

Policies Concerning Procedures of Review of Business Combination
(Tentative Translation)

Japan Fair Trade Commission, June 14, 2011

Revised as of April 1, 2015

Revised as of September 26, 2018

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1. Purpose

With regard to plans for business combinations of share acquisition etc. (meaning acquisitions of shares, mergers, joint incorporation-type splits, absorption-type splits, joint share transfers, and acquisitions of business, etc.; the same shall apply hereafter) (hereinafter the “business combination plan”), the Japan Fair Trade Commission (hereinafter “JFTC”) applies an advance notification system based on the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947; hereinafter the “Antimonopoly Act”) and conducts reviews on whether business combination plans may be substantially to restrain competition in particular fields of trade (hereinafter “review of business combination”) by following procedures prescribed in the Antimonopoly Act. In recent years, the further improvement in both swiftness and transparency of review of business combination procedures has been required.

As a response, with the aim of improving predictability of review of business combination for entrepreneurs and ensuring further swiftness and transparency of procedures of review of business combination, the JFTC stipulates the “Policies Concerning Procedures of Review of Business Combination” (hereinafter “the Policies”). The Policies will be applied on July 1, 2011, and the “Policies Dealing with Prior Consultation Regarding Business Combination Plans” (JFTC, December 11, 2002) will be abolished.

2. Consultation Prior to Notification

A corporation planning to notify the JFTC concerning a business combination plan pursuant to Article 10, paragraph (2) (including cases where a deemed application is made pursuant to provisions of paragraph (5) of the said Article), Article 15, paragraph (2), Article 15-2, paragraph (2) or (3), Article 15-3, paragraph (2), or Article 16, paragraph (2) of the Antimonopoly Act (hereinafter “corporation planning to give notification”) may have consultation with the JFTC regarding the said business combination plan (hereinafter “consultation prior to notification”). In such consultation, a corporation planning to give notification may consult regarding how to make entries on the notification form, etc. (Consultations can be received at the offices where the notification forms should be submitted, which are listed in the Attachment.) (Note 1)

For example, the notification form has a section in which the positions of **the corporation conducting a business combination (hereinafter “the parties”)** in the domestic market should be described. If a corporation planning to give notification consults the JFTC about matters related to contents to be described in the said section of the notification form, such as the JFTC’s view of a particular field of trade, the JFTC shall collect information necessary for giving explanations concerning the consultation from the said corporation planning to give notification, for example, and then provide whatever explanations it can based on the currently available information in light of the Guidelines to Application of the Antimonopoly Act

Concerning Review of Business Combination (JFTC, May 31, 2004) (hereinafter the “Business Combination Guidelines”) and views it presented in past cases.

Also, a corporation planning to give notification can submit to the JFTC materials that it believes necessary for receiving appropriate explanations concerning the consultation prior to notification.

The review after the notification is undertaken based on interactions between the corporation planning to give notification and the JFTC in the consultation prior to notification, though explanations given by the JFTC for the consultation may be corrected in the review after the notification.

Note 1: Even if a corporation planning to give notification does not have a consultation prior to notification, it will not be given disadvantageous treatment in the review after the notification.

3. Primary review (Note2)

(1) Receipt of a notification form

When a corporation planning to notify the JFTC concerning a business combination plan (hereinafter “notifying corporation”) submits the notification form to the JFTC and the JFTC receives it, the JFTC starts the primary review.

The format of the notification form of business combination plan and documents required for the notification are prescribed in Articles 2-6, 5, 5-2, 5-3 and 6 of the Rules on Applications for Approval, Reporting, Notification, etc. Pursuant to the Provisions of Articles 9 to 16 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Fair Trade Commission Rule No. 1, 1953; hereinafter the “Notification Rules”). On receipt of a notification form submitted pursuant to these provisions, the JFTC shall deliver to the notifying corporation a written receipt of notification form pursuant to the provisions of Article 7, paragraphs (1) and (2) of the Notification Rules.

Note 2: “Primary review” is a review, which is undertaken after the JFTC receives a notification form, except a review undertaken after more detailed review is necessary and request submission of the necessary reports, information or materials prescribed in Article 10, paragraph (9) of the Antimonopoly Act (including cases where it is applied mutatis mutandis pursuant to Article 15, paragraph (3), Article 15-2, paragraph (4), Article 15-3, paragraph (3), and Article 16, paragraph (3) of the Antimonopoly Act after deeming replacements, respectively; the same shall apply hereinafter) (hereinafter the “reports, etc.”). The review undertaken after requesting submission of the reports, etc is “Secondary review”.

(2) Waiting period

When the JFTC receives the notification form, the notifying corporation is prohibited from effecting the share acquisition, etc. in question until the expiration of the 30-day waiting period from the date of receipt of the said notification (period hereinafter referred to as the “waiting period”), as stipulated in the main clause of Article 10, paragraph (8) of the Antimonopoly Act (including cases where it is applied mutatis mutandis pursuant to Article 15, paragraph (3), Article 15-2, paragraph (4), Article 15-3, paragraph (3), and Article 16, paragraph (3) of the Antimonopoly Act after deemed replacements, respectively. The same shall apply hereinafter.); provided, however, that the JFTC may, when it finds it necessary, shorten the said period pursuant to the provisions of the proviso of Article 10, paragraph (8) of the Antimonopoly Act.

(3) Procedures of primary review

On the primary review, during the waiting period, the JFTC will normally either: (1) judge that the said business combination is not problematic in light of the Antimonopoly Act and give notification to the effect that it will not issue a cease and desist order

pursuant to the provisions of Article 9 of the Notification Rules , or; (2) judge that more detailed review is necessary and request submission of the reports, etc.,or; (3) give notification pursuant to the provisions of Article 48-2 of the Antimonopoly Act (hereafter the “Notification of Commitment Procedures”) concerning the procedures pursuant to the provisions of from Article 48-2 to 48-9 of the Antimonopoly Act to resolve suspected violations against the Antimonopoly Act voluntarily by consent between the JFTC and an enterprise (including trade association, etc.) (hereafter the “Commitment Procedures”).

In the case of (1) above, when the notifying corporation requests shortening of the waiting period in writing, the JFTC promptly give notification to the effect that it will not issue a cease and desist order and shortens the waiting period until the date of the said notification (Note 3). Also, any other cases that will be informative for other corporations judged during the phase of the primary review will be made public by the JFTC. Such cases include those deemed by the JFTC not to be problematic in light of the Antimonopoly Act on the condition that remedy(ies) (when a business combination may be substantially to restrain competition in a particular field of trade and such restraint may be remedied by certain appropriate measures taken by the notifying corporation, such measures solving the issues are called “remedy(ies)” ; the same shall apply hereinafter) should be taken by the notifying corporations in the phase of the primary review.

In the case of (2) above, the procedures in detail are described in the following 4.

In the case of (3) above, the procedures in detail are described in the Policies Concerning Commitment Procedures (JFTC, September 26,2018).

Note 3: The waiting period will also be shortened promptly when the JFTC’s judgment is (1) above and the notifying corporation has requested shortening of the waiting period in writing after the JFTC gave notification to the effect that it would not issue a cease and desist order pursuant to the provisions of Article 9 of the Notification Rules.

4. Secondary review

(1) Request for reports, etc.

The JFTC requests a notifying corporation to submit reports, etc and starts the secondary review.

When the JFTC requests the notifying corporation to submit reports, etc., the JFTC will deliver to the notifying corporation a written request for reports, etc. as stipulated in Article 8, paragraph (1) of the Notification Rules, and when the JFTC receives all the reports, etc. from the notifying corporation, it will deliver a written receipt of reports, etc. as stipulated in paragraph (2) of the same article. When requesting a reports, etc. pursuant to the provisions of the second sentence of paragraph (1) of the same article, the JFTC will describe the points of requesting the reports, etc. in the written request for reports, etc.

When the JFTC requests the notifying corporation to submit reports, etc., the JFTC will make a release to the public to that effect.

(2) Hearing of third party opinions

Any party with an opinion about the business combination plan, about which the JFTC has publicized its request for a reports, etc. in accordance with (1) above, can submit a written opinion to the JFTC within 30 days after the said publication.

(3) Procedures of secondary review

On the secondary review, as stipulated in Article 10, paragraph (9) of the Antimonopoly Act, during the period until 120 days after the date of receipt of the notification or 90 days after the date of receipt of all reports etc., whichever is later, the JFTC will either: (1) judges that the business combination in question is not problematic in light of the

Antimonopoly Act and give notification to the effect that it will not issue a cease and desist order; (2) provides Notification of Commitment Procedures, or; (3) provides the notification of hearing of opinions pursuant to the provisions of Article 50, paragraph (1) of the Antimonopoly Act (hereafter the “Notification of Hearing”).

In the case of (1), the JFTC will explain in writing the result of the review including reasons why the business combination in question is not problematic in light of the Antimonopoly Act. Also, the JFTC will make public the said results of the review (Note 4).

In the case of (2), the procedures in detail are described in the Policies Concerning Commitment Procedures.

In the case of (3), the procedures are conducted pursuant to the provisions of Section 2 of Chapter VIII of the Antimonopoly Act.

Note 4: The results of the review of business combination will be made public even when the JFTC decides not to issue a cease and desist order after it provided Notification of Hearing because the notifying corporation has, for instance, offered to take remedy(ies).

5. Explanation of issues and submission of written opinions and materials by the notifying corporation

Ensuring close communications between the JFTC and notifying corporations enables swift and highly transparent review of business combination and is thought to be beneficial both for the JFTC and notifying corporations. Therefore, when during the period of a primary or secondary review (hereinafter the “reviewing period”), a notifying corporation requests explanation about issues, etc. in a review of business combination or the JFTC finds such explanation necessary, the JFTC will explain the current issues.

Also, pursuant to the provisions of Article 7-2 of the Notification Rules, a notifying corporation can submit to the JFTC written opinions or any other materials it believes necessary for the review (including offers to take remedy(ies) in question) anytime during the reviewing period; provided, however, that the contents of a written opinion or material may not be sufficiently reflected in the contents, etc. of the Notification of Hearing depending on the timing of its submission.

The review is undertaken on the premise of remedy(ies) written on the notification form by the notifying corporation (If the notifying corporation offers remedy(ies) after notification, it submits a written report of the changes pursuant to the provisions of Article 7, paragraph (3) of the Notification Rules or resubmits the notification form pursuant to the provisions of Article 7, paragraph (4) of the Notification Rules.).

Also, in cases where the JFTC finds that it is appropriate to apply the Commitment Procedures and the notifying corporation comes to intend to initiate it, the JFTC will provide Notification of Commitment Procedures to the notifying corporation. Then the notifying corporation will consider the application for approval for Exclusion Measures Plan which includes remedy(ies) pursuant to the provisions of Article 48-3, paragraph (1) of the Antimonopoly Act.

While the JFTC clarifies judgment criteria, etc. for review of business combination in the Business Combination Guidelines, it tends to refer to materials listed in the attached paper in review of business combination.

6. Consultation about business combination plans that is not required notification

(1) Dealing with a consultation from a corporation planning a business combination

When a corporation plans a business combination that is not required to notify because the domestic sales, etc. do not meet the standards, or an interlocking directorate or any other business combination that is not required to notify because it is not subject to notification, and the said corporation consults with the JFTC concerning the said business combination plan by showing specific contents of the plan, the JFTC shall respond pursuant to provisions of the above items 2 to 5.

(2) Business combination plan with large total consideration for acquisitions

Among business combination plans that is not required to notify because only the amount related to domestic sales, etc. of a substantially acquired corporation (hereinafter “acquired company”) (Note 5) does not meet the standards (hereinafter “notification-free business combination plan”), when the total consideration for the acquisition (Note 6) is large and is expected to affect domestic consumers, in order to scrutinize the impact on domestic competition, the JFTC requests the corporation having the notification-free business combination plan to submit the documents on the Attachment, etc., and conduct a business combination review.

Regarding notification-free business combination plan, 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 based on (1) above (Note 7).

① When the business base or research and development base of the acquired company 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

(Note 5) The acquired company refers to, for example, a share issuing company in the case of share acquisition, an absorbed company in the case of an absorption-type merger, and a company transferring a business in the case of transfer of business, etc.

(Note 6) The total consideration related to the acquisition is the sum of cash, shares, securities, and other assets which are received in relation to the acquisition (including cash, etc. expected to be received in the future)

(Note 7) If there is no consultation from the parties, the JFTC requests the parties to submit the documents on the Attachment, etc. and reviews the business combination plan. In addition, regarding a notification-free business combination plan, even if the total consideration for the acquisition does not exceed 40 billion or if none of ① to ③ is satisfied, when its necessary to scrutinize the impact on domestic competition, the JFTC reviews the notification-free business combination plan.

Offices Where Notification Forms Should be Submitted

	Contact	Jurisdictional area (prefecture)
General Secretariat, Japan Fair Trade Commission Central Government Bldg. No. 6-B 1-1-1 Kasumigaseki, Chiyoda-ku, Tokyo, 100-8987, Japan	Mergers and Acquisitions Division, Economic Affairs Bureau Phone: (03) 3581-3719 Fax: (03) 3581-5771	Ibaraki, Tochigi, Gunma, Saitama, Chiba, Tokyo, Kanagawa, Niigata, Nagano, Yamanashi
Hokkaido Office Sapporo Joint Government Bldg. No. 3 Odorinishi 12-chome, Chuo-ku, Sapporo-shi, Hokkaido, 060-0042 Japan	General Affairs Division Phone: (011) 231-6300 Fax:(011) 261-1719	Hokkaido
Tohoku Office Sendai Joint Government Bldg. No. 2, 3-2-23, Hon-cho, Aoba-ku, Sendai-shi, Miyagi, 980-0014, Japan	General Affairs Division Phone: (022) 225-7095 Fax: (022) 261-3548	Aomori, Iwate, Miyagi, Akita, Yamagata, Fukushima
Chubu Office Nagoya Joint Government Bldg. No. 2, 2-5-1, Sanomaru, Naka-ku, Nagoya-shi, Aichi, 460-0001, Japan	Director of Economic Affairs Phone: (052) 961-9422 Fax: (052) 971-5003	Toyama, Ishikawa, Gifu, Shizuoka, Aichi, Mie
Kinki-Chugoku-Shikoku Office Osaka Joint Government Bldg. No. 4, 4-1-76, Otomae, Chuo-ku, Osaka-shi, Osaka, 540-0008, Japan	Director of Economic Affairs Phone: (06) 6941-2174 Fax: (06) 6943-7214	Fukui, Shiga, Kyoto, Osaka, Hyogo, Nara, Wakayama
Chugoku Branch of Kinki-Chugoku-Shikoku Office Hiroshima Joint Government Bldg. No. 4, 6-30, Kamihacchobori, Naka-ku, Hiroshima-shi, Hiroshima, 730-0012, Japan	General Affairs Division Phone: (082) 228-1501 Fax: (082) 223-3123	Tottori, Shimane, Okayama, Hiroshima, Yamaguchi
Shikoku Branch of Kinki-Chugoku-Shikoku Office Takamatsu Sanport Local Government South Bldg., 3-33, Sanport, Takamatsu-shi, Kagawa, 760-0019, Japan	General Affairs Division Phone: (087) 811-1750 Fax: (087) 811-1761	Tokushima, Kagawa, Ehime, Kochi
Kyushu Office Fukuoka Joint Government Bldg. No. 2, Annex, 2-10-7, Hakataekihigashi, Hakata-ku, Fukuoka-shi, Fukuoka, 812-0013, Japan	Director of Economic Affairs Phone: (092) 431-5882 Fax: (092) 474-5465	Fukuoka, Saga, Nagasaki, Kumamoto, Oita, Miyazaki, Kagoshima
Fair Trade Office of General Affairs Department, Okinawa General Bureau, Cabinet Office Wing 2, Naha Local Government Bldg. No. 2, 2-1-1, Omoromachi, Naha-shi, Okinawa, 900-0006, Japan	Fair Trade Office Phone: (098) 866-0049 Fax: (098) 860-1110	Okinawa

Attachment: Examples of Materials Referred to by the Japan Fair Trade Commission in Business Combination Reviews

Corresponding part of Business Combination Guidelines		Examples of materials
Part II-2	A Particular Field of Trade (Product Range)	<ul style="list-style-type: none"> • Product outline (form, characteristics, etc.) • Raw materials, production method, production process chart • Degree of difference among products in quality and performance, and standard and system • Other products whose utilities are of the same, or similar, type • Changes in price and traded quantity of each product • Characteristics of recognition and actions of users • Outline of production facilities of factories (switchability of production lines, etc.) • Related documents, surveys, analyses, etc. (The same shall apply to all the below items.)
Part II-3	A Particular Field of Trade (Geographic Range)	<ul style="list-style-type: none"> • Countries and areas where businesses are operated (by the company and its competitors) • Locations and business districts of factories and places of business (of the company and its competitors) • The area around which users purchase the product, and their purchasing behaviors • Features of goods • Methods of transporting and supplying goods, and cost of transportation • Changes in prices and traded quantities in each country and region • <u>Physical and commercial distribution</u>
Part IV-2 (1)	The Position of the Company Group and the Situation of Competitors(including competitive situation in the market, etc.)	<ul style="list-style-type: none"> • Changes in market size (in quantity and monetary terms) and demand forecast • Changes in quantity of production and shipment at each company (and competitor) (as sorted out by usage, demand sector, or between captive consumption and sales, etc.) • The company's sales quantity of the product traded (profit and cost) • Fluctuation in market share and competition among the parties in the past • Monthly changes of sales prices by product (as sorted out between negotiation transactions and market trend, by user group, by distribution channel, etc.) • Method of determining price (sales promotion expenses, rebates, advertising expenses, etc.) • Frequency of price negotiations, and timing and factors of price changes • Distribution channel of each product, distribution in quantity and monetary terms in each channel, sales organizations and state of distributive integrations • Outline of production facilities of factories (including facility details, changes in production capacity, production quantity, and excess capacity and method of calculating them, and details and production capacity of facilities under construction/plan, etc.) • Changes in export quantity and export prices (pricing factors, difference in price from domestic products) • Product lineup of the company (product brochure, etc.), outline of other companies' products (product lineups, grades, etc.) • Characterization of products by differentiation (brand, grade, etc.)

		<p>evaluation of the brand</p> <ul style="list-style-type: none"> • Patent rights held or ones for which authorization to exploit are held, and details of alliances concerning introduction of technologies • Development status of new products, research and development, case examples of entries in terms of technology development, case examples of entries in terms of technology development, amount (in monetary terms), amount of investment (outline, etc. of personnel and equipment) • Changes in the speed and degree of technological innovation, state of product obsolescence, and ratio of research and development expenses to sales in Japan and overseas concerning the product.
Part IV-2 (2)	Import	<ul style="list-style-type: none"> • Changes in import quantity and import prices (pricing factors, difference in price from domestic products) • Presence or absence and details of tariffs and other tax and legislative regulations related to international trades • Prices, quality, and technologies of imports, and expenses and facilities concerning import (distribution facilities, storage facilities, etc.) • Demand trends and excess export capacity of exporting countries, outlines of powerful overseas entrepreneurs • Forecasts of import and export in the future

Part IV-2 (3)	Entry	<ul style="list-style-type: none"> • Presence or absence of legislation regulating the entry, such as license • Presence or absence of barriers to entry in practice (including appropriate range of production facilities required for the entry, required amount of investment in the facilities, their locations, technical issues, purchasing conditions for raw materials and sales conditions, etc.) • Past cases of entry and their effects • Presence or absence of entrepreneurs who may make entries and of entry plans, and business plans of entrepreneurs intending to make entries
Part IV-2 (4)	Competitive Pressures from Related Markets	<ul style="list-style-type: none"> • States of competition in related markets and the degree of the impact of competition in related markets on competition in particular fields of trade (similar goods and adjacent areas)
Part IV-2 (5)	Competitive Pressure from Users	<ul style="list-style-type: none"> • Names of main users (locations and changes in sales in quantity and monetary terms) • Sales destinations by size of main users (large- and small-lot users) and trading relationship (changes in sales in quantity [monetary] terms, trade practice, etc.) • Competition among users • Ease of changing suppliers (cost of switching suppliers, state of multiple purchases by users, examples of switching of suppliers, etc.)
Part IV-2 (7)	Efficiency	<ul style="list-style-type: none"> • Rationalization and efficiency improvement plans related to the business combination, and details and calculation base of the economic effect (economies of scale, integration of production facilities, specialization of factories, reduction in transportation costs, efficiency in research and development, etc.) • Documents of internal procedures leading to the decision of the business combination, explanatory materials for shareholders and financial markets regarding efficiency, etc. • Past results of reduced prices, quality improvement, provision of new products, etc. due to efficiency improvement
Part IV-2 (8)	Financial Conditions of the Company Group	<ul style="list-style-type: none"> • Financial conditions of company with poor results • State of negotiations with other entrepreneurs capable of bailing out company with poor results

Note 1 : The materials listed above are only examples, and materials are not limited to them.

Note 2: Concerning changes in market size, prices, quantity, market shares, etc., submission of data for three to five years is generally desirable, but the subject period may differ, for instance, depending on the details of the business combination, characteristics of the trade, and presence or absence of available data.

Possible sources of information for such data include government statistics, trade organization statistics, material from market research organizations, and POS data (in the case of a product intended for consumers).

(Note 3) In order to confirm the recognition of the parties regarding each item in the above table, the JFTC may request the parties to submit internal documents of the parties. (for example, materials and minutes used at various meetings of the company's 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.)

Flowchart of Business Combination Review (Reference)

