

The JFTC's Review Results
Concerning Acquisition of Fitbit, Inc. by Google LLC
(Tentative Translation)

I. Parties

Google LLC (hereinafter referred to as "Google", and a group of companies which have already formed joint relationships with Google's ultimate parent company, Alphabet Inc., headquartered in the U.S., is referred to as "Google Group") is headquartered in the U.S., and Google Group is active in a wide range of areas, notably in services regarding digital advertisement, internet search, cloud computing, software and hardware.

Fitbit, Inc. (hereinafter referred to as "Fitbit", and a group of companies which have already formed joint relationships with Fitbit is referred to as "Fitbit Group." In addition, Google Group and Fitbit Group are collectively referred to as the "Parties") is headquartered in the U.S., and mainly operates the business of manufacturing and distributing wrist-worn wearable devices.

II. Overview of this case and applicable provisions

This is a case in which Google and Fitbit planned that (1) Google will newly establish its subsidiary company, that (2) Fitbit will merge the subsidiary company as the merged company and Fitbit itself as the merging company, and thereafter that (3) Google will acquire all the voting rights related to the Fitbit's shares as the consideration for such business combinations (hereinafter referred to as the "Acquisition").

The applicable provisions are Articles 10 and 15 of the Antimonopoly Act.

III. Brief summary of results of business combination review

1. Business combination review procedure

The Parties announced their plan for the Acquisition on November 1, 2019. The Acquisition fell short of the notification criteria stipulated in Article 10, paragraph (2) and Article 15, paragraph (2), of the Antimonopoly Act because the total amount of domestic turnover of Fitbit Group was less than 5 billion yen. Nevertheless, the Japan Fair Trade Commission (hereinafter referred to as the "JFTC") decided to conduct a business combination review on the Acquisition and requested the Parties to explain the case because the Acquisition was substantially equivalent to an acquisition of Fitbit Group by Google Group, in which it was expected that the total consideration for the Acquisition would exceed 40 billion yen, and by which domestic

users would be affected¹.

Corresponding to the request, the Parties voluntarily submitted to the JFTC the detailed plan of the Acquisition, and their written opinions and materials in turn, in which they considered that the Acquisition would not substantially restrain competition. The JFTC had several exchanges of views with the Parties. Moreover, the JFTC reviewed the Acquisition in accordance with the procedures for the business combination review for which notification is required, in light of the detailed plan, opinions, materials, etc., related to the Acquisition submitted by the Parties, as well as of the interviews, etc., with the concerned parties such as competitors.

In addition, the European Commission and other foreign competition authorities also reviewed the Acquisition, and the JFTC conducted the business combination review while exchanging information with those authorities.

2. Viewpoints of the business combination review

Among the Parties, specifically Google Group has a broad range of business. The JFTC considered the following four types of business combination in which the Parties are involved in business relationships, etc., as the area where the Acquisition may cause competition concerns.

More information concerning the goods, services, etc., in each type of business combination will be described in detail in Section IV below.

- (1) Business of providing operating systems (OSs) for wrist-worn wearable devices (Google Group's business) and business of manufacturing and distributing wrist-worn wearable devices (Fitbit Group's business).

For wrist-worn wearable devices to function, there needs to be an OS developed for wrist-worn wearable devices (OS for wrist-worn wearable devices). Currently, with respect to its own wrist-worn wearable devices, Fitbit Group is not provided by Google Group with any OSs for wrist-worn wearable devices; however, in the review of this case, on the assumption that Google Group and Fitbit Group are involved in a potential business relationship, the JFTC considered whether any issue of closure or exclusivity of the market would arise from a viewpoint of vertical business combination.

¹ The JFTC revised the Policies Concerning Procedures of Review of Business Combination (the JFTC, June 14, 2011) on December 17, 2019, in which it publicly announced that, even in the case of a business combination plan falling short of the notification criteria (or requiring no notification), if the total consideration for the acquisition is large and therefore expected to affect domestic users, the JFTC conducts a business combination review.

- (2) Business of providing smartphone OSs (Google Group’s business) and business of manufacturing and distributing wrist-worn wearable devices (Fitbit Group’s business)

By linking a wrist-worn wearable device to a smartphone, a user of such a device is able to use various services such as transmission of data between a device and a smartphone. Currently, being provided with Android API² from Google Group, Fitbit Group enables its wrist-worn wearable devices to link to smartphones with Android OS (i.e., the smartphone OS licensed by Google Group) (hereinafter referred to as “Android smartphone(s)”).

In this respect, on the ground that Fitbit Group has been provided from Google Group with the functions to ensure the interoperability with Android OS through Android API, this case falls under the category of vertical business combination. On this point, in response to the Parties’ proposal for implementing remedies as described in Section VI.3(4)a below, the JFTC decided to conduct a legal assessment in light of the Antimonopoly Act based on the details of such proposals.

- (3) Business of providing the Health-related Database (the Parties’ business) and business of providing health-related apps (the Parties’ business)

When a user uses a wrist-worn wearable device or a smartphone with a health-related app, such user’s Health-related Data are collected and stored in a database. Currently, the Parties allow enterprises operating the business of providing health-related apps to have access to their own Health-related Database (i.e., Google Fit platform and Fitbit platform) through Web API³.

In this respect, this case falls under the category of vertical business combination because the member groups of the Parties are respectively involved in the business of providing health-related apps, and thus because the Health-related Database to be used for the provision of health-related apps can be mutually provided between such member groups through Web API. On this point, in response to the Parties’ proposal for implementing remedies as described in Section VI.4(3)a below, the JFTC decided to conduct a legal assessment based on the Antimonopoly Act in light of the details of such proposals.

² Android API is a means by which to enable other software to establish a way of connecting to Android Smartphones. Details of Android API will be described in Section IV.4(1).

³ Web API is generally a means that enables the API provider and the API users to communicate via the Internet. Details of Web API will be described in Section IV.4(2) below.

- (4) Business of providing the Health-related Database (the Parties' business) and Digital Advertising-related Business (Google Group's business)

The Health-related Data of users collected into the Health-related Database can be useful input for operating the Digital Advertising-related Business.

Currently, Google Group has not used its Google Fit users' Health-related Data for its Digital Advertising-related Business, and the Google Group's privacy policy constraints the use of Health-related Data for advertising business; however, it is possible that Google Group may use its Health-related Data and the Health-related Data collected by Fitbit Group for its Digital Advertising-related Business after the Acquisition, which therefore was also reviewed by the JFTC.

Fitbit Group by itself is involved in neither the Digital Advertising-related Business nor distribution of the Health-related Data to others for the purpose of being used for the Digital Advertising-related Business; therefore, there is no overlap or business relationship between the Parties. Hence, this case falls under neither the category of horizontal business combination nor that of vertical business combination, which therefore falls under the category of conglomerate business combination.

In this respect, in response to the Parties' proposal for implementing remedies as described in Section VI.5(3)a below, the JFTC decided to conduct a legal assessment based on the Antimonopoly Act in light of the details of such proposals.

IV. Description of relevant products/services

1. Wrist-worn wearable devices

(1) Product/service description

Fitbit Group operates the business of manufacturing and distributing wrist-worn wearable devices. A wearable device is an Information and Communications Technology (ICT) device to be used by being worn on the body, with a function to obtain biological information (e.g., heart rate) of a person who wears such a device through a sensor mounted thereon. There are various kinds of wearable devices depending on the body parts to be worn on, such as wrist-, ear- and eye-worn types. Wrist-worn wearable devices are also called "smart watches" or "fitness trackers".

Also, many users in Japan purchase wrist-worn wearable devices from Japanese-language websites of wrist-worn wearable device manufacturers, etc., or at physical stores such as electronics retail stores in Japan.

(2) Connection to smartphones

General consumer users become able to use various services such as data transmission via Bluetooth⁴ by linking their wrist-worn wearable devices to smartphones. Wrist-worn wearable device manufacturers install OSs for wrist-worn wearable devices (see 2(2) described below) with a function enabling such connection on their wrist-worn wearable devices and provide to general consumer users the apps called “companion apps” that enable the linkage between their wrist-worn wearable devices and smartphones.

2. OSs

(1) Product/service description

An OS (Operating System), also called “basic software”, is the software that provides basic functions commonly used in many application software and controls the entire computer system.

While the Parties develop different OSs for wrist-worn wearable devices respectively, Google Group grants licenses for its self-developed OS for wrist-worn wearable devices to wrist-worn wearable device manufacturers, and Fitbit Group installs its self-developed OS for wrist-worn wearable devices only on its own wrist-worn wearable devices. Also, Google Group develops Android OS (i.e., a smartphone OS) and makes it available, and grants free licenses, to other companies.

(2) OSs for wrist-worn wearable devices

OSs for wrist-worn wearable devices are those developed for wrist-worn wearable devices and used by being installed thereon.

Google Group developed “Wear OS by Google” (“Wear OS”) and grants free licenses to wrist-worn wearable device manufacturers. On the other hand, Fitbit Group installs its self-developed OS on its wrist-worn wearable devices, but it has not granted any licenses to any other wrist-worn wearable device manufacturers.

In addition, there are some enterprises, other than Google Group, which grant free OSs licensed for wrist-worn wearable devices to wrist-worn wearable device manufacturers.

(3) Smartphone OSs

Smartphone OSs are those developed for smartphones and used by being

⁴ Bluetooth is a transmission standard that allows short-range wireless data communication.

installed thereon. Smartphone OSs include Android OS provided by Google Group, and iOS developed by Apple Inc. and installed on its smartphones (i.e., iPhones).

Google Group opens Android OS to the public as an “open source” in the Android Open Source Project (AOSP), thereby granting free licenses to enterprises such as smartphone manufacturers. An open source means the source that anyone in the world can use without charge by accessing to the information shared online and also can modify and publish by themselves.

3. Apps

(1) Product/service description

An app (i.e., an abbreviation of “application software”) is software designed to enable general consumer users to access web contents or services on devices. Apps can be categorized depending on their usage (e.g., “communication” and “maps and navigation”), types of devices on which they are used (e.g., PCs, tablets, smartphones, wrist-worn wearable devices and gaming consoles) or OSs on which they can run (e.g., Microsoft Windows, Mac OS, Android OS and iOS).

a. Categories by usage of apps

Each app has unique functions and appeals to users who are in need of relevant function. Depending on their usage, Apps can be categorized into “communication” apps with functions such as messaging and chatting, “map and navigation” apps with functions of GPS, maps and traffic tools, and “health-related apps” that provide functions such as those for recording the step counts or the amount of exercise made, for making fitness goal suggestions, for calculating the calories burned, and for sleep cycle, nutrition/dieting goals and menstrual cycle monitoring. The apps, such as health-related apps, provided by the Parties will be described in (2) below.

b. Categories by types of devices on which apps are used

Apps are developed to be optimized for devices used; therefore, apps can be categorized by types of devices to which apps are provided. For example, smartphone apps are developed according to characteristics such as display size, touch panel functions and processing capacity of smartphones.

c. Categories by OSs on which apps run

Each type of devices described in paragraph b above uses multiple OSs,

and apps for different OSs require different development environments⁵, development methods, and functions; therefore, apps can also be categorized depending on OSs on which they can run.

(2) Apps provided by the Parties

a. Google Group

(a) Health-related app (Google Fit app)

Google Group provides Google Fit app as a health-related app for free of charge, which can be used on smartphones and wrist-worn wearable devices. The Health-related Data used in Google Fit app (see 5(1) described below) includes heart rate, step counts, body temperature, sleep, height, weight, food logging, exercise location information, etc.

(b) Other apps provided by Google Group

Google Group provides apps related to many services other than those described in paragraph (a) above, which include, for example, “Google Search” that provides a search engine function, “YouTube” that provides video distribution services, “Google Chrome” that provides a web browser function, “Gmail” that provides an email function, “Google Maps” that provides a map function, and companion app (“Wear OS by Google” mobile app) that enables the linkage between wrist-worn wearable devices and Wear OS (hereinafter referred to as the “Wear OS devices”) and smartphones.

b. Fitbit Group

(a) Health-related app (Fitbit mobile app)

Fitbit Group provides Fitbit mobile app for free of charge, which can be used on smartphones. The Fitbit mobile app connects and synchronizes the wrist-worn wearable devices manufactured and distributed by Fitbit Group (hereinafter referred to as the “Fitbit Devices”) and smartphones, thereby enabling (users) to view their own Health-related Data collected through the Fitbit Devices (see 5(1) described below) and the analysis results of such Data on smartphones. In addition, the Fitbit mobile app also has a function as a companion app that enables the linkage between the Fitbit Devices and smartphones.

⁵ For example, as smartphone OSs, Android OS and iOS are mainly used, and the development of an app for Android OS requires development environments such as the Android Studio.

(b) Other apps provided by Fitbit Group

Fitbit Group provides multiple apps that can run on wrist-worn wearable devices such as an exercise app and a timer app.

4. APIs

An API (i.e., Application Programming Interface) is a means that enables functions, data, etc., of certain software to be available also from other software. API users can use API by inputting a mathematical function of a necessary functionality in accordance with the terms of use, which makes it possible for API users to create software using such functionalities without performing programming by themselves.

The Acquisition may cause concern about ensuring the interoperability with Android API provided by Google Group and with Web API provided by the Parties.

(1) Android API

Google Group provides APIs, as part of AOSP described in 2(3) above, etc., to manufacturers of wrist-worn wearable devices that pair, connect and synchronize with Android OS, and to providers of apps that run on Android OS⁶, which is referred to as “Android API”. Wrist-worn wearable device manufacturers and app providers incorporate Android API at the stage of programming OSs for wrist-worn wearable device, companion apps or wrist-worn wearable device apps. Currently, the access via Android API is free of charge⁷.

The minimum required functions to ensure the interoperability between Android Smartphones and wrist-worn wearable devices include the Bluetooth and notification functions⁸.

(2) Web API

A means that enables software functions, data, etc., to be available via the Internet between an API provider and API users is generally called Web API. Web API can be used on web browsers, which enables the connection between

⁶ AOSP API is a public domain, and anyone who takes prescribed steps enjoys free access thereto.

⁷ Note that some additional services provided via API charge fees.

⁸ The Bluetooth function enables the connection between smartphones and wrist-worn wearable devices. Notification function is a function that displays notifications (e.g., arrival of a phone call and a SMS message), events registered on the calendar, etc., on wrist-worn wearable devices (including message-reply operation, etc.) through companion apps.

apps developed in different programming languages. More information of Web API provided by the Parties will be described in detail in 5(3)b below.

5. Business of providing the Health-related Database

(1) Description of the Health-related Data

If a general consumer user uses a wrist-worn wearable device or a smartphone with a health-related app, the data of such a general consumer user will, subject to his/her consent, be collected by the sensor of his/her wrist-worn wearable device or smartphone automatically, or by manual input by the general consumer user. Also, the data of the general consumer user will be collected by being synchronized with third-party apps (meaning apps created by any enterprises other than itself (hereinafter referred to as the “Third Parties”, “Third Party” or “Third-Party”); the same shall apply hereafter), etc., via Web API described in paragraph 4(2) above.

The data to be collected as data related to health include heart rate, step counts, body temperature, sleep, height, weight, food logging and exercise location information (hereinafter referred to as the “Health-related Data”; the database that compiled the Health-related Data to be used for collecting, sorting and sharing such Data is referred to as the “Health-related Database”).

Multiple wrist-worn wearable device manufacturers and app providers, including the Parties, collect the Health-related Data of general consumer users via wrist-worn wearable devices or smartphones on which their apps are installed or via Third-Party apps, which means that such data have been compiled in the Health-related Database of each enterprise. Also, as described in (3) below, such enterprises share the Health-related Data on their Health-related Database with the other Third-Party app providers via Web API.

(2) Collection, sorting and storage of the Health-related Data by the Parties

a. Google Group

Google Group has the Health-related Database called “Google Fit platform”, in which the Health-related Data obtained by sensors, etc., of smartphones on which Google Fit app is installed are collected, sorted and stored.

In addition, consent of general consumer users is required for the collection and storage of the Health-related Data (the same applies to the data collected and stored by Fitbit Group described in b below).

b. Fitbit Group

Fitbit Group has the Health-related Database called “Fitbit platform”, in

which the Health-related Data obtained by sensors, etc., of Fitbit devices, on which Fitbit mobile apps are installed, are collected, sorted and stored.

(3) Sharing of the Health-related Data with Third-Party app providers

a. Outline

Subject to consent of general consumer users, the Parties share certain Health-related Data on the Health-related Databases of the Google Fit platform and the Fitbit platform with Third-Party app providers. The Parties state that, by sharing the Health-related Data as described above, it can be expected that Third-Party app providers will develop many high-quality apps in addition to apps that can link to Wear OS devices and Fitbit devices, and that sales of Wear OS devices and Fitbit devices will be facilitated and that the number of active users⁹ will be maintained and increased thanks to the indirect network effects.

b. Data sharing by Web API

The data sharing described in paragraph a above will be performed through Web API provided by the Parties. Google Group and Fitbit Group publicly provide Google Fit API and Fitbit Web API, respectively, in order to allow the access to their respective databases.

6. Digital Advertising-related Business

(1) Product/service description

Among multiple types of properties used for advertising, the advertisements provided on the Internet services (e.g., search portal websites, video sharing websites, social networking services and blogs) are referred to as the “Digital Advertisements”. The business of selling advertising spaces for the Digital Advertisements is referred to as the “Digital Advertising Business”, and the business of mediating sales of spaces for the Digital Advertisements, the “Digital Advertising Intermediary Business”, and both collectively, the “Digital Advertising-related Business”.

a. Digital Advertising Business

The Digital Advertising Business is the business that a digital advertising publishing company sells advertising spaces displayed on its advertising properties to advertisers or advertising agencies.

⁹ Meaning users who used the service once or more within a certain period of time.

The Digital Advertisements include “Search advertisements”¹⁰ and “Display advertisements”¹¹, depending on display methods, forms, etc.

b. Digital Advertising intermediary business (ad platform business)

Digital Advertising intermediary business is the business of mediating the sales of digital advertising spaces between advertisers or advertising agencies and publishers. Digital advertising intermediary services are provided, in particular mainly focusing on Display advertisements, to both advertisers or advertising agencies and publishers. Also, digital advertising intermediary enterprises provide a mediation process in a single, independent service or in combination with multiple services.

(2) Services provided by Google Group

a. Digital Advertising Business

Google Group sells advertising spaces on websites such as search portal websites (e.g., “Google Search”) and video sharing websites (e.g., “YouTube”) to advertisers or advertising agencies, and provides “Search advertisements” and “Display advertisements”.

b. Digital Advertising intermediary business

Google Group provides digital advertising intermediary services to both advertisers or advertising agencies and publishers. In addition, Google Group provides digital advertising intermediary services as the services for placing advertisements on its own digital advertising spaces.

¹⁰ Advertisements related to specific search words to be displayed at the same time with the search results when a visitor visits a search engine and searches a certain word which was registered in advance by advertisers or advertising agencies.

¹¹ Advertisements other than Search advertisements, which will be displayed on part of the screen when a consumer, using a PC, smartphone, etc., visits a website or uses an app.

V. Definition of particular fields of trade

1. Wrist-worn wearable devices

(1) Product/service market definition

Wearable devices are categorized into wrist-, ear-, eye-worn types, etc., depending on the body part to be worn on. These devices differ in functions and utilities, and therefore it is considered that users choose different types of devices depending on their intended usage. Hence, there can be no demand substitutability found between wearable devices for different body parts to be worn on.

Also, although there are some enterprises that manufacture various wearable devices for different body parts to be worn on, it is difficult to shift from a manufacturing of a specific type of wearable devices to that of wearable devices for different body parts to be worn on because wearable devices for different body parts to be worn on require different technology, know-how, etc., for their manufacturing. Hence, there can be no supply substitutability found between wearable devices for different body parts to be worn on.

Thus, the JFTC defines the product/service market as “wrist-worn wearable devices”.

(2) Geographic market definition

Many domestic users purchase wrist-worn wearable devices from Japanese language websites of wrist-worn wearable device manufacturers, etc., or at physical stores such as electronics retail stores in Japan. Hence, it is considered that the geographic market in which users in Japan purchase wrist-worn wearable devices is basically confined to Japan.

Thus, the JFTC defines the geographic market of wrist-worn wearable devices as “all regions of Japan”.

2. OSs

(1) Product/service market definition

a. OSs for wrist-worn wearable devices

As described in Section IV.2(2) above, OSs for wrist-worn wearable devices are developed specifically for wrist-worn wearable devices and installed thereon. Hence, for wrist-worn wearable device manufacturers as users, there can be no demand substitutability found between OSs for wrist-worn wearable devices and OSs for other types of devices such as PCs and smartphones.

In addition, wrist-worn wearable devices are smaller than other types of

devices such as PCs and smartphones and equipped with different types of sensors. Therefore, the development of OSs for wrist-worn wearable devices requires different technology and know-how from those of OSs for other types of devices such as PCs and smartphones. Hence, there can be no supply substitutability found between OSs for wearable devices and OSs for other types of devices such as PCs and smartphones.

Thus, the JFTC defines the product/service market as “OSs for wrist-worn wearable devices”.

b. Smartphone OSs

It is considered that the users of smartphone OSs are smartphone manufacturers because they install such smartphone OSs on their smartphones. On the other hand, as described in Section IV.4(1) above, wrist-worn wearable device manufacturers, in order to equip their devices with the function to ensure the interoperability with Android OS, incorporate the API for ensuring the interoperability with smartphone OSs (i.e., the API provided by Google Group is Android API) when programming an OS for wrist-worn wearable device, companion app, or wrist-worn wearable device app. Therefore, in this context, the JFTC will consider the product/service market, assuming that the users are wrist-worn wearable device manufacturers.

Because it is easy for wrist-worn wearable device manufacturers as users to use APIs for smartphone OSs provided by the relevant companies on devices manufactured and distributed by themselves in order to ensure the interoperability with smartphone OSs provided by the relevant companies, it is found that there is demand substitutability between smartphone OSs provided by the relevant companies.

Therefore, the JFTC defines the product/service market as “smartphone OSs”, and in this case will hereafter consider “Android OS” provided by Google Group.

(2) Geographic market definition

The “OSs for wrist-worn wearable device” and “smartphone OSs” defined in (1) above are supplied worldwide, and users all over the world purchase OSs for wrist-worn wearable device and smartphone OSs from suppliers all over the world indiscriminately. In addition, OSs, due to their nature as goods/services, do not require transport costs, and there are no differences in their licensing statuses in and outside Japan.

Thus, for all the OSs above, the JFTC defines the geographic markets as

“worldwide”.

3. Health-related apps

(1) Product/service market definition

a. Substitutability between apps for different usage

Because general consumer users of apps select apps suitable for their usage, there can be no demand substitutability found between apps for different usage. Also, although app providers can apply know-how of app development itself, if once acquired, to the development of apps for different usage, it requires time and costs to acquire data necessary for app development and specialized knowledge about each usage; therefore, it is found that supply substitutability among apps for different usage is limited.

Hence, markets of apps will be defined by their usage. Because both members of the Parties provide the apps for specific usage called “health-related app”, the JFTC will, with respect to such apps, hereafter consider the substitutability between apps for different types of devices and between apps for each OS.

b. Substitutability between apps for different types of devices (e.g., PCs, tablets, smartphones, and wrist-worn wearable devices)

Because general consumer users of apps select apps that can be used on their own devices, there can be found no demand substitutability between different types of apps.

In addition, the development of apps for different types of devices requires different programming languages, development tools, and know-how necessary for such development. For example, for an enterprise providing only smartphone apps to develop an app for PCs or wrist-worn wearable devices, it will require professional engineers, and time and costs to ensure such engineers. Hence, there can be no supply substitutability found between apps for different types of devices.

Thus, apps for different types of devices such as “smartphone apps” and “wrist-worn wearable device apps” fall under different product/service markets.

c. Substitutability between apps for different OSs (e.g., Android OS and iOS)

Because general consumer users of smartphone apps and wrist-worn wearable device apps select apps that can be used on the OSs installed on their own devices, there can be no demand substitutability found between apps for

different OSs.

On the other hand, although the development of apps for different OSs requires different programming languages, development tools, assessment standards of app stores which can be used on each OS for respective devices, etc., it is possible for many smartphone app providers and wrist-worn wearable device app providers to develop apps for different OSs without investing great additional time and costs because they have organized development environments of, and actually developed, apps for multiple OSs. Hence, it is found that there is supply substitutability between apps for different OSs.

d. Summary

Thus, the JFTC defines “health-related apps for wrist-worn wearable devices” and “health-related apps for smartphones” as the product/service markets.

(2) Geographic market definition

Although there is a need to set up the language, etc., according to the country in which the user is located, the functions themselves to be provided by health-related apps are common in many countries. Therefore, users can acquire health-related apps without being particularly aware of where they are located. Also, with regard to many health-related apps, there is no problem that they cannot be provided in specific countries due to circumstances such as legal regulations¹².

In this respect, it is possible to define the geographic ranges as “worldwide”, but there is a need to deal with the issues concerning countries where users are located as described above, and there may be cases where there is a need to deal with certain legal regulations on the handling of the Health-related Data depending on countries¹³. Hence, after careful consideration, the JFTC defines

¹² For example, apps that can fall under medical equipment due to their functions (e.g., an electrocardiogram function provided in a competitor’s wrist-worn wearable devices and their companion apps) may not be provided due to legal regulations in respective countries (in fact, such an electrocardiogram function was not provided in Japan as of 14th January, 2021). Provided, however, that it is considered that there are many cases where health-related apps do not fall under medical equipment in light of the content of collected data (see Section IV.5(1) above) and the accuracy thereof.

¹³ For example, as seen in Europe’s General Data Protection Regulation (GDPR), etc., there may be cases where, depending on laws of personal information protection in certain countries and regions, the rules concerning the method or process of obtaining consent of general consumer users for obtaining or using the Health-related Data are stricter than

the geographic markets as “all regions of Japan”.

4. Business of providing the Health-related Database

The Parties provide the Health-related Database to Third-Party app providers via APIs for the purpose of sharing the Health-related Database (hereinafter the business of providing the Health-related Database via APIs is referred to as the “Business of Providing the Health-related Database”).

(1) Product/service market definition

With respect to the Health-related Data held on the Health-related Database of wrist-worn wearable device manufacturers and app providers, respectively, and shared with other parties, there is no particular difference in variety, volume, velocity, etc.; therefore, it is found that there is demand substitutability between the Health-related Databases of each company. Thus, the Business of Providing the Health-related Database of each company is considered to be in the same market.

(2) Geographic market definition

The Health-related Data are shared by enterprises providing the Health-related Database with the Third-Party app providers as users of the Health-related Database in and outside Japan via the Internet without geographic constraint. Also, the suppliers can provide the Health-related Database through Web API without geographic constraint in principle. In fact, both members of the Parties basically do not differentiate the treatment of Third-Party app providers depending on where the bases of such providers are located.

In this respect, it is possible to define the geographic market as “worldwide”, but there may be cases where Web API cannot be used in some countries, and, as with 3(2) above, there may be cases where there is a need to deal with certain legal regulations on the handling of the Health-related Data depending on countries because enterprises providing the Health-related Database are required to obtain consent of general customer users when Third-Party app providers access to the data of such users. Hence, after careful consideration, the JFTC defines the geographic market as “all regions of Japan”.

those of other countries and regions. Such strict procedures will not be restrictions on companies that have already adopted a globally applicable strict process of obtaining consent, but it is considered that some app providers may need to address relevant issues depending on countries and regions.

5. Digital Advertising-related Business

(1) Product/service market definition

As described in Section IV.6 above, Google Group operates the Digital Advertising Business of distributing its own digital advertising publishing and the Digital Advertising Intermediary Business to mediate between advertisers or advertising agencies and publishers. From a viewpoint of substitutability, it is also considered that the Digital Advertising Business and the Digital Advertising Intermediary Business, respectively, fall under different product/service markets or further segmented product/service markets.

That said, according to the results of the interviews with competitors, etc., it is reasonably considered that Google Group has a leading position in at least several areas of the Digital Advertising-related Business. Nevertheless, as described in Section VI.5(3)a below, in light of the fact that Google Group has proposed the remedies for the entirety of its advertising-related business, it suffices in this case to consider the entirety of its Digital Advertising-related Business, and it is not considered necessary to define the product/service markets in further details.

Thus, the JFTC defines the product/service market as the “Digital Advertising-related Business”.

(2) Geographic market definition

Enterprises providing the Digital Advertising-related Business are able to provide their business regardless of where advertisers or advertising agencies and publishers as users are located, and there is no difference in price depending on areas.

Also, although it is possible that the Digital Advertising-related Business may be transacted from anywhere in the world because it is a business of selling and mediating advertising spaces through the Internet, its advertisements are basically presented to general consumers in Japan due to restrictions including languages used in advertisements.

Thus, the JFTC defines the geographic market of the Digital Advertising-related Business in this case as “all regions of Japan”.

VI. Competitive assessment

1. Outline

As described in Section III.2 above, the JFTC reviewed the four types of business combination in which the Parties are involved in business relationships, which may cause competition concerns by the Acquisition. In discussing the points of issues, etc., with the Parties and proceeding with the review while exchanging information with foreign competition authorities, the Parties proposed to the JFTC the remedies as listed in the column of “Remedies” in Table 1 below (hereinafter referred to as the “Remedies” that include the proposals related to regular reporting to the JFTC) (the corresponding relation with the four types of business combination are as described in Table 1). Then, considering the effect of the Remedies to be brought about, the JFTC reviewed the impact on competition of the four types of business combination.

[Table 1] Corresponding relationships between types of business combination and the Remedies

		Upstream market	Downstream market	Remedies
Vertical business combination	1	Business of providing the OS for wrist-worn wearable devices (G)	Business of manufacturing and distributing wrist-worn wearable devices (F)	-
	2	Business of providing smartphone OSs (G)	Business of manufacturing and distributing wrist-worn wearable devices (F)	Remedies for refusal of providing, etc., ¹⁴ Android API
	3	Business of Providing the Health-related Database (G, F)	Business of providing health-related apps (for wrist-worn wearable devices, smartphones) (G, F)	Remedies for refusal of providing, etc., Web API
Conglomerate business combination		Business of Providing the Health-related Database (G, F)	Digital Advertising-related Business (G)	Remedies for use of data to digital advertising

Note: (G) and (F) stand for businesses conducted by Google Group and Fitbit Group, respectively.

¹⁴ The “refusal of providing, etc.” includes not only the refusal of providing services but also transactions at a more competitive disadvantage compared with the transaction where the Acquisition does not conduct.

2. Vertical business combination in which the business of providing OSs for wrist-worn wearable devices is in the upstream market and the business of manufacturing and distributing wrist-worn wearable devices is in the downstream market (“Vertical business combination 1” in Table 1)

(1) Position of the Parties

The market share of the Parties in the “business of manufacturing and distributing wrist-worn wearable devices” is as described in Table 2 below, which does not fall under the safe-harbor criteria for vertical business combination. Also, the market share of the “business of providing OSs for wrist-worn wearable devices” after the Acquisition is unknown, the review was made based on the premise that the safe-harbor criteria for vertical business combinations are not met.

[Table 2] Business of manufacturing and distributing wrist-worn wearable devices
Japanese market in 2019 (based on the number of devices)

Rank	Company name	Market share ¹⁵
1	Company A	Approx. 55%
2	Company B	Approx. 20%
3	Fitbit Group	Approx. 10%
4	Company C	Approx. 5%
5-11	Companies D-J	0-5%
	Others	0-5%
	Total	100%

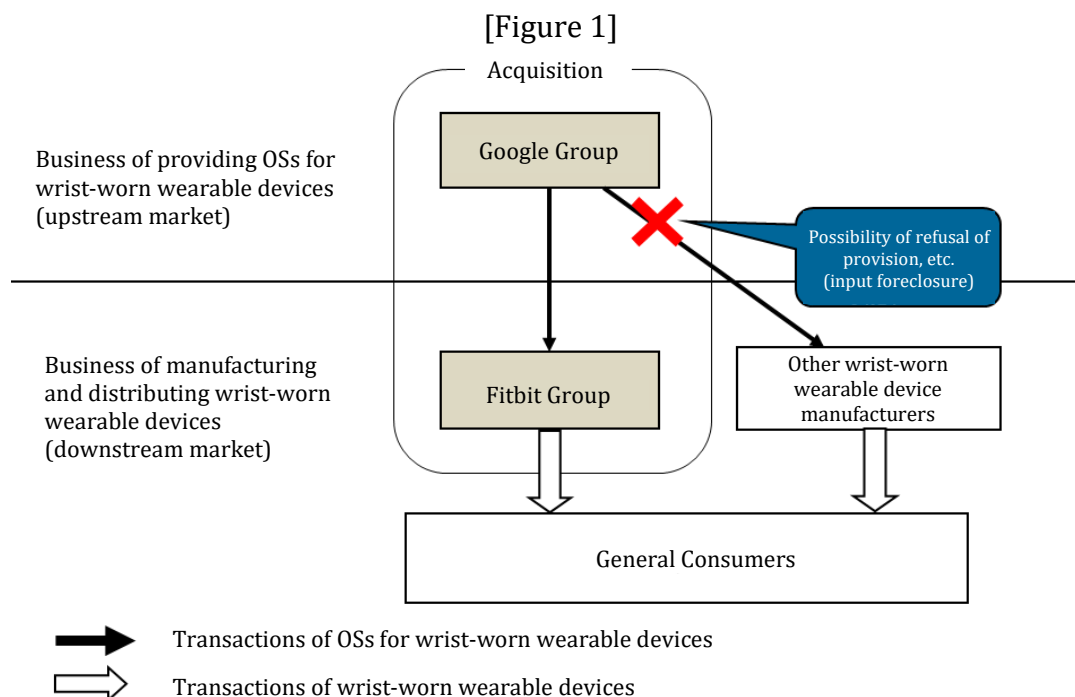
(2) Refusal of provision, etc.

It is possible that, if Google Group refuses to provide the OS for wrist-worn wearable devices to wrist-worn wearable device manufacturers other than Fitbit Group, the issue of closure or exclusivity of the market may arise in the downstream market.

There are providers of OSs for wrist-worn wearable devices other than the Parties in the upstream market, and such OSs are licensed for free, as with the OS for wrist-worn wearable devices provided by Google Group. Based on the fact that, due to the nature of OSs for wrist-worn wearable devices, it is hard to consider that there is a shortage in the capacity to provide them, wrist-worn wearable device manufacturers other than Fitbit will never lose suppliers of OSs for wrist-worn wearable devices if Google Group refuses to provide, etc., the OSs

¹⁵ Shown in increments of 5% (e.g., “Approx. 55%” stands for “52.5% or more and less than 57.5%”); therefore, the total will not necessarily add up to 100.

for wrist-worn wearable devices to wrist-worn wearable device manufacturers other than Fitbit Group. Hence, it is found that the issue of closure or exclusivity of the market will not arise due to the refusal of providing the OS for wrist-worn wearable devices by Google Group.



(3) Refusal of use, etc.

It is possible that the issue of closure or exclusivity of the market may arise in the upstream market due to the Fitbit Group’s refusal of the use of OSs for wrist-worn wearable devices of any competitor of Google Group.

Currently, because Fitbit Group has not been provided with any OS for wrist-worn wearable devices from providers other than its own Group and has sold its wrist-worn wearable devices with the self-developed OS for wrist-worn wearable devices, such refusal of use, etc., will not cause any issues of closure or exclusivity of the market.

3. Vertical business combination in which the business of providing smartphone OSs is in the upstream market and the business of manufacturing and distributing wrist-worn wearable devices is in the downstream market (“Vertical business combination 2” in Table 1)

(1) Position of the Parties

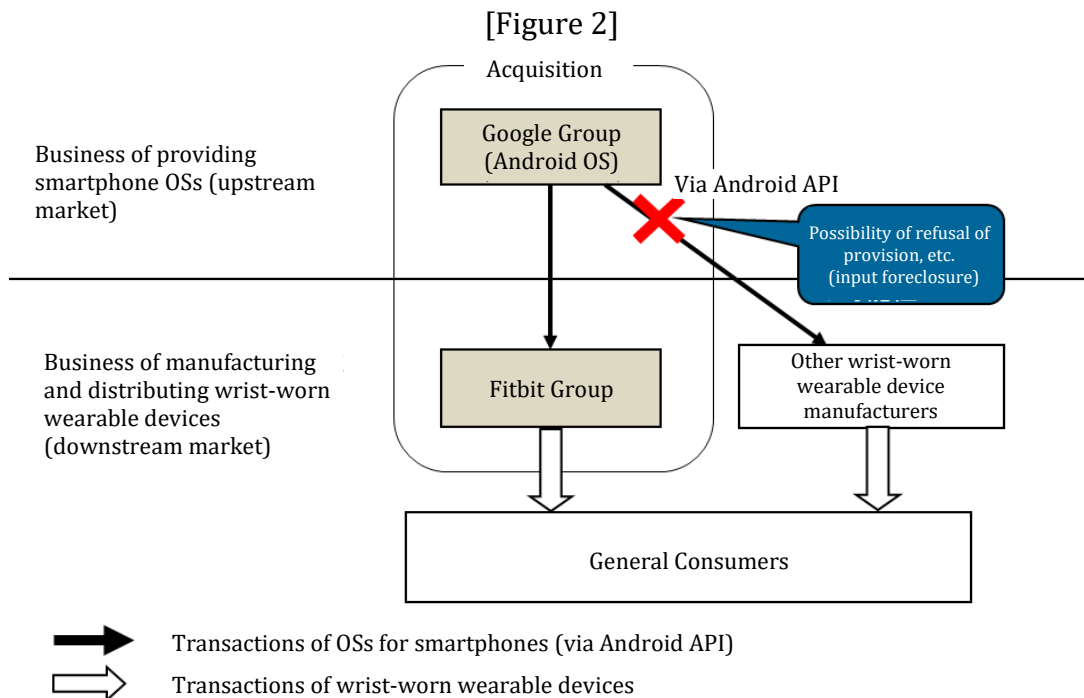
The market share of the Parties with respect to the “business of

manufacturing and distributing wrist-worn wearable devices” is as described in 2(1) above, which does not fall under the safe-harbor criteria for vertical business combination. Also, the market share of the “business of providing smartphone OSs” after the Acquisition is unknown, which will therefore be considered with an assumption that such market share does not fall under the safe-harbor criteria for vertical business combination.

(2) Refusal of provision, etc.

After the Acquisition, Google Group may treat discriminatory wrist-worn wearable device manufacturers other than Fitbit Group by not ensuring the interoperability with the wrist-worn wearable devices manufactured and distributed by manufacturers of wrist-worn wearable devices other than Fitbit Group, or by setting the degree of the interoperability for such manufacturers’ devices more disadvantageous than Fitbit Group’s ones, through Android API for pairing, connecting and synchronizing between the Android Smartphones and wrist-worn wearable devices.

In this regard, some wrist-worn wearable device manufacturers expressed concerns that, due to the Acquisition, Google Group may discriminatory treat such manufacturers with respect to the interoperability with the Android Smartphones, access to all the Android APIs, technical supports, etc.



(3) Results and assessments of economic analysis

The JFTC requested the Parties to provide quantitative evidence showing that there is no incentive that lowers the interoperability between Android Smartphones and wrist-worn wearable devices through Android API. In response to this, the Parties provided an economic analysis based on a method called vertical arithmetic¹⁶ using data about the Japanese market in 2019 (e.g., internal data and published data); therefore, the JFTC assessed and verified such economic analysis.

The Parties calculated the “incremental profit from degrading the interoperability¹⁷” and the “loss of profit from degrading the interoperability¹⁸”, respectively. After that, the Parties asserted that the degradation of the interoperability might lead to consequences that some general consumer users of wrist-worn wearable devices using Android Smartphones might switch from Android Smartphones to iPhones, or to other Android Smartphones that are expected to be able to avoid the degradation of the interoperability by the Parties (hereinafter referred to as the “Switch to iPhone, etc.”), and the Parties conducted a comparative analysis in light of the above. Then, the Parties asserted that, although the Parties would not gain profit and would lose incentive to degrade the interoperability if the rate of the Switch to iPhone, etc., associated with the switch to Fitbit reaches a certain degree or more, it is highly likely that the threshold would be very low, and that the incentive to degrade the interoperability would not arise. However, even if such assumption is correct, there are no criteria or grounds for determining the degree of the threshold shown, and the Parties remain to assert that “the degree is very low”¹⁹.

Also, with respect to the profit from the degradation of the interoperability, the sum of profits that would arise over the future was measured by the

¹⁶ The vertical arithmetic is one of major economic analysis methods for vertical business combination to assess whether the Parties have incentive for market foreclosure, by calculating the “incremental profit from market foreclosure” and the “loss of profit from market foreclosure”, respectively, and comparing them.

¹⁷ For example, the profit from the distribution of such devices when general consumer users who use wrist-worn wearable devices subject to the degradation of the interoperability switch from their devices to Fitbit ones.

¹⁸ E.g., profit that used to be gained from the use of Google Group’s services by general consumer users who switched to iPhone, etc., and profit to be gained from the distribution of Pixel smartphones manufactured and distributed by Google Group.

¹⁹ Because the switching to iPhone, etc., requires the switching from a smartphone or the so-called eco-system, it is considered that the switching cost is high for general consumer users and therefore that the switching to iPhone, etc., due to the degradation of the interoperability is relatively unlikely to occur.

discounted present value²⁰ in light of the so-called stickiness²¹. However, it is highly likely that such profit is underestimated because, despite the expectation that the degree of stickiness of general consumer users to Fitbit Group is likely to increase due to the decrease in options of wrist-worn wearable devices for general consumer users arising from the degradation of the interoperability, such likelihood is not taken into account.

Moreover, the data used for the vertical arithmetic are basically Japanese ones, which however include worldwide data used as a substitute because some of Japanese data cannot immediately be obtained by the Parties. It is highly likely that some of the world data do not reflect the reality of Japanese market situation, and, under the influence thereof, some of the figures constituting the loss of profit from degrading the interoperability may be underestimated or overestimated.

As described above, because there are some points that should be corrected, it is desirable that additional analysis be conducted; therefore, the JFTC determined that at the moment it should not accept the economic analysis as a ground for proving that there is no incentive to degrade the interoperability²².

(4) Remedies for the refusal of providing, etc., Android API

a. Remedies proposed by the Parties

Google Group shall remain the following items (i) and (ii) for wrist-worn wearable device manufacturers for 10 years from the date of the Acquisition.

- (i) To make certain Android APIs (core interoperability APIs²³) available, without charge for access, under the same terms that apply to all other Android APIs that Google group makes available as part of AOSP, and on a

²⁰ The discounted present value means the value measured by turning the value of future profit, etc., into the current value in light of the interest rate, etc., in that the value of 10,000 yen after one year is, by taking into account the interest rate, etc., less than the current value of 10,000 (i.e., if the interest rate is r , the current value is $10,000 \times 1/(1+r)$ yen).

²¹ The stickiness here means the tendency that a person who purchased a product of a certain manufacturer is likely to purchase another product from the same manufacturer again when purchasing a replacement, etc., in the future.

²² However, as described in (4) below, because the Parties proposed the remedies related to Android API, the JFTC has not requested the Parties to submit additional analysis.

²³ Meaning, for the purpose of the remedies for the refusal of providing Android APIs (i), the functions of Android API that at least ensure the interconnectivity between the Android Smartphone devices and wrist-worn wearable devices, which include functions such as Bluetooth function and answering phone call function.

non-discriminatory basis from the Parties²⁴. In addition, not to degrade Android APIs by reducing their functionalities relative to the Parties.

- (ii) Not to discriminate against wrist-worn wearable device manufacturers by withholding, denying or delaying their access to the functionalities of Android APIs to be made generally available to other Android Smartphone device app developers for use with an Android apps.

b. Assessment

As described in a(i) above, Google Group proposes that it makes certain Android APIs (core interoperability APIs) available without charge for access under the same license terms that apply to all other Android APIs that Google group makes available as part of AOSP, and on a non-discriminatory basis from the Parties for 10 years from the date of the Acquisition.

In addition, as described in a(ii) above, Google Group proposes that it does not discriminate against wrist-worn wearable device manufacturers by withholding, denying or delaying their access to the functionalities of Android APIs to be made generally available to other Android Smartphone app developers for use with an Android apps. In this respect, the interoperability will continue to be ensured also for the companion apps, etc. distributed by wrist-worn wearable device manufacturers.

Thus, it can be assessed that the Remedies proposed by the Parties are appropriate.

- 4. Vertical business combination in which the business of providing the Health-related Database is the upstream market and the business of providing health-related apps for wrist-worn wearable devices and for smartphones are the downstream market (“Vertical business combination 3” in Table 1)

(1) Position of the Parties

With respect to “Business of Providing the Health-related Database”, “health-related apps for wrist-worn wearable devices” and “health-related apps for smartphones”, the market shares of the Parties are unknown and will therefore be considered with an assumption that such market shares do not fall under the safe-harbor criteria for vertical business combination.

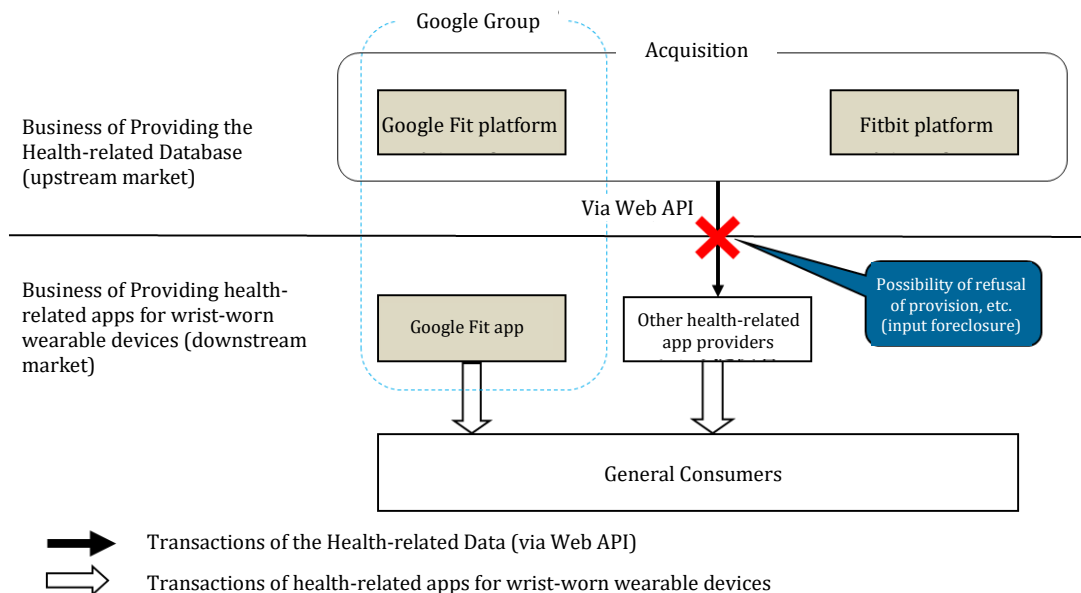
²⁴ According to the Parties, it will not differentiate the availability or functionalities, depending on whether the access from wrist-worn wearable devices or companion apps of the Parties, or of the Third Parties.

(2) Refusal of provision, etc.

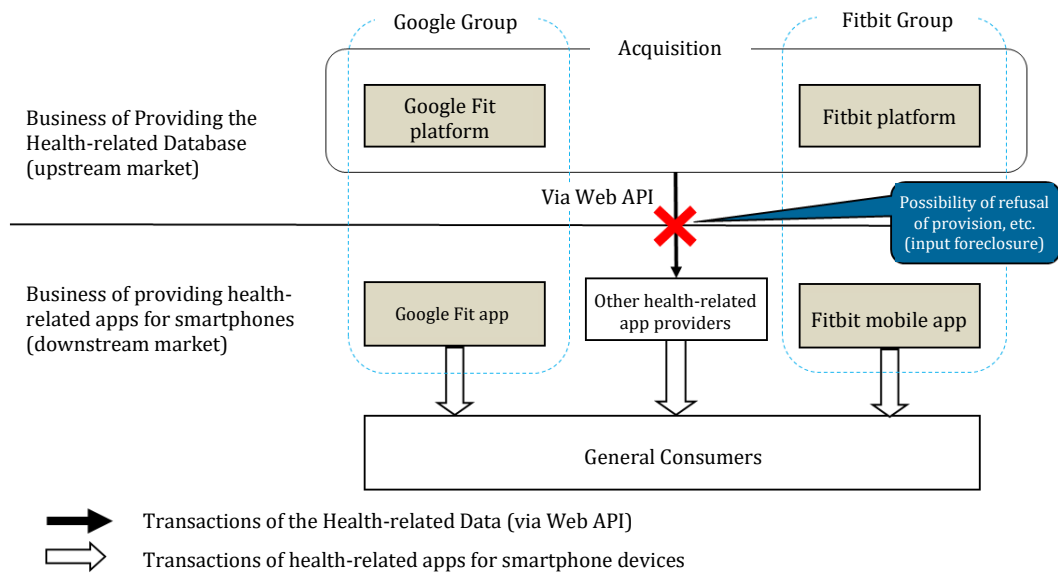
After the Acquisition, it is possible that, with respect to the Business of Providing the Health-related Database, the Parties Group may discriminatory treat health-related app providers other than the Parties Group by suspending access from health-related app providers other than the Parties via Web API or setting disadvantageous conditions for access via Web API.

The app providers who are Fitbit Web API users expressed concerns that it is likely that the Acquisition may result in a situation where they use Fitbit Web API on the conditions different from the current ones, such as charge for access to Fitbit Web API.

[Figure 3] Case where health-related apps for wrist-worn wearable devices are in the downstream market



[Figure 4] Case where health-related apps for smartphones are in the downstream market



(3) Remedies for refusal of providing Web API

a. Remedies proposed by the Parties

Google Group shall, subject to consent of general consumer users, maintain to provide certain Health-related Data (supported measured body data²⁵) to health-related app providers other than Google Group via Web API provided by the Parties Group, without charge for access for 10 years from the date of the Acquisition in compliance with the terms of use²⁶ specified in the remedies.

b. Assessment

As described in paragraph a above, the Parties propose that they maintain the access via Web API without charge for 10 years from the date of the Acquisition. Moreover, with respect to the access to Google Fit API after the Acquisition, no health-related app providers expressed concerns in the interviews conducted by the JFTC.

Hence, it can be assessed that the Remedies proposed by the Parties are appropriate.

²⁵ In the remedies for the refusal of providing Web API, it means the Health-related Data provided to the Third Parties via Fitbit Web API as of the date of the Acquisition. Provided, however, that the range of such Health-related Data may be added by the monitoring trustee during the applicable duration.

²⁶ The terms of use for Fitbit platform, and the terms of use and the service user data policy that apply to the use of relevant Google APIs available on <https://www.developers.google.com/fit> or its successor website.

5. Conglomerate business combination of the Business of Providing the Health-related Database and the Digital Advertising-related Business

(1) Position of the Parties

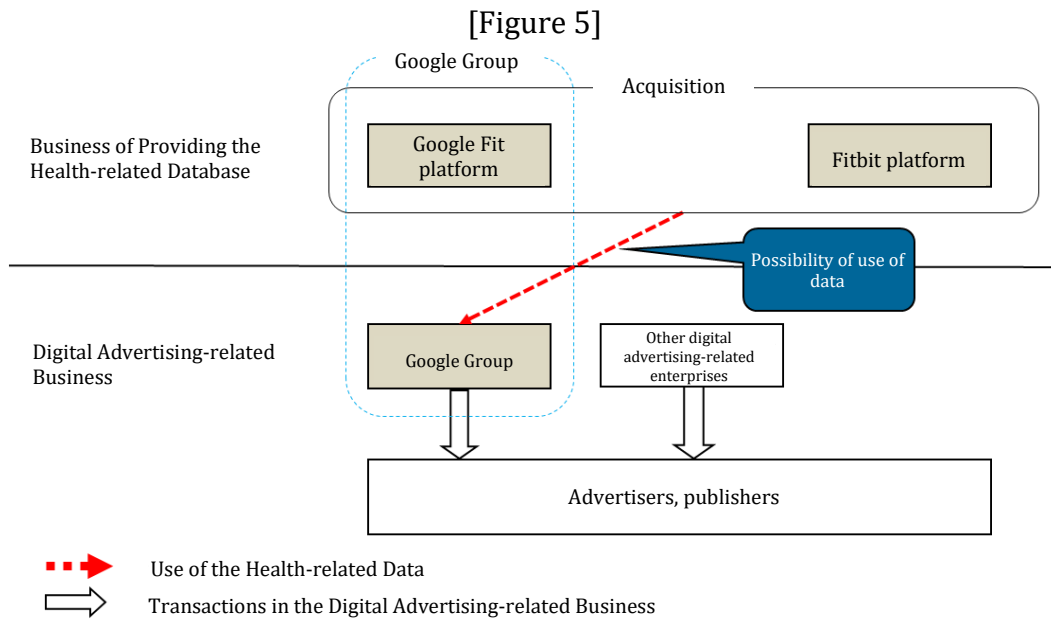
The market shares of the “Business of Providing the Health-related Database”, and the “Digital Advertising-related Business” are unknown, which will therefore be reviewed with an assumption that such market share does not fall under the safe-harbor criteria for conglomerate business combination.

(2) Impact on relevant markets

Currently, Fitbit Group does not provide the Health-related Data to digital advertising-related enterprises, and Google Group does not use its own Health-related Data for the Digital Advertising-related Business.

Moreover, Google Group asserts that it is not an option to use the Health-related Data of Fitbit for the Digital Advertising-related Business of Google group in conducting such business after the Acquisition, and that this point is clearly demonstrated by the fact that Google Group currently does not use the Health-related Data, which it has collected from Google Fit users, for the so-called targeting advertisements. In addition, Google Group asserts that Google Group’s incentive to use the Health-related Data for the Digital Advertising-related Business will not increase, considering that data protection-related laws and regulations govern the use of the Health-related Data for the Digital Advertising-related Business.

However, the JFTC considers that, if Google Group revises its privacy policy and comply with the Act on the Protection of Personal Information (Act No. 57 of 2003), it is possible for Google Group to use its own Health-related Data for the Digital Advertising-related Business. Also, if, after the Acquisition, Google Group uses its own Health-related Data and the Health-related Data provided by Fitbit Group for the Digital Advertising-related Business, the position of Google Group with respect to its Digital Advertising-related Business, although currently still in a leading position, will be further strengthened by the improvements in the precision of targeting at the time of advertisement distribution, and thereby the issue of closure or exclusivity of the market may arise.



(3) Remedies for the use of data for digital advertising

a. Remedies proposed by the Parties

Google Group shall maintain the following items (i) and (ii) for 10 years from the date of the Acquisition. In addition, this duration may be extended (up to an additional 10 years) pursuant to the provisions of the remedies.

- (i) Not to use certain Health-related Data (i.e., measured body data or health and fitness activity location data²⁷) for Google Group's Digital Advertising-related Business.
- (ii) To maintain the separation of the Health-related Data in item (i) above from the other data sets within Google Group.

b. Assessment

As described in paragraph a above, considering that Google Group proposes, for example, that it will not use the Health-related Data described in a(i) above for its Digital Advertising-related Business, it can be considered that the Remedies proposed by the Parties are appropriate.

²⁷ These refer to the Health-related Data of users in Japan, which are collected via wrist-worn wearable devices, health-related apps, etc., provided by the Parties in the remedies for the use of data for digital advertising. Provided, however, that the range of such Health-related Data may be added by the monitoring trustee in the applicable duration.

6. Other Remedies

(1) Regular reporting to the JFTC

Once in six months for 10 years from the date of the Acquisition, the Parties shall report to the JFTC the result of the monitoring the status of compliance with 3(4)a, 4(3)a and 5(3)a described above to be monitored by an independent third party (monitoring trustee).

(2) Assessment

From a perspective of monitoring the effectiveness of the Remedies, it is found to be an appropriate measure that, once in six months for 10 years from the date of the Acquisition, the Parties shall report to the JFTC the result of the monitoring the status of compliance with 3(4)a, 4(3)a and 5(3)a described above to be monitored by the independent third party.

VII. Conclusion

Based on the premise that the Parties will implement the Remedies, the JFTC concluded that the Acquisition would not substantially restrain competition in any particular fields of trade.