

**State of notifications related to business combinations in fiscal year 2020**

July 7, 2021

The Japan Fair Trade Commission

**Part I State of acceptance and investigation of notifications of acquisition of stock**

In FY2020, the JFTC received 266 notifications of business combination plans (down 14.2% from the previous fiscal year), of which notifications of acquisition of stock numbered 223, notifications of merger 16, notifications of split 7, notifications of joint share transfer 0, and notifications of business acquisition, etc. 20.

Of the 266 notifications received in FY2020, the “number of cases where the JFTC issued a notice to the effect that the JFTC would not issue a cease and desist order on the grounds that the primary review found no problems under the Antimonopoly Act (hereinafter AMA)” was 258, the “number of cases subjected to the secondary review on the grounds that further detailed examination would be necessary”, was 1, and the “number of cases withdrawn during the preliminary investigation”, was 7.

As well, among the cases closed in FY2020, there were 6 cases in which the JFTC determined that there would be no issues in terms of the AMA given the implementation of remedies proposed by the Parties and 9 cases which were concerned with business combination plans which did not require notifications (cases in which a corporation consulted with the JFTC or cases in which the JFTC reviewed the business combinations voluntarily)

The state of acceptance and investigation of notifications in the past three years is shown in Table 1, Table 2, and Table 3.

Table 1. Processing status of the notifications in the past three fiscal years

	FY2018	FY2019	FY2020
Number of notifications	321	310	266
Cases closed at the preliminary review <sup>(Note 1)</sup>	315	300	258
Cases where the waiting period was shortened among above	(240)	(217)	(199)
Cases withdrawn prior to the conclusion of the preliminary review	4	9	7
Cases which were sent to the secondary investigation	2	1	1

(Note 1) Cases where the JFTC issued a notice to the effect that the JFTC would not issue a cease and desist order on the grounds that the primary review found no problems under the AMA

Table 2. Processing status of the secondary review in the past three fiscal years

	FY2018	FY2019	FY2020
Cases closed at the secondary review <sup>(Note 3)</sup>	3	0	1
Cases found to have no issues given the implementation of remedies	2	0	1
Cases in which a cease and desist order was issued	0	0	0

(Note 2) The above table shows the number of notifications processed in each fiscal year regardless of whether they were received during the same fiscal year.

(Note 3) Cases where the JFTC issued a notice to the effect that the JFTC would not issue a cease and desist order on the grounds that the secondary review found no problems under the AMA

Table 3. Changes in the number of notifications concerning business combination plans that include a foreign enterprise in the Parties

	FY2018	FY2019	FY2020
Integration plans between Japanese enterprises and foreign enterprises	6	12	6
Integration plans between foreign enterprises	34	39	14
Total	40	51	20

## Part II Number of cases by type of business combination

### 1. Acquisition of stock

(1) Number of cases by total domestic sales (Table 4)

Table 4. Number of notifications of acquisition of stock by total domestic sales

Total domestic sales of a share-issuing company \ Total domestic sales of a share-acquiring company	5B yen or more and less than 20B yen	20B yen or more and less than 50B yen	50B yen or more and less than 100B yen	100B yen or more and less than 500B yen	500B yen or more	Total
20B yen or more and less than 50B yen	17	7	2	0	0	26
50B yen or more and less than 100B yen	17	7	2	2	0	28
100B yen or more and less than 500B yen	54	16	9	7	2	88
500B yen or more and less than 1T yen	17	9	0	8	0	34
1T yen or more and less than 5T yen	15	9	10	5	2	41
5T yen or more	2	0	0	3	1	6
Total	122	48	23	25	5	223

(2) Number of cases by percentage of acquired voting rights (Table 5)

Table 5. Number of notifications of acquisition of stock by percentage of acquired voting rights

More than 20% up to 50%	More than 50%	Total
47	176	223

(Note 4) A percentage of acquired voting rights is calculated by dividing the sum of the number of voting rights concerning a share issuing company which will be owned by a notifying company after acquisition and by corporations, other than the notifying company, which belong to a group of combined companies which the notifying company is part of, by the total number of voting rights of the share issuing company owned by all stockholders.

## 2. Mergers

### (1) Number of cases by type

By type of merger, 16 notifications were about mergers (absorption-type mergers) and there was no notification of consolidation.

### (2) Number of cases by total domestic sales (Table 6)

Table 6. Number of notifications of merger by total domestic sales

Total domestic sales of a dissolving company \ Total domestic sales of a surviving company	5B yen or more and less than 20B yen	20B yen or more and less than 50B yen	50B yen or more and less than 100B yen	100B yen or more and less than 500B yen	500B yen or more	Total
5B yen or more and less than 20B yen	0	0	0	0	0	0
20B yen or more and less than 50B yen	1	0	2	1	0	4
50B yen or more and less than 100B yen	0	0	1	1	1	3
100B yen or more and less than 500B yen	0	1	0	0	1	2
500B yen or more and less than 1T yen	0	0	0	1	1	2
1T yen or more and less than 5T yen	1	0	0	0	3	4
5T yen or more	1	0	0	0	0	1
Total	3	1	3	3	6	16

(Note 5) The above table only includes a dissolving company with the largest domestic sales if the merger is among three or more companies, in other words, if there are two or more dissolving companies.

### 3. Splits

#### (1) Number of cases by type

By type of split, 7 notifications were about absorption-type splits and there was no notification of joint incorporation-type split.

#### (2) Number of cases by total domestic sales (Table 7)

Table 7. Number of notifications of split by total domestic sales

Total domestic sales of a company which is split (or domestic sales concerning the business which is transferred)	3B yen or more and less than 20B yen	20B yen or more and less than 50B yen	50B yen or more and less than 100B yen	100B yen or more and less than 500B yen	500B yen or more	Total
Total domestic sales of a succeeding company						
5B yen or more and less than 20B yen	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)
20B yen or more and less than 50B yen	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)
50B yen or more and less than 100B yen	0(1)	0(0)	0(0)	0(0)	0(0)	0(1)
100B yen or more and less than 500B yen	0(2)	0(0)	0(0)	0(1)	0(0)	0(3)
500B yen or more and less than 1T yen	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)
1T yen or more and less than 5T yen	0(0)	0(0)	0(2)	0(0)	0(0)	0(2)
5T yen or more	0(1)	0(0)	0(0)	0(0)	0(0)	0(1)
Total	0(4)	0(0)	0(2)	0(1)	0(0)	0(7)

(Note 6) The number of received notifications by total domestic sales of an alienating company which transfers all its business is shown outside of brackets and the number of received notifications by domestic sales of the business to be split which is an important part of an alienating company is shown in brackets. (Neither number is included in the other in any set of two numbers, one inside and the other outside of brackets.)

### 4. Joint share transfer

There was no notification of joint share transfer.

## 5. Acquisition of business, etc.

### (1) Number of cases by type

By type of acquisition of business, etc. 20 notifications were about acquisition of business and 3 notifications were about acquisition of fixed assets for business.

### (2) Number of cases by total domestic sales (Table 8)

Table 8. Number of notifications of acquisition of business, etc. by total domestic sales

Domestic sales concerning acquired business, etc.	3B yen or more and less than 20B yen	20B yen or more and less than 50B yen	50B yen or more and less than 100B yen	100B yen or more and less than 500B yen	500B yen or more	Total
Total domestic sales of an acquiring corporation						
20B yen or more and less than 50B yen	4	0	0	0	0	4
50B yen or more and less than 100B yen	5	1	0	0	0	6
100B yen or more and less than 500B yen	2	2	0	0	0	4
500B yen or more and less than 1T yen	3	1	0	0	0	4
1T yen or more and less than 5T yen	2	0	0	0	0	2
5T yen or more	0	0	0	0	0	0
Total	16	4	0	0	0	20

(Note 7) The above table only includes an assignor company with the largest domestic sales in the case of acquisition of business, etc. from two or more companies, in other words, if there are two or more assignor companies.

### **Part III Number of notifications by industry (Table 9)**

#### **1. Acquisition of stock**

Of 223 notifications of acquisition of stock , apart from “Others”, “Manufacturing” accounted for the largest part and recorded 52 notifications, followed by “Wholesale and retail trade”, 36 and “Transportation/communication/warehousing”, 13.

#### **2. Mergers**

Of 16 notifications of merger[s], apart from “Others”, “Manufacturing” and “Wholesale and retail trade” accounted for the largest part, respectively 4 notifications, followed by “Transportation/communication/warehousing”, 2.

#### **3. Split**

There was no notification of joint incorporation-type split.  
Of 7 notifications of absorption-type split, there was one each for “Manufacturing”, “Wholesale and retail trade”, “Transportation/communication/warehousing”, “Services”, and “Electricity, gas, heat supply and water”.

#### **4. Joint share transfer**

There was no notification of joint share transfer.

#### **5. Acquisition of business, etc.**

Of 20 notifications of acquisition of business, etc., “Manufacturing” accounted for the largest part and recorded 11 notifications, followed by “Wholesale and retail trade”, 5 and “Transportation/communication/warehousing”, 2.

Table 9. Number of notifications by industry

By industry	Acquisition of stock	Merger	Joint incorporation-type split	Absorption-type split	Joint share transfer	Acquisition of business, etc.	Total
Agriculture, forestry, and fisheries	0	0	0	0	0	0	0
Mining	0	0	0	0	0	0	0
Construction	4	0	0	0	0	0	4
Manufacturing	52	4	0	1	0	11	68
Wholesale and retail trade	36	4	0	1	0	5	46
Real estate	7	0	0	0	0	0	7
Transportation/communication/warehousing	13	2	0	1	0	2	18
Services	12	1	0	1	0	1	15
Finance and insurance	6	0	0	0	0	0	6
Electricity, gas, heat supply and water	3	0	0	1	0	0	4
Others	90	5	0	2	0	1	98
Total	223	16	0	7	0	20	266

(Note 8) Notifications were classified by the industry of the share-acquiring company in the case of acquisition of stock, the industry of the surviving company after merger in the case of merger, the industry of the succeeding company in the case of joint incorporation-type split and absorption-type split, the industry of the newly established company in the case of joint share transfer, and the industry of the company which acquires business, etc. in the case of acquisition of business, etc.



**Part IV Number of notifications by type of relationship (Table 10)**

**1. Acquisition of stock**

Of 223 notifications of acquisition of stock, horizontal relationship was the most prevalent and involved in 141 notifications, followed by vertical relationship (forward), 75 and vertical relationship (backward), 57.

(Note 9) Types of relationship are detailed below. hereinafter the same applies.

(1) Horizontal relationship: Cases where parties constituting the company group are competing with each other in the same particular field of trade.

(2) Vertical relationship: Cases where parties constituting the company group do not share the same transaction stage.

Backward: Cases where a business combination is made with a corporation which is farther from end-users.

Forward: Cases where a share acquiring company, surviving company, succeeding company or acquiring corporation combines with a corporation which is closer to end-users

(3) Conglomerate relationship: Cases where neither horizontal nor vertical relationship applies

Market extension: Cases where parties constituting the company group are supplying the same kind of goods or services in different markets

Product extension: Cases where parties constituting the company group are supplying different kinds of goods or services that are related in terms of production or sales

Pure: Cases where none of the above applies

(Note 10) Notifications involving multiple types of relationship are counted towards their respective type. Therefore, the sum of the number of notifications of each type does not always match the number of notifications in total. hereinafter the same applies.

**2. Mergers**

Of 16 notifications of merger[s], horizontal relationship was the most prevalent and involved in 14 notifications, followed by vertical relationship (backward), 6 and conglomerate relationship (product extension), 4.

**3. Splits**

There was no notification of joint incorporation-type split.

Of 7 notifications of absorption-type split, horizontal relationship was the most

prevalent and involved in 6 notifications, followed by vertical relationship (forward), 3 and conglomerate relationship (product extension), 1.

#### 4. Joint share transfer

There was no notification of joint share transfer.

#### 5. Acquisition of business, etc.

Of 20 notifications of acquisition of business, etc., horizontal relationship was the most prevalent and involved in 15 notifications, followed by vertical relationship (backward), 4 and conglomerate relationship (market extension), 2.

Table 10. Number of notifications by type of relationship

By type		Acquisition of stock	Merger	Joint incorporation-type split	Absorption-type split	Joint share transfer	Acquisition of business, etc.
Horizontal relationship		141	14	0	6	0	15
Vertical relationship	Forward	75	2	0	3	0	0
	Backward	57	6	0	0	0	4
Conglomerate relationship	Market extension	46	1	0	0	0	2
	Product extension	40	4	0	1	0	1
	Pure	41	0	0	0	0	1
Number of notifications		223	16	0	7	0	20

(Note 11) Notifications involving multiple types of relationship are counted towards their respective type. Therefore, the sum of the number of notifications of each type does not always match the number of notifications in total.

Table 11. Changes in the number of notifications in the past three years of horizontal, vertical and conglomerate business combinations

	FY2018	FY2019	FY2020
Horizontal business combination	179 (56%)	187 (60%)	176 (66%)
Vertical business combination	129 (40%)	128 (41%)	118 (44%)
Conglomerate business combination	105 (33%)	135 (44%)	125 (47%)
Total	321 (100%)	310 (100%)	266 (100%)

(Note 12) Notifications involving more than one type of business combination, namely horizontal, vertical and conglomerate, are counted towards their respective type. Therefore, the total percentage may not equal 100% and the sum of the number of notifications of each type does not always match the number of notifications in total.

Data: Changes in the number of notifications/reports related to business combinations (Note 1)

Fiscal year	Business report pursuant to Article 9(Note 2)	Notification of incorporation pursuant to Article 9 (Note 2)	Notification of acquisition of stock (Note 3)	Notification of interlocking directorate (Note 4)	Report of shareholding by other than company (Note 5)	Notification of merger (Note 6)	Notification of split (Note 7)	Notification of joint share transfer (Note 8)	Notification of acquisition of business, etc. (Note 9)
1947			(2)		(0)	(23)			(22)
48			(31)		(0)	(309)			(192)
49			(13)		(0)	(123)			(53)
			2,373		0	448			143
50			3,840		0	420			207
51			4,546		0	331			182
52			4,795		0	385			124
53			3,863	268	0	344			126
54			2,827	328	0	325			167
55			3,033	268	0	338			143
56			3,080	457	0	381			209
57			3,069	375	0	398			140
58			3,316	557	0	381			118
59			3,170	466	0	413			139
60			2,991	644	0	440			144
61			3,211	675	1	591			162
62			3,231	804	0	715			193
63			3,844	758	0	997			223
64			3,921	527	4	864			195
65			4,534	487	1	894			202
66			4,325	462	0	871			264
67			4,075	458	2	995			299
68			4,069	480	3	1,020			354
69			4,907	647	0	1,163			391
70			4,247	543	2	1,147			413
71			5,832	552	0	1,178			449
72			5,841	501	1	1,184			452
73			6,002	874	0	1,028			443
74			5,738	794	0	995			420
75			5,108	754	9	957			429
76			5,229	925	6	941			511
77			5,085	916	1	1,011			646
78			5,372	1,394	0	898			595
79			5,359	3,365	0	871			611
80			5,759	2,556	2	961			680
81			5,505	2,958	1	1,044			771
82			6,167	2,477	1	1,040			815
83			6,033	3,389	4	1,020			702
84			6,604	3,159	2	1,096			790
85			6,640	3,504	6	1,113			807
86			7,202	2,944	1	1,147			936
87			7,573	3,776	1	1,215			1,084
88			6,351	3,450	0	1,336			1,028
89			8,193	4,420	0	1,450			988
90			8,075	4,312	0	1,751			1,050
91			8,034	6,124	2	2,091			1,266
92			8,776	5,675	0	2,002			1,079
93			8,036	6,330	3	1,917			1,153
94			8,954	5,137	18	2,000			1,255
95			8,281	5,897	1	2,520			1,467
96			9,379	5,042	0	2,271			1,476
97	0	0	8,615	5,955	7	2,174			1,546
98	2	0	7,518	447	0	1,514			1,176
99	1	1	1,029			151			179
2000	5	1	804			170			213
01	7	7	898			127	20		195

Fiscal year	Business report pursuant to Article 9(Note 2)	Notification of incorporation pursuant to Article 9 (Note 2)	Notification of acquisition of stock (Note 3)	Notification of interlocking directorate (Note 4)	Report of shareholding by other than company (Note 5)	Notification of merger (Note 6)	Notification of split (Note 7)	Notification of joint share transfer (Note 8)	Notification of acquisition of business, etc. (Note 9)
02	16	7	899			112	21		197
03	76	4	959			103	21		175
04	79	1	778			70	23		166
05	80	5	825			88	17		141
06	87	2	960			74	19		136
07	93	2	1,052			76	33		123
08	92	4	829			69	21		89
09	93	5	840			48	15	3	79
2010	92	2	184			11	11	5	54
11	100	0	224			15	10	6	20
12	99	1	285			14	15	5	30
13	100	0	218			8	14	3	21
14	103	0	231			12	20	7	19
15	104	2	222			23	17	6	27
16	108	2	250			26	16	3	24
17	105	0	259			9	13	3	22
18	107	2	259			16	15	2	29
19	112	0	264			12	12	3	19
20	114	1	223			16	7	0	20

(Note 1) Numbers in brackets are the ones of authorized cases.

(Note 2) As the provisions for business report and notification of incorporation of Article 9 of the AMA were established in the 1997 revision of the Act, no data is available for years prior to the revision.

In addition, before the 2002 revision of the AMA, business reports and notifications of incorporation were required for holding companies with total amounts of assets exceeding a certain level. Since the 2002 revision, however, financial companies and non-financial companies with total amounts of assets exceeding a certain level in addition to holding companies have been required to submit business reports and notifications of incorporation.

(Note 3) The (total asset) threshold requiring reports of shareholding has been revised as follows:

Revised year	(Total asset) threshold
1949	Over 5 million yen
1953	Over 100 million yen
1965	Over 500 million yen
1977	Over 2 billion yen

Before the 1998 revision of the AMA, domestic corporations (excluding those engaged in financial business) with total assets of over 2 billion yen as well as foreign corporations (excluding those engaged in financial business) were required to submit a report of shareholding within three months of the end of every business year, if they had shares of domestic corporations. Under the 1998 revision of the AMA, a corporation which had total assets exceeding 2 billion yen and belonged to

a group of combined companies which had a sum of total assets exceeding 10 billion yen was required to submit a report of shareholding if it acquired or held more than 10%, 25%, or 50% of stocks of a domestic corporation with total assets exceeding 1 billion yen or a foreign corporation with domestic sales exceeding 1 billion yen.

In addition, notification standards have been changed since the revision of the AMA in 2009 and a corporation with total domestic sales exceeding 20 billion yen has been required to submit a notification in advance just as in the case of a merger, etc., if it plans to acquire stocks of another corporation with total domestic sales, including those of subsidiaries, exceeding 5 billion yen, and to hold more than 20% or 50% of voting rights (notification at two stages).

(Note 4) Before the 1998 revision of the AMA, officers and employees of a corporation were required to notify the JFTC if they also held positions as officers of another corporation which was in competition with the first corporation in Japan and a total amount of assets of one of the two corporations exceeded 2 billion yen. This requirement was removed in the 1998 revision.

(Note 5) Before the 1998 revision of the AMA, a person other than a company was required to submit a report of shareholding, if he was to hold more than 10% of all issued stocks of each of two or more domestic corporations which were in competition with each other in Japan. This requirement was removed in the 1998 revision.

(Note 6) Before the 1998 revision of the AMA, a corporation was required to notify the JFTC in advance without exception, if it planned to merge with another. Under the 1998 revision, however, notification was required if the Parties included a corporation which belonged to a group of combined companies which had a sum of total assets exceeding 10 billion yen and another corporation which belonged to a group of combined companies which had a sum of total assets exceeding 1 billion yen.

In addition, notification standards have been changed since the revision of the AMA in 2009 and now the JFTC must be notified if a corporation with total domestic sales exceeding 20 billion and another corporation with total domestic sales exceeding 5 billion yen plan to merge.

(Note 7) As notification of split was introduced in the 2000 revision of the Commercial Code, no data is available for years up to FY2000.

In addition, notification standards have been changed since the revision of the AMA in 2009 and now the JFTC must be notified of a plan of split in cases where the Parties include a total succession company (a corporation which intends to alienate all of its business) whose total domestic sales exceed 20 billion yen and a corporation with total domestic sales exceeding 5 billion yen which intends to succeed to the business.

(Note 8) As notification of joint share transfer was introduced in the 2009 revision of the AMA, no data is available for years up to FY2008.

(Note 9) Before the 1998 revision of the AMA, a corporation was required to notify the JFTC in advance without exception, if it planned to acquire the whole or a substantial part of the business of another company. Under the 1998 revision, however, notification

was required if a corporation which belonged to a group of combined companies which had a sum of total assets exceeding 10 billion yen planned to acquire the whole business of another domestic corporation whose total assets were over 1 billion yen.

In addition, notification standards have been changed since the revision of the AMA in 2009 and now the JFTC must be notified of a plan to acquire a business if a corporation with total domestic sales exceeding 20 billion plans to acquire the whole business of another corporation with domestic sales exceeding 3 billion yen.

## Business combination reviews

If competition is substantially restrained as a result of a business combination (shareholding, interlocking directorate, merger, split, joint share transfer, acquisition of business, etc.), (i) users will be disadvantaged because their options will be fewer, and (ii) the incentive of the Parties to respond appropriately to demand will be lost, which will result in the Parties losing the opportunity to grow further, and ultimately will obstruct economic revitalization.

For this reason, the AMA prohibits business combinations that would substantially restrain competition in any particular field of trade, and the JFTC conducts business combination reviews in accordance with the provisions of the AMA.

### **1 Business combination review process**

#### (1) Business combination plans that require notification

Companies that meet certain conditions, such as those in Table 1 below, and intend to conduct a business combination must notify the JFTC in advance.

If the JFTC determines that there are no problems in light of the provisions of the AMA with respect to the notified business combination within 30 days from the date of acceptance of the notification, the review will be completed within this period (primary review).

If the JFTC determines that it is necessary to conduct a detailed review, it will request the notifying company to submit necessary reports, etc. (secondary review). Then, within 90 days from the date of acceptance of all reports, etc., the JFTC decides whether or not the business combination in question is problematic in light of the provisions of the AMA.

Even if a business combination is determined to substantially restrain competition in a particular field of trade, the business combination may not be considered a violation of the the AMA (the business combination may be allowed), provided that the Parties are able to resolve the problem by taking certain appropriate remedial measures (remedies).

(2) Business combination plans that do not require notification

If a company planning a business combination that does not require notification consults with the JFTC, indicating the specific details of the business combination plan, the JFTC will respond in the same manner as in the case of notification of a business combination plan that requires notification.

If a business combination plan does not require notification only because the amount of domestic sales of the company to be acquired does not meet the notification criteria, but the total amount of consideration for the acquisition is large and the business combination would be expected to have an impact on domestic users, the JFTC will request the Parties to submit materials and conduct a business combination review.



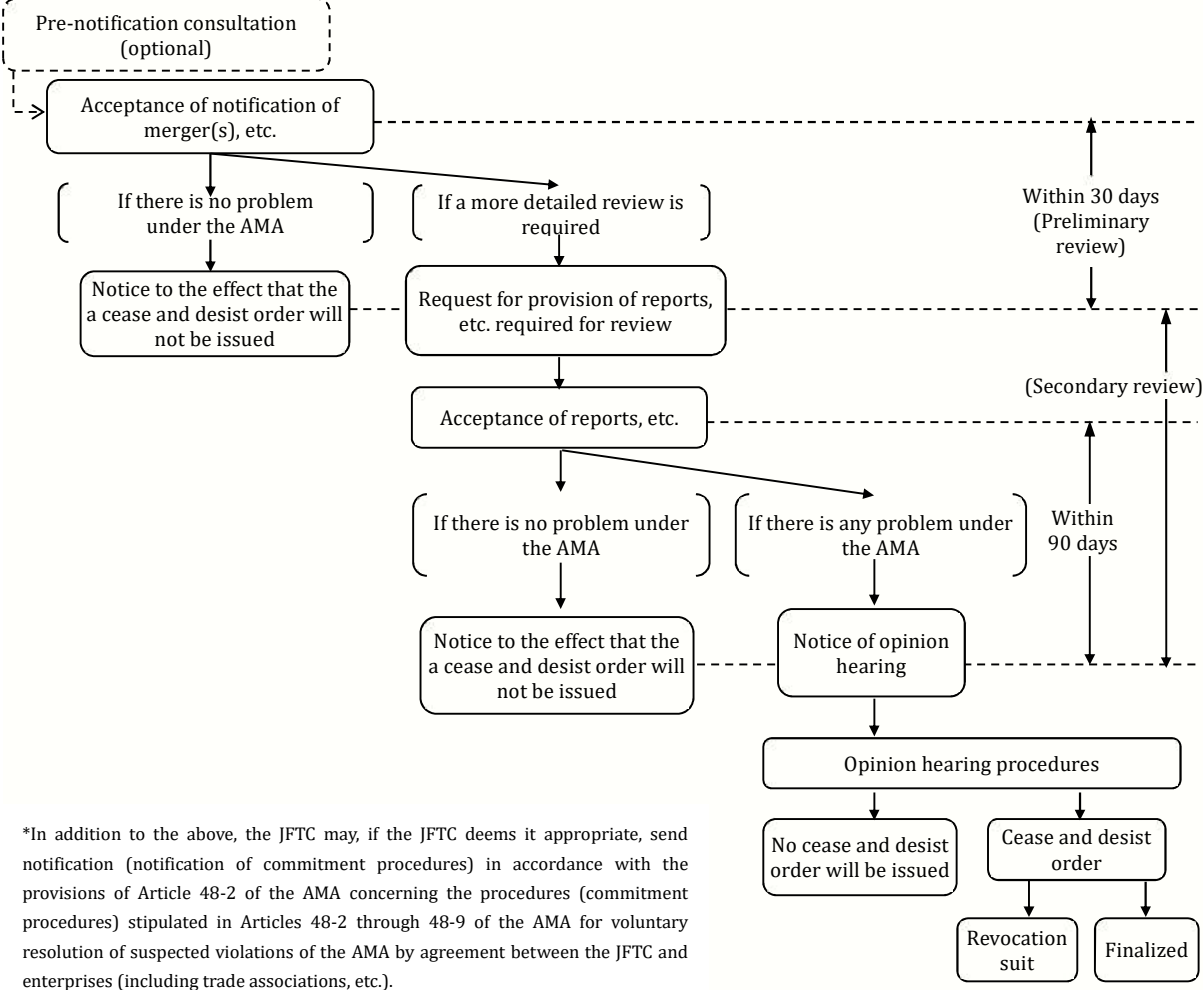
**Table 1 Summary of cases requiring notification by type**

Types (applicable provisions)		Summary of cases requiring notification
Acquisition of stock (Article 10)		Cases where (i) a company with total domestic sales <sup>(Note 1)</sup> of more than 20 billion yen (ii) acquires shares of a share-issuing company whose total domestic sales, including those of its subsidiaries, exceed 5 billion yen and thereby (iii) holds more than 20% or 50% of voting rights <sup>(Note2)</sup>
Merger(s) (Article 15), joint share transfer (Article 15-3)		Cases where (i) a company with total domestic sales of more than 20 billion yen and (ii) another company with total domestic sales of more than 5 billion yen (iii) conduct a merger (or joint share transfer)
Split(s) (Article 15-2)	Joint incorporation-type split	Cases where (i) a company with total domestic sales of more than 20 billion yen and (ii) another company with total domestic sales of more than 5 billion yen (iii) establish a company through joint incorporation-type split and have it succeed to all of their businesses, and other cases
	Absorption-type split	Cases where (i) a company with total domestic sales of more than 20 billion yen has (ii) another company with total domestic sales of more than 5 billion yen (iii) succeed to all of its business, and other cases
Acquisition of business (Article 16)		Cases where (i) a company with total domestic sales of more than 20 billion yen (ii) acquires the whole of the business of another company with domestic sales of more than 3 billion yen, or (i) a company with total domestic sales of more than 20 billion yen (ii) acquires a substantial part of the business (or the whole or a substantial part of the fixed assets used for the business) of another company and the domestic sales of the acquired part exceed 3 billion yen

(Note 1) Total domestic sales means the sum of the domestic sales of companies, etc. in a group of combined companies (the group consisting of the “ultimate parent company” of the notifying company and its subsidiaries).

(Note 2) The percentage of voting rights held means the percentage of voting rights held by companies, etc. that belong to the same group of combined companies.

**Table 2 Flowchart of business combination review**



\*In addition to the above, the JFTC may, if the JFTC deems it appropriate, send notification (notification of commitment procedures) in accordance with the provisions of Article 48-2 of the AMA concerning the procedures (commitment procedures) stipulated in Articles 48-2 through 48-9 of the AMA for voluntary resolution of suspected violations of the AMA by agreement between the JFTC and enterprises (including trade associations, etc.).

**2 Basic approach to business combination reviews**

The JFTC's approach to business combination reviews has been published as the “Guidelines to application of the antimonopoly act concerning review of business combination” (the so-called “business combination guidelines”).

First, a particular field of trade (market) is defined from the viewpoint of the range of suppliers from which users can procure goods and services concerned, and then it is examined whether or not the business combination in question poses a problem under the AMA from the viewpoint of whether or not the business combination will substantially restrain competition, i.e., whether or not it will result in a situation where users will not be able to secure sufficient options.

(1) A particular field of trade denotes the range (“product range” and “geographic range”) for determining whether competition will be restrained by a business combination.

Particular fields of trade are in principle defined in terms of substitutability for users and, if necessary, for suppliers.

Substitutability for users is judged under the assumption that a certain enterprise exclusively supplies certain goods/services in a certain region, by considering the degree to which users can switch their purchase of the goods/services to other goods/services or other regions in the event that the monopolist executes a “small but significant and non-transitory increase in price” for the purpose of maximizing profits.

- The above method for defining a particular field of trade (market) is called the SSNIP (Small but Significant and Non-transitory Increase in Price) test.
- The SSNIP test is a method that is also used in Europe and the US.
- Under normal circumstances, “a small but significant and non-transitory increase in price” shall mean a 5%-10% price increase over a more or less one-year period.

(2) Substantial restraint on competition

A. The safe-harbor criteria

(a) The safe-harbor criteria for horizontal business combination

Competition in a particular field of trade is usually not considered to be substantially restrained by a horizontal business combination (hence immediately judged to be “acceptable”) in a market where the HHI<sup>(Note 3)</sup> after the business combination falls under any of the following (1) through (3):

- (1) The HHI after the business combination is 1,500 or less.
- (2) The HHI after the business combination is more than 1,500 but not more than 2,500 and the increment of HHI<sup>(Note 4)</sup> is 250 or less.
- (3) The HHI after the business combination is more than 2,500 and the increment of HHI is 150 or less.

(Note 3) The HHI is calculated by totaling the square of the market share of each business in this particular field of trade.

(Note 4) The increment of HHI due to a business combination can be calculated by multiplying the market share of each of the Parties and doubling the result, if the Parties consist of two companies.

(b) The safe-harbor criteria for vertical business combination and conglomerate business combination

Competition in a particular field of trade is usually not considered to be substantially restrained by a vertical business combination or conglomerate business combination (hence immediately judged to be “acceptable”), if the company group after the business combination falls under either of the following (1) or (2):

- (1) The company group after the business combination does not have more than 10% market share in any particular field of trade in which the Parties are involved.
- (2) The HHI after the business combination is 2,500 or less and the company group after the business combination does not have more than 25% market share in any particular field of trade in which the Parties are involved.

B. Cases that do not meet the safe-harbor criteria

If the safe-harbor criteria are not met, then it will be examined whether or not competition in a particular field of trade will be substantially restrained (i) by the unilateral conduct of the company group, or (ii) by the coordinated conduct of the company group and its competitors.

During the examination, the following questions are considered: (1) with regard to substantial restraint of competition by the unilateral conduct of the company group, based on the actual conditions of the market and transactions revealed through interviews and questionnaires, “whether or not the company group will find it easier to raise prices, etc. after the business combination due to the company group's enhanced market position”; against the price increase, etc. by the Parties, “whether or not there will be competitive pressure from competitors”, “whether or not there will be competitive pressure from imports or new entrants”, “whether or not there will be competitive pressure based on users' countervailing bargaining power”, “whether or

not there will be competitive pressure from competing goods in adjacent markets” and others.

Similarly, (2) with regard to substantial restraint of competition by the coordinated conduct of the company group and its competitors, “whether or not the company group and its competitors will find it easier to raise prices, etc. in a coordinated manner after the business combination”; against the coordinated price increases, etc. by the company group and its competitors, “whether or not there will be competitive pressure from imports or new entrants”, “whether or not there will be competitive pressure based on users’ countervailing bargaining power”, “whether or not there will be competitive pressure from competing goods in adjacent markets” and others.

### (3) Remedies

Even if a business combination substantially restrains competition in a particular field of trade, the Parties may be able to resolve the problem by taking certain appropriate remedial measures (remedies).

What kind of remedies are appropriate is considered on a case-by-case basis according to each business combination.

Remedies should be able to restore competition that would be otherwise lost under a business combination, and in principle they should be structural measures such as business transfers. However, in markets where the market structure changes rapidly due to technological innovation, etc., it may be more appropriate to adopt remedial measures related to certain actions.