

Study Group on Competition Policy and  
Public Support for Revitalization  
Interim Report

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Revitalization

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## Part 1: Introduction

In Japan, support for business revitalization by the corporations, etc. which the national government finances (public support for revitalization) is provided to help enterprises recover its ability to continue business when it faces financial difficulty despite possessing useful management resources. This support is provided to achieve various policy objectives.

Public support for revitalization is provided when a business needs to be revitalized for the benefit of society, but cannot be revitalized without this support. At the same time, public support for revitalization for these enterprises, which would otherwise be exited from the market as a result of financial failure brought about by market competition, has been shown to affect competition in the market.

Therefore, the Study Group conducted a detailed examination of the feedback received from organizations providing public support for revitalization (hereinafter the “supporting organizations”), enterprises receiving this support (hereinafter the “beneficiaries”), competitors of these beneficiaries, and experts regarding the systems for and actual state of public support for revitalization in Japan, EU, and the United States. It then prepared an interim report of the public support for revitalization in view of the competition policy.

## Part 2: Basic recognition of public support for revitalization in view of the competition policy

### 1. Assessing public support for revitalization in terms of competition policy

#### (1) Public support for revitalization in Japan

In Japan, public support for revitalization (Note) is provided to help enterprises recover its ability to continue business when it faces financial difficulty, despite possessing useful management resources. The main policy objectives for this support include maintaining community health care, public transportation, and other infrastructures, securing employment, stimulating the local economy, and preventing chain-reaction bankruptcy.

(Note) Based on the actual state of public support for revitalization in Japan, public support for revitalization only refers to support for business revitalization provided by the corporations, etc. which the national government finances in this interim report. It does not include court involvement in legal liquidation (for the concurrent application of public support for revitalization and legal liquidation, see Part 3, 2 (3) below).

In addition, support for rescue provided to enterprises facing financial difficulty due to natural disasters and other force majeure events shall be considered separate from support provided to enterprises facing financial difficulty as a result of market competition. Thus for the purposes of this interim report, support for rescue for enterprises affected by disasters shall not be included in the public support for revitalization.

#### (2) Distortion of competition due to public support for revitalization

##### (Generation of distortion of competition)

To maintain the market mechanism in which more efficient enterprises survive in the market, it is necessary for inefficient enterprises to be exited from the market when they go bankrupt as a result of financial difficulties caused by market competition. In contrast, public support for revitalization interferes with this market mechanism. It poses a greater risk of compromising this mechanism than in cases when no such support is provided. If the market mechanism is compromised in this manner, distortion of competition will arise as discussed below.

##### (Effects of distortion of competition on the market)

When public support for revitalization distorts competition, the following effects on the market may arise:

- The survival of beneficiaries despite their inefficiency will hinder the transfer of demand and resources (labor force and other human resources, as well as plants, factories, and other material resources) from inefficient enterprises to efficient incumbents or new entrants. In addition, if inefficient beneficiaries gain a competitive advantage over efficient enterprises as a result of public support for revitalization, the transfer of demand and resources from existing, efficient enterprises to inefficient beneficiaries will accelerate.
  - The expectation of relief when facing financial difficulty leads to lessen incentive to promote business more efficiently (moral hazard), because ultimately enterprises will expect to receive public support for revitalization to survive in the market without conducting efficient business activities.
- In addition, inefficiency caused by this distortion of competition may inhibit the benefits consumers are supposed to receive.

#### (Improving the efficiency of beneficiaries)

Public support for revitalization is provided to help beneficiaries recover their ability to continue business, and it may improve their efficiency.

However, when the beneficiaries are improved not through their own efforts but rather public support for revitalization, which is not available to their competitors, the sales and profits of these competitors may shrink more than in cases when no support is provided to the beneficiaries, even though they have improved their efficiency by exercising their creativity and ingenuity and performing various efforts, such as reducing costs. In some cases, public support for revitalization may lead to the downfall and expulsion of incumbents receiving no support as a result of competition with beneficiaries, or the loss of opportunities for new entrantsenterprises to enter the market.

#### (Effects of maintaining competition in an oligopolistic market highly concentrated with a few enterprises)

It is also indicated out that in an oligopolistic market highly concentrated with a few enterprises with high entry barriers, the survival of beneficiaries in the market as a result of public support for revitalization may have the effect of continuing to restrict the market power of competitors, because no pressure for entry will be expected in the short term. Nevertheless, this will still compromise the market mechanism under which more efficient enterprises survive.

(Necessity of ensuring a competitive environment)

First of all, public support for revitalization may contribute to the prolonged existence of inefficient beneficiaries in the market. Therefore, it is necessary to set up an environment in which new entrants that carry on businesses can easily enter the market, ensuring that the policy objectives to be pursued with the public support for revitalization can be achieved without relying on public support for revitalization.

(3) Basic understanding of public support for revitalization in view of the competition policy

In light of the possibility that public support for revitalization may distort competition and cause various forms of inefficiency by interfering with the market mechanism in which more efficient enterprises survive in the market, this support should be provided after giving careful consideration to effects on competition in advance.

2. Principles to consider when providing public support for revitalization

Taking into account the statements listed in 1. above, public support for revitalization should be provided based on the following three principles in view of the competition policy.

(1) Principle of subsidiarity

Public support for revitalization should be provided to complement the functions of the private sector only when the business cannot be revitalized smoothly through efforts of the private sector, and public support must be provided for business revitalization by the supporting organizations in order to achieve various policy objectives.

(2) Principle of minimum necessity

Public support for revitalization should be provided within the minimum means/ways necessary to achieve various policy objectives only when these objectives cannot be achieved without the revitalization of enterprises in financial difficulty.

(3) Principle of transparency

Information about individual cases, as well as information about general matters such as support standards or procedures, should be made as open as

possible. Consideration should be given to the prompt disclosure and accessibility of information to clearly identify the effects public support for revitalization has on the market mechanism, allow competitors of the beneficiaries to state their opinions about the effects of public support for revitalization on competition, and take the appropriate measures in response to the actions of the beneficiaries.

### Part 3: Effects of public support for revitalization on competition and action on these effects

#### 1. Varying degree of effects on competition

The effects of public support for revitalization basically varies according to (1) the market structure and (2) the specific details of support. The following discussion examines the general of public support for revitalization on competition in regards to (1) the market structure and (2) the specific details of support, respectively, based on the assumption that the other conditions remain constant.

##### (1) Market structure

This section specifically focuses on the business size of beneficiaries, which is considered to have a broad impact on competition.

In addition, the absolute business size and relative business size of beneficiaries in relation to the size of their competitors, which is indicated as market share, will be examined separately because the corresponding issues for each are different.

##### a. Absolute business size

When the absolute business size of beneficiaries is large, the transfer of demand, etc. from beneficiaries (inefficient enterprises) to their competitors (efficient enterprises) is more greatly inhibited, public support for revitalization has a major impact on competition. On the other hand, when the absolute business size of beneficiaries is small, public support for revitalization has little impact on competition.

##### b. Market share

If the market share of beneficiaries is large, the transfer of demand, etc. from beneficiaries (inefficient enterprises) to their competitors (efficient enterprises) is more greatly inhibited, public support for revitalization has a major impact on competition.



In particular, when there is a higher degree of concentration and oligopoly in the market, changes in the actions of beneficiaries will have a greater impact on the business activities of their competitors. For example, in a highly oligopolistic market in which there are only two enterprises, public support for revitalization will have a much greater impact on competition.

## (2) Details of support

### a. Scale of support

The scale of public support for revitalization is categorized into the absolute scale, such as the amount of financial support, and the relative scale in relation to the business size of beneficiaries. Generally, the greater the scale of support is, either absolute scale or relative scale, the greater impact the support has on competition.

### b. Period/frequency of support

Generally, the longer the period of public support for revitalization is, the greater effect the support has on competition due to the extended period of distortion. In addition, while the frequency of support does not directly affect on competition, frequent provision of support tends to impair the incentive of enterprises to improve their efficiency (likely to cause moral hazard). Thus, repeated support will have a greater impact on competition than once-only support.

### c. Method of support

There are two main methods of public support for revitalization: 1) financial support, such as capital injections and loans, and (2) non-financial support, such as coordination among creditors and dispatch of experts.

#### (a) Financial support

##### (Classification of financial support)

There are various means of financial support. The main means are liquidity support, such as loans and the guarantee of loans, and the capital injections.

##### (General effects of financial support)

Financial support affects the cost structure of beneficiaries directly or indirectly, and may provide them with a competitive advantage. For instance,

beneficiaries can secure loans at low interest or even zero interest from supporting organizations or receive capital injections enabling them to replace the large-scale of facilities that generally could not be done without this financial support. The replacement of facilities in this manner can change the cost structure.

In particular, if financial support affects variable costs such as marginal cost, etc., then there are direct effects on the price and level of output of beneficiaries. In this case, financial support will have a major impact on competition in the short-term. In addition, if financial support affects the capital cost of beneficiaries, then there are effects on the level of investment in facilities and research and development, etc. Thus, generally, in this respect financial support will also have a major impact on competition in the long-term.

(Effects of various means of financial support)

There are various means of financial support, with the main means being liquidity support and the capital injections. The impact of these means of financial support on competition are as follows.

a. Liquidity support

Liquidity support will provide beneficiaries with greater incentive to repay loans as promptly as possible by imposing interest. This in turn enhances the potential for the swift completion of business rehabilitation. For this reason, liquidity support without interest will delay the completion of business revitalization, which in turn results in a greater impact on competition.

Compared to the level of interest and other conditions for loans from private financial institutions, the more preferential the level of interest and other conditions supporting organizations impose on the provision of liquidity support are, the greater the difference in the degree of effects of the loans and other facilities beneficiaries secure from the market is. This form of liquidity support will have a major impact on competition.

b. Capital injections

On the other hand, when beneficiaries are insolvent or they have too little equity capital, their capital must be reinforced by recommending the

release of debt to creditors and capital injections, rather than through the provision of liquidity support.

Compared to loans and other forms of liquidity support, the capital injections is more likely to provide beneficiaries with a greater competitive advantage because (1) there is no need for repayment, and because (2) this capital injections complements the creditworthiness of beneficiaries . This produces a greater impact on competition than liquidity support.

(Handling of capital injections at the completion of support)

When the supporting organizations inject capital into beneficiaries, the two main means for disposing (also referred to as “exiting”) the shares acquired are as follows: auctioning management right and listing on a financial instruments exchange.

In the case of auctioning management right, if an incumbent acquires the management right and secures a significantly higher market position, public support for revitalization will have a greater impact on competition. On the other hand, if a new entrant obtains management right and becomes a new independent competitor, the support will have less impact on competition. The impact of the support on competition tends to vary from case to case.

In contrast to auctioning management right, when shares are listed on a financial instruments exchange, in general the market position of incumbents do not become significantly higher, and no new independent competitors appear.

In addition, when the period of support comes to an end, shares may be disposed of in a way that ensures the market conditions remain as close to the conditions for when no public support for revitalization is provided. The purpose of this is to leave as little a trail of public support for revitalization as possible because this support impairs the market mechanism. For this reason, when public support for revitalization is not provided, it is generally believed that the likelihood of listing on a financial instruments exchange is small. Thus, the auctioning management right is more likely to produce market conditions closer to those for when public support for revitalization is not provided than listing on the financial instruments exchange. As a result, the relative impact on competition is diminished.

## (b) Non-financial support

### (Summary of non-financial support)

There are various means of non-financial support. The main means include coordination among creditors and the dispatch of management and experts.

### (General effects of non-financial support)

Non-financial support facilitates business revitalization and improves the efficiency of the business operations of beneficiaries through means such as coordination among creditors and the dispatch of experts. In addition, the stated intent of supporting organizations generally, which are public organizations, to commit themselves to revitalize the beneficiaries supplements the creditworthiness with beneficiaries and prevents their credit from being damaged. In light of these reasons, non-financial support may affect competition.

#### a. Coordination among creditors

The purpose of coordination among creditors is to coordinate the amount of debt to be waived, businesses to be liquidated or transferred, and other matters necessary for business revitalization among creditors, and reach an agreement on the support plan. Coordination among creditors under the supervision of the supporting organizations from their role as third party and public organizations may help to build a consensus on the support plan. However, the degree of impact of coordination among creditors on competition varies according to the contents of the support plan, which determines the extent to which debt is waived and other conditions.

#### b. Dispatch of experts

The purpose of dispatching experts is to help beneficiaries run the business operations towards business revitalization smoothly. When supporting organizations as public organizations select and dispatch experts, or request for the dispatch of experts, beneficiaries are to receive capable personnel dispatched who would otherwise be unavailable without involvement of the supporting organizations. The dispatch of experts may help beneficiaries make their business more efficient, which they otherwise would have been unable to do without these experts.

However, the degree of impact the dispatch of experts has on competition depends on the degree to which they facilitate the business revitalization and improve efficiency of the business of beneficiaries. In short, the degree of impact depends on the quality or number of experts dispatched, the period of dispatch, and other conditions.

## 2. Minimizing the effects of public support for revitalization on competition

### (1) Necessity of consideration based on the market structure

(Support for small and medium sized enterprises, etc.)

When the absolute business size or market share of beneficiaries is small, the effects on competition is also small. Thus, in this case it is generally less necessary to consider the effects of public support for revitalization on competition than in other cases.

### (2) Minimizing the effects through the arrangement of specific support

#### a. Period/frequency of support

The period of support should be kept as short as possible for ensuring business revitalization, to shorten the period of distortion of competition. This period should not be extended.

In regards to the frequency of support, support should be provided once-only. In addition, it should be provided in a way that ensures business revitalization and does not impair the incentive of beneficiaries to improve their efficiency.

However, if the support is to be provided for an extended period, it may be stated in advance under the support plan that the support will be provided in a series of stages adapted to the state of business revitalization, rather providing support all at once.

#### b. Scale of support

Based on the fact that the greater the scale of support, the greater effect the support has on competition, the scale of support should be kept to the minimum necessary to ensure business revitalization.

In light of limiting the scale of support to the minimum, if an increase in liquidity and capital or other similar action is required for business revitalization, ideally the supporting organizations should require, as a

condition for provision of public support for revitalization, for the beneficiaries to secure loans and increase capital to a certain extent on their own (own contribution) before the provision of public support. Likewise, they should require the shareholders, etc. of the beneficiaries to burden losses in the form of capital reduction, etc. (burden sharing) based on their responsibility as shareholders, etc..

Requiring beneficiaries to secure financing on their own is expected not only to limit the scale of public support for revitalization to the extent necessary for business revitalization and reduce the effects on competition, but also maintain the incentive for enterprises to improve their efficiency. In addition, requiring shareholders, etc. to burden losses is also expected to help maintain the discipline needed for efficient management by shareholders, etc.

#### c. Method of support

(Points of attention for both financial support and non-financial support)

When financial or non-financial support is provided, it should be noted that the necessity and details of support should be considered based on the principle of subsidiarity. In addition, the minimum means/ways necessary to achieve various policy objectives should be taken in accordance with the principle of minimum necessity.

For instance, when beneficiaries cannot obtain loans and other facilities from private financial institutions, and they lack the operating funds to continue their business, the supporting organizations should not inject capitals. However, liquidity support provided by the supporting organizations will supply funds that are not covered only by private entities to compensate for the shortage. This is considered to be an appropriate means of financial support, with minimal effects on competition.

In addition, liquidity support provided by the supporting organizations will help to attract loans and other facilities from private financial institutions. For this reason, the principle of minimum necessity must be applied to ensure the supporting organizations do not provide excessive support.

(Points of attention for financial support)

When financial support is provided, the effects on competition may be minimized with restriction of use to business revitalization so that the scale of financial support does not become unnecessarily large. For instance, financial

support may be provided on the condition that it is solely used for investment in businesses subject to business revitalization, and not for investment in new businesses.

As for the means of financial support, because liquidity support such as loans and other facilities have less impact on competition than the capital injection, needs for the financial support of beneficiaries must be ascertained in advance to ensure the appropriate level of financial support. Likewise, full consideration must be given to the necessity for the capital injections, as well as loans and other liquidity support.

Points of attention in regards to the means of financial support are as follows.

(Points of attention for liquidity support)

When using liquidity support, it is desirable to impose a guarantee charge on the loan guarantee, interest on the loan, or other loan conditions such as the level of interest, etc. that are close to those of private financial institutions. The purpose of these measures is to minimize the effects on competition to the greatest extent possible.

(Points of attention for capital injection)

In light of the fact that capital injection will have a major impact on competition, if the capital injections is necessary, based on the principle of subsidiarity contributors should be sought in the private sector first before seeking capital injections from the supporting organizations, especially. The supporting organizations should only inject capital into beneficiaries when it is impossible to find any contributors in the private sector.

As for restricting the purpose of expenditures and the use of support to revitalize business, it is desirable to ensure that beneficiaries cannot use funds for any purpose other than the business revitalization envisioned by supporting organizations. This should be done by requiring beneficiaries to distinguish and manage the capital when the capital injection is actually made.

In regards to exiting from capital injections, auctioning management right is considered to be a valid option because it minimizes the trail of public support for revitalization. Given that the degree of effects on competition caused by auctioning management right varies from case to case, it is best to determine whether to use this option by identifying the entities that are expected to participate in the auction, potentially successful bidders, and the market positions

of other competitors of the beneficiaries in advance.

Whether participants in auction acquire the management right is ultimately subject to the regulations of mergers and acquisitions set forth by the Japan Fair Trade Commission in accordance with the provisions of the Antimonopoly Act.

### (3) Concurrent application of legal liquidation

In regards to the concurrent application of legal liquidation with providing public support for revitalization by the supporting organizations, the functions of public support for revitalization and those of legal liquidation partially overlap in terms of support for business revitalization. Thus, the concurrent application of legal liquidation and public support for revitalization may result in excessive support beyond the extent necessary for business revitalization. In this case, public support for revitalization will have a greater impact on competition.

Therefore, in principle, concurrent application of legal liquidation should be avoided. However, if there is a pressing need to apply the unique functions of legal liquidation that are not available under public support for revitalization (such as determining the liabilities of beneficiaries by shutting off the risk that off-the-book debts not recorded in the balance sheet may be actualized), the concurrent application of legal may be approved.

In this case, if legal liquidation is concurrently applied to take advantage of the functions mentioned above, which are not available as part of public support for revitalization, it is impossible to apply some of the functions of legal liquidation because of the nature of legal liquidation. Therefore, the supporting organizations are required that concurrently applying legal liquidation may make public support for revitalization excessive.

In this regard, the supporting organizations are able to choose the scale and means of support, taking into consideration the effects on competition exercised by public support for revitalization. The details of public support for revitalization can be arranged so that excessive support beyond the extent necessary for business revitalization is not provided.

In addition, the concurrent application of legal liquidation involves business revitalization under the supervision of the court. For this reason, some people believe that it enhances transparency within the process of public support for revitalization. However, the amount of information actually disclosed to the stakeholders of beneficiaries (meaning the financial institutions, etc. providing loans to beneficiaries; and the same shall apply hereinafter) may be restricted. In



light of this fact, the involvement of the court in the procedures for business revitalization does not necessarily lead to the disclosure of information or help improve transparency.

Taking the above points into consideration, the concurrent application of public support for revitalization and legal liquidation should involve a full prior examination of their necessity. Even when this necessity is considered to exist, because the concurrent application of public support for revitalization and legal liquidation may lead to excessive support, full attention must still be given to ensuring transparency by obtaining opinions and feedback from the competitors of beneficiaries and other entities concerned regarding effects of public support for revitalization on competition. In addition, the principle of minimum necessity should be applied in strictly arranging the details of public support for revitalization, taking into full account the effects of legal liquidation.

(4) Measures for when distortions of competition is not enough limited despite arranging the details of support

(Viewpoints for consideration)

Essentially, the effects of public support for revitalization on competition must be minimized by arranging for specific support. However, distortion of competition that cannot possibly be ignored may remain by arranging for specific support.

In addition to the arrangement of specific support, in this case measures must be also taken to minimize effects of public support for revitalization on competition (hereinafter referred to as the “measures for minimizing effects”). To implement the measures for minimizing effects, beneficiaries may be required to take certain measures as a condition for provision of support by the supporting organizations, working in cooperation with the regulatory authorities when needed, to the extent necessary for business revitalization.

For instance, if public support for revitalization leads to an increase in production facilities and investment that otherwise would not have been possible without public support for revitalization, and the absolute business size and market share of beneficiaries are expected to expand, providing them with a highly competitive advantage, measures to restrict the business activities of beneficiaries (hereinafter referred to as the “behavioral measures”) may be taken.

In addition, if the absolute business size and market share of beneficiaries is sufficiently large when determining the specific support, and the beneficiaries are

expected to gain highly competitive advantage due to the support upon the completion of public support for revitalization, measures to reduce the market presence of beneficiaries (hereinafter referred to as the “structural measures”) may be taken in advance.

(Specific actions)

a. Behavioral measures

In regards to behavioral measures, for instance, investment in new production facilities and new business fields may be restricted for a certain period, and beneficiaries may be required to periodically submit reports to the supporting organizations about their business activities and investment plans. However, careful consideration should be given to behavioral measures because they may potentially restrict competition in the market by restricting the production quantity and investment of beneficiaries. Of the potential behavioral measures, restrictions on pricing directly restrict competition in the market, and thus should not be imposed in principle. This restriction should only be imposed in extremely special cases in which there are no other behavioral measures for limiting the effects on competition.

In addition, if the pricing by beneficiaries constitutes unjust low price sales, etc. under law, the Japan Fair Trade Commission will strictly address this issue in the manner stipulated in the provisions of the Antimonopoly Act.

b. Structural measures

In regards to structural measures, a business transfer or the disposal of production facilities and other assets may be conducted to reduce the production capacity of beneficiaries. In addition, when conducting a business transfer or the disposal of assets, measures should be taken to ensure that new independent competing enterprises will appear and that existing competitors will gain an effective restraining effects against beneficiaries.

(Necessity of taking measures and the timing for determining the details of measures)

It is difficult to determine whether the competitive advantage of beneficiaries in the market is for public support for revitalization or self-help efforts after the start of support. For this reason, if the adoption of measures for minimizing effects is based solely on the fact that the beneficiaries gain a competitive advantage after the

start of the support, it may lessen the incentive of the beneficiaries to improve their efficiency through their own management efforts.

In addition, the possibility of imposing measures for minimizing effects after the start of support because of the competitive advantage gained will generate uncertainty not only among beneficiaries but also among their stakeholders in regards to the course of business revitalization and the returns on the capital injections/loans, etc. provided by stakeholders. This will impair the incentive of stakeholders to commit to business revitalization.

Taking these points into account, the necessity of implementing measures for minimizing effects and their respective details must be specified in advance when determining whether to provide support.

(Timing for implementing measures for minimizing effects)

In principle, the measures for minimizing effects specified when determining whether to provide support should be implemented during the period of support. The purpose of this is to prevent a delay in the implementation of measures that will consequently increase the distortion of competition. However, exceptional treatment may be approved if beneficiaries ask for the implementation of these measures to be postponed for certain reasons, such as a significant economic downturn or other sharp change in the economic climate during the period of support, which could not be foreseen when determining whether to provide support.

#### Part 4: Framework for securing the appropriacy of public support for revitalization

Based on the discussion in Part 2 “Basic recognition of Public support for revitalization in view of the competition policy” and Part 3 “Influence of Public support for revitalization on competition and action on those effects,” the framework for securing the appropriacy of public support for revitalization in view of the competition policy will be discussed below.

##### 1. Division of roles between the Japan Fair Trade Commission and the supporting organizations

To secure the appropriacy of public support for revitalization in view of the competition policy, the following methods of evaluation are considered: (i) The Japan Fair Trade Commission evaluates the effects of public support for revitalization on competition in individual cases when determining specific support,

and (ii) the Japan Fair Trade Commission provides general guidelines for the ideal form of public support for revitalization in view of the competition policy, and then the supporting organizations evaluate the effects of public support for revitalization on competition by taking the guidelines into consideration when determining specific support.

(Evaluation of effects on competition in individual cases)

It is necessary to determine the specific details of public support for revitalization in individual cases, comprehensively considering the results of evaluating the effects on competition, the characteristics, and other features of the industry concerned, as well as the feasibility of policy objectives to be achieved, the potential for business revitalization, and various other factors. Thus, when evaluating the effect on competition while attempting to determine support in individual cases, it is considered best for the supporting organizations to evaluate the effects in cooperation with the regulatory agency as needed when determining specific support, rather than asking the Japan Fair Trade Commission to conduct this evaluation.

(Evaluation of general influence on competition)

On the other hand, the Japan Fair Trade Commission, which is the administrative organ in charge of the competition policy, is considered to have sufficient expertise in providing cross-industry guidelines regarding the effects of public support for revitalization on competition.

(Conclusion)

Based on the discussion above, the following arrangement is considered to be the most appropriate: The Japan Fair Trade Commission should prepare and publish cross-industry guidelines containing matters in view of the competition policy that supporting organizations should keep in mind when providing public support for revitalization. In addition, each supporting organization should consider and evaluate the effects on competition based on the aforementioned guidelines, cooperating with regulatory agencies as needed, when determining the specific support for each case.

Each supporting organization is expected to consult with the Japan Fair Trade Commission about the evaluation method that is to be applied in specific cases when evaluating the effects of public support for revitalization on competition in accordance with the guidelines the Japan Fair Trade Commission prepares.

In addition, if specific public support for revitalization in individual cases is

inappropriate based on the guidelines prepared by the Japan Fair Trade Commission, and would have a substantially major impact on competition, one possible course of action the Japan Fair Trade Commission may take is to warn the supporting organizations of this fact.

## 2. Ex-post measures to restore competition

### (Identification of problems)

Even though public support for revitalization is started by ensuring the minimal level of effects on competition after its provision is determined, beneficiaries may gain a greater competitive advantage than initially expected. In these cases, the ex-post actions taken to minimize effects on competition (ex-post measures to restore competition) may include the following measures: (i) cessation of support, (ii) reduction of support, and (iii) measures financially disadvantageous to beneficiaries.

In regards to these measures, (i) cessation of support and (ii) reduction of support involve changes in the specific support provided. When beneficiaries gain a greater competitive advantage than initially expected after the start of public support for revitalization, (iii) measures financially disadvantageous to beneficiaries may be considered as one measures for minimizing effects.

### (Effects on the incentive to improve efficiency)

If changes in specific support, such as (i) cessation of support or (ii) reduction in support, are subsequently made when beneficiaries gain a greater competitive advantage than initially expected after the start of public support for revitalization, it may impair the incentive of beneficiaries to improve their efficiency in an effort to revitalize their business.

In addition, if (iii) measures financially disadvantageous to beneficiaries are subsequently taken when beneficiaries gain a greater competitive advantage than initially expected after the start of public support for revitalization, they are considered to be the same as actions taken to minimize effects because of the dominant market position beneficiaries gain after the start of public support for revitalization. Thus, these measures may also impair the incentive of beneficiaries to improve their efficiency in an effort to revitalize their business.

In addition, if the ex-post measures to restore competition of (i) to (iii) above is taken because a competitive advantage was gained after the start of public support for

revitalization, it may impair the incentive of not only beneficiaries, but also the incentive of stakeholders of beneficiaries to commit themselves to business revitalization.

(Difficulties in view of the law system)

As for (iii) measures financially disadvantageous to beneficiaries, the current law system does not provide for the imposition of these kind of measures on beneficiaries that do not engage in any illegal acts, etc.

Likewise, in regards to the establishment of a new system for subsequently and unilaterally imposing measures financially disadvantageous to beneficiaries without obtaining the prior consent of beneficiaries when determining support, it not only causes concern about the guarantee of property rights, but also it makes it difficult to determine whether beneficiaries gain a competitive advantage as a result of public support for revitalization or their efforts for self-improvement. Thus, it is also difficult to establish the standards for measuring the financial disadvantage to be imposed on beneficiaries. Therefore, this type of system is considered difficult to legislate.

(Conclusion)

Based on the above, the adoption of an ex-post measures to restore competition considered to be inappropriate when beneficiaries gain a greater competitive advantage than initially expected because it may impair the incentive of beneficiaries to carry out business revitalization, or the incentive for beneficiaries' stakeholders to commit themselves to business revitalization. In addition, measures financially disadvantageous to beneficiaries are considered difficult to be taken in light of the law system.

### 3. Relevant business regulations, etc.

When beneficiaries and their competitors are subject to a public regulation system, the regulatory agencies may impose actions for disposition, including actions concerning the granting of licenses, permits, etc. to correct distortion in competition and ensure a competitive environment if beneficiaries may gain a substantial competitive advantage as a result of public support for revitalization.

In this case, the regulatory agencies should consider the specific actions to ensure a competitive environment by promoting the stimulation of competition in the market.

Based on this perspective, actions, etc. to promote the entry of new potential participating enterprises in the market and those for facilitating the use of facilities essential to the business operations of competitors, including new participating enterprises, are generally considered desirable. These actions are designed to ensure a competitive environment by stimulating competition among beneficiaries and their competitors, including new participating enterprises.

#### 4. Ensuring transparency

##### (1) General transparency

In principle, the supporting organizations should publicly announce the general standards for the examination of and the procedures for the provision of public support for revitalization to improve the predictability of beneficiaries, their competitors, and their stakeholders.

In addition, if the impact on competition is considered to be great because of the large absolute business size and market share of beneficiaries, the details of the assessment of the impact of public support for revitalization on competition, conducted by the supporting organizations in accordance with the guidelines prepared by the Japan Fair Trade Commission, should be made publicly available as soon as possible.

In this regard, fairness must be ensured in the process of providing public support for revitalization by complying with the relevant laws and regulations. The supporting organizations are expected to enhance the transparency of the process of providing public support for revitalization by actively disclosing information about this process to ensure fairness.

##### (2) Transparency in individual cases

###### a. Supporting organizations

If the impact on competition is considered to be great because of the large absolute business size and market share of beneficiaries, the supporting organizations should publicly announce the specific details of support plans and their assessment of the effect of public support for revitalization on competition to the greatest extent possible when determining whether to provide support. On the other hand, it is necessary to take precautions when making this announcement to avoid hindering smooth business revitalization by aggravating the financial positions of beneficiaries as a result of damage

caused by rumors, etc.

Moreover, when assessing the impact on competition, the supporting organizations should obtain feedback from competitors, etc. as needed, but without impeding business revitalization. Feedback is especially required when the impact on competition is considered to be great due to the large absolute business size and market share of beneficiaries or if the legal liquidation is concurrently applied.

b. Regulatory agencies

When a regulatory agencies decide to consider the effects of public support for revitalization on competition in taking actions, etc. as described above, it should promptly and publicly announce its assessment of the effect on competition to the greatest extent possible so as not to impair the predictability of beneficiaries, etc.

In addition, when the regulatory agencies actually consider the effects of public support for revitalization on competition in taking actions, etc. as described above, it should publicly announce the details of the actions, etc. and its assessment of the effects on competition to the greatest extent possible.



## Part 5: Summary

The previously described discussions are summarized as follows.

### 1. Basic recognition of public support for revitalization in view of the competition policy

#### (1) Assessing public support for revitalization in view of the competition policy

Public support for revitalization may cause distortion in competition and hinder the transfer of demand and resources from inefficient enterprises to efficient enterprises. This leads to inefficiency by lessening the incentive to improve business efficiency because inefficient enterprises in financial difficulty survive in the market without being existed, in contrast to cases in which such support is not provided.

Therefore, in view of the competition policy, public support for revitalization should only be provided after giving careful consideration to the effects on competition in advance.

#### (2) Principles to consider when providing public support for revitalization

Public support for revitalization should be provided based on the following three principles.

##### a. Principle of subsidiarity

Public support for revitalization should be provided to complement the functions of the private sector only when the business cannot be revitalized smoothly through efforts of the private sector, and public support must be provided by the supporting organizations for business revitalization in order to achieve various policy objectives.

##### b. Principle of minimum necessity

Public support for revitalization should be provided within the minimum means/ways necessary to achieve various policy objectives only when these objectives cannot be achieved without the revitalization of enterprises in financial difficulty.

##### c. Principle of transparency

Information about individual cases, as well as information about general matters such as support standards or procedures, should be made as open as

possible, ensuring the promptness and accessibility of information. This makes it possible to identify the specific effects of public support for revitalization on the market mechanism, and enable competitors to provide feedback about this effects and take appropriate actions in response to the acts of beneficiaries.

## 2. Effects of public support for revitalization on competition and action on these effects

### (1) Varying degree of effects on competition

The effects of public support for revitalization on competition basically varies according to (i) the market structure and (ii) specific details of support.

As for the market structure, when the absolute business size and market share of beneficiaries are large, public support for revitalization has a major impact on competition.

In regards to specific details of support, when the scale of support is large, the period of support is long, or support is frequently provided, the effects on competition will be great.

In addition, public support for revitalization is divided into financial support and non-financial support, based on the means in which support is provided.

In regards to the means of financial support, liquidity support such as loans and the capital injections are the primary forms used. The capital injections will have a greater impact on competition than loans and other types of liquidity support. Although liquidity support will have a small impact with the imposition of interest, if the interest rate level is more preferential than that of loans from private financial institutions, impact on competition will be greater.

As for the means of non-financial support, coordination among creditors and dispatch of experts are the primary forms used. The effects of non-financial support on competition will vary according to the conditions of the support plan, the quality of experts dispatched, and other conditions.

### (2) Minimizing the effects of public support for revitalization on competition

#### a. Necessity of consideration based on the market structure

When the absolute business size or market share of beneficiaries is small, the effects on competition is also small. Thus, in this case it is generally less necessary to consider the effects of public support for revitalization on competition than in other cases.

b. Minimizing the effect through the arrangement of specific support

(a) Period/frequency of support

The period or frequency of support should be kept as short as possible and not extended, for ensuring business revitalization. In addition, support should be provided once-only.

(b) Scale of support

Beneficiaries should be required to secure self-financing in advance, and their shareholders, etc. should be required to bear losses before public support for revitalization is provided in order to limit the scale of support to the minimum extent necessary, but without impeding business revitalization.

(c) Method of support

In providing financial support and non-financial support, it is commonly required to consider the necessity and specific details of support based on the principle of subsidiarity. The provision of support is ensured by considering the minimum means/ways necessary to achieve the policy objectives based on the principle of minimum necessity.

Financial support, which includes capital injections and loans, should be provided with restriction of use to business revitalization. In addition, based on the fact that loans and other liquidity support will have less impact on competition than the capital injections, the financial support needs of beneficiaries must be ascertained in advance to ensure the appropriate level of financial support. Likewise, full consideration must be given to the necessity for the capital injections as well as loans and other liquidity support.

In providing liquidity support, interest should be imposed at a level close to the conditions of loans from private financial institutions. In addition, when a capital injections is needed, supporting organizations should seek contributors in the private sector first and only inject capital into beneficiaries when it is impossible to find any contributors in the private sector because capital injections will have a great impact on competition.

c. Concurrent application of legal liquidation

In regards to the concurrent application of legal liquidation when providing public support for revitalization, some functions of public support for revitalization and those of legal liquidation partly overlap in terms of support for business revitalization. Thus, the concurrent application of legal liquidation and public support for revitalization may result in excessive support beyond the extent necessary for business revitalization. In this case, public support for revitalization will have a greater impact on competition.

Therefore, in general public support for revitalization and legal liquidation should not be concurrently applied. However, if there is a pressing need to apply the unique functions of legal liquidation that are not available under public support for revitalization, the provision of public support for revitalization may be approved for enterprises subject to legal liquidation. In this case, the supporting organizations are required to fully consider the possibility of excessive support resulting from the concurrent application of legal liquidation.

Taking the above points into consideration, the concurrent application of public support for revitalization and legal liquidation should involve a full prior examination of their necessity. Even when this necessity is considered to exist, because the concurrent application of public support for revitalization and legal liquidation may lead to excessive support, full attention must still be given to ensuring transparency by obtaining opinions and feedback from the competitors of beneficiaries and other entities concerned regarding effects of public support for revitalization on competition. In addition, the principle of minimum necessity should be applied in strictly arranging the details of public support for revitalization, taking into full account the effects of legal liquidation.

d. Measures for when distortions of competition is not enough limited despite arranging the details of support

After arranging for specific support, if there is any remaining effects on competition that cannot be ignored, measures must be taken to minimize effects of public support for revitalization on competition (measures for minimizing effects). In regards to the measures for minimizing effects, when necessary beneficiaries may be required to take certain actions as conditions for the provision of support by the supporting organizations in cooperation

with a regulatory agencies, making sure not to impede business revitalization.

As for measures for minimizing effects, preliminary measures to restrict the business operations of beneficiaries (behavioral measures) and diminish their presence in the market (structural measures) may be adopted.

In regards to behavioral measures, investment by beneficiaries, specifically investment in new production facilities and new business fields, may be prohibited for a certain period. However, behavioral measures may restrict competition in the market, and thus careful consideration should be given when deciding whether to adopt them. In particular, restrictions on pricing by beneficiaries should not be imposed because they will directly restrict competition in the market. If they need to be imposed, they should only be imposed in extremely special cases.

As for structural measures, measures such as business transfer or the disposal of production facilities and other assets may be conducted to reduce the production capacity of beneficiaries. In addition, business transfer and the disposal of assets should be conducted in a way that ensures that new independent competing enterprises will appear and that existing competitors will gain an effective restraining effects.

Moreover, the need for taking measures for minimizing effects and the timing for determining specific support should be decided in advance when determining whether to provide support. The purpose of doing this is to avoid impairing the incentive of beneficiaries to improve efficiency and the incentive of these enterprises' stakeholders to commit themselves to business revitalization. Likewise, in regards to the timing for taking these measures, they should be taken while providing support to ensure that the delay in their implementation does not lead to expanded distortion in competition.

### 3. Framework for securing the appropriacy of public support for revitalization

#### (1) Division of roles between the Japan Fair Trade Commission and the supporting organizations

The best arrangement is for the Japan Fair Trade Commission to prepare and publish the cross-industry guidelines containing matters in view of the competition policy that the supporting organizations should keep in mind when providing public support for revitalization. In addition, each supporting organization should consider and evaluate the effects on competition based on the aforementioned guidelines, cooperating with regulatory agencies as needed,

when determining the specific support for each case.

(2) Ex-post measures to restore competition

The ex-post measures to restore competition that may be adopted when beneficiaries gain a greater competitive advantage than initially expected after the start of public support for revitalization may include changes in the specific support, such as cessation of support, reduction of support, and measures financially disadvantageous to beneficiaries. These measures may impair the incentive of beneficiaries to improve their efficiency in an effort to revitalize their business, and the incentive of these enterprises' stakeholders to commit themselves to business revitalization.

In regards to measures financially disadvantageous to beneficiaries, the current law system does not provide for imposition of these kinds of measures on beneficiaries that do not engage in any illegal acts, etc. The adoption of this new system not only causes concern about the guarantee of property rights but also it is difficult to judge whether beneficiaries gain a competitive advantage as a result of public support for revitalization or their efforts for self-improvement. Thus, it is also difficult to establish the standards for measuring the financial disadvantage to be imposed on beneficiaries. Therefore, this type of system is considered difficult to legislate.

Based on the above, the adoption of an ex-post measures to restore competition is considered to be inappropriate when beneficiaries gain a greater competitive advantage than initially expected because it may impair the incentive of beneficiaries to carry out business revitalization or the incentive for these enterprises' stakeholders to commit themselves to business revitalization. In addition, measures financially disadvantageous to beneficiaries are considered difficult to be taken in light of the law system.

(3) Relevant business regulations, etc.

When beneficiaries and their competitors are subject to a public regulation system, the regulatory agencies may impose actions for disposition, including actions concerning the granting of licenses, permits, etc. to correct distortion in competition and ensure a competitive environment if beneficiaries may gain a substantial competitive as a result of public support for revitalization.

In this case, the regulatory agencies should consider the specific actions to ensure a competitive environment by promoting the stimulation of competition

in the market.

Based on this perspective, actions, etc. for promoting the entry of new potential participating enterprises in the market and those for facilitating the use of facilities essential to the business operations of competitors, including new participating enterprises, are generally considered desirable. These actions are designed to ensure a competitive environment by stimulating competition among beneficiaries and their competitors, including new participating enterprises.

#### (4) Ensuring transparency

##### a. Supporting organizations

In principle, the supporting organizations should publicly announce the general standards for the examination of and the procedures for the provision of public support for revitalization to improve the predictability of beneficiaries, their competitors, and their stakeholders.

In addition, if the impact on competition is considered to be great, the supporting organizations should publicly announce the details of the support plans for individual cases and their assessment of the effects of public support for revitalization on competition to the greatest extent possible when determining whether to provide support.

Moreover, when supporting organizations assess the impact on competition, they should obtain feedback from competitors, etc. as needed, making sure not to impede business revitalization.

##### b. Regulatory agencies

When a regulatory agencies decide to consider the effects of public support for revitalization on competition in taking actions, etc., it should promptly and publicly announce its assessment of the effects on competition to the greatest extent possible. Likewise, when it actually considers the effects of public support for revitalization on competition in taking actions, it should publicly announce the details of the actions, etc. and its assessment of the influence on competition to the greatest extent possible.

#### 4. Conclusion

The supporting organizations and the relevant authorities are expected to consider and implement effective measures based on the guidelines indicated in this interim report.

End.



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December 11, 2014]

## Past Deliberations of the Study Group on Competition Policy and Public Support for Revitalization

- First meeting (August 13, 2014)
  - Determination of administrative structure, procedures, and the matters to be considered
- Second meeting (September 10, 2014)
  - Feedback from the Regional Economy Vitalization Corporation of Japan
  - Feedback from the Financial Services Agency
- Third meeting (September 25, 2014)
  - Feedback from Japan Airlines, Co., Ltd.
  - Feedback from ALL NIPPON AIRWAYS CO., LTD.
  - Feedback from The Ashikaga Bank, Ltd.
- Fourth meeting (October 8, 2014)
  - Hearing from Kenneth A. Siegel, attorney
  - Hearing from Hideaki Tada, associate professor, Faculty of Law, Toyo University
- Fifth meeting (October 24, 2014)
  - Free discussion related to the preparation of the interim report (1)
- Sixth meeting (November 7, 2014)
  - Free discussion related to the preparation of the interim report (2)
- Seventh meeting (November 21, 2014)
  - Presentation and discussion on the interim report draft
- Eighth meeting (December 11, 2014)
  - Compilation of the interim report