

# Amendments to Guidelines to Application of the Antimonopoly Act concerning Review of Business Combination and to Policies concerning Procedures of Review of Business Combination

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The Japan Fair Trade Commission

Guidelines to Application of the Antimonopoly Act concerning Review of Business Combination (May 31, 2004 the Japan Fair Trade Commission(JFTC)) : Business Combination Guidelines

Policies concerning Procedures of Review of Business Combination (June 14, 2011 the JFTC) : Business Combination Procedures Policies

## Background and Purpose

Due to increased necessity of properly dealing with business combinations in the digital market in recent years and other reasons, based on Action Plan of the Growth Strategy (June 21 2019 Cabinet Decision) , etc., Business Combination Guidelines and Business Combination Procedures Policies are amended.

## Overview of Amendments to Business Combination Guidelines①

### 1 Definition of Particular Field of Trade

#### (1) To stipulate Views on a multi-sided market being characteristic of digital service, etc.

While a particular field of trade is basically defined for each user segment, if a platform mediates business transactions between different user segments and causes strong indirect network effect, there are some cases where a particular field of trade comprising each user segment is defined in an overlapping manner.

#### (2) To Stipulate Views on Competition by Means of Not Price But Quality, etc.

The extent to which users replace a product with another product or purchase a product in another region may be taken into consideration in cases where in a certain region a product suffers a deteriorating quality, etc. or where users bear increased costs of being offered a product in a certain region.

#### (3) To Stipulate Considerations in Defining Product Range and Geographic Range in Digital Service, etc.

Product range: characteristics of content (such as the type and function), qualities (such as sound quality, image quality, communication speed, and the level of security), user-friendliness (such as usable languages and terminals), etc. of the available service are taken into consideration.

Geographic range : a range within which a user can enjoy the service provided by a supplier on the same terms and quality, etc., and a range where the user can enjoy such service that is provided by suppliers are taken in to consideration among others.

## Overview of Amendments to Business Combination Guidelines②



### 2 Substantial Restraint of Trade (Horizontal Business Combination)

#### (1) To Stipulate Views on a Business Combination Case Where the Parties Engaging Research and Development

When each party is engaged in research and development of goods or services which are expected to compete in high degree after placed in the market, compared to a situation in which the goods or services are expected not to compete in high degree, the business combination will greatly affect competition because the business combination causes decreased competition between the parties and diminished incentives for the party to do research and development that would be realized were it not for the business combination.

#### (2) To Stipulate Views on Competition Analysis Based on Characteristics of Digital Service (Multi-Sided Market, Network Effect, Switching Cost, etc.)

When a direct network effect works, it is determined how the business combination affects competition in considering the direct network effect. In particular, a direct network effect affects competition in a single-homing case to a greater extent than in a multi-homing case.

Also, in a platform-based multi-sided market, when an indirect network effect works, it is determined that how the business combination affects competition in considering such indirect network effects.

In a case where it is difficult for users to switch from the company group to any other supplier because of the existence of network effects, switching costs and others that build a high barrier for the users when switching from the company group to another supplier, it is difficult for competitive pressure from users to work.

#### (3) To Stipulate Views on a Case Where It Is Difficult to Maintain Competition by Multiple Business Operators

In a case where a particular field of trade is not large enough for multiple efficient business operators to engage in profitable business activities, and therefore it is difficult to maintain competition by multiple business operators even without a business combination, such business combination normally may not be substantially to restrain competition in a particular field of trade even when such multiple business operators are reduced to only one operator as the result of such combination.





### 3 Substantial Restraint of Trade (Vertical Business Combination and Conglomerate Business Combination)

Based on recent reviews of business combinations, it stipulates competition analysis in vertical and conglomerate business combinations and views on an acquisition case where the acquired company holds important input goods for competition purposes such as data.

#### (1) To Stipulate Views on Refusal to Supply, etc. Against Other Companies in a case Where Data Can Be Traded in the Market

If Company A in the upstream market holding important data for a competition purpose enters into vertical business combination with Company B in the downstream market which uses such data for the purpose of providing its service, Company A's refusal to supply, etc. against Company B may give rise to closure of or exclusion from the downstream market.

In addition to data, input goods such as intellectual property rights that are important for competition purposes are considered based on the same way as data.

#### (2) To Stipulate Views on Elimination of the Possibility for New Entry into the Market by Acquiring a Start-up, etc. Having Important Input Goods such as Data

If Company A who is already engaged in a business in certain market enters into a conglomerate business combination with Company B who is not engaged in the same business but has important input goods such as data and therefore would be expected to become a powerful competitor if Company B enters the market solely or by a business combination with other companies, the business combination will eliminate the possibility for Company B to enter the market and thereby greatly affect competition, compared to a situation in which the Company B would not be expected to become a powerful competitor.

#### (3) To Stipulate Views on Assessing Importance of Data for Competition, etc.

In assessing the importance of data for competition in the situation of (2) above, following points are taken into consideration.

- ① what kind of data are held or collected by one of the parties (Company B)
- ② how much / how wide range of data are collected by one of the parties on a daily basis as well as how much data are already held by it
- ③ how frequently does one of the parties collect data
- ④ how much do the data held or collected by one of the parties relate to the improvement of the service, etc. provided by the other parties (Company A) in the product market

Also, advantage of the data which are held or collected by one of the parties (Company B) as compared with the data that are available to the competitor in the product market of the other party (Company A) is taken into consideration from the perspectives ① to ④.

## Overview of Amendments to Business Combination Procedures Policies

### (1) Review of Business Combination Plan with Large Total Consideration for Acquisitions

Among business combination plans that only the amount related to domestic sales, etc. of the acquired company does not meet notification standards ( “Notification-free business combination plan” ), when the total consideration for the acquisition is large and the business combination plan is expected to affect domestic consumers, the JFTC requests the parties to submit documents, etc. and reviews the business combination.

### (2) Business Combination Plans Recommended to Consult with the JFTC

Regarding notification-free business combination plans, when the total consideration for the acquisition exceeds 40 billion yen and the notification-free business combination plan is expected to affect domestic consumers such as satisfying one of the following ① to ③, it is recommended that the parties having the notification-free business combination plan consult the JFTC.

- ① when the business base or research and development base of the acquired company, etc. is located in Japan
- ② when the acquired company conducts sales activities targeting domestic consumers, such as opening a Japanese website or using a Japanese pamphlet
- ③ when the total domestic sales of the acquired company exceed 100 million yen

### (3) To Stipulate Internal Documents as Examples of Materials referred in Business Combination Reviews

In order to confirm the recognition of the parties, the JFTC may request the parties to submit internal documents of the parties. (for example, materials and minutes used at various meetings of the parties’ board of directors etc., documents of consideration and analysis of the effects of the business combination, etc. used when the parties considering and deciding the business combination, e-mails of officers or employees of the parties involved in the consideration of the business combination, etc.)