Publication of the Draft of the New Guidelines on Merger Review

March 23, 2004
Fair Trade Commission

The Fair Trade Commission of Japan (JFTC) has been making efforts to ensure transparency and clearness of merger reviews through issuing guidelines and making public its views on the important cases with reasoned explanation from the standpoint of the Antimonopoly Act. On the other hand, there has been recently increasing requests for the JFTC to further enhance transparency and predictability regarding how to delineate "a particular field of trade (a relevant market)" or how to assess effects of mergers on competition whether they may pose problems in view of the Antimonopoly Act.

The JFTC already clarified its policy to deal with prior consultation on mergers in December 2002, and, since then, it has already conducted transparent and predictable merger reviews based on this policy, for example - to make clear its views on cases which are subject to detailed examination with reasoned explanation. Furthermore, with a view to more responding to such requests for further transparency and predictability, the JFTC today made public "Draft of the New Guidelines on Merger Review". (Overviews: See Attachment.)

On this occasion, the JFTC invites every interesting party to submit its comments on this draft. The details are follows.

[The Address for submitting comments]
Mergers and Acquisitions Division
Economic Affairs Bureau, Fair Trade Commission of Japan
Central Government Office Building 6, Annex B
1-1-1 Kasumigaseki, Cuiyoda-ku, Tokyo 100-8987, Japan
Fax 03-3581-5771
E-mail ketsugouGL@jftc.go.jp

[Deadline for Comments] April 22, 2004

(Note)
Please submit comments by mail, e-mail or fax, after verifying that your name (or corporation name), address and contact telephone and/or fax number and/or e-mail address are legible.
The JFTC may release the contents of the opinions received after deleting addresses and contact numbers. The JFTC is not able to respond individually to each opinion submitted. Your understanding is appreciated.

[Attachment]

Overview of JFTC's New Merger Guidelines*

1. Features of JFTC's New Merger Guidelines

- The assessment of mergers is more consistent with economic logic, and more congruent with the ones in the EU and US merger guidelines (than ever).
- Horizontal, vertical and conglomerate mergers are covered.
- Safe harbor rules for mergers are adopted. Presumptive illegality rules are not.
- The approach to remedial actions is explained.

2. Determination of Relevant Markets

- A relevant market is principally determined by demand substitution.
- Product and geographic dimensions specify the boundary of a relevant market.
- Price discrimination and supply substitution are also taken into consideration.

3. The Effects of Horizontal Mergers

- Common safe harbor for horizontal mergers:
  - A merging parties' combined market share is 10% or less.
  - A merging parties' combined market share is 25% or less and the HHI is less than 1000.
- Non-coordinated (unilateral) effects and coordinated effects are examined.
- Analysis of non-coordinated effects:
  - Safe harbor regarding non-coordinated effects:
    - A merging parties' combined market share is 25% or less, at least one rival's market share is 10% or more, and the HHI is less than 1800.
    - A merging parties' combined market share is 35% or less, at least two rivals' market shares are 10% or more, and the HHI is less than 1800.
    - An increment in HHI is less than 100, and at least one rival's market share is 10% or more.
  - The status of merging parties: market shares, market share ranks, pre-merger rivalries among the parties.
  - The competitive pressures from non-merging firms: market shares, differences in market share between a merged firm and its rivals, excess capacity for supply, the degree of product differentiation.
  - The potential and actual competitive pressures: import and entry, the presence

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* It is appreciated if you could refer to the full text in Japanese when you prepare your comments.

of adjacent product and geographic markets, competitiveness in vertically related markets.
    - Efficiency and viability of merging parties.
- Analysis of coordinated effects:
    - The status of merging parties and rivals: the number of participants, similarity in product and cost structure, pre-merger rivalries among the merging parties, excess capacity for supply.
    - The relevant market environments: transparency in business transactions, frequency and size of orders, stability and maturity in demand, the speed of technological development, pre-merger competitiveness.
    - The potential and actual competitive pressures: import and entry, the presence of adjacent product or geographic markets, competitiveness in vertically related markets.
    - Efficiency and viability of merging parties.

4. The Effects of Vertical and Conglomerate Mergers

- Common safe harbor for vertical and conglomerate mergers:
    - A merging parties' combined market share is 10 % or less.
    - A merging parties' combined market share is 25% or less and the HHI is less than 1000.
    - A merging parties' combined market share is 25 % or less, at least one rival's market share is 10% or more, and the HHI is less than 1800.
    - A merging parties' combined market share is 35% or less, at least two rivals' market shares are 10% or more, and the HHI is less than 1800.
- Vertical or horizontal market foreclosure, facilitating coordinated effects, and elimination of potential competition are considered.
- Analysis: the aspects examined here are similar to the ones explained in horizontal mergers.

5. Remedies

- Following types of remedies are considered.
    - Remedies to restore or minimize a change in market structure: divestiture of a part of business, reduction in the shareholding ratio, etc.
    - Remedies to enhance competition that will be confronted by the merged firm: requiring access to essential inputs for import or entry, licensing know-how or intellectual property rights, etc.

- Remedies to exclude or limit the merged firm's action to take advantage of the increased market power: a commitment to non-discriminatory behavior, obligation to refrain from information exchange (which may lead to collusion among firms), etc.