

Status of notifications related to business combinations in fiscal year 2021

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The Japan Fair Trade Commission

Part I. Status of acceptance and review of notifications of acquisition of stock, etc.

In FY 2021, the number of acceptance of notifications of business combination plans was 337 (a 26.7% increase from the previous fiscal year). It consisted of 288 notifications related to acquisition of stocks, 10 notifications related to mergers, 17 notifications related to splits, 3 notifications related to joint share transfer, and 19 notifications related to acquisitions of business, etc.

Of 337 notifications accepted in FY 2021, 328 cases were “informed that no cease and desist order will be issued as no issues were found in light of the Antimonopoly Act as a result of the preliminary review,” 1 case “led to secondary review as more detailed review was necessary,” and 8 cases were “withdrawn during the preliminary review.”

Moreover, among the cases of which the reviews were finished in FY 2021, 3 cases were judged that no issues in the light of the Antimonopoly Act were found based on the remedial measures proposed by the parties, 14 cases were related to business combination plans that do not require notifications, including the ones in the digital field (ones that were consulted about by the parties or the ones which the Japan Fair Trade Commission (hereinafter referred to as “JFTC”) started to review) (see reference 2).

The status of acceptance of notifications and review in the past 3 fiscal years is shown in Table 1, Table 2, and Table 3.

Table 1 Status of handling of notifications accepted in the past 3 fiscal years

	FY 2019	FY 2020	FY 2021
Number of notifications	310	266	337
Cases finished in the preliminary review ^(Note 1)	300	258	328
of which the waiting period is reduced	(217)	(199)	(248)
Withdrawn before the preliminary review is finished	9	7	8
Cases which proceeded to the secondary review	1	1	1

(Note 1) Cases in which it was informed that no cease and desist order will be issued, as no issues were found in light of the Antimonopoly Act, as a result of the preliminary review.

Table 2 Status of handling of the secondary review in the past 3 fiscal years^(Note 2)

	FY 2019	FY 2020	FY 2021 ^(Note 4)
Cases finished in the secondary review ^(Note 3)	0	1	1
Cases judged as no issue based on the remedial measure proposed by the parties	0	1	0
Withdrawn before the secondary review is finished	0	0	1
Cases in which cease and desist orders were issued	0	0	0

(Note 2) Regardless of whether or not a case was accepted in the relevant fiscal year, cases that were handled in the relevant fiscal year are stated.

(Note 3) Cases in which it was informed that no cease and desist order will be issued, as no issues were found in light of the Antimonopoly Act, as a result of the secondary review.

(Note 4) Cases finished in the secondary review and cases withdrawn before the secondary review is finished in FY 2021 are shown in reference 3.

Table 3 Change of notifications related to business combination plans including foreign firms in the parties^(Note 5)

	FY 2019	FY 2020	FY 2021
Notifications related to business combination plans between Japanese firms and foreign firms	12	6	11
Notifications related to business combination plans between foreign firms	39	14	33
Total	51	20	44

(Note 5) Of the number of notifications stated in Table 1, change of notifications related to business combination plans including foreign firms in the parties is stated.

Part II. Number of cases by action categories

1 Acquisition of stock

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

Table 4 Number of acceptance of notifications of acquisition of stock by the sum of domestic sales

Domestic sales of share issuing company Total amount The sum of domestic sales of company acquiring stocks	5 billion yen or more and less than 20 billion yen	20 billion yen or more and less than 50 billion yen	50 billion yen or more and less than 100 billion yen	100 billion yen or more and less than 500 billion yen	500 billion yen or more	Total
20 billion yen or more and less than 50 billion yen	32	5	1	0	0	38
50 billion yen or more and less than 100 billion yen	40	5	5	1	0	51
100 billion yen or more and less than 500 billion yen	60	20	12	9	2	103
500 billion yen or more and less than 1 trillion yen	30	7	1	8	1	47
1 trillion yen or more and less than 5 trillion yen	13	9	2	3	0	27
5 trillion yen or more	10	3	5	4	0	22
Total	185	49	26	25	3	288

(2) Number of cases by ratio of acquisition of voting rights (Table 5)

Table 5 Number of accepted notifications of acquisition of stocks by the ratio of acquisition of voting rights

More than 20% and 50% or less	More than 50%	Total
72	216	288

(Note 6) A ratio of acquisition of voting rights is, in the case of acquisition of stocks of a share issuing company, a ratio of the number of total voting rights of the number of voting rights pertaining the stocks of the share issuing company that will be held after the acquisition by the notified company, and the number of voting rights pertaining the stocks of the share issuing company held by the companies, etc., besides the notifying company, which belongs to the group of combined companies to which the notifying company belongs, to the number of voting rights of all the stockholders of the share issuing company.

2 Mergers

(1) Number of cases by type

Concerning the types of notifications related to mergers, 10 cases were absorption-type mergers and no consolidation-type mergers were notified.

(2) Number of cases by sum of domestic sales (Table 6)

Table 6 Number of acceptance of notifications of mergers by the sum of domestic sales

Domestic sales of the company that cease to exist Total amount The Sum of domestic sales of the surviving company	5 billion yen or more and less than 20 billion yen	20 billion yen or more and less than 50 billion yen	50 billion yen or more and less than 100 billion yen	100 billion yen or more and less than 500 billion yen	500 billion yen or more	Total
5 billion yen or more and less than 20 billion yen	0	1	0	3	0	4
20 billion yen or more and less than 50 billion yen	2	0	0	0	1	3
50 billion yen or more and less than 100 billion yen	0	0	0	2	0	2
100 billion yen or more and less than 500 billion yen	1	0	0	0	0	1
500 billion yen or more and less than 1 trillion yen	0	0	0	0	0	0
1 trillion yen or more and less than 5 trillion yen	0	0	0	0	0	0
5 trillion yen or more	0	0	0	0	0	0
Total	3	1	0	5	1	10

(Note 7) When a merger involves 3 or more companies, i.e., when 2 or more companies cease to exist, it is based on the disappearing company with the largest sum of domestic sales.

3 Splits

(1) Number of cases by type

Notifications by type of splits included 2 cases of joint incorporation-type splits and 15 cases of absorption-type splits.

(2) Number of cases by sum of domestic sales (Table 7 and Table 8)

Table 7 Number of acceptance of notifications of joint incorporation-type splits by the sum of domestic sales

The sum of domestic sales of demerging company 2 (or domestic sales concerning the part subject to split)	3 billion yen or more and less than 20 billion yen	20 billion yen or more and less than 50 billion yen	50 billion yen or more and less than 100 billion yen	100 billion yen or more and less than 500 billion yen	500 billion yen or more	Total
The sum of domestic sales of demerging company 1 (or domestic sales concerning the part subject to split)						
5 billion yen or more and less than 20 billion yen	0(1)	0(0)	0(0)	0(0)	0(0)	0(1)
20 billion yen or more and less than 50 billion yen	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)
50 billion yen or more and less than 100 billion yen	0(1)	0(0)	0(0)	0(0)	0(0)	0(1)
100 billion yen or more and less than 500 billion yen	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)
500 billion yen or more and less than 1 trillion yen	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)
1 trillion yen or more and less than 5 trillion yen	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)
5 trillion yen or more	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)
Total	0(2)	0(0)	0(0)	0(0)	0(0)	0(2)

(Note 8) Of the companies carrying out joint incorporation-type split, a company with the highest sum of domestic sales or domestic sales concerning the part subject to split was indicated as “demerging company 1” and the second highest one as “demerging company 2.”

(Note 9) The number of acceptance of notifications by the sum of domestic sales concerning the company succeeding the entire business is shown outside the brackets. The number of acceptance of notifications by domestic sales concerning the part subject to the split of the company succeeding the substantial part of the business is shown inside the brackets (it is not an included number).

Table 8 Number of acceptance of notifications of absorption-type splits by sum of domestic sales

Sum of domestic sales of the demerging company (or domestic sales concerning the part subject to split)	3 billion yen or more and less than 20 billion yen	20 billion yen or more and less than 50 billion yen	50 billion yen or more and less than 100 billion yen	100 billion yen or more and less than 500 billion yen	500 billion yen or more	Total
Sum of domestic sales of the succeeding company						
5 billion yen or more and less than 20 billion yen	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)
20 billion yen or more and less than 50 billion yen	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)
50 billion yen or more and less than 100 billion yen	0(2)	0(0)	0(0)	0(0)	0(0)	0(2)
100 billion yen or more and less than 500 billion yen	0(3)	0(0)	0(1)	0(2)	0(0)	0(6)
500 billion yen or more and less than 1 trillion yen	0(1)	0(1)	0(0)	0(0)	0(0)	0(2)
1 trillion yen or more and less than 5 trillion yen	0(4)	0(0)	0(1)	0(0)	0(0)	0(5)
5 trillion yen or more	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)
Total	0(10)	0(1)	0(2)	0(2)	0(0)	0(15)

(Note 10) The number of acceptance of notifications by sum of domestic sales concerning the company succeeding the entire business is shown outside the brackets. The number of acceptance of notifications by domestic sales concerning the part subject to the split of the company succeeding the substantial part of the business is shown inside the brackets (it is not an included number).

4 Joint share transfer

(1) There were 3 notifications concerning joint share transfers.

(2) Number of cases by sum of domestic sales (Table 9)

Table 9 Number of acceptance of notifications of joint share transfer by the sum of domestic sales

The sum of domestic sales of company 2 transferring shares \ The sum of domestic sales of company 1 transferring shares	5 billion yen or more and less than 20 billion yen	20 billion yen or more and less than 50 billion yen	50 billion yen or more and less than 100 billion yen	100 billion yen or more and less than 500 billion yen	500 billion yen or more	Total
20 billion yen or more and less than 50 billion yen	0	1	0	0	0	1
50 billion yen or more and less than 100 billion yen	0	2	0	0	0	2
100 billion yen or more and less than 500 billion yen	0	0	0	0	0	0
500 billion yen or more and less than 1 trillion yen	0	0	0	0	0	0
1 trillion yen or more and less than 5 trillion yen	0	0	0	0	0	0
5 trillion yen or more	0	0	0	0	0	0
Total	0	3	0	0	0	3

(Note 11) Of the companies carrying out joint share transfers, the company with the highest sum of domestic sales was indicated as “company 1 transferring shares” and the second highest one as “company 2 transferring shares.”

5 Acquisitions of business, etc.

(1) Number of cases by type

Notifications of acquisitions of business, etc. by type included 10 cases of acquisitions of business and 9 cases of acquisitions of business-related fix assets.

(2) Number of cases by sum of domestic sales (Table 10)

Table 10 Number of acceptance of notifications of acquisitions of business, etc. by the sum of domestic sales

Domestic sales concerning the part subject to the acquisition of business	3 billion yen or more and less than 20 billion yen	20 billion yen or more and less than 50 billion yen	50 billion yen or more and less than 100 billion yen	100 billion yen or more and less than 500 billion yen	500 billion yen or more	Total
The sum of domestic sales of the acquiring corporation						
20 billion yen or more and less than 50 billion yen	3	0	1	0	0	4
50 billion yen or more and less than 100 billion yen	3	0	0	0	0	3
100 billion yen or more and less than 500 billion yen	4	1	0	0	0	5
500 billion yen or more and less than 1 trillion yen	2	0	0	0	0	2
1 trillion yen or more and less than 5 trillion yen	2	0	0	0	0	2
5 trillion yen or more	3	0	0	0	0	3
Total	17	1	1	0	0	19

(Note 12) When the acquisition of a business, etc., is from 2 or more companies, i.e., if it involves 2 or more transferring companies, it is based on the transferring company with the highest domestic sales of the part subject to the acquisition.

Part III. Number of acceptance of notifications by industry type (Table 11)

1 Acquisition of stock

Of 288 notifications concerning acquisitions of stocks, the largest number of cases was 41 in “wholesale and retail business” excluding “others,” followed by 36 cases in “manufacturing” and 18 cases in “transport, communication, and warehousing.”

2 Mergers

Of 10 notifications concerning mergers, the largest number of cases was 3 in “manufacturing” excluding “others,” and 1 case in “wholesale and retail business” and “transport, communication, and warehousing” respectively.

3 Splits

2 notifications concerning joint incorporation-type splits, 1 case was in “manufacturing” and another was in “wholesale and retail business.”

Of 15 notifications concerning absorption-type splits, the largest number of cases was 6 in “manufacturing,” followed by 5 in “wholesale and retail business,” and 2 in “service industry.”

4 Joint share transfer

3 notifications concerning joint share transfers included a case each in “wholesale and retail business,” “service industry” and “finance and insurance industry.”

5 Acquisitions of business, etc.

Of 19 notifications of acquisition of a business, etc., the largest number of cases was 6 in “manufacturing,” followed by 4 in “wholesale and retail business,” excluding “others.”

Table 11 Number of acceptance of notifications by industry type

By industry type	Acquisition of stock	Mergers	Joint incorporation-type split	Absorption-type split	Joint share transfer	Acquisitions of business, etc.	Total
Agriculture, forestry, and fishery	0	0	0	0	0	0	0
Mining	0	0	0	0	0	0	0
Construction	10	0	0	0	0	1	11
Manufacturing	36	3	1	6	0	6	52
Wholesale and retail business	41	1	1	5	1	4	53
Real estate business	11	0	0	0	0	0	11
Transport, communication, and warehousing	18	1	0	0	0	3	22
Service industry	17	0	0	2	1	1	21
Finance and insurance industry	11	0	0	1	1	0	13
Electricity and gas Heat supply and water supply industry	6	0	0	1	0	0	7
Others	138	5	0	0	0	4	147
Total	288	10	2	15	3	19	337

(Note 13) To which industry type a company belongs depends on an industry type of a company which acquired stocks in the case of acquisition of stocks, an industry type of a surviving company in the case of merger, an industry type of a company succeeding business in the case of joint incorporation-type split and absorption-type split, an industry type of a newly incorporated company in the case of a joint share transfer, an industry type of a company which acquired business, etc., in the case of acquisition of business, etc.

Part IV. Number of acceptance of notifications by type (Table 12)

1 Acquisition of stock

Of 288 notifications concerning the acquisition of stocks, the number of cases including horizontal relations was 157 and the largest, followed by 73 cases including vertical relations (progression) and 73 cases including conglomerate relations (pure).

(Note 14) “By type” indicates the following categorization. The same shall apply hereinafter.

- (1) Horizontal relation: when the parties groups are in competition with each other in the same particular field of trade
- (2) Vertical relation: when the parties groups have different stages of trade
 - Progression: when a company acquiring stocks, a surviving company, a succeeding company, or an acquiring corporation is carrying out business combination with a company in the direction of final users
 - Regression: when carrying out a business combination with a company in the opposite direction of progression
- (3) Conglomerate relation: when it is applicable to neither horizontal nor vertical
 - Territory expansion: when supplying similar goods or services to different markets
 - Goods expansion: when supplying different kinds of related goods or services in production or sales
 - Pure: when it is applicable to none of the above

(Note 15) Concerning the number of cases by type, in the case of business combinations applicable to multiple types, all the applicable types are aggregated. Therefore, the total number of cases does not necessarily match the number of acceptance of notifications. The same shall apply hereinafter.

2 Mergers

Of 10 notifications of mergers, the number of cases including conglomerate relations (goods expansion) was 4 and the largest, followed by 3 cases including horizontal relations and 3 cases including conglomerate relations (pure).

3 Splits

There were 2 notifications of joint incorporation-type split and both included horizontal relations.

Of 15 notifications of absorption-type splits, the number of cases including horizontal relations was 13 and the largest, followed by 5 cases including vertical relation (progression) and 5 cases including vertical relation (regression).

4 Joint share transfer

All 3 cases of joint share transfer included horizontal relations.

5 Acquisitions of business, etc.

Of 19 notifications of acquisitions of business, etc., number of cases including horizontal relations was 10 and the largest, followed by 8 cases including vertical relations (regression) and 3 cases including vertical relations (progression).

Table 12 Number of acceptance of notifications by type

By type		Acquisition of stock	Mergers	Joint incorporation-type split	Absorption-type split	Joint share transfer	Acquisitions of business, etc.
Horizontal relation		157	3	2	13	3	10
Vertical relation	Progression	73	2	0	5	0	3
	Regression	71	1	0	5	0	8
Conglomerate relation	Territory expansion	38	0	0	3	0	1
	Goods expansion	41	4	0	0	0	0
	Pure	73	3	0	0	0	1
Number of acceptance of notifications		288	10	2	15	3	19

(Note 16) Concerning the number of cases by type, in the case of business combinations applicable to multiple types, all the applicable types are aggregated. Therefore, the total number of cases by type does not necessarily match the number of acceptance of notifications.

Table 13 Change of notifications of horizontal, vertical, and conglomerate business combinations in the past 3 fiscal years

	FY 2019	FY 2020	FY 2021
Horizontal business combination	187(60%)	176(66%)	188(56%)
Vertical business combination	128(41%)	118(44%)	139(41%)
Conglomerate business combination	135(44%)	125(47%)	142(42%)
Number of acceptance of notifications	310(100%)	266(100%)	337(100%)

(Note 17) In the case of business combinations applicable to multiple horizontal, vertical, and conglomerate types, all the applicable types are aggregated. Therefore, the total ratios do not become 100%, or the total number does not necessarily match the number of acceptance of notifications.

Material Change of the number of notifications and reports related to business combinations(Note 1)

Fiscal year	Article 9 business report (Note 2)	Article 9 written notification of establishment (Note 2)	Notification of acquisition of stock (Note 3)	Notification of interlocking officers (Note 4)	Shareholding report by ones other than the company (Note 5)	Notification of mergers (Note 6)	Notification of splits (Note 7)	Notification of joint share transfer (Note 8)	Notification of acquisitions of business, etc. (Note 9)
1947			(2)		(0)	(23)			(22)
1948			(31)		(0)	(309)			(192)
1949			(13)		(0)	(123)			(53)
			2,373		0	448			143
1950			3,840		0	420			207
1951			4,546		0	331			182
1952			4,795		0	385			124
1953			3,863	268	0	344			126
1954			2,827	328	0	325			167
1955			3,033	268	0	338			143
1956			3,080	457	0	381			209
1957			3,069	375	0	398			140
1958			3,316	557	0	381			118
1959			3,170	466	0	413			139
1960			2,991	644	0	440			144
1961			3,211	675	1	591			162
1962			3,231	804	0	715			193
1963			3,844	758	0	997			223
1964			3,921	527	4	864			195
1965			4,534	487	1	894			202
1966			4,325	462	0	871			264
1967			4,075	458	2	995			299
1968			4,069	480	3	1,020			354
1969			4,907	647	0	1,163			391
1970			4,247	543	2	1,147			413
1971			5,832	552	0	1,178			449
1972			5,841	501	1	1,184			452
1973			6,002	874	0	1,028			443
1974			5,738	794	0	995			420
1975			5,108	754	9	957			429
1976			5,229	925	6	941			511
1977			5,085	916	1	1,011			646
1978			5,372	1,394	0	898			595
1979			5,359	3,365	0	871			611
1980			5,759	2,556	2	961			680
1981			5,505	2,958	1	1,044			771
1982			6,167	2,477	1	1,040			815
1983			6,033	3,389	4	1,020			702
1984			6,604	3,159	2	1,096			790
1985			6,640	3,504	6	1,113			807
1986			7,202	2,944	1	1,147			936
1987			7,573	3,776	1	1,215			1,084
1988			6,351	3,450	0	1,336			1,028
1989			8,193	4,420	0	1,450			988
1990			8,075	4,312	0	1,751			1,050
1991			8,034	6,124	2	2,091			1,266
1992			8,776	5,675	0	2,002			1,079
1993			8,036	6,330	3	1,917			1,153
1994			8,954	5,137	18	2,000			1,255
1995			8,281	5,897	1	2,520			1,467
1996			9,379	5,042	0	2,271			1,476
1997	0	0	8,615	5,955	7	2,174			1,546
1998	2	0	7,518	447	0	1,514			1,176
1999	1	1	1,029			151			179
2000	5	1	804			170			213
2001	7	7	898			127	20		195
2002	16	7	899			112	21		197

Fiscal year	Article 9 business report (Note 2)	Article 9 written notification of establishment (Note 2)	Notification of acquisition of stock (Note 3)	Notification of interlocking officers (Note 4)	Shareholding report by ones other than the company (Note 5)	Notification of mergers (Note 6)	Notification of splits (Note 7)	Notification of joint share transfer (Note 8)	Notification of acquisitions of business, etc. (Note 9)
2003	76	4	959			103	21		175
2004	79	1	778			70	23		166
2005	80	5	825			88	17		141
2006	87	2	960			74	19		136
2007	93	2	1,052			76	33		123
2008	92	4	829			69	21		89
2009	93	5	840			48	15	3	79
2010	92	2	184			11	11	5	54
2011	100	0	224			15	10	6	20
2012	99	1	285			14	15	5	30
2013	100	0	218			8	14	3	21
2014	103	0	231			12	20	7	19
2015	104	2	222			23	17	6	27
2016	108	2	250			26	16	3	24
2017	105	0	259			9	13	3	22
2018	107	2	259			16	15	2	29
2019	112	0	264			12	12	3	19
2020	114	1	223			16	7	0	20
2021	114	3	288			10	17	3	19

(Note 1) The number of authorizations is shown inside the brackets.

(Note 2) The system of submission of business reports and notification of establishments based on Article 9 of the Antimonopoly Act was newly established in the subsequent statute of the Antimonopoly Act of 1997. Thus, there are no cases before that time.

Furthermore, before the 2002 amendment of the Antimonopoly Act, the act required holding companies with total assets surpassing a certain level to submit business reports and notify establishments, but after the amendment, the act required financial firms and general business companies as well in addition to holding companies with total assets surpassing a certain level to submit business reports and notify establishments.

(Note 3) The exemption requirement (total asset) of the shareholding report is amended as follows.

Amendment year	Exemption requirement (total asset)
1949	More than 5 million yen
1953	More than 100 million yen
1965	More than 500 million yen
1977	More than 2 billion yen

According to the Antimonopoly Act before the amendment of the subsequent statute of 1998, if domestic companies (excluding firms operating financial business) or foreign companies (excluding firms operating financial business) with more than 2 billion yen of total asset held stocks of domestic companies, they were required to submit shareholding reports within 3 months after the end of every business year. However, according to the Antimonopoly Act after the amendment, if companies with total asset of more than 2 billion yen and the sum of total assets of more than 10 billion yen, will acquire or hold more than 10%, 25% or 50% of stocks of domestic companies with more than 1 billion yen of the total asset or foreign companies with domestic sales of more than 1 billion yen, they are required to submit shareholding reports.

Moreover, in the subsequent statute of the Antimonopoly Act of 2009, notification criteria were reviewed, and if a company with a sum of domestic sales of more than 20 billion yen will acquire stocks of a company with domestic sales of more than 5 billion yen, including domestic sales of subsidiaries, and voting right share is over 20% or 50% (2 phases), a notification in advance became necessary as in the case of a merger, etc.

- (Note 4) The Antimonopoly Act before the amendment of the subsequent statute of 1998, required company directors or employees to notify if they also have positions as company directors in a domestic company in competition domestically and if either of the companies had total assets of more than 2 billion yen. However, after the amendment of the Act, this provision was abolished.
- (Note 5) The Antimonopoly Act before the amendment of the subsequent statute of 1998, required persons other than companies to submit shareholding reports if they will hold more than 10% of stocks of 2 or more domestic companies in competition domestically with each other. However, after the amendment of the Act, this provision was abolished.
- (Note 6) The Antimonopoly Act before the amendment of the subsequent statute of 1988, required notifications in advance whenever a company would merge. However, the amended Antimonopoly Act required notifications if the parties included companies with the sum of total assets of more than 10 billion yen and companies with the sum of total assets of more than 1 billion yen. Moreover, notification criteria were reviewed in the 2009 amendment of the Antimonopoly Act, and notifications became necessary in the case of mergers of a company with total domestic sales of more than 20 billion yen and a company with total domestic sales of more than 5 billion yen.
- (Note 7) Notification of splits was newly established in the 2000 amendment of the Commercial Code. Thus, no cases are seen before the year FY 2000. Moreover, notification criteria were reviewed in the 2009 amendment of the Antimonopoly Act, and if the parties include a total succession company (meaning a company succeeding the entire business) with the sum of domestic sales of more than 20 billion yen and a company which will succeed the business with the sum of domestic sales of more than 5 billion yen, etc., they are required to notify a plan concerning the split.
- (Note 8) Notification of joint share transfers was newly established in the 2009 amendment of the Antimonopoly Act. Thus, no cases are seen in the year FY 2008 and earlier.
- (Note 9) The Antimonopoly Act before the amendment of the subsequent statute of 1998, whenever a company would acquire the whole or a substantial part of the business, etc., notifications in advance were required. However, the amended Antimonopoly Act required notifications if a company with the sum of total assets over 10 billion yen will acquire the entire business, etc., of a domestic company with the total asset of more than 1 billion yen. Moreover, the notification criteria were reviewed in the 2009 amendment of the Antimonopoly Act, and notifications of acquisitions of business, etc., became necessary in the case of a company with total domestic sales of more than 20 billion yen will acquire the entire business of a company with domestic sales of more than 3 billion yen.

Concerning the business combination review

If the competition will be substantially restrained due to a business combination (shareholding, interlocking officers, merger, split, joint share transfer, acquisitions of business, etc.), not only (i) the users will be disadvantaged due to reduced options, but also (ii) incentives of the parties which try to adequately respond to the demand will be lost, and as a result, the parties will miss their chances to grow further, and that will lead to obstruction of economic vitalization.

Therefore, the Antimonopoly Act prohibits business combinations that will substantially restrain competition in a particular field of trade, and the Japan Fair Trade Commission (hereinafter referred to as “JFTC”) is conducting business combination reviews in accordance with the provisions of the Antimonopoly Act.

1 Procedure of business combination review

(1) Business combination plans requiring notifications

When a company meeting certain conditions shown in Table 1 below carries out a business combination, it needs to notify the JFTC in advance.

Concerning the notified business combination, if the JFTC judged that there is no issue in the light of provisions of the Antimonopoly Act within 30 days after the date of acceptance of the notification, the review will finish within this period (the preliminary review).

Also, if the JFTC judged that it needs to carry out a detailed review, it will ask the notified company for necessary reports, etc. (secondary review). Then, within 90 days after accepting all the reports, etc., it will judge whether this business combination is problematic or not in the light of provisions of the Antimonopoly Act.

Even if the business combination is judged to substantially restrain competition in a particular field of trade, if the parties can resolve the problem by implementing certain appropriate remedial measures (remedies), this business combination will be judged as not problematic in the light of the Antimonopoly Act (this business combination can be carried out).

(2) Business combination plans not requiring notifications

If a company which is planning a business combination that does not require a notification consulted the JFTC about the relevant business combination indicating the specific contents of the plan, the JFTC will respond in accordance with the notification concerning business combination plans that require notifications.

Moreover, of the business combination plans which do not require notifications because the amount related only to domestic sales, etc., of the virtually acquired company of the parties do not meet the notification criteria, if the sum of the consideration related to the merger is large, and it is estimated that it has an impact on domestic users, the JFTC will ask the parties to submit materials, etc., and conduct a business combination review.

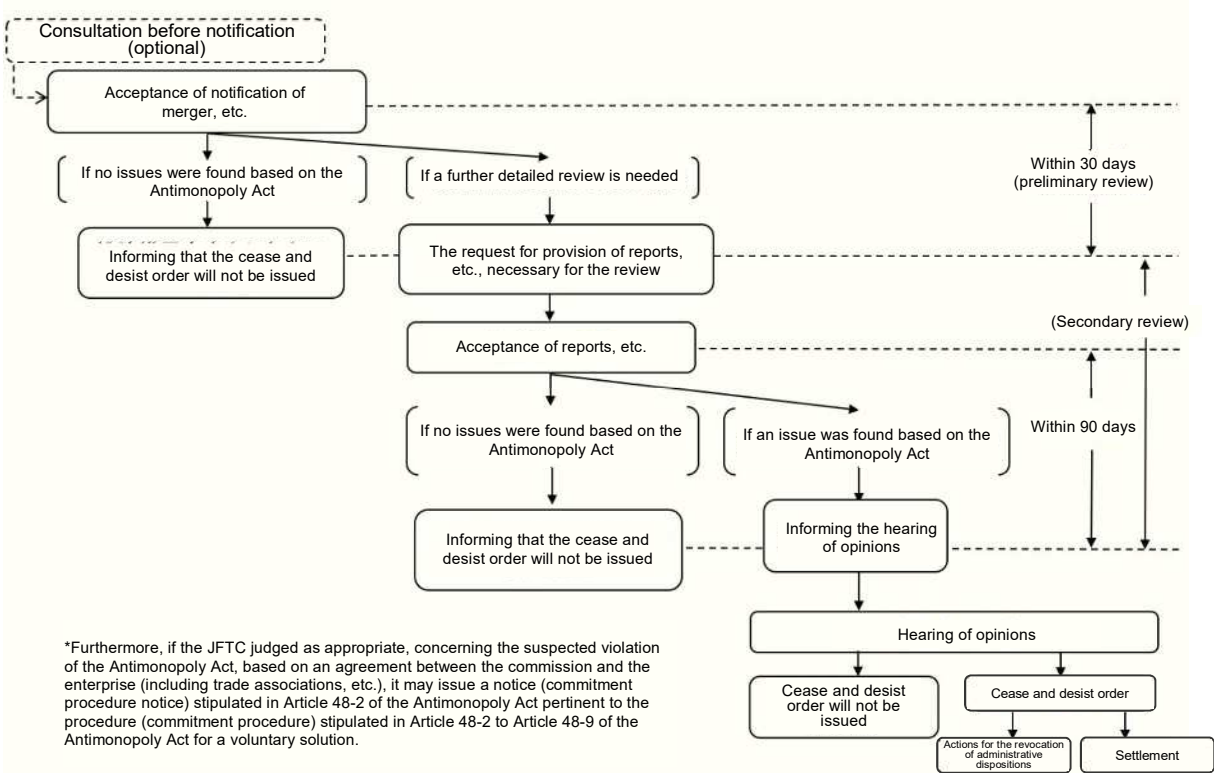
Table 1 Overview of cases requiring notifications by type

Type (applicable provisions)		Overview of cases requiring notifications
Acquisition of stock (Article 10)		(i) A company with the sum of domestic sales ^(Note 1) of over 20 billion yen (ii) acquires stocks of a share issuing company with the sum of domestic sales of the share issuing company and its subsidiary of over 5 billion yen (iii) and the voting rights share ^(Note 2) will surpass 20% or 50%
Merger (Article 15), joint share transfer (Article 15-3)		(i) A company with the sum of domestic sales of more than 20 billion yen and (ii) a company with the sum of domestic sales of more than 5 billion yen (iii) will carry out a merger (or joint share transfer)
Splits (Article 15-2)	Joint incorporation-type split	(i) A company with the sum of domestic sales of more than 20 billion yen and (ii) a company with the sum of domestic sales of more than 5 billion yen (iii) let the incorporated company by joint incorporation-type split succeed the entire business, etc.
	Absorption-type split	(i) A company with the sum of domestic sales of more than 20 billion yen (ii) lets a company with the sum of domestic sales of more than 5 billion yen (iii) succeed the entire business, etc.
Acquisition of business, etc. (Article 16)		(i) A company with the sum of domestic sales of more than 20 billion yen (ii) acquires an entire business from a company with domestic sales of more than 3 billion yen or (i) A company with the sum of domestic sales of more than 20 billion yen (ii) acquires a substantial part of the business (or a whole or a substantial part of the fixed asset related to the business) with domestic sales of more than 3 billion yen

(Note 1) The sum of domestic sales is the total amount of domestic sales of companies, etc., within a group of combined companies (a group of an “ultimate parent company” and its subsidiaries of the notified company).

(Note 2) Voting rights share is a proportion of voting rights which is held by a company, etc., within a group of combined companies.

Table 2 Flowchart of business combination reviews



2 Basic idea on business combination reviews

The idea of the JFTC to carry out business combination reviews is published as “Guidelines to the application of the antimonopoly act concerning the review of business combination (business combination guidelines)” (May 31, 2004, by the JFTC).

Firstly, after defining the range of a particular field of trade (market), from the perspective of which range of suppliers can users procure goods and services from, and whether this business combination will substantially restrain the competition, in other words, whether this will cause any problem in light of the Antimonopoly Act, from the perspective of whether users will be in the situation where they will not be able to secure sufficient options, will be examined.

- (1) A particular field of trade indicates a range (“scope of goods” and “geographic range”) to judge whether the competition will be restrained by a business combination. This particular field of trade is basically defined from the perspective of substitutability for users, or as necessary, from the perspective of substitutability for suppliers. Substitutability for users is judged, by considering the extent to which the users replace the purchase of goods and services with the purchase of other goods and services or other areas, supposing that an enterprise in a certain area, is dominantly supplying certain goods and services, and the dominant enterprise, aiming to maximize its profit, implemented “a small but significant and non-transitory increase in price.”
 - The above-mentioned way of thinking in defining a particular field of trade (market) is called SSNIP (Small but Significant and Non-transitory Increase in Price) test.
 - SSNIP test is a way of thinking that is used in Western countries.

- Normally, “a small but significant and non-transitory increase in price” is around a 5% to 10% increase, and the period is about a year.

(2) Substantial restraints on competition

A. The safe-harbor criteria

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

In a market in which the HHI^(Note 3) after a business combination applies to one of the following (i) to (iii), the horizontal business combination is usually not considered to substantially restrain competition in any particular field of trade (immediately judged as “innocent”).

(i) If HHI is 1,500 or less after the business combination

(ii) If HHI is more than 1,500 and 2,500 or less, and increment^(Note 4) of HHI is 250 or less after the business combination

(iii) If HHI is more than 2,500, and the increment of HHI is 150 or less after the business combination

(Note 3) HHI is calculated by the sum of the square of the market share of each enterprise in a particular field of trade.

(Note 4) The increment of HHI derived from a business combination can be calculated by doubling the multiplied value of each market share of the parties, if two companies are involved in the parties.

(b) The safe-harbor criteria of vertical business combinations and conglomerate business combinations

If the parties group after a business combination is applicable to either (i) or (ii) shown below, the vertical business combination or the conglomerate business combination is usually not considered to substantially restrain competition in any particular field of trade (immediately judged as “innocent”).

(i) When the market share of the parties group after the business combination is 10% or less in all particular fields of trade related to the parties

(ii) When HHI after the business combination is 2,500 or less and the market share of the parties group after the business combination is 25% or less in all particular fields of trade related to the parties

B. When it is not applicable to the safe-harbor criteria

When it is not applicable to the safe-harbor criteria, (i) whether a unilateral conduct by the parties group will substantially restrain competition in a particular field of trade, and (ii) whether the parties group and its competitor will substantially restrain competition in a particular field of trade by their coordinated conduct, will be examined.

In this examination, (i) the substantial restraints of competition due to the unilateral conduct of the parties group are judged, based on the actual status of the market and transactions shown by interviews and questionnaire surveys, by examining “whether the price increase, etc., by the parties group after the business combination will be easier, due to the increased position, etc., of the parties in the market,” “whether the competitive pressure from the competitor functions” against price increase, etc., of the parties, “whether the competitive pressure from imports and entrants functions,” “whether the competitive pressure based on users countervailing bargaining power functions,” “whether the competitive pressure from competing goods in neighboring markets functions,” etc.

Similarly, (ii) the substantial restraints of competition due to coordinated conduct by the

parties group and the competitor are judged by examining “whether it will be easier after the business combination for the parties group and the competitor to cooperate and increase the price, etc.,” “whether the competitive pressure from imports and entrants functions” against the coordinated price increase, etc. by the parties group and the competitor, “whether the competitive pressure based on users countervailing bargaining power functions,” “whether the competitive pressure from competing goods in neighboring markets functions,” etc.

(3) Remedy

Even if the business combination will substantially restrain competition in a particular field of trade, sometimes it is possible to resolve the problem by implementing certain appropriate measures (remedies) by the parties.

What kind of measures are appropriate as remedies will be examined specifically and individually depending on the individual business combination.

Remedies should basically be something that can recover the competition lost by the business combination, and in principle, it is structural measures such as acquisitions of business, etc. However, in the case of the market where the change of market structure is radical due to technological innovation, etc., sometimes it is more appropriate to take measures focused on a certain conduct.

Concerning the recent responses to the business combination reviews in the digital field

June 2022

The Japan Fair Trade Commission (hereinafter referred to as “JFTC”) has carried out reviews of the business combination cases in the digital field based on the characteristics such as free-of-charge services and indirect network effects¹. However, considering the recent development of digitalization in economy, in December 2019, it revised “Guidelines to application of the antimonopoly act concerning review of business combination (business combination guidelines)” (May 31, 2004, the JFTC) and “Policy of response concerning review of business combinations (procedure response policy)” (June 14, 2011, the JFTC), and proceeding with the response to the review of business combinations in the digital field as follows.

1 Revision of business combination guidelines and procedure response policy

The business combination guidelines revised in 2019, concerning the contents of the review, in addition to the examination of market definition and competition restraint effect considering the characteristics of digital services such as quality competition, multi-sided markets, network effects, etc., indicated the idea on competition restraining effect in the case when a company, although small-scaled at present, such as startup firms, with an important asset, etc., for the competition, including intellectual property right, will be acquired. Moreover, they organized and showed the mechanism of competition restraints in the review of vertical and conglomerate business combinations.

Furthermore, in the procedure response policy which was revised at the same time, concerning the review procedure aspect, it indicated that it will carry out the business combination review in certain cases, for example, the sum of the consideration related to the merger is large, such as in the case of business combination where a company, although its sales are small, with highly potential competitiveness, will be acquired, even if it does not meet the notification criteria, as well as clarifying that it may require the parties to submit internal documents during the review.

The JFTC, based on the revision of the procedure response policy, conducted necessary reviews of the cases that did not meet the notification criteria as well. For example, in FY 2021, it conducted reviews of cases such as the consolidation of Microsoft Corporation and Nuance Communications, Inc., the consolidation of Amazon.com, Inc. and MGM Holdings, Inc., the acquisition of stock of pring Inc. by Google International LLC, the acquisition of stock of Paidy Inc. by PayPal Holdings, Inc., and did not find any issue in these cases in the light of the Antimonopoly Act.

2 Enhancing the enforcement related to business combination reviews

(1) Enhancement of the system

In April 2021, the JFTC enhanced the review system for business combinations in the digital field, by setting up Deputy Director General (in charge of business combinations) and increasing the number of senior business combination investigators. Furthermore, in April 2022, aiming to enhance the economic analysis system, it newly set up an economic analysis office which specializes in economic analysis tasks in reviewing

¹Joint share transfer of KADOKAWA CORPORATION and DWANGO Co., Ltd. (FY 2014), acquisition of stock of Ikyu Corporation by Yahoo Japan Corporation (FY 2015), etc.

cases suspected of violation of the Antimonopoly Act, business combination review, various fact-finding investigations, etc.

(2) Enhancing the enforcement

The JFTC will promote more prompt and more appropriate enforcement by the following efforts considering the characteristics of the digital market concerning the business combination cases in the digital field².

A. Calling for information and opinions related to individual cases

Concerning the business combination reviews, for the cases that came under secondary reviews, it has already been announcing that it would hear opinions from the third party at the same time it started the secondary review, and widely called for opinions. However, centering the cases in the digital field, amid the complicatedly and rapidly changing market situation, as for the cases of business combination that is considered to be necessary to collect opinions more widely from the third party, regardless of starting of the secondary review, as necessary, it will announce that it will hear opinions from the third party, and call for information and opinions.

B. Using internal documents during the business combination reviews

In order to conduct prompt and appropriate business combination reviews, it is extremely important to understand the facts related to the relevant business combinations. Therefore, it may require the parties group (meaning a group of companies of a company carrying out a business combination and companies in joint relationships with it) or interested parties to submit internal documents. Especially concerning business combination cases in the digital market, amid the rapidly changing market situation, because it needs to understand, what kind of intent or purpose the relevant company group has in planning the business combination, what kind of impact will arise to various interested parties such as users and competitors as a result of the business combination, how it predicts the future of the market, from the early stage of the review, it will ask to submit internal documents such as materials of the board of directors, materials related to competition analysis in the company, and carry out business combination reviews (see the attached material for what the actual practice of the JFTC in the case of asking submission of the internal documents is).

C. Using economic analysis

It has already been proactively using economic analysis in business combination reviews, and it will continue to do so to understand the impact to the competition and effectiveness of the measures, etc., by using more refined economic analysis, having the newly established economic analysis office in the center.

3 Publication of contents of business combination reviews of individual cases

The JFTC is conducting business combination reviews based on the idea shown in the revised business combination guidelines, etc., for individual cases in the digital field. As for specific contents, the contents of the reviews of individual cases of the business integration of Z Holdings Corporation and LINE Corporation (published on August 4,

² Concerning these efforts, in June 2022, the JFTC published “Toward a proactive promotion of competition policy corresponding to the change of society and economy such as digitalization – enhancing the alignment of advocacy and enforcement –”.

2020), the consolidation of Google LLC and Fitbit, Inc. (published on January 14, 2021) and the consolidation of Salesforce.com, Inc. and Slack Technologies, Inc. (published on July 1, 2021) are published and clarified.

Actual practice of the Japan Fair Trade Commission related to the submission of internal documents in business combination reviews

In a review on whether a business combination will substantially restrain competition in a particular field of trade or not (hereinafter this review is referred to as “business combination review”), in order to check the facts of the business combination, it may require¹ companies carrying out business combinations and companies in joint relationships with it (hereinafter referred to as “the parties group”) to submit internal documents (documents that were created and used in the business, such as materials for board of directors, management meetings) (see attachment (Note 1) of “Policy of response concerning review of business combinations (procedure response policy)” (June 14, 2011, the Japan Fair Trade Commission (hereinafter referred to as “JFTC”))).

In order to conduct a prompt and appropriate business combination review, correct facts regarding the business combination plan are extremely important and internal documents are one of the important materials for that. Actual practice in the case when the JFTC requires submission of the internal documents is as follows.

1 Significance of submission of internal documents during business combination reviews

In a business combination review, in addition to statements on the written notification and attachments, various materials are referred depending on the contents of the business combination (see the procedure response policy in the attachment). Internal documents are sometimes included in the materials to be referred to in the business combination reviews. In such cases, the JFTC may require submission of internal documents to the parties group, and if necessary, to the users of the goods and services supplied by the parties group and competitors, etc., of the parties group (hereinafter referred to as “the third party”) as well. By having the parties group and the third party submit internal documents to the JFTC, it is considered that the JFTC will be able to understand in detail and correctly what kind of intent and purpose the parties group has in its business combination plan, what kind of impact does it predict to have on the third party as a result of the business combination, how it predicts the market future, etc., and that will contribute to the prompt and appropriate business combination review. Especially, concerning the business combination cases in the digital field, amid the rapidly changing market situation, these internal documents would often be necessary to judge the impact on competition, and the use of these internal documents is becoming a standard review method internationally as well.

2 Scope of internal documents that are required to submit

Supposing the significance of the submission of internal documents during the business combination review stated in 1 above, if the JFTC judged that checking of internal documents is necessary, depending on the contents of the business combination and the market situation, within the scope that is considered to be necessary for the business combination review, it requires the submission of what it considers to be necessary among the internal documents illustrated below. After that, depending on the level of necessity to check internal documents in the case, and after being consulted by the parties group, etc., the scope of specific internal documents to be submitted will be identified. Then, after

¹ When the economic analysis is conducted, it may ask to submit various data separately.

receiving part of the documents, such as an organization chart and a list of employees, considering the contents of the relevant internal documents, it may consider the scope of other internal documents that it requires to submit.

Periods of internal documents to be submitted differ from case by case. However, in many cases, it required to submit documents of about 2 years before the time when it asked to submit internal documents. Moreover, if the time of the creation of internal documents is not specifically designated, the internal documents required to be submitted may not be limited to the ones that were made during or after the consideration stage of the business combination, but also the ones created before that stage.

- Materials, minutes, etc., that were used in various meetings, etc., such as the board of directors meetings of the parties group related to the business combination
- Materials which were considered and analyzed regarding the purpose, effect, etc., of the business combination when the parties groups considered and made decisions on the business combination, and materials indicating the background of starting the consideration of the business combination
- E-mails (related to the business combination) of directors or employees of the parties group who were involved in the consideration of the business combination
- Business plans and various business strategies that were devised, or documents that were created concerning the business report, in organizations and departments related to the business subject to the business combination
- Documents which were created when the parties considered and analyzed the business plan and entry plan of competitors and new entrants related to the business subject to the business combination, and materials showing the recognition and evaluation of the parties concerning the scope of competitors, competitiveness, and the level of competition
- Marketing-related reports on price, number, or market research, market prediction, market survey, etc., of goods and services relevant to business subject to business combination (created by the parties or a research company, etc.)
- Organization charts, materials indicating the business of each organization and department, and lists of employees of the parties group (for the entire company and each organization or department engaged in the provision of goods and services, price setting, or marketing in a particular field of trade related to the business combination)

If the parties group, etc., wish to conduct certain extraction and selection works concerning the internal documents to be submitted, the JFTC is requiring the parties group, etc., to explain the extraction and selection method, etc., and asking for a negotiation about the handling, before the consultation on the scope of submission, etc., or during such process. Examples of main items requiring explanation are as follows.

- Whether or not there is a necessity or rationality to conduct extraction and selection.
- If extraction and selection will be conducted, its scope (besides personal scopes such as departments and persons to be covered, physical scopes or periodical scopes of the e-mail server, local folders, shared folders, external memories, etc.) and the reason for such scope.
- In the case of extraction and selection by search words, etc., search conditions to be used, and tools to be used (if a forensic provider is to be used, its overview should be

included). If further refinement will be done for extracted and selected internal documents, a system of such refinement tasks, refinement criteria, tools to be used, etc.

- Maintenance situation of internal documents which could be extracted and selected (check whether they are not destroyed, etc.)

Also, if the JFTC will conduct a business combination review and ask for the submission of internal documents, internal documents which could be subject to extraction and selection should be prevented to be destroyed from the time when the JFTC required the submission of internal documents, and they are required to be maintained and stored until the business combination review is finished. Furthermore, as stated in 3 below, also in the case when the parties group explained the purpose, etc., of the business combination in the form of indicating internal documents before the JFTC required the submission of internal documents, from that moment on, the maintenance and storage of internal documents are requested.

3 Time of submitting internal documents

The JFTC sometimes requires the submission of internal documents, even if a case does not proceed to the secondary review. Moreover, for the parties group to explain the purpose, etc., of the business combination in the form of showing internal documents, during the stage before being required by the JFTC, can sometimes contribute to a prompt and accurate business combination review.

4 The way of submitting internal documents

The most appropriate way of submitting internal documents is being considered between the JFTC and the parties. Specifically, the most appropriate way is selected among the following methods, depending on the system of the parties group, etc., type of internal documents, and the amount.

- Attachment to the e-mail (if the volume surpasses 50 MB, they are asked to send in divisions.)
- Submission via recording media such as hard disks and DVDs
- Data submission via file transfer services that are designated by the JFTC

Moreover, when submitting, the following points are also asked to be dealt with.

- Disable security measures such as passwords, etc.
- Submit in the format with which texts in the documents are searchable
- Submit metadata
- Submit relevant documents such as attachments and quoted documents
- Delete overlapping documents
- Inform whether recording media need to be returned or not
- Submit a Japanese translation or explain in Japanese where necessary
- Categorize and organize data when submitting

Background, etc., of the cases finished in the secondary review and withdrawn before the secondary review is finished in FY 2021

1 Acquisition of stocks of Siltronic AG by GlobalWafers GmbH

(1) Overview

This case concerned a plan of GlobalWafers GmbH, which operates the manufacturing and sales business of silicon wafers, to acquire voting rights of 70.0% or more related to stocks of Siltronic AG, which operates manufacturing and sales business of silicon wafers (hereinafter referred to as “the conduct”).

(2) Background

Year 2021	May 17th	Acceptance of notification of the plan concerning the acquisition of stock (start of the preliminary review)
	June 15th	The request for provision of reports, etc. (start of the secondary review)
	October 4th	Acceptance of all the reports, etc. (Deadline of hearing of opinions: January 3, 2022)
	November 26th	Informing that the cease and desist order will not be issued

(3) Conclusion

The Japan Fair Trade Commission (hereinafter referred to as “JFTC”) judged that the conduct cannot be said to substantially restrain competition in a particular field of trade.

(Reference) Contact and coordination with authorities abroad

This case was subject to reviews by competition authorities abroad and the JFTC proceeded with the review, while exchanging information between the Competition and Consumer Commission of Singapore and the U.S. Federal Trade Commission.

2 Acquisition of stocks of Daewoo Shipbuilding & Marine Engineering Co., Ltd. by Korea Shipbuilding & Offshore Engineering Co., Ltd.

(1) Overview

This case concerned a plan of Korea Shipbuilding & Offshore Engineering Co., Ltd. (hereinafter referred to as “Korea Shipbuilding & Offshore”) to acquire voting rights of more than 50.0% related to stocks of Daewoo Shipbuilding & Marine Engineering Co., Ltd. (hereinafter referred to as “the parties” together with Korea Shipbuilding & Offshore) (hereinafter referred to as “this case of acquisition of stocks”).

(2) Background

Year 2019	January 31st	Hyundai Heavy Industries Holdings Co., Ltd. (ultimate parent company of Korea Shipbuilding & Offshore) announced the plan concerning this case of acquisition of stocks
Year 2020	February 25th	Acceptance of notification of the plan concerning this case of acquisition of stocks (start of the preliminary review)
	March 19th	The request for provision of reports, etc. (start of the secondary review)
Year 2022	January 14th	Korea Shipbuilding & Offshore withdrew the notification
	March 8th	The parties cancelled the agreement concerning this case of the acquisition of stocks

(3) Conclusion

Because the parties cancelled the agreement concerning this case of acquisition of stocks, the JFTC ended the review.

(Reference) Contact and coordination with authorities abroad

This case was subject to reviews by competition authorities abroad, and the JFTC proceeded with the review, while exchanging information between the Competition and Consumer Commission of Singapore, the European Commission, the Korea Fair Trade Commission, and the State Administration for Market Regulation of China.