Major Business Combination Cases in Fiscal Year 2020

(Tentative Translation)

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The Japan Fair Trade Commission

For the purpose of ensuring the transparency of reviews by the Japan Fair Trade Commission (hereinafter referred to as "JFTC") and improving the predictability of the reviews, the JFTC has published "Guidelines to Application of the Antimonopoly Act concerning Review of Business Combination (May 31, 2004, JFTC; hereinafter referred to as the "Business Combination Guidelines")"in order to clarify its stance for applying the Antimonopoly Act (hereinafter referred to as the "AMA") to its business combinations reviews. In addition, the JFTC has publicized the review results each fiscal year with respect to major business combination cases.

This year also, the JFTC is going to publicize the review results about major business combination cases of fiscal year 2020.

The JFTC sincerely hopes that companies planning business combinations will make use of the published outcomes of the JFTC's reviews of major business combination cases, as well as the Business Combination Guidelines.

Major Business Combination Cases in Fiscal Year 2020

Number	Case (Major field of examination)	Type of business combination, etc.						Page
		Horizontal	Vertical	Conglomerate	Remedy	Economic analysis	Information exchange with foreign authorities	
1.	Acquisition of shares of Dai-Nippon Meiji Sugar Co., Ltd. by Mitsui Sugar Co., Ltd. (centrifugal sugar)	○						1
2.	Acquisition of shares of San-ei Sucrochemical Co., Ltd. by Showa Sangyo Co., Ltd. (crystalline glucose)	○				○		7
3	Acquisition of shares of BASF Colors & Effects Japan Ltd. by DIC Corporation (organic pigments) (released on December 24, 2020)	○			○	○	○	15
4	Integration of the diagnostic imaging business and healthcare IT business of Hitachi, Ltd. by Fujifilm Corporation (ultrasound endoscopes, etc.)			○	○		○	23
5	Acquisition of shares of Maxim Integrated Products, Inc. by Analog Devices, Inc. (general-purpose analog ICs)	○						30
6	Integration of Google LLC and Fitbit, Inc. (wrist-worn wearable devices, etc.) (released on January 14, 2021)		○	○	○	○	○	38
7	Acquisition of shares of UD Trucks Corp. by Isuzu Motors Limited (large and medium trucks)	○						65
8.	Establishment of a joint investment company	○						71

	concerning design and sales of merchant ships by Imabari Shipbuilding Co., Ltd. and Japan Marine United Corporation (container ships)							
9.	Acquisition of shares of The Fukuho Bank by The Fukui Bank (lending to SMEs) (released on June 16, 2021)	○						78
10	Business integration of Z Holdings Corporation and Line Corporation (code-based payment business, etc.) (released on August 4, 2020)	○			○	○		99
	(Reference) Business combination reviews							147

(Note 1) The order of the cases in this document complies with the order used in the Japan Standard Industry Classification, applied to business concerning products and services subject to reviews of business combinations.

(Note 2) Confidential information and competitor names, etc. associated with the companies concerned are not disclosed in the respective cases. Each competitor is represented by a random alphabet letter.

(Note 3) Market shares, HHI levels after business combinations, and number counts, e.g, the increment of the HHI after business combinations, are shown as approximate figures estimated by the JFTC based on the documents/materials submitted by the concerned companies (note that the term "HHI" in this context refers to the Herfindahl-Hirschman Index; the same shall be applied hereinafter). When it comes to market shares, in principle, these figures are shown at 5% intervals. (For example, any number that is 37.5% or larger and less than 42.5% is expressed as "around 40%.") Accordingly, their total is not necessarily 100.

(Note 4) In each case, a horizontal business combination refers to a business combination between companies competing in the same particular field of trade; a vertical business combination refers to a business combination between companies operating at different transaction stages such as a merger between a manufacturer and a distributor selling the manufacturer's products and ; a conglomerate business combination refers to a business combination that is neither a horizontal business combination nor a vertical business combination such as a merger between companies operating in different industries and the acquisition of shares between companies operating in a particular field of trade but in different geographical scopes.

Case 1 Acquisition of shares of Dai-Nippon Meiji Sugar Co., Ltd. by Mitsui Sugar Co., Ltd.

Part I The Parties

Mitsui Sugar Co., Ltd. (JCN 1010001034929) (hereinafter referred to as "Mitsui Sugar") and Dai-Nippon Meiji Sugar Co., Ltd. (JCN 1010001049134) (hereinafter referred to as "Dai-Nippon Meiji Sugar") are both companies mainly conducting manufacturing and sales of sugar.

Hereinafter, a group of companies which have already built joint relationships with Mitsui Sugar shall be referred to as "Mitsui Sugar Group," and a group of companies which have already built joint relationships with Dai-Nippon Meiji Sugar shall be referred to as "Dai-Nippon Meiji Sugar Group." As well, the Mitsui Sugar Group and the Dai-Nippon Meiji Sugar Group shall be collectively referred to as "the parties group."

Part II Outline of this case and applicable provision

This case concerns a plan in which Mitsui Sugar would acquire all of the voting rights with regard to shares of Dai-Nippon Meiji Sugar (hereinafter referred to as "the conduct of this case[1]").

The applicable provision to this case is Article 10 of the AMA.

Note that there are many products manufactured/sold by the parties group that are competing with each other or traded among the parties group. The JFTC examined these products, and the following explains in detail the horizontal business combination of the manufacturing and sales business of centrifugal sugar (except for processed sugar), which was considered to have a relatively large impact on competition.

Part III Product outline, etc.

1 Product description of sugar

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1 At the same time as the conduct of this case, this case also concerns a plan in which Mitsubishi Corporation (JCN 5010001008771) would acquire more than 20% of the voting rights related to the shares of Mitsui Sugar. Therefore, the JFTC examined this case together with the conduct of this case from the perspective that an indirect joint relationship could arise through Mitsui Sugar between Mitsui & Co., Ltd. (JCN 1010001008767), which has already built a joint relationship with Mitsui Sugar, and Mitsubishi Corporation, which has already built a joint relationship with Dai-Nippon Meiji Sugar.

Sugar is a sweetener produced from raw materials such as sugarcane or sugar beets[2], and is used in the manufacture of food, confectionery, beverages, etc. It is roughly classified into centrifugal sugar and non-centrifugal sugar.

Centrifugal sugar is produced by boiling down the juice of sugar extracted from raw materials, separating the result into raw sugar, which is crystallized, and molasses by centrifugation, and then repeating the crystallization of raw sugar. On the other hand, non-centrifugal sugar is produced by boiling down the sugar juice extracted from raw materials as is without separating it into crystals and molasses. In general, centrifugal sugar is white in color[3], and non-centrifugal sugar is brown, with the latter having a more distinctive flavor than the former.

2 Product description of raw sugar

Raw sugar is crystals made from sugar juice of sugarcane or sugar beets, and the raw material for the production of centrifugal sugar. The manufacturing/sales companies of centrifugal sugar procure the raw sugar necessary for the manufacture of centrifugal sugar from domestic raw sugar manufacturing/sales companies or import it from overseas, and most of the raw sugar used in Japan is imported from overseas.

3 Outline of the sugar price adjustment system

In Japan, based on the "Act on Price Adjustment of Sugar and Starch" (Act No. 109 of 1965) (hereinafter referred to as the "Sugar Price Adjustment Act"), a system has been adopted to secure a stable supply of sugar by ensuring the viability of the farming of sugar cane and sugar beets, the raw sugar manufacturing business using these raw materials, and the centrifugal sugar manufacturing business using such domestically produced raw sugar and imported raw sugar. Specifically, in accordance with the Sugar Price Adjustment Act, the government raises the price of imported raw sugar by collecting an adjustment fee from centrifugal sugar manufacturing/sales companies that import raw sugar, and lowers the price of domestically produced raw sugar by providing domestic raw sugar manufacturing/sales companies with subsidies derived from the said adjustment fee. In addition, the government adjusts the import volume of raw sugar.[4]

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2 Sugar beets are a member of the amaranth family, and accumulate sugar in their roots. In Japan, they are cultivated in Hokkaido.

3 Some types are yellowish brown.

4 An independent administrative agency under the jurisdiction of a national administrative organ is responsible for the collection of the adjustment fee.

Part IV Particular field of trade

1 Product range

Centrifugal sugar differs significantly from non-centrifugal sugar in price, and the former is white while the latter is brown and has a unique flavor. Therefore, food, confectionery, and beverage manufacturers, which are the main users of sugar, use the two products to a certain extent according to their price, color, flavor, and other characteristics, and demand substitutability between the two products is limited. In addition, as described in Part III 1 above, the manufacturing processes of the two products are different, and thus the manufacturing facilities are also different. As well, centrifugal sugar, which requires mass production, needs to be produced in large-scale facilities, whereas non-centrifugal sugar is mostly produced near sugarcane farms.[5] Therefore, it is not easy to switch between the manufacturing of the two products, and the suppliers are different between centrifugal sugar and non-centrifugal sugar. Therefore, supply substitutability is not recognized between the two products.

Centrifugal sugar also includes processed sugar (e.g., cube sugar, powdered sugar, crystal sugar, etc.), which is made by processing centrifugal sugar into shapes that are suitable for specific purposes. However, processed sugar differs significantly from centrifugal sugar other than processed sugar in price, and is used for specific purposes. Therefore, processed sugar is used separately from centrifugal sugar other than processed sugar and the demand substitutability between the two products is limited. In addition, compared to processed sugar, the production of centrifugal sugar other than processed sugar requires large-scale facilities for mass production, and the enterprises producing processed sugar purchase centrifugal sugar and use facilities to process it into specific shapes. Therefore, it is not easy to switch between the manufacturing of processed sugar and centrifugal sugar other than processed sugar and the suppliers are different between processed sugar and centrifugal sugar other than processed sugar. Therefore, supply substitutability is not recognized between the two products.

Based on the above, the JFTC defined and examined separate product ranges, namely, “centrifugal sugar (other than processed sugar),” “processed sugar,” and “non-centrifugal sugar,” and the following explains in detail the product range defined as “centrifugal sugar (other than processed sugar).”

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5 As it is difficult to store harvested sugarcane for a long period of time, it needs to be processed into non-centrifugal sugar or raw sugar immediately after harvesting.

Sweeteners other than sugar (isomerized sugar[6], sugar-added preparations[7], etc.) belong to other product ranges than that of centrifugal sugar (other than processed sugar) because their raw materials, manufacturing processes, manufacturing facilities, etc. are completely different from those of centrifugal sugar (other than processed sugar) and there is no supply substitutability. However, since these sweeteners are used as substitutes for centrifugal sugar (other than processed sugar) and are cheaper than centrifugal sugar, a certain degree of demand substitutability is recognized, and therefore they were examined as an adjacent market for centrifugal sugar (other than processed sugar) in Part V 4 below.

2 Geographic range

Centrifugal sugar (other than processed sugar) can be stored at room temperature and has no expiration date, and there is no regional price difference. As well, the parties group and competitors sell their products throughout Japan, and users procure centrifugal sugar (other than processed sugar) regardless of where the manufacturing/sales companies of the product are located.

Based on the above, the JFTC defined the geographic range as "all regions of Japan."

Part V Impact of the conduct of this case on competition

Since both parties of the parties group are conducting manufacturing and sales of centrifugal sugar (other than processed sugar), the conduct of this case falls under the definition of horizontal business combinations in manufacturing and sales of centrifugal sugar (other than processed sugar).

1 Position of the parties group and conditions of competing enterprises

The following table shows market shares of manufacturers of centrifugal sugar (other than processed sugar). As HHI is around 1,900, up around 600, the conduct of this case does not meet the safe-harbor criteria for horizontal business combinations.

[Market shares concerning centrifugal sugar (other than processed sugar) in FY2018]

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6 A saccharified product produced by isomerizing the sugar obtained by hydrolyzing the starch produced from corn, etc. It is used in the manufacture of beverages, seasonings, etc.

7 It is a mixture of sugar and non-sugar food ingredients, such as cocoa and milk powder, mainly imported from South Korea, China, and Singapore, and used in the manufacture of food, confectionery, and beverages.

Rank	Company name	Market share
1.	Mitsui Sugar Group	Approx. 25%
2	Company A	Approx. 15%
3	Dai-Nippon Meiji Sugar Group	Approx. 10%
4	Company B	Approx. 10%
5	Company C	Approx. 10%
6	Company D	Approx. 5%
7	Company E	Approx. 5%
8	Company F	0-5%
9	Company G	0-5%
10	Company H	0-5%
	Others	0-5%
Total		100%
Combined market share/rank: approx. 35%/1st place		

After the conduct of this case, the market share of the parties group will be around 35% (1st place). However, there are influential competitors, Company A with around 15% of the market, and Company B and Company C, holding around 10% of the market respectively.

Due to the manufacturing method of repeatedly crystallizing a single raw material, the quality of centrifugal sugar (other than processed sugar) is not likely to vary and is considered the same across different manufacturing/sales companies.

As for the excess capacity, the competitors' production facilities for centrifugal sugar (other than processed sugar) have sufficient excess capacity. However, the parties group and the competitors procure most of the raw sugar, which is the raw material for centrifugal sugar (other than processed sugar), through import, and the quantity of imported raw sugar set by the government and notified to each manufacturer (hereinafter, referred to as the "notified quantity") is less than their production capacity. So, unless additional raw sugar can be procured, it is difficult to increase the supply volume by utilizing the excess capacity of production facilities. In addition, when trying to procure additional raw sugar by importing it above the notified quantity, an additional adjustment fee will be levied[8], and thus there are some restrictions on increasing raw sugar imports. However, according to the interviews with competitors, it is possible to increase the import volume of raw sugar to a certain level by paying the adjustment fee, and multiple competitors have actually imported raw sugar above the notified quantity by paying the adjustment fee.

Based on the above, a certain level of competitive pressure from competitors is

[8] An enterprise is subject to an adjustment fee even when importing within its notified quantity, but if it imports raw sugar above its notified quantity, an additional adjustment fee will be levied.

recognized.

2 Imports

Import pressure is not recognized because imports are extremely limited due to the higher level of tariffs and other import costs required when importing centrifugal sugar (other than processed sugar), compared to imports of raw sugar and sugar-added preparations.

3 Entry

Entry pressure is not recognized since the demand for centrifugal sugar (other than processed sugar) has been declining for a long time, and the production of centrifugal sugar (other than processed sugar) requires large-scale facilities as described in Part IV 1 above, making it difficult for newcomers to enter the market.

4 Competitive pressure from adjacent markets

Among the types of sugar, non-centrifugal sugar and processed sugar differ significantly from centrifugal sugar (other than processed sugar) in terms of how they are used and their prices, as described in Part IV 1 above, and are therefore rarely used as substitutes for centrifugal sugar (other than processed sugar). On the other hand, among a variety of sweeteners other than sugar, isomerized sugar and sugar-added preparations in particular are used as substitutes for centrifugal sugar (other than processed sugar).

Isomerized sugar is a saccharified product that contains fructose and is used in the manufacture of beverages, seasonings, etc.

Sugar-added preparations are mixtures of sugar and non-sugar food ingredients, such as cocoa and milk powder. With sugar as a raw material, they are highly homogeneous with sugar and used in the manufacture of a wide range of products, such as food, confectionery, and beverages. Sugar-added preparations are mainly manufactured overseas, and since tariffs and other import costs required for importing them are lower than those for sugar, they are widely imported.

Food, confectionery, and beverage manufacturers, which are the main users of centrifugal sugar (other than processed sugar), are actively using isomerized sugar and sugar-added preparations, which are less expensive than centrifugal sugar (other than processed sugar), as substitutes in a wide range of products for the purpose of reducing manufacturing costs. Those manufacturers are switching from centrifugal sugar (other than processed sugar) to isomerized sugar and sugar-added preparations because of their lower prices. In fact, the consumption of centrifugal sugar (other

than processed sugar) in Japan has been on the decline over a long period of time, while the consumption of isomerized sugar and the import of sugar-added preparations have been on the rise, so there has been a shift from centrifugal sugar (other than processed sugar) to isomerized sugar and sugar-added preparations, mainly due to their price advantages. In addition, some users are willing to switch from centrifugal sugar (other than processed sugar) to isomerized sugar, sugar-added preparations, etc. if the price of centrifugal sugar (other than processed sugar) rises.

Based on the above, competitive pressure from adjacent markets is recognized.

5 Competitive pressure from users

Due to the manufacturing method of repeatedly crystallizing a single raw material, the quality of centrifugal sugar (other than processed sugar) is not likely to vary across different manufacturers. A questionnaire survey of users has also revealed that users, understanding there is no difference in quality among manufacturing/sales companies, source centrifugal sugar (other than processed sugar) from multiple manufacturing/sales companies, and change purchase volume or switch suppliers based on the prices quoted by them to reduce the procurement cost of centrifugal sugar (other than processed sugar) in order to maintain price competitiveness. In addition, the consumption of centrifugal sugar (other than processed sugar) has been on the decline in Japan for a long time as general consumers have increasingly preferred lower sweetness.

Based on the above, a certain level of competitive pressure from users is recognized.

6 Summary

Based on the above, the JFTC recognizes a certain level of competitive pressure from competitors, competitive pressure from adjacent markets, and a certain level of competitive pressure from users. Therefore, the conduct of this case would not substantially restrain competition in manufacturing and sales of centrifugal sugar (other than processed sugar) through unilateral conduct of the parties group or coordinated conduct with competitors.

Part VI Conclusion

The JFTC concluded that the conduct of this case would not substantially restrain competition in any particular field of trade.

Case 2 Acquisition of shares of San-ei Sucrochemical Co., Ltd. by Showa Sangyo Co., Ltd.

Part I The Parties

Showa Sangyo Co., Ltd. (JCN 3010001008690) (hereinafter referred to as "Showa Sangyo") and San-ei Sucrochemical Co., Ltd. (JCN 7180001094703) (hereinafter referred to as "San-ei Sucrochemical") are both companies conducting manufacturing and sales of saccharified products.

Hereinafter, a group of companies which have already built joint relationships with Showa Sangyo shall be referred to as "Showa Sangyo Group," and the Showa Sangyo Group and San-ei Sucrochemical shall be collectively referred to as "the parties group."

Part II Outline of this case and applicable provision

This case concerns a plan in which Showa Sangyo would acquire more than 50% of the voting rights with regard to shares of San-ei Sucrochemical (hereinafter referred to as "the conduct of this case").

The applicable provision to this case is Article 10 of the AMA.

Note that there are multiple saccharified products manufactured/sold by the parties group that are competing with each other or traded among the parties group. The JFTC examined these products, and the following explains in detail the horizontal business combination of the manufacturing and sales of crystalline glucose, which was considered to have a relatively large impact on competition because both parties of the parties group have a large market share.

Part III Particular field of trade

1 Product outline

Saccharified products are a generic term for sugars[1] produced by hydrolyzing starch, such as corn starch made from corn, with amylase or other enzymes or acids, and are classified into starch syrup, glucose, and isomerized sugar according to the degree of hydrolysis of the starch.

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1 Saccharified products are used as sweeteners, and one of the typical sweeteners is sugar. Saccharified products and sugar are made from different raw materials (sugar is made from sugarcane or sugar beets), using different manufacturing methods, and have different sugar content and characteristics. Therefore, users, such as food manufacturing/sales companies, etc., use these sweeteners differently according to their purposes.

Of these, glucose[2] is a monosaccharide product made by hydrolyzing starch to the molecular level. Glucose has refreshing sweetness with a lower sweetness level than sugar, dissolves easily in water, and is digested and absorbed quickly. It is mainly used in the manufacture of confectionery, bread, seasonings, pharmaceuticals, and other products.

2 Product range

Glucose comes in two forms: liquid glucose and powdered glucose. Liquid glucose is not suitable for use in final products with low water content, and the production of powdered glucose requires a process to remove water, so powdered glucose differs from liquid glucose in its use and production process.

Both parties of the parties group produce crystalline glucose, which is part of powdered glucose, and crystalline glucose is divided into dextrose monohydrate and dextrose anhydrous. Dextrose anhydrous, compared to dextrose monohydrate, has a lower water content and dissolves quickly in water at the time of use, which makes it suitable for water-soluble powder products, e.g., powdered drink mixes, and its price difference from dextrose monohydrate is significant. As users choose between dextrose monohydrate and dextrose anhydrous according to their characteristics and prices, demand substitutability is limited between them.

In addition, there is no supply substitutability between dextrose monohydrate and dextrose anhydrous because the production facilities for crystallization to produce crystalline glucose are different between them, and switching manufacturing from one to the other requires high capital investment.

Based on the above, the JFTC defined separate product ranges, namely, "liquid glucose," "dextrose monohydrate," and "dextrose anhydrous," and the following examines "dextrose monohydrate" and "dextrose anhydrous."

3 Geographic range

For both dextrose monohydrate and dextrose anhydrous, there are no special circumstances such as restrictions on domestic transportation in Japan, and there are no differences in price between regions either. All manufacturers cover all regions of Japan and sell their products directly or through distributors to users in all regions of Japan.

Since users also procure products from manufacturers, etc. throughout Japan, the JFTC defined the geographic range as "all regions of Japan."

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2 Although there are other types of glucose such as total sugar glucose, the JFTC examined crystalline glucose, which is manufactured by both parties of the parties group.

Part IV Impact of the conduct of this case on competition

Since both parties of the parties group are conducting business of manufacturing and sales of dextrose monohydrate and dextrose anhydrous in all regions of Japan, the conduct of this case falls under the definition of horizontal business combinations.

1 Dextrose monohydrate

(1) Substantial restriction of competition through unilateral conduct

A. Position of the parties group and conditions of competing enterprises

The following table shows market shares of manufacturers of dextrose monohydrate. As HHI, after the conduct of this case, is around 3,100, up around 1,100, the conduct of this case does not meet the safe-harbor criteria for horizontal business combinations.

[Market shares concerning dextrose monohydrate in FY2019]

Rank	Company name	Market share
1.	San-ei Sucrochemical	Approx. 30%
2	Company A	Approx. 20%
3	Showa Sangyo Group	Approx. 20%
4	Company B	Approx. 10%
5	Company C	Approx. 10%
	Imports[3]	Approx. 15%
Total		100%
Combined market share/rank: approx. 50%/1st place		

Although Company A, which has a market share of approximately 20%, and Companies B and C, each with a market share of approximately 10%, continue to exist as competitors after the conduct of this case, competitive pressure from competitors is limited because the excess capacity of these competitors to supply dextrose monohydrate is not considered to be sufficient.[4]

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[3] In the Trade Statistics of Japan published by the Ministry of Finance, dextrose monohydrate and dextrose anhydrous are lumped together under the same statistical number (1702.30-221) without a quantitative breakdown of the two products. Therefore, the import volumes of the two products were estimated by dividing the obtained data proportionally using the ratio of the total domestic production of both products.

[4] Since the parties group submitted data on gross profit margins, the JFTC calculated the conversion ratio (the ratio of the increase in sales volume of Company B to the decrease in sales volume of Company A in the case where Company A implements a small price increase. The conversion ratio assumes that all of the sales volume that Company A

B. Imports

(a) The state of imports, etc.

Although the amount of crystalline glucose imported into Japan was small until around 2000, it has been on the rise since then, and over the past 10 years the total import volume of crystalline glucose has been between about 8,000 tons and about 12,000 tons. Products of several foreign manufacturers, mainly from China, Germany, and South Korea, are imported, and although there are some fluctuations due to the effects of exchange rates, the overall trend is upward.

Interviews with users have revealed that among the users who actually use crystalline glucose as a raw material for foods, there are those who have experience of switching from domestic products to imported products, those who are actually considering switching to imported products, and those who have suggested switching to imported products when negotiating the price of domestic products. This suggests that the use of imported products as substitutes for domestic products by domestic users has spread, and it seems to have become a restraint against price increase of domestic products.

(b) Degree of institutional barriers

There are no particular institutional barriers against import other than tariffs. As described below, the extent to which the tariff system poses a barrier to the import of dextrose monohydrate is recognized to be limited, because imported products have a certain level of price competitiveness even when

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loses due to the price increase will be converted to sales volumes of other companies in the same market and that all of the companies in the market are equally competitive.). Based on the conversion ratio and the prices of the parties group, the JFTC calculated the GUPPI (Gross Upward Pricing Pressure Index, an index used to evaluate whether and to what extent the parties group formed after a business combination would have incentives to raise its prices). The formula for calculating GUPPI is as follows:

GUPPI from Company A to Company B = conversion ratio x profit margin of Company B x price of Company B / price of Company A

As a result of the calculation, the GUPPIs for dextrose monohydrate and dextrose anhydrous were 4.8% and 4.6%, respectively, which are relatively high values, suggesting that there is a certain degree of incentive for the parties group to raise the prices after the acquisition of the shares in this case. However, this analysis result is only for reference because in this case, the gross profit rate, calculated based on accounting costs, had to be used as a proxy variable for the profit margin, as opposed to using the profit calculated based on the cost concept assumed in economics, such as treating labor costs as variable expense, which is appropriate in conducting such economic analysis.

tariffs are taken into account.

(c) Whether or not there are import-related distribution problems

According to the interviews with users, there are no distribution problems related to imports, and a growing number of domestic distributors are handling imported products, so it is recognized that domestic users can purchase imported products regardless of the nature or scale of their business.

(d) Degree of substitutability between imported products and the products of the parties group

Dextrose monohydrate is a monosaccharide product made by hydrolyzing starch to the molecular level, and its quality is not likely to differ significantly, so there is no significant difference in domestic products due to differences in manufacturers. According to the interviews with users, there is basically no difference in quality between imported products and domestic products, and if users were to suspect any quality difference due to the contamination with burnt products, etc. during the manufacturing process, they would use imported dextrose monohydrate after confirming its quality. Based on the above, substitutability is generally recognized between domestic and imported products in terms of quality.

As for the price, imported products are generally cheaper than domestic products in domestic sales price, hence more price competitive than domestic products, so imported products are recognized to have substitutability for domestic products in terms of price.

(e) Degree of supply possibility from overseas

Although the amount of crystalline glucose imported into Japan was small until around 2000, it has been on the rise since then, and the use of imported products in Japan tends to expand. Currently, about 60% of imported crystalline glucose comes from China, and this figure has been increasing in recent years, especially due to quality improvements. Since corn, the raw material, is easy to obtain, China and other countries around the world have a considerable excess capacity to supply crystalline glucose, and it is recognized that there is a possibility of an increase in imports in the event that the parties group raises the price of the product.

(f) Summary

As mentioned above, there are no institutional or distributional barriers against importing dextrose monohydrate, with the exception of tariffs, and even with tariffs imported products are competitive in price; they also have substitutability for domestic products in terms of quality; the use of imported products is on the rise, and there is sufficient excess capacity overseas, mainly in China; and users are actually switching from domestic products to imported products, or suggesting such a switch when negotiating the price of domestic products. Therefore, import pressure is recognized to such an extent that it seems to have become a restraint against price increase of domestic products.

C. Entry

According to the interviews with competitors, manufacturing of dextrose monohydrate would require a significant investment in the introduction of necessary facilities, and this applies even to existing manufacturers of saccharified products, and no enterprises have newly entered recently or are expected to enter the market in the future. Accordingly, entry pressure is not recognized.

D. Competitive pressure from adjacent markets

Apart from dextrose monohydrate, there are sugar and many other sweeteners, and it is not necessarily impossible to use other sweeteners in foods, beverages, etc. that currently use dextrose monohydrate. In fact, some food products use dextrose monohydrate and others use different sweeteners, even though they are of the same type.

On the other hand, as described in Part III 1 and 2 above, according to the interviews with users, who are manufacturing/sales companies of food products, etc., they use various sweeteners, including dextrose monohydrate, according to the characteristics of each sweetener. In addition, in some situations users of dextrose monohydrate may find it difficult to switch to other sweeteners for food products for which production has already begun using dextrose monohydrate, because the use of dextrose monohydrate as a raw material was decided during the development of the food products based on its sweetness, functionality, and price.

Therefore, competitive pressure from adjacent markets is limited.

E. Competitive pressure from users

According to the interviews with users, there are some cases where large

users in particular have procured products from multiple domestic manufacturers from the viewpoint of ensuring stable supply, or have switched to imported products against the background of limited excess capacity of domestic manufacturers, etc. However, since the excess capacity of domestic manufacturers is not sufficient at present, users are not in a situation where they can easily change their suppliers. Therefore, competitive pressure from users on the parties group is limited.

F. Summary

As described above, the competitive pressure from competitors, adjacent markets, and users is limited, and although no entry pressure is recognized, import pressure is recognized to the extent that imported products seem to have become a restraint against price increase of domestic products, as the products of several foreign manufacturers are imported and the use of imported products is on the rise. Therefore, the conduct of this case would not substantially restrain competition in this particular field of trade through unilateral conduct.

(2) Substantial restriction of competition through coordinated conduct

As described in (1) B above, competitive conditions such as cost conditions for imported products are different from those for domestic products, and users are actually switching from domestic products to imported products, or suggesting such a switch when negotiating the price of domestic products. Therefore, import pressure is considered to be a sufficient restraint and to hinder coordinated conduct.

Therefore, the conduct of this case would not substantially restrain competition in this particular field of trade through coordinated conduct of manufacturing/sales companies of dextrose monohydrate in Japan.

2 Dextrose anhydrous

(1) Substantial restriction of competition through unilateral conduct

A. Position of the parties group and conditions of competing enterprises

The following table shows market shares of manufacturers of dextrose anhydrous. As HHI, after the conduct of this case, is around 4,600, up around 1,200, the conduct of this case does not meet the safe-harbor criteria for horizontal business combinations.

[Market shares concerning dextrose anhydrous in FY2019]

Rank	Company name	Market share
1.	San-ei Sucrochemical	Approx. 50%

2	Company D	Approx. 25%
3	Showa Sangyo Group	Approx. 10%
	Imports	Approx. 15%
Total		100%
Combined market share/rank: approx. 60%/1st place		

Although there is a competitor, Company D, which has a market share of approximately 25%, it is not recognized to have sufficient excess capacity, and against price increase by the parties group, the competitor could impose only limited restraint by increasing its supply volume. Therefore, competitive pressure from competitors is limited.

B. Imports

The situation of imported products is the same as in 1 (1) B above, and import pressure is recognized for dextrose anhydrous as well.

C. Entry

According to the interviews with competitors, manufacturing of dextrose anhydrous would require a significant investment in the introduction of necessary facilities, and this applies even to existing manufacturers of saccharified products, and no enterprises have newly entered recently or are expected to enter the market in the future. Accordingly, entry pressure is not recognized.

D. Competitive pressure from adjacent markets

According to the interviews with users, it is difficult to substitute dextrose anhydrous' function of low water content with other sweeteners, so the competitive pressure from adjacent markets is limited.

E. Competitive pressure from users

According to the interviews with users, there are some cases where large users in particular have procured products from multiple manufacturers from the viewpoint of ensuring stable supply, or have switched to imported products against the background of insufficient excess capacity of domestic manufacturers. However, since the excess capacity of domestic manufacturers of dextrose anhydrous is not sufficient at present, users are not in a situation where they can easily change their suppliers. Therefore, competitive pressure from users on the parties group is limited.

F. Summary

As described above, import pressure is recognized as the products of several foreign manufacturers are imported and the use of imported products is on the rise. Therefore, the conduct of this case would not substantially restrain competition in this particular field of trade through unilateral conduct.

(2) Substantial restriction of competition through coordinated conduct

As described in (1) B above, import pressure is recognized, and since competitive conditions such as cost conditions for imported products are different from those for domestic products, import pressure is considered to be a sufficient restraint and to hinder coordinated conduct.

Therefore, the conduct of this case would not substantially restrain competition in this particular field of trade through coordinated conduct of manufacturers of dextrose anhydrous in Japan.

Part V Conclusion

The JFTC concluded that the conduct of this case would not substantially restrain competition in any particular field of trade.

CASE 3 Acquisition of BASF Colors & Effects Japan Ltd. of shares by DIC Corporation

Part I. Parties

DIC Corporation is a company which mainly operates pigment manufacturing and sales business, and BASF Colors & Effects Japan Ltd. is a company which mainly operates pigment sales business.

Hereinafter, DIC Corporation is referred to as "DIC", and a group of companies which have already formed joint relationships with DIC is referred to as "DIC Group". Also, BASF Colors & Effects Japan Ltd. is referred to as "BCE", and a group of companies which have already formed joint relationships with BCE[1] is referred to as "BCE Group".

DIC Group and BCE Group are collectively referred to as "the Parties".

Part II. Overview of this case and applicable provision

This is a case in which DIC plans to acquire all the voting rights related to the shares of BCE (hereinafter referred to as the "Conduct of this case").

The applicable provision is Article 10 of the Antimonopoly Act.

Part III. Brief Summary of Results of Merger Review

1. Merger review procedure by the JFTC

The Parties voluntarily submitted to the Japan Fair Trade Commission (hereinafter referred to as the "JFTC") its written opinions and materials, in which it saw that the Conduct of this case is unlikely to substantially restrain competition in February 2020 and later, and, at the request of the Parties, the JFTC held several meetings with the Parties. Then, following the submission by DIC of a written notification of the plan for the Conduct of this case in accordance with the provisions of the Antimonopoly Act on April 20, 2020, the JFTC received such notification and started the primary review. Because, as a result of the progress of the primary review based on the aforementioned written notification and other materials submitted by the Parties, it was found that this case requires more detailed review, the JFTC requested DIC to submit reports, etc., and started the secondary review on May 20,

[1] DIC Group plans to acquire all the issued shares held by the companies operating pigment manufacturing and sales business under BASF SE (headquartered in Germany), the ultimate parent company of BCE, and the Conduct of this case forms part of such plan. This case was reviewed by including the companies (including BCE) operating pigment manufacturing and sales business under BASF SE in the BCE Group.

2020, and publicized on the same day that it started the secondary review and that it will receive public comments from third parties.

In the secondary review, at the request of the Parties, the JFTC held several meetings with the Parties to explain and discuss relevant issues, etc. Also, the JFTC proceeded with the review on the impact of the Conduct of this case on competition, based on the reports, etc., submitted in turn by DIC, as well as on the results, etc., of the interview with, written surveys on and economic analysis about the users, distributors, etc.

In addition, with respect to the request to DIC to submit reports, etc., the submission of all the reports, etc., was completed when DIC submitted the reports, etc., on November 27, 2020.

2. Brief summary of the merger review

The JFTC conducted review mainly on the fields of trade related to the pigments, the color indexes[2] of which were Pigment Red 179[3] (hereinafter referred to as "P.R.179"), Pigment Violet 29[4] (hereinafter referred to as "P.V.29"), Pigment Red 122[5] (hereinafter referred to as "P.R.122"), Pigment Red 202[6] (hereinafter referred to as "P.R.202") and Pigment Violet 19[7] (hereinafter referred to as "P.V.19") (hereinafter collectively referred to as the "Five Pigments"), which were deemed to have a relatively greater impact on competition in the fields of trade in which the Parties compete. With respect to the fields of trade related to P.R.179, P.V.29 and P.R.202 (hereinafter referred to as the "Three Pigments"), out of the Five Pigments mentioned above, which are expected to be of high quality because they are used for automotive paint, etc., as described in Sections IV through VIII, the JFTC concluded that the Conduct of this case is unlikely to substantially restrain competition based on the premise that the Parties will implement the remedies proposed by the Parties to the JTFC.

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[2] Names assigned to colors registered in the database jointly maintained by the Society of Dyers and Colourists and the American Association of Textile Chemists and Colorists (e.g., "P.R.179 (Pigment Red 179)" is a name assigned to "No. 179" "Red" "Pigment").

[3] A red pigment used for automotive paints, etc.

[4] A violet pigment used for automotive paints, carpet fibers, etc.

[5] A red pigment used for inks, etc.

[6] A red pigment used for automotive paints, inks, etc.

[7] A violet pigment used for paints, inks, etc.

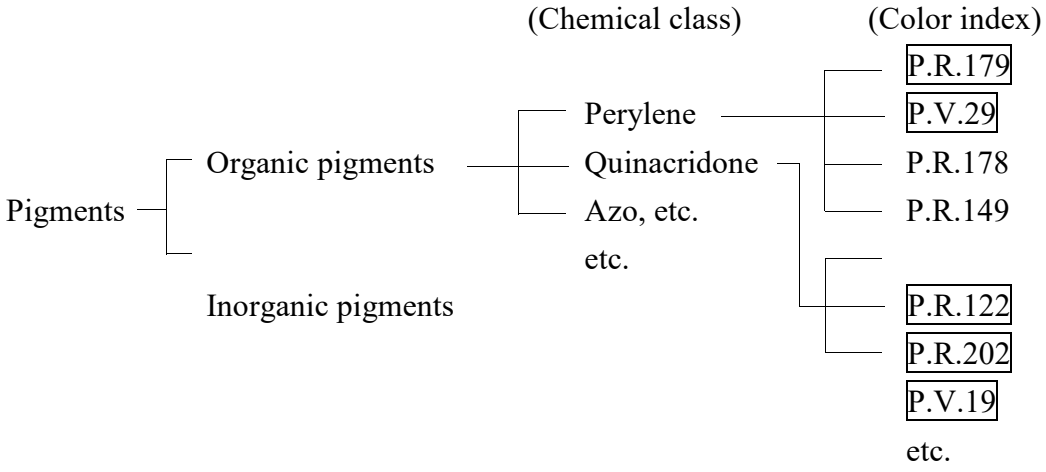
Also, with respect to all the fields of trade other than those of the Three Pigments, the JFTC concluded that the Conduct of this case is unlikely to substantially restrain competition in particular fields of trade.

Part IV. Pigments

1. Product description

Pigments are colorants that give colors to substances and are preliminary goods in a powdery state for manufacturing inks or paints.

Pigments are largely categorized into organic pigments which are chemically synthesized mainly from petroleum, and inorganic pigments which are obtained by chemical reaction of metals, etc. These pigments are categorized by chemical class, and their classes are further categorized by color index depending on detailed classification differences.



2. Particular fields of trade

(A) Product market definition

a Organic pigments and inorganic pigments

The demand substitutability of organic pigments and inorganic pigments is limited even if they belong to the same color, because they differ in characteristics such as richness of color variations, colorability and clearness of color. Also, there can be found no supply substitutability between organic pigments and inorganic pigments because it is difficult to change their manufacturing processes due to the differences in their raw materials, and manufacturing methods and facilities, etc.

Hence, organic pigments and inorganic pigments are defined as different product markets.

b Organic pigments with different chemical classes

Organic pigments differ in characteristics such as weatherability and thermostability depending on their chemical classes; therefore, it is likely that users often cannot alternatively use organic pigments with different chemical classes. Also, the supply substitutability between organic pigments with different chemical classes is limited due to certain difference in their raw materials, and manufacturing methods and facilities, etc.

Hence, organic pigments with different chemical classes are defined as different product markets.

c Organic pigments of the same chemical class with different color indexes

At the interviews with users, some users explained that organic pigments with different color indexes are not normally used alternatively because each color index has different characteristics such as shade and transparency. Other users said that, in considering an alternative organic pigment with a certain color index, they first consider organic pigments with the same color index manufactured by a different manufacturer, and that there are also cases where they do not consider any organic pigment with a different color index. Hence, the demand substitutability between organic pigments with different color indexes is limited.

Also, the supply substitutability between organic pigments with different color indexes is limited because they have different structural details even if they have the same chemical class, thereby being manufactured with to some extent different raw materials, and manufacturing methods and facilities, etc.

d Economic analysis

In order to confirm to what degree the price levels differ between the Five Pigments in the fields of trade in which the Parties competes, and to confirm whether the prices and price ratio proceed in a manner that can be said to fall under the same product market, the JFTC conducted price analysis such as price correlation analysis[8] and

[8] The price correlation analysis for market definition is an analytical method in

stationary analysis[9], using the sales performance data for users in Japan (January 2016 – December 2019) submitted by the Parties[10].

First, it was confirmed that the monthly average sales prices of the Five Pigments proceed with more than certain degree of difference[11]. Next, in the price correlation analysis of monthly average sales prices, there was a significance found between organic pigments with color indexes with different chemical classes in that the correlation coefficient became partially greater than a certain degree[12]. However, there was no robustness found[13] in the price correlation analysis conducted in parallel using log difference[14]. For other combinations, the

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which to calculate a correlation coefficient for the prices of two goods to be analyzed, and in which, if there is found a high correlation coefficient between them, it will be concluded that these goods are more likely to be in the same market.

[9] The stationary analysis for market definition is an analytical method in which to confirm whether there is stationarity in the price ratio of two goods (i.e., whether there can be found any relationship that the prices of goods converges to the same price level in a long-term period even if there is a temporary gap between the price of certain goods and that of the other goods) using the price ratio of such two goods to be analyzed, and in which, if there is stationarity, it will be concluded that these goods are more likely to be in the same market.

[10] Basically, the same results were obtained also in the price analysis using the respective data on the performance of sales for users in Europe and the U.S. included in the sales performance data of the Parties. However, because the data showed that exchange rate fluctuations are likely to be extremely large, the price analysis, using monthly average sales prices worldwide calculated by adding up the data on the performance of sales for users in Japan, Europa and the U.S. after converting such data to the same currency unit, has not been conducted.

[11] In particular, the price level of P.V.29 was extremely high, which was approximately 1.9-3.6 times higher than that of organic pigments with other color indexes.

[12] Significance means that it is hard to see that the estimated result is coincidental, but it is considered to make sense, and means in this context that the prices of two goods are not statistically uncorrelated (i.e., correlation coefficient is zero) but are correlated.

[13] Robustness means that there arises no significant difference in estimated results even if there is a change in conditions or assumptions to a certain extent. The combinations in which robustness was not confirmed were those of "P.V.29 and P.R.122" and "P.V.29 and P.V.19", and their correlation coefficients were 0.669 (0.183) and 0.341 (0.017), respectively (the values in brackets are correlation coefficients in the case of using log differences). Also, with respect to P.V.29, the price level is also extremely high as described in footnote 11.

[14] Log difference means, with respect to some numbers like x_1 and x_0, taking a difference of natural logarithm (i.e., $\ln x_1 - \ln x_0$). Because it is known that, if the rate of change is small enough, the log difference is an approximate value for such rate of change (if g_1 is a rate of change from x_0 to x_1, that is, $g_1 = (x_1 - x_0)/x_0$, it will be

robustness was also found in that the correlation coefficients were low (i.e., minus 0.142 to minus 0.260). Thus, it was concluded that organic pigments with different chemical classes are unlikely to be included in the same product market.

On the other hand, with respect to the organic pigments of the same chemical class with color indexes, the stationary analysis was conducted using the Augmented Dickey-Fuller (ADF) test[15] because there were significance and robustness found in the values of correlation coefficient, although not so high, of such combination of organic pigments[16]. As a result, it was suggested that organic pigments with different color indexes are highly likely to be included in different product markets, because the analysis did not confirm robustness that is sufficient to conclude that the price ratio of monthly average sales prices is stationary[17].

As described above, the economic analysis led to a conclusion that supports the qualitative analysis in paragraphs b and c above.

e Conclusion of this part

$\ln x_1 - \ln x_0 = \ln(x_1/x_0) = \ln(1 + g_1) \approx g_1$), the price correlation analysis using log difference can be said to be a price correlation analysis using the rate of change in monthly average sales prices.

[15] The ADF test is known as a standard method for statistically determining whether there is stationarity.

[16] The correlation coefficients of "P.R.179 and P.V.29", "P.R.122 and P.R.202" and "P.R.122 and P.V.19" were 0.492 (0.372), 0.315 (0.356) and 0.383 (0.327), respectively. In addition, although it is likely that the "spurious correlation" in which the correlation coefficient is high due to a change in the price of raw materials used in the two goods, the JFTC has not addressed such "spurious correlation" because the correlation coefficient is not high.

[17] In conducting the ADF test, the first through twelfth lag orders (e.g., the first lag order means the difference between P_{t-1} and P_{t-2} (i.e., ΔP_{t-1}) that is the value of the difference between the price ratio P_t and P_{t-1} for the previous period (i.e., ΔP_t), which is used for eliminating serial correlation in the error terms) were used. Although it is necessary to note that the number of observation is small, in the ADF test, the stationarity of the price ratio of the combination of "P.R.122 and P.R.202" was found only in the cases of the first through fourth lag orders, and the stationarity of the other combinations was confirmed only in lag orders less than the fourth order; therefore, it cannot be said that there can be found robustness in the results indicating stationarity, and it is possible that stationarity may have been confirmed by serial correlation in the error terms.

As described above, the JFTC defined the product markets of organic pigments by color index and defined the Five Pigments as independent product markets, respectively.

(B) Geographic market definition

Pigments are not subject to restrictions in terms of import shipping costs.

Also, suppliers have transacted with users regardless of where users are located, and users have also transacted with suppliers without discriminating against suppliers[18].

Accordingly, the JFTC defines the geographic market as "worldwide".

Part V. Competitive assessment

Part I. Position of the Parties and the state of competition

This case falls under the horizontal business combination because both of the Parties manufacture and sell the Five Pigments.

The market share status of the Three Pigments out of the Five Pigments are as shown in the tables below. The respective markets after the Conduct of this case are described as follows: HHI[19] for P.R.179 is approximately 2,800 with an increment in HHI of approximately 900, and the market share of the Parties is approximately 40% (first ranked); HHI for P.V.29 is approximately 3,300 with an increment in HHI of approximately 300, and the market share of the Parties is approximately 35% (first ranked); and IHH for P.R.202 is approximately 3,500 with an increment in HHI of approximately 200, and the market share of the Parties is approximately 20% (third ranked). Any of the above does not fall under the safe-harbor criteria for the horizontal business combination.

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[18] In defining the geographic market, the JFTC considered to conduct a price analysis to compare changes in prices in Japan, Europe and the U.S. after converting the data on the performance of sales for users in Japan, Europa and the U.S. to the same currency unit. However, because, as described in footnote 10, the data showed that the impact of exchange rate fluctuations is highly likely to be significant, the JFTC did not conduct comparative analysis among areas following the Bishop, S. and M. Walker (2002) "The Economics of EC Competition Law – Concepts, Application and Measurement" London Sweet & Maxwell, Chapter11.

[19] Herfindahl-Hirschman Index (i.e., an index that shows the concentration ratio of a market, which is calculated by the sum of the squares of market shares of companies in certain fields of trade).

[Market share of P.R.179 in 2019]

Rank	Company name	Market share [20]
1	BCE Group	Approx. 25%
2	Company A	Approx. 20%
3	Company B	Approx. 20%
4	DIC Group	Approx. 20%
5	Company C	Approx. 15%
—	Others	0-5%
Total		100%

[Market share of P.V.29 in 2019]

Rank	Company name	Market share
1	Company D	Approx. 35%
2	Company E	Approx. 35%
3	DIC Group	Approx. 30%
4	BCE Group	0-5%
5	Company F	0-5%
Total		100%

[Market share of P.R.202 in 2019]

Rank	Company name	Market share
1	Company G	Approx. 50%
2	Company H	Approx. 25%
3	BCE Group	Approx. 15%
4	DIC Group	Approx. 5%
—	Others	0-5%
Total		100%

On the other hand, the respective markets of the pigments other than those of the Three Pigments after the Conduct of this case are described as follows: HHI for P.R.122 is approximately 1,200 with an increment in HHI of approximately 100, and HHI for P.V.19 is approximately 1,400 with an increment in HHI of approximately 400. They fall under the safe-harbor criteria for the horizontal business combination.

Part II. Legal assessment based on the Antimonopoly Act

As described in paragraph 1 above, the Three Pigments do not fall under the safe-harbor criteria for the horizontal business combination. Also, according to the interviews with users, there were users who said that there was no alternative other than the Parties with respect to the Three Pigments because these were expected to be of high quality as they were used for automotive paint, and because there were

[20] Shown in increments of 5% (e.g., “Approx. 25%” stands for “22.5% or more and less than 27.5%); therefore, the total will not necessarily add up to 100. The same applies hereinafter.

uncertainties concerning the quality and stable supply of competing companies other than the Parties listed in the tables on market shares in paragraph 1 above.

However, with respect to the Conduct of this case, after the secondary review started, the Parties notified the JFTC that it plans to transfer a part of DIC Group's pigment business to a third party. In response to this, because the Parties in the end made a proposal of remedies as described Section VI below as a result of the review by the JFTC, the JFTC decided to conduct a legal assessment based on the Antimonopoly Act in light of such proposal.

Part VI. The proposal of remedies by the Parties

The Parties proposed the following remedies:

(i) To transfer the pigment manufacturing and sales business operated in DIC Group's Bushy Park plant (in South Carolina, the U.S.) to a company other than members of the Parties (hereinafter such business to be transferred is referred to as the "Business to Be Transferred"). The Business to Be Transferred includes tangible assets (e.g., manufacturing assets and facilities), intangible assets (e.g., technology, research and development results), employees, etc., related to pigments manufactured in the Bushy Park Plant;

(ii) The transferee will be selected based on criteria such as being a company with sufficient experience and ability in the pigment field, being a company independent of and without financial ties to the Parties, and having financial resources, expertise and incentive to maintain and develop the Business to Be Transferred. The specific transferee will be notified to the JFTC to obtain approval of the JFTC;

(iii) The Parties will ensure to manage the Business to Be Transferred as business suitable for sales by separating the Business to Be Transferred from other business of DIC Group until the remedies are completed; the effectiveness thereof will be monitored by an independent third party (i.e., monitoring trustee [21]); and

(iv) If the Parties fails to enter into a contract with a transferee within six months, an independent third party (i.e., divestiture trustee[22]) will, upon approval of the

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[21] Meaning a person, as a third party independent of the Parties, who monitors whether the Parties appropriately operates business without undermining the value of the Business to Be Transferred until the completion of the business transfer.

[22] If any transferee is not found within a certain period of time, the Parties will designate a disposition trustee who is an independent third party, and, after the designation of a divestiture trustee takes effect, only such disposition trustee will have the rights to sell the Business to Be Transferred.

JFTC, designate a transferee, and then the Parties will transfer the Business to Be Transferred to the designated transferee.

Currently, DIC Group manufactures P.R.179 only in the Bushy Park Plant, and almost all P.V.29 and P.R.202 in the Bushy Park Plant. Hence, by transferring its Bushy Park Plant, DIC Group will transfer all of its manufacturing and sales business related to P.R.179 and almost all of its manufacturing and sales business related to P.V.29 and P.R.202.

Part VII. Assessment of the remedies

If the remedies in Section VI above are implemented, the market share of the Parties will not increase due to the Conduct of this case in the fields of trade related to P.R.179 out of the Three Pigments, because the manufacturing and sales business of DIC Group (i.e., one of the Parties) as such will be transferred to another company other than the members of the Parties. Also, with respect to the fields of trade related to P.V.29 and P.R.202, the increase in the Parties' market share due to the Conduct of this case will be small because the business equivalent to almost all of DIC Group's market share will be transferred.

The content of the Business to Be Transferred is, as described in (i) of Section VI above, deemed to be sufficient for the purpose of a transfer because this is the transfer in which the entire Business to Be Transferred as such, including the business related to the Three Pigments operated by DIC Group so far and employees involved in manufacturing in the Bushy Park Plant, will be transferred.

Moreover, it is considered that, if a transferee meets all the requirements in (ii) of Section VI, it will be a major independent competitive company in the manufacturing and sales market of the Three Pigments; however, whether the actual transferee meets such requirements will be concluded by the JFTC after receiving reports from the Parties.

In addition, the deadline of the remedies is appropriately and clearly set out in that, as described in (iii) of Section VI above, the Group Company will have a third party (monitoring trustee) involved in order to ensure the effectiveness of business transfer and the competitiveness of the Business to Be Transferred until the time of transfer, that, as described in (iv) of Section VI above, even in the case of the business transfer after the Conduct of this case, such transfer will be implemented within at most six months , and that, if a contract with the transferee is not finally concluded within such period, an independent third party (i.e., divestiture trustee) will, upon approval of the JFTC, designate a transferee of the Business to Be Transferred.

Accordingly, the JFTC considered that the remedies proposed by the Parties are appropriate.

Part VIII. Conclusion

Based on the premise that the Parties will implement its remedies, the JFTC concluded that the Conduct of this case is unlikely to substantially restrain competition in the particular fields of trade.

Case 4 Integration of the diagnostic imaging business and healthcare IT business of Hitachi, Ltd. by Fujifilm Corporation

Part I The Parties

Fujifilm Corporation (JCN 2010401064789) (hereinafter referred to as "Fujifilm") is a company mainly conducting manufacturing and sales of medical equipment.

Hitachi, Ltd. (JCN 7010001008844) (hereinafter referred to as "Hitachi") is a company mainly conducting manufacturing and sales of information and communication systems.

Hereinafter, a group of companies which have already built joint relationships with Fujifilm shall be referred to as "Fujifilm Group," and a group of companies which have already built joint relationships with Hitachi shall be referred to as "Hitachi Group." As well, the Fujifilm Group and the Hitachi Group shall be collectively referred to as "the parties group."

Part II Outline of this case and applicable provision

This case concerns a plan in which Fujifilm would acquire all of the voting rights with regard to shares of Fujifilm Healthcare Corporation (JCN 5040001112100), which had succeeded to the diagnostic imaging business and a part of the healthcare IT business to be split off from Hitachi (hereinafter referred to as "the conduct of this case").

The applicable provision to this case is Article 10 of the AMA.

Note that there are many products manufactured/sold by the parties group that are competing with each other or traded among the parties group. The following explains in detail ultrasound endoscopes and ultrasound observation devices, which were considered to have a relatively large impact on competition.

(FYI) Coordination with foreign competition authorities

This case was also reviewed by foreign competition authorities and the JFTC reviewed this case while exchanging information with the Austrian Federal Competition Authority, the State Administration for Market Regulation of China, the Federal Cartel Office of Germany, the Federal Trade Commission of the US (FTC), etc.

Part III Particular field of trade

1 Product outline

(1) Ultrasound endoscopes

An ultrasound endoscope consists of a probe[1] for ultrasound endoscopy built into the tip of an endoscope, and is used in connection with an ultrasound observation device.

In ultrasound endoscopy, accurate images can be drawn by inserting the endoscope through the mouth, moving it forward through the esophagus, stomach, and duodenum to the vicinity of organs such as the liver, pancreas, and spleen, transmitting ultrasound waves from the probe at the tip in the lumen, and receiving the reflected waves from the object.

(2) Ultrasound observation devices

Ultrasound observation devices analyze the ultrasound waves received by the probe at the tip of the ultrasound endoscope.

There are two types of ultrasound observation devices: a box type that does not allow the user to replace the body surface probe (a device that is applied directly to the body surface to send and receive ultrasound waves), and a stationary type that allows the user to replace the body surface probe.

The box-type ultrasound observation device is a device that constitutes a part of a box-type ultrasound endoscope system, and manufacturers of box-type ultrasound endoscope systems do not sell to other companies box-type ultrasound observation devices alone without building them into their box-type ultrasound endoscope systems.

As for the stationary-type ultrasound observation device, medical institutions, etc. purchase it separately from an ultrasound endoscope and use these two in combination. Stationary-type ultrasound observation devices are used in highly specialized medical and research institutions, such as university hospitals and cancer centers, because they offer more functions and higher image quality than box-type ultrasound observation devices.

2 Product range

(1) Ultrasound endoscopes

There are two types of endoscopes: ultrasound endoscopes and endoscopes without ultrasound function. The use and purpose of ultrasound endoscopes are

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[1] A device that sends and receives ultrasound waves

different from those of endoscopes without ultrasound functions, and there is no demand substitutability between them because users, such as box-type ultrasound endoscope system manufacturers and medical institutions, cannot substitute endoscopes without ultrasound functions for ultrasound endoscopes.

In addition, ultrasound endoscopes, for their development and manufacturing, require ultrasound technology that is not incorporated in endoscopes without ultrasound functions, and it is difficult for manufacturers of endoscopes without ultrasound functions to start manufacturing ultrasound endoscopes in a short period of time without incurring significant costs, so there is no supply substitutability between ultrasound endoscopes and endoscopes without ultrasound functions.

Based on the above, the JFTC defined a product range as "ultrasound endoscopes" in this case.

(2) Stationary-type ultrasound observation devices

As described in 1 (2) above, box-type ultrasound observation devices are sold to medical institutions as an integrated part of box-type ultrasound endoscope systems, and are not sold by themselves. Stationary-type ultrasound observation devices are sold to medical institutions, etc.

Since it is difficult for a manufacturer of one type of ultrasonic observation devices to develop, manufacture, and sell the other type of ultrasonic observation devices in a short period of time, the supply substitutability between box-type ultrasound observation devices and stationary-type ultrasound observation devices is limited.

Based on the above, the JFTC defined a product range as "stationary-type ultrasound observation devices."

3 Geographic range

As for each product for which a product range is defined in 2 above, users purchase them from manufacturers throughout Japan.

In addition to the fact that the manufacturers of these products sell them throughout Japan, there is no regional price difference.

Based on the above, the JFTC defined the geographic range as "all regions of Japan" for each of the products defined in 2 above.

Part IV Impact of the conduct of this case on competition

Although the Fujifilm Group currently manufactures ultrasound endoscopes in-house for the box-type ultrasound endoscope systems that it manufactures/sells, it does not manufacture/sell ultrasound... endoscopes that can be connected to stationary-type ultrasound observation devices. However, after the conduct of this case, the Fujifilm Group is expected to manufacture/sell ultrasound endoscopes that can be connected to the stationary-type ultrasound observation devices manufactured/sold by the Hitachi Group (the Fujifilm Group after the conduct of this case) by changing the specifications of the ultrasound endoscopes that the Fujifilm Group currently manufactures in-house. Therefore, since ultrasound endoscopes and stationary-type ultrasound observation devices are sold to the same users, such as medical institutions, this case falls under the definition of conglomerate business combinations in the business of manufacturing and selling ultrasound endoscopes and stationary-type ultrasound observation devices.

1 Position of the Parties and conditions of competing enterprises

(1) Ultrasound endoscopes

There is no enterprise other than Company A that manufactures/sells ultrasound endoscopes.

[Market shares concerning ultrasound endoscopes in FY2019]

Rank	Company name	Market share
1	Company A	100%
Total		100%

(2) Stationary-type ultrasound observation devices

There is no enterprise other than the Hitachi Group that manufactures/sells stationary-type ultrasound observation devices.

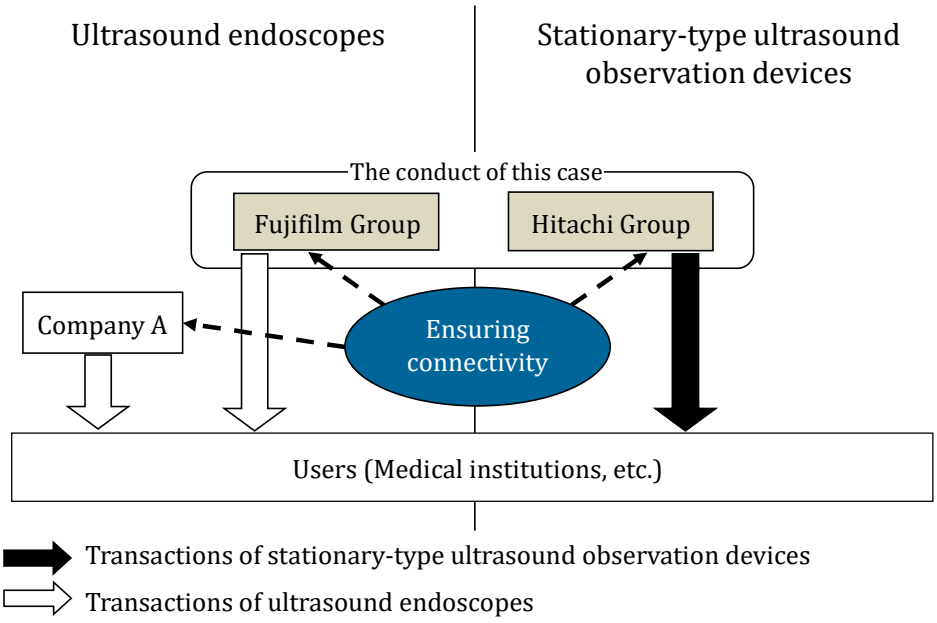
[Market shares concerning stationary-type ultrasound observation devices in FY2019]

Rank	Company name	Market share
1	Hitachi Group	100%
Total		100%

2 Closure or exclusivity of the market of ultrasound endoscopes

The Fujifilm Group states that one of the purposes of the integration of this case is that the businesses of the parties group are complementary and that the Fujifilm Group after the integration will be able to provide total solutions with a broad lineup.

After the conduct of this case, the Fujifilm Group is likely to manufacture/sell ultrasound endoscopes that can be connected to the stationary-type ultrasound observation devices manufactured/sold prior to the conduct of this case by the Hitachi Group and after the conduct of this case by the Fujifilm Group. The Fujifilm Group, after the conduct of this case, may place Company A at a competitive disadvantage by discriminating against Company A in favor of the Fujifilm Group, such as by reducing the degree of connectivity of Company A's ultrasound endoscopes to the Fujifilm Group's stationary-type ultrasound observation devices compared to the degree of connectivity of the ultrasound endoscopes that the Fujifilm Group manufactures/sells; or by making various services related to stationary-type ultrasound observation devices provided to users of Company A's ultrasound endoscopes less favorable than those provided to users of the Fujifilm Group's products. This may cause issues of closure or exclusivity of the market of ultrasound endoscopes, so the following will examine this matter.



*Including potential transactions

(1) Capabilities to implement market foreclosure

There is no enterprise other than the Hitachi Group that manufactures/sells stationary-type ultrasound observation devices.

Therefore, the parties group is recognized to have capabilities to implement market foreclosure.

(2) Incentive to implement market foreclosure

The Fujifilm Group, after the conduct of this case, may place Company A at a competitive disadvantage and exclude Company A from the market by treating ultrasound endoscopes of Company A, which is a competitor of the Fujifilm Group, less favorably than ultrasound endoscopes of the Fujifilm Group with regard to the connectivity of these products to stationary-type ultrasound observation devices during the development of new products, etc.; or by making various services such as after-sales service provided to the users of Company A's products less favorable than the users of the Fujifilm Group's products. Through this, the Fujifilm Group may increase its sales of ultrasound endoscopes and thus increase the profits from the products.

Based on the above, the parties group is recognized to have an incentive to implement market foreclosure.

3 Closure or exclusivity of the market of stationary-type ultrasound observation devices

Since only the Hitachi Group manufactures/sells stationary-type ultrasonic observation devices, there would be no issues of closure or exclusivity of the market of stationary-type ultrasound observation devices.

4 Sharing of confidential information

When Company A develops ultrasound endoscopes, in order to ensure connectivity with the Hitachi Group's stationary-type ultrasound observation devices, confidential competitive information such as information related to the development of those endoscopes is shared with the Hitachi Group.

As a result of the conduct of this case, the Fujifilm Group would obtain confidential competitive information on Company A's product development and sales, etc., and if the Fujifilm Group were to use such information to its advantage, Company A would be placed at a competitive disadvantage, and the issue of closure or exclusivity of the market may arise in the market of ultrasound endoscopes.

5 Summary

Based on the above, there is a probability that the issue of closure or exclusivity of the market will arise in the ultrasound endoscope market.

Part V Proposal of remedies from the Parties

When the Parties were informed that there would be a possibility that an issue of closure or exclusivity of the market would arise from the conduct of this case, the Parties proposed remedies summarized in the following (hereinafter referred to as "remedies of this case").

1 Ensuring connectivity between stationary-type ultrasound observation devices and ultrasound endoscopes, etc.

The parties group will continue to ensure connectivity between the stationary-type ultrasound observation devices manufactured/sold by the Hitachi Group and the ultrasound endoscopes of Company A, and will not treat Company A's products in an unfairly discriminatory manner.

2 Measures to block the flow of information

The parties group will designate persons who have access to Company A's confidential competitive information, and take measures such as setting passwords to restrict access by unauthorized persons.

In addition, those who come into contact with such confidential information will not be allowed to be involved in the ultrasound endoscope business of the Fujifilm Group for a certain period of time.

In addition, those who come into contact with such confidential information will make a written pledge to the effect that they will be subject to punishment in the event that they violate their duty of confidentiality established with regard to the handling of such confidential information, and will act accordingly.

3 Regular reporting

The Parties will make a report to the JFTC once a year in principle for a period of three years from the day of the conduct of this case on the state of implementation of 1 and 2 above.

Part VI Assessment of the remedial measure of this case

If measures, such as ensuring the connectivity between stationary-type ultrasound observation devices and ultrasound endoscopes as described in Part IV 1 above, are taken by the Parties, market foreclosure in the market of ultrasound endoscopes would not be possible while such measures continue to be in place.

In addition, if the measures to block the flow of information as described in Part IV 2 above are adopted, Company A's confidential competitive information would not be shared within the parties group, and the issue of closure or exclusivity of the market would not arise from obtaining Company A's confidential competitive information.

Moreover, regular reporting, as described in Part IV 3 above, is considered as an effective measure in terms of monitoring implementation of the remedies of this case.

Based on the above, the remedies of this case are considered to prevent issues of closure or exclusivity of the market from arising in the market of ultrasound endoscopes.

Part VII Conclusion

The JFTC concluded that the conduct of this case would not substantially restrain competition in any particular field of trade, provided that the Parties implement the remedies of this case.

Case 5 Acquisition of shares of Maxim Integrated Products, Inc. by Analog Devices, Inc.

Part I The Parties

Analog Devices, Inc. (headquartered in the US; hereinafter referred to as "ADI") and Maxim Integrated Products, Inc.(headquartered in the US; hereinafter referred to as "Maxim") are both companies conducting manufacturing and sales of semiconductor products.

Hereinafter, a group of companies which have already built joint relationships with ADI shall be referred to as "ADI Group," and a group of companies which have already built joint relationships with Maxim shall be referred to as "Maxim Group." The ADI Group and the Maxim Group shall be collectively referred to as "the parties group."

Part II Outline of this case and applicable provision, etc.

This case concerns a plan in which ADI would acquire all of the voting rights with regard to shares of Maxim (hereinafter referred to as "the conduct of this case").

The applicable provision to this case is Article 10 of the AMA.

Note that there are multiple products manufactured/sold by the parties group that are competing with each other among the parties group. The following explains in detail the horizontal business combination of the manufacturing and sales of general-purpose analog ICs, which were considered to have a relatively large impact on competition.

Part III Particular field of trade

1 Product outline

(1) Integrated circuits (ICs)

An integrated circuit, also known as an IC, is a semiconductor product consisting of many devices with multiple functions, such as transistors, electrical resistors, and capacitors, etc., mounted on a single silicon semiconductor substrate. ICs are classified into analog ICs and digital ICs according to their functions, performance, etc.

(2) Analog ICs

Analog ICs are ICs that have the function of outputting digital signals from analog inputs such as voltage, sound, light, temperature, etc. Analog ICs can be broadly classified into "general-purpose analog ICs" that can be used for any

application and "application-specific analog ICs" that are used for specific functions or purposes.

(3) General-purpose analog ICs

With only a single function installed, a general-purpose analog IC can be used for general purposes without limiting its application. There are six types of general-purpose analog ICs: amplifiers, comparators, signal conversion, interfaces, isolators, and power management ICs, and they are divided into four categories by function and structure: "amplifiers and comparators," "signal conversion," "interfaces and isolators," and "power management ICs."[1]

A. Amplifiers and comparators

Amplifiers and comparators have the function of adjusting, processing, and modifying input analog signals. Amplifiers have the function of amplifying or attenuating input analog signals (voltage or current), whereas comparators have the function of comparing the intensity of two input analog signals and switching the output signals according to the result.

Since amplifiers also have the functions of a comparator, they may be used as a substitute for a comparator.[2]

B. Signal conversion

Signal conversion is the function of converting data, signals, etc. from one format to another. For signal conversion, there are analog-to-digital converters (ADCs), which convert analog signals to digital signals, and digital-to-analog converters (DACs), which do the opposite.

C. Interfaces and isolators

Interfaces have the function of modifying or shaping signals in order to

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[1] The World Semiconductor Trade Statistics also classifies ICs into four categories. The WSTS classification is considered the most common in the semiconductor industry, and is used as a standard for calculating sales by many semiconductor manufacturers and for creating survey and analysis data by enterprises that conduct market research.

[2] Although it is technically possible to use a comparator as a substitute for an amplifier, it is difficult to guarantee that a comparator will have optimal performance when used as an amplifier because there are differences between amplifiers and comparators in the characteristics of the signals they generate.

guarantee the integrity of signals transmitted over a certain distance through physical media such as wires, cables, waveguides, etc. Isolators, on the other hand, have the function of electrically isolating specific analog or digital signals in a signal chain[3] so that only specific signals can be transmitted. Interfaces and isolators are similar in that they both have the function of mediating the transmission of digital signals within or between electronic systems.

There are two types of interfaces: isolated and non-isolated. Isolated interfaces also include the function of an isolator.

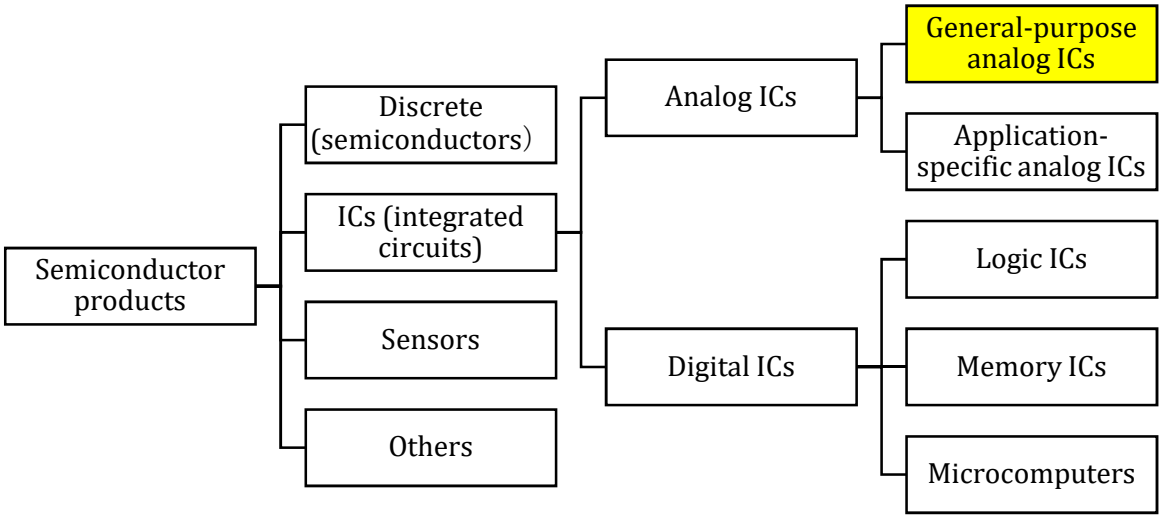
D. Power management ICs

Power management ICs have the function of converting, controlling and distributing DC power, and are divided into different types by each of these functions. Looking into the functions more specifically, there are functions to maintain a constant voltage and stabilize the power supply in a device or system, and functions to monitor and manage the state of batteries, such as measuring how much they are charged.

(4) Application-specific analog ICs

Application-specific analog ICs are analog ICs designed specifically for particular applications, and are categorized by application as “for automobiles,” “for communication equipment,” “for computers,” “for consumer use,” and “for industrial use.” The level of quality, etc., required by customers for application-specific analog ICs may vary depending on the application, and manufacturing/sales companies of application-specific analog ICs sometimes obtain certification, etc., from external organizations in order to guarantee the quality customers want.

[3] It means a series of signal flow to convert an analog signal to a digital signal.



2 Product range

(1) General-purpose analog ICs

A. Substitutability between general-purpose analog ICs and application-specific analog ICs

Demand substitutability between general-purpose analog ICs and application-specific analog ICs is limited because their applications and functions are basically different, although some general-purpose analog ICs and application-specific analog ICs have similar functions.

Meanwhile, the level of quality, etc., required for application-specific analog ICs by customers may be high depending on the application, and in order to guarantee the level of quality customers want, manufacturers may need to have each product certified as meeting safety standards by an external organization, or may need to have their quality control certified by an external organization for each application. Therefore, the supply substitutability with general-purpose analog ICs is limited.

B. Substitutability among general-purpose analog IC products

There are six types of general-purpose analog ICs, and although there are common or similar functions in some products, e.g., between “amplifiers and comparators” and “interfaces and isolators,” the functions are basically different for each product type, and thus the demand substitutability among general-purpose analog IC products is limited.

Since all general-purpose analog IC products are manufactured using basic circuit design and know-how, most analog IC manufacturing/sales companies

can manufacture any type of product within roughly one year using their existing technology and know-how. Therefore, there is a certain degree of supply substitutability among general-purpose analog IC products. Meanwhile, only a few companies manufacture/sell all types of general-purpose analog ICs, and different manufacturers compete in different categories of general-purpose analog ICs, which are classified by their function and structure as "amplifiers and comparators," "signal conversion," "interfaces and isolators," and "power management ICs."

(2) Summary

Based on the above, the JFTC defined product ranges as "amplifiers and comparators," "signal conversion," "interfaces and isolators," and "power management ICs" in this case.

3 Geographic range

All of the products defined in 2 (2) above are traded at practically equivalent prices in all sales regions, with little price difference in Japan and abroad because the transportation costs and tariffs account for only a small percentage of the product prices. As well, the users do business with suppliers regardless of whether the suppliers are in or outside of Japan and the suppliers have established systems to supply products to all over the world.

Based on the above, the JFTC defined the geographic range as "worldwide."

Part IV Impact of the conduct of this case on competition

The conduct of this case falls under the definition of horizontal business combinations as both parties of the parties group conduct manufacturing and sales of semiconductor products including "amplifiers and comparators," "signal conversion," "interfaces and isolators," and "power management ICs" in the global market.

1 Substantial restriction of competition through unilateral conduct

The market shares of manufacturers of "amplifiers and comparators," "signal conversion," "interfaces and isolators," and "power management ICs" are provided in the following tables:

[Market shares concerning amplifiers and comparators in 2019]

Rank	Company name	Market share
1	Company A	Approx. 30%
2	ADI Group	Approx. 25%
3	Maxim Group	0-5%
4	Company B	0-5%
5	Company C	0-5%
	Others	Approx. 35%
Total		100%
Combined market share/rank: approx. 30%/2nd		

[Market shares concerning signal conversion in 2019]

Rank	Company name	Market share
1	ADI Group	Approx. 40%
2	Company D	Approx. 35%
3	Maxim Group	Approx. 5%
4	Company E	0-5%
5	Company F	0-5%
	Others	Approx. 20%
Total		100%
Combined market share/rank: approx. 45%/1st place		

[Market shares concerning interfaces and isolators in 2019]

Rank	Company name	Market share
1	Company G	Approx. 30%
2	ADI Group	Approx. 15%
3	Maxim Group	Approx. 10%
4	Company H	Approx. 10%
5	Company I	0-5%
	Others	Approx. 35%
Total		100%
Combined market share/rank: approx. 20%/2nd		

[Market shares concerning power management ICs in 2019]

Rank	Company name	Market share
1	Company J	Approx. 30%
2	ADI Group	Approx. 10%
3	Company K	Approx. 10%
4	Company L	Approx. 10%
5	Company M	Approx. 5%
6	Company N	0-5%
7	Company O	0-5%
8	Maxim Group	0-5%
	Others	Approx. 35%
Total		100%
Combined market share/rank: approx. 10%/2nd		

Of general-purpose analog ICs, HHI for amplifiers and comparators is around 1,800, up around 200, HHI for interfaces and isolators is around 1,500, up around 200, and HHI for power management ICs is around 1,300, up around 100. Therefore, for these products, the conduct of this case meets the safe-harbor criteria for horizontal business combinations.

For "signal conversion," HHI is around 3,500, up around 500, and the parties group holds around 45% of the market (1st place), so the conduct of this case does not meet the safe-harbor criteria for horizontal business combinations.

The following examines "signal conversion."

(1) Position of the parties group

After the conduct of this case, the market share of the parties group will be around 45% (1st place). However, the market share of the Maxim Group before the conduct of this case is 5% at the most.

Therefore, the conduct of this case would not significantly increase the competitive position of the parties group.

(2) Conditions of competing enterprises

Even after the conduct of this case, there would be an influential competitor, Company D, holding around 35% of the market.

In addition, as the demand for semiconductor products has been increasing in recent years, many enterprises, including Company D, have been actively investing in technology for the manufacturing/selling business of signal conversion products, and price competition between the parties group and competitors is expected to intensify in the future.

Based on the above, competitive pressure from competitors is recognized.

(3) Entry

In addition to the fact that there are no technical or institutional barriers against the entry into the signal conversion market, many enterprises are actively making investments in the related technology, as mentioned in (2) above. Based on this, it is expected that many enterprises will enter the business of manufacturing and sales of signal conversion products in the future.

Accordingly, a certain level of entry pressure is recognized.

(4) Summary

Based on the above, the conduct of this case would not substantially increase the competitive position of the parties group, competitive pressure from competitors is recognized, and a certain level of entry pressure is recognized. Therefore, the conduct of this case would not substantially restrain competition in this particular field of trade through unilateral conduct.

2 Substantial restriction of competition through coordinated conduct

Although the number of competing enterprises would decrease as a result of the conduct of this case, as described in 1 (2) above, the demand for semiconductor products has been increasing in recent years, and many enterprises continue to actively invest in signal conversion technology. Therefore, many enterprises are expected to enter the field of trade of signal conversion. Based on the above, the conduct of this case would not substantially restrain competition in this particular field of trade through coordinated conduct.

Part V Conclusion

The JFTC concluded that the conduct of this case would not substantially restrain competition in any particular field of trade.

CASE 6　　the Acquisition of Fitbit, Inc. by Google LLC

(Tentative Translation)

Part 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.

Part 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.

Part 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 affected[1].

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

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[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.

arise from a viewpoint of vertical business combination.

(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 API[2] 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 API[3].

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,

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[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.

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.

(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 overwrap 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.

Part 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 Bluetooth[4] 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.

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

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 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 environments[5], 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

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[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.

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.

(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 OS[6], 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 charge[7].

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

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.

and notification functions[8].

(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 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.

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[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.

(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 users[9] 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

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

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.

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".

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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.

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.

Part 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 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 environment 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 regulations[12].

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

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 countries[13]. Hence, after careful consideration, the JFTC defines 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

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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 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.

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".

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”.

Part 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.

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

[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.

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%

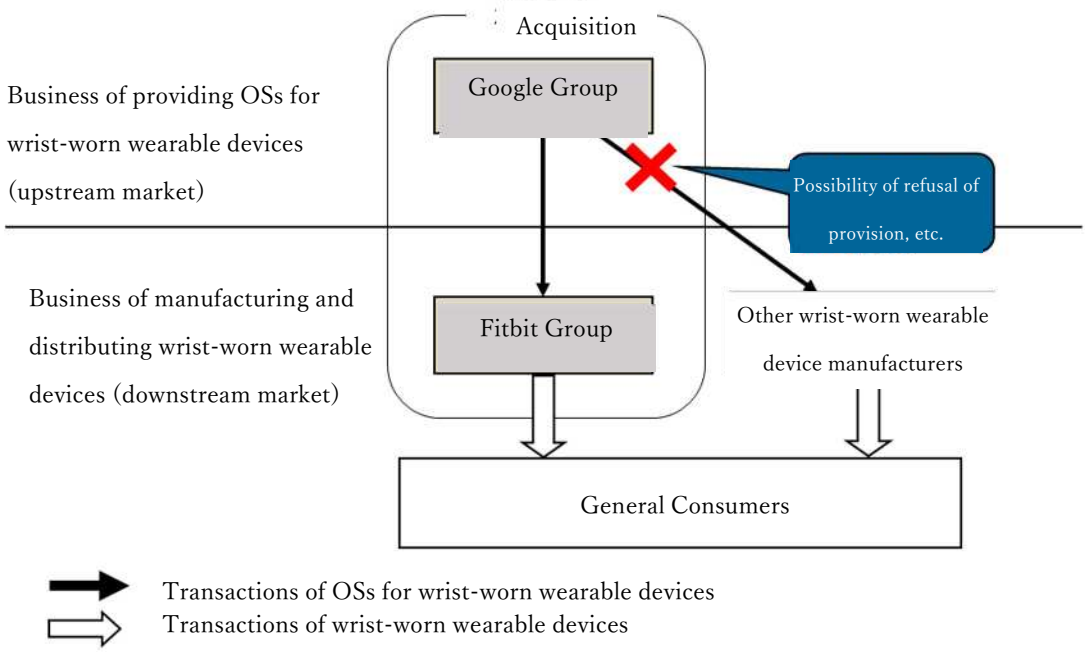
(2) Refusal of provision, etc.

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 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.

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.

[Figure 1]



(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

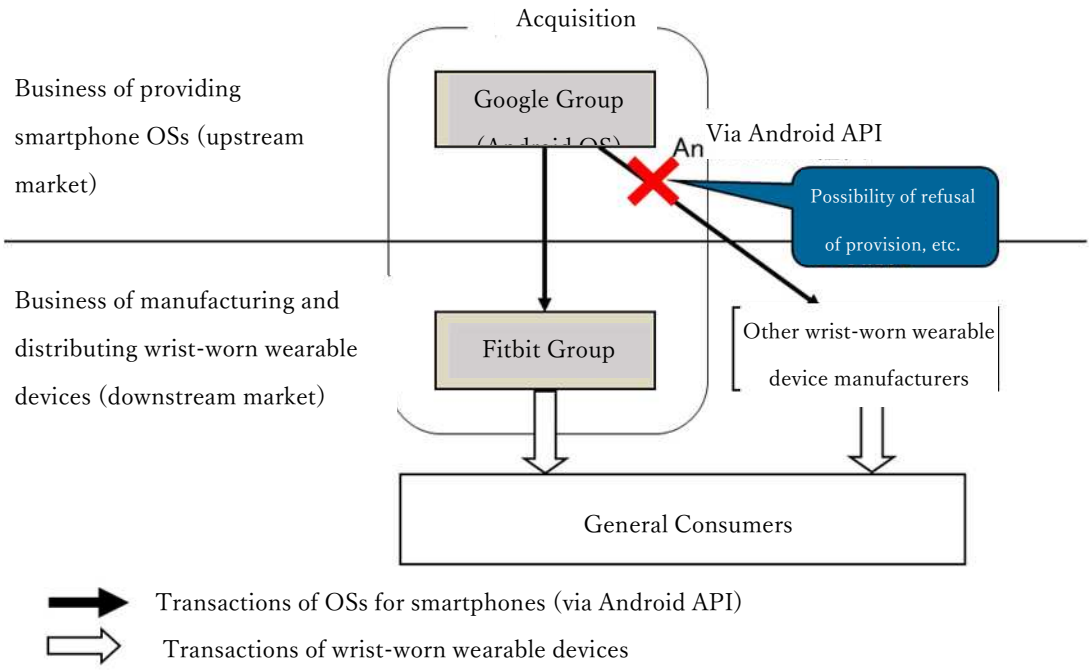
The market share of the Parties with respect to the "business of manufacturing and distributing wrist-worn wearable devices" is as described in 2(1) above, which does not fall under the safe-harbor criteria for vertical business combination. Also, the market share of the "business of providing smartphone 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.

[Figure 2]



(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 arithmetic[16] 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 interoperability[17]" and the "loss of profit from degrading the interoperability[18]",

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.

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 discounted present value[20] in light of the so-called stickiness[21]. 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

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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.

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× 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.

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 interoperability[22].

(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 APIs[23]) 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 non-discriminatory basis from the Parties[24]. 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.

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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.

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.

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

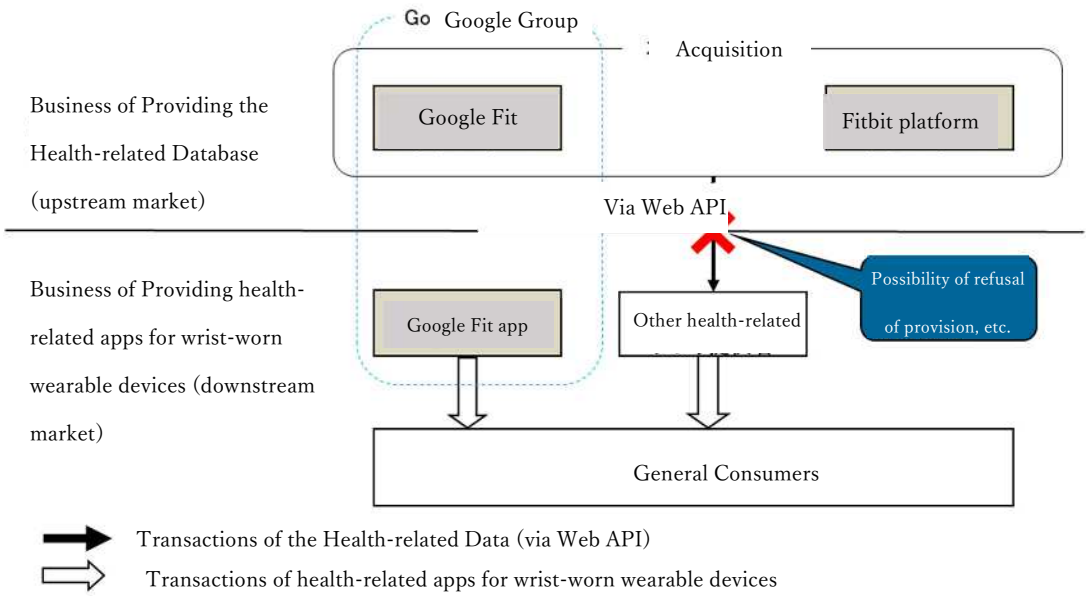
With respect to "Business of Providing the Health-related Database", "health-related apps for wrist-worn wearable devices" and "health-related apps for smartphones", the market shares of the Parties are unknown and will therefore be considered with an assumption that such market shares do not fall under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

(2) Refusal of provision, etc.

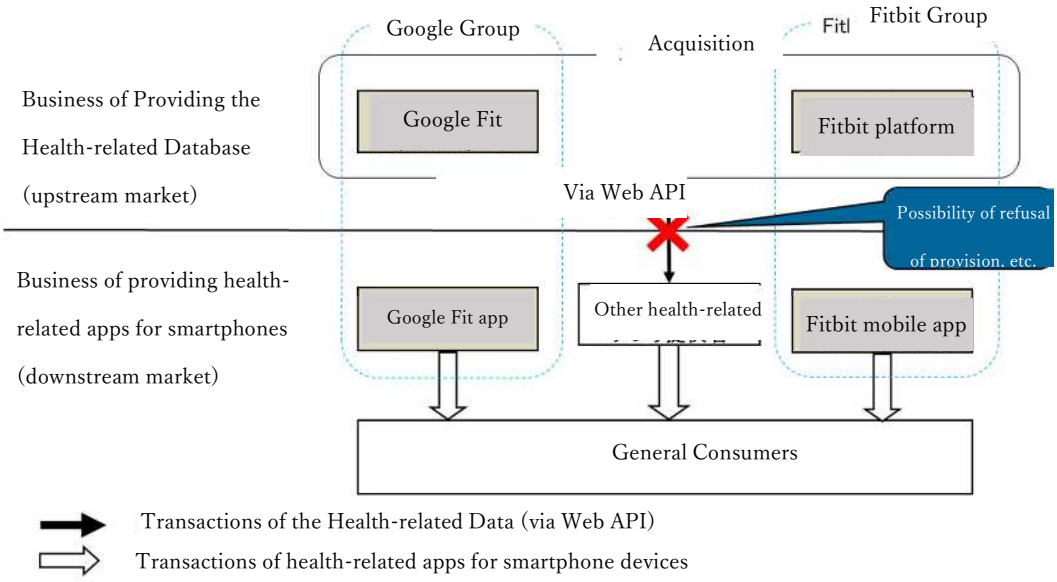
After the Acquisition, it is possible that, with respect to the Business of Providing the Health-related Database, the Parties Group may discriminatory treat health-related app providers other than the Parties Group by suspending access from health-related app providers other than the Parties via Web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

data[25]) 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 use[26] 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.

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

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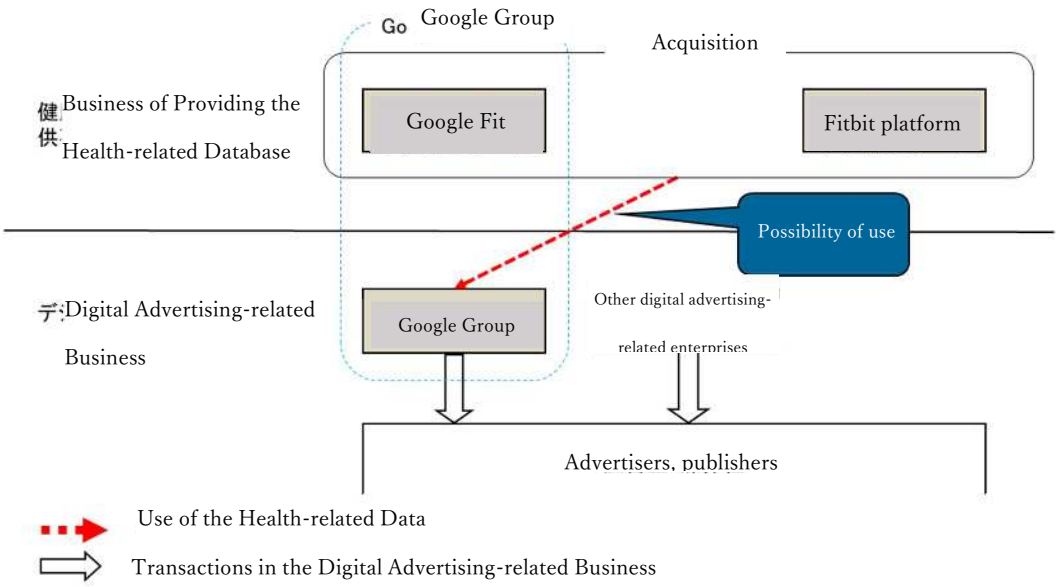
25 In the remedies for the refusal of providing Web API, it means the Health-related Data provided to the Third Parties via Fitbit Web API as of the date of the Acquisition. Provided, however, that the range of such Health-related Data may be added by the monitoring trustee during the applicable duration.

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.

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.

[Figure 5]



(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 data[27]) 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.

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.

Part 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.

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[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.

Case 7 Acquisition of shares of UD Trucks Corp. by Isuzu Motors Limited

Part I The Parties

Isuzu Motors Limited (JCN 5010701000904) (hereinafter referred to as "Isuzu") and UD Trucks Corp. (JCN 8030001043599) (hereinafter referred to as "UD") are both companies conducting manufacturing and sales of trucks.

Hereinafter, a group of companies which have already built joint relationships with Isuzu shall be referred to as "Isuzu Group," and a group of companies which have already built joint relationships with UD shall be referred to as "UD Group." As well, the Isuzu Group and the UD Group shall be collectively referred to as "the parties group."

Part II Outline of this case and applicable provision

This case concerns a plan in which Isuzu would acquire all of the voting rights with regard to shares of UD (hereinafter referred to as "the conduct of this case").

The applicable provision to this case is Article 10 of the AMA.

Note that there are many products manufactured/sold by the parties group that are competing with each other or traded among the parties group. The following explains in detail the manufacturing and sales of large trucks and medium trucks, which were considered to have a relatively large impact on competition.

Part III Particular field of trade

1 Product range

(1) Substitutability between passenger vehicles and commercial vehicles

By usage, automobiles can be broadly classified into passenger vehicles for the purpose of transporting people and commercial vehicles such as trucks for the purpose of transporting cargo. Users who purchase commercial vehicles for the purpose of transporting cargo, etc. cannot substitute passenger vehicles for commercial vehicles, and it is not common for users who purchase automobiles for the purpose of transporting people to purchase commercial vehicles. Therefore, demand substitutability is not recognized.

In addition, there are differences between passenger vehicles and commercial vehicles in terms of body structure and technology required for their manufacturing, and with the exception of some commercial vehicles that are small in size, the manufacturers are different and there is no supply substitutability.

(2) Substitutability among different types of trucks

Truck manufacturers sell various types of trucks with different cargo capacities and body sizes, which are roughly classified into three categories: large trucks (with a maximum cargo capacity of approximately 6 tons or more), medium trucks (with a maximum cargo capacity of approximately 4 tons or more but less than 6 tons), and small trucks (with a maximum cargo capacity of approximately less than 4 tons).

Users choose and procure the trucks that meet their transportation needs from various types of trucks. It is considered possible to use trucks of different cargo capacities alternatively if the difference is small; however, between different categories, the maximum cargo capacity differs considerably and thus the corresponding transportation needs also differ. In addition, according to their category, trucks have different body sizes, which do not just affect the maneuverability of the vehicles, but also make significant differences in price range and fuel efficiency. Since these differences affect the users' choice of products, the demand substitutability between trucks of different categories is considered to be limited.

Meanwhile, a certain level of supply substitutability is considered to be recognized because large trucks and medium trucks are sometimes manufactured on the same production line. However, from the viewpoint of examining the situation of competition among the parties group carefully, the JFTC defined separate product ranges as “large trucks” and “medium trucks.”

In addition to general “trucks” in which the chassis and the bed are integrated, truck manufacturers also produce “tractors,” which can be separated into the chassis and the bed (trailer) that cannot drive itself. Not just capable of transporting heavy items that cannot be carried by large trucks, tractors can also transport marine containers, etc. by placing them on the connected trailers, which eliminates the need to reload cargo. For this reason, tractors are often used for large cargo or mass transportation. Thus, the cargo capacity of tractors is mostly equivalent to that of large trucks in the above three categories. Therefore, examining the substitutability between trucks and tractors, demand substitutability is considered to be limited because tractors are used to transport heavy items and marine containers that are difficult for trucks to carry. Meanwhile, trucks and tractors differ only in the length of their bodies and whether they are equipped with a towing device to connect a trailer, with not much difference in their structures as vehicles, and truck manufacturers manufacture tractors on the same lines as large trucks. Therefore, supply substitutability can be recognized between large trucks and tractors, so it is appropriate to define a product range together with large trucks.

Consequently, the JFTC defined product ranges as “large trucks,” which include large trucks and tractors, and “medium trucks.”

2 Geographic range

Since trucks are sold to users through sales offices, etc. of truck sales companies throughout Japan, users can choose trucks regardless of where the manufacturing bases of truck manufacturers are located, and truck manufacturers compete with each other for users throughout the country without limiting the regions.

Based on the above, the JFTC defined the geographic range as “all regions of Japan.”

Part IV Impact of the conduct of this case on competition

As the Isuzu Group and UD Group both manufacture/sell “large trucks” and sell “medium trucks,” the conduct of this case falls under the definition of horizontal business combinations.

1 Large trucks

(1) Substantial restriction of competition through unilateral conduct

A. Position of the Parties

The following table shows market shares of manufacturers of large trucks. As HHI, after the conduct of this case, is around 3,600, up around 900, the conduct of this case does not meet the safe-harbor criteria for horizontal business combinations.

[Market shares concerning large trucks in FY2019]

Rank	Company name	Market share
1.	Company A	Approx. 35%
2	Isuzu Group	Approx. 25%
3	Company B	Approx. 20%
4	UD Group	Approx. 15%
Total		100%
Combined market share/rank: approx. 40%/1st place		

B. Conditions of competing enterprises

In the truck market, the research and development of automatic driving technology and other technologies has become more active in recent years, and in order to respond to this situation, there has been an increase in affiliation internationally through business and capital alliances.

After the conduct of this case, the parties group’s market share will be

around 40%. However, there are influential competitors, Company A and Company B, holding around 35% and 20% of the market respectively. According to the interviews with competitors, their production capacity is recognized to be at a level higher than the current production volume. In addition, according to the demand forecast by an industry group, the demand in the domestic truck market is expected to decrease in FY2025, which means that the truck manufacturers are expected to further increase their excess capacity in the future.

As described above, competitors have excess capacity to respond to the switch of suppliers by users, so they are recognized to be able to impose a restraint against price increase by the Parties.

Looking at the trend of the large truck market share since FY2014, Company A's market share has increased by about 5%, while the market shares of the Isuzu Group, the UD Group, and Company B have all decreased by 1 to several percent, which suggests that the competition between Company A and the Isuzu Group (or the UD Group, Company B) has been relatively more active than that between the Isuzu Group and the UD Group.

Based on the above, competitive pressure from competitors is recognized.

C. Competitive pressure from users

Transportation companies, which are the main users of large trucks, place importance on keeping procurement costs as low as possible because they use large trucks for business purposes. Since large trucks tend to have longer operating distances, loading capacity, maneuverability, fuel efficiency, etc. are also important factors, but it is difficult for truck manufacturers, which have already reached a certain technical level, to make significant differentiation in these areas. In addition, in the case of passenger vehicles, users (general consumers) consider design and vehicle concept as major factors when choosing a vehicle, but in the case of large trucks, where practicality is important, design has less of an impact.

Therefore, users are quite demanding in terms of price. According to the notifying corporation, most of the users obtain quotations from multiple truck manufacturers when purchasing large trucks, and especially in the case of large users such as major transportation companies and major rental companies of construction vehicles, they purchase dozens to hundreds of trucks in one order, so in order to land such orders, large truck manufacturers meet the users' demand for price reduction. In the interviews with large truck users (top business partners of the parties group) as well, it was recognized that the users, when purchasing

large trucks, obtained quotations from several truck manufacturers and negotiated the prices by using the prices of competing truck manufacturers and past supplier prices in order to further reduce the prices. In addition, in the interviews with the large truck users (top business partners of the parties group), they did not raise any concerns in terms of competition regarding the conduct of this case. According to these facts, it is recognized that truck manufacturers, including the Parties, are under strong pressure from users to reduce prices. In addition, as described in B above, the demand for large trucks is expected to decrease in the future, and truck manufacturers are expected to have stronger incentives than before to compete for business with users through price competition in order to maintain their sales volume. Based on the above, competitive pressure from users is recognized.

D. Summary

As described above, competitive pressure from competitors and competitive pressure from users are recognized. Therefore, the conduct of this case would not substantially restrain competition in this particular field of trade through unilateral conduct.

(2) Substantial restriction of competition through coordinated conduct

In addition to the fact that truck manufacturers, including the parties group, have sufficient excess capacity and incentives to increase sales by increasing the volume of orders received, users obtain quotations from multiple suppliers, negotiate for price reductions based on the quoted prices, and choose suppliers based on the results of such negotiations, which serves as competitive pressure from users. Therefore, the conduct of this case would not substantially restrain competition in this particular field of trade through coordinated conduct with other manufacturers.

2 Medium trucks

(1) Substantial restriction of competition through unilateral conduct

A. Position of the Parties

The following table shows market shares of manufacturers of medium trucks. As HHI, after the conduct of this case, is around 4,000, up around 200, the conduct of this case does not meet the safe-harbor criteria for horizontal business combinations.

[Market shares concerning medium trucks in FY2019]

Rank	Company name	Market share
1.	Isuzu Group	Approx. 45%
2	Company C	Approx. 40%
3	Company D	Approx. 15%
4	UD Group	0-5%
Total		100%
Combined market share/rank: approx. 45%/1st place		

However, the UD Group's market share is only 0-5% and is on the decline.

B. Conditions of competing enterprises

After the conduct of this case, the parties group's market share will be around 45%. However, there are influential competitors, Company C and Company D, holding around 40% and 15% of the market respectively. As well, according to the interviews with competitors, their production capacity is recognized to be at a level higher than the current production volume. In addition, as described in 1 (1) B above, the truck manufacturers are expected to further increase their excess capacity in the future.

As described above, competitors have excess capacity to respond to the switch of suppliers by users, so they are recognized to be able to impose a restraint against price increase by the Parties.

Based on the above, competitive pressure from competitors is recognized.

C. Competitive pressure from users

The same as described in 1 (1) C above.

D. Summary

As described in A above, the increase in market share from the conduct of this case is small, and competitive pressure from competitors and competitive pressure from users are recognized. Therefore, the conduct of this case would not substantially restrain competition in this particular field of trade through unilateral conduct.

(2) Substantial restriction of competition through coordinated conduct

As described in (1) A above, the increase in market share from the conduct of this case is small, and truck manufacturers, including the parties group, have sufficient excess capacity and incentives to increase sales by increasing the volume of orders received. In addition, users obtain quotations from multiple suppliers,

negotiate for price reductions based on the quoted prices, and choose suppliers based on the results of such negotiations, which serves as competitive pressure from users.

Therefore, the conduct of this case would not substantially restrain competition in this particular field of trade through coordinated conduct with other manufacturers.

Part V Conclusion

The JFTC concluded that the conduct of this case would not substantially restrain competition in any particular field of trade.

Case 8 Establishment of a joint investment company concerning design and sales of merchant ships by Imabari Shipbuilding Co., Ltd. and Japan Marine United Corporation

Part I The Parties

Imabari Shipbuilding Co., Ltd. (JCN 7500001011179) (hereinafter referred to as "Imabari Shipbuilding") is a company mainly conducting manufacturing and sales of merchant ships.

Japan Marine United Corporation (JCN 8020001076641) (hereinafter referred to as "JMU") is a company mainly conducting manufacturing and sales of merchant ships, naval ships, offshore floating structures[1], etc.

Hereinafter, a group of companies which have already built joint relationships with Imabari Shipbuilding shall be referred to as "Imabari Shipbuilding Group," and a group of companies which have already built joint relationships with JMU shall be referred to as "JMU Group." As well, the Imabari Shipbuilding Group and the JMU Group shall be collectively referred to as "the parties group."

Part II Outline of this case and applicable provision

This case concerns a plan made by Imabari Shipbuilding and JMU, in which Imabari Shipbuilding would acquire 30% of the voting rights with regard to shares of JMU, and the two companies would establish a joint investment company concerning the business of design and sales of merchant ships and offshore floating structures with the exception of LNG carriers (see Part III 1 (2) below) (hereinafter collectively referred to as "the conduct of this case").

The establishment of the above joint investment company will be carried out by having a wholly-owned subsidiary established by JMU succeed to, through absorption-type split, JMU's business related to the design and sales of merchant ships (excluding LNG carriers) and offshore floating structures as well as Imabari Shipbuilding's business related to the design and sales of merchant ships (excluding LNG carriers), and then Imabari Shipbuilding's acquiring 51% of the voting rights related to the said wholly-owned subsidiary of JMU as consideration for the absorption-type split.

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[1] Structures floating in the ocean that are used for offshore development JMU manufactures/sells offshore floating structures such as oil and gas production, storage and offloading facilities and offshore wind-related facilities, but the business that the joint investment company would succeed to in this case is limited to the business related to floating offshore wind-related facilities.

The applicable provisions in this case are Article 10 and Article 15-2 of the AMA.

Note that there are multiple products manufactured/sold by the parties group that are competing with each other. The following explains in detail the manufacturing and sales of merchant ships, which were considered to have a relatively large impact on competition.

Part III Particular field of trade

1 Product outline

(1) Ocean-going vessels and coastal vessels

There are two types of merchant ships: ocean-going vessels that serve foreign routes and coastal vessels that serve domestic routes. The structure and equipment of ocean-going vessels must conform to international conventions established by the International Maritime Organization, whereas coastal vessels are not subject to international conventions because their navigation areas are limited, so the hull structures of ocean-going and coastal vessels are different. In addition, ocean-going vessels are large in size because they cover long transportation distances and the importance is placed on transporting as much cargo as possible in one voyage, whereas coastal vessels, which are used only for domestic cargo transportation, are smaller than ocean-going vessels.

While ocean-going vessels are built by major domestic and foreign shipbuilding companies, coastal vessels are built by small and medium-sized domestic shipbuilding companies, and both parties of the parties group are mainly engaged in building ocean-going vessels.

Therefore, the following examines ocean-going vessels.

(2) Types of merchant ships

Merchant ships, which transport passengers and cargo, are divided into various types (ship types) depending on the type of cargo to be transported and the transportation method.

The following four types of ocean-going merchant ships have been built by both parties of the parties group over the past five years.

1) “Bulk carriers,” which transport large quantities of various resources such as iron ore, coal, grain, etc. as they are, without packaging.
2) “Container ships,” which transport international standard containers containing cargo loaded in cargo holds or on deck
3) “LNG carriers,” which transport liquefied natural gas (LNG), which was

liquefied at low temperature, by storing it in tanks made of special materials.

4) "Car carriers," which transport self-propelled cargo such as automobiles and construction machinery, with a multi-deck structure like a multilevel parking garage.

(3) Sizes of merchant ships

Merchant ships are built in a variety of sizes (size categories) even within the same ship type, and ships suitable for the amount of cargo to be transported and the scale of facilities at ports of call are used.

In the shipping industry, size categories are given names derived from the constraints of shipping routes and roles of the ships, but there is no clear definition of the names or the ranges of the size categories.

For example, typical size category names of container ships and their ranges are shown in the table below.

Names		Ranges	Characteristics
Post-Panamax		15,000 TEU[2] or more	Large ships that cannot pass through the Panama Canal
Neopanamax	Large	12,000 TEU or more less than 15,000 TEU	Ships that can pass through the Panama Canal after the expansion works in 2016.
	Small	8,000 TEU or more less than 12,000 TEU	Ships that can pass through the Panama Canal after the expansion works in 2016.
Panamax		3,000 TEU or more less than 8,000 TEU	Ships that can pass through the pre-expansion Panama Canal
Feeder		Less than 3,000 TEU	Small ships used on feeder routes that connect major ports (hubs) around the world with regional ports.

2 Product range

(1) Demand substitutability

Merchant ships are divided into various ship types depending on the type of

[2] TEU (Twenty-foot Equivalent Unit) is a unit used to indicate the loading capacity of a container ship or the cargo capacity at a container terminal, and it expresses the amount of cargo based on the volume of a 20-foot container.

cargo to be transported and the transportation method. Depending on the ship type, there are differences in the chemical and physical characteristics of the cargo and the ways of stacking the cargo, so there are differences in the equipment installed on the ships. As users choose a ship type according to the cargo to be transported, there is no demand substitutability among the ship types.

In addition, although there are various size categories of merchant ships, users choose the size of ship according to the required loading capacity and facility constraints on the route, so demand substitutability among ship size categories is limited.

(2) Supply substitutability

A. Shipbuilding process

A merchant ship is manufactured as follows: the hull is manufactured in several blocks, which are assembled in facilities called "docks" (hull construction) to complete the hull, then the ship is launched and moored at a wharf, where it is outfitted with equipment and facilities (outfitting works) to function as a ship.

Merchant ships, regardless of the type or size category, are all built according to the above process, and the main production facilities are hull factories and docks for manufacturing and assembling blocks, as well as wharves.

B. Substitutability among the ship types and size categories

Since the structure of the hull and the internal structure of the hull differ depending on the ship type[3], building a different type of ship requires skills to create design drawings for the type of ship, and the acquisition of such skills generally requires several years of preparation. The shapes of the blocks that make up the hull, as well as the necessary equipment and facilities, vary depending on the ship type. Therefore, the work required, the amount of work, and the time required for the block manufacturing and outfitting process vary depending on the ship type.

In terms of size categories, shipbuilding companies build hulls by assembling blocks at the docks, so the size of the ships they can build is limited

3 For example, container ships used in regular routes are required to operate at high speeds even if they are large in size in order to keep up with port call schedules, thus requiring a hull shape that can cope with the increased wave-making resistance that comes with higher speeds. In the case of tankers, a double-layered structure is required to prevent liquid cargo from leaking overboard in the event of an accident.

by the size of their docks. In addition, the amount of work and time required for shipbuilding vary depending on the size category, so building ships of different size categories at the same time complicates the process management.

For the above reasons, shipbuilding companies try to receive orders for the ship type and size category that they are good at in succession, so that they can improve production efficiency and reduce manufacturing costs through the use of similar design documents, etc., in order to offer competitive ship prices. Even among shipbuilding companies that build multiple types of ships, many have multiple docks, each of which is somewhat dedicated to building ships of certain types and size categories.

Thus, for many shipbuilding companies, it is not easy to build ships of types or size categories for which they have never received an order before.

Therefore, supply substitutability is limited among different ship types and size categories.

With regard to the classification of container ships by size category as mentioned in 1 (3) above, ships larger than "Panamax" that can pass through the Panama Canal after the expansion works are generally referred to as "Neopanamax." As mentioned in (1) above, users choose the size of ship according to the required loading capacity and facility constraints on the route including ports of call, and the ships that fall under the category of Neopanamax include not only those of the maximum size that can pass through the Panama Canal, but also relatively small ships. There is a considerable difference in the size of the hull between the small Neopanamax and the large Neopanamax that can pass through the Panama Canal after the expansion work in 2016, and it may be possible to build the former but not the latter due to the limitation of the size of the dock.

(3) Summary

From the above, in the field of manufacturing and sales of merchant ships, a different product range is defined for each ship type and size category. In addition, from the perspective of carefully examining supply substitutability, with regard to the classification of container ships by size category, Neopanamax will be classified into two categories: "large," which applies to the largest class of ships that can pass through the Panama Canal after the expansion works in 2016, and "small," which applies to smaller ships.

The parties group manufactures/sells ships of multiple types and size categories, of which the following examines "container ships (large Neopanamax),"

concerning which the conduct of this case is considered to have a relatively large impact on competition.

3 Geographic range

The major shipbuilding companies that build container ships (large Neopanamax) are concentrated in three countries: Japan, South Korea and China. These domestic and foreign shipbuilding companies have sales areas all over the world, and sell container ships (large Neopanamax) at practically the same price in all sales areas of the world. When domestic and foreign users of container ships (large Neopanamax) place orders for such ships, they obtain quotations from domestic and foreign shipbuilding companies regardless of the country in which they are based and choose and do business with shipbuilding companies without distinguishing between domestic and foreign shipbuilding companies.

Accordingly, the JFTC defined the geographic range as “worldwide” in this case.

Part IV Impact of the conduct of this case on competition

As both parties of the parties group manufacture/sell “container ships (large Neopanamax),” the conduct of this case falls under the definition of horizontal business combinations.

1 Substantial restriction of competition through unilateral conduct

(1) Position of the Parties and conditions of competing enterprises

The following table shows market shares of manufacturers of container ships (large Neopanamax). As HHI is around 2,700, up around 600, the conduct of this case does not meet the safe-harbor criteria for horizontal business combinations.

[Market shares based on total orders received[4] over the five years from 2014 to 2018]

Rank	Company name	Market share
1.	Company A	Approx. 35%
2	Imabari Shipbuilding Group	Approx. 15%
3	JMU Group	Approx. 15%
4	Company B	Approx. 10%
5	Company C	Approx. 5%
	Others	Approx. 15%
Total		100%
Combined market share/rank: approx. 35%/2nd		

After the conduct of this case, the parties group's market share will be around 35% (2nd place). However, there are multiple competitors, in addition to influential competitors, Company A and Company B, holding around 35% and 10% of the market respectively.

In addition, the shipbuilding industry has been in the state of excess capacity as the volume of orders for new ships has been decreasing since the 2008 financial crisis, and each competitor has sufficient excess capacity to supply container ships (large Neopanamax).

Therefore, competitive pressure from competitors is recognized.

(2) Competitive pressure from users

The users, namely shipping companies and ship-owning companies, are working hard to lower their operating costs so that they can make a profit even in unstable shipping markets, and they are also trying to procure ships at the lowest possible price.

Therefore, in order to have a countervailing bargaining power against shipbuilding companies, users obtain quotations from multiple shipbuilding companies and have them compete with each other when choosing suppliers. In addition, in a questionnaire survey of merchant ship users located in Japan, they were asked if they were concerned about the impact of the conduct of this case on

[4] Orders received are based on the "Compensated Gross Tonnage (CGT)," which is an indicator of the amount of shipbuilding work. Building ships with the same volume but of different types, sizes, or specifications will require different amounts of shipbuilding work to be done at a shipyard. For this reason, CGT is used as an indicator of the amount of work done by shipbuilding companies, and it is calculated by multiplying the Gross Tonnage (GT), which represents the volume of a ship, by CGT coefficients determined by the ship type and size.

their ship procurement, and the majority of the respondents answered that they were not concerned. In the interviews with container ship users located in Japan as well, they did not raise any concerns in terms of competition regarding the conduct of this case.

According to these facts, shipbuilding companies, including the parties group, are under strong pressure from users to reduce prices, and shipbuilding companies that compete with each other for business with such users have strong incentives to compete.

Therefore, competitive pressure from users is recognized.

(3) Summary

As described above, competitive pressure from competitors and competitive pressure from users are recognized. Therefore, the conduct of this case would not substantially restrain competition in this particular field of trade through unilateral conduct.

2 Substantial restriction of competition through coordinated conduct

Since the number of influential competitors with more than 10% market share will be reduced from four to three as a result of the acquisition of the shares in this case, the main question to be asked is whether competition will be substantially restrained through coordinated conduct.

However, as mentioned in 1 (1) above, there are a large number of competitors in the field of trade of container ships (large Neopanamax). In particular, in addition to the influential competitors, Company A and Company B, Company C is the second largest company in the field of trade of Post-Panamax container ships with a market share of more than 20%, and among the other competitors, there are companies whose order volume for Post-Panamax is more than twice that of large Neopanamax.

In addition, the shipbuilding industry has been in the state of excess capacity, and all the above competitors also have sufficient excess capacity. As well, transactions of container ships are generally based on lot orders, in which multiple ships are ordered at one time, and for shipbuilding companies, which need to increase the utilization rate of their shipyards as an important management issue, receiving orders for container ships, in which multiple ships are ordered at one time, is significant in terms of both securing sales and securing workload. In particular, large Neopanamax, the largest class of ships that can pass through the Panama Canal, is the main size category of container ships, so shipbuilding companies have a high incentive to receive orders.

Under such circumstances, as described in 1 (2) above, users are employing order placement methods such as obtaining price quotations from multiple shipbuilding companies to have them compete with each other, so they have strong incentives to compete.

Based on the above, the conduct of this case would not substantially restrain competition in this particular field of trade through coordinated conduct of manufacturing/sales companies of container ships (large Neopanamax).

Part V Conclusion

The JFTC concluded that the conduct of this case would not substantially restrain competition in any particular field of trade.

Case 9 Acquisition of Shares of The Fukuho Bank, Ltd. by The Fukui Bank, Ltd.

Part I. Parties

The Fukui Bank, Ltd. (regional bank, hereinafter referred to as "Fukui Bank") and The Fukuho Bank, Ltd. (second-tier regional bank, hereinafter referred to as "Fukuho Bank") are headquartered in Fukui Prefecture, and operate the business of banking mainly in Fukui Prefecture.

Fukui Bank and Fukuho Bank are collectively referred to as the "Parties". In addition, a group of companies which have already formed joint relationships with Fukui Bank, and a group of companies which have already formed joint relationships with Fukuho Bank, are collectively referred to as "the company group."

Part II. Outline of the case and applicable provision

Fukui Bank plans to acquire the shares of Fukuho Bank and thereby obtain more than 50 percent of Fukuho Bank's voting rights (hereinafter referred to as "the acquisition").

The applicable provision is the Article 10 of Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (hereinafter referred to as "the Antimonopoly Act").

Part III. Proceedings and brief summary of the review

1 Proceedings

In June 2020, the company group voluntarily explained to the Japan Fair Trade Commission (the JFTC) about the plan of acquisition of shares of Fukuho Bank by Fukui bank. Since then, the JFTC has been explained the plan by the company group by oral or written reports.

The company group concluded a basic agreement concerning acquisition of shares of Fukuho Bank by Fukui bank, and announced the fact on January 14, 2021. Since the acquisition means the combination of major banks headquartered in Fukui Prefecture, and it may have an impact on the competition in Fukui Prefecture, the JFTC requested the company group to provide an explanation on related facts continuously, while asking competitors and users to submit document reports or be interviewed to find the necessary facts.

The company group submitted the written notification of their plan of the acquisition to the JFTC, in accordance with the provision of the Antimonopoly Act, on May 17, 2021. The JFTC received it, and reviewed the impact of the acquisition on competition, in consideration of the plan notification, documents submitted by the company group, the result of interview with competitors and users, and others.

2 Brief summary of the review

Among fields of trade where the Fukui Bank group competes with the Fukuho bank group, the field of business lending was reviewed intensively because it has considerable impact on competition as a result of the acquisition. The review was conducted from the

viewpoint of whether or not the acquisition would lead to the decrease of alternatives of financial institutions to the Parties for users including SMEs, resulting in enabling the Parties to determine terms of trade including interest rate without considerable constraint. At the end, the JFTC concluded that the acquisition would not substantially restrain competition in any regions of Fukui Prefecture, based on the facts including existence of competitors exerting sufficient competitive pressure in all regions of the Prefecture, as described in section VI below.

Also, regarding other fields of trade where the Fukui Bank group and the Fukuho Bank group compete with each other, such as non-business lending (see IV. 2 (2) described below), deposit, exchange, investment trust sales, public bond sales, insurance agents, and credit cards, the Commission concluded that the acquisition would not substantially restrain competition in the particular fields of trade, based on the facts including existence of competitors exerting sufficient competitive pressure.

The detail of review about the field of business lending is as follows.

Part IV. Overview of financial institutions and lending business and the market

1 Financial institutions

Financial institutions handling business lending are banks, cooperative financial institutions, and government-affiliated financial institutions.

(1) Banks

Banks are classified into city banks, regional banks, and second-tier regional banks. Several city banks and regional banks have their branches within Fukui Prefecture and operate their businesses. Meanwhile, the second-tier regional bank which has its branches within Fukui Prefecture is Fukuho Bank only.

Also, city banks and regional banks whose branches are located not in Fukui Prefecture but in prefectures adjacent to Fukui Prefecture conduct business with a part of users in Fukui Prefecture.

Basically, there is no legal restriction on borrowers of banks.

(2) Cooperative financial institutions

Cooperative financial institutions which have their branches within Fukui Prefecture include Shinkin banks, credit unions, agricultural cooperatives (hereinafter referred to as "AC"), and credit federations of fishery cooperatives (hereinafter referred to as "CFFC.")

Shinkin banks finance their members in principle[70]. In the case of judicial persons, those who have the membership qualification shall be limited to judicial persons

[70] However, if borrowers are local public bodies, lending to non-members is possible (Article 53, paragraph 2 of Shinkin Bank Act, and Article 8 of the Order for Enforcement of the Shinkin Bank Act).

who employ 300 permanent employees or less, or whose capital amount is 0.9 billion yen or less[71].

Credit unions finance their members in principle[72]. In the case of enterprises, those who have the membership qualification shall basically be limited to judicial persons whose capital amount is 0.3 billion yen or less (0.1 billion yen in the case of wholesale business, 0.05 billion yen in the case of retail business and service business), or persons who employ 300 permanent employees or less (100 employees or less in the case of wholesale business, 50 employees or less in the case of retail business, 100 employees or less in the case of service business)[73].

ACs finance their members and CFFCs finance members of fishery cooperatives that are members of the CFFC, in principle[74]. Those who have the membership qualification for ACs shall mainly be limited to farmers. In the case of judicial persons, those who have the membership qualification for ACs shall be limited to judicial persons who employ 300 or less employees, or whose capital amount is 0.3 billion yen or less[75]. Also, those who have the membership qualification for fishery cooperatives shall be mainly limited to fishers. In the case of judicial persons, those who have the membership qualification shall be limited to judicial persons who satisfy the requirements including that the number of employees is 300 or less[76].

(3) Government-affiliated financial institutions

Government-affiliated financial institutions which have their branches within Fukui Prefecture and operate their businesses are The Shoko Chukin Bank, Ltd. (hereinafter referred to as “the SCB”) and Japan Finance Corporation (hereinafter referred to as “the JFC”).

The SCB is a financial institution which aims to facilitate financing for groups of small- and medium-sized enterprises (hereinafter referred to as “SMEs”) and the

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[71] Article 10, paragraph 1 of Shinkin Bank Act, and Article 4, the Order for Enforcement of the Shinkin Bank Act.

[72] However, if borrowers are local public bodies, lending to non-members is possible (Article 9-8, paragraph 1, item 1 of Small and Medium-Sized Enterprise Cooperatives Act, and Article 14, paragraph 1 of the Order for Enforcement of the Small and Medium-Sized Enterprise Cooperatives Act).

[73] Article 9 (8), paragraph 1, item 1, Article 8, paragraph 4, Article 7, paragraph 1, item 1 of Small and Medium-Sized Enterprise Cooperatives Act.

[74] Article 10, paragraph 1, item 2 of Agricultural Cooperatives Act, and Article 11, paragraph 1, item 3 of Fishery Cooperative Act. However, if borrowers are local public bodies, lending to non-members is possible (Article 10, paragraph 20 of Agricultural Cooperatives Act, Article 11, paragraph 10 of Fishery Cooperative Act, and Article 2, paragraph1 of the Order for Enforcement of the Fishery Cooperative Act).

[75] Article 2, paragraph 1, and Article 12 of Agricultural Cooperatives Act.

[76] Article 18 of Fishery Cooperative Act.

members[77]. Its borrowers are limited to SCB's shareholders including small and medium-sized enterprise cooperatives, and the members, and lending is basically provided for SMEs[78].

The JFC is a financial institution fully funded by the government of Japan, and its purpose includes supplementing finance provided by ordinary financial institutions[79]. The business of the JFC consists of Micro Business and Individual Unit, SME Unit, and Agriculture, Forestry, Fisheries and Food Business Unit. The first unit finances micro and individual enterprises, the second SMEs, and the third agriculture, forestry, and fishery businesses, mainly. With the limited exception, each financing system of the JFC has the detailed requirements for lending, and only those who satisfy the requirement may be financed[80]. Also, the terms of lending including the use of funds, limitation of lending, period of lending, and interest rate are specified beforehand, upon the approval of the competent minister.

2 Overview of lending business

Lending business provided by financial institutions is classified into "business lending" for bodies including enterprises, and "non-business lending" for general consumers.

(1) Business lending

The business lending is the business of providing funds for enterprises or local public bodies.

Lending for enterprises is firstly dealt with from (a) to (e) below, and then lending for local public bodies in (f) at the last.

(a) Trigger for entering into business

According to interviews with financial institutions and users, a lending business in Fukui Prefecture is majorly opened up by a salesperson with each branch of financial institutions, visiting a potential customer regularly, grasping the demand for funds and making a proposal of lending.

When users select financial institutions as a lender, various terms of repayment shall be considered, for example, interest-rate level, whether the interest rate is fixed or floating, the requirement of collateral or guarantee, and period for repayment. Also, in the case of users borrowing from two or more financial institutions as described in below (d), some users select the financial

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77 Article 1 of Shoko Chukin Bank Limited Act.

78 In the case of manufacturing business, its capital amount is 0.3 billion yen or less, or its number of employees is 300 or less, in the case of wholesale business, its capital amount is 0.1 billion yen or less, or its number of employees is 100 or less, in the case of service business, its capital amount is 0.05 billion yen or less, or its number of employees is 100 or less, in the case of retail business, its capital amount is 0.05 billion yen or less, or its number of employees is 50 or less, etc. (Article 2, paragraph 1 of Small and Medium-sized Enterprise Basic Act).

79 Article 1 of Japan Finance Corporation Act.

80 The website of the JFC (https: //www.jfc.go.jp/n/finance/search/index.html)

institution which the users are least dependent on, for balanced borrowing from each financial institution.

(b) Examination of lending and transaction conditions

Financial institutions conduct an examination of lending by collecting information through regular visits to enterprises, finding financial status from financial statements and other sources, performing credit ratings for enterprises, and evaluating profitability of investment plans, etc.

The transaction conditions are determined by bilateral negotiations between the financial institutions and users for each loan, and the interest rate is proposed by the financial institutions considering the cost situation (for more detail on factors to be considered by financial institutions to decide the interest rate, see (e) below).

(c) Post-contract visit

Even after conclusion of a loan contract, financial institutions shall often visit the enterprise regularly or irregularly for the purpose of managing credit so that the loaned funds will be repaid as scheduled.

In business lending, marketing personnel are necessary not only for sales activities to acquire transactions but also for continuous visits to users after lending, so it is necessary for financial institutions to develop the structure for lending, including sales personnel and branches as the bases.

(d) Number of financial institutions with which users have transactions

According to the interviews with financial institutions and users, in Fukui Prefecture, users often conduct "multi-bank transactions," which means deals with two or more financial institutions, for the purpose of stable fund procurement and risk diversification. However, some enterprises conduct "single-bank transactions" which means deals with only a single financial institution. The number of financial institutions with which enterprise trades tends to increase as the business scales and the amount of borrowing increases.

Among the financial institutions with which enterprises conduct transactions, the one with the largest loan balance or the longest-term business relationship is recognized as the main bank. However, according to the interviews with financial institutions and users, users in Fukui Prefecture tend to receive financing from financial institutions other than the main bank when conditions such as interest rates are satisfactory. There are also users who borrow from other financial institutions than the main bank and the borrowing amount is equivalent to or more than the borrowing amount from the main bank. Thus, it was not found that the selection of financial institutions is restricted by the existence of the main bank.

(e) Determinant of interest rates

According to the interviews with financial institutions, a lending interest rate of business lending is decided based on A) procurement cost, B) banking expenses, C) credit cost, and D) profit, considering other factors including competition situation with other financial institutions, collateral and guarantee status, repayment period, status of other transaction than the loan project with the same user.

A) Procurement cost is the cost required for a bank to procure funds. Banks procure funds that are the source of lending from deposits or the mutual fund market of financial institutions called as interbank, and the interest rate required for the procurement is the procurement cost.
B) Banking expenses include personnel expenses related to lending operations, material expenses for properties such as branches, and administrative expenses.
C) Credit cost is an estimate of the loss that will be incurred if the lender becomes unable to repay.
D) Profit is the profit for financial institutions.

Financial institutions usually set standard interest rates for each lender's business condition and loan period, taking into consideration the above A), B), C), and D). Financial institutions determine the interest rate presented to users based on the above standard interest rate, taking into consideration the competitive situation with other financial institutions regarding the lending project, other transaction status with the lender, etc.

Of the above, B), C), and D) differ depending on the financial institution. B) Banking expenses vary depending on the density of the branch network, the efficiency of paperwork, and the amount of manpower put in for sales. For example, banking expenses are relatively high when financial institutions have a lot of branches in a certain geographic area, they have a small loan amount per user, salespersons are in charge of a relatively small number of users, and they spend long time visiting each user. Regarding the C) credit cost, how much information can be collected about users and lending projects, and how to evaluate it, differs depending on the financial institution. Therefore, it is difficult for each financial institution to grasp the cost standard of the other financial institutions.

According to the interviews with competitors, in Fukui Prefecture, when multiple financial institutions compete for individual transactions, it is not uncommon to offer users an interest rate below cost.

(f) Lending to local public bodies

Unlike general enterprises, local public bodies are loaned from financial

institutions by local bonds or temporary borrowings based on the Local Autonomy Law.

Lending to local public bodies is legally possible for any financial institution. According to the interviews with financial institutions and local public bodies, local public bodies in Fukui Prefecture are basically using designated bidding or other methods (hereinafter referred to collectively as "bidding") to receive finance from the financial institution which presents the lowest interest rate. Those who participate in bidding related to lending to local public bodies in Fukui Prefecture include city banks, regional banks, second-tier regional banks and Shinkin banks, as well as ACs and a CFFC.

As described above, lending to local public bodies differs from lending to general enterprises in terms of transaction method and content.

(2) Non-business lending

Non-business lending is the business of providing loans to general consumers. Non-business lending is roughly divided into mortgage housing loans, education loans, auto loans, free loans, and card loans, according to the purpose of use of the funds (including multipurpose loans).

Transactions are generally initiated with introduction by companies providing services which generate fund demand such as housing manufacturers in the case of mortgage housing loans, with users' visits to financial institution branches and loan centers, and with application via the Internet.

Financial institutions prepare standard products for non-business lending with fixed lending conditions, such as interest rates, for each purpose of use, and basically do not change the lending conditions for each individual transaction. Lending conditions such as interest rates are published on the websites of each financial institution, and it is easy for general consumers to compare them.

Part V. Definition of particular field of trade

1 Service market

(1) Business lending and non-business lending

(a) Demand substitutability

While the users of business lending are enterprises and local public bodies, the users of non-business lending are general consumers (see the above IV. 2), therefore the users themselves are different. Also, financial institutions confirm the usage for business lending and do not allow borrowing to be used for any different usage. In addition, non-business lending usually has a smaller loan amount than business lending and is not a substitute for business lending. Therefore, the business lending and non-business lending are not in an alternative relationship for users, and no demand substitutability can be found.

(b) Supply substitutability

In business lending, it is necessary to set lending conditions according to the business and financial situation of each user (see the above IV. 2 (1)), so the financial institutions need to have expertise and experience to grasp or evaluate the credit status and other conditions by visiting enterprises on a regular basis and to reflect them in the lending conditions. It takes considerable costs and time for them to acquire such expertise and experience. In addition, in order to make regular visits to enterprises, branches that serve as the bases and a corresponding number of sales personnel are required.

On the other hand, as for non-business lending, regardless of the credit status of individual consumers, the lending conditions are constant (see the above IV. 2 (2)). In addition, it is possible to rely on the examination of the guarantee company for the loan examination. For this reason, the expertise and experience required for business lending, as well as the development of branches and personnel, are not required.

As described above, business lending and non-business lending differ in the required branches, number of staff, expertise and experience, and it is not easy for a non-business lending provider to provide business lending. Therefore, supply substitutability between business lending and non-business lending is limited.

(c) Conclusion of this section

Based on the above, the JFTC examined the substantial restriction on competition on the premise that business lending and non-business lending are defined as the different scope of services.

(2) Service markets and types of users

The Parties are handling business lending for large and midsize enterprises,

SMEs[81], and local public bodies.

Large and midsize enterprises, SMEs, and local public bodies differ in business scale, scope of business development, nature of business, borrowing amount, transaction method, etc. In addition, the financial institutions handling transactions with large and midsize enterprises, SMEs, and local public bodies are different, because the restrictions on borrowers differ depending on the type of financial institutions that are lenders (see the above IV. 1).

Based on the above, "lending for large and midsize enterprises", "lending for SMEs", and "lending for local public bodies" are defined as different service markets.

The scope of competitors in each service market was defined as follows.

(a) Lending for large and midsize enterprises

Large and midsize enterprises tend to have a large business scale, require a significant amount of funds, and have a large amount of borrowing.

In this respect, banks have no legal restrictions on the size of borrowers, industries, etc. (see the above IV. 1 (1)), and the lending limit is also large. Therefore, large and midsize enterprises can use each bank as an alternative lender.

Borrowers of Shinkin banks, credit unions and the SCB are basically limited to SMEs by law (see the above IV. 1 (2)). In addition, the JFC mainly lends SMEs, etc. (see the above IV. 1 (3)). Therefore, the cases where large and midsize enterprises can use such financial institutions as alternative lenders are limited.

For ACs, etc., the lending target is basically limited to farmers, etc., and the borrower shall be, in principle, their members, but large and midsize enterprises do not have the membership qualifications (see the above IV. 1 (2)).

Based on the above, in the examination of this case, the scope of competitors in lending to large and midsize enterprises was considered to be banks.

(b) Lending to SMEs

Since SMEs tend to have relatively small business scales and borrowing amounts, banks are sufficiently capable of meeting the funding needs of SMEs, so SMEs can use each bank as an alternative lender.

Regarding Shinkin banks and credit unions, there are restrictions on the size of the borrowers, but all SMEs meet the standards (see the above IV. 1 (2)). In addition, the lending limit stipulated by law does not impose restrictions on SMEs' borrowing[82], and SMEs can use Shinkin banks and credit unions as

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81 “SMEs” are those who satisfy the requirement stipulated in Article 2, paragraph 1 of Small and Medium-sized Enterprise Basic Act (see the aforementioned footnote 8), and “large and midsize enterprises” are those who don’t satisfy such requirement.

82 According to the interviews with financial institutions, cases in which the SMEs’

alternative lenders.

For ACs, etc., the lending target is basically limited to farmers, etc. (see the above IV. 1 (2)). The SCB and the JFC basically conduct lending for those who have difficulty borrowing from private financial institutions, for supplementing the private sector. In addition, the SCB lends only to the shareholders and their union members, etc., and the JFC lends to those who meet the detailed lending requirements stipulated for each loan system, with some exceptions (see the above IV. 1 (3)). Therefore, there are only a limited number of cases where SMEs can use ACs, etc., the SCB, and the JFC as alternative lenders.

Therefore, in the examination of this case, the scope of competitors in lending to SMEs is defined as banks, Shinkin banks and credit unions, whereas ACs, etc., the SCB, and the JFC should be considered as competitive pressure from adjacent markets, if necessary[83].

(c) Lending to local public bodies

As described in IV. 2 (1) (f) above, local public bodies in Fukui Prefecture basically select the financial institution offering the lowest interest rate as the lender by bidding method. Therefore, the Parties cannot obtain the contracts if they offer high interest rates. Besides, transaction conditions other than interest rates cannot be influenced by the Parties, because local public bodies specify such transaction conditions.

Also, according to the interviews with local public bodies, the bidding participants are not only banks and Shinkin banks but also ACs and the CFFC. In particular, ACs have branches in all municipalities in Fukui Prefecture. These competitors are recognized as having sufficient financial excess capacity.

Based on the above, without further investigation, the JFTC found that the acquisition would not substantially restrain competition in the particular fields of trade of lending to local public bodies.

(d) Conclusion of this section

Based on the above (a), (b), and (c), the JFTC further examined "lending for large and midsize enterprises" and "lending for SMEs" (see paragraph 2 below).

2 Geographic markets for lending to large and midsize enterprises and lending to SMEs

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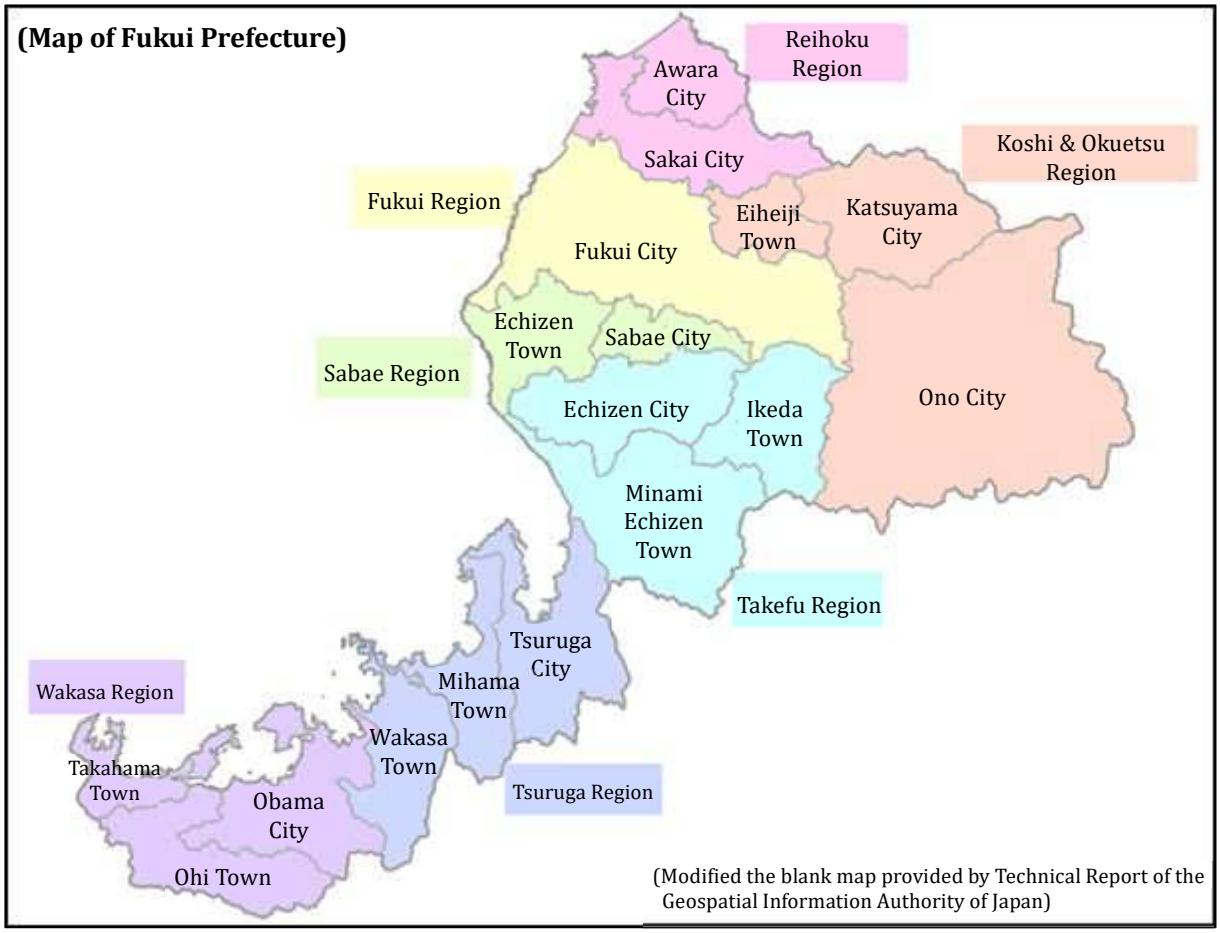
financing demand can't be satisfied due to the legally specified limitation amount of lending are quite rare.

83 As described in Section VI. 2 below, as for lending for SMEs, sincethe JFTC could make judgement concerning the substantial restraint on competition based on factors excluding the competitive pressure from the adjacent market, the JFTC didn't have to examine it.

Regarding the geographic range, the Parties explained to the JFTC, that they are competing in the seven economic zones in the table below (hereinafter simply referred to as "economic zones"), for both lending for large and midsize enterprises, and lending for SMEs.

Economic zones	constituent cities and towns
Reihoku Region	Sakai City, Awara City
Fukui Region	Fukui City
Koshi & Okuetsu Region	Ono City, Katsuyama City, Eiheiji Town
Sabae Region	Sabae City, Echizen Town
Takefu Region	Echizen City, Minami Echizen Town, Ikeda Town
Tsuruga Region	Tsuruga City, Mihama Town, Wakasa Town
Wakasa Region	Obama City, Takahama Town, Ohi Town



The results of examination on this point are as follows.

(1) Background circumstances

According to the interviews with financial institutions and users, in transactions between financial institutions and users in Fukui Prefecture, financial institutions

often visit users, whereas not often users visit branches of financial institutions. Therefore, users say that the location of financial institutions in remote areas does not pose a particular obstacle to conducting transactions. On the other hand, according to financial institutions, sales personnel of them needs to continue to visit users even after lending, and the cost of the visit is so high that lending to users located in remote areas of the branch is not realistic.

From the above, in defining the geographic markets in the lending for large and midsize enterprises and the lending for SMEs in this case, the main point is the geographic area that the sales personnel can actually visit from each branch of financial institutions.

In addition, according to the interviews with financial institutions, as for lending to large and midsize enterprises, the business scale and loan amount of users tend to be large, so even if the cost of visiting is high, it is easy to obtain revenue that exceed the cost. Thus, as for lending to large and midsize enterprises, the geographic area that can be visited from each branch is wider than that for SMEs.

(2) Lending for large and midsize enterprises

Since the Parties (both of Fukui Bank and Fukuho Bank) lend funds to users mainly located in Fukui Prefecture, the JFTC focused on examining the impact on users in Fukui Prefecture. Almost all loans, in terms of monetary amounts, to large and midsize enterprises in Fukui Prefecture are made by banks.

According to the interviews with financial institutions, as described in (1) above, in the case of lending to large and midsize enterprises, it is easy to make a profit even for users located in remote areas from each branch. Therefore, financial institutions have a long reach, and the banks can provide finance to large and midsize enterprises located in Fukui Prefecture without any particular problem regardless of the city or town where they are located.

Based on the above, regarding lending to large and midsize enterprises, the JFTC found "Fukui Prefecture" as the geographic market, and financial institutions that perform business lending to users located in Fukui Prefecture as competitors belonging to the same market.

(3) Lending to SMEs

According to the interviews with and submitted materials from financial institutions, each financial institution lending funds to SMEs in Fukui Prefecture generally visits potential or existing borrowers located in the same economic zone or in a broader area.

In addition, in the interviews with financial institutions, most of them explained that the area where financial institutions can conduct business lending for SMEs is basically within an hour by car from the branch, partially because lending to SMEs is less profitable than lending to large and midsize enterprises, as described in the

above (1), and the area that can be actually visited is narrower. The range within an hour by car from a branch is wider than the range of each economic zone.

From these facts, it is considered that the geographic markets for lending to SMEs match or are wider than the range of economic zones.

Based on the above, in order to conduct more careful examination, each economic zone is defined as a geographic market for loans to SMEs, and financial institutions that perform business lending to users located in each economic zone are considered as the competitors belonging to the same market.

Part VI. Examination of substantive restrictions on competition in business lending

1 Lending for large and midsize enterprises

The table below shows the market share, etc. in lending for large and midsize enterprises in Fukui Prefecture as of the end of March 2020[84]. According to the “Guidelines to application of the Antimonopoly Act concerning review of business combination” (issued by the JFTC on May 31, 2004, hereinafter referred to as “business combination guidelines”), when A) Herfindahl-Hirschman Index (hereinafter referred to as “HHI”)[85] after the business combination is 1,500 or less, B) The HHI after the business combination is more than 1,500 and 2,500 or less, and the increment of HHI is 250 or less, or C) HHI after the business combination exceeds 2,500 and the HHI increment is 150 or less, the horizontal business combination is usually not considered to substantially restrain competition in any particular field of trade[86] (such criteria are called as "the safe-harbor criteria"; the same shall apply hereinafter). According to the market share, etc. in lending for large and midsize enterprises listed in the table below, the value of HHI after the acquisition and its increment correspond to the case of B) above, so this case falls under the safe-harbor criteria for horizontal business combination.

84 The market share is calculated on the basis of loan balance. The same shall apply hereafter.

85 HHI is a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm in a particular field of trade and then summing the resulting numbers.

86 Part IV., 1 (3) of business combination guideline

[Market share, etc. in lending for large and midsize enterprises]

Rank	Financial institutions	
1	Fukui Bank	Approx. 35%
2	A	Approx. 15%
3	B	Approx. 15%
4	C	Approx. 10%
5	D	Approx. 5%
6	E	Approx. 5%
7	Fukuho Bank	0-5%
	Other	0-5%
Total		100%
Total market share & rank for the Parties: Approx. 40% (Top)		
HHI after the acquisition: Approx. 2,300		
Increment of HHI: Approx. 230		

According to the business combination guideline, even if the horizontal business combination falls under any of the above A), B), and C), it may be necessary to consider various other judgment factors in some cases. However, there are no circumstances that require such examination on lending to large and midsize enterprises in Fukui Prefecture.

Therefore, as for lending to large and midsize enterprises, the acquisition does not substantially restraint competition in the particular field of trade.

From A to E in the above table are all banks (city banks or regional banks).

2 Lending for SMEs

Regarding lending to SMEs, the general situation, etc. of competition in Fukui Prefecture is firstly described in the below item (1), and then the examination results regarding the substantial restriction on competition are explained.

The examination results for the six economic zones excluding Wakasa Region (hereinafter referred to as "six economic zones") are described in the same section (item (2) below), because the situations are similar, and Wakasa Region is dealt with separately in item (3) below because the situation is different.

(1) Competitive situation in lending to SMEs

Fukui Bank is a regional bank, and Fukuho Bank is a second-tier regional bank. Second-tier regional banks originate from Mujin, which was a financial institution for individuals, and most of them are relatively small banks that are closely related

to the local region.[87] In general, second-tier regional banks have higher ratio of loans to SMEs than regional banks[88], and process more small loans than regional banks. These also apply to the status of lending to SMEs at Fukui Bank and Fukuho Bank.

According to the interviews with financial institutions and users and materials submitted by financial institutions, regarding lending to SMEs, the business scales of the main borrowers of the Parties are different from each other, and there is relatively little overlap of users of both banks. In addition, it can be seen that there are relatively few cases in which the Parties actually have a rivalry for a specific deal with an individual user. According to the interviews with financial institutions and users, Fukui Bank is believed to have a relatively strong competitive relationship with regional banks for lending to relatively large users among SMEs, and with Shinkin banks in each region for lending to relatively small users among SMEs. On the other hand, Fukuho Bank mainly lends to relatively small users, and it is Shinkin banks in each region that are considered to have a relatively strong competitive relationship with Fukuho Bank.

From these facts, the competitive relationship between the Parties may be relatively weak compared to the degree of competitive relationship with each competitor of the Parties. At least, the competitive relationship between the Parties is not found to be particularly strong.

In addition, some of the Parties and competitors offer refinancing, offering low interest rates to the users of other financial institutions. Also, within the past few years, one of the competitors opened a new branch to expand transactions in Fukui prefecture. Thus, it is recognized that the principle of competitive markets sufficiently works.

(2) Six economic zones

(a) Market share, etc.

For each of the six economic zones, the market share and other index on lending to SMEs as of the end of March 2020 is as shown in the following tables. None of them meets the safe-harbor criteria of the horizontal business combination.

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87 Documents submitted by The Second Association of Regional Banks to the "Working Group on Japanese Banking System" of the Financial System Council held on Oct. 28, 2020.

88 The ratio of lending for SMEs in the lending for corporation is 72.2% in regional banks ("Overview of FY2019 financial results of regional banks" issued on June 17, 2020, by the Regional Banks Association of Japan), whereas 98.6% in second-tier regional banks ("Financial results of members bank as of Mar. 31, 2020" available at the website of The Second Association of Regional Banks〔https://www.dainichiginkyo.or.jp/membership/conditions.html〕).

[Reihoku Region]

Rank	Name of Financial institutions	Market share
1	F	Approx. 30%
2	Fukui Bank	Approx. 25%
3	G	Approx. 20%
4	Fukuho Bank	Approx. 10%
5	H	Approx. 5%
	Other	0-5%
Total		100%
Total market share & rank: Approx. 40% (Top)		
HHI after combination: Approx. 3,000		
Increment of HHI: Approx. 600		

[Fukui Region]

Rank	Name of Financial institutions	Market share
1	Fukui Bank	Approx. 35%
2	I	Approx. 25%
3	J	Approx. 15%
4	Fukuho Bank	Approx. 15%
5	K	Approx. 5%
	Other	Approx. 5%
Total		100%
Total market share & rank: Approx. 50% (Top)		
HHI after combination: Approx. 3,200		
Increment of HHI: Approx. 900		

[Koshi & Okuetsu Region]

Rank	Name of Financial institutions	Market Share
1	Fukui Bank	Approx. 30%
2	L	Approx. 30%
3	M	Approx. 20%
4	Fukuho Bank	Approx. 5%
5	N	Approx. 5%
	Other	Approx. 5%
Total		100%
Total market share & rank: Approx. 40% (Top)		
HHI after combination: Approx. 2,800		
Increment of HHI: Approx. 500		

[Sabae Region]

Rank	Name of Financial institutions	Market share
1	O	Approx. 25%
2	P	Approx. 25%
3	Fukui Bank	Approx. 25%
4	Fukuho Bank	Approx. 10%
5	Q	Approx. 5%
	Other	Approx. 10%
Total		100%
Total market share & rank: Approx. 35% (Top)		
HHI after combination: Approx. 2,400		
Increment of HHI: Approx. 400		

[Takefu Region]

Rank	Name of Financial institutions	Market share
1	R	Approx. 35%
2	Fukui Bank	Approx. 30%
3	S	Approx. 15%
4	Fukuho Bank	Approx. 10%
5	T	Approx. 10%
	Other	0-5%
Total		100%
Total market share & rank: Approx. 40% (Top)		
HHI after combination: Approx. 3,000		
Increment of HHI: Approx. 600		

[Tsuruga Region]

Rank	Name of Financial institutions	Market share
1	U	Approx. 35%
2	Fukui Bank	Approx. 25%
3	V	Approx. 25%
4	Fukuho Bank	Approx. 10%
5	W	0-5%
	Other	0-5%
Total		100%
Total market share & rank: Approx. 35% (Top)		
HHI after combination: Approx. 3,100		
Increment of HHI: Approx. 500		

The total market share of the company group for each market is approximately 35-50%, which ranks first in all economic zones. On the other hand, also in all economic zones, there are two or more competitors whose market share reaches approximately 15% or more. Moreover, the gaps between the total market shares of the Parties and the shares of leading competitors are not necessarily large.

From F to W are regional banks or Shinkin banks with branches in Fukui Prefecture.

(b) Excess capacity of competitors

Even if there are multiple competitors, if the excess capacity of the competitors is not sufficient, the restraining force against the company group may not work well. Therefore, when the excess capacity of the competitors is not sufficient, even if the difference of the market share between the company group and the competitors is not so large after the acquisition, the impact of the acquisition on competition may not be small[89]. The excess capacity related to business lending in financial institutions is generally classified into excess capacity in terms of funds, and excess capacity in terms of human resources.

(i) Excess capacity in terms of funds

The JFTC examined the excess capacity of competitors in terms of funds in each of the six economic zones, considering the below 2 factors for each competitor; (1) the difference between the amount of the deposit

89 Part IV., 2 (1) E. of business combination guideline

and the amount of the loan, and (2) the maximum amount that can be lent under the capital adequacy requirements.

Each bank is considered to have sufficient excess capacity in terms of funds, based on such as the fact that each of the above (1) and (2) exceeds the total amount of business lending of the Parties in Fukui Prefecture (including those for large and midsize enterprises).

Also, each Shinkin bank is considered to have sufficient excess capacity in terms of funds, based on the fact that each of the above (1) and (2) exceeds the total amount of business lending for SMEs of the Parties, in the economic zone which is the main business scope of each Shinkin bank.

(ii) Excess capacity in terms of human resources

Regarding the excess capacity of competitors in terms of human resources in each of the six economic zones, firstly the JFTC confirmed the number of users that each competitor can newly lend funds, based on the number of borrowers, the number of sales staff, the number of users that each sales staff member is in charge of, practical possibility of increase in the number of sales staff, and time required to visit the users after lending, at the time of examination.

In addition, according to the interviews with competitors, if starting a loan to new users who did not have any transactions in the past, the number of users to be visited by sales staff will increase. Meanwhile, if the loan amount or lending projects to existing lenders increases, the number of users to be visited will not increase, so it is recognized that the shortage of sales staff will not hinder new lending. Also, among the users of the Parties, those who received funds from competitors are existing users for competitors.

Based on the above points, the JFTC compared the number of users of the Parties and the total number of users that competitors can lend additionally. The results show that as a whole, it is possible for competitors to lend funds to many of the users of the Parties instead of the Parties in each of the six economic zones, and competitors have sufficient excess capacity in terms of the human resources.

(c) Substantial restriction on competition related to unilateral conduct

In the six economic zones, there are two or more leading competitors, and the competitors have sufficient excess capacity in terms of funds and human resources (see the above (a) and (b)). Thus, competitors are recognized as having sufficient restraining power. In addition, as described in the above (1), the degree of the competitive relationship between the Parties is not found to be particularly strong, compared to the competitive relationship with each competitor of the

Parties.

Therefore, it is acknowledged that the acquisition would not lead to substantial restriction on competition in the fields of lending for SMEs in the six economic zones, resulting in enabling the Parties to determine terms of trade including interest rate without considerable constraint.

(d) Substantial restriction on competition related to coordinated conduct

The transaction conditions for business lending for SMEs in Fukui Prefecture are determined by bilateral negotiations between financial institutions and users for each loan project (see the above IV. 2 (1) (b)), and the contents are not disclosed. The transaction conditions include whether the interest rate is fixed or floating, the necessity and content of collateral and guarantees, the repayment deadline as well as the level of interest rate (see the above IV. 2 (1) (a)), and there can be various combinations of these conditions. In addition, financial institutions consider the interest rate in consideration of the cost of lending, but the cost standards differ depending on the financial institutions, and it is difficult for financial institutions to grasp the cost standards of other financial institutions (see the above IV. 2 (1) (e)).

The above points leads to the recognition that, regarding business lending for SMEs in six economic zones, it is not easy to establish a common understanding and mutual prediction among suppliers, which is a prerequisite for coordinated conduct, and to monitor deviance from coordinated conduct.

Therefore, it is acknowledged that the acquisition would not lead to substantial restriction on competition in the field of lending for SMEs in each six economic zone, resulting in enabling the Parties and competitors to determine terms of trade including interest rate in a coordinated way without considerable constraint.

(3) Wakasa Region

(a) Market share, etc.

The market share and other index on lending to SMEs in Wakasa Region as of the end of March 2020 is as shown in the table below, and they do not meet the safe-harbor criteria of the horizontal business combination.

[Market share, etc. of lending for SMEs in Wakasa Region]

Rank	Financial institutions	
1	X	Approx. 35%
2	Fukui Bank	Approx. 30%
3	Fukuho Bank	Approx. 20%
4	Y	Approx. 5%
5	Z	Approx. 5%
6	AA	0-5%
7	BB	0-5%
8	CC	0-5%
9	DD	0-5%
	Other	0-5%
Total market share & rank: Approx. 50% (Top)		
HHI after combination: Approx. 3,800		
Increment of HHI: Approx. 1,200		

The total market share of the company group is approximately 50%, which ranks first. On the other hand, the market share of the leading competitor X reaches approximately 35% and exceeds that of the Parties before the acquisition.

From X to DD are banks or Shinkin banks.

(b) Branch network and business area

Regarding the actual number of branches[90] in Wakasa Region of the Parties, Fukui Bank has four branches (two in Obama City, one in Ohi Town, one in Takahama Town), and Fukuho Bank has two branches (one in Obama City, one in Takahama Town).

On the other hand, as for competitors, two out of the seven listed in the table above (a) have branches in Wakasa Region, and the total number of branches of the competitors is seven (four in Obama City, one in Ohi Town, two in Takahama Town). In addition, according to the interviews with competitors and users, it is recognized that three out of the five competitors who do not have branches in Wakasa Region can visit users located in the whole or partial area of Wakasa Region on a daily basis to close a deal from branches in other economic zones in Fukui Prefecture or branches located in prefectures adjacent to Fukui Prefecture. According to the evidences including interviews with competitors, it is difficult for the other competitors to close a deal from users in Wakasa Region broadly because of the fact that the nearest branch is located in a remote

90 In the case that a branch has another branch inside of it (branch in branch), they are counted as one branch.

location[91] or others.

Based on the above points, it is recognized that in Wakasa Region, there are the total of five competitors (the above two and three) that can generate a substantial restraining force against the Parties after the acquisition.

(c) Excess capacity of competitors

(i) Excess capacity in terms of funds

The excess capacity in terms of funds of five competitors described in the above (a), which can be a substantial restraining force against the Parties after the acquisition in Wakasa Region, was examined in consideration of the two factors below for each competitor; (1) the difference between the amount of deposit and the amount of loan, and (2) the maximum amount that can be lent under the capital adequacy requirements, in common with the six economic zones described in the above (2) (b) (i).

Among the five competitors, regarding banks, the above (1) and (2) greatly exceed the total business lending amount of the Parties in Fukui Prefecture (including those for large and midsize enterprises), so it is recognized that banks have sufficient excess capacity in terms of funds.

Also, regarding Shinkin banks, the above (1) and (2) exceed the total business lending amount for SMEs of the Parties in Wakasa Region. It is recognized that Shinkin Banks have sufficient excess capacity in terms of funds.

(ii) Excess capacity in terms of human resources

Regarding the excess capacity in terms of human resources of the five competitors described in the above (a), in the same way as the above (2) (b) (ii), firstly the JFTC confirmed the number of users that each competitor can newly lend funds.

Also, as described in the above (2) (b) (ii), if the loan amount or lending projects to existing lenders increases, the number of users to be visited will not increase, so it is recognized that the shortage of sales staff will not hinder new lending. Also, among the users of the Parties, those who received funds from competitors are existing users for competitors.

Based on the above points, we compared the number of users of the

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91 Those competitors have the loan balance for users in the said region. However, according to the interview with the competitors, it is because they got deals from the parent company (operating in the sales area of such competitors) of users as a result of sales activity, or users formerly operating in such sales area moved to the out of the area during repayment period. Therefore, it is difficult for those competitors to widely get new deals from other users in the area.

Parties and the total number of users that the five competitors described in the above (a) can lend additionally. The results show that as a whole, it is possible for the competitors to lend funds to many of the users of the Parties instead of them, and the competitors have sufficient excess capacity in terms of human resources.

(d) Substantial restriction on competition related to unilateral conduct

In Wakasa Region, there are competitors, and the competitors have sufficient excess capacity in terms of funds and human resources (see the above (a) and (c)). Thus, competitors are recognized as having sufficient restraining power. In addition, as described in the above (1), the degree of the competitive relationship between the Parties is not found to be particularly strong, compared to the competitive relationship with each competitor of the Parties.

Therefore, it is acknowledged that the acquisition would not lead to substantial restriction on competition in the field of lending for SMEs in Wakasa Region, resulting in enabling the Parties to determine terms of trade including interest rate without considerable constraint.

(e) Substantial restriction on competition related to coordinated conduct

Regarding business lending for SMEs in Wakasa Region, for the same reasons described in the above (2) (d), it is not easy to establish a common understanding and mutual prediction among suppliers, which is a prerequisite for coordinated conduct, and to monitor deviance from coordinated conduct.

Therefore, it is acknowledged that the acquisition would not lead to substantial restriction on competition in the field of lending for SMEs in Wakasa Region, resulting in enabling the Parties and competitors to determine terms of trade including interest rate in a coordinated way without considerable constraint.

Part VII. Conclusion

The JFTC concluded that the acquisition would not substantially restrain competition in the particular fields of trade.

CASE 10 M&A operations between Z Holdings Corporation and LINE Corporation

Part I. The Parties

Z Holdings Corporation is a company that performs business management of its subsidiaries, and one its subsidiary companies, Yahoo Japan Corporation, is a company that primarily runs E-commerce business and others. LINE Corporation is a company that primarily runs an advertising business, etc. Both companies are enterprises running so-called digital platform businesses that operate online shopping malls and/or provide distribution services of contents (such as electronic books). The words and terms listed in the left column of the table below are hereinafter referred to as those listed in the right column.

Left Column	Right Column
SoftBank Corp.	SoftBank
Z Holdings Corporation	ZHD
A group of companies of which joint relationships with SoftBank Group Corp., the ultimate parent company of SoftBank Corp., have already been established	SBK/ZHD Group
A group of companies which have already established joint relationships under ZHD as their ultimate parent company	ZHD Group
A group of companies, which have already established joint relationships with SoftBank Group Corp., not including those belong to the ZHD Group	SBK Group
NAVER Corporation	NAVER
LINE Corporation	LINE
A group of companies which have already established joint relationships with NAVER	NAVER/LINE Group
A group of companies which have already established joint relationships under LINE Corporation as their ultimate parent company	LINE Group
A group of companies, which have already established joint relationships with NAVER, not including those belong to the LINE Group	NAVER Group
Aggregation of the SBK/ZHD Group and the NAVER/LINE Group	the Parties

Part II. Outline of this case and applicable provisions

This case is a plan of the Parties for M&A operations between ZHD and LINE (hereinafter referred to as "the conduct of this case") through acquisition of shares, etc.

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

Part III. Sequence of events, etc.

1 Sequence of events

ZHD and LINE publicly announced the plan of the conduct of this case on November 18, 2019 and, thereafter, voluntarily submitted their written opinions and materials, which explained their consideration that the conduct of this case would not substantially restrain competition, to the JFTC in series. In response to requests from the Parties, the Commission had meetings with the Parties several times to exchange views.

In addition to careful examinations on such written opinions and materials, the Commission conducted interviews with the competitors, and also carefully examined materials and minutes of various meetings such as board meetings and management meetings, etc., which the Commission requested the Parties to submit, as well as internal data such as e-mail exchange of executive officers and employees.

Thereafter, the Parties submitted a written notification of the plan regarding the conduct of this case on July 14, 2020 based on the provisions of the Antimonopoly Act. Therefore, the Commission accepted the notification and started the preliminary investigation. The Commission proceeded with the investigation on possible influence from the conduct of this case on the competition based on not only the above notification of the plan, opinions and materials submitted by the Parties but also the results of interviews with competitors, etc., economic analysis and so on.

2 Overview of the investigation

Among the fields of trade in which the Parties is involved as a competing enterprise or a trader, the investigation by the JFTC was focused on the fields of "news distribution service", "advertisement-related business" and "code-based payment service" that were considered to be sensitive to the conduct of this case[1].

[1] As for the fields of trade other than "news distribution service", "advertisement-related business" and "code-based payment service", it was determined that the conduct of this case would not result in imposing any substantial restraint on competition in any of such fields of trade in view of the fact that a certain competitive pressure by competitors was observed in such other fields of trade.

As will be mentioned later in Parts 4 and 5, the JFTC concluded that the conduct of this case would not substantially restrain competition in the fields of news distribution service and advertisement-related business.

Regarding code-based payment services, as will be mentioned later in Part 6, based on the premise that parties will implement their proposed the remedial measures, the JFTC concluded that the conduct of this case would not substantially restrain competition.

Part IV. News Distribution Service

1 Outline

News distribution service typically means distribution services of news articles to consumers through the internet by news media such as newspaper publishing companies (hereinafter referred to as "Media") or by enterprises that get news articles from the Media. There are two major types of news distribution service. One is the distribution to users (consumers) who browse news mainly on PCs, and another is the distribution to users (consumers) who browse news mainly on mobile devices such as smartphones (hereinafter referred to as "News Distribution to Mobile Devices"). As will be mentioned later in (3), the business field, in which the Parties are competing, is mainly the News Distribution to Mobile Devices. Therefore, the investigation hereunder is focused on the News Distribution to Mobile Devices.

There are two news distribution methods to mobile devices. One is distribution through website (namely, consumers activate web browser on mobile devices to access portal site, etc. on which they browse news. The same shall apply hereinafter) and another is distribution by using a mobile app (namely, consumers browse news on mobile devices by activating dedicated apps, etc. The same shall apply hereinafter).

The enterprises that run business of News Distribution to Mobile Devices (hereinafter this business is referred to simply as "News Distribution Service") provide consumers with the News Distribution Service on their own website or by using mobile apps on chargeable basis or free of charge (hereinafter, the News Distribution Service on chargeable basis is referred to as "Chargeable News Distribution Service" and the enterprise that provides such services is referred to as "Chargeable News Distribution Service Provider", and the News Distribution Service free of charge is referred to as "Free News Distribution Service" and the enterprise that provides such free services is referred to as "Free News Distribution Service Provider").

(1) Chargeable News Distribution Service

The Chargeable News Distribution Service is typically operated by the media themselves who produce the news articles. The Chargeable News Distribution Service Provider distributes the news articles produced by itself to consumers who have been registered as paid subscribers through its own website or on mobile apps.

The Chargeable News Distribution Service Provider receives a certain amount of subscription fee from consumers registered as paid subscribers, and also gains advertising revenue by running advertisements on their website or mobile apps.

There are also cases where the Chargeable News Distribution Service Providers offer free news distribution to a certain extent, and consumers may browse the news free of charge to such an extent.

(2) Free News Distribution Service

Free News Distribution Service Providers typically do not produce news articles by themselves but get news articles from the Media (purchase news articles) and distribute them to consumers on their websites or mobile apps.

Free News Distribution Service Providers do not charge any subscription fee to consumers, and their primary source of income is an advertising revenue by running advertisements on their websites or mobile apps.

When Free News Distribution Service Providers purchase news articles from the Media, the payment methods of the price of news articles to the Media are typically made by one of the following three or, any combination thereof in some cases depending on the contract conditions:

(i) Yearly or monthly payment of a fixed amount.

(ii) A certain portion of advertisement revenue which the Free News Distribution Service Provider receives is paid to the Media (revenue sharing).

(iii) An arrangement to increase advertisement revenue of the Media (who are the source of the news article) by linking users (traffic-back) with the websites or mobile apps of the Media via websites or mobile apps of the Free News Distribution Service Provider.

(3) News Distribution Service provided by the Parties

SBK/ZHD Group and LINE Group are operating News Distribution Services mainly under the service names of “Yahoo! News” and “LINE NEWS”, respectively. The Parties distributes news articles to consumers free of charge in both cases and the major source of income is an advertisement revenue.

Regarding such Free News Distribution Services operated by the Parties,

"Yahoo! News" is distributed on both websites and mobile apps and "LINE NEWS" is distributed on mobile apps only.

2 Particular Field of Trade

(1) Service range

As mentioned in the above 1, the News Distribution Services have two operating styles, namely, the Free News Distribution Service and the Chargeable News Distribution Service. Also, there are two distribution methods, namely, distribution on website and on mobile apps.

In the following paragraphs, substitutability between the Free News Distribution Service and the Chargeable News Distribution Service and substitutability between distribution on websites and on mobile apps are investigated respectively.

(A) Substitutability between the Free News Distribution Service and the Chargeable News Distribution Service

(a) Demand substitutability

Users of the Free News Distribution Service may browse news articles free of charge and are basically able to browse news articles produced by various Media.

On the other hand, when users use websites or mobile apps operated by Chargeable News Distribution Service Providers, the users may browse news articles free of charge to a certain extent such as a certain numbers of articles per month. However, if any user wants to browse any news article on the said website or mobile app beyond such an extent, the user is required to pay a certain amount of subscription fee. Another difference between the Chargeable and Free News Distribution Services is that the subscription fee allows the user to subscribe only news articles produced by the said Chargeable News Distribution Service Provider.

Therefore, it seems that the users are using both services differently for different purposes to a certain extent. Namely, it is considered that users are not choosing either service as an alternative of the other service. Thus, the substitutability between "Chargeable News Distribution Service" and "Free News Distribution Service" is considered to be limited.

(b) Supply substitutability

When a Free News Distribution Service Provider (or a Chargeable News Distribution Service Provider) changes its style of services to a chargeable

distribution service (or free distribution service), it involves substantial changes in the business model. In view of the fact that Chargeable News Distribution Service Providers, in principle, distribute news articles produced by themselves, it is considered difficult particularly for Free News Distribution Service Providers, who do not produce news articles on their own in the most cases, to changes their style of services to Chargeable News Distribution Service without assuming substantial amount of additional costs and risks.

As mentioned in the above (1) of 1, Chargeable News Distribution Service Providers also provide free distribution services of news articles with a certain limitation. However, if they change their style of services to an absolute free distribution of all news articles, it involves substantial changes in the business model. Therefore, it is considered difficult to change the business style to Free News Distribution Service without assuming substantial amount of costs and risks.

Therefore, no supply substitutability is observed between the Free News Distribution Service and the Chargeable News Distribution Service.

(c) Summary

Based on the above, “Free News Distribution Service” and “Chargeable News Distribution Service” have been defined as different service range.

(B) **Demand substitutability between Distribution on Websites and Distribution on Mobile Apps**

There are two news distribution methods, one is distribution on website and another is distribution on mobile app. Users can browse news articles anytime through website from mobile devices such as smart phones. When users browse news articles through dedicated news distribution app, it is also effortless once such a news distribution app has been installed on the user's mobile device.

For that reason, the demand substitutability exists for users between distribution on websites and distribution on mobile apps.

Therefore, service range of this case is not distinguishable between "Distribution on Websites" and "Distribution on Mobile Apps".

(C) **Based on the above, the service range of this case has been defined as "Free News Distribution Service".**

In the meantime, in view of the fact that "Chargeable News Distribution Service" also provides free distribution of some portion of news articles, the said portion of the service has been decided to be assessed as competitive pressure from adjacent markets.

(2) Geographic range

Since the Free News Distribution Service is a business to distribute news articles through internet, Free News Distribution Service Providers are able to distribute news articles in all regions of Japan irrespective of their or users' location, and users are also able to enjoy the benefit of such free services in all regions of Japan without any geographical limitation. Therefore, the geographic range of this case has been defined as "all Regions of Japan".

3 Relevance to the safe-harbor criteria in particular field of trade

Both members of the Parties are running businesses of Free News Distribution Service and are in competitive relationship each other. Therefore, this case falls under the category of horizontal business combination.

Since the exact values of market share, etc. of Free News Distribution Services provided by the respective members of the Parties are unknown yet, it will be investigated later in 4 whether the conduct of this case would substantially restrain competition or not, based on an assumption that the safe-harbor criteria of horizontal business combination is not met.

4 Examination on substantial restraint on competition

(1) Positions, etc. of the Parties and competitors

The number of users of respective News Distribution Services of the Parties is considered to account for as many as 60 to 75% of the number of monthly users of news distribution services (users that use news distribution services through mobile devices at least once a month. The same shall apply hereinafter) in the domestic market in Japan. Namely, they are in a very strong position in the market of such services, in terms of utilization ratio of News Distribution Service. In the meantime, there are also more than one influential competitors that have 10 to 20% of the monthly users.

(2) Entry

Any Free News Distribution Service Providers, including competitors to the Parties, may distribute the same news articles as the ones distributed by the Parties, as far as they can get them from the Media. Also, anyone can start Free News Distribution Service by developing a mobile app and releasing it on app store. Although it may be necessary to have know-how to secure a certain number of users to gain income such as advertisement revenue, there is no specific reason that makes the entry be considered very difficult. Therefore, it is considered that the entry is relatively easy.

(3) Competitive pressure from users

Any Free News Distribution Services (provided by Free News Distribution Service Providers) enable users to freely browse many news articles free of charge. And in case of news articles sourced from the same news Media, the contents of the distributed news articles will not have any substantial difference among the providers thereof. In addition, if any user as a consumer wants to switch to other Free News Distribution Service, such a user incurs almost no cost for switching but is only required to install a new mobile app, etc. Thus, the number of users that use more than one Free News Distribution Services concurrently (so-called multi-homing) is not small. Because of this, it is considered that it is easy for users as consumers to change Free News Distribution Service that they are using and, therefore, the competitive pressure from users is also observed.

(4) Competitive pressure from adjacent markets

Under circumstances where a free distribution service of news articles is available to a certain extent in the framework of Chargeable News Distribution

Services, if a consumer especially wants to search some particular news article, it is considered possible for such a consumer to gain the same level of benefit as that from Free News Distribution Services by browsing such news articles within the said free portion of the Chargeable News Distribution Services. Actually, there are data saying that utilization ratio of free news sites provided by Chargeable News Distribution Services Providers accounts for approximately 10% of monthly users of news distribution services. Namely, it is safe to say that the presence of Chargeable News Distribution Services Providers is recognizable as competitive pressure from adjacent markets to a certain extent.

(5) Concerning competition-related concerns expressed during interviews with third parties

The interviews revealed the presence of an opinion that, in view of the fact that the availability of news articles from major Media was critical for Free News Distribution Service Providers to acquire users, if the conduct of this case would help the Parties attain stronger position in the market and would eventually create circumstances where major Media would stop providing news articles to competitors (other Free News Distribution Service Providers) it would result in a possibility for exclusion of competitors or new entrants.

In this relation, if we assume a situation where major Media do not make any transaction with other Free News Distribution Service Providers, the following can be considered as possible scenarios:

(i) If the position of the Parties is expected to become too strong in the Free News Distribution Service market, transactions with Free News Distribution Service Providers, of which utilization ratio is relatively low compared with the Parties, will be stopped because of unfavorable cost-benefit performance in terms of the time and effort required for digital processing of news articles, which are differently arranged for each Free News Distribution Service Provider.

(ii) The Parties exerts pressure on the Media, supplier of news articles, to stop providing news articles to other Free News Distribution Service Providers.

However, if the following factors are taken into consideration, it is safe to say that such a concern would not become a reality.

(A) Existence of many Media that distribute news articles

According to the result of interviews, they say that availability of news articles from major Media is important for Free News Distribution Service Providers in

terms of getting users. Therefore, in case where the number of the Media (especially the number of major Media) that are dealing with Free News Distribution Service Providers is limited, probability of situation where they will have difficulties in finding alternative supplier will increase, once any circumstances such as the above (i) or (ii) should break out. Then, such a situation is considered to result in an increase of the risk of exclusion of other Free News Distribution Service Providers or new entrants. However, the number of Media, from whom the members of the Parties are purchasing news articles, reaches as many as a few hundreds, such as newspaper publishing companies, sport journal publishers, TV broadcasters and book publishing companies. In addition, as a result of checking with major Media (among media that supply news articles to members of the Parties, the large ones in terms of the amount of monetary value of news articles supplied), it neither seemed that the source of news articles was concentrated to any particular Media nor that purchase amount of news articles from any particular Media was prominently large. The interview clarified that the other competitors were also put in the same situations, namely, there were quite a number of Media that were supplying news articles to Free News Distribution Service Providers compared to the number of such Media for the Parties.

(B) The fact that major Media are currently dealing with many Free News Distribution Service Providers

Furthermore, according to the result of interviews with major Media, regarding the concern on the above (i), voice of the majority said that additional costs incurred by the supply of news articles to multiple Free News Distribution Service Providers were not substantial, and, therefore, such an increase in additional costs would not result in discontinuation of transactions with other Free News Distribution Service Providers. As a matter of fact, all of the major Media, with whom interviews had been conducted, were supplying news articles not only to the Parties but also to many other Free News Distribution Service Providers.

Based on the above, it can be considered that, for the Media that supply news articles, there is only a small possibility for discontinuation of supply of news articles to Free News Distribution Service Providers other than the Parties because of additional costs for the time and effort required for the preparation of news articles.

(C) The fact that the Parties does not currently impose any pressure on the Media and the fact that they are saying that they would not respond even if they are so requested

In addition, according to the result of interviews with major Media regarding the concern of the above (ii), they said that they had never been imposed any pressure by the Parties to suspend the supply of news articles to other Free News Distribution Service Providers. The voice of majority also said that they had no such concern and would not respond even if they should receive such a request.

5 Summary

Based on the above, the JFTC concluded that the conduct of this case would not substantially restrain competition in the Free News Distribution Service through any unilateral conduct or coordinated conduct of the Parties.

Part V. Advertisement-related businesses

1 Outline

(1) Outline of advertisement-related businesses

Advertising businesses means businesses of media companies[2], who own advertising media such as TV, newspapers/magazines, internet services (portal site, video-sharing site, social networking service (hereinafter referred to as "SNS") and blog), to sell advertising space displayed on their own advertising media to advertising clients or advertising agencies.

Advertisement put on internet (hereinafter referred to as "Digital Advertisement) has large classification of "Search Advertising[3]", "Display Advertising[4]

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[2] "Media Company" means an enterprise that runs advertisement by configuring advertising spaces on advertising media such as TV, newspapers/magazines and internet services and by selling such advertising spaces to advertising clients and/or advertising agencies.

[3] "Search Advertising" means an advertisement having a relation to the keyword that appears on the search result screen together with the search result whenever the keyword registered beforehand by advertising client/advertising intermediation is entered into the search engine.

[4] "Display Advertising" means any advertisement, other than the Search advertising, which appears in some section of the screen when a consumer browses websites or uses apps on PC, smartphone or feature phone, etc. (There are several types such as video advertisement, banner advertisement and text advertisement, etc.).

(Operation type[5]) and "Display Advertising (Reserved type[6])[7] and others depending on method and form of display of the advertisement. Among advertisement services on internet, there also exists a method to send messages or e-mail directly to individual consumers. The LINE Group has an advertising service named "Account Advertisement", where an advertising client sets up an official account which will then be registered as "Friend" in the network of "LINE", and the Account Advertisement sends direct messages (such as the latest information on the business of advertising client, coupons and information on sales campaign) to such accounts. The revenue from "Account Advertisement" constitutes the major portion of advertisement-related sales of the LINE Group. Such an advertisement distribution method as the above provides different advantages from those of conventional "Search Advertising", "Display Advertising (Operation type)" and "Display Advertising (Reserved type)". Examples of such advantages are that consumers' registering their names as "Friend" may make themselves feel proactively interested in the advertisement of such a company, and that advertisement can be distributed directly to consumers by utilizing the account. Based on the fact that such features are similar to those of advertisement by e-mail, advertisements distributed directly to individual consumers in the form of messages or e-mail such as the above are hereinafter referred to as "Message-type Advertising".

(2) Outline of intermediation service of digital advertisement

Intermediation service of digital advertisement means intermediation service between an advertising client/advertising agency and a media company for the sales of digital advertising space. This intermediation service, of which main focus is put on Display Advertising (Operation type), is offered to both advertising clients/advertising agencies and media companies, and provides various

[5] "Display Advertising (Operation type)" is one form of display advertising which is displayed only for targeted consumers based on attributes of the consumer (sex, resident area, interests and concerns, etc.).

[6] "Display Advertising (Reserved type)" is one form of display advertising which is displayed for unspecified consumers by exclusively reserving an advertising space under certain conditions such as the period or time slot.

[7] "Display Advertising (Reserved type)" also has a type that is displayed only for a certain type of users namely, this type has a sort of a functionality of "targeting". To the contrary, "Display Advertising (Operation type)" also has a type that does not have the functionality of "targeting".

advertising technology services[8] as a single independent service or in combination with multiple services.

The Parties and some of major Media offer services by which they can independently complete the intermediation service between an advertising client/advertising agency and a media company by combining multiple advertising technology services, basically as a service for the purpose of placing advertisement in its (the media company's) own digital advertising space (such services are hereinafter referred to as "Intermediation Service of Specific Digital Advertisement"). In comparison with the above, other intermediation services of digital advertisement are basically to undertake a part of intermediation services between an advertising client/advertising agency and a media company, and are often completed in combination with digital advertisement intermediation services provided by multiple enterprises. In addition, there are some enterprises of the Intermediation Service of Specific Digital Advertisement that provide intermediation services only for their own digital advertising space by using their own Intermediation Service of Specific Digital Advertisement. In such a case, it will result in a situation where other enterprises providing intermediation service of digital advertisement will have difficulties in providing intermediation services for the said digital advertising space.

(3) Services provided by the Parties

(A) Digital advertising business

The ZHD Group is selling advertising spaces configured on portal sites such as "Yahoo! Japan" and various contents media such as "Yahoo! News" and "Yahoo! Weather/Disaster" and the SBK Group is selling advertising spaces configured on portal sites, etc. such as "ITmedia" of ITmedia Inc. to advertising clients/ advertising agencies. In addition, the LINE Group is selling advertising spaces configured on messenger apps named "LINE", etc. to advertising clients/advertising agencies.

In the meantime, the Parties does not run advertising businesses such as TV advertisement and newspaper/magazine advertisement.

(B) Intermediation Service of Specific Digital Advertisement

All of the ZHD Group, the SBK Group and the LINE Group provide the Intermediation Service of Specific Digital Advertisement to both media companies and advertising clients/advertising agencies.

[8] There are various services such as Ad Network, Demand Side Platform (DSP) and Supply Side Platform (SSP).

2 Particular field of trade

(1) Advertising business

(A) Service range

(a) Substitutability between "Digital Advertising Business" and "Advertising Business other than Digital Advertising Business (a dvertising business on TV and newspaper/magazine, etc.)"

a Demand substitutability

According to the result of interviews with advertising clients/advertising agents as users, it was expressed that digital advertisement was different compared to advertisement other than digital advertisement (advertisement on TV and newspaper/magazine, etc.) in terms of ease of targeting based on user information and search keywords and availability of measurement of frequency of appearance of advertisement on consumers' screens, number of consumers' clicking the advertisement and number of contracts made by consumers (conversion). If such a situation is taken into account, it can be considered that advertising clients/advertising agents appreciate "digital advertisement" to have different use and purpose from those of "other advertisement on TV and newspaper/magazine, etc." and are using them differently to a certain extent.

Therefore, the demand substitutability between digital advertising business and advertising business other than digital advertising business (advertising business on TV and newspaper/magazine, etc.) is limited.

b Supply substitutability

Media companies as supplier are different each other in types of enterprises depending on the types of respective advertising media, such as TV advertising spaces are sold by TV broadcasting enterprises and newspaper advertising spaces are sold by newspaper publishing enterprises. Although there are some enterprises that have multiple advertising media, it is difficult for an enterprise, which mainly runs business of either digital advertisement or advertisement other than digital advertisement, to shift their business to the other side without incurring additional cost and risk associated with substantial changes in the business model required for such a shift.

Therefore, no supply substitutability is observed between "Digital

Advertising Business" and "Advertising Business other than Digital Advertising Business (advertising business on TV and newspaper/magazine, etc.)".

c Summary

Based on the above, "Digital Advertising Business" and "Advertising Business other than Digital Advertising Business (advertising business on TV and newspaper/magazine, etc.)" have been defined as different scopes of services in this case.

(b) Substitutability between "Search Advertising Business" and "Digital Advertising Business other than Search Advertising (Display Advertising (Operation Type) Business, Display Advertising (Reserved Type) Business and Message-type Advertising Business)"

a Demand substitutability

As mentioned in the above (1) of 1, the Search Advertising is an advertisement displayed on the screen of search result when consumers search a particular keyword on search engine. It has been learned in interviews with advertising clients/advertising agents as users that such consumers, who originally had an interest in the search result, are more likely to pay attention to the advertisement displayed on the search result screen and have more tendency to purchase the goods or services advertised therein, and that the Search Advertising is used to introduce goods or services that are in line with the interest of consumers.

On the other hand, regarding non-Search digital advertisement (hereinafter referred to as "Non-Search Advertising"), which represents Display Advertising (Operation type), Display Advertising (Reserved type) and Message-type Advertising, the above interviews with advertising clients/advertising agents as users indicated as follows. Namely, there are both cases where consumers look at the display on the screen with a specific interest therein, and where they passively see the display with no special reason. Therefore, they use the Non-Search Advertising to increase consumers' awareness, such as advertisement of new products.

As above, while advertising clients/advertising agents consider the Search Advertising as an advertisement to prompt consumers to purchase

goods/services, the Non-Search Advertising is considered to be an advertisement to raise consumers' awareness about goods/services. Based on such a fact, it seems that they recognize "Search Advertising" and "Non-Search Advertising" as different advertisements with different purposes and usages, and are using them differently to a certain extent.

Therefore, the demand substitutability between "Search Advertising Business" and "Non-Search Advertising Business" is limited.

b Supply substitutability

In case of the Search Advertising Business, either a person who has Search advertising system or a person who sells advertising spaces by using such a system under the license from the owner of the Search advertising system can play the role of the Media company. Therefore, the Media company as suppliers, who will shift their business from "Non-Search Advertising Business" to "Search Advertising Business", will be in need of large amount of funds to cover the cost to set up the Search advertising system or to buy the license.

Therefore, no supply substitutability is observed between "Search Advertising Business" and "Non-Search Advertising Business".

c Summary

Based on the above, "Search Advertising Business" and "Non-Search Advertising Business" have been defined as different scopes of services.

(c) Substitutability among "Display Advertising (Operation type) Business", "Display Advertising (Reserved type) Business" and "Message-type Advertising Business" in the framework of "Non -Search Advertising Business"

a Demand substitutability

The Display Advertising (Operation type) is able to run an advertisement targeting at a particular consumer, who browses advertising media, based on its attributes (sex, resident area, interests and concerns, etc.). In case of the Display Advertising (Reserved type), it generally runs an advertisement for many and unspecified consumers irrespective of the attributes of the viewers. However, even in case of the Display Advertising (Reserved type), it still allows advertising clients as users to narrow down the target to particular groups of consumers to some extent by running an

advertisement through a knowledgeable advertising agent in a particular business field.

Furthermore, the Message-type Advertising have the form of “E-Mail Magazine”, which inserts advertisement in the text or header, etc. of e-mail being sent, and the form of “Direct Mail”, which sends direct message to consumers that have an e-mail address or an account opened on the message app. According to the result of interviews with advertising clients/advertising agents as users, consumers often register themselves as a member beforehand for e-mail distribution or follow particular accounts of good/services, etc., and such behavior of consumers allow advertisements of any form to be targeted at consumers having a certain level of interests in the content of advertisement.

Because of the above, the Display Advertising (Operation type), the Display Advertising (Reserved type) and the Message-type Advertising are able to gain similar advantages in terms of efficient deployment of advertisement of goods/services to a particular group of consumers.

Therefore, the existence of demand substitutability is observed to a certain extent among “Display Advertising (Operation type) Business”, “Display Advertising (Reserved type) Business” and “Message-type Advertising Business”.

b Supply substitutability

Media companies, who provide “Display Advertising (Operation type)” and “Display Advertising (Reserved type)”, set up their own websites and, thereafter, sell advertising spaces that will be displayed on such websites. On the other hand, Media companies, who provide “Message-type Advertising”, set up message apps and/or e-mail distribution systems through which consumers can communicate each other and, thereafter, sell advertising spaces that will be displayed on such e-mail and/or messages. Therefore, in order to shift the business to and from “Display Advertising (Operation type) Business”, “Display Advertising (Reserved type) Business” and “Message-type Advertising Business”, Media companies as suppliers will need to have funds and know-how to set up websites that are attractive enough to make their advertising space marketable or funds to set up message distribution systems.

Therefore, the supply substitutability is limited at least between “Display Advertising (Operation type) Business”/“Display Advertising

(Reserved type) Business" and "Message-type Advertising Business".

c Summary

As described above, although the demand substitutability is observed to a certain extent among "Display Advertising (Operation type) Business", "Display Advertising (Reserved type) Business" and "Message-type Advertising Business", the supply substitutability is limited. Therefore, it is also possible to define these businesses as different scopes of services.

However, in the LINE Group, among the sales related to digital advertising businesses, the Message-type Advertising Business constitutes one of the major services. On the other hand, in the ZHD Group and the SBK Group, the digital advertising business is mainly taken care of by the ZHD Group and the sales amount of the Message-type Advertising Business of the ZHD Group is small, while "Display Advertising (Operation type)" and "Display Advertising (Reserved type)" constitute a part of their major services. In order to investigate carefully on such major services of the Parties as businesses competing each other, "Display Advertising (Operation type) Business", "Display Advertising (Reserved type) Business" and "Message-type Advertising Business" have been defined as the same Service range ("Non-Search Advertising Business").

(d) Based on the above, the Service range of this case has been defined as "Non-Search Advertising Business".

Geographic range

"Non-Search Advertising Business" is a business to sell adverting spaces displayed on internet services. Therefore, Media companies are able to sell advertising spaces in all regions of Japan irrespective of the location of advertising clients/advertising agencies without any location-based price difference. Therefore, the geographic range of this case has been defined as "all regions of Japan"[9].

[9] In view of the fact that it is the sale of advertising spaces displayed on internet, there is a possibility that transaction will be made anywhere in the world. However, in consideration of constraints in languages used in advertisement, it is considered unnecessary to be prepared for the world market in this case.

(2) Intermediation service of digital advertisement

Enterprises that provide intermediation services of digital advertisement offer services to two different user groups, namely, advertising clients/advertising agencies and Media companies. Therefore, the investigation is necessary to define scopes of services for both cases, namely the case where advertising clients/advertising agencies are the users and the case where Media companies are the users.

(A) Service range

a Substitutability between "Intermediation Service of Specific Digital Advertisement" and "Intermediation Service of Digital Advertisement other than Intermediation Service of Specific Digital Advertisement", for both of which advertising clients/advertising agencies are uses

(a) Demand substitutability

As mentioned in the above (2) of 1, in case of the Intermediation Service of Specific Digital Advertisement, advertising clients/advertising agencies as uses can independently and completely provide intermediation services between advertising clients/advertising agencies and Media companies. On the other hand, intermediation services of other digital advertisement can perform only a part of the Intermediation Service of Specific Digital Advertisement, if such services are performed independently. Also, some of enterprises providing Intermediation Service of Specific Digital Advertisement provide intermediation services for their own advertising media only by using their own Intermediation Service of Specific Digital Advertisement. Therefore, the demand substitutability is limited.

(b) Supply substitutability

As mentioned in the above (2) of 1, the Intermediation Service of Digital Advertisement other than Intermediation Service of Specific Digital Advertisement can perform only a part of the Intermediation Service of Specific Digital Advertisement, if such services are performed independently. Therefore, it is considered difficult to switch such services to the Intermediation Service of Specific Digital Advertisement without incurring substantial amount of additional costs and risks. Therefore, the supply substitutability is limited.

(c) Summary

As described above, if advertising clients/advertising agencies are users, both demand and supply substitutability are limited between "Intermediation Service of Specific Digital Advertisement" and "Intermediation Service of Digital Advertisement other than Intermediation Service of Specific Digital Advertisement". Therefore, the Service range of this case has been defined as "Intermediation Service of Specific Digital Advertisement".

b Substitutability between "Intermediation Service of Specific Digital Advertisement" and "Intermediation Service of Digital Advertisement other than Intermediation Service of Specific Digital Advertisement" for Media companies as users

(a) Demand substitutability

As is the case mentioned in the above a of (A), for Media companies as users, the demand substitutability is limited between "Intermediation Service of Specific Digital Advertisement" and "Intermediation Service of Digital Advertisement other than Intermediation Service of Specific Digital Advertisement".

(b) Supply substitutability

As is the case mentioned in the above b of (A), for enterprises, who provide Intermediation Service of Digital Advertisement, as suppliers, the supply substitutability is limited between "Intermediation Service of Specific Digital Advertisement" and "Intermediation Service of Digital Advertisement other than Intermediation Service of Specific Digital Advertisement".

(c) Summary

As described above, if Media companies are users, both demand and the supply substitutability are limited between "Intermediation Service of Specific Digital Advertisement" and "Intermediation Service of Digital Advertisement other than Intermediation Service of Specific Digital Advertisement". Therefore, the Service range of this case has been defined as "Intermediation Service of Specific Digital Advertisement".

(B) Geographic range

Enterprises providing Intermediation Service of Specific Digital Advertisement are able to perform intermediation services of digital advertising space in all regions of Japan irrespective of the location of advertising clients/advertising agencies and Media companies as users without any location-based price difference. Therefore, the geographic range of the Intermediation Service of Specific Digital Advertisement of this case has been defined as "all regions of Japan"[10], respectively.

3 Relevance to the safe-harbor criteria in particular field of trade

(1) Type of business combination

Because all members of the Parties are running Non-Search Advertising Businesses and are in competitive relationship each other, this case falls under the category of horizontal business combination in the Non-Search Advertising Business.

In addition, all members of the Parties are performing the Intermediation Service of Specific Digital Advertisement for both advertising clients/advertising agencies and Media companies as uses and are in competitive relationship each other. Therefore, this case falls under the category of horizontal business combination[11].

(2) Relevance to the safe-harbor criteria to horizontal business combination

(A) Non-Search Advertising Business

As the market size of the Non-Search Advertising Business is not available, the market share of the Parties in the said business field is unknown. Therefore, it will be investigated later in 4 whether or not the conduct of this case would substantially restrain competition based on an assumption that the safe-harbor criteria is not met.

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[10] As is the case with "Non-Search Advertising Business" in the above B of (1), if constraints in languages used in advertisement is taken into account, it can be considered unnecessary to be prepared for world market in this case.

[11] Meantime, this case also falls under the category of vertical business combination, of which upstream market is the Intermediation Service of Specific Digital Advertisement, and of which downstream market is the Non-Search Advertising Business (Users of such intermediation services and advertising businesses are Media companies). However, as it will be discussed later in 4, there are strong competitors in both markets and the increase in the sales of the Group of the Parties after integration of the Intermediation Service of Specific Digital Advertisement is small. Therefore, it seems that the conduct of this case will not pose any risk of input foreclosure and customer foreclosure. Therefore, the detailed investigation has been omitted.

(B) Intermediation Service of Specific Digital Advertisement

As is the case in the Non-Search Advertising Business, because the market size of the Intermediation Service of Specific Digital Advertisement is not available for neither case where advertising clients/advertising agencies are users nor the case where Media companies are users, the market share of the Parties in the field of the said intermediation services is unknown for both cases. Therefore, it will be investigated later in 4 whether or not the conduct of this case would substantially restrain competition based on an assumption that the safe-harbor criteria are not met.

4 Examination on substantial restraint on competition

(1) Position, etc. of the Parties and competitors

(A) Non-Search Advertising Business

Although the market size of Non-Search Advertising Business is unknown, the aggregated market share of the Parties in particular field of trade of this case cannot be considered high, even if it is estimated based on the market share in terms of expense of advertising media on internet excluding the Search Advertising cited from “2018 Detailed analysis of Advertising Expense and Expense of Advertising Media on Internet in Japan” prepared by Dentsu Inc.

Also, in the field of the Non-Search Advertising Business, there are powerful competitors other than the Parties. Especially, some of such competitors have various media for the Non-Search Advertising such as video-sharing sites, SNS sites and photo posting sites, which are well-known to consumers. According to the result of interviews with advertising clients/advertising agencies as users, it was said that the ratio of transactions, in which digital advertisements are put in advertising spaces of competitors other than the Parties, was high.

Furthermore, in case of the Non-Search Advertising Business, unlike the manufacturers, capacity of facilities does not play a major role in the provision of services and subdivision of digital advertising space and/or enlargement of digital advertising media are relatively easy. Also, such digital advertising spaces have no upper limit. Because of such facts, even if the Parties should raise the price of digital advertising spaces as a result of the conduct of this case, advertising clients/advertising agencies as users may make a deal with other powerful competitors that have an adequate excess capacity.

(B) Intermediation Service of Specific Digital Advertisement for the case where both of advertising clients/advertising agencies and Medi

a companies are users

As is the case of the Non-Search Advertising Business, there are multiple powerful competitors other than the Parties also in the field of Intermediation Service of Specific Digital Advertisement. According to the result of interviews with advertising clients/advertising agencies and Media companies as users, they voiced that, if an enterprise having advertising media that are well-recognized by consumers also provides the Intermediation Service of Specific Digital Advertisement, many of advertising clients/advertising agencies and Media companies as users will end up using the Intermediation Service of Specific Digital Advertisement provided by such an enterprise. Therefore, they say that such an enterprise is in a strong position also in the field of the Intermediation Service of Specific Digital Advertisement.

In addition, if the magnitude of the sales of FY2018 of the Parties for the Intermediation Service of Specific Digital Advertisement is taken into account, it can be considered that the increase in the market share of the Parties as a result of the conduct of this case is negligibly small.

Furthermore, in case of the Intermediation Service of Specific Digital Advertisement, unlike the manufacturers, capacity of facilities does not play a major role in the execution of business. Also, enterprises providing the Intermediation Service of Specific Digital Advertisement have also been performing the system maintenance based on an assumption that the number of advertising clients/advertising agencies and Media companies will increase. Because of such facts, even if the Parties should raise the fee for the Intermediation Service of Digital Advertisement as a result of the conduct of this case, advertising clients/advertising agencies or Media companies as users are able to make a deal with other powerful competitors that have an adequate excess capacity.

(2) Concerning evaluation of competition-related data owned by the Parties[12]

In the course of the Digital Advertising Business and the Intermediation Service

[12] The Digital Advertising Business is a business activity to sell digital advertising spaces and, as an issue of business capability improvement as a result of data accumulation, it is also possible to make an investigation with a focus on the Intermediation Service of Specific Digital Advertisement that runs targeting advertisement. However, in view of the fact that many of advertisement placed in the advertising space sold by the Group of the Parties are generally placed through the Intermediation Service of Specific Digital Advertisement provided by the Group of the

of Specific Digital Advertisement operated by the Parties, there are cases where data such as information on common ID of platforms provided by each member of the Parties (such as sex, telephone number[13]) and information on search history and/or purchasing behavior of consumers obtained through other business activities (searching business and E-commerce business, etc.) of the Parties are used. Regarding this matter, during interviews with competitors, they expressed a concern that the business capability of the Parties might be improved as a result of the fact that, after the conduct of this case, the Parties would become to be able to use the information on such common ID and the data obtained through other business activities for the Digital Advertising Business and the Intermediation Service of Specific Digital Advertisement.

(A) Concerning the variety of data obtained by the Parties

As mentioned in the above, data that can be obtained by the Parties through business activities other than the Digital Advertising Business and the Intermediation Service of Specific Digital Advertisement (hereinafter referred to as "Other Business Data"), include information related to common ID, search history and shopping history of E-commerce users, etc. However, if such Other Business Data are compared with those which are obtainable by leading enterprises in competition running the Digital Advertising Business and the Intermediation Service of Specific Digital Advertisement (such as search histories on major search engine portal site, user profiles on SNS and shopping histories on major internet shopping malls), they can neither be considered as unique data that can only be obtainable through the utilization of services provided by the Parties nor data that would exert a substantial influence on the competition in the Digital Advertising Business and the Intermediation Service of Specific Digital Advertisement.

(B) Concerning the volume/range of data obtained by the Parties

It is difficult to quantitatively understand the volume or range of Other Business Data that the Parties can obtain. However, if the positions of the Parties in the field of respective businesses other than the Digital Advertising Business and the Intermediation Service of Specific Digital Advertisement are taken into

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Parties, it has been decided to investigate the Digital Advertising Business and the Intermediation Service of Specific Digital Advertisement together.

[13] Including the case where users provide such information voluntarily. The same shall apply hereinafter.

consideration in comparison with the positions of competitors in the field of respective businesses other than the Digital Advertising Business and the Intermediation Service of Specific Digital Advertisement (such as business operation of searching business, video-sharing site, SNS site and photo posting site), it cannot be considered that the volume or range of Other Business Data obtainable by the Parties is so large or wide as would give an advantage to the position of the Parties in comparison with those obtainable by competitors.

Particularly in this case, because of the large number of users of contents of "Yahoo! Japan" and "LINE" of the Parties in Japan, there are concerns that accumulation of information relating to those common ID may result in enhancement of the business capability.

However, if such facts as (i) the common ID-related information is basic information such as sex and telephone number as mentioned in the above A, and, among data obtained by the Parties, the type of such information is considered neither as unique data obtainable only through the use of services provided by the Parties nor as data that would exert substantial influence on competition in the Digital Advertising Business and the Intermediation Service of Specific Digital Advertisement, (ii) there seem to be numbers of overlap to a substantial extent between the groups of users of both services and (iii) according to the Parties, formats of data that both companies currently have are optimized in different form for each business/company, and the integration of data in different format is technically very difficult, etc.[14] are taken into consideration, the volume/range of data obtained by the Parties cannot be considered so large/wide that will give the Parties an advantage to enhance their competitive position even if the said concerns are taken into consideration.

(C) Frequency(velocity) of data collection by the Parties

Other Business Data that the Parties can obtain are collected every time when users of services relating to respective businesses use the said services. However, as is the case mentioned in the above B, the frequency is not considered so high that will give the Parties an advantage to enhance their position, if it is compared to the frequency of collection of Other Business Data by competitors.

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[14] Regarding the quality of targeting, according to the result of interviews with experts, while data need to have a certain level of scale, the required quality of targeting can be adequately secured once a certain level of scale has been secured. Namely, there is also an opinion that the scale of data exceeding such a certain level will not always contribute to significant enhancement of targeting quality.

(D) Relationship with improvement of services, etc. in relation to the Digital Advertising Business and the Intermediation Service of Specific Digital Advertisement between one of the Parties and the Other of Parties

The communication business operated by the LINE Group has monthly users as many as approximately 84 million persons or more which is one of the largest numbers in Japan. As a result of the conduct of this case, the ZHD Group will newly become able to obtain data (text data, etc. of users' messages), which have been obtained/kept by the LINE Group through the communication business. As a consequence of this, it may be an issue whether substantial influence will be exerted on the competitive position of the Parties in the Digital Advertising Business and the Intermediation Service of Specific Digital Advertisement. However, because the protection of confidentiality under the Telecommunications Business Act (Act No. 86 of 1984) is applicable to contents of communication among users, which have been obtained/kept by the LINE Group, even the LINE Group themselves are not permitted to see/use such contents unless otherwise permitted by law. Therefore, obtainment of such data will not result in exerting a substantial influence on the competitive position of the Parties in the Digital Advertising Business and the Intermediation Service of Specific Digital Advertisement.

(E) Other situation

Even before the conduct of this case, the Parties was in a position to be able to use Other Business Data owned by respective members thereof in the course of the Digital Advertising Business and the Intermediation Service of Specific Digital Advertisement that had been operated by them on their own. However, there are more than one powerful enterprises other than the Parties in the field of the Digital Advertising Business and the Intermediation Service of Specific Digital Advertisement. Because of this, it cannot be considered that the Parties has reached to the level where they can use Other Business Data owned by themselves as advantageously as would exert a substantial influence on the competition in the Digital Advertising Business and the Intermediation Service of Specific Digital Advertisement.

Also, in case where any information obtained through other businesses is used, in addition to those mentioned in the above D, there are restrictions under the Act on the Protection of Personal Information (Act No. 57 of 2003), etc. for the use of such information. Therefore, it is considered that strict protection and

control system is continuously required under the current situation where the importance of personal and privacy information is re-acknowledged along with the advancement of digitalization, etc. by IoT (Internet of Things).

(F) Summary

Based on such a situation as above, although the Parties are currently running the Digital Advertising Business and the Intermediation Service of Specific Digital Advertisement and, at the same time, respective members of the group are also running businesses other than the Digital Advertising Business and the Intermediation Service of Specific Digital Advertisement, it is considered that the business capability of the Parties will not be enhanced to the extent the competitive pressure will not work effectively, even if data obtained from the other businesses are taken into account.

(3) Concerning the existence of indirect network effect

The Parties sells advertising spaces to advertising clients/advertising agencies by way of distribution of various contents such as news articles, comics, videos and games. The more users of contents of the Parties will increase, the more chances of such users to look at advertisements will increase. Then the Digital Advertising Business of the Parties will become more attractive. Further, in view of the fact that many of advertisements in the advertising spaces sold by the Parties are generally placed through the Group's own Intermediation Service of Specific Digital Advertisement, such an increase in the needs for advertisement will result in an increase in the needs for the Intermediation Service of Specific Digital Advertisement of the Parties. Because of such a spiral of benefits, it can be said that indirect network effect is workable between each content business as well as the Digital Advertising Business and the Intermediation Service of Specific Digital Advertisement.

Therefore, even if there is no substantial restraint on competition when the degree of influence of the conduct of this case is measured on the basis that each content distribution business is considered as a particular field of trade, there still be a risk of influence on the competitive position due to the improvement of business capability of the Parties in the Digital Advertising Business and the Intermediation Service of Specific Digital Advertisement, as a result of the conduct of this case and eventual integration of multiple contents services that used to compete each other within the Parties and have relationship with advertising businesses. Therefore, when an influence on the competition in the field of the

Digital Advertising Business and the Intermediation Service of Specific Digital Advertisement is investigated, it is appropriate that the existence of multidimensional indirect network effect is taken into consideration.

The services, which are classified as neither the Digital Advertising Business nor the Intermediation Service of Specific Digital Advertisement, (such as video-sharing site, SNS site and photo-posting site) owned by powerful competitors that are mentioned in the above (1) are all considered as important services having indirect network effects workable on the Digital Advertising Business and the Intermediation Service of Specific Digital Advertisement, just like the case of contents distribution businesses owned by the Parties. Therefore, there is no reason to consider that the indirect network effects created as a result of an integration of respective contents distribution businesses owned by the Parties become so strong that surpass the indirect network effects of the important services provided by such competitors.

Therefore, as mentioned in the above (1) and (2), in this case, it is considered that there is no reason to downgrade the severity of competitive pressure, etc. created by the existence of powerful competitors, even if such multidimensional indirect network effects as mentioned in the above are taken into consideration.

(4) Conclusion

Based on the above, the JFTC concluded that the conduct of this case would not substantially restrain competition in the Non-Search Advertising Business and the Intermediation Service of Specific Digital Advertisement, of which users are both advertising clients/advertising agencies and Media companies through unilateral conduct or coordinated conduct of the Parties.

Part VI. Code-based payment business

1 Outline of cashless payment and services provided by the Parties

Cashless payment means payment made by means other than physical cash (paper note/coin) and is broadly categorized into the following: (i) Payment by credit-card, (ii) Payment by debit card, (iii) Payment by electronic money (stored-value card)[15], (iv) Payment by electronic money (mobile device) and (v) Code-based payment (see [Table 1] for main features of each cashless payment service).

Among such cashless payment methods, the SBK/ZHD Group offers “PayPay” and

[15] Electronic money typically means an electronic payment method by prepaid system in which necessary amount of money needs to be charged beforehand. (Source: HP of the Bank of Japan)

the NAVER/LINE Group offers “LINE Pay”. Both of these methods are classified as (v) Code-based payment. Therefore, details of the code-based payment business will be discussed hereinafter.

[Table 1] List of various cashless payment services and their outlines

Name of service	Main points of service	Main features		
		Form of payment	Payment method	Time of payment
(i) Payment by credit card	A cashless payment method which allows future payment depending on the creditworthy of purchaser. Credit examination by credit card company is required beforehand to be qualified for the payment by credit card.	Card type	Swipe method, etc.[16]	Future payment
(ii) Payment by debit card	A payment method through which the transaction amount is debited from the purchaser's bank account at the time of transaction simultaneously (immediate payment upon transaction).	Card type	Swipe method, etc.	Upon transaction
(iii) Payment by electronic money (stored-value card)	A payment method through which payment is executed by reading the payment information of consumer stored in IC card, etc. through non-contact-type card reader.	Card type	Non-contact method[17]	Prepaid method[18]
(iv) Payment by electronic	A payment method through which payment is	Mobile type	Non-contact method	Prepaid method or

[16] A method to make payment by swiping magnetic stripe or IC chip on magnetic card, etc. through card reader of terminal device, which reads the payment information of consumer stored therein and execute payment.

[17] A method to make payment electronically by waving magnetic card (mostly IC card) or smartphone (on which necessary apps are installed) over a device named NFC utilizing short range communication technology (hereinafter referred to as "Non-contact-type Card Reader"). By waving the card or smartphone, information stored therein are read by the reader.

[18] A method to make payment of purchase of goods or services by using the money saved beforehand in the card by cash deposit or by transfer from bank account or credit card.

money (mobile device)	executed by reading the payment information of consumer stored in apps on smartphones through non-contact-type card reader.			future payment
(v) Code-based payment	As per 2 below	Mobile type	Code-based method	Prepaid method or future payment

※The list shows main features.

2 Outline of code-based payment service

Code-based payment service means a service to provide consumers and member stores with a payment method that execute payment by electronically reading payment information of the consumer stored in the form of bar code or QR code (hereinafter both are referred to simply as "Code") by using a payment app on smartphone[19].

There are two methods to use the code-based payment service. Namely, (i) to make payment by reading the code presented by the member store by using the consumer's own smartphone (MPM: Merchant-Presented Mode) or (ii) payment is made when member store's code reader reads the code on payment app on consumer's smart phone presented by the consumer (CPM: Consumer-Presented Mode). Their features are that (i) MPM requires only a piece of paperboard, etc., on which the code is displayed, as a preliminary preparation to be made by member stores and requires negligible initial cost in many cases[20], and is rather popular among small and medium sized stores, and (ii) CPM requires modification of POS system, etc. and is often used among large scale stores such as convenience stores and large scale chain stores.

MPM: Merchant-Presented Mode		A method through which user's own smartphone read the code presented by the member store. There are two types of code, namely, one is a code presented by store which includes information on payment amount (dynamic code) and another is a code displayed at member store

[19] There are also services available for online payment.

[20] Even in case of MPM, it is necessary for member stores to have devices such as tablet, etc. to prepare QR code in case of dynamic code system. Therefore, enterprises that have no such devices, etc. still incur a certain amount of initial cost.

		which the user read on smartphone and input the payment amount to make payment (static code).
CPM: Consumer-Presented Mode		The user presents the code by displaying on payment app on user's own smartphone, and the member store of the code-payment service reads such a code by scanning by code reader, etc.

3 Market conditions in association with code-based payment service

The market size relating to code-based payment service in 2019 has rapidly grown to approximately 500 billion yen, more than three times as much as 150 billion yen in 2018, and there is also a forecast that it will reach 9.7 trillion yen in 2025[21]. Namely, considerable growth is expected in the future. If we look at the ratio of amount paid by code-based payment among private-sector final consumption expenditure in this country, it has increased to 0.31% in 2019 from 0.05% in 2018, representing approximately six-fold growth in one year[22]. Taking these facts into consideration, it can be considered that, there is a possibility for a radical change in competitive environment in association with the code-based payment service in a few years.

4 Particular field of trade

(1) Definition of a particular field of trade in case where multiple groups of users exist

The enterprises that operate code-based payment services provide their services to two different groups of users, namely, consumers and member stores[23]. Therefore, it is necessary to define and investigate the scopes of services for two different cases, namely, one for the case where consumers are the users and another

[21] Card-Wave "General Survey on Electronic Payment 2019 – 2020"

[22] Materials from the 2nd "Review Meeting on Environmental Improvement for Further Facilitation of Cashless Payment for Small and Medium-Sized Stores" of the Ministry of Economy, Trade and Industry (June 23, 2020). There was also a comment during interviews with member stores that the ratio of code-based payment was almost doubled in one year compared to those in the early days when such payment method was introduced.

[23] Code-based payment service consists of two transactions conducted by the enterprise that provides the code-based payment service, namely, (i) a transaction to provide a consumer with cashless payment method (code-based payment) free of charge (a transaction in which the consumer is the user) and (ii) a transaction to provide a member store with cashless payment method (code-based payment) with service fee imposed on the member store (a transaction in which the member store is the user).

case where member stores are the users.

(A) Service range

a Code-based payment service for consumers as users

(a) Demand substitutability

According to private research data obtained by the Parties[24] and data which have been aggregated/processed/analyzed by the Parties based on its own data, etc. and submitted to the Commission (hereinafter referred to as "the Submitted Data"), the great majority of cashless payment methods used by consumers other than code-based payment is dominated by credit card payment[25].

In case of code-based payment services where consumers are users, consumers can use the code-based payment free of charge. However, in case of credit card, annual fee might be charged, which is different from the code-based payment. Credit card requires credit examination for qualification, which is also a difference. Furthermore, according to the Submitted Data, credit cards are often used for payment of larger amount compared to code-based payment (refer [Figure 1]). This indicates that consumers are using the two payment methods differently depending on the payment amount[26]. Based on such facts as above, it is considered that demand substitutability is limited between code-based payment and credit card payment.

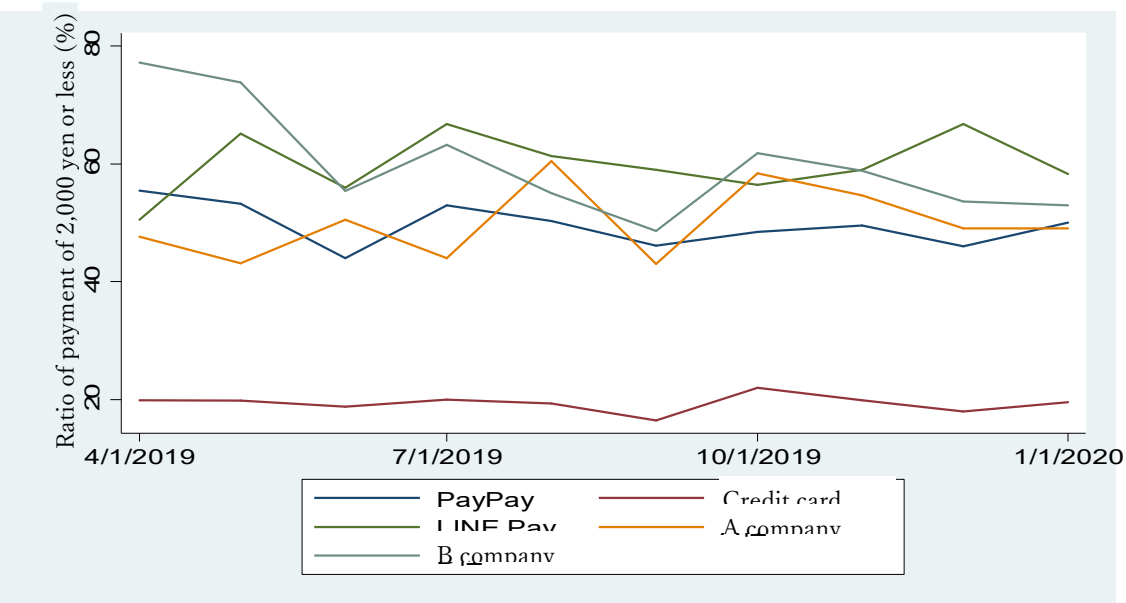
[Figure 1] Ratio of payment of small amount (2,000 yen or less) out of aggregated

[24] The said data were obtained from the investigation on daily household accounts of approximately 30 thousand men and women aged between 15 and 59 (60 years old or over is partly included). Categories of the goods included in such data broadly covers goods/services that are regularly purchased by general consumers on a day-to-day basis, such as "foods/commodities", "dining out", "home electrical appliances", "beauty care/health/medical care/sanitation" and "clothes/fashion".

[25] According to the Submitted Data, the ratio of credit card payment among total cashless payment is 59% in terms of paid amount and 35% in terms of number of times of payment as of October 2019.

[26] The same tendency was also confirmed in the course of interviews with member stores.

payment amount[27] [28]



If we look at the comparison between the code-based payment service and cashless payment services other than credit card payment (payment by electronic money (stored-value card), etc.), they have common features such as no fee charged to consumers and similarities in the amount of payment (both payment methods tend to be used for relatively smaller amount of payment compared to credit card payment), although there are differences such as the code-based payment is made on payment apps on smartphone, etc. while the payment by electronic money (stored-value card), etc.) always requires the card being carried by the user. Therefore, it can be considered that demand substitutability is observed to a certain extent between the code-based payment service and cashless payment services other than credit card payment.

(b) Supply substitutability

Services provided by the code-based payment service and services provided by the other cashless payment services have substantial differences in reading methods of payment data and in payment systems. Therefore, supply substitutability is limited.

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[27] This shows the result obtained from calculation of "total amount of payment not more than 2,000 yen made by each payment method" divided by "total amount of payment made by each payment method".

[28] This chart was prepared by the JFTC based on the Submitted Data.

(c) Summary

In addition to the above, the Service range of this case in the situation where the group of users are consumers has been defined as "Code-based payment service for consumers as users", in consideration of the fact that all members of the Parties are competing in code-based payment services, the fact that, according to the internal data of the Parties, the Parties always determine strategies for an increase of the number of users considering only the enterprises providing code-based payment services as competitors and the fact that, among cashless payment methods, the growth of code-based payment is particularly significant, etc.

In the meantime, as for cashless payment methods other than code-based payment service, even though they are not considered as the same market, it can be considered that there is a possibility for such payment methods to be assessed as a certain competitive pressure. Therefore, it has been determined that they will be investigated later in 6 as a competitive pressure from adjacent markets.

b Code-based payment service for member stores as users

(a) Demand substitutability

When a member store newly introduces cashless payment, it is generally necessary for them to pay (i) initial cost (introduction cost) and (ii) fee for payment service. Regarding (i) initial cost, many of cashless payment methods require initial cost for installation of a certain equipment. For instance, if credit card payment method will be adopted, installation of terminal devices to read credit card information and to transmit/send payment data will be required. In contrast to this, in case of code-based payment method, if it is the method where the payment is made by consumer's reading the code presented by the member store (MPM: Merchant-Presented Mode), almost no initial cost is required. Thus, it can be considered as an important feature that makes member stores as users feel easier to adopt code-based payment compared to the other methods. Regarding (ii) fee for payment service, for example, in case of PayPay of the SBK/ZHD Group who is a late comer in the field of code-based payment service, the group has been running a campaign that offers no merchant fee to member stores, who satisfy a certain qualification requirements, to increase the number of member stores since the launch of

their service in October 2018 until now. It was also learnt during interviews with competitors and member stores that, even in case of code-based payment services in which member store fees were charged, the rates of such fees for code-based payment services were, in general, set at levels slightly lower than those for other cashless payment services. Under such circumstances, there were many opinions expressed during interviews with member stores that, even if the fee for code-based payment services would be slightly raised, the member stores would not be urged to change their payment methods to other method. Therefore, demand substitutability is limited between the code-based payment service and cashless payment services other than code-based payment.

(b) Supply substitutability

In case where member stores are the users, as is the case where consumers are the users (refer to the above b of (A)), supply substitutability is also limited between the code-based payment service and cashless payment services other than code-based payment.

(c) Summary

In addition to the above, as is the case with the code-based payment service for consumers as users, the Service range of this case in the situation where the group of users are member stores has been defined as "Code-based payment service for member stores as users", in consideration of the fact that all members of the Parties are competing in code-based payment services, the fact that, according to the internal data of the Parties, the Parties always determine strategies for an increase of the number of users considering only the enterprises providing code-based payment services as competitors and the fact that, among cashless payment methods, the growth of code-based payment is particularly significant, etc.

In the meantime, as for cashless payment methods other than code-based payment service, even though they are not considered as the same market, it can be considered that there is a possibility for such payment methods to be assessed as a certain competitive pressure. Therefore, it has been determined that they will be investigated later in 6 as a competitive pressure from adjacent markets.

(B) **Geographic range**

In view of the fact that code-based payment services have been provided without any specific geographic restriction domestically in Japan and without any area-specific condition that causes substantial difference in service prices, geographic range has been defined as "all regions of Japan" for both of "code-based payment service for consumers as users" and "code-based payment service for member stores as users".

5 Relevance to the safe-harbor criteria to particular field of trade

As all members of the Parties are providing code-based payment services for consumers as users and the same for the member stores as users, and are in competitive relationship each other, this case falls under the category of horizontal business combination. The market shares of the Parties in the field of code-based payment services in terms of amount of money paid through code-based payment are as shown in [Table 2]. Namely, based on the market shares as of January 2020, the aggregated share of the Parties after the conduct of this case was approximately 60% (No. 1), HHI[29] after the conduct of this case was approximately 4025 and the increase in HHI was approximately 877. Therefore, the safe-harbor criteria of horizontal business combination is not met.

[29] Herfindahl-Hirschman Index (an index to indicate the degree of market concentration and is obtained as a total sum of the square of the value of market shares of respective enterprises in particular field of trade.)

[Table 2] Market share in the market of code-based payment services (based on amount of money paid through code-based payment)[30]

Name of service		Market share[31]					
		April 2019	Rank order	September 2019	Rank order	January 2020	Rank order
SBK/ZHD Group		Approx. 50%	No. 1	Approx. 50%	No. 1	Approx. 55%	No. 1
NAVER/LINE Group		Approx. 25%	No. 2	Approx. 10%	No. 4	Approx. 5%	No. 5
A Company		Approx. 10%	No.3	Approx. 15%	No. 2	Approx. 10%	No. 3
B Company		Approx. 5%	No. 4	Approx. 10%	No. 3	Approx. 15%	No. 2
C Company		Approx. 5%	No. 5	Approx. 5%	No. 5	Approx. 5%	No. 4
D Company		Approx. 0 – 5%	No. 6	Approx. 5%	No. 5	Approx. 5%	No. 6
E Company		Approx. 0 – 5%	No.6	Approx. 0 – 5%	No. 7	Approx. 0 – 5%	No. 7
Others		Approx. 5%	-	Approx. 5%	-	Approx. 5%	-
Total		100%		100%		100%	
Total share (HHI)	Rank order	Approx. 75% (5850)	No. 1	Approx. 60% (4025)	No. 1	Approx. 60% (4025)	No. 1

6 Investigation on substantial restraint on competition

As mentioned in the above 4, two fields of trade, namely, (i) code-based payment service for consumers as users and (ii) code-based payment service for member stores as users are defined for code-based payment services. The relationship between the two fields of trade is such that the more the number of consumers using a specific code-based payment service are increased in the field of (i), the more the incentive for member stores to adopt such a specific code-based payment service will be increased in the field of (ii), and vice versa (the more the number of member stores using a specific code-based payment service are increased in the field of (ii), the more the incentive for consumers to adopt such a specific code-based payment service will

[30] The table was prepared by the JFTC based on the Submitted Data.

[31] Market shares are mentioned in increments of 5%, such as the share of not less than 47.5% and less than 52.5% is indicated as “Approx. 50%”. Therefore, the total will not always be 100%. The same shall apply hereinafter.

be increased in the field of (i)). Namely, the two fields of trade are in a relationship where indirect network effect is workable. Therefore, the influence exerted by the conduct of this case has been investigated taking such characteristics of the market into consideration.

Furthermore, the JFTC has determined to investigate whether the Parties will attain the market power especially in the field of trade of code-based payment service at the consumers as a result of the conduct of this case, and whether it enables the Parties to raise the payment service fee of member stores through indirect network effect from code-based payment service for consumers. In this relation, structural estimation model was developed to estimate the price elasticity and the magnitude of indirect network effect of respective demands at consumers and member stores, and the data necessary for the analysis thereof were requested. In response to such a request, the Parties reported that they did not have a portion of the data required for the analysis and conducted an economic analysis on payment services focused on the consumers (hereinafter referred to as “Economic Analysis of the Parties”) based on the Submitted Data as an alternative way. Then, the analysis has been submitted to the JFTC. For the purpose of the investigation on this case, the JFTC has conducted the economic analysis on its own by means of assessment/verification of the Economic Analysis of the Parties.

(1) Code-based payment service for consumers as users

(A) Position of the Parties

As mentioned in the above 3, the market relating to code-based payment service has rapidly grown and changed in the past year, and, therefore, services provided by the Parties have been enhanced through a substantial increase in numbers of members and member stores during a period little more than one year (for example, the frequency of payment made by PayPay increased from 21.6 million times in January-March 2019 to 375 million times in January-March 2020). Reflecting such a rapid growth of business activities of the Parties, the size of market relating to code-based payment services as well as the market shares have dramatically changed (refer to [Table 2] of the above 5).

(a) Position of the SBK/ZHD Group

PayPay is a code-based payment service provided by the SBK/ZHD Group. They were a latecomer started the service in October 2018, but rapidly increased numbers of users and member stores through a massive campaign such as 10 billion yen cash-back to users and have gained the market share

as much as approximately 50% by April 2019, six months after the launch. Thereafter, they repeated offering large-scale cash-back campaigns, etc. to users and have achieved approximately 55% market share by January 2020 (No. 1 market share). Furthermore, if we look at the total numbers of members and member stores of PayPay, it overwhelms those of competitors outside the Parties. In consideration of the fact that code-based payment services have two fields of trade, namely, code-based payment services for consumers as users and code-based payment services for member stores as users, and that indirect network effect works between the two fields of trade, the position of the SBK/ZHD Group is considered to be exceptionally strong not only because of their No. 1 market share but also the overwhelming total numbers of users and member stores compared to those of the other enterprises in competition.

(b) Position of the NAVER/LINE Group

On the other hand, LINE Pay, the code-based payment service provided by the NAVER/LINE Group, started the service in December 2014 and had market share of approximately 25 % with No. 2 ranking as of April 2019. However, the share rapidly declined after July of the same year and dropped down to approximately 5 % with No.5 ranking by January 2020. Therefore, if we look only at the current market share, the position of the NAVER/LINE Group relating to code-based payment service can be considered to be remarkably low compared to the other competitors.

However, in view of the following facts, it seems inappropriate to underestimate the competitive position of the NAVER/LINE Group based only on the market share calculated according to the amount of money paid through code-based payment as of today.

(i) The fact that the popularity of LINE Pay has been steadily improving, if the number of active users and the frequency of payment are taken into consideration

Contrary to the impression given by the decline of market share, LINE Pay has a steady improvement in number of users in terms of the number of monthly active users of the code-based payment service provided by the Parties during one year period in 2019.

In addition, although the number of active users was as small as 10 thousand or so in October 2018 when the service launched, it has

dramatically increased to 1 million in three months thereafter and to 10 million by the end of 2019.

Furthermore, as shown in [Table 3], while the market share of LINE Pay calculated based on the transaction amount paid through the service has consistently decreased from approximately 25% as of April 2019 to approximately 10% as of September 2019 and further to approximately 5% as of January 2020, if we look at the transition in the transaction amount paid through code-based payment service and frequency of such payment during the said period of time, it does not necessarily mean that the transaction amount paid through the service has consistently decreased, namely, such transaction amount in January 2020 maintained the level of September 2019, although it had decreased compared to the amount in April 2019. The table also shows that, in terms of the frequency of payment, it has rather improved compared to the situation in April 2019.

[Table 3] Market share of LINE Pay,
transition of transaction amount and frequency of payment[32]

	April 2019	September 2019	January 2020
Market share	Approx. 25%	Approx. 10%	Approx. 5%
Transaction amount*	100	Approx. 78	Approx. 78
Frequency of payment*	100	Approx. 108	Approx. 104

* Scores of transaction amount and frequency of payment are calculated based on the values as of April 2019 of which score is set as 100.

(ii) The fact that LINE Pay is considered to have many potential users and the fact that LINE Pay overwhelms the other competitors in terms of total numbers of members and member stores

If we look at total number of members of code-based payment service of the Parties, total number of members of LINE Pay is much larger than that of PayPay who has No. 1 market share. Furthermore, there are more than approximately 84 million monthly active users of LINE app provided by the NAVER/LINE Group, and it can be considered that such users of

[32] The table was prepared by the JFTC based on the Submitted Data.

LINE app have a strong probability to be members or active users of LINE Pay in the future.

Also, regarding the number of member stores, LINE Pay has secured the number of member stores comparable to that of PayPay having No. 1 market share.

Under such circumstances, the total number of users and member stores of LINE Pay can be considered to be quite substantial compared to those of competitors that have larger market shares than the NAVER/LINE Group.

As mentioned in the above, regarding code-based payment services, if the fact that indirect network effect works between the two fields of trade (namely, code-based payment service for consumers as users and code-based payment service for member stores as users) is taken into consideration, it can be considered that the competitive position of the NAVER/LINE Group that overwhelms other competitors in terms of total numbers of members and member stores becomes even stronger than the position indicated by the market share based on the current amount of payment made through code-based payment services.

(iii) The fact that cash-back campaign is considered to have a strong impact on the fluctuation of market share

In the market relating to code-based payment service, extensive cash-back campaigns have been continuously conducted by enterprises that provide code-based payment services for a few years, and it can be conceived that consumers consider "cash-back campaigns" to be an important factor in the choice among enterprises providing code-based payment services.

For example, a survey clarified that, when the SBK/ZHD Group conducted a campaign named "PayPay 10 Billion Yen Give Away Campaign (first phase)"[33] for December 4 through December 13, 2018, the number of active users of PayPay started a rapid increase from the previous day of the launch of the said campaign and ended up in an explosive increase by the time when it was closed.

[33] A campaign that offers 20% cash-back of amount of code-based payment (maximum cash-back of 50,000 yen out of upper limit of monthly payment 250,000 yen) to every user with further 100% cash-back for winners of the lottery.

A similar tendency was seen in the case of LINE Pay, for which they conducted a cash-back campaign named "Super Pay-Toku Spring Fest"[34] in March 2019. The campaign achieved a considerable increase in all of number of users, amount of payment made through the service and the number of transactions of which payment was made through the service compared to those of the previous month (February 2019).

Irrespective of such a significant impact of cash-back campaigns on the market share as shown in the above, the NAVER/LINE Group have substantially deducted the marketing expense which is the funding source of cash-back campaign of LINE Pay starting from July 2019[35]. Then, the drastic decline of market share of LINE Pay started immediately.

Under such circumstances, there is a possibility that the drastic decline of market share of LINE Pay was caused by their discontinuation of extensive campaigns rather earlier compared to the other enterprises. Therefore, to the contrary, it is reasonable to consider that LINE Pay can gain the market share as soon as they start such extensive campaigns again.

As described above, it seems at the first glance that LINE Pay has lost the market share remarkably and has been placed in a substantially lower competitive position in the market relating to code-based payment service. However, in consideration of the situation mentioned in the above (i) through (iii), the competitive position of the NAVER/LINE Group can be considered to be at a higher level than that implied by the current market share based on the amount of payment made through code-based payment services.

(B) Severity of competition among members of the Parties

If there has been active competition between PayPay and LINE Pay since early times and if they have been in such a relationship where an increase in market share of one party would result in a decrease in market share of the other party (competitive relationship between members of the Parties is strong), it is considered that the influence exerted by the conduct of this case is strong.

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[34] A campaign that offers cash-back of 20% of code-based payment (maximum cash-back of 5,000 yen per person) to every user with further cash-back of maximum 2,000 yen worth for winners of the lottery.

[35] According to financial statement of the LINE Group for the 3rd quarter (from July to September) of FY2019, marketing expense for the said period was reduced by 92% compared to the previous quarter (April to June of 2019).

In the economic analysis of the Parties, they conducted an analysis of "diversion ratio"[36] to assess the severity of competition in the service quality between members of the Parties, and alleged that the severity of competitive relationship between the members of the Parties (competitive relationship between PayPay and LINE Pay) is same as or less than the competitive relationship between PayPay and other code-based payment service. The diversion ratio in the economic analysis of the Parties is calculated by way of event analysis, in which the one-day-only campaign named "PayPay 1st Anniversary [PayPay Thanks Day] Campaign[37]" conducted by the SBK/ZHD Group on October 5, 2019 (hereinafter referred to as "PayPay 1st Anniversary Campaign") was brought into focus and an increase in demand for PayPay (amount of payment executed) and a decrease in demand for each code-based payment service (amount of payment executed) on the same day are compared. However, the PayPay 1st Anniversary Campaign was one-day-only campaign and if the cash-back amount is evaluated in expected value, it corresponded to discount of 21.6% in case of a purchase of 5,000 yen and discount of 12% in case of a purchase of 10,000 yen. Therefore, there was a possibility that, among many consumers using other payment method, there were users who tentatively used PayPay only for one day (namely, they cannot be considered to have changed their payment method), and such a possibility cannot be eliminated. Because of this, there is a possibility that the result of analysis of diversion ratio was overestimated, and such a possibility is necessary to be taken into consideration in the course of investigation hereunder.

On the premise of those facts, as a result of verification of allegations of the Parties, the diversion ratio from LINE Pay to PayPay on the day when the PayPay 1st Anniversary Campaign was conducted was almost comparable to or less than the diversion ratio from other code-based payment services provided by competitors to PayPay. Therefore, under such circumstances, the allegation of the Parties that the competitive relationship between PayPay and LINE Pay is not particularly strong is considered to be reasonable. However, as stated in the

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[36] Diversion ratio means, in a situation where two differentiated goods exist and the demand of one goods is decreased due to price increase, the ratio of such lost demand substituted by another goods, and is one of indices to indicate the severity of competition between companies or goods quantitatively.

[37] A campaign that offered cash-back of maximum 20% of amount of code-based payment to all users (with upper limit of cash-back amount of 1,000 yen per transaction, etc.) with further chance for 100% cash-back with a probability of one in 50 chances (with upper limit of 100,000 yen).

above (iii) of (b) of A, LINE Pay has discontinued any large-scale campaign since July 2019 and, therefore, the possibility of a situation, where the diversion ratio from LINE Pay to PayPay was more prone to decline as of the time of the PayPay 1st Anniversary Campaign, cannot be eliminated.

The NAVER/LINE Group also emphasizes that their market share has decreased to approximately 10% by September of the same year and, therefore, the position (presence) of LINE Pay has declined, and that they have, therefore, lost strong competitive pressure on PayPay. However, as mentioned in the above A, the competitive position of the NAVER/LINE Group is considered to be more powerful than the position indicated by the market share.

(C) Position of competitors

As per [Table 2] of above 5, a certain level of competitive pressure can be seen in the market of code-based payment services because of the presence of powerful competitors such as A company and B company.

However, as mentioned in B of (2) below, it has been discovered that there were cases where respective members of the Parties concluded member store agreement with member stores, or were requesting member stores to conclude a member store agreement, with exclusive dealing conditions (conditions that prohibit member stores to conclude a member store agreement with other enterprises that provide code-based payment services, the same shall apply hereinafter). Under circumstances where the Parties requests for an acceptance of exclusive dealing conditions to or imposes the same on member stores, and under circumstances where there is a possibility for conclusion of a member store agreement with exclusive dealing conditions imposed on member stores in the future, if number of member stores, to whom an acceptance of exclusive dealing conditions is requested, or on whom such conditions are imposed, will increase as a result of the integration, the number of member stores that can use code-based payment services provided by competitors will decrease. In addition, in case of code-based payment service, because indirect network effect works between the two fields of trade (namely, code-based payment service for consumers as users and the same for member stores as users), a decrease in the number of member stores, at which code-based payment services of competitors are available, will make the code-based payment services provided by such competitors less attractive to consumers.

Because of such facts, although a certain level of competitive pressure can be observed at this moment, it is considered that the competitive pressure from

competitors in the market of code-based payment services for consumers as users will decrease if the number of member stores, who are requested for an acceptance of exclusive dealing conditions, or on whom such conditions are imposed, will increase as a result of the integration.

(D) Entry

In the market of code-based payment services, there have been many new entrants since 2017 reflecting the movement of the government policy in these few years for promoting cashless payment (during the period from 2018 to 2019, multiple major competitors, including the SBK/ZHD Group that runs “PayPay”, have entered into the market).

However, it seems that such a movement has slowed down since the second half of 2019. In addition, under the circumstances where major enterprises providing code-based payment services have already secured more than 10 million members, a strong financial power to permit extensive cash-back campaigns, etc. is considered necessary to newly enter and to establish a certain level of presence in the market of code-based payment services from now, if the existence of indirect network effect is taken into consideration.

Taking these things into consideration, it is considered that it is not always easy to newly start the business of code-based payment services in the future.

(E) Competitive pressure from adjacent markets

a Competitive pressure from credit cards

As mentioned in the above a of (a) of A of (1) of 4, credit cards are used more often for payments of larger amount compared to code-based payment. Namely, consumers are using those two payment methods differently to a certain extent depending on the amount of payment. However, if there exists such a situation where the use of credit cards decreases as a result of an increase of the use of code-based payment service, and vice versa (namely, the use of code-based payment service decreases as a result of an increase of the use of credit card), it can be considered that the existence of credit cards is working as a competitive pressure to code-based payment services (competitive pressure from adjacent markets).

In this relation, based on the Submitted Data, investigation was made about transition of ratio of payment amount of each payment method (utilization ratio of each payment method) among total monthly payment after April 2019. As a result, a basic tendency was found that the utilization

ratio of credit cards had not declined irrespective of a continuous increase in the utilization ratio of code-based payment services but rather had increased along with the increase in code-based payment services during the period from April 2019 till January 2020 (refer to [Table 4]). Based on such facts as above, it is considered that credit cards and code-based payment services are not actively scrambling for customers and that competitive pressure from credit cards is not strong in any way.

[Table 4] Transition of utilization ratio of each payment method (based on payment amount)[38]

	2019					
	April	May	June	July	August	September
Cash	**52.64%**	51.14%	50.07%	50.56%	50.42%	46.07%
Credit card	**30.90%**	31.90%	32.61%	31.37%	31.80%	35.26%
Code-based payment service	**1.76%**	1.78%	2.47%	3.09%	3.30%	4.04%

	2019			2020	Comparison with the period of April 2019
	October	November	December	January	
Cash	44.64%	42.99%	42.41%	**41.58%**	(-11.06%)
Credit card	31.60%	34.34%	34.73%	**34.67%**	(+3.77%)
Code-based payment service	6.87%	6.29%	6.73%	**7.30%**	(+5.54%)

Meantime, based on the calculation result of diversion ratio at the time of the PayPay 1st Anniversary Campaign, the Parties alleges that (i) the competitive pressure from credit cards is strong because the diversion ratio from credit cards to PayPay is large and (ii) the competitive relationship with credit cards is stronger than the competitive relationship among members of the Parties and the competitive relationship with other code-based payment services because the diversion ratio from credit cards to PayPay is exceptionally larger than that from other code-based payment services to PayPay.

However, in view of the fact that it is possible to consider that the level of diversion ratio has the same effect as that of demand substitutability, the rationality of such an allegation that the competitive relationship between PayPay and credit card is originally stronger than that between PayPay and other code-based payment services (substitutability for credit card is stronger) becomes questionable, if determination until now based on various factors is taken into consideration. In addition, as mentioned in B above, if it is taken into consideration that the PayPay 1st Anniversary Campaign, which

[38] The table was prepared by the JFTC based on the Submitted Data.

was an objective of diversion ratio analysis by the Parties, was one-day-only event offering high-value rewards, such a possibility is not deniable that even consumers, who use both credit card and code-based payment services differently, may have been prompted to use code-based payment for relatively large purchases, which are usually paid by credit cards.

Therefore, even if the allegation of the Parties regarding diversion ratio is taken into consideration, it is still inappropriate to consider that the competitive pressure from credit cards is strong.

b Competitive pressure from the existence of other cashless paymen t services

Cashless payment methods other than credit card (payment by electronic money (stored-value card), etc.) has common features with code-based payment in terms of free availability in principle for consumers and the level of payment amount when they are used as means of payment (they are usually used for payment of relatively small amount), etc., and, therefore, it is considered to have a competitive relationship with code-based payment to a certain degree.

However, if we look at the result of diversion ratio analysis based on economic analysis of the Parties, there is no case where users have shifted to PayPay from cashless payment methods other than credit card, with a few exceptions. In addition, according to the result of interviews with enterprises operating other cashless payment services, there are such voices that the purpose of the provision of such payment services by some of those enterprises is an enhancement of the convenience of the users of other services provided by their own group and, therefore, they may not consider the enterprises providing code-based payment services as their competitors. Based on these facts, it cannot be considered that the competitive relationship between code-based payment and cashless payment methods other than credit card is severe.

The Parties also alleges that cases of multi-homing (Multi-homing means to be in a situation where multiple cashless payment methods are used in parallel. The same will apply hereinafter.) by consumers have been increasing. As a matter of fact, it has been confirmed from the result of economic analysis of the Parties that some of consumers using code-based payment service of the Parties are also using other cashless payment methods other than credit card. However, the ratio of users using other cashless

payment services other than credit card still remains in the range of more or less 30% for PayPay users and the same for LINE Pay users. Namely, the popularity of multi-homing among consumers is not considered to be high yet.

Therefore, competitive pressure from other cashless payment other than credit card can be observed to some extent but are not so significant.

(F) **Competitive pressure from users**

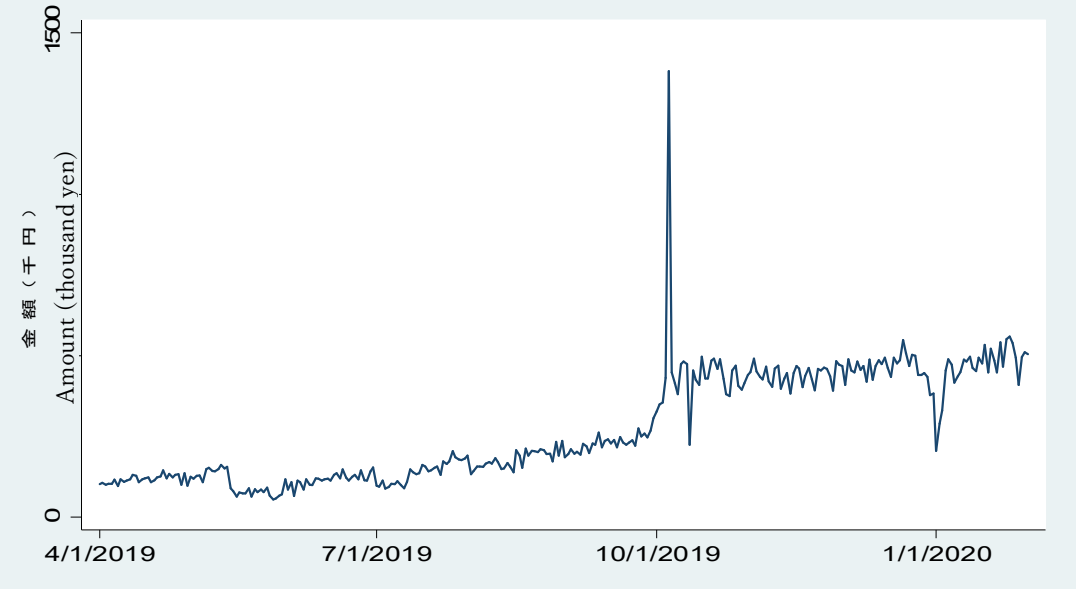
a Ease of changing suppliers

For consumers to start using code-based payment services, it only requires the consumer to take procedures such as installation of a dedicated app on his/her smartphone and registration of bank account or credit card to increase (charge) his/her account balance. Therefore, it is relatively easy for consumers to use multiple code-based payment services simultaneously (as a matter of fact, as mentioned above, it seems that consumers are doing multi-homing to some extent).

On the other hand, according to data submitted by the Parties, as of the end of May 2020, approximately 70% of the average of the balance of PayPay account (including rewards points) per each user who used PayPay at least once during May 2020 is unable to be paid out (disbursed) to bank account for encashment (namely, such an amount can only be used for payment of purchases made under PayPay), and even the balance of the account that can be paid out is still subject to a certain fee unless it is paid out through particular designated banking institutions. Therefore, consumers may end up using such an amount for purchases under PayPay. In this relation, if we look at the transition of the amount of payment (payment of small amount) under PayPay before and after the PayPay 1st Anniversary Campaign, we can notice that the amount of each payment under PayPay has substantially increased driven by the said campaign or the campaign caused a structural change, which makes those users who started using PayPay because of the campaign still continue to use PayPay. (refer to [Figure 2]). If these facts are taken into consideration, it is possible to consider that the use of code-based payment (especially in case of PayPay) exerts lock-in effect on consumers to a certain extent.

Therefore, competitive pressure from users is considered workable to a certain extent, but is not very strong in all cases.

[Figure 2] Daily transition of payment amount under PayPay for small transactions at the time of the PayPay 1st Anniversary Campaign based on the Submitted Data[39]



b Existence of cash as alternative means for payment

There also exists cash as means for payment by consumers. Cash is legal tender in which mandatory circulating power (validity as a final means for payment of the face value indicated thereon) inheres under the Act[40], and its general versatility as means for payment is fundamentally different from that of cashless payment methods such as credit card and others. For the purpose of comparison with code-based payment services, cash is assessed as competitive pressure from users (consumers) in the investigation hereunder, because cash can be considered as an alternative means owned by consumers themselves.

According to analysis of diversion ratio conducted by the Parties, diversion ratio from cash to PayPay is remarkably high. If we look at the transition of monthly utilization ratio of each payment method after April 2019, while the utilization ratio of code-based payment service has increased consistently, the utilization ratio of cash has decreased constantly (refer [Table 4] of the above (a) of E). Therefore, at least under the current market environment, it is in a situation where code-based payment service is taking users from cash on a unilateral basis, and it is difficult to say that existence

[39] This chart was prepared by the JFTC based on the Submitted Data.

[40] The Bank of Japan Act (Act No. 89 of 1997) Paragraph 2 of Article 46, Act on Currency Units and Issuance of Coins (Act No. 42 of 1987) Article 7

of cash as an alternative means for payment is working as competitive pressure against code-based payment services. Furthermore, if the market situation as stated in G below is taken into consideration, the use of cash is expected to continue decreasing also in the future, and competitive pressure from users because of existence of cash is expected to decrease further even in a short-term forecast.

(G) **Concerning the significant growth of market of code-based payment service**

As stated in the above 3, the market of code-based payment service has rapidly grown over the past year. The market size as of 2019 has become 2.3 times as large as the size in 2018 and the utilization ratio of code-based payment as of 2019 has become 6 times as large as that of 2018. In addition, since the beginning of 2020, it is said that the use of code-based payment services has been increasing continuously along with an increase of demand for cashless payment methods due to the spread of COVID-19 infection. Thus, it is expected that the code-based payment-related market size and utilization ratio of the same will continue increasing in 2020, even more than the increase in 2019.

According to the result of interviews with member stores, it is said that the number of users of code-based payment services has sharply increased since the time when "Profit return project for cashless payment consumers" was started by the government in October 2019 (data submitted by the Parties also indicate that utilization ratio of code-based payment has almost doubled in October 2019 compared to those of August of the same year[41]). The said project ended at the end of June 2020, but a project for dissemination of the unified payment code named "JPQR" has newly started in the same month and "Myna-point Project" will also start in September 2020 to facilitate the expansion of cashless payment market as well as the dissemination of the My Number Card. It is also declared in "Growth strategy follow-up" (cabinet approval of July 17, 2020) that the ratio of cashless payment would be doubled to approximately 40% by June 2025. Therefore, it is considered that the government will also actively implement political measures for promotion of cashless payment including code-based payment.

If these facts are taken into consideration, it is expected that the market relating

[41] As means of payment including cash, utilization ratio of code-based payment (on the basis of payment amount) which was around 3.30% in August 2019 has increased to 4.04% in September and to 6.87% in October of the same year.

to code-based payment service will continue remarkable growth.

(H) **Summary**

Taking the above facts into consideration, at this time, it is considered difficult to dispel the concern that the Parties will possibly have a power to control the market.

(2) Code-based payment service for member stores as users

(A) **Position of the Parties**

There is information that, as a factor to be considered for selection of an enterprise providing code-based payment service, member stores consider the number of users as the most important factor next to the amount of fees imposed on them. Therefore, it can be considered that the Parties is in a remarkably strong position as is the case in the market of code-based payment service for consumers as users. Actually, the number of member stores of the Parties is substantially larger than that of other competitors.

(B) **Position of competitors**

Also, in a situation where member sores are users, as is the case mentioned in the above C of (1), there are strong competitors in the market of code-based payment service and a certain degree of competitive pressure can be observed.

However, during the course of interviews, a concern was expressed that the Parties had been imposing exclusive dealing conditions on member stores, and existence of actual cases where each member of the Parties had concluded or had been requesting for conclusion of a member store agreement including exclusive dealing conditions imposed on member stores were confirmed. Therefore, although a certain level of competitive pressure can still be observed at this moment, under the circumstances where the Parties requests member stores to accept exclusive dealing conditions or imposes such conditions on them, and where member store agreements imposing such conditions on member stores still possibly continue to be concluded in the future, if the number of member stores, who accept or are requested to accept such exclusive dealing conditions, increases as a result of the integration, it is considered that the number of member stores of code-based payment services provided by competitors will decrease and competitive pressure from competitors will eventually decrease.

(C) **Entry**

As stated in the above D of (1), it is considered that the movement in last one year has calmed down, and it seems that new entry would not always be easy in the future.

(D) **Competitive pressure from adjacent markets**

The situation mentioned in the above E of (1) stays the same for the case where member stores are users.

In addition, during interviews with member stores, they expressed their belief that the amount of fees imposed on them was most important as a basis for selection of an enterprise providing code-based payment service. There were many opinions saying that whether such fees were lower than those of credit card or not was particularly an important point. Because of this, in code-based payment services for member stores as users, credit card can be considered as competitive pressure in terms of the fact that credit card sets a certain upper limit to the level of fees imposed on member stores for code-based payment (fees cannot be raised to the level higher than those of credit card). As a matter of fact, however, the level of such fees, in which enterprises providing code-based payment services are competing each other, is substantially lower than that of credit cards.

As mentioned in B of (3) below, member stores that satisfy certain qualification requirements can be use the payment services provided by the Parties free of charge until July or around September 2021. On the other hand, many of credit cards and other cashless payment methods require the member stores to pay merchant fees. Under such circumstances, at least for member stores who are exempted from merchant fees, it can be considered that there is almost no competitive pressure from adjacent markets.

Therefore, in case where the member stores are users, it can also be considered that competitive pressure from adjacent markets works to a certain extent but is not substantial.

(E) **Competitive pressure from users**

a Ease of changing suppliers

As mentioned in the above, in case of the market of code-based payment service for member stores as users, if the existence of indirect network effect from the market of code-based payment service for consumers as users is taken into consideration, it may become difficult for member stores to change from PayPay and LINE Pay to other code-based payment services because

total number of members of PayPay and LINE Pay is substantially larger than that of other competitors. Thus, member stores will have no choice but to use code-payment service provided by the Parties. Namely, even if merchant fees are increased, they have no choice but to accept such an increase.

In this relation, according to the result of interviews with member stores, there were opinions that, even if merchant fees would be raised to a certain extent, it would be practically difficult especially for retail shops to cancel any payment service, for which contract had already been made, in view of the risk of complaint from customers, basically unless the merchant fees would be raised higher than those of credit cards.

In the meantime, the Parties considers that, if the degree of multi-homing at the consumers' end becomes higher, the benefit of member stores to choose any particular payment method becomes smaller and, therefore, member stores will not be locked in the code-based payment service of the Parties. In this relation, the Parties alleges that the multi-homing is becoming popular at the consumers' end. However, as mentioned in the above (b) of E of (1), even though a certain level of multi-homing can be observed at the consumers' end, its level is not considered high. On the other hand, there is also a possibility for consumers to be locked in the code-based payment method which the consumers have once started using (the above (a) of F of (1)).

As described above, competitive pressure from users in the case where member stores are users is limited at this moment.

b Existence of cash as alternative means for payment

Based on the market situation as mentioned in the above (b) of F of (1), it is expected that the number of consumers using cash will decrease in the future. Therefore, competitive pressure from users will decrease in the future.

(F) **Summary**

Based on the above, it is considered difficult to dispel concerns about the possibility for a situation where the Parties will have control over the market at this moment.

(3) Other factors to be considered because of importance in the course of consideration whether competition is substantially restrained or not

(A) **Existence of internal documents about discussions on an increase of member fee of member stores in association with the decrease o f competitors**

In this case, the Parties was requested to submit many internal data such as various meeting materials/minutes of meeting of board meetings and management meetings, etc. as well as e-mail, etc. of directors and employees. As a result of detailed examination of such internal documents, we found data that could be considered as a basis for the fact that the Parties was looking into the possibility for raise of merchant fees in view of the decrease of competitors as a result of the conduct of this case.

Based on this fact, it can be considered that there exists an incentive for the Parties to raise merchant fees in the market of code-based payment service.

(B) **The fact that the market of code-based payment service is infant, etc.**

In addition to the fact that the government has adopted the policy for dissemination of cashless payment, the fierce competition for dominance in the numbers of users and member stores waged among enterprises that provide code-based payment services through extensive cash-back campaigns run by such enterprises is considered as a part of the reasons for such a remarkable growth of the market of code-based payment service in such a short period of time. As a result, all of the major enterprises that provide code-based payment services ended up with a big loss in operating expenses.

On the other hand, regarding payment service fees set by each enterprise that operates code-based payment service, while there are some cases where certain level of fees are charged to large-scale retail shops, there are also many cases where member stores are exempted from such fees. Thus, those enterprises that provide code-based payment services are not in a position to be able to earn a profit therefrom. Particularly, in case of PayPay of the SBK/ZHD Group, most of member stores are exempted from the payment service fees and such exemption is scheduled to continue until September 30, 2021. Also in case of LINE Pay of the NAVER/LINE Group, substantial number of member stores are exempted from the payment service fees, and such exemption is scheduled to continue until the end of July 2021.

Like this, the market of code-based payment has not matured yet at this

moment and will be in quite severe condition in terms of the future growth and environmental changes. Therefore, based on the data and materials available at this moment for the investigation, it seems that we are not in a position to be able to forecast the future market situation accurately.

(C) **Assessment of data**

a Assessment of current data

In case of the code-based payment service provided by the Parties, unlike the case of advertising business, only the data obtained through the operation of code-based payment service are basically used for enhancement of service quality and data obtained through the operation of other services or businesses are not used, while there are some cases where information in relation to common ID of platform services provided by respective members of the Parties (sex, telephone number, etc.) is used. Furthermore, in the event of any use of information obtained through other businesses or services, however, a strict protection and management system is considered necessary on a continuous basis as stated in the above D and E of (2) of 4 of Part 5.

In this relation, regarding the type of information, it is considered that there is no particularly unique information that is obtainable only through the services provided by the Parties. However, while competitors in the field of advertisement-related business are in a position comparable to or even stronger than that of the Parties, positions of competitors in the field of code-based payment services are substantially lower than that of the Parties. If these facts are taken into consideration, the Parties has an advantage in terms of the volume and range of data as well as frequency of collection thereof compared to those of competitors. Thus, the probability of influence on competition in code-based payment services as a result of such an advantageous position is undeniable.

b Assessment of data after integration

According to the Parties, they say that they have not established any concrete plan for integration/sharing/utilization of data obtained through operation of other businesses after the integration. In other words, they do not know yet how such data obtained through other businesses will be utilized for code-based payment service (or how the data obtained through code-based payment service will be utilized for other businesses), etc. after the integration.

As for the code-based payment service, while the position of the Parties in the market after the integration is expected to be considerably substantial, it is considered undeniable that there is a possibility for further improvement in business capability of the Parties depending on the method of integration/sharing/utilization of data in the future by the Parties in addition to the future changes in market conditions.

(4) Concerning substantial restraint on competition as a result of coordinated conduct

Even if the position of the Parties is taken into consideration, if the modestly large number of competitors, etc. is also taken into consideration, it is not considered that coordinated conduct will result in substantial restraint on completion.

(5) Legal assessment based on the Antimonopoly Act

Based on the above, the JFTC concluded that the conduct of this case may not immediately substantially restrain competition in the market of code-based payment services where either consumers are users or member stores are users through unilateral conduct or coordinated conduct of the Parties. However, if circumstances as mentioned in the above (1) through (3) are taken into consideration, it is considered impossible to completely dispel the concern about the possibility of the situation where the Parties can rather easily and freely control trade conditions including prices, etc., depending on the manner of handling of exclusive dealing conditions, behavior of the Parties after integration of utilization of data, etc. and conditions of the future market, etc.

7 Proposal of remedial measures from the Parties

In response to the comment as mentioned in the above (5) of 6, the following remedial measures (hereinafter referred to as "Remedial Measures") have been proposed by the Parties.

(1) Regular report and consideration of necessary remedial measures

The Parties[42] will make a report on the following points once every year for three years after the conduct of this case. In addition, when the Parties receives any

[42] For the period after the conduct of this case, in view of the fact that both of ZHD and LINE are consolidated subsidiary companies of SoftBank, the NAVER Group is not included in core members of the proposal for the Remedial Measures.

comment on the content of the report hereunder from the Commission about the possibility for substantial restraint on competition or the risk of impeding fair competition in the market of code-based payment service, the Parties will discuss with the JFTC and will study countermeasures depending on the content of the comment.

A Market size of code-based payment service, position of the Parties and competitive situation, etc.

B Matters concerning merchant fee which is set by the reporting company[43]

C Matters concerning utilization of data relating to code-based payment service

a When data obtained by the reporting company from users in the course of use of code-based payment services are utilized by the Parties for the purpose of any business other than code-based payment service, contents and utilization methods of such data.

b When data obtained by the reporting company from users in the course of use of code-based payment services are utilized by the Parties for the purpose of code-based payment service, contents and utilization methods of such data.

c When data obtained by the Parties from users in the course of any business other than code-based payment services are utilized by the reporting company for the purpose of code-based payment service, contents and utilization methods of such data.

(2) Removal of exclusive dealing conditions

Not later than the execution date of the integration hereunder, trade conditions of member store agreement with member stores shall be modified to eliminate any exclusive condition (conditions to prohibit member stores from making member store agreement with any enterprise operating code-based payment service other than the reporting company), provided, however, that, in the event of an agreement

[43] This means PayPay Corporation and LINE Pay Corporation (or, if the business of the code-based payment service operated by PayPay Corporation and LINE Pay Corporation is transferred to or succeeded by other company of the Group of the Parties, the said other company). The same shall apply hereinafter.

for which the reporting company considers that there is rational grounds for the existence of exclusive dealing conditions, a separate discussion with the JFTC about the maintenance of such conditions shall not be interrupted. Also, for a period of three years from the execution date of the integration hereunder, any exclusive dealing condition shall not be imposed on member stores, provided, however, that, in the event of a business relationship for which the reporting company considers that there is rational grounds for the existence of exclusive dealing conditions, a preliminary and separate discussion with the JFTC about the existence of the said conditions shall not be interrupted.

Furthermore, the implementation status of the response hereunder will be reported together with the report of the above (1).

8 Assessment of the Remedial Measures

(1) Concerning the regular report and consideration of necessary remedial measures

Although the regular reports themselves cannot be appreciated as remedial measures that can revitalize the competition eliminated by business combination, it can be considered as appropriate remedial measures that help the Commission understand better about behavior of the Parties after the integration and the future market conditions.

In this relation, assuming the situation where, based on findings of the regular reports, the Commission may raise any concern about the possibility for substantial restraint on or the risk of impeding fair competition in the market of code-based payment service, it has been proposed that, depending on the contents of such concerns, the matters will be discussed with the JFTC to prepare countermeasures. Thus, the necessary response to competition-related concerns, which may be created by behavior of the Parties and the future market conditions after the integration of data utilization, etc., has been secured with a certain level of effectiveness.

Furthermore, while exemption of merchant fees is scheduled to be in effect for those member stores satisfying a certain requirements until July or around September 2021, the period of three years can also be considered appropriate, in view of the fact that a certain reporting period has been secured even after the end of the said period and that study of data utilization, etc. after the integration seems to require a certain period of time after integration.

(2) Concerning removal of exclusive dealing conditions

Because of the fact that the Parties will remove exclusive dealing conditions from member store agreements with member stores by the effective date of integration hereunder, and that any agreement including exclusive conditions will not be concluded for three years after the conduct of this case, concerns about the possibility for a decline of effectiveness of competitive pressure in the future will be dispelled. Therefore, in view of the practical effectiveness of remedial measures to prevent the Parties from exercising the market power in the future, such remedial measures can be considered to be appropriate. In addition, regular reports to the Commission on the state of implementation of the Remedial Measures is considered to be appropriate from the viewpoint of the monitoring of implementation of the Remedial Measures.

9 Summary

As described above, based on the premise that the Parties will implement the Remedial Measures, the JFTC concluded that the conduct of this case would not substantially restrain competition in code-based payment services.

Part VII. Conclusion

As a result of its review, based on the premise that the Parties will implement the Remedial Measures, the JFTC concluded that the conduct of this case would not substantially restrain competition in particular field of trade.

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.

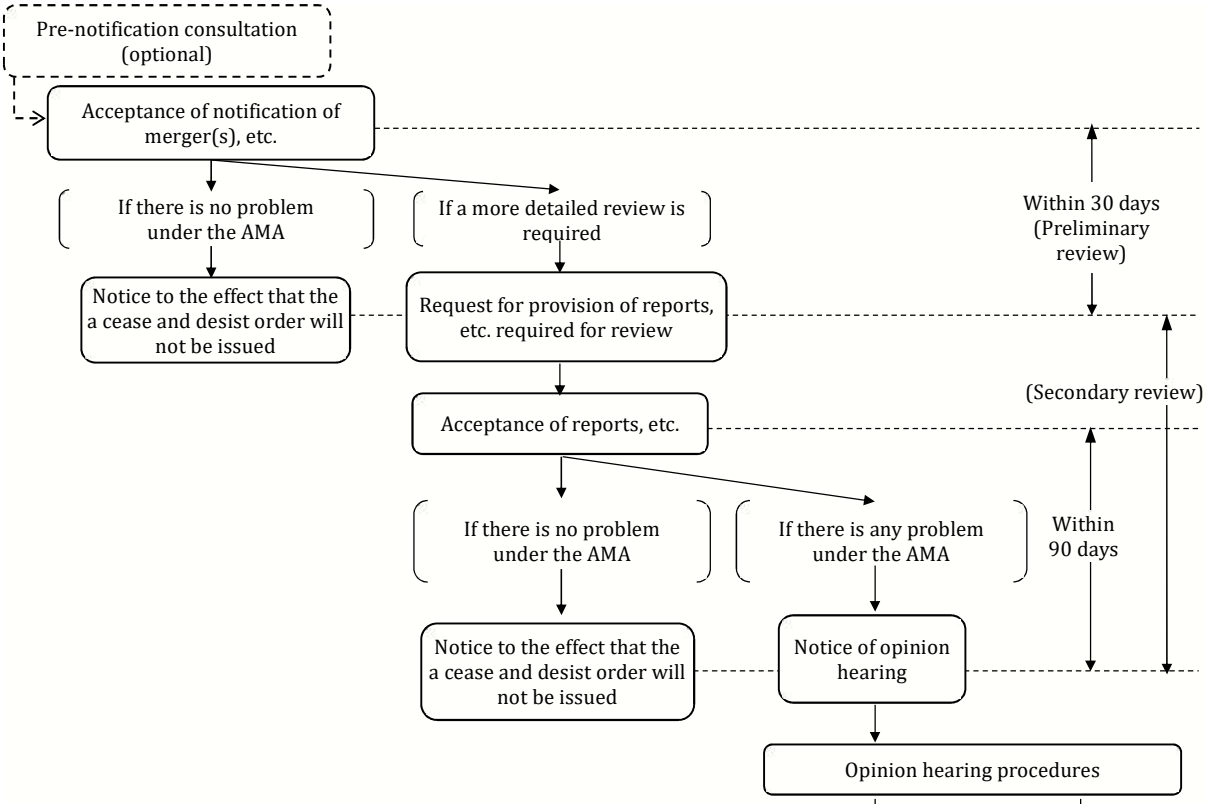
Table 1 Summary of cases requiring notification by type

Types (applicable provisions)		Summary of cases requiring notification
Acquisition of stock (Article 10)		Cases where (i) a company with total domestic sales(Note 1) 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(Note2)
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	(i) a company with total domestic sales of more than 20 billion yen (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)		(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(Note 3) 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(Note 4) 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 parties group after the business combination falls under either of the following (1) or (2):

(1) The parties 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 parties 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 parties group, or (ii) by the coordinated conduct of the parties 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 parties group, based on the actual conditions of the market and transactions revealed through interviews and questionnaires, “whether or not the parties group will find it easier to raise prices, etc. after the business combination due to the parties 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 parties group and its competitors, “whether or not the parties 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 parties 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.