

Regarding the proposed acquisition of shares of
Toshiba Medical Systems Corporation by Canon Inc.

June 30, 2016
Japan Fair Trade Commission

The Japan Fair Trade Commission (JFTC) received submission from Canon Inc. (JCN 6010801003186) (Canon) of a plan notification (Notification) pertaining to its proposed acquisition of the shares of Toshiba Medical Systems Corporation (JCN 8060001013525) (TMSC), and having conducted a review of the proposed business combination, the JFTC found that it would not have the effect of substantially restraining competition in any particular field of trade, and accordingly notified Canon that it would not be issuing a cease and desist order and concluded the review.

(※) JCN : Japan Corporate Number

However, before submission of the Notification to the JFTC, Canon acquired share options etc. whose underlying shares were common shares of TMSC, and, as consideration for such share options etc., Canon in effect made a payment to Toshiba Corporation (JCN 2010401044997) (Toshiba) of an amount equal to the value of the underlying common shares, and also a third party other than Canon and Toshiba came to own voting shares of TMSC until Canon exercises the share options.

This series of actions is likely to give rise to the formation of a certain joint relationship¹ between Canon and TMSC through the abovementioned third party, comprising part of a structure premised on Canon ultimately acquiring the voting shares of TMSC subject to approval being obtained in the business combination review under the Antimonopoly Act.

Given that this series of actions, by being undertaken before Canon made a Notification to the JFTC, is likely to lead to activity that could violate the provisions of Article 10(2) of the Antimonopoly Act, being inconsistent with the purport of the prior notification system, the JFTC has cautioned² Canon not to conduct such actions in the future and has also urged Toshiba, who engaged in the implementation of the above structure, not to engage in activity in the future that may be inconsistent with the purport of the prior notification system.

Therefore, if any companies which plan a business combination need to adopt a structure such as that described above in the future, they shall be requested to make a Notification to the JFTC prior to implementing a part of such a structure.

¹ “joint relationship” means the relationship among two or more companies where operate a business in a united form, whether fully or partially by shareholding, mergers or other transactions.

² The JFTC issues a “caution” when it does not find sufficient evidence to support the existence of illegal conduct but finds that such a conduct may lead to a possible violation.