

The JFTC Closed its Review on the Proposed Acquisition of Shares of The Daiei, Inc. by
AEON CO., LTD.

July 19, 2013
Japan Fair Trade Commission

Upon a notification regarding a proposed acquisition of shares of The Daiei, Inc. (hereinafter "Daiei") by AEON CO., LTD. (hereinafter "AEON"), the Japan Fair Trade Commission (hereinafter "the JFTC") had reviewed the planned acquisition of shares (hereinafter "the Acquisition") and reached the conclusion that the transaction would not substantially restrain competition in any particular fields of trade. Accordingly, the JFTC has notified AEON that it will not issue a cease and desist order, resulting in the completion of its review.

1. Outlines of the transaction

AEON which has subsidiaries and affiliates engaged in the supermarket business under its control is planning to acquire the shares of Daiei which engages in the supermarket business. Daiei will become an AEON's subsidiary after the Acquisition.

2. Reviewing process

Receipt of the notification regarding the Acquisition by AEON on March 1, 2013 (start of the primary review)

Request for reports, etc. by the JFTC on March 29, 2013 (start of the secondary review)

Receipt of all requested reports, etc. from AEON on July 9, 2013 (the due date for a prior notice was set on October 8, 2013)

Notification to AEON that a cease and desist order will not be issued on July 19, 2013

3. Conclusion

As a result of its review, the JFTC concluded that the Acquisition would not substantially restrain competition in any particular fields of trade.

Review Results Regarding Proposed Acquisition of Shares of The Daiei, Inc. by AEON CO., LTD.

I. Parties and corporate groups concerned

AEON CO., LTD. (hereinafter “AEON”) is a holding company and owner of various businesses including supermarkets. In this document, AEON and all companies operating supermarkets which already have a joint relationship with AEON, except for The Daiei, Inc. (hereinafter “Daiei”), will be collectively referred to as the “AEON Group.”

Daiei is a company operating supermarkets. In this document, Daiei and all its subsidiary companies operating supermarkets will be collectively referred to as the “Daiei Group.” Both the AEON Group and the Daiei Group will also be collectively referred to as “the Parties.”

II. Outlines of the transaction and the provision of applicable laws

AEON is planning to acquire the shares of Daiei through a takeover bid (the planned acquisition of shares is hereinafter referred to as “the Acquisition”). Daiei will become an AEON’s subsidiary after the Acquisition.

The provision of applicable law is Article 10 of the Antimonopoly Act (hereinafter “the AMA”).

III. Reviewing process and outline of the results

1. Reviewing process

Since February 2013, the Japan Fair Trade Commission (hereinafter “JFTC”) had been in discussion with AEON, upon AEON’s request regarding the Acquisition plan. On March 1, 2013, AEON submitted the notification regarding the Acquisition as required by Article 10, paragraph (2) of the AMA. The JFTC accepted the notification and launched the primary review. Having conducted the primary review based on the notification, the JFTC judged that a more detailed review was necessary and on March 29, 2013, requested AEON to submit necessary reports, etc. pursuant to Article 10, paragraph (9) of the AMA and launched the secondary review. On the same day, the JFTC announced that it would invite third parties to comment on the Acquisition.

During the secondary review, the JFTC held several meetings with the Parties upon their request. The JFTC also reviewed the reports, etc. and other documents submitted by the Parties, as well as the results of interviews with competitors, etc. in the effort to

analyze the Acquisition's impact on competition. In June 2013, since the Parties requested an explanation about issues, etc., the JFTC explained them based on its understanding at that point, though the JFTC had received only a portion of the reports, etc. originally requested to AEON. In response, the Parties made further claims and provided more information, all of which was taken under consideration by the JFTC.

All of the reports, etc. requested by the JFTC were submitted by the Parties by July 9, 2013.

2. Outline of the review result

The JFTC concluded that the Acquisition would not substantially restrain competition in any particular fields of trade.

The detailed results of the review are discussed in Sections IV through VII.

IV. Joint relationship to be strengthened by the Acquisition

Currently, AEON already controls nearly 20% of Daiei's voting rights, making it the second largest voter. AEON and Daiei also have interlocking directorates and business alliances. This shows that AEON and Daiei already have had a joint relationship to a certain degree. Through the Acquisition, AEON will obtain additional Daiei's voting rights, making the latter its subsidiary, strengthening their joint relationship. It is, therefore, necessary to survey the impact that the strengthening of a joint relationship by the acquisition would have on the competition.

V. Particular field of trade

1. Service range

The Parties operate general supermarkets ("General Merchandise Store" GMS) that sell a wide range of goods including groceries, daily commodities, and clothing, as well as food supermarkets that sell mostly groceries. Both GMS and food supermarkets have well-supplied stocks of perishable food and other groceries, targeting customers. GMS and food supermarket operators recognize that competition is not limited to stores in the same category, but is also between GMS and food supermarkets. At the same time, consumers do not actually consider whether it is GMS or a food supermarket when purchasing groceries.

Convenience stores, drug stores, and home centers offer overlapping selection of products with supermarkets. Shops in the former group are now supplying a wider range of groceries, obscuring the difference between each type of stores. However, when compared with supermarkets, which have competitive edge in perishable food and other groceries, other types of stores are not as well stocked with these items, and

consumers are selective when shopping in supermarkets and other types of stores in accordance with their own purposes.

Accordingly, the JFTC defined the “supermarket business” (GMS and food supermarkets) as the service range.

2. Geographic range

It is considered that supermarkets compete with each other on store-by-store basis. Each operator uses customer surveys and other methods to find out where repeat customers live and to define its trading area for sending out fliers and studying competitors. Trading areas may vary depending on location (downtown or suburb) and size of each store.

The JFTC has, in this case, defined the geographic range for each store to be an area within a radius of 500 to 3,000 meters of the store, which is considered to be a trading area for each store, depending on the store location, size, and other factors.

During the review, the JFTC focused on the geographic range for each Daiei group’s store. Since the actual trading area may not be an exact circle because of landform, like rivers, hills, or mountains, major roads, or other factors, the competition status in the actual trading area had been considered when necessary.

VI. Review concerning substantial restraint of competition

1. Status of competition in each geographic range

(1) Overview

There are approximately 260 geographic ranges in which a Daiei Group store and an AEON Group store compete with each other. While it is technically difficult to calculate the market share for each supermarket store in these geographic ranges (or to determine whether each geographic range falls under the safe harbor standards for horizontal business combinations, as stipulated in IV-1-(3) “Effect may not be substantially to Restrain Competition” of the Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination (JFTC, May 31, 2004)), it can be generally considered that the greater number of stores in one area creates more competition. Consequently, the impact of the Acquisition should be greater in geographic ranges with a smaller number of stores run by competitors.

Supermarkets operating in larger facilities and selling a wider selection of products usually have the advantage in gaining customers, which makes them more competitive. For consumers, the distances between their homes and store may be the most important factor in choosing where to shop. Supermarkets are in fact involved in heavier competition with neighboring stores than with other competitors’ stores in the same geographic range.

Supermarket operators analyze the location and size of neighboring competitors' stores in each trading area as well as their own stores before choosing the main competitor and engage in active competition with it. This may lead to active competition between Parties' stores in case one Party's store has chosen the other Party's store as the main competitor, and should such active competition were to be removed by the Acquisition, it will have a comparably huge impact on competition. However, as described in VI. 4 below, Daiei has been showing poor performances and, with its business ability limited, the actual competition between AEON Group stores and other competitors' stores is equivalent or more active compared to the competition between AEON Group and Daiei Group stores in many of the geographic ranges.

There are about 260 geographic ranges where the Parties' stores compete with each other. Of these, there are about 100 geographic ranges requiring specific consideration for various reasons, including that one Party's store has chosen the other Party's store as the main competitor, or there are few stores run by competitors.

Note Supermarket operators generally set uniform prices which will be applied in each prefecture or areas that surpass prefectures. Accordingly, the JFTC considered competition within ranges of prefectures besides within a geographic range defined in V.2. Results showed that there was no prefecture in which the Parties' competitiveness greatly advanced for such reason that the majority of regional stores are occupied by the Parties.

(2) Status of competition in geographic ranges requiring specific considerations

For the approximately 100 geographic ranges requiring specific considerations, the JFTC has reviewed the impact the Acquisition may have on competition in each range by using information on location, size, and other aspects of the Parties' and their competitors' stores in each geographic range and actual trading area, and also by using customer survey reports and other data provided by the Parties.

Through this review, the JFTC found that all geographic ranges falls under either situation described below and the JFTC concluded that, even after the Acquisition there will still be active competition between the Parties' and their competitors' stores.

- a. Where the Parties' store was in a weaker competitive position due to size or other disadvantages, there was one or more competitive stores of other competitors.
- b. Where one Party's store is located relatively apart from the other Party's store within the same geographic range, there exist one or more competitive stores, located relatively close to the Parties' store, which is owned by other competitors.
- c. Where one Party's store is located relatively close to the other Party's store and in

active competition with each other, there also existed one or more competitive stores of other competitors within the same actual trading area. Consumers in this region may switch between the Parties' and the competitors' stores. Thus, The JFTC concluded that, even after the Acquisition there will still be active competition between the Parties' and their competitors' stores.

2. Entry pressure

Permission to sell processed meat, required by the Food Sanitation Act (Act No.233 of 1947), or any other permission mandatory under the law, cannot be considered as an institutional entry barrier against the supermarket business.

Similarly, for supermarket operators planning to open a new supermarket, their initial investment level cannot be considered to be an entry barrier for new store opening, since the sum required to open a standard-sized supermarket is normally a few hundred million yen, recoverable in a few years under general circumstances.

In order to maintain the living environment around the planned location, all large-scale retail facilities with floor area exceeding 1,000 square meters are required to submit applications to the local prefecture or ordinance-designated city beforehand under the Act on the Measures by Large-Scale Retail Stores for Preservation of Living Environment (Act No.91 of 1998). This procedure has been widely accepted and many applications have been submitted. There are also many new supermarkets with 1,000 square meters or smaller floor areas.

Therefore, the JFTC recognizes that there is entry pressure to a certain degree.

3. Competitive pressure from related markets

(1) Competitive pressure from other businesses including convenience stores

Products being sold in supermarkets are also offered at other types of stores, including convenience stores, drug stores, and home centers, although the latter group's selection of products may be limited. While supermarkets have an advantage over other types of stores in selling perishable food and other groceries, it is recognized that there is a certain level of competition over prices and customer services in selling products that overlap between them, using special offers and other methods, to lure customers.

Therefore, the JFTC recognizes that there is competitive pressure from other businesses to a certain degree.

(2) Competitive pressure from geographically neighboring markets

Consumers may visit supermarkets outside their usual shopping area. In areas

neighboring the geographic range defined in V.2, there are supermarkets operated by competitors. The Parties' stores are engaged in a certain level of competition over prices and customer services, using special offers and other methods to lure customers, with competitors' stores in these neighboring areas.

Therefore the JFTC recognizes that there is competitive pressure from geographically neighboring markets to a certain degree.

4. Daiei's financial condition

Daiei has been showing poor performances with ordinary losses in three out of last five fiscal years up to February, 2013, while making net losses for five consecutive fiscal years. Actual competition between AEON Group stores and other competitors' stores is equivalent or more active compared to the competition between AEON Group stores and Daiei Group stores in many of the geographic ranges, since Daiei Group's business ability has been limited.

VII. Assessment under the AMA

It can be concluded that in all of the geographic ranges requiring specific consideration for various reasons, including that one Party's store has chosen the other Party's store as the main competitor, or there are few stores run by competitors, there will still be active competition between the Parties' stores and competitive stores owned by competitors after the Acquisition. It is also concluded that there is entry pressure and competitive pressure from neighboring markets to a certain degree. Therefore the JFTC concludes that the Acquisition would not substantially restrain competition through unilateral conduct of the Parties or through coordinated conduct of the Parties with competitors.

Flowchart of Business Combination Review (Reference)

