisions of the AMA applied to the case)		Summary of conditions requiring notification for business combinations
Acquisition of shares (Article 10)		(1) A company with domestic total turnover ^(Note 1) exceeding 20 billion Japanese yen (2) acquires shares of a company whose domestic turnover, together with those of its subsidiaries, exceed 5 billion Japanese yen and (3) whose proportions of of voting rights held ^(Note 2) accounts for more than 20% or 50%.
Merger (Article 15), Joint share transfer (Article 15-3)		(1) A company with domestic total turnover exceeding 20 billion Japanese yen and (2) a company with domestic total sales exceeding 5 billion Japanese yen (3) merge (or conduct a joint share transfer).
Split (Article 15-2)	Joint incorporation-type company split	(1) A company with domestic total turnover exceeding 20 billion Japanese yen and (2) a company with domestic total turnover exceeding 5 billion Japanese yen (3) establish a company by joint incorporation-type company split, to which all the businesses are transferred, etc.
	Absorption-type company split	(1) A company with domestic total turnover exceeding 20 billion Japanese yen and (2) a company with domestic total turnover exceeding 5 billion Japanese yen (3) acquire all the businesses, etc.
Acquisition of business, etc. (Article 16)		(1) A company with domestic total turnover exceeding 20 billion Japanese yen (2) acquires all the businesses transferred from a company with domestic turnover exceeding 3 billion Japanese yen; or (1) A company with domestic total turnover exceeding 20 billion Japanese yen (2) acquires any substantial part of a business with domestic turnover exceeding 3 billion Japanese yen (or all or any substantial part of the fixed assets used for business).

(Note 1) Domestic total turnover mean the aggregate domestic turnover of companies, etc. belonging to a business combination group (a group consisting of "the ultimate parent company" of the notifying company and its subsidiaries).

(Note 2) Proportion of voting rights held means the proportion of voting rights held by the group of combined companies to which the notifying company belongs.

2. Flowchart for review of business combinations



Status of Notifications of Recent Share Acquisitions, etc. Received and Reviewed

		2009	2010	2011
Number of notifications	Acquisition of Shares	840	184	224
	Merger	48	11	15
	Split	15	11	10
	Joint Share Transfer	3	5	6
	Acquisition of Business, etc.	79	54	20
	Total	985	265	275
Review status	Cases closed at the primary review	984	263	270
	Cases closed at the secondary review	1	1	4
	Cases judged to raise no issues under the AMA given the implementation of remedies	5 (4)	2 (2)	3 (0)

(*Note 1) The number of notifications received in 2009 includes the number of reports regarding shareholdings (769) under the former AMA, which was revised under the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 51 of 2009; enforced on January 1, 2010; hereinafter referred to as the "2009 Act Amended the AMA").

(*Note 2) The number of notifications decreased significantly in fiscal year 2010 in comparison with those of 2009. It appears that this is because the 2009 Act Amended the AMA narrowed the range of the notifications (see "Reference" below).

(*Note 3) "Review status" is the status as of July 5, 2012 regarding share acquisition, etc. notified for the respective fiscal years. Case not included in the "review status" column is under withdrawn by the relevant notifying companies due to necessity regarding their business combination plan.

(*Note 4) In the field "Cases judged to raise no issues under the AMA given the implementation of remedies," the number of cases in parentheses for the respective fiscal years is judged to raise no issues under the AMA given the implementation of remedies submitted by the parties concerned in the prior consultation.

* For the status of notifications for 2011, see the JFTC homepages (<http://www.jftc.go.jp/ma/doukouindex.html>).

Reference: The amendment on the obligation of notification/report pursuant to the amendment of the AMA in 2009

As to mergers, the AMA prior to the amendment stipulated the obligation to notify the JFTC of the following business combination:

The business combination between a domestic company whose amount of total assets

(including the amount of total assets of domestic direct parent/subsidiary companies) exceeds 10 billion Japanese yen and a domestic company whose amount of total assets exceeds 1 billion Japanese yen.

The amended AMA stipulates that notification is necessary for the following business combination:

The business combination between a company whose amount of total domestic turnover exceeds 20 billion Japanese yen and a company whose amount of total domestic turnover exceeds 5 billion Japanese yen.

As to the acquisition of shares, the AMA prior to the amendment stipulated that the obligation of notification (after the acquisition of shares in question) was imposed on the parties concerned as to the following acquisition of shares:

The acquisition of shares, etc. of a domestic company whose total assets exceeds 1 billion Japanese yen by a company whose total assets exceeds 2 billion Japanese yen and whose amount of total assets combined with total assets of the domestic direct parent/subsidiary companies exceeds 10 billion Japanese yen in which proportion of voting rights held by the company exceeds 10%, 25%, and 50% (three thresholds).

The amended AMA requires that advance notification is necessary for the following acquisition of shares as well as those of mergers, etc.:

The acquisition of shares of a company whose amount of total domestic turnover exceeds 5 billion Japanese yen (including the total domestic turnover of subsidiaries) by a company whose amount of total domestic turnover exceeds 20 billion Japanese yen in which proportion of of voting rights held exceeds 20% and 50% (two thresholds).