

Policies Concerning Commitment Procedures (draft)

\_\_\_\_\_, 20\_\_\_\_

Japan Fair Trade Commission

1. Purpose

With the conclusion of the Act on the Development of Related Legislation Following the Conclusion of the Trans-Pacific Partnership Agreement and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (Act No. 108 of 2016), the procedures stipulated in the provisions of Article 48-2 to Article 48-9 (hereinafter referred to as the “Commitment Procedures”) of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947, hereinafter referred to as the “Antimonopoly Act”) on the voluntary resolution through a consent between the Japan Fair Trade Commission (hereinafter referred to as the “JFTC”) and the enterprise (including trade associations, etc. and the agents of enterprises, trade associations, etc.; hereinafter the same applies.) have been adopted for cases of suspected violation of the Antimonopoly Act. In addition, to prepare the rules needed for Commitment Procedures, the JFTC has established the Rules on Commitment Procedures by the Fair Trade Commission (Japan Fair Trade Commission Rules No. 1 of 2017; hereinafter referred to as the “Rules on Commitment Procedures”).

Commitment Procedures will, compared to cease-and-desist orders or orders for payment of surcharges (hereinafter collectively referred to as the “Legal Measure”), enable swifter rectification of competition concerns, broaden the range of cooperative problem-solving by the JFTC together with enterprises and contribute to efficient and effective enforcement of the Antimonopoly Act. At the same time, since Commitment Procedures represent the introduction of new procedures under the Antimonopoly Act, it is essential to clarify as much as possible the viewpoint regarding Commitment Procedures, including the subjects of Commitment Procedures and their relationships to the procedures conducted prior to migration to Commitment Procedures.

Accordingly, in order to ensure the transparency of the application, as well as predictability for businesses, of the law related to Commitment Procedures, the JFTC hereby stipulates the Policies Concerning Commitment Procedures.

2. Commencement of Commitment Procedures

When the JFTC believes that there to be a fact in violation of the provisions of the Antimonopoly Act to have occurred and finds that it is appropriate to apply the

Commitment Procedures to the act leading to such suspicion (hereinafter referred to as the “Suspected Violation”), that is, when the JFTC recognizes that it is necessary for promotion of free and fair competition (including cases in which the Suspected Violation has ceased and there is a particular need for such procedures for promotion of free and fair competition; hereinafter the same applies.), the JFTC may commence the Commitment Procedures by issuing a written notice (hereinafter referred to as the “Notification of Commitment Procedures”) to the enterprise conducting or has conducted the Suspected Violation (hereinafter collectively referred to as the “Suspected Violator”), pursuant to the provisions of Article 48-2 or Article 48-6 of the Antimonopoly Act, of the following: (i) a summary of the Suspected Violation; (ii) the provisions of the law or regulation that is suspected to be, or to have been, violated; and, (iii) the fact that the enterprise can make an application (hereinafter referred to as the “Application for Commitment Approval”) for the approval of Exclusion Measures Plan which is necessary to eliminate the Suspected Violation or a Plan for Measures to Ensure Exclusion which is necessary to ensure that the Suspected Violation has been eliminated (hereinafter collectively referred to as the “Commitment Plan”).

### 3. Consultation regarding Commitment Procedures

Commitment Procedures constitute a method for the voluntary resolution of a Suspected Violation through a consent between the JFTC and the enterprise concerned. Close communication between the JFTC and the enterprise would enable the swift application of the law related to Commitment Procedures and thus be beneficial to both the JFTC and the enterprise.

For this reason, in order to advance Commitment Procedures more quickly, an enterprise under investigation by the JFTC pursuant to the Antimonopoly Act for a suspected violation of that Act may, even before the JFTC issues a Notification of Commitment Procedures and at any time, consult with the JFTC regarding Commitment Procedures for the act subject to investigation, including confirming whether or not the Commitment Procedures are applicable to the act and indicating its desire for the application of Commitment Procedures.

### 4. Flow of Commitment Procedures

During the period from the start of an investigation to Notification of Hearing (this refers to the notification described under Article 50, Paragraph 1 of the Antimonopoly Act [including when these are applied mutatis mutandis pursuant to Article 62, Paragraph 4 of the Antimonopoly Act following the deemed replacement of terms]; hereinafter the

same applies.), if the JFTC finds that it is appropriate to apply the Commitment Procedures to the Suspected Violation, the JFTC will issue a Notification of Commitment Procedures to the Suspected Violator.

In order to indicate to the party that has received a Notification of Commitment Procedures (hereinafter referred to as the “Notified Enterprise”) how it should eliminate the Suspected Violation or how it should ensure that the violation has been eliminated, that is, what types of Commitment Plan should be prepared, the JFTC will describe in the document of the Notification of Commitment Procedures a summary of the Suspected Violation based on the facts that have been ascertained as of the time of issuing the Notification of Commitment Procedures.

Since a Notification of Commitment Procedures does not constitute a determination that the act of the Notified Enterprise violates the provisions of the Antimonopoly Act, it will not include detailed descriptions of the facts or applicable laws or regulations to the same extent as a cease-and-desist order.

When the Notified Enterprise makes an Application for Commitment Approval, it needs to make an application within sixty days from the date when it received the Notification of Commitment Procedures pursuant to the provisions of Article 48-3, Paragraph 1 or Article 48-7, Paragraph 1 of the Antimonopoly Act.

When the Notified Enterprise has made an Application for Commitment Approval, the JFTC will make a judgment as to whether or not the relevant Commitment Plan conforms to the requirements for approval provided in the subparagraphs of Article 48-3, Paragraph 3 or Article 48-7, Paragraph 3 of the Antimonopoly Act (hereinafter collectively referred to as the “Approval Requirements”) and will approve the Commitment Plan when the JFTC recognizes that the Commitment Plan conforms to the Approval Requirements.

##### 5. Subjects of Commitment Procedures

Pursuant to the provisions of Article 48-2 of the Antimonopoly Act, possible subjects of Commitment Procedures are Suspected Violations of the provisions of said Act regarding private monopolization (Article 3 of the Antimonopoly Act), unreasonable restraint of trade (Article 3 or Article 6 of the Antimonopoly Act), acts prohibited to trade associations (Article 8 of the Antimonopoly Act), unfair trade practices (Article 6 or Article 19 of the Antimonopoly Act), prohibited general concentration (Article 9, Paragraph 1; Article 9, Paragraph 2; Article 11, Paragraph 1; or the provisions of Article 17 relevant to Article 9 or Article 11 of the Antimonopoly Act), or prohibited business combination (Article 10, Paragraph 1; Article 13; Article 14; Article 15, Paragraph 1;

Article 15-2, Paragraph 1; Article 15-3, Paragraph 1; Article 16, Paragraph 1; or the provisions of Article 17 relevant to Article 10, Article 13, Article 14, Article 15, or Article 16 of the Antimonopoly Act), as well as Suspected Violations of the provisions of said Act regarding private monopolization, unreasonable restraint of trade, acts prohibited to trade associations, or unfair trade practices, even if such Suspected Violations already have ceased, under the provisions of Article 48-6 of the Antimonopoly Act.

On the other hand, the following cases are not subject to Commitment Procedures due to the need for strict enforcement of Legal Measure by finding violation, and the fact that in such cases, Commitment Procedures cannot be considered necessary to promote free and fair competition: (i) Suspected Violations of the provisions of Article 3, Article 6, or Article 8, Subparagraph 1 or Subparagraph 2 of the Antimonopoly Act, such as bid-rigging, price-fixing cartels, quantity-fixing cartels and others, and when such case falls under the provisions of Article 7-2, Paragraph 1 of the Antimonopoly Act (including the provisions applied mutatis mutandis under Article 8-3 of the Antimonopoly Act); (ii) cases in which an enterprise has violated the same provision (only when Legal Measure has been finalized) within ten years prior to the date on which the disposition under the provisions of Article 47, Paragraph 1 of the Antimonopoly Act was made for the first time regarding the act related to a Suspected Violation; and, (iii) cases recognized as constituting vicious and serious Suspected Violations which are considered to have wide spread influence on people's livings, as a result of substantially restraining competition of a particular field of trade as described in the JFTC Policies on Criminal Accusation and Compulsory Investigation of Criminal Cases Regarding Antimonopoly Violations (JFTC, October 7, 2005).

In other cases, the JFTC will make a judgment, based on the specifics of each individual case, as to whether or not a resolution of competition concerns through Commitment Procedures is necessary to promote free and fair competition.

## 6. Commitment Plan

### (1) Judgment of whether or not to make an Application for Commitment Approval

Even when the JFTC has issued a Notification of Commitment Procedures, the Notified Enterprise will make an independent judgment as to whether or not to make an Application for Commitment Approval.

If the Notified Enterprise does not make an Application for Commitment Approval, then the investigation conducted prior to the Notification of Commitment Procedures will resume\*1. The Notified Enterprise will not be subject to any disadvantageous treatment

in the subsequent investigation by reason of not having made an Application for Commitment Approval.

\*1 For a business combination for which notice has been submitted to the JFTC pursuant to Article 10, Paragraph 2 (including imputed application thereof under the provisions of Paragraph 5 of that article), Article 15, Paragraph 2; Article 15-2, Paragraph 2 or Paragraph 3; Article 15-3, Paragraph 2; or Article 16, Paragraph 2 of the Antimonopoly Act (hereinafter referred to as the “Notice”), if the Notified Enterprise has not applied for Commitment Approval, then the period over which Notification of Hearing may be made, pursuant to Article 10, Paragraph 11 of the Antimonopoly Act or to other provisions under which that paragraph applies, shall be extended through the addition of sixty days to the notification period under the provisions of the text of Article 10, Paragraph 9 of the Antimonopoly Act (hereinafter referred to as the “Notification Period”).

## (2) Application for Commitment Approval

Pursuant to the provisions of Article 8, Paragraph 1 or Article 22, Paragraph 1 of Rules on Commitment Procedures, an enterprise intending to make an Application for Commitment Approval must make the application using either of the application forms Form 1 or Form 3 to Rules on Commitment Procedures (hereinafter collectively referred to as the “Approval Application Form”). The documents provided in the subparagraphs of Article 8, Paragraph 2 or Article 22, Paragraph 2 of Rules on Commitment Procedures must be attached to the Approval Application Form (hereinafter collectively referred to as the “Attachments to Approval Application”).

Pursuant to the provisions of Article 9 or Article 23 of Rules on Commitment Procedures, an enterprise that has made an Application for Commitment Approval (hereinafter referred to as the “Applicant”) may, during a period of up to sixty days from the date of the Notification of Commitment Procedures and until the disposition related to the Application for Commitment Approval in question has been implemented, submit to the JFTC a report of amendments in order to amend the content of the Approval Application Form and the Attachments to Approval Application (hereinafter collectively referred to as the “Approval Application Documents”) (including submittal of additional Attachments to Approval Application), after it has made an Application for Commitment Approval.

In addition, pursuant to the provisions of Article 11 or Article 25 of Rules on Commitment Procedures, during the period from the date the Application for Commitment Approval was made to the time the disposition related to the Application for Commitment Approval is implemented, the Applicant may, at any time, submit additional

Attachments to Approval Application, showing matters to which the JFTC should refer to in approving the Commitment Plan.

Pursuant to the provisions of Article 10 or Article 24 of Rules on Commitment Procedures, Approval Application Documents need to be submitted through methods such as submittal in person or by registered mail.

Furthermore, pursuant to the provisions of Article 36, Paragraph 1 of Rules on Commitment Procedures, during the period from the date the Application for Commitment Approval was made to the time the disposition related to the Application for Commitment Approval is implemented, the Applicant may, at any time, withdraw the Application for Commitment Approval.

Pursuant to the provisions of Article 36, Paragraph 2 of Rules on Commitment Procedures, withdrawal of an Application for Commitment Approval needs to be made in writing.

When an Application for Commitment Approval has been withdrawn, the investigation conducted prior to the Notification of Commitment Procedures will resume\*2. The Notified Enterprise will not be subject to any disadvantageous treatment in the subsequent investigation by reason of having withdrawn the Application for Commitment Approval.

\*2 In the case of a business combination for which a notice has been submitted, if the Notified Enterprise has canceled an Application for Commitment Approval, the period for which Notification of Hearing may be made shall be extended through the addition of the period corresponding to the length of time from the date of the Notification of Commitment Procedures to the date of the cancellation, pursuant to the provisions of Article 10, Paragraph 12 of the Antimonopoly Act and each of the provisions applied under that paragraph.

### (3) Commitment Measures

#### A. Basic viewpoint

The content of Exclusion Measures or Measures to Ensure Exclusion included in the Commitment Plan (hereinafter collectively referred to as the “Commitment Measures”) is to be considered by the Notified Enterprise based on the specifics of the individual case.

While Notified Enterprise is able to apply for specific behavioral measures or structural measures such as transfer of a business, in order to ensure the restoration of competition order or that the act will not be repeated in the future, the approval of the Commitment Plan shall be conditional on the Commitment Measures of the said plan satisfying the following requirements: (i) they are sufficient for excluding the Suspected Violation or to

confirm that the Suspected Violation has been excluded (hereinafter referred to as the “Sufficiency of the Content of Measures”) and (ii) they are expected to be reliably conducted (hereinafter referred to as the “Reliability of Measures Implemented”).

(A) Sufficiency of the Content of Measures

While the JFTC will make a judgment based on the specifics of each individual case with regard to whether or not Commitment Measures satisfy the Sufficiency of the Content of Measures, the JFTC will, in making such a judgment, refer to the content of measures employed in the past cease-and-desist orders or other procedures involving violations whose content can be considered to be similar, to some degree, to that described in the Notification of Commitment Procedures, with regard to matters such as summaries of the cases or applicable provisions.

(B) Reliability of Measures Implemented

Even in the case the Sufficiency of the Content of Measures is satisfied, unless the Commitment Measures are implemented, it cannot be ensured that the Suspected Violation will be or has been eliminated. Accordingly, a Commitment Plan cannot be approved unless the JFTC is able to determine that the Commitment Measures will be implemented reliably by the deadline for their implementation.

For example, in a case in which there is a need for consent with a third party, such as when the content of Commitment Measures involves amendments to a contract, the requirement for Reliability of Measures Implemented cannot, in principle, be recognized to have been satisfied unless consent has been reached with said third party by the time of the Application for Commitment Approval.

B. Typical examples of Commitment Measures

While the measures listed under (A) to (G) below can be considered typical Commitment Measures, Commitment Measures are not limited to these alone\*<sup>3</sup>. Also, while for some incidents a single Commitment Measure may be enough to conform to Approval Requirements, the combination of multiple Commitment Measures may be necessary in other cases in order to conform to Approval Requirements.

Pursuant to the provisions of Article 48-3, Paragraph 2, Subparagraph 2 or Article 48-7, Paragraph 2, Subparagraph 2 of the Antimonopoly Act, a deadline for implementation needs to be specified for the content of each Commitment Measure to ensure the Reliability of Measures Implemented.

(A) Cessation of the Suspected Violation, confirmation that it has ceased, etc.

One necessary measure to ensure the Sufficiency of the Content of Measures is a resolution by the decision-making body (e.g., the board of directors) of the Notified

Enterprise that both (i) confirms that it will cease or has ceased the Suspected Violation and (ii) affirms that it will not engage in the Suspected Violation in the future.

(B) Notification to trading partners and others or publicizing information to users and others

In a case, for example, one in which the Suspected Violation involves the Notified Enterprise having prohibited its trading partners and others from trading with its competitors, it is necessary to make notification to trading partners and others or publicize information to users and others regarding the matters described under (A) above in order to ensure the restoration of competition order.

For this reason, notification to trading partners and others or publicizing information to users and others regarding the matters described under (A) above will be necessary in some cases, in order to ensure the Sufficiency of the Content of Measures.

(C) Development of a compliance program

In order to ensure matters such as the cessation of the Suspected Violation or confirmation that it has ceased, the Notified Enterprise will need to develop a compliance program (including regular auditing and in-house training of employees).

For this reason, when confirming that it will cease or has ceased the Suspected Violation, the development of a compliance program also may be necessary in some cases, in order to ensure the Reliability of Measures Implemented.

(D) Amendments of Contracts

In some cases, , for example, one in which the Suspected Violation involves the provision of rebates (in general, this refers to monetary payments made to trading partners systematically or per individual transaction, separately from purchase prices) by the Notified Enterprise and such rebates have the effect of restricting the handling of competing products by being conditional on matters such as the degree to which its own products are handled, the Suspected Violation is backed by existing contracts and it would not be possible to ensure the restoration of competition order without amending the content of such contracts.

For this reason, amendment of a contract to which the Notified Enterprise is a party may be necessary in some cases, in order to ensure the Sufficiency of the Content of Measures.

(E) Transfer of businesses etc.

In a case, for example, one in which the Suspected Violation involves ownership by the Notified Enterprise of shares in a competitor, it might not be possible to ensure the restoration of competition order without taking measures such as the sale of such shares.



For this reason, the Notified Enterprise may need to, in some cases, take steps such as the transfer of its business or sale of shares it owns, in order to ensure the Sufficiency of the Content of Measures.

(F) Recovery of monetary value provided by trading partners and others

In cases such as when a Suspected Violation involves a reduction in the price stipulated in a contract after the Notified Enterprise has purchased products or services, or a forced purchase by the trading partner of products or services other than those involved in the transaction, it would be beneficial to have the Notified Enterprise return to the trading partner the amount of gains that the Notified Enterprise had received or the amount of costs incurred by the partner, in order to ensure the Sufficiency of the Content of Measures.

(G) Reporting on the state of implementation

Even if the Commitment Measures satisfies the Sufficiency of the Content of Measures, if they are not actually implemented, then it will not be possible to ensure restoration of competition order.

Accordingly, the periodic reporting of the state of implementation of each Commitment Measure to the JFTC by the Notified Enterprise or an independent third party to whom the Notified Enterprise has entrusted with monitoring its performance of Commitment Measures (only if said third party has been approved by the JFTC) is one measure necessary to ensure the Reliability of Measures Implemented.

It is expected that, depending on the content of Commitment Measures, a single report to the JFTC may be sufficient to ensure the Reliability of Measures Implemented.

\*3 For Commitment Measures related to business combinations, Part 6 (Measures to Remedy Substantial Restraint of Competition) of the Guidelines to Application of the Antimonopoly Act concerning Review of Business Combination (JFTC, May 31, 2004) shall be referred to.

## 7. Public comments

If the JFTC finds that it needs to invite opinions from the public in judging whether or not an applied Commitment Plan conforms to the Approval Requirements, the JFTC may establish a period for submittal of opinions, not to exceed thirty days, in principle, and seek the opinions of third parties regarding an overview of the Commitment Plan, through its website or other means.

When the JFTC has commenced the seeking of opinions, any party with an opinion on the overview of the Commitment Plan may submit written opinions to the JFTC within the period for submittal of such opinions.

The JFTC will not reply to opinions submitted.

Even if the JFTC does not seek opinions from third parties, the JFTC may take actions such as confirmation of the facts related to the Commitment Plan with the Applicant's competitors, trading partners, and others individually.

## 8. Approval or dismissal

### (1) Viewpoint on approval or dismissal of the Commitment Plan

After the JFTC has received an Application for Commitment Approval from the Notified Enterprise, the JFTC shall make a judgment as to whether or not the Approval Requirements are satisfied, based on the Approval Application Documents. As described under Section 3 above, Commitment Procedures constitute a method for the voluntary resolution of a Suspected Violation through a consent between the JFTC and the enterprise concerned, and close communication between the JFTC and the enterprise would enable the swift application of the law related to Commitment Procedures and thus be beneficial to both the JFTC and the enterprise. For this reason, after Notification of Commitment Procedures, as the JFTC deems necessary or when the Applicant has requested an explanation of issues during the process of approval, the JFTC shall explain the issues at that point in time and other matters. The JFTC also may ask the Applicant to explain the content of the application.

If the Commitment Measures have been judged as conforming to the Approval Requirements, that is, as satisfying both the requirements of Sufficiency of the Content of Measures and Reliability of Measures Implemented, the JFTC shall approve the Commitment Plan describing the Commitment Measures in accordance with the provisions of Article 48-3, Paragraph 3 or Article 48-7, Paragraph 3 of the Antimonopoly Act.

On the other hand, if the JFTC has judged that the Commitment Measures do not conform to the Approval Requirements, in a case in which the content of Commitment Measures responds to only part of the Suspected Violation, for example, the JFTC shall render a decision to dismiss the Application for Commitment Approval in accordance with the provisions of Article 48-3, Paragraph 6 or Article 48-7, Paragraph 5 of the Antimonopoly Act. In such a case, the investigation conducted prior to Notification of Commitment Procedures will resume\*<sup>4</sup>.

\*<sup>4</sup> When the JFTC has decided to reject an Application for Commitment Approval for a business combination for which notice has been submitted, pursuant to Article 10, Paragraph 13 of the Antimonopoly Act or other provisions applicable under that

paragraph, the period during which Notification of Hearing may be issued shall be extended with the addition of ninety days to the notification period.

(2) Effect of approval

When the JFTC has approved a Commitment Plan pursuant to the provisions of Article 48-4 or Article 48-8 of the Antimonopoly Act (including cases of approval of amendment of an approved Commitment Plan), the JFTC shall not apply the provisions related to Legal Measure with regard to the Suspected Violation and the acts related to Commitment Measures.

Approval of a Commitment Plan by the JFTC does not represent a judgment that the Applicant's Suspected Violation constitutes a violation of the provisions of the Antimonopoly Act.

9. Amendment to an approved Commitment Plan

An Applicant that has received approval of a Commitment Plan (hereinafter referred to as the "Approved Enterprise") shall implement the Exclusion Measures or Measures to Ensure Exclusion (hereinafter collectively referred to as the "Approved Commitment Measures") described in the Commitment Plan for which it has received approval (hereinafter referred to as the "Certified Commitment Plan").

If it would be difficult for the Approved Enterprise to implement the Approved Commitment Measures by the deadline for their implementation due to circumstances arising after approval of the Commitment Plan or there is no longer a need to implement the Approved Commitment Measures due to changes in economic conditions or other factors, the Approved Enterprise may apply for approval of amendments to the Certified Commitment Plan (hereinafter referred to as the "Application for Approval of Amendment").

Pursuant to the provisions of Article 14, Paragraph 1 or Article 28, Paragraph 1 of Rules on Commitment Procedures, an Approved Enterprise intending to amend a Certified Commitment Plan must apply for approval of such amendments using the application form Form 2 or Form 4 to Rules on Commitment Procedures (hereinafter collectively referred to as the "Amendment Approval Application Form"). The documents provided in the subparagraphs of Article 14, Paragraph 2 or Article 28, Paragraph 2 of Rules on Commitment Procedures (hereinafter collectively referred to as the "Attachments to the Amendment Approval Application") need to be attached to the Amendment Approval Application Form.

Pursuant to the provisions of Article 16 or Article 30 of Rules on Commitment Procedures, the Amendment Approval Application Form and Attachments to the Amendment

Approval Application need to be submitted through methods such as submittal in person or by registered mail.

Same as a case of approval of a Commitment Plan as described under Section 8 (1) above, when, in certifying amendments to a Certified Commitment Plan, the JFTC has judged that the content of Commitment Measures after such amendment conforms to the Approval Requirements, the JFTC shall certify the amendments to the Approved Commitment Plan in accordance with the provisions of Article 48-3, Paragraph 3 applicable mutatis mutandis under Article 48-3, Paragraph 9 or Article 48-7, Paragraph 3 applicable mutatis mutandis under Article 48-7, Paragraph 8 of the Antimonopoly Act. While neither the Antimonopoly Act nor Rules on Commitment Procedures specify a deadline for Application for Approval of Amendments, in a case, for example, when an Application for Approval of Amendments has been submitted immediately prior to the deadline for implementation of the Commitment Measures the JFTC shall make a judgment as to the Sufficiency of the Content of Measures and the Reliability of Measures Implemented based on a consideration of the circumstances that led the Approved Enterprise to apply for approval of amendment at such timing.

The Approved Enterprise will make an independent judgement as to whether or not to make an Application for Approval of Amendment.

#### 10. Rescission of approval of an Approved Commitment Plan

##### (1) Rescission of approval

Pursuant to the provisions of Article 48-5, Paragraph 1 or Article 48-9, Paragraph 1 of the Antimonopoly Act, the JFTC must rescind the approval of a Certified Commitment Plan when the JFTC finds that the Certified Commitment Measures have not been implemented or that the Approved Enterprise obtained the approval of the Commitment Plan based on false or wrongful facts.

In addition, when the JFTC considers particularly necessary, the JFTC may exercise its investigatory authority under the provisions of Article 47 of the Antimonopoly Act to determine whether or not there are grounds for rescission as provided in the subparagraphs of Article 48-5, Paragraph 1 or Article 48-9, Paragraph 1 of the Antimonopoly Act, pursuant to the provisions of Article 68, Paragraph 1 or Paragraph 2 of the Antimonopoly Act.

##### (2) Effect of rescission of approval

When an Approved Commitment Plan has been rescinded, the approval under the provisions of Article 48-4 or Article 48-8 of the Antimonopoly Act shall no longer be in

effect and the investigation conducted prior to Notification of Commitment Procedures will resume\*<sup>5</sup>.

In such a case, the period of limitation (this refers to the period from the time the violation was complete and during which Legal Measure may be taken; hereinafter the same applies.) for Legal Measure (except for cases related to general concentration or business combination) shall be the period of five years from the date when the violation was complete. However, when the JFTC has rescinded the approval of an Approved Commitment Plan pursuant to the provisions of Article 48-5, Paragraph 3 or Paragraph 4 or Article 48-9, Paragraph 3 or Paragraph 4 of the Antimonopoly Act, notwithstanding the period of limitation, the JFTC may take Legal Measure within the period of two years from the date of the decision on such rescission.

\*<sup>5</sup> When the JFTC has canceled a certified Commitment Plan for a business combination for which notice has been submitted (only in cases of cancellation as described in Article 48-5, Paragraph 1, Subparagraph 1 of the Antimonopoly Act), then Notification of Hearing must be issued within one year from the date of the decision to cancel the certified Commitment Plan, pursuant to Article 10, Paragraph 14 of the Antimonopoly Act or other provisions applicable under that paragraph.

#### 11. Public announcement of approval of the Commitment Plan

After the approval of a Commitment Plan, in order to make clear what kinds of specific acts could have an adverse effect on free and fair competition and to ensure the transparency of the application of the law related to Commitment Procedures, the JFTC shall publicly announce a summary of the Approved Commitment Plan, a summary of the Suspected Violation related to such approval, and other matters as necessary. It shall be noted to such public announcement that the JFTC has not recognized a violation of the Antimonopoly Act to have taken place.

In principle, no such public announcement shall be made when the JFTC has dismissed an Application for Commitment Approval or rescinded the approval of a Approved Commitment Plan, or the Applicant has withdrawn its Application for Commitment Approval, since the investigation conducted prior to the Notification of Commitment Procedures will resume.

#### 12. Relationship to procedures conducted prior to migration to Commitment Procedures

(1) Exercise of investigatory authority pursuant to Article 47 of the Antimonopoly Act after migration to Commitment Procedures

It is not prohibited by law for the JFTC to conduct an investigation to confirm the facts of the matter as necessary for taking Legal Measure, including the exercise of its investigatory authority under the provisions of Article 47 of the Antimonopoly Act or seeking voluntary testimony, even after the JFTC found that it would be appropriate to initiate Commitment Procedures and issued a Notification of Commitment Procedures. Having said that, in order to facilitate the smooth implementation of Commitment Procedures, the JFTC shall not, in principle, conduct any investigation of the Notified Enterprise to confirm the facts of the matter as necessary for taking Legal Measure against that enterprise during the period before the dispositions related to the Application for Commitment Approval.

However, in cases such as when, in the approval of the Commitment Plan following the Notification of Commitment Procedures, (i) the JFTC has a firm belief that there are grounds for dismissal of the Commitment Plan and it is expected that the Applicant will not submit sufficient prima facie evidence and other materials, or (ii) it is not possible to secure the voluntary cooperation of the Applicant's trading partners and others for the JFTC's confirmation of facts and interviews, then even during the period before the dispositions related to the Application for Commitment Approval, the JFTC may conduct an investigation to confirm the facts of the matter as necessary for purposes of taking Legal Measure.

#### (2) Notification of Hearing after migration to Commitment Procedures

From the time when the JFTC has issued Notification of Commitment Procedures through the dispositions related to the Application for Commitment Approval, the JFTC shall not, in principle, issue a Notification of Hearing to the Notified Enterprise, although such notification is not prohibited by law.

#### (3) Handling of materials submitted by the enterprise in Commitment Procedures

As described under (1) above, the JFTC shall not, in principle, conduct an investigation to confirm the facts of the matter as necessary to take Legal Measure against the Notified Enterprise during the period before the disposition related to the Application for Commitment Approval.

However, if, in a case in which the JFTC has dismissed an Application for Commitment Approval or rescinded the approval of a Commitment Plan, or the Applicant has withdrawn the Application for Commitment Approval and the materials submitted by the Applicant in connection with the application cannot be used at all as evidence, then such practice could impede the confirmation of the facts as necessary for taking Legal Measure. For this reason, the materials submitted by the Applicant shall not, in such a

case, be returned, and they may be used as evidence for confirmation of the facts as necessary for taking Legal Measure.