

Policies dealing with prior consultation regarding enterprise combination plans (summary for press release)

December 11, 2002

Fair Trade Commission

The Fair Trade Commission (hereinafter referred to as “FTC”) has with regard to plans for mergers and other enterprise combinations adopted a notification system based on the Antimonopoly Act and has undertaken enterprise combination examinations in accordance with the procedures stipulated in the Act.

When there have been prior consultation concerning concrete enterprise combination plans from the companies, the FTC undertakes an examination of whether there is an issue of concern in light of Chapter 4 of the Antimonopoly Act and responds to the companies concerning the results of this examination. However, in recent years there have been demands for further improvements in both the speed and transparency of the FTC’s examinations regarding prior consultation.

As a result, the FTC has, from the perspective of further enhancing the speed and transparency of prior consultation, undertaken a review of its policies dealing with prior consultation. The FTC decided to make public the policies dealing with prior consultation set forth in the attachment.

Meanwhile, the companies are only required to submit a notification on the basis of the provisions of Chapter 4 of the Antimonopoly Act and, as prior consultation are left to the voluntary judgment of the companies, it goes without saying the fact that prior consultation have not taken place does not influence the FTC’s ultimate judgment regarding said enterprise combinations.

Although these policies will be applied to prior consultation received from today onward, the FTC will, to the extent possible, deal with prior consultation currently being undertaken in line with them.

Main points of policy

1. Beginning with the day on which materials showing the concrete contents of the enterprise combination plans are submitted, the FTC will, as a general rule, within 30 days notify the companies to the effect that there are no concerns relating the Antimonopoly Act or to the effect that a detailed examination is required (including the products and services subject to the points of the examination, etc.)
2. Following the above, within 90 days from the day on which the required detailed materials are submitted, the FTC will, as a general rule, undertake to provide a response regarding the examination results, including the reasons for those results.

Also, in order to further increase the transparency of the FTC's examination results, the FTC will provide a written response to the prior consultation for which the detailed examination was undertaken as well as expand the content of both the written response and the public announcement.

Policies dealing with prior consultation regarding enterprise combination plans

(tentative translation)

1. Purpose

The Fair Trade Commission (hereinafter referred to as “FTC”) has with regard to plans for mergers and other enterprise combinations adopted a notification system based on the Antimonopoly Act and has undertaken enterprise combination examinations in accordance with the procedures stipulated in the Act.

When, with regard to concrete enterprise combination plans, there are consultation (hereafter referred to as “prior consultation”) prior to the statutory notification from the companies (this refers to the individuals planning the enterprise combination and includes the directors and employees stipulated in Section 13 of the Antimonopoly Act and the individuals other than companies stipulated in Section 14 of this Act – all references below shall have this meaning) concerning whether the plans raise issues of concern in light of Chapter 4 of the Antimonopoly Act, the FTC responds concerning the results of its examination. In recent years there have been demands for further improvements in both the speed and transparency of the FTC’s examinations regarding prior consultation.

As a result, the FTC has, from the perspective of further increasing the speed and transparency of prior consultation, established a policy – “policies dealing with prior consultation regarding enterprise combination plans” – as set forth below.

2. Application requirements

Prior consultation applications will be accepted when they meet all of the requirements noted below.

1. The application is from the companies attempting to implement the enterprise combination plan which is the subject of the consultation.
2. The companies present a concrete plan concerning the expected enterprise combination which the companies themselves will undertake in the future.
3. In the event a detailed examination is undertaken, the companies agree that the facts relating to the prior consultation and the contents of the FTC’s response will be made public.

Even though it is a project in which there has been no public announcement concerning the enterprise combination plan at the point in time of the application for prior consultation, the companies may apply for prior consultation (hereafter referred to as “non-public project”). However, in the event that the FTC judges that a detailed examination is required, the project will not be subject to prior consultation when the companies at this stage fail to

agree to make public the heretofore non-public project by themselves as it will become necessary to have investigative hearings by the FTC with customers, etc.

3. The initiation of prior consultation

1. When there have been prior consultation, the FTC will initiate the documentary examination noted in “4” below from the day on which materials setting forth the concrete contents of the enterprise combination plans are submitted.

In order to smoothly initiate prior consultation, the companies before initiating prior consultation can make inquiries to the FTC concerning the general outline of the Antimonopoly Act, “Guideline’s for Interpretation on the Stipulation that ‘The Effect May Be Substantially to Restrain Competition in a Particular Field of Trade’ Concerning M&A’s,” (hereafter referred to as “merger guidelines”), prior consultation procedures, the content of the materials showing the concrete contents of the enterprise combination plans, etc. (inquiries should be directed to the reception window for prior consultation).

2. The following are illustrations of “the materials showing the concrete contents of the enterprise combination plans”

(Examples)

Items showing an outline of the companies (company names, the nature of their businesses)

The concrete contents of the enterprise combination plan (the objectives of the combination, the method of the combination, the scope of the business operations subject to the combination, schedule, materials made public by the companies regarding the combination plan)

Items indicating the subject products and services and an outline of these (characteristics of the product, competitive products, the existence of product substitutes, channels of distribution, transaction configuration)

The position of the companies in the market (the respective market shares of the companies, the market shares of competitors)

Regarding the products and services subject to the combination, among the concrete factors for making a judgment noted in the merger guidelines, which, from the perspective of the companies, are thought to concern factors bearing a significant influence on the judgment regarding competition and the materials which form the basis for this (examples: in the cases of “imports,” materials showing the volume of imports, the rising trend of import volume, the linkage between domestic prices and overseas prices, etc.)

Additional materials that the companies believe should be tendered

(Note) Regarding the market share, it is sufficient if the companies indicate

the market which they believe to be appropriate as the area in which there is a competitive business relationship. However, companies should indicate the types of materials upon which the calculation was based. Additionally, in the event there are companies in which the companies have invested and in which they hold over ten percent of the voting rights or there are companies which have invested in the companies and which hold over ten percent of the voting rights of the companies, the share of said companies must be added to the figure.

In the event there are difficulties in obtaining items in the materials noted above, if this is indicated, it will be handled that materials has been submitted regarding the outline of the enterprise combination.

4. Documentary examination(phase 1)

1. From the day on which materials setting forth the concrete contents of the enterprise combination plans are submitted, the FTC will, as a general rule, within 30 days notify the companies to the effect that there are no issues relating the Antimonopoly Act or to the effect that a detailed examination is required.
2. In the event that notification is given to the effect that a detailed examination is required, the FTC will, having identified the products, services, and the geographic scope which will become the subject of the examination, explain the specific points at issue as concerns the Antimonopoly Act and request the presentation of concrete materials which are judged to be required to undertake a detailed examination.

Additionally, in the event that the companies are notified to the effect that a detailed examination is required, the FTC as a general rule will make a public announcement to the effect that a detailed examination concerning said enterprise combination plan will be undertaken by the FTC.

Furthermore, any individual with an opinion regarding said enterprise combination plan may, within 30 days of the public announcement that the FTC will undertake a detailed examination, submit to the FTC a written opinion.

5. Detailed examination(phase 2)

Following notification to the companies to the effect that a detailed examination is required, the FTC will initiate the detailed examination and from the day on which the submission of the concrete materials requested as per "4" above is completed will, as a general rule, within 90 days undertake an examination of whether there is an issue of concern in light of Chapter 4 of the Antimonopoly Act and respond in writing and make a public announcement concerning the results - including the reasons for those results.

6. Exceptions to the notification and response deadlines

The notification and response deadlines stipulated in “4” and “5” above will not, for example, be applicable in the following circumstances.

1. Following submission of materials, when there is an alteration in the enterprise combination plans for which there has been an initial consultation
2. When there has been an application from the companies to set a different due date than the notification and response deadlines

7. Public announcement date

The date for the public announcement of the contents of the response noted in “5” above and the contents of the prior consultation will, from the perspective of providing an opportunity to the companies to review whether there are sections which cover business secrets, take place within one week following the response noted in “5” above.

8. Suspension of prior consultation

For example, in the following circumstances the examination concerning the prior consultation will be suspended.

1. When there has not been a submission of the materials sought from the companies
2. When, during prior consultation, a notification based on the stipulations in Chapter 4 of the Antimonopoly Act concerning said enterprise combination plan has been made
3. When there has been an application from the companies to discontinue the prior consultation
4. Concerning non-public project, when at the stage that the FTC gave notification to the effect that a detailed examination is required and the companies do not undertake to make a public announcement of said project

9. The relationship to statutory procedures

In the responses noted in “4” and “5” above, following a response to the effect that there is not an issue concerning the Antimonopoly Act, when the statutory notification is made with the same content as the enterprise combination plan which was the subject of prior consultation, statutory measures will not be taken. However, this does not necessarily apply when the enterprise combination plan differs from that which was the subject of prior consultation and when circumstances fall within the purview of “10” noted below.

10. Withdrawal of the response

In the event it is ascertained that the materials and the explanations submitted at the time of the prior consultation differ from the facts, the response to the prior consultation will be withdrawn.