

Major Business Combinations in FY 2023

J u l y 5 , 2 0 2 4
Japan Fair Trade Commission

From the perspective of ensuring transparency and improving the predictability of business combination reviews, the Japan Fair Trade Commission (JFTC) has enacted and published its approach to the application of the Antimonopoly Act in business combinations in the “Guidelines to Application of the Antimonopoly Act concerning Review of Business Combination” (May 31, 2004, the JFTC; hereinafter referred to as the “Guidelines”). In addition, the JFTC has compiled and published the results of reviews of major business combination cases in each fiscal year.

The JFTC is also publishing the results of the review of major business combinations in FY 2023.

Companies planning a business combination are encouraged to utilize the Guidelines as well as the major examples of business combinations published herein.

Major Business Combinations in FY 2023

Number	Case (Major field of review)	Form of business combination, etc.				Method of the review				Page
		Horizontal	Vertical	Conglomerate	Remedy	Request for information and comments	Utilization of internal documents	Utilization of economic analysis	Information exchange with overseas authorities	
1	Integration of the non-woven fabric businesses by Mitsui Chemicals, Inc. and Asahi KASEI Corporation (Non-woven fabric for sanitary materials)	✓	✓	-	-	-	-	-	-	7
2	Acquisition of the manufacture and sales business of male infertility drugs of Mochida Pharmaceutical Co., Ltd. by Fuji Pharma Co., Ltd. (Ethical Drugs)	✓	-	-	-	-	-	-	-	26
3	Acquisition of shares in TAKISAWA Co., Ltd. by NIDEC Co., Ltd.	✓	✓	✓	-	-	-	-	-	36

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		Horizontal	Vertical	Conglomerate	Remedy	Request for information and comments	Utilization of internal documents	Utilization of economic analysis	Information exchange with overseas authorities	
	(Machine Tools)									
4	Integration of the manufacturing business of multifunction devices by Ricoh Co., Ltd. and Toshiba Tec Corporation (Multifunction devices)	✓	✓	-	-	-	-	-	-	45
5	Integration of the generators business by Mitsubishi Electric Corp. and Mitsubishi Heavy Industries, Ltd. (Generators)	✓	✓	-	-	-	-	-	-	51
6	Acquisition of shares in Ashimori Industry Co., Ltd. by Toyoda Gosei Co., Ltd. (Airbag)	✓	-	✓	-	-	-	-	-	63
7	Acquisition of shares in TOYOTA	✓	✓	-	-	-	-	-	-	84

Number	Case (Major field of review)	Form of business combination, etc.				Method of the review				Page
		Horizontal	Vertical	Conglomerate	Remedy	Request for information and comments	Utilization of internal documents	Utilization of economic analysis	Information exchange with overseas authorities	
	MAPMASTER INCORPORATED by ZENRIN CO., LTD. and AISIN CORPORATION (Map Database)									
8	Acquisition of shares in U-NEXT HOLDINGS Co., Ltd. by TBS HOLDINGS, INC. (Video Content)	✓	✓	-	-	-	-	-	-	102
9	Acquisition of shares in Asiana Airlines Inc. by Korean Air Lines Co., Ltd. (International Air Passenger Transport and International Air Cargo Transport) (Details of the review results were	✓	-	-	✓	-	✓	✓	✓	112

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		Horizontal	Vertical	Conglomerate	Remedy	Request for information and comments	Utilization of internal documents	Utilization of economic analysis	Information exchange with overseas authorities	
	published on June 19, 2024)									
10	Absorption-type split of the headquarter's business of the franchise chain of Culture Convenience Club Co., Ltd. by MPD Co., Ltd. (Bookstores)	✓	-	-	-	-	-	-	-	159

(Note 1) The order in which the cases are listed is based on the order in the Japanese Standard Industrial Classification of Businesses pertaining to the goods or services that were the subject of the business combination review.

(Note 2) In each case, confidential information regarding the Parties and the names of competing enterprises are withheld. For competing enterprises, an arbitrary letter is used.

(Note 3) The market share, post-action HHI (the Herfindahl-Hirschman Index; same applies hereinafter) level, and the incremental HHI based on the action, etc. listed in each case are calculated based on the materials submitted by the Parties and are expressed as approximate numbers by the JFTC. In this case, in principle, market share is described in units of 5%. For example, "approximately 40%" is used for a market share of 37.5% or more but less than 42.5%. Thus, the total value does not necessarily equal 100.

(Note 4) In each case, a horizontal business combination refers to a business combination between companies in a competitive relationship in a particular field of trade. A vertical business combination refers to a business

combination between companies at different stages of a transaction, for example, a merger between a manufacturer and a distributor of goods. A conglomerate business combination refers to a business combination that does not fall under either a horizontal or a vertical business combination, for example, a merger between companies in different industries, or a shareholding between companies in different geographical ranges in a particular field of trade.

(Note 5) In "Towards the Active Promotion of Competition Policy in response to Socioeconomic Changes as represented by Digitalization - Coordination and Strengthening of Competition Policy Advocacy and Law Enforcement -" published in June 2022, the JFTC made it clear that it would promote prompt and accurate enforcement through efforts such as seeking information and opinions from third parties, utilizing internal documents and economic analysis.

The following shows the number of business combinations for which the JFTC completed reviews in fiscal 2023 that used each of the screening methods.

- Request for information and comments from third parties: 1 case
- Utilization of internal documents: 10 cases
- Utilization of economic analysis: 7 cases
- Information exchange with overseas authorities: 5 cases

Case 1 Integration of the non-woven fabric businesses by Mitsui Chemicals, Inc. and Asahi KASEI Corporation

Case 1 Integration of the non-woven fabric businesses by Mitsui Chemicals, Inc. and Asahi KASEI Corporation

Part I The Parties

Mitsui Chemicals, Inc. (JCN 4010401052081) (hereinafter referred to as "Mitsui Chemicals") and Asahi KASEI Corporation (JCN 5120001059606) (hereinafter referred to as "Asahi Kasei") are mainly engaged in the manufacture and sale of chemical products and non-woven fabrics.

Hereinafter, the group of companies that has already formed a joint relationship with Mitsui Chemicals as the ultimate parent company will be referred to as the "Mitsui Chemicals Group", and the group of companies that has already formed a joint relationship with Asahi Kasei as the ultimate parent company will be referred to as the "Asahi Kasei Group." Mitsui Chemicals and Asahi Kasei are hereinafter collectively referred to as the "Parties", and Mitsui Chemicals Group and Asahi Kasei Group will be referred to as the "Parties Group".

Part II Outline of the Case and applicable provisions

This case is about Mitsui Chemicals and Asahi KASEI's plan to integrate the non-woven fabric business of the Parties Group by a joint incorporation-type demerger¹ (hereinafter referred to as the "Transaction").

The applicable provision is Article 15-2 of the Antimonopoly Act.

If the new company is established by the joint incorporation-type demerger (hereinafter referred to as the "Consolidated Company"), the proportion of voting rights of the Mitsui Chemicals Group and the Asahi Kasei Group will be 60.62% and 39.38%, respectively.

There are multiple competitive or business relationships among the businesses operated by the Parties Group. Of the examinations conducted regarding this point, the following is a detailed description of the results of the review on horizontal business combination in the manufacturing and selling of spun-bond non-woven fabric for sanitary materials and vertical business combination with the manufacturing and selling of raw materials for non-woven fabric for sanitary materials as upstream market and the manufacturing and selling of spun-bond non-woven fabric for sanitary materials as downstream market, which was considered to have a relatively large impact on competition.

¹ The Consolidated Company will take over Asahi Kasei's Moriyama factory by absorption-type split in a few years.

PartIII Product overview

1. Non-woven fabric

Non-woven fabric in the JIS standard, means "a fiber sheet, web or pad in which fibers are oriented in one direction or at random and the fibers are bonded to each other by interlacing, fusion bonding or adhesion, excluding paper, woven, knitted fabrics, tufts or milling felt "

The main uses of non-woven fabric are shown in Table 1. They are as follows: Sanitary materials, medical materials, living materials, industrial materials, civil engineering materials, and agricultural materials. The commercial flow of the non-woven fabric is shown in Figure.

The non-woven fabric for sanitary material and the non-woven fabric for non-sanitary are basically treated as different types of non-woven fabrics because of their different prices, fiber strengths, etc.

Table 1: Uses of non-woven fabrics

Use		Main products
Sanitary materials		▪ Disposable diapers (including those for light incontinence) ▪ Sanitary products ▪ Masks ▪ Wet tissues
Non-sanitary materials	Medical materials	▪ Medical gowns ▪ Drape²
	Living materials	▪ Packaging materials ▪ Miscellaneous goods ▪ Bedding
	Industrial materials	▪ Automotive parts (wipers, ceiling materials, seat materials, etc.) ▪ Oil adsorbent (oil / water filter system, etc.) ▪ Industrial filter
	Civil engineering materials	▪ Drain filter ▪ Sheet for soil improvement

² A drape used to cover the body of a patient during surgery to keep the surgical field and cutting parts clean from unclean areas.

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	Agricultural materials	▪ Covering Sheet
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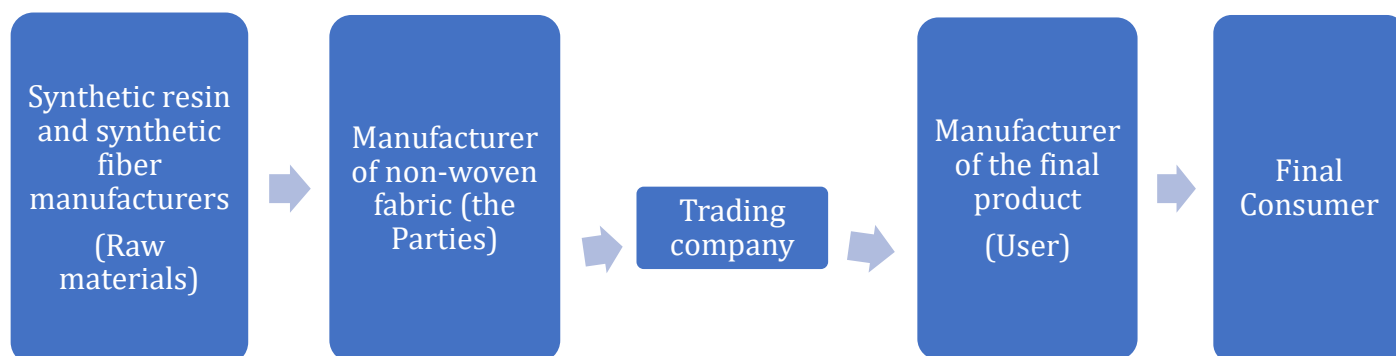


Figure: Commercial flow of Non-woven Fabric



Comparing the non-woven fabrics for sanitary material and non- sanitary material, the non-woven fabrics for sanitary material, which were considered to have a relatively large impact on competition due to the Action, will be examined in detail below.

2 . Non-woven fabric for sanitary materials

(1) Method for producing non-woven fabric

The manufacturing process of non-woven fabric basically consists of two steps as follows³: forming web⁴ (the laying of fibers into a web) and bonding fibers of the formed web (performed by melting the web in a state like cotton, using an adhesive bond, or applying water)

³ In the process of producing melt-blown non-woven fabric, the formation of web and fiber bonding are carried out simultaneously (melt-blown method).

⁴ A thin membranal sheet consisted of only fibers, made by breaking up massive fibers and passing through multiple rolls.

(2) Types of non-woven fabrics for sanitary material

Non-woven fabrics for sanitary material have different properties depending on manufacturing methods. The types of non-woven fabric include spun-bond non-woven fabric, SMS⁵ non-woven fabric, air-through non-woven fabric, spunlaced non-woven fabric and melt-blown non-woven fabric. The outline of each is as follows.

A. Spun-bond non-woven fabric

Spun-bond non-woven fabric is made by forming a web by the spun-bond method and bonding webs by heating calender method, or air-through method.

The spun-bond non-woven fabric has properties such as low basis weight (light weight per unit area) and high strength, and is inexpensive.

B. SMS non-woven fabric

SMS non-woven fabric has a three layer structure of sandwiching melt-blown non-woven fabric with spun-bond non-woven fabric.

Like spun-bond non-woven fabric, SMS non-woven fabric has low basis weight, high strength, and low cost. Moreover, SMS non-woven fabric is dense by being sandwiched between spun-bond non-woven fabric, and has improved water resistance compared with spun-bond non-woven fabric.

C. Air-through non-woven fabric

The air-through non-woven fabric is produced by forming a web by a dry method and bonding the web by an air-through method.

While air-through non-woven fabric has a property that it has a good texture when it comes in contact with the skin because it is easy to get thick, and it repels without retaining moisture, it absorbs moisture easily when a surfactant is added.

D. Spunlaced non-woven fabric

Spunlaced non-woven fabric is produced by forming a web by a dry method and bonding the web by a water-jet interlacing method.

Spunlaced non-woven fabric has the properties of soft touch and

⁵ SMS is the abbreviation for Spunbonded-Melt-blown-Spun-bond.

smoothness like cloth, and excellent water retention.

E. Melt-blown non-woven fabric

The melt-blown non-woven fabric is produced by a melt-blowing method.

The melt-blown non-woven fabric has a property of high water resistance because of its compactness.

(3) Use of the non-woven fabric for sanitary material

As described in 1 above, the main products which uses non-woven fabric for sanitary materials are disposable diapers, sanitary products, masks and wet tissues. The details of the non-woven fabric for sanitary materials used for each product are as follows.

The majority of the total production of non-woven fabric for sanitary materials is for disposable diapers, and the production for sanitary products, masks and wet tissues is small.

A. Disposable diapers

The disposable diapers are roughly divided into "back sheet" (outer portion), "top sheet" (inner portion in direct contact with the skin), "gather" (portions at both ends of the top sheet when the disposable diaper is spread, which prevent urine from leaking to the outside), and "waistband / elastic member".

As for each component, according to the properties of non-woven fabrics for sanitary material, spun-bond non-woven fabrics are mainly used for "back sheet" and "waistband / elastic member", air-through non-woven fabrics are mainly used for "top sheet" because good touch and water absorbency are required, and SMS non-woven fabrics are mainly used for "gather" because water resistance is required.

B. Sanitary products

Sanitary products are classified into two types: napkin-pad type, which consists of "top sheet" and "gather"; and shorts type⁶, which consists of "top sheet", "gather" and "waistband / elastic member".

⁶ It is rarely sold in Japan.

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The type of non-woven fabric for sanitary material used in each component is the same as that of a disposable diaper.

C. Masks

The materials for ears and mouth of the mask, which are in contact with the outside air and the skin are mainly made of a spun-bond non-woven fabric. The filter portion is mainly made of a melt-blown non-woven fabric.

D. Wet tissues

Since wet tissues are required to have water retentivity, spunlaced non-woven fabric is mainly used.

(4) Relationship between the type, manufacturing method and uses of non-woven fabric for sanitary materials

The relationship between the types, manufacturing methods, and uses of the non-woven fabric sanitary materials described from (1) to (3) above is summarized as shown in Table 2.

Table 2: Relationship between types and manufacturing methods of non-woven Fabrics

Type	Manufacturing method		Primary use
	Formation of the web	Fiber bonding of the web	
Spun-bond non-woven fabric	Spun-bond method	Heating calender method	Back sheet (Top sheet)
		Air-through method	
SMS non-woven fabric ⁷	Spun-bond method	Heating calender method	Gather
Air-through non-woven fabric	Dry method	Air-through method	Top sheet (Back sheet)
Spunlaced non-woven fabric		water-jet interlacing method	Wet tissue
Melt-blown non-woven fabric	Melt-blown method (The formation and fiber bonding are		Mask

⁷ There is also a method of forming a web and bonding fibers by melt-blowing.

	performed simultaneously.)	
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(5) Raw material for non-woven fabric for sanitary materials

As a raw material for non-woven fabrics, there are Polypropylene⁸ (hereinafter referred to as "PP"), polyethylene terephthalate⁹ (hereinafter referred to as "PET") and polyethylene¹⁰ (hereinafter referred to as "PE"). As for the non-woven fabric for sanitary materials, PP is mainly used.

Part IV Particular field of trade

1. Non-woven fabrics for sanitary materials (horizontal and vertical business combinations (downstream market))

The non-woven fabric for sanitary materials manufactured and sold by the Parties Group is only a spun-bond non-woven fabric, and as described in III-2(3)A above, it is mainly used for "back sheets" and "waistband / elastic members" of disposable diapers. As other types of non-woven fabrics used for disposable diapers, there are SMS non-woven fabrics and air-through non-woven fabrics.

Therefore, an examination was made as to the substitutability of spun-bond non-woven fabric and other non-woven fabric for sanitary materials.

(1) Product scope

A. Spun-bond non-woven fabric and SMS non-woven fabric

(a) Substitutability of demand

As described in 1 above, the spun-bond non-woven fabric is mainly used for "back sheet" and "waistband / elastic member" of a disposable diaper. On the other hand, the SMS non-woven fabric has basically similar properties to the spun-bond non-woven fabric, but is used mainly for "gather" portions because it has higher water resistance than the spun-bond non-woven fabric due to its denser structure. In this way, the spun-bond non-woven fabric and the SMS non-woven fabric are used separately.

⁸ Thermoplastic resin made mainly from propylene.

⁹ A type of synthetic resin produced by reacting terephthalic acid and ethylene glycol at high temperature and high vacuum.

¹⁰ The thermoplastic resin produced by polymerizing* ethylene.

* The process of combining compounds with relatively small molecular weight into compounds with large molecular weight.

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Accordingly, the substitutability of demand between spun-bond non-woven fabric and SMS non-woven fabric is limited.

(b) Substitutability of supply

SMS non-woven fabric is produced by arranging web injection nozzles in the order of spun-bond non-woven fabric, melt-blown non-woven fabric, and spun-bond non-woven fabric to form a web, and fiber-bonding the formed web by the air-through method. Accordingly, a company producing the SMS non-woven fabric can produce the spun-bond non-woven fabric by stopping the injection from the injection nozzle for the melt-blown non-woven fabric.

On the other hand, in order for a company manufacturing spun-bond non-woven fabric to newly start manufacturing SMS non-woven fabric, it is necessary to newly introduce manufacturing equipment, and a large amount of money and a certain period of time (period required for completion of construction, trial operation, and approval of materials for a new product) are required for the introduction of equipment.

Therefore, the substitutability of supply between spun-bond non-woven fabric and SMS non-woven fabric is limited.

(c) Summary

Based on the above, spun-bond non-woven fabric and SMS non-woven fabric constitute different product scopes.

B. Spun-Bond non-woven fabric and air-through non-woven fabric

(a) Substitutability of demand

As mentioned in 1 above, spun-bond non-woven fabric is used for "back sheet" and "waistband / elastic member" of disposable diaper, and air-through non-woven fabric is mainly used for "top sheet" of disposable diaper because it has shorter fibers, is bulkier, and more comfortable to touch than spun-bond non-woven fabric. Accordingly, the spun-bond non-woven fabric and air-through non-woven fabric are used separately.

On the other hand, the spun-bond non-woven fabric can be used for a "top sheet" of a disposable diaper which an air-through non-woven fabric or the like is usually used for by performing a hydrophilic treatment, and the air-through non-woven fabric is less frequently used in practice

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since it is more expensive than the spun-bond non-woven fabric, but can also be used for a "back sheet" of a disposable diaper.

Accordingly, a certain degree of substitutability of demand is recognized between spun-bond non-woven fabric and air-through non-woven fabric.

(b) Substitutability of supply

The manufacturing process and manufacturing equipment for spun-bond non-woven fabric and air-through non-woven fabric are different. To start manufacturing these non-woven fabrics, it is necessary to newly introduce manufacturing equipment, and a large amount of investment in equipment and a certain period of time (period required for completion of construction, trial operation, and approval of materials for new products) are required.

Accordingly, no substitutability of supply is recognized between spun-bond non-woven fabric and air-through non-woven fabric.

(c) Summary

From the above, as to the spun-bond non-woven fabric and the air-through non-woven fabric, although the substitutability of demand is recognized to a certain degree, the air-through non-woven fabric is more expensive and they are separately used for the different parts of the disposable diaper. In addition, since the substitutability of supply is not recognized. Accordingly, in this case, it is arranged that the spun-bond non-woven fabric and the air-through non-woven fabric constitute different product scope, and it is decided to evaluate the air-through non-woven fabric as competitive pressure from adjacent markets in VI-1(4) below.

C. Summary

Based on the above, the product scope was defined as "spun-bond non-woven fabric" in this case.

(2) Geographical scope

Japanese manufacturers and sellers of non-woven fabrics for sanitary materials sell all types of them all over Japan. Since there are no circumstances

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in which the selling price or difficulty of transportation differs depending on the region, users can purchase from all over Japan.

Accordingly, in this case, the geographical scope of the spun-bond non-woven fabric was defined as "all over Japan".

2. Raw materials for non-woven fabrics for sanitary materials (Vertical type business combination (upstream market))

The non-woven fabric for sanitary material manufactured and sold by the Parties Group is only a spun-bond non-woven fabric. As described in Ⅲ-2(5) above, although PP is mainly used as the raw material of the spun-bond non-woven fabric, PET and PE are also used.

Therefore, the substitutability among PP, PET, and PE was examined.

(1) Product scope

The substitutability of demand among PP, PET and PE is limited because each material has different properties and may be used separately depending on the performance required by customers of non-woven fabrics for sanitary materials.

Also, the substitutability of supply among the raw materials of PP, PET and PE is limited due to the different manufacturing methods.

Accordingly, in this case, "PP", "PET" and "PE" were defined as product scopes.

(2) Geographical scope

The manufacturers and sellers of PP, PET, and PE, which are raw materials for non-woven fabrics for sanitary materials, sell all raw materials all over Japan, and there are no circumstances in which the selling price and difficulty of transportation differ depending on the region.

Accordingly, in this case, the geographical scopes of the "PP", "PET" and "PE" markets were defined as "all over Japan".

Part V Applicability of the Safe-harbor Criteria in a Particular Field of Trade

1. Horizontal business combination (Spun-bond non-woven fabric)

The Parties Group is engaged in the manufacture and sale of spun-bond non-woven fabrics. Table 3 shows the market shares of the Parties Group in the spun-bond non-woven fabrics sales market. The HHI after the Action is

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approximately 3,300 at the maximum and the increment of HHI is approximately 800, so the safe-harbor criteria for a horizontal business combination are not met. Therefore, the determining factors concerning a horizontal business combination are examined in VI-1 below.

Table 3: Market share of the spun-bond non-woven fabrics sales market
(FY 2021)

Rank	Company	Market Share
1	Mitsui Chemicals Group	Approx. 35%
2	Company A	Approx. 25%
3	Company B	Approx. 20%
4	Asahi Kasei Group	Approx. 10%
5	Company C	Approx. 5%
—	Others	0-5%
Total		100%
Combined market share/ranking: Approx. 45%/ 1st		
HHI after the Action (maximum): Approx. 3,300		
HHI incremental: Approx. 800		

2. Vertical business combination

The relationship of the Parties Group in the upstream and downstream markets is shown in Table 4.

The market shares of the Parties Group in the upstream markets are as described in (1) to (3) below, and the market shares of the Parties Group in the downstream market are as shown in Table 3 of 1 above, so the safe-harbor criteria for a vertical business combination are not met. Therefore, the determining factors for a vertical business combination are examined in Section VI-2 below.

Table 4: Relationship of the Parties Group in the upstream and downstream markets

Upstream market		Downstream market	
Product scope	Geographical scope	Product scope	Geographical scope
the manufacture and sale business of PP	All over Japan	Manufacture and sale business of spun-bond	All over Japan

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(Mitsui Chemicals Group)		non-woven fabrics (the Parties Group)	
the manufacture and sale business of PET (Mitsui Chemicals Group)			
the manufacture and sale business of PE (the Parties Group)			

(1) Manufacture and sale of PP

Table 5 shows the Mitsui Chemicals Group's market share in the PP manufacturing and sales market. It does not meet the safe-harbor criteria for a vertical business combination.

Table 5: PP production capacity share (2021)

Rank	Company	Share
1	Mitsui Chemicals Group	Approx. 45%
2	Company D	Approx. 30%
3	Company E	Approx. 15%
4	Company F	Approx. 10%
Total		100%

(2) Manufacture and sale of PET

The market share of the Mitsui Chemicals Group in the PET manufacturing and sales market is 10% or less (0-5%) (2021), so it meets under the safe harbor criteria for a vertical business combination.

(3) Manufacture and sale of PE

Table 6 shows the market shares of the Mitsui Chemicals Group and the Asahi Kasei Group in the PE manufacturing and sales market. These figures do not meet the safe harbor criteria for a vertical business combination.

Table 6: PE production capacity share (2021)

Rank	Company	Share
1	Company G	Approx. 30%

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2	Mitsui Chemicals Group	Approx. 25%
3	Company H	Approx. 10%
4	Company I	Approx. 10%
5	Company J	Approx. 10%
6	Asahi Kasei Group	Approx. 5%
Total		100%

Part VI Impact of the Transaction on Competition

1. Horizontal business combination (Spun-bond non-woven fabric)

(1) Status of the Parties Group and Competitors etc.

A. Status of the Parties Group and Competitors

The combined market share of the Parties Group is approximately 45% (first place). However, the major competitors in the market are Company A (second place with a market share of approximately 25%) and Company B (third place with a market share of approximately 20%). Competitors are also recognized as having excess capacity.

Therefore, the restraining power from competitors is recognized.

B. Existing conditions of the competition between the Parties Group

Mitsui Chemicals Group focuses on the production of "back sheets" and "gathers" for disposable diapers and Asahi Kasei Group focuses on that of "top sheets" and "back sheets".

Consequently, the Parties Group is competing only in the production of spun-bond non-woven fabric for "back sheets" of disposable diapers etc., and the degree of competition between the two companies is low.

(2) Import

There is almost no difference in quality between imported spun-bond non-woven fabric and domestically produced spun-bond non-woven fabric, and the prices of imported products tend to be lower than those of domestic products. Therefore, in recent years, imports from manufacturers in China and Thailand have been increasing.

There is no significant difference in the transportation cost between imported products and domestic ones, and the customs duty on imports from Korea, China, Thailand and Malaysia into Japan was abolished with the enforcement of the Regional Comprehensive Economic Partnership (RCEP)

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Agreement in January 2022. Therefore, it is considered that there are almost no factors that would be an obstacle to the import of spun-bond non-woven fabric.

Based on the above, an import pressure is recognized.

(3) Entry

The production and sale of non-woven fabric for sanitary materials do not require any license or permission, and there are no patents or the like indispensable for the production of non-woven fabric for sanitary materials. Therefore, it is possible to enter the business of manufacturing and selling non-woven fabric for sanitary materials by constructing a factory equipped with manufacturing equipment.

However, since a large amount of investment is required to introduce facilities for manufacturing non-woven fabrics for sanitary materials, and the sales market for them in Japan is on the decline, it is considered that there is little incentive to enter the market.

Thus, entry pressure is not recognized.

(4) Competitive pressure from adjacent markets

Non-woven fabrics for sanitary materials are separated according to the difference in price and properties. For the back sheet of disposable diapers, which is the main application of spun-bond non-woven fabrics, air-through non-woven fabrics are also used in part.

Thus, competitive pressure from adjacent markets is recognized to a certain extent.

(5) Competitive pressure from users

The major users of spun-bond non-woven fabrics are large enterprises, which have large transaction sizes and strong purchasing power.

In addition, since disposable diapers and sanitary products manufactured by using non-woven fabrics for sanitary materials are consumables, the final consumers value the price and users are exposed to price competition. Therefore, it is considered that users have a motive to request price reduction to manufacturers and sellers of non-woven fabrics for sanitary materials in order to reduce manufacturing costs.

Furthermore, it is said that users can switch their business partners for

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spun-bond non-woven fabrics in three months to one year. In fact, during price negotiations for spun-bond non-woven fabrics, it is recognized that the user reduced the purchase volume from manufacturers and sellers who proposed a price increase and switched to purchasing from competitors.

Thus, competitive pressure from users is recognized.

(6) Summary

As described above, the restraining power from competitors, import pressure, and competitive pressure from users are recognized, and competitive pressure from adjacent markets is recognized to a certain extent. Therefore, it cannot be said that the unilateral conduct of the Parties Group or the coordinated conduct of the Parties Group and competitors substantially would restrain competition in a particular field of trade.

2. Vertical business combination ① (Upstream market: PP manufacturing and sales business, Downstream market: Spun-bond non-woven fabric manufacturing and sales business)

(1) Input foreclosure

Mitsui Chemicals Group does not supply PP to other manufacturers and sellers of spun-bond non-woven fabrics.

Therefore, the Parties Group does not have the capacity to perform input foreclosures, and it is not likely that there will be any market closure or exclusivity issues in the downstream market due to input foreclosures.

(2) Customers foreclosure

PP is also used as a raw material for various products other than spun-bond non-woven fabrics. The proportion of PP used as a raw material for spun-bond non-woven fabrics is insignificant in the total sales volume of PP.

In addition, in the field of manufacturing and selling spun-bond non-woven fabrics, there are strong competitors such as Company A and Company B. Therefore, even if the Parties Group refuses to purchase PP from PP manufacturers and sellers which are competitors of the Mitsui Chemicals Group, the competitors are considered to be able to sell PP to other spun-bond non-woven fabric manufacturers and sellers.

Therefore, the Parties Group does not have the ability to perform customer foreclosure, and there is no risk that the customer foreclosure will cause a problem of market closure and exclusivity in the upstream market.

3. Vertical business combination ② (Upstream market: PET manufacturing and sales business, Downstream market: Spun-bond non-woven fabric manufacturing and sales business)

(1) Input foreclosure

The market share of the Mitsui Chemicals Group in the PET manufacturing and sales market meets under the safe-harbor criteria for a vertical business combination. Therefore, the Mitsui Chemicals Group does not have the ability to perform input foreclosures, and it is unlikely that there will be any problems of market closure or exclusivity in the downstream market due to input foreclosures.

(2) Customers foreclosure

Case 1 Integration of the non-woven fabric businesses by Mitsui Chemicals, Inc. and Asahi KASEI Corporation

PET is also used as a raw material for various products other than spun-bond non-woven fabrics. The proportion of PET used as a raw material for spun-bond non-woven fabrics is insignificant in the total sales volume of PET.

In addition, in the field of manufacturing and selling spun-bond non-woven fabrics, there are major competitors, such as Company A and Company B. Therefore, even if the Parties Group refuses to purchase PET from PET manufacturers and sellers which are competitors of the Mitsui Chemicals Group, the competitors are considered to be able to sell PET to other sellers of spun-bond non-woven fabrics.

Therefore, the Parties Group does not have the ability to perform customer foreclosure, and there is no risk that the customer foreclosure will cause a problem of market closure and exclusivity in the upstream market.

4. Vertical business combination ③ (Upstream market: PE manufacturing and sales business, Downstream market: Spun-bond non-woven fabric manufacturing and sales business)

(1) Input foreclosure

The Parties Group does not supply PE to other manufacturers and sellers of spun-bond non-woven fabrics.

Therefore, the Parties Group does not have the capacity to perform input foreclosures, and it is not likely that there will be any market closure or exclusivity issues in the downstream market due to input foreclosures.

(2) Customer foreclosure

The Parties Group does not purchase PE as a raw material for the non-woven fabric because it does not manufacture the spun-bond non-woven fabric made from PE.

Therefore, the Parties Group does not have the ability to perform customer foreclosure, and there is no risk that the customer foreclosure will cause a problem of market closure and exclusivity in the upstream market.

5. Summary

Consequently, it cannot be said that the unilateral conduct of the Parties Group or the coordinated conduct of the Parties Group and competitors substantially would restrain competition in a particular field of trade.

**Case 1 Integration of the non-woven fabric businesses by Mitsui Chemicals, Inc. and Asahi
KASEI Corporation**

PartVII Conclusion

The JFTC concluded that the Transaction would not substantially restrain competition in a particular field of trade.

Case2 Acquisition of the manufacture and sales business of fertility drugs for male of Mochida Pharmaceutical Co., Ltd. by Fuji Pharma Co., Ltd.

Case2 Acquisition of the manufacture and sales business of fertility drugs for male of Mochida Pharmaceutical Co., Ltd. by Fuji Pharma Co., Ltd.

Part I The Parties

Fuji Pharma Co., Ltd. (JCN5010001084045) (hereinafter referred to as "FUJI Pharma") and Mochida Pharmaceutical Co., Ltd. (JCN9011101021173) (hereinafter referred to as "Mochida Pharmaceutical") are mainly engaged in the manufacture and sale of ethical drugs.

Hereinafter, Fuji Pharma and Mochida Pharmaceutical are collectively referred to as the "Parties".

Part II Outline of the Case and applicable provisions

The present case is about Fuji Pharma's plan to acquire Mochida Pharmaceutical's manufacturing and sales business of fertility drugs for male, which is an important part of the business (the "Transaction"). The domestic sales of the business acquired by Fuji Pharma do not exceed 3 billion yen, and therefore the Transaction does not meet the criteria for notification as provided for in Article 16-2 of the Antimonopoly Act. However, Fuji Pharma presented the details of the specific plan and consulted with the JFTC about a business combination plan that does not require notification. Therefore, the JFTC conducted a business combination review in the same manner as if notification had been made for a business combination plan that required notification, in accordance with 6 (1) of the "Policies Concerning Procedures of Review of Business Combination" (Japan Fair Trade Commission, June 14, 2011).

The applicable provision is Article 16 of the Antimonopoly Act.

Part III Particular field of trade

1. Overview of product

Fertility drugs for male are used for the treatment of male fertility due to male gonadal failure, spermatogenic dysfunction, etc.

The marketing authorization holders of fertility medicines for male in Japan are only the Parties and Company A. Fertility drugs for male marketed in Japan are the products listed in Table 1 (the "Subject Products").

Case2 Acquisition of the manufacture and sales business of fertility drugs for male of Mochida Pharmaceutical Co., Ltd. by Fuji Pharma Co., Ltd.

Table 1. Fertility drugs for male manufactured and sold in Japan

Business operator	Products	Classification by Ingredients
Fuji Pharma	Testosterone Enanthate Intramuscular Injection 250 mg "F" (hereinafter referred to as "Fuji Products") ¹	Testosterone Enanthate
Mochida Pharmaceutical	Testinon Depot Intramuscular Injection 125mg/250mg ("Mochida Products")	
Company A	Product A	

In addition to the formulation and packaging of Fuji Products, Fuji Pharma is also operating the formulation and packaging of Product A and the formulation of Mochida Products.

The drug substances required for the manufacturing, etc. are procured by Company A and Mochida Pharmaceutical and supplied to Fuji Pharma. The drug substances manufactured by Company B are used for all the Subject Products. However, Company B has decided to terminate the manufacture of the drug substances for the Subject Products, and accordingly, Fuji Pharma has decided to switch the supplier of the drug substances from Company B to Company D.

Table 2: Relationship between each process of manufacturing fertility drugs for male and business operators

Process	Fuji products	Mochida Products	Product A
Manufacture of drug substances	Company B	Company B	Company B
Formulation	Fuji Pharma	Fuji Pharma	Fuji Pharma
Packaging	Fuji Pharma	Company C	Fuji Pharma

2. Product scope

It is appropriate to define the scope of ethical drugs for the same indication according to the method of administration to patients and the decision of prescription by physicians, etc., based on the "Clinical Practice Guidelines"², etc.,

¹ Fuji products are generic versions of Mochida products.

² The Japan Council for Quality Health Care (JPS) publishes the Clinical Practice Guidelines on the

Case2 Acquisition of the manufacture and sales business of fertility drugs for male of Mochida Pharmaceutical Co., Ltd. by Fuji Pharma Co., Ltd.

and the scope of ethical drugs for the same function and effect from the viewpoint of physicians, medical institutions, etc., who are consumers. Therefore, drugs with the same functions and effects as seen from the consumer's perspective are defined as the same product scope regardless of whether they are original drugs or generic drugs.

The drugs are classified according to the ATC-classification³ method established by the European Association for Marketing of Pharmaceuticals (EphMRA). In the case of drugs classified to the same category according to the ATC Classification, if the functions and effects of the drug are the same as those of the other drug from the viewpoint of consumers, the scope of products is defined as the same.

The Subject Products include both original drugs and generic drugs. All of the Subject Products are classified as "G3B (androgen)" (ATC code level 3) and are prescribed as fertility drugs for male. Among the drugs sold in Japan, there are no drugs classified as "G3B (androgen)" except for the Subject Products. Therefore, all of the drugs classified as "G3B (androgen)" can be considered to be of the same type in terms of function and effect. In addition, there are no drugs classified as ATC code level 3 that have the same effect as fertility drugs for male.

Based on the above, it is considered that drugs classified as "G3B (androgen)" of ATC Code Level 3 can be defined as the same product scope in this case. And all of the drugs are prescribed as drugs for the treatment of male infertility. Therefore, the product scope is defined as "fertility drugs for male"⁴ ⁵

Internet, allowing users to search for recommended treatments (standard treatments) by disease, etc. These guidelines provide information on the most appropriate treatments for various health-related problems based on evidence (scientific grounds).

³ Anatomical Therapeutic Chemical Classification System. The criteria for classification are the anatomical site of action, indication and use, and the chemical composition and mode of action of the drug. In the classification method, drugs are classified with symbols from level 1 to level 4 (level 1 is major classification and level 4 is minor classification). In this document, the symbol for Level 3 is described as "ATC Code Level 3".

⁴ Since marketing approval of the Minister of Health, Labour and Welfare is required for each drug (Article 14, Paragraph 1 of the Act on Securing Quality, Efficacy and Safety of Pharmaceuticals, Medical Devices, Regenerative and Cellular Therapy Products, Gene Therapy Products, and Cosmetics [Act No. 145 of 1960]) and a certain period of time is required from the start of clinical studies to marketing, there is no substitutability of supply among drugs.

⁵ In this case, the product scope was defined based on the ATC code level 3. However, even if the drugs are classified into the same ATC code level 3, in case that the functions and effects are not the same from the viewpoint of medical institutions, etc. (for example, the products are not used as substitutes in light of practical use such as administration to patients and judgment by doctors), the product scope is defined based on the ATC code level 4 or a more detailed classification.

3. Geographic scope

All of the marketing authorization holders of fertility drugs for male have the system and capability to supply products to various regions in Japan. Also, there are no circumstances that make it difficult to transport the products due to their characteristics or that cause differences in selling prices due to transportation costs, etc. Therefore, consumers in Japan can procure products from any of the marketing authorization holders at the equivalent price.

In addition, in order to market drugs domestically, including those manufactured in foreign countries, it is necessary to obtain approval from the Minister of Health, Labour and Welfare for each product. In principle, this applications for approval must be accompanied by clinical study data from Japanese subjects, and there is a regulatory restriction that the clinical studies require several years.

Accordingly, in this case, the geographic scope is defined as "the whole of Japan."

Part IV Applicability of safe harbor standards in a particular field of trade

Since the Parties are engaged in the marketing of fertility drugs for male in Japan, the Transaction is a horizontal business combination related to the marketing of drugs for the treatment of male infertility throughout Japan⁶.

The market shares of the Parties in Japan are shown in Table 3. The maximum HHI after the Transaction is approximately 6,000 and the increment of HHI is approximately 300, which do not meet the safe-harbor criteria for a horizontal business combination.

Therefore, the effect of the Transaction on competition is examined as described in V below.

⁶ As mentioned in Section III-1 above, since the formulation of Mochida Products is conducted by Fuji Pharmaceutical, the Transaction may be considered to constitute a vertical business combination in which "contract manufacturing of formulations of fertility drugs for male " is the upstream market and "manufacture and sell of fertility drugs for male " is the downstream market. In this case, since only Fuji Pharmaceutical formulate the Subject Products, it is considered that Fuji Pharmaceutical has the ability to perform input foreclosure by refusing to accept the contract manufacturing of Product A. However, as discussed in Section V-1 below, Fuji Pharmaceutical has no incentive to close its inputs, and the issue of closure and exclusivity of downstream markets does not arise. In addition, Mochida Pharmaceutical outsources the formulation of Mochida Products only to Fuji Pharmaceutical, so there is no problem of closure and exclusivity of the upstream market due to customer foreclosure. Therefore, the examination of the vertical business combination is omitted.

Case2 Acquisition of the manufacture and sales business of fertility drugs for male of Mochida Pharmaceutical Co., Ltd. by Fuji Pharma Co., Ltd.

Table 3. Market share in the market for fertility drugs for male (2022)

Rank	Company	Market Share
1	Company A	Approx. 70%
2	Mochida Pharmaceutical	Approx. 20%
3	Fuji Pharma	Approx. 10%
Combined market share/ranking: Approx. 30%/2nd		
HHI after the Transaction (maximum): Approx. 6,000		
HHI incremental: Approx. 300		

Part V Effect of the Transaction on Competition

1. Substantial restrain of competition by unilateral conduct

(1) Position of the Parties and states of competitors

As described in IV above, Company A is a competitor in the field of manufacturing and selling the Subject Products, with a larger market share (approximately 70% (first place)) than the Parties.

On the other hand, as described in III-1 above, Fuji Pharma is entrusted with the manufacturing (formulation and packaging) of Product A by receiving the drug substance from Company A. Therefore, Fuji Pharma may refuse to accept the contract manufacturing of Product A after the Transaction, thereby reducing the supply of Product A to the customers by Company A and causing Fuji Pharma to sell Fuji Product or Mochida Product (hereinafter referred to as the "Own Product") in place of Company A. In this case, Company A may not be a strong competitor to the Parties because it will require a certain period of time and a large amount of expenses, such as procedures for approval of change from the Minister of Health, Labour and Welfare, if it outsources the manufacture of Product A to a company other than Fuji Pharma.

However, in view of the circumstances described in A and B below, it is unlikely that Fuji Pharma would refuse to accept manufacturing contract from Company A after the Transaction. Therefore, Company A can be evaluated as a strong competitor for the Parties.

Therefore, the restraining power from competitors is recognized.

A. Fuji Pharma has little capacity to significantly increase sales of the Own Product.

After the Transaction, Fuji Pharma needs to procure the corresponding

Case2 Acquisition of the manufacture and sales business of fertility drugs for male of Mochida Pharmaceutical Co., Ltd. by Fuji Pharma Co., Ltd.

amount of the drug substance in order to increase the sales volume of the Own Product. However, as described in III-1 above, Company B, which is the supplier of the drug substance for the Subject Products, will terminate the manufacture of the drug substance, and Fuji Pharma will not be able to procure drug substance from Company B. In order to switch the supplier of the drug substance from Company B to Company D, Fuji Pharma plans to submit an application for approval of the change of the supplier of the drug substance to the Minister of Health, Labour and Welfare after the Transaction. It is expected that the application will be approved in approximately 6 months, which is the standard approval processing period. Furthermore, the lead time for the procurement of the drug substance from Company B is currently approximately eight months.

Therefore, it is considered that it will take at least one year for Fuji Pharma to procure a large amount of the drug substance after obtaining the approval. Therefore, in order for Fuji Pharma to reject contract manufacturing of Product A and increase the sales volume of the Own Product early after the Transaction, the only option is to manufacture the Own Product using the stock of the drug substance procured from Company B.

However, the current production plan only has enough stock of the drug substance for approximately 1 to 2 years, and it is recognized that there is a limit to the amount of drug substance that can be used by Fuji Pharma.

Based on the above, it is considered that Fuji Pharma has almost no surplus supply capacity to substantially increase its sales volume within one to two years after the Transaction.

B. There is no incentive for Fuji Pharma to increase sales of the Own Product by refusing to contract manufacturing of Product A to Company A

(a) The small profit Fuji Pharma can gain from the sale of the Own Product

Even if Fuji Pharma refused to contract manufacturing of Product A to Company A and increased the sales volume of the Own Product, the profit from the sales of that is small, so the additional profit that Fuji Pharma would obtain is small.

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(b) Fuji Pharma has concluded manufacturing contracts with Company A for drugs other than Product A.

Fuji Pharma has been contracted by Company A to manufacture several other pharmaceuticals over a long period of time. Therefore, if Fuji Pharma refused to accept manufacturing contracts for Product A in order to increase sales volume of the Own Product, on the contrary, it would lose the confidence of Company A, and there is a possibility that Fuji Pharma will lose all manufacturing contracts for pharmaceuticals including Product A.

(c) If Fuji Pharma hinders the stable supply of pharmaceuticals, the Ministry of Health, Labour and Welfare may impose an adverse disposition on it.

If Fuji Pharma refuses to accept manufacturing contract for Product A in order to increase the sales volume of the Own Product, there is a risk that the supply of Product A by Company A will be disrupted. Therefore, based on the notification⁷ of the Ministry of Health, Labour and Welfare (hereinafter referred to as the "MHLW"), the company A have to inform the MHLW that Fuji Pharma has reduced the supply of Product A and that there is a possibility of supply disruption and that there are the Own Product as substitute products⁸.

According to the Parties, if the MHLW determines that Fuji Pharma has taken inappropriate actions as a pharmaceutical manufacturer, Fuji Pharma may take an adverse disposition⁹, such as an order to suspend business for manufacturing business license. The MHLW has taken into account the situation related to supply instability in the procedures for listing drugs in the NHI price list, and therefore, the NHI price listing of Fuji products may be postponed.

⁷ "Appropriate information provision concerning shortage of ethical drugs" (Notification No. 1218 - 1 of the Director of the Economic Affairs Division, Health Policy Bureau, MHLW, dated December 18, 2020).

⁸ The notification stipulates that if there is a risk of a disruption in the supply of drugs, companies must promptly report to the Pharmaceutical Industry Information Division and explain the reasons for the occurrence of supply instability, substitute products, prospects for improvement, etc.

⁹ Article 75, Paragraph 1 of the Act on Securing Quality, Efficacy and Safety of Pharmaceuticals, Medical Devices, Regenerative and Cellular Therapy Products, Gene Therapy Products, and Cosmetics (Act No. 145 of 1960).

Case2 Acquisition of the manufacture and sales business of fertility drugs for male of Mochida Pharmaceutical Co., Ltd. by Fuji Pharma Co., Ltd.

(d) Summary

Based on the above, it is considered that Fuji Pharma has no incentive to refuse to accept manufacturing contract for Product A.

(2) Entry

Even for generic drugs, it takes approximately two to three years to develop them, and it takes approximately one year to obtain approval from the Minister of Health, Labour and Welfare for marketing drugs in the Japanese market. Therefore, it is unlikely that market entry will occur within a certain period of time after the Transaction.

Thus, competitive pressure from entry is not permitted.

(3) Competitive pressure from purchasers

In recent years, the size of pharmaceutical wholesalers has increased through business integration, etc., and this has increased the ability of pharmaceutical wholesalers to negotiate prices with pharmaceutical marketing authorization holders. The move is designed to pressure pharmaceutical marketing authorization holders to lower prices in order to pass on the strong pressure from medical institution to the wholesale prices¹⁰. In particular, products that have been on the market for a long time are often subject to strong pressure to lower prices compared to products that have just been on the market. The Subject Products are considered to be under strong pressure to lower prices from pharmaceutical wholesalers because they have been on the market for a long time.

Therefore, competitive pressure from purchasers is recognized to some extent.

(4) Summary

Based on the above, it cannot be said that the unilateral conduct of the companies would substantially restrain competition in the field of manufacturing and selling the Subject Products.

2. Substantial restrain of competition by coordinated conduct

As the Subject Products are all formulated by Fuji Pharma Co., Ltd. (see Table

¹⁰ The selling price of a drug from the manufacturer to the drug distributor.

Case2 Acquisition of the manufacture and sales business of fertility drugs for male of Mochida Pharmaceutical Co., Ltd. by Fuji Pharma Co., Ltd.

2), the market affected by the Transaction is the sales market of the Subject Products. Therefore, the impact on the sales market of the Subject Products is examined below.

(1) The status of the companies and competitors and the state of competition in the market

As a result of the Transaction, the number of distributors of the Subject Products in Japan will be two, Fuji Pharma and Company A. Therefore, it is considered that it is easy for Fuji Pharma and Company A to reach a common understanding on the price, etc. and to mutually monitor whether or not they have deviated from coordinated conduct (such as raising the wholesale price) based on such common understanding.

(2) Coordinated conduct through the use of cost information for the formulation and packaging of products

As a result of the Transaction, the number of distributors of the Subject Products in Japan will be two: Fuji Pharma and Company A. Since the manufacturing of Product A is commissioned to Fuji Pharma by Company A, it is possible that Fuji Pharma will take coordinated conduct (such as raising the wholesale price) by using the cost information on the formulation and packaging of Product A.

However, Fuji's system prevents the head of the sales division, who has the authority to determine the wholesale price of Fuji's products, from accessing the cost information on the formulation and packaging of Product A. Therefore, it can be said that Fuji Pharma has taken certain measures to prevent the use of the cost information on the formulation and packaging of Product A in determining the wholesale price.

Even if the head of the sales division of Fuji Pharma accessed the cost information on the formulation and packaging of Product A, it would be difficult to estimate the wholesale price of Product A from the information because the cost of the formulation and packaging is small.

(3) Obstructions to Coordinated conduct

As described in 1 (3) above, even after the Transaction, the Company is likely to be under strong pressure from large-scale pharmaceutical wholesalers to lower prices, and thus there is a certain degree of competitive

Case2 Acquisition of the manufacture and sales business of fertility drugs for male of Mochida Pharmaceutical Co., Ltd. by Fuji Pharma Co., Ltd.

pressure from purchasers that may become a factor preventing coordinated conduct.

(4) Summary

As described above, although the Transaction makes it easier for Fuji Pharma and Company A to reach a common understanding on prices, etc., it is difficult for Fuji Pharma to take coordinated conduct by using Company A's cost information, and even after the Transaction, competitive pressure from purchasers, which is a factor preventing coordinated conduct, is recognized to a certain extent. Thus, it is considered that there is no risk of Fuji Pharma taking coordinated conduct. Therefore, it cannot be said that the coordinated conduct between the Parties and the competitors would substantially restrain competition in the field of manufacturing and selling the Subject Products.

Part VI Conclusion

The JFTC concluded that the Transaction would not substantially restrain competition in a particular field of trade.

Case 3 Acquisition of shares in TAKISAWA Co., Ltd. by NIDEC Co., Ltd.

Part I The Parties

NIDEC Co., Ltd. (JCN9130001002387) (hereinafter referred to as "NIDEC") is engaged in the business of manufacturing and selling precision small motors.

TAKISAWA Co., Ltd. (JCN8260001008257) (hereinafter referred to as "TAKISAWA") is engaged in the manufacturing and selling business of manufacturing machine.

Hereinafter, the group of companies that have already formed a business relationship with NIDEC is called the "NIDEC Group," and the group of companies that have already formed a business relationship with TAKISAWA is called the "TAKISAWA Group." The NIDEC Group and the TAKISAWA Group are collectively referred to as the "Parties Group."

Part II Outline of the Case and applicable provisions

This case involves NIDEC's plan to acquire more than 50% of the voting rights of TAKISAWA's shares (the "Transaction").

The applicable provision is Article 10 of the Antimonopoly Act.

There are multiple competitive or business relationships among the businesses operated by the Parties Group. The following are the results of the review of these relationships: Horizontal business combination in the manufacturing and sales business of vertical machining centers operated by the Parties Group, vertical business combination between that of speed reducers operated by the NIDEC Group¹ and that of lathes operated by the TAKISAWA Group, and conglomerate business combination (goods expansion) between that of machining centers by NIDEC Group and that of lathes by TAKISAWA Group.

Part III Particular field of trade

1. Product Overview

(1) Machine tool

A. Overview of machine tools

Machine tools are used to remove unnecessary parts of a metal workpiece by cutting, grinding, or by utilizing energy such as electricity,

¹ NIDEC Group manufactures and sells machining center other than vertical type.

and to create a required shape. In the classification by Japan Machine Tool Builders' Association ("JMTBA"), it is classified into multiple types such as a lathe and a machining center.

The machine tools are classified into "general-purpose machine tools" that are operated by the operator by turning the handle, and "NC (meaning numerical control by computer; the same shall apply hereinafter) machine tools" that perform automatically by NC, according to the difference of control methods.

B. Machining centers

The machining center is an NC machine tool that can perform a variety of machining operations such as boring, milling, drilling, tapping, reaming, etc. in a continuous manner. It has a function to automatically change tools required for each machining operation.

Machining centers are classified into vertical type, horizontal type, and other types (portal, etc.) according to the classification of the JMTBA.

C. Lathes

Lathes are machine tools for rotating and machining cylindrical or disk-shaped workpieces, and can perform such machining as turning, facing, taper turning, boring, drilling, parting, and threading.

Lathes are classified into horizontal, vertical and inverted ones according to the classification of the JMTBA. Lathes are also classified into ordinary lathes and NC lathes according to whether they have NC or not. In the ordinary lathes, the machining results differ depending on the operator, while in the NC lathes, a certain level of machining results can be obtained regardless of the operator.

(2) Speed reducers

The speed reducer is a mechanical device for reducing the rotational speed of a motor by using a gear or the like. The speed reducer is used together with a motor in equipment such as a machine tool, and has a function of increasing torque (turning force) by reducing the number of rotations of the motor.

There are various types of speed reducers. They are classified into two types: "for servo motors" and "for induction motors", which differ in accuracy according to the control performance of the motors used together.

Case 3 Acquisition of TAKISAWA Co., Ltd. by NIDEC Co., Ltd.

Among motors, a servo motor is small and excellent in controllability, and is used for industrial robots, medical equipment, etc., while an induction motor is inferior in controllability to a servo motor but is widely used for consumer equipment and industrial machinery because it has a simple structure and operates without performing special power conversion. Therefore, the speed reducers for servo motors require higher accuracy, and the speed reducers for induction motors are not as accurate as those for servo motors.

Speed reducers for servo motors are categorized into strain wave gearing, internal planetary gear speed reducers (medium and large), and planetary gear speed reducers (small) according to motor output and weight capacity.

2. Product range

(1) Machine tools

A. Machine tools

The shape of the machined part after machining, application, function, etc. differ depending on the type of machine tool. In addition, the manufacturing equipment and manufacturing process of machine tools also differ. Therefore, substitutability of supply and demand is not recognized between different types of machine tools.

Accordingly, machining centers, lathes, and other machine tools constitute a different product range.

B. Machining centers

Consumers of machining centers select each type of machining center according to the required accuracy, the machining quantity, the size, weight, and price of the workpiece. Generally speaking, they tend to select the vertical type when accuracy is required for machining, the horizontal type when the machining quantity is large, and the portal type when the workpiece is large and heavy. Thus, the substitutability of demand between different types is limited.

In addition, different types of machining centers have significantly different periods required for development and new design, assembly spaces, heights of factory buildings required for manufacturing, crane capacities, etc. Therefore, it is difficult for a business operator who manufactures only one type of machining center to manufacture and sell

Case 3 Acquisition of TAKISAWA Co., Ltd. by NIDEC Co., Ltd.

another type of machining center in a short period of time without incurring a large amount of additional cost and risk. Thus, there is no substitutability of supply between different types.

Therefore, in this case, the product range was defined for each type of machining center, and the field of manufacturing and sales of "vertical machining centers" in which the Parties Group competes was reviewed.

C. Lathes

(a) Substitutability between types of lathes

Since it is considered that lathe consumers select each type of lathe according to the processing contents, the substitutability of demand between different types is limited.

On the other hand, the difference between the respective types is only the difference in whether the modules such as the spindle and the tool rest are arranged in the horizontal direction or in the vertical direction, and the lathe manufacturer can easily manufacture any type of lathes by changing the arrangement of the modules. Thus, there is a supply substitutability between the different types.

Accordingly, the horizontal, vertical and inverted forms constitute the same product range.

(b) Substitutability with and without NC

Since lathe consumers are likely to select between ordinary lathes and NC lathes in consideration of machining accuracy, the substitutability of demand between the two is limited.

On the other hand, if an NC is mounted on an ordinary lathe, it becomes an NC lathe, and since mounting NC on a lathe does not require special technology, etc., it is possible for a manufacturer of an ordinary lathe to manufacture an NC lathe in a short period of time without incurring a large additional cost. Therefore, the substitutability of supply is recognized between the two.

Accordingly, ordinary lathes and NC lathes constitute the same product range.

(c) Summary

For the above reasons, the product range in this case was defined as

"lathe."

(2) Speed reducers

A. Substitutability between speed reducers for servo motors and speed reducers for induction motors

The consumers of speed reducers choose between speed reducers for servo motors and speed reducers for induction motors according to the type of the motor used in combination with the speed reducers. Therefore, there is no substitutability of demand between the two. In addition, when a new type of speed reducer is manufactured, it takes a considerable amount of time to develop. Therefore, there is no substitutability of supply between different types of speed reducers.

Therefore, the speed reducers for servo motors and the speed reducers for induction motors constitute different product range.

B. Substitutability between Different Types of Speed Reducers for Servo Motors

Since consumers of speed reducers for servo motors select the type of them according to the output and the weight capacity of the servo motor used in combination with the speed reducers, the substitutability of demand between different types is limited.

In addition, when manufacturing a new type of speed reducers for servo motors that differs from the current types, a considerable amount of development time is required, and therefore, the substitutability of supply between different types is not recognized.

C. Summary

Based on the above, the product range was defined for each type of speed reducers for servo motors, and the field of manufacturing and sales of "internal planetary gear speed reducers (medium size)" manufactured and sold by the NIDEC Group was selected as the subject of the review.

3. Geographic range

The geographic range of "vertical machining centers," "lathe," and "internal planetary gear speed reducers (medium size)," which was defined above 2 as product range, was defined as "all over Japan" in this case because the

Case 3 Acquisition of TAKISAWA Co., Ltd. by NIDEC Co., Ltd.

consumers are located all over Japan and the suppliers are uniformly selling to the consumers all over Japan.

PartIV Effect of the Transaction on Competition

1 . Horizontal business combination

The market share of the Parties Group in the field of manufacturing and sales of vertical machining centers is less than 5% for both the NIDEC Group and the TAKISAWA Group. The incremental HHI resulting from the Transaction is 150 or less, and therefore the Parties Group falls under the safe-harbor criteria for horizontal business combinations.

Table: Market Share of Vertical Machining Centers (FY 2021)

Rank	Company	Market Share
-	NIDEC Group	0-5%
-	TAKISAWA Group	0-5%
-	Others	Approx. 95%
Total		100%
Combined market share, ranking: 0-5% / unknown		
HHI after the Transaction: Unknown		
Increment of HHI: 150 or less		

2 . Vertical business combination

Since the internal planetary gear speed reducers (medium size) manufactured and sold by the NIDEC Group are also used in the lathes manufactured and sold by the TAKISAWA Group, this case falls under a vertical business combination in which the upstream market is the manufacturing and selling of the internal planetary gear speed reducers (medium size) operated by the NIDEC Group and the downstream market is the manufacturing and selling of the lathes operated by the TAKISAWA Group.

(1) Substantial restraint of competition by unilateral conduct

A. Input foreclosure

Since the market share of the NIDEC Group in the manufacturing and sales market for the internal planetary gear speed reducers (medium size) is unknown, it is considered that it does not fall under the safe-harbor criteria for vertical business combinations.

Case 3 Acquisition of TAKISAWA Co., Ltd. by NIDEC Co., Ltd.

Sales of the NIDEC Group's internal planetary gear speed reducers (medium size) are insignificant. In addition, there are several competitors in the market for the internal planetary gear speed reducers (medium size), and these competitors have a relatively higher market share than the NIDEC Group.

Accordingly, NIDEC Group does not have the capacity to conduct input closures, and it is unlikely that the input foreclosure would cause a market closure or exclusivity problem in the downstream market.

B. customers foreclosure

In the lathe manufacturing and sales field, TAKISAWA Group's market share is less than 5%, which falls under the safe-harbor criteria for vertical business combinations.

Therefore, TAKISAWA Group does not have the capacity to close its customers, and there is no risk that the customers foreclosure will cause a problem of market closure and exclusivity in the upstream market.

C. Obtaining the Confidential Information

In transactions involving the internal planetary gear speed reducers (medium size) and the lathe, the Parties Group imposes confidentiality obligations in the sales contract, etc. As described in A and B above, the market share of the Parties Group is small in both the upstream market and the downstream market, and therefore, even if confidential information is exchanged by the Parties, it is considered that the effect on competition is small.

Based on these facts, it is considered that there is no risk of the problem of the closure and exclusiveness of the market arising due to the acquisition of confidential information.

(2) Substantial restraint of competition by coordinated conduct

As described in (1) above, it is unlikely that the group of companies will obtain confidential information of each competitor and that the number of competitors will decrease due to the foreclosure of inputs or customers. Therefore, it is unlikely that the Parties Group and competitors will be able to take cooperative actions more easily.

Consequently, it is not considered that the coordinated conduct between

the Parties Group and their competitors would substantially restrain competition.

(3) Summary

Consequently, it cannot be said that the unilateral conduct by the Parties Group or the coordinated conduct between the Parties Group and competitors would substantially restrain competition in a particular field of trade.

3. Conglomerate business combination (product expansion)

There are overlapping consumers for the machining centers manufactured and sold by the NIDEC Group and the lathes manufactured and sold by the TAKISAWA Group. The NIDEC Group expects that the Transaction will increase sales opportunities for each other's customers. Therefore, there is a possibility that the Parties Group will supply machining centers and lathes in combination.

However, as described in 1 and 2 above, there are multiple competitors in the vertical machining centers and lathe markets, and the market share of the Parties Group is small. The NIDEC Group also manufactures and sells machining centers other than vertical type. The detailed market share of horizontal machining centers and the machining centers of portal type other than vertical type is unknown. However, the existence of several strong competitors suggests that the market share of the Parties Group is not large.

Therefore, it is unlikely that the Parties Group can strengthen its position in one of the markets for the machining center or lathe by using its dominant position in the other market. Therefore, the Parties Group does not have the ability to create a closed and exclusive market by supplying a combination of products.

In addition, although it is often the case that both turning by a lathe and milling by a machining center are performed in machining a single part, even in such a case, machining is performed by one machine and then transferred to the other machine, and the machining center and the lathe are used independently of each other, and are not connected to each other. Therefore, it is not assumed that the secret information of competitors is obtained for the purpose of ensuring connectivity.

Therefore, it is not probable that the combined supply of machining centers and lathes by the Parties Group would cause the problem of market closure and

Case 3 Acquisition of TAKISAWA Co., Ltd. by NIDEC Co., Ltd.

exclusivity, thereby substantially restraining competition in a particular field of trade.

Part V Conclusion

The JFTC concluded that the Transaction would not substantially restrain competition in a particular field of trade.

**Case 4 Integration of the manufacturing business of multifunction devices
by Ricoh Co., Ltd. and Toshiba Tec Corporation**

**Case 4 Integration of the manufacturing business of multifunction devices
by Ricoh Co., Ltd. and Toshiba Tec Corporation**

Part I The Parties

Ricoh Co., Ltd. (JCN2010801012579) (hereinafter referred to as "Ricoh")
Toshiba Tec Corporation (JCN 8010701016022) (hereinafter referred to as
"TOSHIBA TEC"). Both companies are engaged in the manufacture and sale of
multifunction devices¹.

Hereinafter, the group of companies that have already formed a joint rela-
tionship with Ricoh is referred to as the "Ricoh Group," and the group of com-
panies that have already formed a joint relationship with TOSHIBA TEC is re-
ferred to as the "TOSHIBA TEC Group." The Ricoh Group and the TOSHIBA TEC
Group are collectively referred to as the "Parties Group."

Part II Outline of the Case and applicable provision

This case involves Ricoh Technologies Co., Ltd. (JCN 6021001049696)
("Ricoh Technologies"), a subsidiary of Ricoh. Ricoh Technologies plans to suc-
ceed the manufacturing business of the multifunctional devices operated by the
Ricoh Group and the manufacturing business of the multifunctional devices op-
erated by the TOSHIBA TEC Group through an absorption-type split, and Ricoh
owns 85% of the voting rights of Ricoh Technologies shares and TOSHIBA TEC
owns 15% of them (hereinafter referred to as "the Transaction").

The applicable provision is Article 15-2 of the Antimonopoly Act².

There are multiple competitive or business relationships among the busi-
nesses operated by the Parties Group³. Of the examination conducted regard-
ing them, the following is a detailed description of the result of the review on
horizontal business combinations in the manufacturing and selling of

¹ Device that integrates functions such as copying, printing, scanning, facsimile, and networking

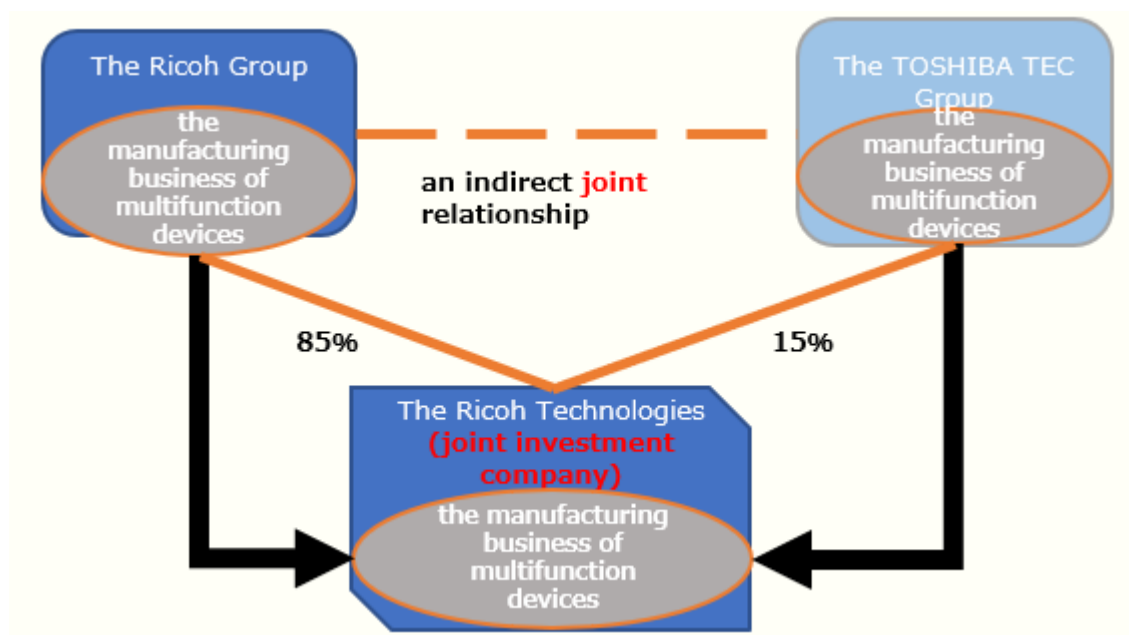
² In this case, Article 10 of the Antimonopoly Act is also applicable because the acquisition of shares
is also carried out as consideration for the absorption-type split. However, the voting rights of Ricoh
Technologies acquired by TOSHIBA TEC do not exceed the 20% threshold and this acquisition of
shares are not subject to notification.

³ After the Transaction, Ricoh and TOSHIBA TEC will conclude a shareholders' agreement between
Ricoh and TOSHIBA TEC to carry out the business necessary for the common interest and hold vot-
ing rights of the shares of Ricoh Technologies. Therefore, Ricoh Technologies will be a joint invest-
ment company between Ricoh and TOSHIBA TEC, and a joint relationship will be formed between
Ricoh Technologies and TOSHIBA TEC Group. Therefore, the vertical relationship between Ricoh
Technologies and TOSHIBA TEC Group (upstream market: manufacturing and selling of parts for
multifunction devices, downstream market: manufacturing and selling of multifunctional devices)
is also reviewed.

**Case 4 Integration of the manufacturing business of multifunction devices
by Ricoh Co., Ltd. and Toshiba Tec Corporation**

multifunction devices⁴ considered to have a relatively large impact on competition.

Figure: Overview of the Case



PartIII Particular field of trade

1. Product scope

(1) Substitutability in the application

The multifunction devices are roughly classified into an industrial multifunction device used by a printing company such as a centralized copy center and an office multifunction device used when general office work is performed in a company or a government office.

Industrial multifunction devices are superior to office multifunction device in terms of scanning / printing speed, durability, resolution and gloss of printed matter, energy saving performance, etc., and are more expensive. Therefore, the substitutability of demand between industrial multifunction

⁴ The business to be integrated into Ricoh Technologies is the manufacturing of multifunction devices. However, Ricoh Technologies is a joint investment company, and an indirect business relationship between the Ricoh Group and the TOSHIBA TEC Group is expected to be formed due to the Transaction. The Parites Group is planning to standardize most of the hardware between the two groups after the Transaction, and there is a possibility that a cooperative relationship will also arise in the sales business of multifunction devices. In light of these facts, the JFTC considered the integration of the entire manufacturing and distribution business of multifunction devices.

**Case 4 Integration of the manufacturing business of multifunction devices
by Ricoh Co., Ltd. and Toshiba Tec Corporation**

devices and office multifunction devices is limited.

Next, industrial multifunction devices use relatively high-quality parts from the viewpoint of durability and high performance as described above. However, since the manufacturing processes of both are considerably common, a certain degree of substitutability of supply is recognized between them.

From the above, it is considered that the industrial multifunction devices and the office multifunction devices constitute the same product scope. However, the products that the Parties Group competes with are office multifunction devices. Therefore, from the viewpoint of conducting a more careful examination, the examination in this case is conducted on the assumption that the industrial multifunction devices and the office multifunction devices constitute different product scope.

(2) Substitutability in printing methods

Multifunction devices are classified into laser type and ink jet type depending on the printing method. The laser type multifunction device and the ink jet type multifunction device are considerably different in price, and also differ in print quality, sorting after printing, variety of post processing such as stapler function, and water resistance and light resistance of printed matter. Therefore, the laser-type multifunction devices are mainly used in offices (companies, etc.), and the ink-jet-type multifunction devices are mainly used in homes (individuals), so that the substitutability of the demand between the two is limited.

Next, the laser type multifunction devices and the inkjet type multifunction devices differ in raw materials necessary for printing (toner for the laser type and ink for the inkjet type) and components mounted therein, and it is difficult to switch the manufacturing lines between them, so that the substitutability of supply between the two is limited.

Accordingly, the laser type multifunction devices and the inkjet type multifunction devices constitute different product scope.

(3) Substitutability at the corresponding maximum print size

The multi-function devices are classified into those having a maximum print size larger than A3 and those having a maximum print size of A3 or smaller, and those having a maximum print size of A3 or smaller are further

**Case 4 Integration of the manufacturing business of multifunction devices
by Ricoh Co., Ltd. and Toshiba Tec Corporation**

classified into those having an A3 size and those having an A4 size.

While multifunction devices having a maximum print size larger than A3 are used for the creation of posters and advertising materials, computer-aided design (CAD), etc., a multifunction device having a maximum print size of A3 or smaller is used for general office work. Accordingly, the substitutability of demand between the multifunction devices whose maximum print size is larger than A3 and the multifunction devices whose maximum print size is A3 or smaller is limited.

Next, multifunction devices whose maximum print size is A3 or less are used by individuals and companies for general office work. In particular, companies select multifunction devices whose maximum print size is A3 and A4 as substitutes in consideration of the paper size which are frequently used, installation location, price, etc. Therefore, a certain degree of substitutability of demand is recognized between multifunction devices whose maximum print size is A3 and multifunction devices whose maximum print size is A4.

Therefore, multifunction devices with a maximum print size of larger than A3 and those with a maximum print size of A3 or smaller constitute different product scope. On the other hand, it is considered that multifunction devices with a maximum print size of A3 and multifunction devices with a maximum print size of A4 constitute the same product scope. However, the products in which the Parties Group competes are only those with a maximum print size of A3. Accordingly, from the viewpoint of conducting a more careful examination, the present case is reviewed as constituting different product scope.

(4) Substitutability of color and monochrome

Multifunction devices come in two types, those having the color printing functions (hereinafter referred to as "color multifunction devices") and those having only monochrome printing functions (hereinafter referred to as "monochrome multifunction devices").

Monochrome printing is possible with color multifunction devices, and the price difference between color multifunction devices and monochrome multifunction devices is not large. Therefore, the two types of multifunction devices have a certain degree of substitutability of demand.

It is possible to switch the manufacturing lines in a relatively short period and at a low cost because the manufacturing processes of color multifunction devices and monochrome multifunction devices are almost the same except

**Case 4 Integration of the manufacturing business of multifunction devices
by Ricoh Co., Ltd. and Toshiba Tec Corporation**

for some parts. Also, major multifunction devices manufacturers and sellers in Japan manufacture both color multifunction devices and monochrome multifunction devices. Therefore, the substitutability of the supply can be recognized between them.

Accordingly, the color multifunction device and the monochrome multifunction device constitute the same product scope.

(5) Summary

Based on (1) through (4) above, and the fact that the products in which the Parties Group competes are only those with a maximum print size of A3, the product scope in this case is defined as "office laser-type A3 multifunction devices" among the multifunction devices.

2. Geographic scope

Consumers of office laser-type A3 multifunction devices purchase products manufactured by domestic manufacturers and sellers. In addition, the Ricoh Group, the TOSHIBA TEC Group, and all major competitors sell their products in Japan, and the price range does not vary by region.

Accordingly, in this case, the geographic scope was defined as "the whole of Japan."

PartIV Impact of the Transaction on competition

The market share of manufacturing and sales field of the office laser-type A3 multifunction device in Japan is shown in the following table. The incremental HHI is approximately 100, which meets the safe-harbor criteria for a horizontal business combination.

**Case 4 Integration of the manufacturing business of multifunction devices
by Ricoh Co., Ltd. and Toshiba Tec Corporation**

Table: Market Share of Laser Type A3 Multifunction Devices for Office Use
(FY 2021)

Rank	Company	Market Share
1	Company A	Approx. 30%
2	Ricoh Group	Approx. 20%
3	Company B	Approx. 15%
4	Company C	Approx. 15%
5	Company D	Approx. 5%
6	Company E	Approx. 5%
7	TOSHIBA TEC Group	0-5%
	Others	0-5%
Total		100%
Combined market share/ranking: Approx. 25%/2nd		
HHI after the Transaction: Approx. 2,100		
HHI incremental: Approx. 100		

Part V Conclusion

The JFTC concluded that the Transaction in question would not substantially restrain competition in the particular field of trade.

Case 5 Integration of the generators business by Mitsubishi Electric Corp. and Mitsubishi Heavy Industries, Ltd.

Case 5 Integration of the generators business by Mitsubishi Electric Corp. and Mitsubishi Heavy Industries, Ltd.

Part I The Parties

Mitsubishi Electric Corp. (JCN 4010001008772) (hereinafter referred to as "Mitsubishi Electric") is engaged in the manufacture and sale of generators.

Mitsubishi Heavy Industries, Ltd. (JCN8010401050387) (hereinafter referred to as "Mitsubishi Heavy Industries") is engaged in the business of supplying power plants

Hereinafter, the group of companies that have already formed a business relationship with Mitsubishi Electric is referred to as the "Mitsubishi Electric Group," and the group of companies that have already formed a business relationship with Mitsubishi Heavy Industries is referred to as the "MHI Group." The Mitsubishi Electric Group and the MHI Group are collectively referred to as the "Parties Group."

Part II Outline of the Case and applicable provisions

1. Summary and applicable provisions

This case is about the Parties Group's plan to integrate each power generation business through an absorption-type company split and acquisition of shares. (hereinafter referred to as the "Transaction"). As a result of the Transaction, each power generation business will be transferred to a newly established company (hereinafter referred to as the "Integrated Company"). The Integrated Company will be a joint investment company between Mitsubishi Electric and Mitsubishi Heavy Industries.

The applicable provisions are Article 10 and Article 15-2 of the Antimonopoly Act.

There are multiple competitive or business relationships among the businesses operated by the Parties Group. Of the examinations on these relationships, the following are detailed examinations on horizontal and vertical business combinations related to the manufacturing and sales of generators used in thermal power and nuclear power generation, which are considered to have a relatively large impact on competition.

2. Background of the Transaction

The MHI Group jointly sold turbines manufactured by MHI Group and

Case 5 Integration of the generators business by Mitsubishi Electric Corp. and Mitsubishi Heavy Industries, Ltd.

generators manufactured by Mitsubishi Electric Group in order to supply power plants in Japan. In 2014, MHI Group succeeded¹ to the thermal power generation system business, including the manufacturing and sales of generators, from Hitachi Ltd. Since then, it has begun to manufacture generators itself.

Part III Particular field of trade

1. Overview of the product

(1) Power generators

A power generator is a machine that obtains electrical energy from kinetic energy by utilizing the law of electromagnetic induction, and is an important piece of equipment in power plants. It is mainly composed of a stator and a rotor, and by rotating the rotor, kinetic energy can be converted into electrical energy.

A. Turbine generators and water turbine generators

Power sources for power generation include thermal power, nuclear power, and hydraulic power. In both thermal power generation and nuclear power generation, turbines are rotated by steam that is generated, and a turbine generator is used to convert kinetic energy to electrical energy. In a turbine generator, a rotor is connected to a steam turbine or a gas turbine, and rotates at high speed. Therefore, it is necessary to reduce the diameter of the rotor to withstand the centrifugal force caused by high-speed rotation.

On the other hand, in hydraulic power generation, a water turbine is rotated by flowing water, and a water turbine generator is used to convert kinetic energy into electric energy. In a water turbine generator, a rotor is connected to the water turbine and rotates more slowly than that of a turbine generator. Therefore, the rotor diameter must be increased to achieve sufficient peripheral speed.

As described above, the turbine generator and the water turbine generator are mechanisms corresponding to the rotational speeds obtained from their respective power sources. They differ significantly in their basic mechanisms, such as shape and structure.

¹ See "Major business combinations in FY2013" (Japan Fair Trade Commission, June 11, 2014) Case 10 "Integration of the thermal power generation system business of Mitsubishi Heavy Industries, Ltd. and Hitachi, Ltd."

B. Relation between output capacity and application of turbine generators

Turbine generators vary from those with a large output capacity to those with a small output capacity, and the application of the turbine generator varies depending on the output capacity. Specifically, large generators with an output capacity of 100 megawatts or more are used by electric power companies that sell electricity to consumers, and small and medium-sized generators with an output capacity of less than 100 megawatts are used by general companies that supply electricity to various manufacturing facilities.

C. Demand for power generators (new / existing)

Power generators are basically ordered for the purpose of being incorporated into a new power plant, and are rarely ordered for replacement or backup of existing generators.

D. After-sales service

Manufacturers and sellers of generators provide after-sales service for generators delivered by their own companies, such as replacement of parts, repair, and periodic maintenance.

(2) Power plants

A power plant is a set of equipment such as generators, turbines, and boilers that make up a power generation facility. Due to difference in the power source, power plants are classified into thermal power plants, nuclear power plants, and hydroelectric power plants, etc.

2. Product Scope

(1) Power generators

A. Substitutability of turbine generators and water turbine generators

A turbine generator and a water-turbine generator are designed to respond to the rotational speed obtained from the power source. A turbine generator cannot be used in a hydroelectric plant, and a water-turbine generator cannot be used in a thermal power plant. Therefore, there is no substitutability of demand between them.

In addition, the two are different in manufacturing process and know-how, and the substitutability of supply between them is limited.

B. Substitutability of large turbine generators and small and medium turbine generators

It is extremely inefficient for an electric power company to use a plurality of small and medium-sized turbine generators instead of large turbine generators in spite of the need for large output capacity for business use, or for a general company to generate power exceeding the output capacity required by its own manufacturing facility with large turbine generators. For this reason, consumers choose turbine generators with output capacities that match their applications. Accordingly, no substitutability of demand is recognized between large and small and medium-sized turbine generators.

The basic mechanism of a large turbine generator is the same as that of a small and medium-sized turbine generator. Factors required for the development of generators² widely differ depending on output capacities of generators, so different manufacturing technologies and know-how are required for development³. Accordingly, the substitutability of supply between them is limited.

C. Summary

Based on the above, the product scope in this case was defined as "large turbine generators" and "small and medium-sized turbine generators."

(2) Power plants

A. Substitutability of thermal power plants and nuclear power plants

Thermal power plants and nuclear power plants both use turbine generators. Thermal power plants generate heat by burning coal, natural gas in boilers, while nuclear power plants generate heat by fission of uranium

² Both types of turbines require cost reduction. In the case of large turbine generators, the emphasis is on large capacity and high efficiency, while in the case of small and medium-sized turbine generators, the emphasis is on miniaturization, short delivery time, and mass production. Therefore, the main elements of development are the material and structure that emphasize performance for large turbine generators and the manufacturing method and structure that emphasize productivity for small and medium-sized turbine generators.

³ In fact, the supplier lineup is different for large and small and medium-sized turbine generators.

Case 5 Integration of the generators business by Mitsubishi Electric Corp. and Mitsubishi Heavy Industries, Ltd.

in nuclear reactors. The heat is used to rotate turbines and generate electricity. The substitutability of supply and demand between thermal power plants and nuclear power plants is limited because the licenses for the establishment, fuels, and components of the power plants differ.

As new orders for nuclear power plants have been suspended due to the Great East Japan Earthquake, the generators defined in (1) above are currently installed only in thermal power plants.

Accordingly, the thermal power plant will be described in detail below.

B. Substitutability of large thermal power plants and small and medium-sized thermal power plants

Large-sized thermal power plants are used by electric power companies that sell electricity to consumers, while small and medium-sized thermal power plants are used by general companies that supply electricity to various manufacturing facilities. There is no substitutability of demand between large thermal power plants and small and medium-sized thermal power plants. In addition, since the technologies for manufacturing the equipment that constitutes the power generation facilities such as generators are different between large thermal power plants and small and medium-sized thermal power plants, there is no substitutability of supply between them.

C. Summary

Based on the above, the scope of products in this case was defined as "large-sized thermal power plants" and "small and medium-sized thermal power plants."

3. Geographical scope

The consumers of generators and power plants defined in 2 above place orders with manufacturers and sellers of generators and power plant suppliers based in Japan, considering whether maintenance after delivery can be carried out without hindrance.

Accordingly, in this case, the geographical scope of the manufacturing and selling business of generators and the power plant supply business as defined in 2 above was defined as "the whole of Japan."

PartIV Applicability of safe-harbor standards in a particular field of trade

The Transaction is an act of causing the Integrated Company to succeed to the large turbine generator business operated by each of the Parties Groups, and is a horizontal business combination for the manufacture and sale of large turbine generators in Japan.

The MHI Group is engaged in the supply of large-sized thermal power plants and small and medium-sized thermal power plants. The MHI Group has business relationships with the Mitsubishi Electric Group regarding them⁴. Therefore, the Transaction constitutes a vertical business combination in Japan, in which large turbine generators are the upstream market and large-sized thermal power plants are the downstream market, and a vertical business combination in Japan, in which small and medium-sized turbine generators are the upstream market and small and medium-sized thermal power plants are the downstream market.

The MHI Group does not manufacture or sell small and medium-sized turbine generators⁵.

1. Large-scale turbine generator

Table 1 shows the market shares of large-scale turbine generators in Japan. This do not meet the safe-harbor criteria for horizontal business combinations.

Table 1: Large Turbine Generators (2013 to 2022)⁶

Rank	Company	Market Share
1	Mitsubishi Electric	Approx. 45%
2	Company A	Approx. 25%
3	Company B	Approx. 5%

⁴ The Mitsubishi Electric directly sells turbine generators to electric power companies as a Type-B joint venture with the MHI Group and there is no business relationship between the Mitsubishi Electric and the MHI Group. However, the MHI Group, which is actively taking orders from electric power companies, etc., has selected which turbine generator to use and is proposing it to electric power companies, etc. Therefore, the MHI Group and the Mitsubishi Electric Group are regarded as having a substantial business relationship, and the market closing effect in the vertical relationship is reviewed here.

⁵ While the MHI Group does not manufacture small and medium-sized turbine generators, it sometimes sells small and medium-sized externally procured turbine generators combined with turbines, boilers, etc. as small and medium-sized thermal power plants.

⁶ As in the case described in footnote 1, the market share is calculated based on the sales volume (MW) over a 10-year period, because the number of power plant replacement projects in a year is limited, and the market share calculated based on the actual results of a year can vary significantly depending on the target year, and because the replacement of power plants takes a long time.

Case 5 Integration of the generators business by Mitsubishi Electric Corp. and Mitsubishi Heavy Industries, Ltd.

4	Mitsubishi Heavy Industries	Approx. 5%
	Other	Approx. 15%
Total		100%
Combined market share/ranking: Approximately 50%: No. 1		
HHI after the Transaction (maximum): Approximately 3,500		
HHI increment: Approximately 600		

2. Large-scale thermal power plant

Since the market share of large-sized thermal power plants is unknown, it is considered that the Transaction does not fall under the safe harbor criteria for vertical business combinations.

3. Small and medium-sized turbine generators

The market conditions of small and medium-sized turbine generators are shown in Table 2. Since the market shares of companies other than Mitsubishi Electric and Company C are unknown, the market is considered not to meet the safe-harbor criteria for a vertical business combination.

Table 2: Small and Medium-sized Turbine Generators (2013 to 2022)⁷

Rank	Company	Market Share
—	Mitsubishi Electric	Approx. 25%
—	Company C	Approx. 25%
	Others	Approx. 55%
Total		100%
HHI after the Transaction: Unknown		

4. Small and medium-sized thermal power plants

Since the market share of small and medium-sized thermal power plants is unknown, it is considered that it does not fall under the safe-harbor criteria for vertical business combinations.

Part V Effect of the Transaction on Competition

1. Horizontal business combination (large turbine generator)

(1) Status of the Parties Group and Competitors

⁷ Same as footnote 7.

Case 5 Integration of the generators business by Mitsubishi Electric Corp. and Mitsubishi Heavy Industries, Ltd.

Through the Transaction, the Parties Group will have the largest market share (approximately 50%), but there are competitors, Company B in addition to Company A, which has a market share of approximately 25%.

Therefore, the competitors have a certain degree of restraint against the price increase by the Parties Group.

(2) Competitive situation of the Parties Group

Large turbine generators are basically custom-made products that meet the specifications of thermal power plants, and require technical cooperation with turbines. The Parties Group has been operating a business system in which they jointly sell to consumer large-sized thermal power plants that combine turbines, boilers, etc. of the MHI Group with large turbine generators of the Mitsubishi Electric Group. According to the sales records in Japan over the past 10 years, all of them have been sold in combination with large-sized thermal power plants of the MHI Group and the large turbine generators manufactured and sold by the Parties Group.

Under such a sales system, the MHI Group takes the initiative in taking orders for large-sized thermal power plants, and decides whether to incorporate large turbine generators of either the Mitsubishi Electric Group or the MHI Group into the large-sized thermal power plants. In making the decision, the MHI Group basically does not perform competitive estimation, and uses the generators of either the MHI Group or the Mitsubishi Electric Group based on past performance and production capacity.

As described above, the MHI Group and the Mitsubishi Electric Group are effectively in a relationship of jointly supplying large-sized thermal power plants, and the degree of competition between the Parties Group in the manufacture and sale of large turbine generators is considered to have been extremely limited.

Therefore, the Transaction has an extremely limited effect on competition in the market for manufacturing and selling large turbine generators.

(3) Import and entry pressures

The electric power companies are the end users of large turbine generators. They tend to select suppliers from among the manufacturers and sellers of large turbine generators in Japan based on the past delivery records and the existence of maintenance systems. Therefore, import pressure is not

Case 5 Integration of the generators business by Mitsubishi Electric Corp. and Mitsubishi Heavy Industries, Ltd.

recognized. In addition, since the production of large turbine generators requires large amounts of money for large-scale equipment and development, and also requires time for tests and other processes before commercialization, there is no entry pressure.

(4) Competitive pressure from consumers

The electric power companies, which are the end users, based on such information as procurement results and estimated amount⁸ in the past, have the ability to calculate the appropriate price level for each component of the large-sized thermal power plant, such as large turbine generators, and it is considered possible to negotiate the price of large turbine generators.

In addition to large turbine generators, the Mitsubishi Electric Group sells transformers, gas circuit breakers, and various other transmission and transformation equipment to electric power companies. The MHI Group also supplies nuclear fuel and equipment around nuclear reactors, and provides various after-sales services and inspection and maintenance for the resumption of operations. It is therefore considered possible for electric power companies to negotiate prices for large turbine generators to bring them closer to the level of fair prices they consider, using these business relationships as leverage.

Therefore, competitive pressure from consumers is recognized to some extent.

(5) Summary

As described above, the Parties Group is not in a competitive relationship in the manufacture and sale of large turbine generators, and the Transaction has an extremely limited effect on competition. In addition, a certain degree of restraint from competitors and competitive pressure from consumers are recognized. Therefore, it cannot be said that the Transaction would substantially restrain competition in the manufacture and sale of large turbine generators by the Parties Group's unilateral conduct or coordinated conduct with competitors.

⁸ Electric power companies collect estimates that state the prices of each component of large-sized thermal power plants, such as large-scale turbine generators, and grasp the prices of large-scale turbine generators.

2. Vertical business combination ① (upstream market: large turbine generators, downstream market: large-sized thermal power plants)

Large turbine generators are basically custom-made products that meet the specifications of thermal power plants, and require technical cooperation with turbines, etc. Large-sized thermal power plant suppliers other than the MHI Group produce large turbine generators in-house. For this reason, it is unlikely that the Mitsubishi Electric Group, which manufactures and sells large turbine generators, will collaborate with large-sized thermal power plant suppliers other than MHI Group. And it is also unlikely that the Mitsubishi Electric Group's large turbine generators will be incorporated into large-sized thermal power plants of other than MHI Group. In addition, the MHI Group has incorporated large turbine generators made in-house or by the Mitsubishi Electric Group into large-sized thermal power plants for business operators in Japan. Therefore, it is inconceivable that large turbine generators from manufacturers other than the Mitsubishi Electric Group will be adopted.

As described above, since there is no possibility of customer foreclosures and input foreclosures occurring as a result of the Transaction, it cannot be said that the unilateral conduct of the Parties Group or the coordinated conduct of the Parties Group and competitors would substantially restrain competition in the upstream market and the downstream market.

3. Vertical business combination ② (upstream market: small and medium-sized turbine generators, downstream market: small and medium-sized thermal power plants)

(1) Competitive situation of the Parties Group

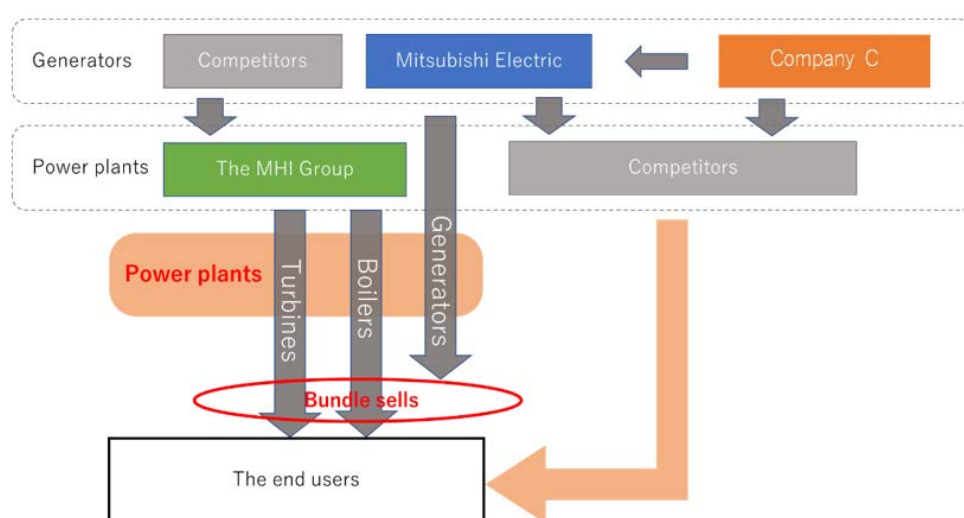
The MHI Group does not manufacture or sell small and medium-sized turbine generators. On the other hand, Mitsubishi Electric procures and sells all of its small and medium-sized turbine generators from Company C, an equity method affiliate⁹ that designs and manufactures them. Because small and medium-sized turbine generators are compatible between manufacturers unlike large turbine generators to a certain extent, the MHI Group

⁹ Non-consolidated subsidiaries (meaning non-consolidated subsidiaries prescribed in Article 2, Item 6 of the Ordinance on Terminology, Forms, and Preparation Methods of Consolidated Financial Statements (Ordinance of the Ministry of Finance No. 28 of 1976) to which the equity method prescribed in Article 2, Item 8 of the same Ordinance is applied (Registration of Change)

Case 5 Integration of the generators business by Mitsubishi Electric Corp. and Mitsubishi Heavy Industries, Ltd.

incorporates generators which competitors of the Mitsubishi Electric Group manufactured into its power plants, and small and medium-sized thermal power plant suppliers, which are competitors of the MHI Group, incorporate generators procured from the Mitsubishi Electric Group into their own power plants (The commercial flow is shown in the following figure.)

Figure: Commercial flow of small and medium-sized turbine generators and small and medium-sized thermal power plants



(2) Refusal to supply small and medium-sized turbine generators (input foreclosure)

Because there are more standardized products of small and medium-sized turbine generators than large turbine generators and have a certain degree of compatibility, it is easy for consumers to switch manufacturers and distributors of small and medium-sized turbine generators. There are many competitors in the small and medium-sized turbine generator market¹⁰.

Therefore, the Parties Group does not have the capability to close the input, and the problem of market closure and exclusivity is not considered to arise in the downstream market.

¹⁰ As the Mitsubishi Electric owns 50% of the voting rights of Company C, we conducted a review of the input foreclosure by assuming that a joint relationship had been formed between Company C and the Mitsubishi Electric. Even in this case, we did not find that the issue of market closure and exclusivity in the downstream market would arise.

(3) Refusal to purchase small and medium-sized thermal power plants (customer foreclosure)

There are multiple competitors in downstream market for small and medium-sized power plants.

In addition, the MHI Group procures most of small and medium-sized turbine generators from the Mitsubishi Electric Group, and procurement from other companies is negligible. Therefore, the extent of the impact of the refusal of the MHI Group to purchase the generators is limited.

Therefore, the Parties Group does not have the ability to close customers, and the issue of the market closure and exclusivity is not recognized to arise in the upstream market.

(4) Summary

Consequently, the unilateral conduct of the Parties Group or the coordinated conduct of the Parties Group and its competitors would not substantially restrain competition in the upstream and downstream markets.

Part VI Conclusion

The JFTC concluded that the Transaction would not substantially restrain competition in a particular field of trade.

Case 6 Acquisition of shares in Ashimori Industry Co., Ltd. by Toyoda Gosei Co., Ltd.

Part I The Parties

Toyoda Gosei Co., Ltd. (JCN7180001045235) (hereinafter referred to as "Toyoda Gosei") and Ashimori Industry Co., Ltd. (JCN3120001048973) (hereinafter referred to as "Ashimori Industry") are engaged in the business of manufacturing and selling automotive parts.

Hereinafter, the group of companies that have already formed a business relationship with Toyoda Gosei is called the "Toyoda Gosei Group," and the group of companies that have already formed a business relationship with Ashimori Industry is called the "Ashimori Industry Group." Toyoda Gosei Group and Ashimori Industry Group are collectively referred to as the "Parties Group."

Part II Outline of the Case and applicable provisions

The present case involves Toyoda Gosei's acquisition of more than 20% of the voting rights of Ashimori Industry (the "Transaction").

The applicable provision is Article 10 of the Antimonopoly Act.

Part III Particular field of trade

1. Product Overview

The Parties Group is automotive components manufacturers which mainly manufactures safety parts for the purpose of protecting the occupants of automobiles ("safety parts"). The Parties Group competes in the production and sales of airbags and seat belts. As described in (1) B. below, the Toyoda Gosei Group manufactures and sells steering wheels that are used in automobiles in combination with driver's seat airbags.

(1) Airbags

A. Type of airbags

The airbag is a safety part that is designed to instantly inflate a bag (hereinafter referred to as "bag") with gas generated by an inflator (gas generating device) when a vehicle is collided. It absorbs and mitigates physical impact to the head and chest of an occupant.

There are several types of airbag according to the location of installation

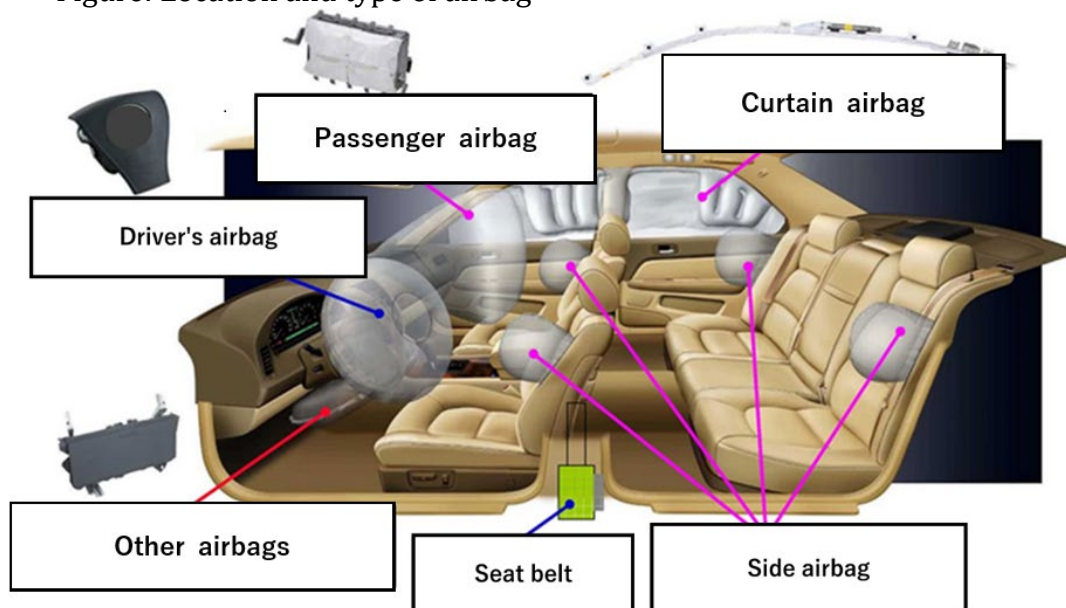
Case 6 Acquisition of stock in Ashimori Industry Co., Ltd. by Toyoda Gosei Co., Ltd.

and function, as shown in the following figure and Table 1. In 2015, "Safety Standards for Road Transport Vehicles",¹ which establishes the safety standards for vehicle, established new standards for occupant protection in the event of a side collision involving utility poles, etc. Based on this, new cars released on or after June 15, 2018 are basically equipped with driver's seat airbags, passenger seat airbags, curtain airbags, and side airbags.

¹ Ordinance of the Ministry of Land, Infrastructure and Transport (Ordinance of the Ministry of Transport No. 67 of 1951) under the provisions of Chapter 3 of the Road Transport Vehicle Act (Act No. 185 of 1951).

Case 6 Acquisition of stock in Ashimori Industry Co., Ltd. by Toyota Gosei Co., Ltd.

Figure: Location and type of airbag



(Source: Prepared by the JFTC based on the materials submitted by the Parties.)

Table 1: Types of airbags, and their locations and functions

	Type	Location and function of the equipment
①	Driver's seat airbags	It is mounted in the middle of the steering wheels. The bag inflates in the event of a collision at the front of the vehicle, protecting the driver.
②	Passenger seat airbags	It is mounted in the dashboard on the front passenger side. The bag inflates to protect the front passenger in the event of a frontal collision.
③	Curtain airbags	It is mounted on the upper part of the window frame of the door. In the event of a side impact, the bag will inflate to cover the side window and protect the occupant's head.
④	Side airbags	It is mainly mounted on the side of the seat. In the event of a side impact, the bag inflates to protect the occupant's chest.

Case 6 Acquisition of stock in Ashimori Industry Co., Ltd. by Toyota Gosei Co., Ltd.

⑤	Other airbags	“Knee airbag” that protects the lower limbs of the front seat occupant in the event of a frontal collision, “Seat cushion airbag” that prevent forward displacement of the front passenger, “rear-seat center airbag” that prevent rear-seat occupants from striking each other in a side impact, “Rear-end impact airbag” that protect the head of the rear seat occupant in the event of a rear collision, and “Pedestrian protection airbag” that mitigates the impact on the pedestrian's head in the event of a pedestrian collision,. The rate of installation is lower than that of ① through ④.
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Any types of airbags share a basic design: in the event of a vehicle crash, they instantly generate gas to inflate the bag and protect the occupant. This allows the facility to be repurposed for manufacturing other types of airbags without significant additional cost or time, and major Japanese airbag manufacturers sell a variety of airbags.

B. Driver's seat airbags and steering wheels

Driver's seat airbags is mounted in a vehicle in a state where the airbag is housed in a steering wheel as described in (3) below.

In the past, regarding procuring the airbags and the steering wheels, automobile manufacturers developed the connecting parts between the driver's seat airbags and the steering wheels, and disclosed the specifications and technical information to the airbag manufacturer and the steering wheels manufacturer, thereby having them manufacture products that meet the specifications, and then procuring the driver's seat airbag and the steering wheels. However, in recent years, although the ordering method by automobile manufacturers has not changed, the procurement practice work of automobile manufacturers to procure both driver's seat airbags and steering wheels from the same supplier has become established. Therefore, when an airbag manufacturer manufactures and sells driver's seat airbags, it develops the connecting parts and then manufactures and combines the steering wheels itself, or manufactures them with specifications that assume the combination with

Case 6 Acquisition of stock in Ashimori Industry Co., Ltd. by Toyota Gosei Co., Ltd.

the steering wheels manufactured by the manufacturer of them.²

Except for Ashimori Industry Group, the major Japanese airbag manufacturers also manufacture steering wheels, and sell driver's seat airbags in combination with their own steering wheels. On the other hand, the Ashimori Industry Group provides specifications for the connecting parts developed by itself with the steering wheels manufactures³ and procures steering wheels manufactured as meet the specifications, and sells driver's seat airbags in combination with the procured steering wheels.

(2) Seat belts

A seat belt is a safety part that secures a body of an occupant to a seat by a belt, and prevents the occupant from being thrown out of the seat or being hit against a steering wheel, a windshield, or the like in the event of a collision or sudden deceleration of a vehicle, thereby reducing the injury of the occupant.

Seat belts have the types and functions shown in Table 2, depending on the number of supporting points.

Table 2: Types and functions of seat belts

	Type	Function
①	two points support type belt (two points seat belt)	It is mainly used in the passenger seats of buses and the center seats of commercial vehicles, and it restrains the waist of the occupant. 
②	Belt with three points support (three points seat belt)	A general specification that simultaneously constrains the occupant's hip and upper torso. 

² In view of the above, the airbag manufacturer is currently developing the connecting part between the airbag and the steering wheels.

³ The steering wheels manufacturer that sells steering wheels to the Ashimori Industry Group also manufactures and sells driver's seat airbags.

Case 6 Acquisition of stock in Ashimori Industry Co., Ltd. by Toyota Gosei Co., Ltd.

③	Full harness seat belt	It is mainly used in racing vehicles, and can be equipped with additional belts in the crotch and belt to strengthen the restraint of the occupant.
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(Source: Prepared by the Board based on the materials submitted by the Parties)

(3) Steering wheels

The steering wheels is a part that the driver operates to change the direction of the vehicle. It is composed of the limb that transmits steering force to the steering shaft (the part generally called “handle” the driver grips in steering), the pad to cushion the impact of the driver striking the steering wheels in an accident or the like.

The primary function of a steering wheel is steering. The steering wheels is positioned as a safety part because it is required to have high safety performance in order to absorb the impact when the driver is hit and because the performance of the driver's seat airbags mounted at the center of the steering wheels depends on the design of the steering wheels.

(4) Selection of suppliers by automobile manufacturers

When procuring automobile parts such as airbags, automobile manufacturers select suppliers by getting competitive quotes.

The selection of suppliers of airbags, seat belts, and steering wheels is carried out mainly at the time of the development of new vehicle models, when the body and platform (skeleton part of the vehicle body) of the vehicle are developed, and at the time of full model change, which is carried out once every five to six years. As to products, such as airbags and seat belts, which have multiple installation locations and different specifications and unit prices depending on the installation location, the selection of suppliers is carried out for each product corresponding to the installation location.

Automobile manufacturers select suppliers by comprehensively evaluating quality, price, stability of supply, product development, and quality control systems. There is no difference among automotive components manufacturers in terms of their ability to meet the requirements of automakers and their product quality that would affect their selection. In effect, price is the most important factor. Even after starting business with suppliers, automakers regularly negotiate prices with the aim of reducing procurement prices by encouraging suppliers to streamline their

manufacturing processes.

2. Product scope

(1) Airbags

As airbags have different functions depending on the use and the location of installation, there is no substitutability of demand among different types of products.

Next, since the basic structure of the airbag is common even if the airbag is of a different type and major airbag manufacturers manufacture various airbags, there is a substitutability of supply among different types of products.

Accordingly, in this case, it is possible to define "automobile airbag" as the product scope. However, as mentioned in Part III .1 (1) B. above, the procurement practice work of automobile manufacturers to procure driver's seat airbags in combination with steering wheels from the same company has become established, and whether there is a competitiveness of steering wheels may affect the competitiveness of driver's seat airbags. Therefore, it is considered that the Transaction has a different effect on competition between driver's seat airbags and other airbags. In addition, since the automobile manufacturers' estimates are adjusted for each location where airbags other than driver's seat airbags are installed, it is probable that the impact of the Transaction on competition differs depending on the type of airbag.

Therefore, in view of more careful consideration, the product scope in this case was defined as "driver's seat airbags," "passenger seat airbags," "side airbags," and "curtain airbags."

(2) Seat belts

Although the basic functions of any seat belt are the same, the substitutability of demand among different types of products is limited because seat belts are used according to the type of vehicle and seat.

Next, seat belts have common manufacturing technology and basic component structure, and seat belt manufacturers can basically manufacture any type of seat belt. Therefore, there is a substitutability of supply among different types of products.

Based on the above, the product scope in this case was defined as "seat

Case 6 Acquisition of stock in Ashimori Industry Co., Ltd. by Toyota Gosei Co., Ltd.

belts for automobiles."

(3) Steering wheels

Steering wheels have various types such as the product of which the shape of limb and materials differ and which has buttons for controlling various functions. These differences are merely a response to requests from automobile manufacturers, and therefore, there is a substitutability of demand among different types of products.

Next, even if various steering wheels are manufactured in consideration of the above-mentioned requests from the automobile manufacturers, since the steering wheels manufacturer can manufacture any type of steering wheels, there is a substitutability of supply among different types of products.

For the above reasons, "steering wheels" was defined as the product scope in this case.

3. Geographical scope

Automobile manufacturers determine the suppliers of automobile parts such as airbags regardless of the region where they are sold in Japan, and automotive components manufacturers sell them nationwide in response to requests from automobile manufacturers. Therefore, the geographical scope of this case was defined as "all of Japan."

PartIV Effect of the Transaction on Competition

1. Type of business combination of the Transaction⁴

⁴ Toyota Gosei has already formed a joint relationship with TOYOTA MOTER COORPORATION(JCN1180301018771)(hereafter, the company group which has already formed a joint relationship with this company is referred to as TOYOTA Group). The Transaction will create an indirect business combination between the Ashimori Industry Group and the TOYOTA Group through TOYODA GOSEI. Therefore, this case also constitute a vertical business combination in which the upstream market is the manufacturing and selling of automobile parts manufactured by the Ashimori Industry Group and the downstream market is the manufacturing and selling of automobiles.

However, as described in 3 (1) and (2) below, there are several strong competitors for airbags and seatbelts manufactured by the Ashimori Industry Group, and there are no circumstances that make it difficult for automobile manufacturers that compete with the TOYOTA Group to switch suppliers. Therefore, it is not deemed that the closure and the exclusivity of the market will be caused by the input foreclosure in the downstream market. Also, in the upstream market, , diversification of suppliers is essential for the TOYOTA Group to ensure stable procurement , and there are opportunities to do business with automobile manufacturers other than the TOYOTA Group. Therefore, it is not deemed that the problem of market closure or exclusivity due to customer foreclosures will arise.

Case 6 Acquisition of stock in Ashimori Industry Co., Ltd. by Toyota Gosei Co., Ltd.

Since the Parties Group manufactures and sells airbags and seatbelts, the Transaction constitutes a horizontal business combination related to the manufacture and sale of them (see ① and ② of Horizontal Business Combination in Table 3).

Next, among airbags, the driver's seat airbags are installed in a vehicle in combination with a steering wheel. Ashimori Industry, which does not manufacture steering wheels, sells driver's seat airbags in combination with steering wheels manufactured by manufacturer of that. Therefore, the Transaction constitutes a conglomerate type business combination (product expansion) related to the business of manufacturing and selling driver's seat airbags and steering wheels (conglomerate type business combination ① in Table 3).

In addition, in the automobile industry, the procurement method and product concept are changing, such as the emergence of needs for products that integrate multiple safety parts. As with the combined sales of driver's seat airbags and steering wheels, the combined sales of airbags and seat belts are expected to be conducted. Therefore, in this case, we review the conglomerate business combination (product expansion) related to the manufacturing and sales business of airbags and seat belts (conglomerate business combination ② in Table 3).

Table 3: Types of Business Combinations in the Transaction

Type	Scope of Products	Geographical scope
Horizontal Business Combination ①	Manufacture and sale of airbags (driver's seat airbags, passenger seat airbags, curtain airbags, and side airbags)	All over Japan
Horizontal Business Combination ②	Manufacture and sale of seat belts	All over Japan
Conglomerate Business Combination ①	Manufacture and sale of airbags (driver's seat airbags) and steering wheels	All over Japan

Case 6 Acquisition of stock in Ashimori Industry Co., Ltd. by Toyota Gosei Co., Ltd.

Conglomerate Business Combination ②	Manufacture and sale of airbags (driver's seat airbags, passenger seat airbags, curtain airbags, and side airbags) and seat belts	All over Japan
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2. Applicability of the safe-harbor criteria in a particular field of trade

(1) Horizontal business combination ① (Manufacture and sale of airbags)

A. Driver's seat airbags

The market shares of driver's seat airbags in Japan are shown in Table 4. The HHI after the Transaction is approximately 3,800 and the increment of HHI is approximately 500. Therefore, the Transaction does not fall under the safe harbor criteria for horizontal business combinations.

Table 4: Market share of Driver's seat airbags (2022)

Rank	Company	Market Share
1	Toyota Gosei Group	Approx. 50%
2	Company A	Approx. 25%
3	Company B	Approx. 20%
4	Ashimori Industry Group	Approx. 5%
5	Company C	0-5%
Total		100%
Combined market share/ranking: Approx. 55%/No. 1		
HHI after the Transaction: Approx. 3,800		
HHI increment: Approx. 500		

B. Passenger seat airbags

The market shares of the passenger seat airbags in Japan are shown in Table 5. The HHI after the Transaction is approximately 3,100 and the increment of HHI is approximately 800. Therefore, the Transaction does not fall under the safe harbor criteria for horizontal business combinations.

Table 5: Market share of Passenger seat airbags (2021)

Rank	Company	Market Share
1	Toyota Gosei Group	Approx. 35%
2	Company D	Approx. 20%
3	Company E	Approx. 15%
4	Company F	Approx. 15%

Case 6 Acquisition of stock in Ashimori Industry Co., Ltd. by Toyota Gosei Co., Ltd.

5	Ashimori Industry Group	Approx. 10%
-	Others	0-5%
Total		100%
Combined market share/ranking: Approx. 45%/No. 1		
HHI after the Transaction: Approx. 3,100		
HHI increment: Approx. 800		

C. Curtain airbags

The market shares of curtain airbags in Japan are shown in Table 6. The HHI after the Transaction is approximately 3,000 and the increment of HHI is approximately 300. Therefore, the Transaction does not fall under the safe harbor criteria for horizontal business combinations.

Table 6: Market share of curtain airbags (2021)

Rank	Company	Market Share
1	Company G	Approx. 35%
2	Toyota Gosei Group	Approx. 30%
3	Company H	Approx. 10%
4	Ashimori Industry Group	Approx. 5%
5	Company I	0-5%
-	Others	Approx. 20%
Total		100%
Combined market share/ranking: Approx. 35%/2nd		
HHI after the Transaction: Approximately 3,000		
HHI increment: Approximately 300		

D. Side airbags

The market shares of side airbags in Japan are shown in Table 7. The HHI after the Transaction is approximately 4,300 and the increment of HHI is approximately 700. Therefore, the Transaction does not fall under the safe harbor criteria for horizontal business combinations.

Table 7: Market share of side airbags (2021)

Rank	Company	Market Share
1	Toyota Gosei Group	Approx. 45%

Case 6 Acquisition of stock in Ashimori Industry Co., Ltd. by Toyota Gosei Co., Ltd.

2	Company J	Approx. 35%
3	Ashimori Industry Group	Approx. 10%
4	Company K	Approx. 5%
5	Company L	0-5%
Total		100%
Combined market share/ranking: Approx. 55%/No. 1		
HHI after the Transaction: Approx. 4,300		
HHI increment: Approx. 700		

(2) Horizontal business combination ② (Manufacture and sale of seat belts)

The market shares of the seat belt manufacturing and sales sector in Japan are shown in Table 8. The HHI after the Transaction is approximately 4,000 and the increment of HHI is approximately 1,000. Therefore, the Transaction does not fall under the safe harbor criteria for horizontal business combinations.

Table 8: Market share of seat belts (2021)

Rank	Company	Market Share
1	Company M	Approx. 40%
2	Toyota Gosei Group	Approx. 30%
3	Ashimori Industry Group	Approx. 15%
4	Company N	Approx. 15%
Total		100%
Combined market share/ ranking: Approximately 50%/No. 1		
HHI after the Transaction: Approximately 4,000		
HHI increment: Approximately 1,000		

(3) Conglomerate-type business combination ① (Manufacture and sale of driver's seat airbags and steering wheels)

As for the manufacturing and sales of driver's seat airbags, as mentioned in (1) A. above, the combined market share of the Parties Group after the Transaction is approximately 55% and HHI is approximately 3,800.

Table 9 shows the market share of the steering wheels manufacturing and sales field in Japan. The market share of the Parties Group after the Transaction is approximately 60%, and HHI is approximately 4,000.

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Therefore, it does not fall under the safe harbor criteria for a conglomerate business combination.

Table 9: Market share of Steering Wheels (2021)

Rank	Company	Market Share
1	Toyota Gosei Group	Approx. 60%
2	Company O	Approx. 20%
3	Company P	Approx. 10%
4	Company Q	Approx. 5%
-	Others	0-5%
Total		100%
HHI after the Transaction: Approximately 4,000		

(4) Conglomerate business combination ② (Manufacture and sale of airbags and seat belts)

The market shares and HHI of the Parties Group in the manufacturing and sales field of each airbag are as described in (1) A. to D. above, and the market shares and HHI of the Parties Group in the manufacturing and sales field of seat belts are as described in (2) above.

Therefore, it does not fall under the safe harbor criteria for a conglomerate business combination.

3. Horizontal business combination

(1) Horizontal business combination ① (Manufacture and sale of airbags)

A. Circumstances that may be a judgement factor in determining the substantial restraint of competition

(a) Status of the Parties and Competitors

The combined market share of the Parties Group after the Transaction is high, ranging from approximately 35% (curtain airbags) to approximately 55% (driver's seat airbags and side airbags). However, for each product, there are several competitors with market shares same as or greater than that of the Ashimori Industry Group.

Next, the automobile manufacturers, who are consumers of the products, stated in the hearings with the JFTC that they would not be hindered from adopting the products of other airbag manufacturers in place of the products of the Parties Group because the difference in

Case 6 Acquisition of stock in Ashimori Industry Co., Ltd. by Toyota Gosei Co., Ltd.

quality of the products would be small among airbag manufacturers that are supplying them to the automobile manufacturers in Japan.

Furthermore, all competitors in the Parties Group have a significant degree of surplus supply capacity.

This shows that restraining power from competitors is recognized.

(b) Competitive pressure from consumers

As described in Part III.1 (4) above, automobile manufacturers place the highest priority on price in getting competitive quotes when selecting suppliers. They also periodically negotiate prices with suppliers to reduce prices even after starting business with them. In addition, the selection of suppliers by automobile manufacturers is carried out for each model in conjunction with the introduction of new models or a full model change. If selected as a supplier, it is possible to obtain large-scale and stable transactions over several years until the next model change. Therefore, there is a large incentive for airbag manufacturers to obtain transactions, and this is a reason why the automobile manufacturers, who are consumers, have increased their bargaining power in price negotiations. Therefore, even after the start of the transaction, the price negotiation for the purpose of price reduction is periodically carried out between the automobile manufacturer and the airbag manufacturer as the procurement destination.

This shows that there is competitive pressure from consumers.

B. Substantial restraint of competition by unilateral conduct

As described in A. above, there are restraining power from competitors and competitive pressure from consumers for any types of airbags. Therefore, it is not considered that the unilateral conduct of the Parties Group would substantially restrain competition in the field of manufacturing and selling airbags.

C. Substantial restraint of competition by coordinated conduct

As described in A. (a) above, there are several competitors of the Parties Group, and each of them has a considerable surplus supply capacity. Therefore, it is not easy for the airbag manufacturer to predict the

Case 6 Acquisition of stock in Ashimori Industry Co., Ltd. by Toyota Gosei Co., Ltd.

behavior of competitors.

As described above, the multiple competitors of the Parties Group have considerable surplus supply capacity. And the timing of competitive quotes, in which the automobile manufacturer selects suppliers, is the time when it develops new models or when it makes full model changes. Therefore, once an automotive components manufacturer is selected as a supplier, it can obtain large and stable transactions. Therefore, it is considered that the airbag manufacturer has an incentive to compete with other airbag manufacturers so as to be selected as a customer.

Consequently, it is not considered that the coordinated conduct between the Parties Group and competitors would substantially restrain competition in the field of manufacturing and selling airbags.

(2) Horizontal business combination ② (Manufacture and sale of seat belts)

A. Determining factor for substantial restraint of competition

(a) Status of the Parties and Competitors

Although the combined market share of the Parties Group after the Transaction is high at approximately 50%, there are several competitors with a certain market share.

Next, the automobile manufacturers, which are the consumers, stated in the hearings with the JFTC that there would be no problem in using the products of other manufacturers in place of the products of the Parties Group because the difference in quality of the products among the seat belt manufacturers is small.

Furthermore, all competitors of the Parties Group have a significant degree of surplus supply capacity.

Therefore, the restraining power from competitors is recognized.

(b) Competitive pressure from consumers

The state regarding transactions of seat belts between automobile manufacturers and seat belt manufacturers is the same as in (1) A. (b) above.

Thus, competitive pressure from consumers is recognized.

B. Substantial restraint of competition by unilateral conduct

Case 6 Acquisition of stock in Ashimori Industry Co., Ltd. by Toyota Gosei Co., Ltd.

As for seat belts, as mentioned in A. above, it is not considered that the Parties Group's unilateral conduct would substantially restrain competition in the seat belt manufacturing and sales field because of restraining power from competitors and the competitive pressure from consumers.

C. Substantial restriction of competition by coordinated conduct

As described in A. (a) above, there are several competitors for the Parties Group, and each of them has a considerable surplus supply capacity. Therefore, it is considered that it is not easy for the seat belt manufacturer to predict the actions of competitors.

As in the case of airbag transactions, several competitors of the Parties Group have considerable surplus supply capacity, and once a manufacturer is selected as a supplier, it can obtain large and stable transactions. Therefore, it is considered that seat belt manufacturers have an incentive to compete with other airbag manufacturers so that they can be selected as a supplier.

Consequently, it is not considered that the coordinated conduct between the Parties Group and competitors would substantially restrain competition in the field of manufacturing and selling seat belts.

4. Conglomerate business combination

(1) Conglomerate business combination ① (Manufacture and sale of driver's seat airbags and steering wheels)

As described in PartⅢ.1 (1) B. above, the procurement practice work of automobile manufacturers to procure both driver's seat airbags and steering wheels from the same supplier has been established.

Ashimori Industry Group does not manufacture or sell steering wheels in Japan, and therefore sells driver's seat airbags in combination with steering wheels procured from manufacturers of that. After the Transaction, however, Ashimori Industry Group will be able to sell driver's seat airbags in combination with steering wheels manufactured by Toyota Gosei Group. Therefore, the following points will be examined.

① The possibility that the Ashimori Industry Group combines steering wheels manufactured by the Toyota Gosei Group with its own driver's seat airbags, and the Parties Group licenses the use of each technology, thereby

Case 6 Acquisition of stock in Ashimori Industry Co., Ltd. by Toyota Gosei Co., Ltd.

enhancing the position of the Ashimori Industry Group in the field of manufacturing and sales of steering wheels, reducing the competitiveness of competitors of the Parties Group, weakening the competitiveness of and the restraining power from the competitors, and causing a problem of market closure and exclusivity (combined supply).

- ② The possibility that the Toyota Gosei Group, through the Ashimori Industry Group, obtains and uses business secrets of the steering wheels manufacturers that sell steering wheels to the Ashimori Industry Group (business secrets provided to the Ashimori Industry Group to ensure the interconnection with driver's seat airbags), thereby reducing the competitiveness of competitors of the Parties Group in the field of manufacturing and sales of steering wheels, and weakening the restraining power from these competitors, and causing a problem of market closure and exclusivity (obtaining confidential information).

A. Consideration of combined supply (① above)

As described in PartⅢ.1 (1) B. above, the airbag manufacturers that compete with the Parties Group handle both driver's seat airbags and steering wheels, and the Parties Group is not the only company that can combine and sell complementary products. In addition, the automobile manufacturers, which are consumers, responded in the hearing that even if the Transaction enabled the connecting of the steering wheels of the Toyota Gosei Group and the driver's seat airbag of the Ashimori Industry Group, they do not expect that the quality and function of the products would be significantly improved compared to those of competitors. Therefore, it is not considered that the combination of the steering wheels of the Toyota Gosei Group and the driver's seat airbag of the Ashimori Industry Group immediately lead to the enhancement of the position of the Parties Group in the market.

As mentioned in PartⅢ.1 (1) B. above, the technology developed by the airbag manufacturer is used for the connecting part between the driver's seat airbag and the steering wheels. It is assumed that the Transaction may trigger a mutual license for the use of the technology owned by the Parties Group. If the patent on the connection method owned by one of the Parties is very excellent and the other company can use it, which increases the competitiveness of the Parties Group, it may affect the competition of the

Case 6 Acquisition of stock in Ashimori Industry Co., Ltd. by Toyota Gosei Co., Ltd.

driver's seat airbag and the steering wheels connected to it. However, the automobile manufacturers, which are the consumer, responded in the hearing that the connection method adopted by the Ashimori Industry Group does not have any particular technical advantage. It is difficult to assume that the position of the Parties Group in the market will be significantly enhanced by the mutual licensing of the use of the technology owned by the Parties Group itself.

In relation to the use of the connection technology, even if it is assumed that the Transaction would cause other business operators to lose the opportunity to use the technology owned by the Parties Group, it is not assumed that the airbag manufacturers other than the Ashimori Industry Group would use the technology owned by the Parties Group because they developed the connection part themselves. The manufacturers that sell steering wheels to the Ashimori Industry Group, which does not manufacture steering wheels, also manufacture and sell driver's seat airbags. Even if the Transaction makes it impossible for them to sell steering wheels to the Group using the technology of the Ashimori Industry Group, they can continue to manufacture and sell steering wheels for their own products, driver's seat airbags. Therefore, it is considered that the loss of opportunities for other business operators to use the technology for the connecting parts owned by the Parties Group would have a minor impact on competition.

From the above, it is not recognized that the problem of market closure and exclusivity arises by the combination supply.

B. Consideration of obtain of confidential information (above ②)

First, the technical design of the driver's seat airbag manufactured by the Ashimori Industry Group and the connecting part of the steering wheels combined with it is instructed to the steering wheels manufacturer by the Ashimori Industry Group as an airbag manufacturer. There is no concern that the specification information of the connecting part adopted by the steering wheels manufacturer in other products (driver's seat airbag sold by the manufacturer in combination with its own steering wheels) will be leaked to the Parties Group.

Next, when the Ashimori Industry Group and the steering wheels manufacturer make adjustments to connect the driver's seat airbag and

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the steering wheels into an integrated product, the steering wheels manufacturer provides the Ashimori Industry Group with the specifications of the steering wheels and cost information based on the specifications. It is possible that this information will be leaked to the Toyota Gosei Group, which is the steering wheels manufacturer, through the Ashimori Industry Group.

However, the steering wheels is not a general-purpose product but a custom-made product that is supposed to be mounted on a specific vehicle model. The specifications of that also change depending on limb (handle) design and balance with other vehicle body specifications. The specifications of one product are not common to that of others, and detailed information (for example, the blending ratio of raw materials and procurement volume), which is the basis of cost, is not disclosed. Therefore, it is considered that there is a limit to grasp technical information and price information related to steering wheels manufactured by competitors of the Toyota Gosei Group from the leaked information.

Therefore, it is not considered that the Toyota Gosei Group would gain a competitive advantage as a steering wheel manufacturer by obtaining confidential information of competitors which sell steering wheels to Ashimori Industry Group.

Based on the above, it is not considered that the sharing of confidential information of competitors between the Parties Group would cause the problem of market closure and exclusivity.

(2) Conglomerate business combination ② (Manufacture and sale of airbags and seat belts)

A. Consideration of combined supply

At present, automobile manufacturers procure airbags and seatbelts for each product, and there is little need to entrust the optimization of these products to automotive components manufacturers. However, the automobile industry is in a period of change, with the advent of electrification, and the division of roles between automotive components manufacturers and auto parts manufacturers could change. There could also be changes in the needs for safety parts due to the advent of automated driving, and changes in the procurement methods and product concepts (for example, integration of seat belts and airbags). For this

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reason, there is a possibility that the Toyota Gosei Group, through the Transaction, sells the seat belts manufactured by the Ashimori Industry Group in addition to the airbags for their own products, thereby enhancing the position in the market, reducing the competitiveness in the field of manufacturing and sales of airbags, and causing a problem of market closure and exclusivity.

In the following, the possibility is reviewed.

First, some of the competitors of the Toyota Gosei Group in the field of manufacturing and sales of various airbags are engaged in sales of seat belts. These companies are all major suppliers operating in Japan and overseas, and therefore it is possible to meet the needs of automobile manufacturers as described above.

In addition, the automobile manufacturers, which are consumer, stated in the hearing by the JFTC that, while acknowledging that the Ashimori Industry Group is good at seat belts for small cars, they do not believe that the quality and function of the products manufactured by the Toyota Gosei Group would be significantly improved if the Toyota Gosei Group could handle the seat belts of the Ashimori Industry Group as a result of the Transaction. Therefore, it is not considered that the Transaction would result in a decline in the competitiveness of competitors and give rise to concerns about market closure and exclusivity.

From the above, it is not recognized that the problem of market closure and exclusivity arises by the combination supply.

B. Consideration of the elimination of potential competition

The Ashimori Industry Group is also a company that handles both airbags and seatbelts. If the ability to develop airbags and seatbelts integrally gives a competitive advantage, and if the Ashimori Industry Group can become a leading business operator against the Toyota Gosei Group, the future impact of the loss of competition among the Parties Group due to the Transaction may be greater than it is now.

However, in response to the JFTC's hearings, the automobile manufacturers, which are consumers, stated the following view: The development of safety parts is relatively burdensome in terms of data collection and applications for certification, capital investment, and compliance with laws and regulations. In addition, the technical

Case 6 Acquisition of stock in Ashimori Industry Co., Ltd. by Toyoda Gosei Co., Ltd.

accumulation of airbags and seat belts, which has been accumulated to date, is not sufficient to develop airbags and seat belts in an integrated manner and the development of safety parts will impose additional burdens in terms of funding and technical development before the practical application of safety parts. Therefore, it is difficult for the Ashimori Industry Group, which is a small scale for automotive components manufacturer, to deal with this situation alone. Next, as described above, there are several major competitors who handle both airbags and seatbelts, and it is probable that the restraining power of these competitors will continue to work even after the Transaction.

Based on the above, the impact of the elimination of potential competition by the Transaction on market competition is minor.

Part V Conclusion

The JFTC concluded that the Transaction would not substantially restrain competition in a particular field of trade.

Case 7 Acquisition of shares in TOYOTA MAPMASTER INCORPORATED by ZENRIN CO., LTD. and AISIN CORPORATION

Part I The Parties

ZENRIN CO., LTD. (JCN5290801002046) (hereinafter referred to as "ZENRIN") mainly provides maps such as housing map book and map databases.

AISIN CORPORATION (JCN6180301013611) (hereinafter referred to as "AISIN"). is mainly engaged in manufacturing of automobile parts and developing and providing software for the car navigation systems (hereinafter referred to as "Car navigation").

TOYOTA MAPMASTER INCORPORATED (JCN4180001047184) ("TOYOTA MAPMASTER") is engaged in the planning, research, production, and sale of map data for car navigation systems and related map data.

TOYOTA MOTOR CORPORATION (JCN1180301018771) (hereinafter referred to as "TOYOTA") is mainly engaged in the business of manufacturing and selling automobiles.

The terms in the left column of the following table are described as shown in the right column.

Left-column	Right-column
The group of companies that has already formed a joint relationship with ZENRIN as the ultimate parent company	ZENRIN Group
the group of companies that have already formed a joint relationship with AISIN as the parent company	AISIN Group
A group of companies that has already formed a joint relationship with TOYOTA as the ultimate parent company (including TOYOTA MAPMASTER and AISIN Group)	TOYOTA Group
Group of companies including the ZENRIN Group and the TOYOTA Group	the Parties Group
Map database for car navigation systems (for details, see PartIV.1 (1) B (a) below)	Car navigation DB
Map database for the map application for the smartphone (hereinafter referred to as "map application") and the map viewing service provided by the Internet (hereinafter referred to as "web map service"). (For details, see PartIV.1 (1) B (b) below.)	Net DB
Software for car navigation systems (for details, see Part	Car navigation

IV.1 (2) below)	software
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Part II Outline of the Case and applicable provisions

This case is a planned acquisition by ZENRIN and AISIN of more than 20% of the voting rights of TOYOTA MAPMASTER's shares (the acts of acquisition by both companies are collectively referred to as the "Transaction").

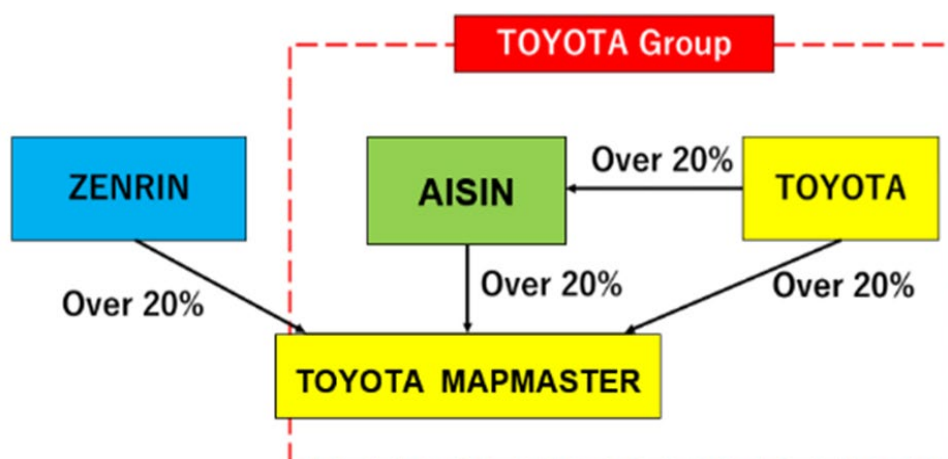
Based on the circumstances that, after the Transaction, ZENRIN, AISIN, and TOYOTA will hold more than 20% of the voting rights of TOYOTA MAPMASTER, and in light of Part I , 1. (1) A to C of the Business Combination Guidelines, it is considered that the relationship of the ZENRIN Group, the AISIN Group, and TOYOTA with TOYOTA MAPMASTER and the indirect relationship between the ZENRIN Group and the TOYOTA Group (excluding TOYOTA MAPMASTER) through TOYOTA MAPMASTER will be formed, maintained and strengthened, respectively¹. Therefore, the JFTC decided to scrutinize the relationships (the main capital relationships of the Parties Group after the Transaction are shown in Figure 1).

The applicable provision is Article 10 of the Antimonopoly Act.

There are multiple competitive or business relationships among the businesses operated by the Parties Group. Among the considerations made on these relationships, the following details the results of examinations of these combinations: horizontal business combinations in the car navigation DB business and the Net DB business and vertical business combinations in which the car navigation DB business is the upstream market and the car navigation software business is the downstream market, which were considered to have a relatively large impact on competition.

Figure 1: Major Capital Relationships of the Parties Group after the Transaction

¹ Prior to the Transaction, while TOYOTA MAPMASTER had been a subsidiary of TOYOTA (a "subsidiary" as defined in Article 10, Paragraph 6 of the Antimonopoly Act and hereinafter the same apply in this footnote), AISIN had not been. Thus, AISIN and TOYOTA MAPMASTER are the same group of combined companies ("group of combined companies" as defined in Article 10, Paragraph 2 of the Antimonopoly Act and hereinafter the same apply in this footnote) with TOYOTA as the ultimate parent company. Therefore, the JFTC decided to include AISIN's acquisition of TOYOTA MAPMASTER's shares in the subject of the business combination review because it does not meet Part I .1 (4) B of the Business Combination Guidelines, which states that "in many cases, the business combination review is not normally conducted when the share acquiring company and the share issuing company belong to the same group of combined companies."



PartIII Particular field of trade

1. Product Overview

(1) Outline of the map database

The procedure for creating the map database is roughly as follows.

First, the Geospatial Information Authority of Japan and local governments have conducted surveys to create "Fundamental Maps" that describe coastlines, boundaries of public facilities, elevation points, and perimeter lines of buildings.

Next, the map database production and sales business operator (hereinafter referred to as "map vendor") creates map data by adding information (contents) corresponding to the purpose of use collected by conducting on-site surveys and surveys based on high-precision measurement in the company to the basic map.

Map vendors also compile collections of multiple types of map data, such as road and urban area map data, add search tools, and so on, and create and sell map databases.

Map databases are broadly classified into three types: "housing map database," "map database for navigation," and "high-precision three-dimensional map database." The outline of these databases is as follows.

A. Housing map database

The housing map database is an electronic version of a housing atlas sold to local governments, companies, and the like, and has information such as resident names, building names, tenant information, addresses, and the like.

B. Map database for navigation

The map database for navigation is a map database to which information such as traffic regulations, road types, road widths, road sign positions, signal positions, and facilities is added. The map database for navigation is used for car navigation software, map application, web map service, and the like.

The car navigation DB and the Net DB, which are the subject products, are both a type of map databases for navigation, and the map data serving as the base is common. However, the information added to the two databases is different, for example, the car navigation DB includes information required for driving a car such as information on a railroad crossing, a tollgate, and a parking lot, and the Net DB includes information for supporting walking and movement in a public transportation system.

(a) Car navigation DB

Car navigation DB is sold to car navigation software manufacturers.

A car navigation software manufacturer creates car navigation software using a car navigation DB and sells it to a car navigation manufacturer, and the car navigation manufacturer makes a car navigation equipped with the car navigation software.

(b) Net DB

The Net DB is sold to map application manufacturers and web map service operators.

Map application manufacturers and web map service operators sell and provide map application and web map services using the Net DB to consumers and companies.

C. High-precision three-dimensional map database (HD map)

The high-precision three-dimensional map database (hereinafter referred to as "HD map") is a map data to which real features (something that exist such as traffic signs and traffic lane) and virtual features (something that does not exist such as a center line of traffic lane) is added. The map data is sold mainly to automobile manufacturers.

Since the position of a vehicle can be specified at a lane level by using an

HD map, the HD map is used exclusively in a driving assistance system and a self-driving system of a vehicle.

(2) Car navigation software

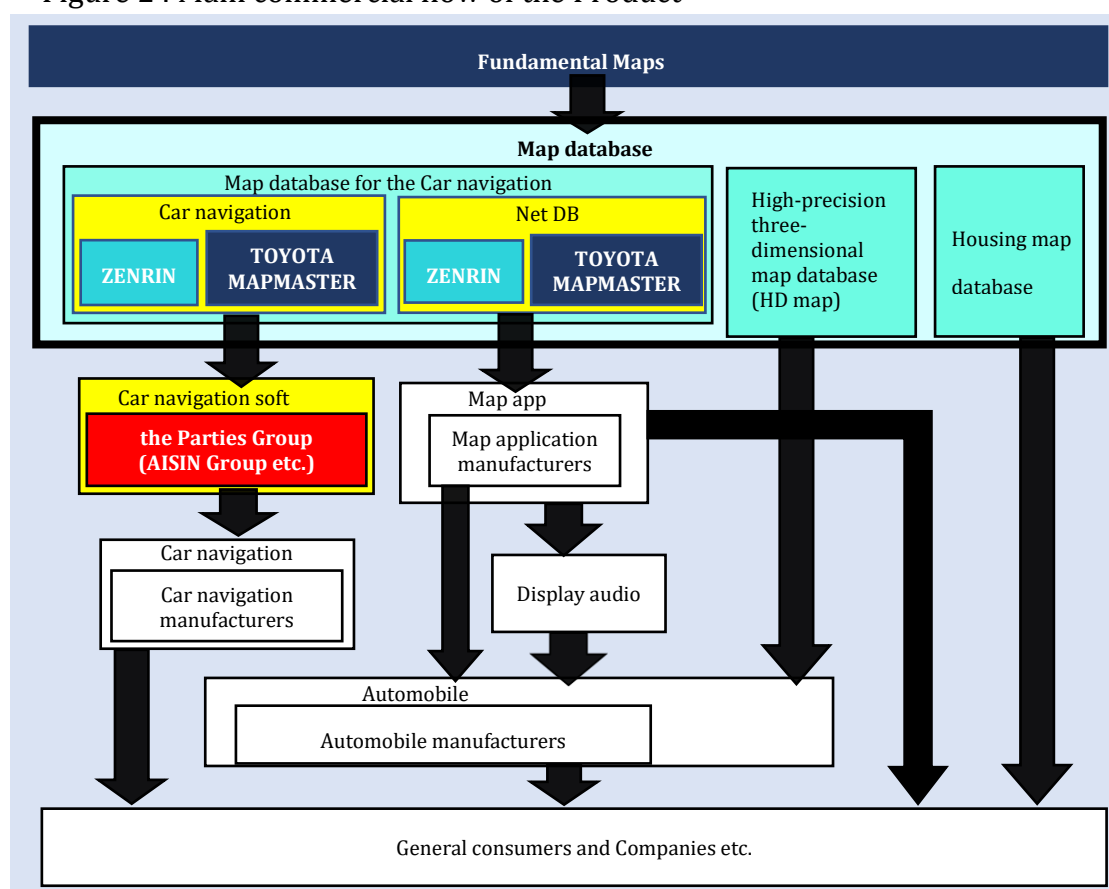
The car navigation software is provided for a car navigation system mounted in a car (hereinafter referred to as "car navigation for a vehicle") and a portable car navigation system (hereinafter referred to as "portable car navigation"). The software is sold to automobile manufacturers and consumers through car navigation manufacturers.

The car navigation for a vehicle is classified into manufacturer options (devices mounted in the manufacturing stage of the vehicle), dealer options (devices selected as mounting options when the vehicle is purchased), and commercial products (devices sold to consumers at an automotive parts and accessories store).

(3) Display audio

Display audio is a car audio that can operate applications for smartphones. By connecting their smartphone to the display audio, car users can use the applications installed on their smartphone (such as car navigation applications and map applications) on the display audio.

Figure 2 : Main commercial flow of the Product



2. Product scope

(1) Map database

A. Substitutability between map database types

As described in 1 (1) above, the map databases include a housing map database, a map database for navigation, and an HD map, but the types of information added to each database are different, and thus the utility for the customer is different. Thus, there is no substitutability of demand between map database types.

Next, although each map database is common in that a basic map is used, since the information and functions added are different depending on the type of map database, and the process of creating a map database is different, it does not mean that if one map database is created, another map database can be easily created. Thus, there is no substitutability of supply between map database types.

B. Substitutability between car navigation DB and the Net DB

The car navigation DB and the Net DB, which are a kind of map database for navigation, have the same map data, but have different information added according to the use as described in 1 (1) B. According to the results of interviews with customers, it is not impossible to use both DBs as substitutes, but it is not easy to do so when considering the maintenance of the service level of the car navigation software provided, and it may take several years to switch. Therefore, no substitutability of demand is recognized between the car navigation DB and the Net DB.

Next, since the car navigation DB and the Net DB differ in the information and functions added thereto, and the map database creation process is different, it does not follow that if one of them is created, the other can be easily created. Therefore, no substitutability of supply is recognized between the car navigation DB and the Net DB.

C. Summary

Based on the above, the product scope in this case is defined as "housing map database," "car navigation DB," "Net DB," and "HD map."

Some map application manufacturers offer to map application manufactures the data for map application which can be provided to customers as it is without adding value to the data as provided (hereinafter referred to as "set-map data"). Set-map data is sometimes used by map application manufacturers, etc., which are Net DB customers, in place of the Net DB. It is recognized that there is a certain degree of substitutability of demand between the Net DBs and set-map data. Therefore, set-map data was considered in the evaluation of competitive pressure from adjacent markets as a product with similar utility to the Net DB.

(2) Car navigation software

The car navigation software is software developed for mounting in a car navigation, and is not of a nature that can be substituted by other software.

Accordingly, the product range is defined as "car navigation software" in this case.

3. Geographical scope

The products described in 2 above are all sold in Japan with the intention of being used in various parts of the country, and there is no circumstance that the

prices and the charge systems differ depending on the region. Customers of the products are also considered to be purchasing from domestic suppliers in Japan regardless of the regions where the suppliers are located, basically on the assumption that the products will be used in various regions in Japan.

Accordingly, in this case, the geographical range of each of the products described in 2 above is defined as "the whole of Japan".

PartIV Effect of the Transaction on Competition

1. Horizontal business combination

(1) Horizontal Business Combination ① (Car Navigation DB Business)

A. Applicability of safe harbor criteria

The market share of the car navigation DB is shown in Table 1. The HHI after the Transaction is approximately 3,000 and the increment of HHI is approximately 2,000. Therefore, the HHI does not meet the safe harbor criteria for horizontal business combinations.

Therefore, whether the Transaction would substantially restrain competition in the field of trade of car navigation DB will be examined in B and C below.

Table 1: Market Share of Car Navigation DB (FY 2022)

Rank	Company	Market Share
1	ZENRIN Group	Approx. 30%
2	TOYOTA MAPMASTER	Approx. 30%
-	Others	Approx. 35%
Total		100%
Combined market share and ranking: Approx. 65% and No. 1		
HHI after the Transaction: Approx. 3,000		
HHI increment: Approx. 2,000		

B. Substantial restraint of competition by unilateral conduct

(a) Status of the Parties Group and competitors

a) Market share and ranking

There are several competitors other than the Parties Group. As mentioned in A above, the combined market share of the Parties Group after the Transaction is approximately 65% (the largest share), and the gap between the Parties Group and other competitors will be large.

b) Competitive situation in the past among the Parties Group

Looking at the actual trade conditions of car navigation DB, for example, unlike the ZENRIN Group, TOYOTA MAPMASTER sells many of its car navigation DB to automobile manufacturers in the TOYOTA

Group through car navigation software manufacturers and car navigation manufacturers, and the transaction relationship tends to be fixed. It was not necessarily found that competition among the Parties Group was active. In addition, the results of interviews with customers did not reveal that customers of car navigation DB frequently switched their sources of supply between the ZENRIN Group and TOYOTA MAPMASTER.

Therefore, even if competition among the Parties Group is lost by the Transaction, it is considered that the effect on competition in the field of transactions of the car navigation DB is not significant.

c) Surplus supply capacity of competitors

In the field of car navigation DB transactions, there are several competitors of the Parties Group, and the combined market share of these competitors is approximately 35%. In addition, since the car navigation DB is intangible and the marginal cost of supply is low, it is considered that the competitor can easily increase the supply amount.

Therefore, the competitors of the Parties Group are considered to have surplus supply capacity.

(b) Competitive pressure from adjacent markets

In recent years, it has become possible to search for a route and arrive at a destination using a map application if you have a smartphone without using a car navigation system. In addition, the function available for using map application become popular in a vehicle which has a display audio or onboard operating system (hereinafter referred to as "onboard hardware", and map application and this function are collectively referred to as "app service").

While the driver is the direct customer of an app service, the car navigation software manufacturer is the direct customer of a car navigation DB. Therefore, it is considered that an app service and a car navigation DB are not in a direct substitute relationship. However, the recent decline in demand for portable car navigation is noticeable, and it is evident that consumers are switching from car navigation to map application. In addition, several automobile manufacturers are starting to adopt display audio and onboard hardware instead of car navigation.

In light of these facts, if the Parties Group raises the price of the car navigation DB, the price of car navigation software and car navigation will rise, and it is possible that the switch from car navigation to app services will further progress. Therefore, it is considered that the car navigation software, which is a product in the downstream market from the viewpoint of the car navigation DB market, and the app service, which is in competition with the car navigation, have the restraining power on the price increase of the car navigation DB.

Therefore, competitive pressure from the app service market, which is indirectly adjacent to the car navigation DB market, is recognized.

(c) Competitive pressure from customers

The direct users of the car navigation DB are car navigation software manufacturers or car navigation manufacturers who also create car navigation software, and the main customers of these users are car navigation manufacturers or automobile manufacturers. The car navigation sold to consumers through automobile manufacturers include the products which consumers can purchase by directly looking at the price of the car navigation such as dealer options. Consumers want to minimize the cost of purchasing cars, including dealer options. Therefore, it is considered that car navigation software manufacturers are under pressure from car navigation manufacturers and automobile manufacturers to lower prices in consideration of such consumption behavior. In fact, as a result of hearings with users, it was found that car navigation software manufacturers and car navigation manufacturers regularly negotiate prices of car navigation DBs with map vendors in response to requests for price reductions from automobile manufacturers.

Therefore, the Parties are under pressure to control price increases from automobile manufacturers and car navigation manufacturers through car navigation software manufacturers in light of consumer behavior, and thus competitive pressure from customers is recognized.

(d) Summary

As described above, the combined market share of the Parties Group after the Transaction is approximately 65%, and the gap in market share

with competitors will increase, but the impact of the loss of competition among the Parties is not necessarily large, the competitors of the Parties Group are recognized to have surplus supply capacity, and competitive pressures from adjacent markets and customers are recognized. Therefore, it is not considered that the unilateral conduct of the Parties Group would substantially restrain competition in the field of transactions of car navigation DB.

C. Substantial restriction of competition by coordinated conduct

As mentioned in A above, the market share in the field of trade of the car navigation DB is concentrated in a few major operators like each of the ZENRIN Group and TOYOTA MAPMASTER has a market share of approximately 30%. As a result of the Transaction, the number of competitive units will decrease, and it is possible that coordinated conduct will occur between the Parties Group and competitors.

However, as described in B (b) and (c) above, competitive pressures from adjacent markets and customers are recognized, and these competitive pressures are considered to be factors that prevent coordinated conduct.

Therefore, it is not considered that the coordinated conduct between the Parties Group and the competitors would substantially restrain competition in the field of trade of the car navigation DB.

(2) Horizontal business combination ② (Net DB business)

A. Applicability of safe harbor criteria

Since the market share of the Parties Group in the Net DB transaction field is unknown, the safe harbor criteria for horizontal business combinations are assumed to be not met. Whether the Transaction would substantially restrain competition in this field is examined in B and C below.

B. Substantial restraint of competition by unilateral conduct

(a) Status of the Parties Group and competitors

a) Market share and ranking

As mentioned in A above, the market share of the Parties Group in the Net DB market is unknown, although there are several providers

of the Net DB.

b) Competitive situation in the past among the Parties Group

According to the results of interviews with customers, it was not found that customers of the Net DB frequently switched their sources of procurement between the ZENRIN Group and TOYOTA MAPMASTER.

In this regard, the Parties Group also stated that there had been no instances of the Net DB customers switching this procurement source from the ZENRIN Group to TOYOTA MAPMASTER (or vice versa).

Therefore, even if competition among the Parties Group is lost as a result of the Transaction, the impact on competition in the field of the Net DB transactions is not necessarily large.

c) Surplus supply capacity of competitors

As the Net DB is intangible and the marginal cost of supply is low, it is considered that the competitors of the Parties Group can easily increase the supply.

Therefore, the competitors of the Parties Group are considered to have surplus supply capacity.

(b) Competitive pressure from adjacent markets

As described in Part III, 2 (1) C, the set-map data is sometime used by customers such as map application manufacturers in place of the Net DB, and therefore, it is considered that the set-map data is a product having a utility similar to that of the Net DB (a product in a market adjacent to the Net DB market).

Therefore, if the Parties Group raises the price of the Net DB, there is a possibility that customers such as map application manufacturers will switch their products procurement from the Net DB to the set-map data. Therefore, the set-map data is considered to be a restraining force against the Parties Group raising the price of the Net DB.

Thus, competitive pressure from adjacent markets is recognized.

(c) Competitive pressure from customers

The main customers of the Net DB are map application manufacturers

and operators of web map services. Generally, operators of map application and web map services provide free map application and web map service to consumers, but many map application manufacturers and operators of web map services are considered to have strong bargaining power in terms of business scale.

In addition, the interviews with customers revealed as follow: If the price of the Net DB is raised, users of that will pass on increases in the price to the sales price of the digital advertising space associated with the provision of map application². However, it is difficult to raise the selling price of digital advertising space because there are many strong competitors in the digital advertising market (a market where advertisers are the customers). For this reason, competition in the market for services provided by the Net DB customers (digital advertising market) is considered to be active. As mentioned above, considering that there are many Net DB customers who seem to have strong bargaining power, this can function as pressure on the Parties Group to lower the price of the Net DB.

Thus, competitive pressure from customers is recognized.

(d) Summary

As described above, the combined market share of the Parties Group after the Transaction is unknown. However, the effect of the loss of competition among the Parties Group is not considered to be significant, the competitors of the Parties Group are recognized to have surplus supply capacity, and competitive pressure is recognized from adjacent markets and customers. Therefore, it is not considered the unilateral conduct of the Parties Group would substantially restrain competition in the transaction field of the Net DB.

C. Substantial restraint of competition by coordinated conduct

Although the market share of Net DB is unknown, competitive pressures from adjacent markets and customers are recognized as described in B. (b) and (c) above. These competitive pressures are considered to be a factor that hinders coordinated conduct between the Parties Group and

² When you run a free application, you may see ads at the top and bottom of the screen.

competitors.

Therefore, it is not considered that the coordinated conduct of the Parties Group and competitors would substantially restrain competition in the transaction field of the Net DB.

2. Vertical business combination (upstream market: car navigation DB business, downstream market: car navigation software business)

(1) Applicability of safe harbor criteria

A. Car navigation DB business (upstream market)

The combined market share of the Parties Group in the car navigation DB business is approximately 65% as described in 1. (1) A. above.

B. Car navigation software business (downstream market)

Table 2 shows the market share of the car navigation software business. Only the AISIN Group of the Parties Group has a market share of approximately 30%.

In addition to the AISIN Group, there are several companies operating car navigation software businesses in the Parties Group, but their market shares are unknown.

Table 2: Market Share of Car Navigation Software (FY 2019)

Rank	Company	Market Share
1	AISIN Group	Approx. 30%
2	Company A	Approx. 15%
3	Company B	Approx. 15%
4	Company C	Approx. 10%
5	Company D	Approx. 5%
-	Others ³	Approx. 25%
Total		100%
Combined market share and ranking: Approximately 30% or more, No. 1		
HHI after the Transaction: Unknown		
HHI increment: unknown		

³ Including the market shares of the Parties Group, excluding the AISIN Group.

C. Summary

The Transaction does not meet the safe harbor criteria for a vertical business combination because the market share of the Parties Group exceeds 10% in both the upstream market and the downstream market.

Therefore, whether the Transaction would substantially restrain competition is examined in (2) and (3) below.

(2) Substantial restraint of competition by unilateral conduct

A. Input Foreclosure

As described in 1 (1) A. above, the combined market share of ZENRIN Group and TOYOTA MAPMASTER in the field of car navigation DB transactions after the Transaction becomes approximately 65% (the first place), and the gap between them and the competitors of the Parties Group will become large. In addition, in the interview with the customers, the customers replied that it takes several years and a considerable development cost for the customer to switch the supplier of the car navigation DB.

Therefore, if the Parties Group refuses to supply the product, it is not easy for the car navigation software manufacturer to procure the car navigation DB from other suppliers. Therefore, the Parties Group is considered to have the ability to close the input.

However, even if the Parties Group conducted the input foreclosure and succeeded in increasing its market share in the car navigation software market, the movement to switch from car navigation to app services in the adjacent market (described in 1 (1) B (b) above) would exert competitive pressure, and would be a factor that would prevent the Parties Group from raising the price of car navigation software.

Therefore, it is not considered that the Transaction would substantially restrain competition in the downstream market.

B. Customer foreclosure

As mentioned in (1) B. above, the AISIN Group alone has a market share of approximately 30% in the car navigation software market. However, there are several other companies with market shares of approximately 10% to approximately 15%. For this reason, competitors of the Parties Group involved in the car navigation DB can easily switch their sales

contact to other car navigation software manufacturers, and therefore the Parties Group is not considered to have the ability to close customers.

Therefore, it is considered that there is no risk that the Transaction will cause a problem of market closure and exclusivity due to the customer foreclosure for car navigation software by the Parties Group.

(3) Substantial restraint of competition by coordinated conduct

A. Ease of coordinated conduct in upstream markets

It is probable that the Transaction may enable the ZENRIN Group and TOYOTA MAPMASTER to obtain confidential information that is important for competition, such as the prices of car navigation DB supplied by other map vendors, through the AISIN Group and other companies in the Parties Group, thereby making it easier to predict the behavior of competitors of the Parties Group and increasing the possibility of coordinated conducts among map vendors.

However, as described in 1 (1) B (b) and (c) above, in the car navigation DB market, competitive pressure from adjacent markets and customers is expected to act, and it is unlikely that map vendors will take coordinated conducts.

B. Ease of coordinated conduct in downstream markets

The Parties Group, such as the AISIN Group, may be able to obtain confidential information that is important for competition, such as the prices of car navigation software supplied by other manufacturers of that, through the ZENRIN Group and TOYOTA MAPMASTER. This may make it easier to predict the behavior of competitors of the Parties Group, and may increase the possibility of coordinated conduct among car navigation software manufacturers.

However, as mentioned in (1) B. above, there are several companies in the car navigation software market that have a market share of approximately 10 to 15 percent other than the Parties Group. In addition, as in the case of the car navigation DB market, there is a possibility that the car navigation software market will be subject to competitive pressure from adjacent markets and customers. Therefore, it is unlikely that car navigation software manufacturers will take coordinated conducts.

C. Summary

Based on the above, it is not considered that the coordinated conduct between the Parties Group and competitors would substantially restrain competition in the upstream market and the downstream market.

Part V Conclusion

The JFTC concluded that the Transaction would not substantially restrain competition in a particular field of trade.

Case 8 Acquisition of shares in U-NEXT HOLDINGS Co., Ltd. by TBS HOLDINGS, INC.

Part I The Parties

TBS HOLDINGS, INC. (JCN5010401020855) (hereinafter referred to as "TBS HD") is a holding company that has subsidiaries and other entities that operate video content streaming business.

U-NEXT HOLDINGS Co., Ltd. (JCN7011001116975) (hereinafter referred to as "U-NEXT") is mainly engaged in video content streaming business.

Hereinafter, the group of parties that have already formed a business relationship with TBS HD is called the "TBS HD Group," the group of parties that have already formed a business relationship with U-NEXT is called the "U-NEXT Group," and the TBS HD Group and the U-NEXT Group are collectively referred to as the "Parties Group."

Part II Outline of the Case and applicable provisions

This case is about TBS HD's plan to acquire 20% of the voting rights of U-NEXT shares (hereinafter referred to as the "Transaction")¹. Although the criteria for notification as provided for in Article 10 (2) of the Antimonopoly Act were not met, TBS HD provided specific details of the plan and consulted with the JFTC on a business combination plan that did not require notification. The JFTC therefore examined this case in the same manner as if notification had been made for a business combination plan that required notification, in accordance with 6 (1) of the "Policies Concerning Procedures of Review of Business Combination" (Japan Fair Trade Commission, June 14, 2011).

The applicable provision is Article 10 of the Antimonopoly Act.

There are multiple competitive or business relationships among the businesses operated by the Parties Group. Of the examinations on these relationships, the following is a detailed description of the results on businesses related to video content that was considered to have a relatively large impact on competition.

Part III Particular field of trade

¹ In light of the TBS HD's percentage of voting rights held and the ranking of shareholders in U-NEXT after the Transaction, it is considered that the joint relationship between TBS HD and U-NEXT will be formed, maintained, and strengthened after the Transaction.

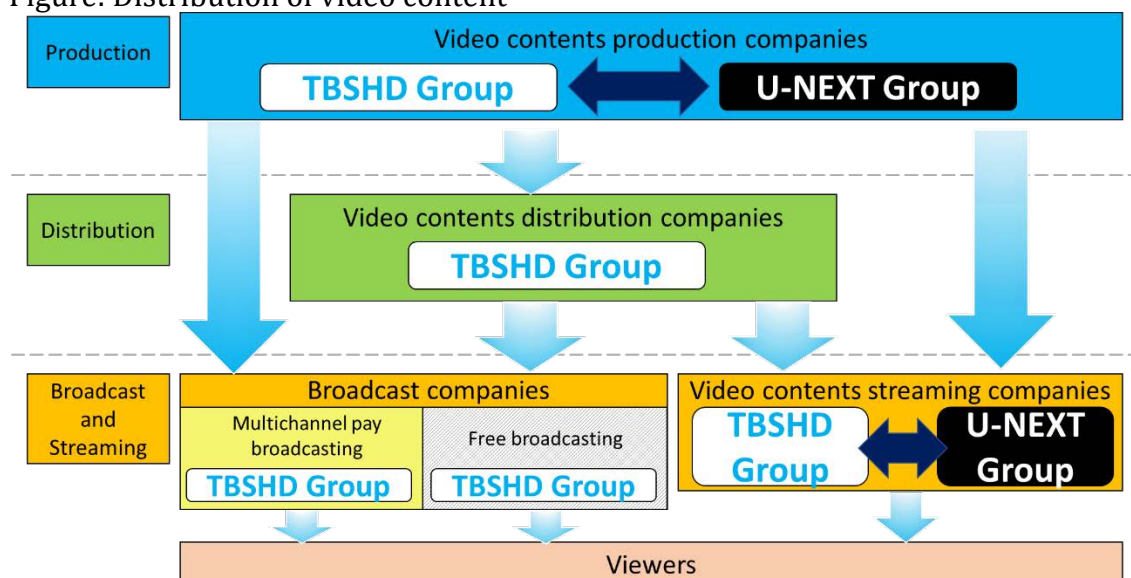
1. Overview of the services of the Parties Group

The TBS HD Group is engaged in the production, distribution, and streaming of video content and the pay broadcasts in Japan.

On the other hand, the U-NEXT Group operates a production and streaming business of video content in Japan as a business related to video content.

The distribution of video content is shown in the following figure, and the outline of each business operated by the Parties Group is as follows.

Figure: Distribution of video content



(1) Video content production business

The video content production business is to produce video contents such as movies, dramas, variety shows, animation, sports, and music.

Video content production parties plan, produce, shoot, and edit various video content, and earn profits by selling the broadcasting rights of produced video content to distributors, streaming parties, or broadcasters.

They sell video content by ① selling it without going through distributors, or ② selling it through distributors to reduce the costs of investigating the customers and negotiating contracts with the purchasers.

(2) Video content distribution business

The video content distribution business is to distribute video content produced by the production parties to the streaming parties and the broadcasters.

The video content distributor basically obtains profits by purchasing the broadcasting rights of the video content from the production parties and selling the broadcasting rights to the streaming parties and the broadcasters.

(3) Video content streaming business

The video content streaming business is to provide a streaming service of video content produced by itself or procured from production parties through the Internet.

A video content streaming party receives profits by receiving viewing fees from viewers in exchange for viewing various video contents or receiving advertisement fees by streaming advertisement videos along with various video contents.

(4) Broadcasting business

Broadcasting businesses is to provide broadcasting services for video content produced by itself or procured from production parties through a ground wave, satellite or wired communication network².

The broadcasting business is divided into the multichannel pay broadcasting business and the free broadcasting business in relation to the viewers. The multichannel pay broadcasters receive subscription fees based on the contract with the viewers, while the free broadcasters receive advertisement fees by broadcasting advertisement videos along with various video contents.

2. Service scope

(1) Video content production business

A. Substitutability between video content of different genres

Video contents include various genres such as movies, dramas, variety shows, animation, sports, and music. Generally, viewers who are the end users of video contents do not view only video contents of a specific genre, but may select video contents to view from various genres according to their preferences and viewing purposes (information collection, entertainment, etc.). For this reason, distributors, streaming parties, and broadcasters that deal with production parties purchase a wide range of

² There are mainly television transmission cables (for CATV) and optical fibers for communication (for so-called optical television).

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video content from various genres in consideration of the viewing tendency of viewers. In addition, they do not have any particular restriction on the genre that can be distributed, streamed, and broadcasted, and when the video content of a specific genre cannot be procured or the procurement price has risen, it is possible to procure alternative video content from another genre, and distribute, stream, and broadcast it. Therefore, the substitutability of demand is recognized between the production businesses of different genres.

B. Summary

Accordingly, in this case, the service scope is defined as "video content production business."

(2) Video content distribution business

A. Substitutability between video content of different genres

Video content distributors generally earn profits by purchasing broadcast rights for video content from production parties and selling them to streaming parties and broadcasters. However, since streaming parties and broadcasters do not have any special circumstances such as restrictions on streaming and broadcasting depending on the genre of video content, they can procure video content from video distributors regardless of the genre according to their own demand based on the viewing tendency of viewers. Therefore, there is a substitutability of demand between the distribution businesses of video contents of different genres.

B. Summary

Accordingly, the service scope is defined as "video content distribution business."

(3) Video content streaming business

A. Substitutability between video content of different genres

Among streaming parties, there are businesses that stream video content of various genres and businesses that stream only video content of a specific genre. Viewers who actually view video content through the streaming services are considered to decide the streaming party that

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provides the streaming service to be actually used after comparing and examining the lineup of video content to be streamed and the subscription fee (difference in billing method and amount of money), rather than comparing the streaming parties in a specific genre. Therefore, there is a substitutability of demand between the video content streaming businesses of different genres.

B. Summary

Accordingly, in this case, the service scope is defined as "video content streaming business."

(4) Broadcasting business

A. Substitutability between multichannel pay-broadcasts and free-broadcasts

The utility of multichannel pay broadcasts and free broadcasts for viewers differs greatly depending on whether they are charged for viewing video content and the total number of video content to be broadcast. In addition, the technology and know-how required for business operations differ for broadcasters and the business schemes for earning profits also differ greatly. Therefore, the substitutability of demand and the substitutability of supply between the multichannel pay broadcasting business and the free broadcasting business are limited.

B. Summary

Accordingly, in this case, "multichannel pay broadcasting business" and "free broadcasting business" are defined as different services.

3. Geographical scope

The production, distribution, streaming and broadcasting of video content can be provided as a service from remote locations. On the other hand, viewers who are the end users of video content prefer content that can be viewed in Japanese, and therefore, they mainly view content produced in Japan or content produced overseas and localized such as subtitling and dubbing process. Based on such preferences of viewers, video content for Japan is traded among various parties involved in the production, distribution, streaming, and broadcasting of video content.

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Accordingly, the geographical scope of this case is defined as "all over Japan" for any of the businesses of production, distribution, streaming and broadcasting of video contents³.

PartIV Effect of the Transaction on Competition

1. Types of Business combination and applicability of safe harbor criteria

The following table shows the types of business combinations that may have a competitive impact due to the Transaction.

In addition, since the exact market share of the Parties Group in a certain field of trade after the Transaction is unknown as to each of the business combinations listed in the following table, the impact of the Transaction on competition is examined on the assumption that it does meet under the safe harbor criteria.

³ Case 7 of "Integration of Microsoft Corporation and Activision Blizzard Inc." in "Major Business Combinations in FY 2022" (June 28, 2023, JFTC) also defines the geographical range of "game development and publishing business" and "game sales and distribution business" as "all of Japan" because of the necessity of localization of languages, etc. in each country and the differences in preferences of consumers in each country.

Table: Types of Business Combination

Horizontal business combination	
Video content production business	
Video content streaming business	
Vertical business combination	
Upstream market	Downstream market
Video content production business	Video content distribution business
	Video content streaming business
	Multichannel pay broadcasting business ⁴
Video content distribution business	Video content streaming business

2. Horizontal business combination

(1) Horizontal business combination in the video content production business

There are several major competitors in the video content production business. In addition, since there are no particular technical obstacles for video content distributors, streaming parties, and multichannel pay broadcasters, who are the consumers of the production parties, to receive video content from the production parties other than the Parties Group and distribute, stream, or broadcast it, it is considered that they can easily switch video content production parties from whom they purchase it. Therefore, the restraining power from competitors is recognized.

As described in (2) and 3 (1) below, it is considered that the video content distribution business, the streaming business, and the multichannel pay broadcasting business each have multiple major competitors, and competition is active in each business. Therefore, a certain degree of competitive pressure from consumers is recognized.

(2) Horizontal business combination in video content streaming business

⁴ The business combination in question is also a vertical business combination in which the downstream market is the free broadcasting business. However, it was considered that the business combination in question would not be significantly different from a vertical business combination in which the downstream market is the multichannel pay broadcasting business. Therefore, the vertical business combination in which the downstream market is the multichannel pay broadcasting business was examined among the broadcasting businesses (see 3. (1) below).

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In the video content streaming market, "subscription video on demand," which is one form of video content streaming services, accounts for more than 80% of total sales. There are several major competitors in this market, including parties that offer both subscription video on demand and "pay-per-view"(electric sell-through and transactional video on demand).

On the other hand, the market share of the Parties Group in the subscription video on demand market after the Transaction was limited to approximately 15% at the maximum, and there is no circumstance that the Parties Group has particular strength in the pay-per-view market, which accounts for nearly 20% of the total sales of the video content streaming market. The market share of the Parties Group in the overall video content streaming business is not expected to be much more than approximately 15%.

(3) Summary

Based on the above, it cannot be said that the horizontal business combination in the video content production business and the video content streaming business would substantially restrain competition by the unilateral conduct of the Parties Group or the coordinated conduct of the Parties Group and competitors.

3. Vertical business combination

(1) Vertical business combination ① (Upstream market: Video content production business, Downstream market: Video content distribution business, Video content streaming business, Multichannel pay broadcasting business)

As described in 2 (1) above, there are several major competitors in the video content production business in the upstream market. In the video content streaming business and the multichannel pay broadcasting business, the video content can be purchased not only from the production parties but also from the distributors. Therefore, even if the Parties Group refuses to supply video content to competitors in the distribution business, the streaming business, and multichannel pay broadcasting business, the competitors can sufficiently switch the suppliers of it. Therefore, the Parties Group does not have the capacity to conduct input foreclosure, and the problem of market closure and exclusivity is not deemed to arise in the

downstream market.

Turning to the downstream market, there are several major competitors in the video content distribution business, video content streaming business, and multichannel pay broadcasting business. The production parties can sell the video content to any of the distributors, the streaming parties, and the multichannel pay broadcasters. Therefore, even if the Parties Group refuses to purchase the video content from a competitor of the Parties Group in the video content production business, the competitor is considered to be sufficiently capable of switching the customers of it. Therefore, the Parties Group does not have the ability to conduct foreclosure, and the problem of market closure and exclusivity is not deemed to arise in the upstream market.

(2) Vertical business combination ② (Upstream market: Video content distribution business, Downstream market: Video content streaming business)

First, in the upstream market, even if the TBS HD Group refused to supply video content to the competitors of the Parties Group which are engaged in the streaming business, as described in 3 (1) above, there are several major competitors in the video content distribution business, and it is possible to purchase video content directly from the production parties. Therefore, it is considered that the competitors of the Parties Group can switch their purchasing source to the competitors of the TBS HD Group in the video content distribution business or the production parties. Therefore, the Parties Group does not have the capacity to close the input, and the problem of market closure and exclusivity is not deemed to arise in the downstream market.

Next, looking at the downstream market, even if the Parties Group refused to purchase from a competitor of the TBS HD Group in the video content distribution business, as mentioned in 3 (1) above, there are several major competitors in the video content streaming business, and it is considered that the competitor of the TBS HD Group can switch its customers to the competitor of the Parties Group in the video content streaming business. Therefore, the Parties Group does not have the ability to close customers, and the problem of market closure and exclusivity is not deemed to arise in the upstream market.

(3) Summary

Based on the above, it cannot be said that the vertical business combination mentioned in (1) and (2) above would substantially restrain competition by the unilateral conduct of the Parties Group or the coordinated conduct of the Parties Group and competitors.

Part V Conclusion

The JFTC concluded that the Transaction would not substantially restrain competition in a particular field of trade.

Case 9 Acquisition of stock in Asiana Airlines Inc. by Korean Air Lines Co., Ltd.**Part I: Overview of the Parties**

Korean Air Lines Co., Ltd. (JCN 6700150004988) and Asiana Airlines Inc. (JCN 7700150000045) are both companies headquartered in the Republic of Korea that are primarily engaged in the international air passenger transport business and the international air cargo transport business.

The table below presents abbreviations of relevant terms used in this document; the items in the left-hand column shall be referred to using the corresponding words and phrases in the right-hand column.

Left-hand column	Right-hand column
Korean Air Lines Co., Ltd.	Korean Air
A group of companies that have already formed an integral relationship with Korean Air as the ultimate parent company	Korean Air Group
Asiana Airlines Inc.	Asiana Airlines
A group of companies that have already formed an integral relationship with Asiana Airlines as the ultimate parent company	Asiana Airlines Group
A group of companies comprised of Korean Air and Asiana Airlines	Parties
A group of companies comprised of Korean Air Group and Asiana Airlines Group	Parties Group

Part II: Outline of this Case and Applicable Provisions

This case involves a plan by Korean Air to acquire more than 50% of the voting rights of Asiana Airlines stock (hereinafter referred to as the “Action”).

The applicable provision is Article 10 of the Antimonopoly Act.

In this case, the Japan Fair Trade Commission (hereinafter referred to as the “JFTC”) reviewed all the businesses operated by the Parties Group that were in competitive or transactional relationships. The following is a detailed description of the results of the review of a horizontal business combination in the international air passenger transportation business and the international air cargo transportation business between Japan and South Korea, which was considered to have a relatively large impact on competition.

Part III: Background of the Case

On November 16, 2020, the Parties publicly announced their plans for the Action, and since January 2021, the Parties voluntarily submitted to the JFTC a succession of written opinions and materials arguing that the Action could not be said to substantially restrain competition.

The JFTC scrutinized the contents and materials relating to the said written opinions voluntarily submitted by the Parties Group and also requested the Parties Group to submit their internal materials (e.g., materials related to the Action used at various meetings of the Parties Group’s, such as the board of directors and other meetings, and internal materials related to the analysis of competition). The submitted internal

materials were also examined closely. Additionally, questionnaire surveys and interviews with competitors and users were conducted.

At the request of the Parties Group, the JFTC exchanged views with the Parties Group on several occasions.

Subsequently, on January 24, 2024, Korean Air submitted a written notification of a plan for the Action pursuant to the provisions of the Antimonopoly Act, and the JFTC received the notification and initiated the phase 1 review. The JFTC proceeded with its review of the impact of the Action on competition based on the said written notification of the plan and the written opinions and materials submitted by the Parties Group arguing that the Action would not substantially restrain competition, as well as the Parties Group's internal documents, questionnaires and interviews with competitors and users, the results of economic analysis, and other factors.

The Action was/has been also reviewed by overseas competition authorities and the JFTC conducted the review while exchanging information with the Australian Competition and Consumer Commission, the U.K. Competition and Markets Authority, the U.S. Department of Justice, the European Commission, the Korea Fair Trade Commission, and the State Administration for Market Regulation of China.

Part IV: International Air Passenger Transportation Business

1. Definition of particular field of trade, etc.

(1) Overview of international air passenger transportation business, etc.

A. Overview of international air passenger transportation business and commercial distribution

“Air passenger transportation business” means the business of transporting passengers for a fee using aircraft to meet the demand of others, and “international air passenger transportation business” means air passenger transportation business between points in Japan and points outside Japan or between various places outside Japan (see Article 2, paragraphs 18 and 19 of the Civil Aeronautics Act (Act No. 231, 1952)). Hereinafter, a service involving the transportation of passengers for a fee by aircraft in response to customer demand is referred to as “air passenger transportation service.”

Air carriers that provide air passenger transportation services sell tickets for their flights directly to users or through travel agencies. In some cases, airline tickets are sold to tour companies and travel agencies that handle group tours, etc. Users of air passenger transportation services include not only travelers but also business travelers on business trips.

B. Full-service carriers (FSCs) and low-cost carriers (LCCs)

Airlines that provide air passenger transportation services are classified into two types: Full-service carriers (FSCs) and Low-cost carriers (LCCs). An overview of each type is provided below.

(a) Overview of FSCs

FSCs are airlines that provide conventional services, including offering multiple seat classes such as first, business, and economy, providing in-flight meals and beverages, baggage storage, lounges, and other services associated with air passenger transportation services, including compensation in the event of a flight cancellation and allowing ticket refunds.

FSCs are also called network carriers because they operate a complex route network that includes short-haul, medium-haul, and long-haul flights, as well as connecting flights. The airports used by FSCs are often the major airports in each country. Many FSCs have adopted a business model in which a base airport (hub) is the center of their operations and airports in domestic and international cities are connected like the spokes on a bicycle, attracting passengers to the base airport and transporting large numbers of passengers by large aircraft to airports in domestic and international cities. To accommodate operations on a variety of routes with different operating distances and demand, FSCs use a wide variety of aircraft with different sizes.

FSC fares are higher than LCC fares which mean that the cost of operating an aircraft is higher for FSCs than for LCCs, owing to the following factors: FSCs often use larger aircraft with more spacious seats than LCCs; they include in their fares various services incidental to air passenger transportation services, such as the provision of in-flight meals and beverages, baggage storage, and lounges; they have to schedule flights in consideration of connections between arrival and departure flights for the convenience of connecting passengers, which makes it difficult to improve the efficiency of aircraft operations; FSCs have higher training costs for flight crews and cabin crews to work on various types of aircrafts; and FSCs incur high airport usage fees due to the use of major airports.

FSCs also offer a unique point service called a frequent flyer program, which allows users to use the points (miles) they have accumulated by flying a particular airline (or an airline that has entered into an alliance with that airline), using a credit card affiliated with that airline, etc., to obtain the desired ticket without paying the fare. While a frequent flyer program provides an incentive for users to continue to use a particular airline, the airline incurs costs to maintain the frequent flyer program and operating network.

As described above, in addition to air passenger transportation services, FSCs provide various services incidental to air passenger transportation services, while fares are set at a relatively high level that incorporates the costs required to provide these services. The target users are mainly business travelers and tourists who require flexibility to accommodate sudden schedule changes or cancellations and are willing to pay for these services.

(b) Overview of LCCs

LCCs are airlines that provide low-cost air passenger transportation services by thoroughly reducing costs through simplification of various services traditionally provided in conjunction with air passenger transportation services and streamlining of operations. Specifically, the airline adopts a business model of reducing operating costs and increasing profitability by maximizing the number of seats per aircraft through narrowing seat spacing, charging for in-flight meal service, limiting reservation changes and cancellations, and reducing ticket sales costs (sales commissions to travel agencies, etc., and costs to establish and maintain local

subsidiaries and branches) through direct sales centered on the company website, reducing maintenance costs and training costs for flight crews, etc., through the use of a single fleet of aircraft and by operating aircraft more efficiently by minimizing the time spent on the ground and conducting high-frequency flights.

Additionally, in terms of reducing the cost of accommodation for flight crew and cabin crew, which is one of the ways to reduce operating costs, LCC routes are generally determined in consideration of the flight time zone that allows a crew member departing from the base airport to make a round-trip flight and return to the base airport within the daily flight time limit specified in the flight rules and regulations, meaning that the routes are mainly short-distance routes, covered in a five-hour one-way trip. Accordingly, the aircraft fleet will also consist mainly of small aircraft suitable for short-haul flights.

In general, LCCs do not offer frequent flyer programs.

As described above, LCCs are able to operate at low fares by minimizing operating costs and increasing the number of seats to reduce the cost per aircraft seat, and their target user group is mainly budget tourists who accept simplified service in favor of cheaper fares.

By providing low-cost air passenger services through the thorough cost reductions described above, LCCs have grown by attracting a new group of low-cost-oriented users who had not previously used FSCs.

C. Process leading up to airlines' start of operations and coordination of arrival and departure slots

(a) Process leading up to airlines' start of operations

Since the governments of Japan and South Korea agreed on an open skies policy*1, in 2010, airlines can, in principle, freely fly into and out of airports in Japan and South Korea, except for Tokyo International Airport (hereinafter referred to as "Haneda Airport") and Gimpo International Airport (hereinafter referred to as "Gimpo Airport"), which are excluded from this agreement. However, if an airline were to fly into a Japanese airport, it would need to acquire authorization under the Civil Aeronautics Act. In addition, at certain congested airports, requests for arrival and departure (slots*2) on a desired day of the week and during a desired time period are adjusted and allocated (hereinafter referred to as "slot adjustments") by the slot coordinator described in (b) below. Therefore, it is not always possible to operate at the desired time.

In Japan, Haneda Airport and Narita International Airport (hereinafter referred to as "Narita Airport"), Kansai International Airport (hereinafter referred to as "Kansai Airport"), Fukuoka Airport, New Chitose Airport, and Chubu Centrair International Airport, listed in Table 1, are designated as congested airports by the International Air Transport Association (IATA*3). (However, congestion levels are assigned according to the degree of congestion, with Haneda, Narita, Kansai, and Fukuoka airports designated as congestion level 3 and New Chitose and Chubu Centrair International Airports as congestion level 2.) These airports are subject to the adjustment of arrival and departure slots, with the exception of

Chubu Centrair International Airport.

In South Korea, it is also necessary to obtain authorization under South Korean domestic law to enter airports; Gimpo Airport and Incheon International Airport (hereinafter referred to as “Incheon Airport”) are designated as congested airports (congestion level 3); thus, similar slot adjustments are made for arrivals and departures.

Meanwhile, between Haneda Airport and Gimpo Airport, which are not subject to the open skies policy, Japanese and South Korean airlines are allowed to operate six round trips each per day (two of which are between Haneda Airport and Gimhae International Airport (Busan)) through consultations between the Japanese Ministry of Land, Infrastructure and Transport and the South Korean aviation authorities (inter-airport authority consultations). The decision as to which airline will be allocated this transportation concession is left to the discretion of the two governments. The companies that have been allocated transportation concessions will apply for specific slots at Haneda Airport and Gimpo Airport, respectively, and will have their slots adjusted accordingly.

- ¹ “Open skies policy” refers to the mutual elimination of restrictions on the number of companies, routes, and flights between two countries. This will allow airlines to open new routes or increase the number of flights in an elastic manner according to demand.
- ² According to the materials by the Ministry of Land, Infrastructure, Transport and Tourism, a slot is not defined by law, but is an opportunity for an aircraft to use the airport, air navigation facilities, control security, etc. concerned each time it takes off from or lands at the airport (source: June 2019, Haneda Departure and Arrival Slot Allocation Criteria Study Subcommittee (5th Meeting) Document 1, p. 4), and refers to specific arrival and departure times at specific airports on specific days of the week that are allocated to air carriers.
- ³ The International Air Transport Association (IATA) is an association of the world’s air transport-related companies and is responsible for making decisions on matters concerning transportation operations.

(b) Slot adjustment process

As described in (a) above, each airport in the two countries is classified into three levels, Levels 1-3, according to congestion levels, with slot adjustments conducted at airports with a congestion level of Level 2 and above (such slot adjustments are conducted at each airport in each country around the world). Table 1 shows the classification of congestion levels at major Japanese airports and the slot coordinator.

Table 1: Congested airports, congestion levels, and slot coordinators in Japan

Congestion Level	Airport Name	Slot coordinator
Level 3	Haneda Airport	Japan Schedule Coordination
	Narita Airport	

	Kansai Airport	(JSC)*4
	Fukuoka Airport	
	New Chitose Airport	
Level 2	Chubu Centrair International Airport	None
Level 1	Others (including Naha Airport)	None

As shown in Table 1, for Haneda, Narita, Kansai, Fukuoka, and New Chitose airports, Japan Schedule Coordination (JSC), a neutral third-party organization, is responsible for adjusting arrival and departure slots for the summer schedule (late March to late October) and winter schedule (late October to late March) in accordance with the IATA guidelines. Under the guidelines, the following priority order will be used to adjust slots at congestion level 3 airports: *5

- ① Same slots as existing airline flights (Historic*6)
- ② Time slot change for flights operated by existing carriers (Historic change)
- ③ Flights operated by new airlines (New entry)
- ④ Increased flights by existing airlines.

⁴ Japan Schedule Coordination (JSC) is an organization under the Japan Aeronautic Association (JAA), which is responsible for the coordination of slots at congested airports in Japan. JSC exists within the JAA, which is not affiliated with either the airlines or the airport companies, thereby ensuring its independence and neutral, impartial, and transparent coordination (See: <https://www.schedule-coordination.jp/jpn/>). An agency that performs this type of coordination work is also called a slot coordinator.

⁵ Although New Chitose Airport is a congestion level 2 airport, the ease of securing slots for increased flights is not much different from congestion level 3 airports, as JSC adjusts slots in accordance with IATA guidelines.

⁶ “Historic” refers to the priority given to coordinate arrivals and departures with respect to slots. To make effective use of valuable slots at congested airports, if the utilization rate of slots allocated to an airline falls below 80%, the airline will no longer be able to obtain historic slots for the same time period in the following year. This rule, which was established based on the international arrival and departure quota adjustment rules set by IATA, is called the use it or lose it rule (“U/L rule”).

(2) Scope of services

As described in (1) A above, international air passenger transportation services cater to the carriage of passengers between points in Japan and points outside of Japan or between places outside of Japan for a fee, using aircraft to meet the demand of others. In this case, the scope of services has been defined as “international air passenger transportation services.”

As described in (1) B above, while operators of international air passenger transportation services are divided into FSCs and LCCs according to differences

in various services incidental to air passenger transportation services provided to passengers, etc., for passengers as users, their requirement is to arrive at their destinations within a reasonable time, and in this respect, the two types of operators are considered to have a certain degree of demand-side substitutability. Further, since Japan-South Korea routes are short-distance flights, the impact of differences in the levels of various services that accompany air passenger transport services is considered to be relatively small. Therefore, both type of operators were defined as the same scope of services.

However, FSCs and LCCs are differentiated to a certain degree in terms of service level and price range; therefore, the degree of competitive constraint from LCCs against FSCs (relatively weak compared to the competitive constraint between FSCs) was taken into consideration when considering the impact of the Action on competition as described in 3 below. These differences between FSCs and LCCs were also considered while assessing the remedial measures proposed by the Parties (hereinafter referred to as the “Remedy”).*7

⁷ Both of the Parties are FSCs, and both of the Parties Group have LCCs.

(3) Geographic scope

In this case, a geographic scope was defined for each route (round trip) that originates and terminates at a specific departure airport (origin) and arrival airport (destination). Based on the operation status, etc., of the Parties Group, the following 10 routes for which both of the Parties Group own slots and operate passenger flights were examined in this case: Tokyo-Seoul, Osaka-Seoul, Sapporo-Seoul, Nagoya-Seoul, Fukuoka-Seoul, Okinawa-Seoul, Tokyo-Busan, Osaka-Busan, Sapporo-Busan, and Fukuoka-Busan (these 10 routes are hereinafter referred to as the “10 overlapping routes”).

Since airports located in the same city or its vicinity are substitutable options, they were defined as being in the same geographic scope. Specifically, Narita and Haneda airports, as well as Incheon and Gimpo airports, are located relatively close to the center of each city (Tokyo or Seoul), less than 100 kilometers from each other, so they are defined as the same geographic scope (“Tokyo” for Narita and Haneda airports, “Seoul” for Incheon and Gimpo airports). *8

⁸ In addition to the Kansai International Airport, Osaka Prefecture has the Osaka International (Itami) Airport, but since there are no direct flights between Japan and South Korea at this airport, “Osaka” does not include Osaka International (Itami) Airport in the definition.

(4) Assumptions for consideration in the review of this case

As the COVID-19 pandemic has had a particularly large impact on the market environment in the international air passenger transportation business, the review of this case was conducted based on a market environment that excludes the impact of COVID-19, and the market environment in 2019, before the spread of COVID-19, was used as the premise for the review as a similar market environment. Changes in market conditions after that year (e.g., competitors’ operating status), which are expected to continue even if the impact of COVID-19 is no longer significant in the future, are to be considered separately.

(5) Form of business combination

Since both of the Parties Group provide international air passenger transportation services within the geographic scope defined in (3) above, this case constitutes a horizontal business combination with regard to such services.

2. Applicability of Safe-Harbor criteria

The market shares (based on the number of passengers) of the 10 overlapping routes in 2019 are shown in Table 2 through Table 11, respectively, and none of them falls under the Safe-Harbor criteria⁹ for a horizontal business combination.

Therefore, the JFTC examines in 3 below whether the Action leads to a substantial restraint of competition.

Table 2: Market share of the Tokyo-Seoul route*10 (2019)

Rank	Company Name	Market Share
1	Asiana Airlines Group	Approx. 30%
2	Korean Air Group	Approx. 25%
3	Company A and Company B	Approx. 10%
4	Company C	Approx. 10%
5	Company D	Approx. 10%
6	Company E	Approx. 5%
7	Company F	Approx. 5%
8	Company G	0%–5%
Total		100%
Combined market share and rank: Approx. 55%, 1st rank		
HHI after the Action: Approx. 3,400		
HHI increments: 1,500		

Table 3: Market share of Osaka-Seoul route (2019)

Rank	Company Name	Market Share
1	Korean Air Group	Approx. 30%
2	Asiana Airlines Group	Approx. 25%
3	Company H	Approx. 20%
4	Company I	Approx. 10%
5	Company J	Approx. 10%
6	Company K	Approx. 5%
Total		100%
Combined market share and rank: Approx. 55%, 1st rank		
HHI after the Action: Approx. 3,600		
HHI increments: Approx. 1,500		

Table 4: Market share of Sapporo-Seoul route (2019)

Rank	Company Name	Market Share
1	Korean Air Group	Approx. 35%
2	Asiana Airlines Group	Approx. 20%
3	Company L	Approx. 20%
4	Company M	Approx. 10%
5	Company N	Approx. 10%
6	Company O	Approx. 5%

Total	100%
Combined market share and rank: Approx. 55%, 1st rank	
HHI after the Action: Approx. 3,700	
HHI increments: Approx. 1,400	

Table 5: Market share of Nagoya-Seoul route (2019)

Rank	Company Name	Market Share
1	Company P	Approx. 35%
2	Korean Air Group	Approx. 25%
3	Asiana Airlines Group	Approx. 25%
4	Company Q	Approx. 20%
Total		100%
Combined market share and rank: Approx. 50%, 1st rank		
HHI after the Action: Approx. 3,700		
HHI increments: Approx. 1,200		

Table 6: Market share of Fukuoka-Seoul route (2019)

Rank	Company Name	Market Share
1	Korean Air Group	Approx. 40%
2	Asiana Airlines Group	Approx. 20%
3	Company R	Approx. 20%
4	Company S	Approx. 10%
5	Company T	Approx. 10%
Total		100%
Combined market share and rank: Approx. 60%, 1st rank		
HHI after the Action: Approx. 4,000		
HHI increments: Approx. 1,500		

Table 7: Market share of Okinawa-Seoul route (2019)

Rank	Company Name	Market Share
1	Asiana Airlines Group	Approx. 25%
2	Korean Air Group	Approx. 25%
3	Company U	Approx. 15%
4	Company V	Approx. 15%
5	Company W	Approx. 10%
6	Company X	Approx. 10%
Total		100%
Combined market share and rank: Approx. 50%, 1st rank		
HHI after the Action: Approx. 3,100		
HHI increments: Approx. 1,200		

Table 8: Market share of Tokyo-Busan route (2019)

Rank	Company Name	Market Share
1	Asiana Airlines Group	Approx. 30%
2	Company Y	Approx. 30%
3	Korean Air Group	Approx. 25%
4	Company Z	Approx. 15%
Total		100%

Combined market share and rank: Approx. 55%, 1st rank
HHI after the Action: Approx. 4,200
HHI increments: Approx. 1,500

Table 9: Market share of Osaka-Busan route (2019)

Rank	Company Name	Market Share
1	Asiana Airlines Group	Approx. 30%
2	Korean Air Group	Approx. 25%
3	Company AA	Approx. 20%
4	Company BB	Approx. 10%
5	Company CC	Approx. 10%
6	Company DD	0%–5%
Total		100%
Combined market share and rank: Approx. 55%, 1st rank		
HHI after the Action: Approx. 3,700		
HHI increments: Approx. 1,600		

Table 10: Market share of Sapporo-Busan route (2019)

Rank	Company Name	Market Share
1	Asiana Airlines Group	Approx. 45%
2	Korean Air Group	Approx. 30%
3	Company EE	Approx. 15%
4	Company FF	Approx. 10%
Total		100%
Combined market share and rank: Approx. 75%, 1st rank		
HHI after the Action: Approx. 6,000		
HHI increments: Approx. 2,800		

Table 11: Market share of Fukuoka-Busan route (2019)

Rank	Company Name	Market Share
1	Asiana Airlines Group	Approx. 60%
2	Company GG	Approx. 25%
3	Korean Air Group	Approx. 15%
Total		100%
Combined market share and rank: Approx. 75%, 1st rank		
HHI after the Action: Approx. 6,200		
HHI increments: Approx. 1,900		

⁹ The “Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination” (May 31, 2004, the JFTC: hereinafter referred to as the “Guidelines”), 1 Part IV. 1 (3) above states that with respect to a horizontal business combination, ① if the Herfindahl–Hirschman index (HHI: an index of the concentration ratio of the market, calculated as the sum of the squares of the market shares of each business operator in a certain field of trade) after the business combination is 1,500 or less, ② if the HHI after the business combination is between 1,500 and 2,500 and the increment of HHI is 250 or less, or ③ if the HHI after the business combination is greater than 2,500 and the increment of HHI is 150 or less, then it is

normally considered that the effect of a horizontal business combination may not be substantially to restrain competition in any particular field of trade. These criteria are called the “Safe Harbor criteria.”

¹⁰ As a general rule, the percentages are stated in increments of 5%, such as “approximately 30%” for 27.5% and above and 32.5% and below. Thus, the total value is not necessarily 100. The same applies hereinafter.

3. Impact of the Action on competition

(1) Substantial restriction on competition through unilateral conduct

A. Positions of the Parties Group and competitors and the conditions of competition in the market, etc.

With regard to 7 routes out of the 10 overlapping routes, (namely, Osaka-Seoul, Sapporo-Seoul, Nagoya-Seoul, Fukuoka-Seoul, Osaka-Busan, Sapporo-Busan, and Fukuoka-Busan), ① the combined market share of the Parties Group after the Action will be as high as approximately 50%–75% and the Parties will be ranked first in terms of market share, with a large gap from the second-ranked competitors and below; ② in particular, for the Seoul routes (excluding Tokyo-Seoul), only the Parties Group operates FSCs, so competition between FSCs will be completely lost after the Action (the competitive closeness between FSCs is important as a competitive constraint and because there is a definite difference between FSCs and LCCs in fares and service levels, the competitive constraint from LCCs against FSCs is relatively weak; thus, the disappearance of competition between FSCs has a large impact on competition on these routes); ③ although some of the competitors are planning to increase the number of flights, the market share situation between the Parties Group and the competitors will not change significantly because the Parties Group is also planning to increase flights; thus, the JFTC finds that the competitive constraint from the competitors will be limited.

B. Entry

(a) Institutional barriers to entry

As stated in 1(1)C(a) above, Haneda Airport and Gimpo Airport are not subject to the open skies policy, and airlines may not freely fly into and out of these airports.

In addition, there are restrictions on arrival and departure slots for many Japanese and South Korean airports associated with the overlapping routes. Specifically, the Haneda, Narita, Kansai, Fukuoka, Gimpo, and Incheon airports, which are designated as congestion level 3 airports, and the New Chitose Airport, as a congestion level 2 airport, need to have their slots adjusted when entering congested time slots, etc. For congestion level 3 airports, as described in 1(1)C(b) above, the priority for New entry is subordinate to that of Historic and Historic change.

However, the existence of slot adjustment may not be a barrier to entry for congestion level 3 airports, as there have been several cases of entry in the past.

(b) Practical barriers to entry

For an airline to enter a particular new route, in addition to securing slots, the airline must make arrangements such as securing aircraft, coordinating flight crew and cabin crew, and selecting a contractor for ground operation services at the origin and destination airports. While it is difficult to make a generalized argument about the high or low barriers to entry because of these arrangements as their difficulty level varies depending on the circumstances of each operator seeking to enter the market, these arrangements are at least not recognized as barriers to entry that are generally restrictive to international air passenger carriers that are already operating other routes.

(c) Degree of substitutability

In air passenger transportation, the demand of passengers is to arrive at their destination within a reasonable time, and the differences between operators in this respect are small.

Regarding the difference between FSCs and LCCs, if the same type of airline as an existing airline on the route in question enters the market (e.g., the existing airline is an LCC and a new LCC enters the market), the difference in fare and service level is relatively small, so substitution is possible without problems.

However, given that there are certain differences in fares and service levels between FSCs and LCCs as described in 1(1)B above, even if an LCC enters the market, its substitutability with FSCs will be limited.

(d) Degree of potential for entry

Several LCCs have entered the Tokyo-Seoul route since 2019, the year on which this review is based.

According to the results of a survey conducted by the JFTC on airlines, for routes other than the Tokyo-Seoul route, assuming that demand recovers to the same level as before the COVID-19 pandemic and that the Parties Group alone raises fares by about 5%–10%, no airlines specifically responded that they would consider entering the route within a certain period of time (roughly within two years) from the time of responding to the survey.

(e) Summary

Based on the above, the JFTC finds that there is competitive pressure from entry for the Tokyo-Seoul route, where there has actually been market entry since 2019, but not for the other routes, since there is no realistic possibility of market entry on those routes.

C. Competitive pressure from adjacent markets

Since all Japan-South Korea routes are short-haul flights, there is no evidence of competitive pressure from transiting flights. In addition, there are no other circumstances that suggest competitive pressure from adjacent markets.

D. Competitive pressure from users

There is no evidence of competitive pressure from users in any of these routes.

E. Management situation of the Parties Group

The Parties argued that Asiana Airlines' business performance was deteriorating; that Asiana Airlines, as one of the Parties, could not find a noncompetitive buyer to replace Korean Air, given that its business performance was further deteriorating owing to the spread of COVID-19; and that a flexible decision should be made considering the risk of business failure of Asiana Airlines and the impact on consumer convenience and maintenance of international exchange on Japan-South Korea routes. In the review of this case, the JFTC determined that the said assertion by the Parties is not an explicit assertion of facts, etc. falling under B.(a)*11 and (b)*12 of Part IV.2(8) above (Financial Conditions of the Parties Group) of the Guidelines. Even if a claim based on the relevant section of the Guidelines were made by the Parties, it cannot be accepted for the following reasons:

- After reviewing the financial data for Asiana Airlines (non-consolidated) submitted by the Parties for the third quarter of 2022, the JFTC found that the performance of the international passenger and cargo divisions had improved significantly and it was unclear that Asiana Airlines was likely to go bankrupt and exit the market in the near future.
- There is possibility of the existence of a buyer to replace Korean Air that is less competition-restrictive and It is not impossible that there are buyers who would have a lesser impact on competition than the Action.

¹¹ When a party to the combination has recorded continuous and significant ordinary losses or has excess debt or is unable to obtain finance for working capital and it is obvious that the party would be highly likely to go bankrupt and exit the market in the near future without the business combination. Moreover, it is difficult to find any business operator that can rescue the party with a combination that would have less impact on competition than the business operator that is the other party to the combination.

¹² When the performance of a business department of a party to the combination is extremely poor such as recording continuous and significant losses and it is obvious that the party would be highly likely to exit the market in the near future without the business combination. Moreover, it is difficult to find any business operator that can rescue the business department with a combination that would have less impact on competition than the business operator that is the other party to the combination.

F. Results of economic analysis

(a) Overview

With respect to the air passenger transportation business, the JFTC outsourced outside experts to conduct two economic analyses.*13 Specifically, it conducted ① a price analysis (see (b)a) below; confirmation of

the robustness*¹⁴ of the regression analysis results on the impact of the number of operators in the market on fares submitted by the Parties Group) and ② an analysis of price increase incentives using GUPPI*¹⁵ (see (b)b) below; review of the presence or absence of a price increase incentive after this Action by calculating GUPPI). As a result, the results of the regression analysis submitted by the Parties Group, which stated that “the number of operators in the market will not affect fares unless the number of operators decreases from two to one,” were not robust, and the analysis showed that there is a price increase incentive for at least one of the Parties on 8 of the 10 competing routes.

¹³ The JFTC outsources economic analysis to outside experts as necessary, such as when it is necessary to conduct advanced economic analysis in light of the importance and complexity of a business combination case. In this case, given the complexity of the aviation industry and other factors, the JFTC decided to outsource the economic analysis to an outside expert; it engaged the services of UTokyo Economic Consulting Inc. (UTEcon). In selecting the contractor, the JFTC concluded a negotiated contract with UTEcon, which submitted the best proposal through a planning competition.

¹⁴ “Robustness” meaning that even if the assumptions are changed slightly, the estimated results do not differ significantly.

¹⁵ Gross Upward Pricing Pressure Index (GUPPI) is an index used to evaluate whether and to what extent there is an incentive to raise prices through business combinations, and generally, a GUPPI value exceeding 5% is considered to indicate an incentive to raise prices. The GUPPI, which represents an incentive for Company A to raise its price due to the business combination of Company A and Company B, is defined as “diversion ratio from Company A to Company B × ((Company B’s price – Company B’s marginal cost) / Company B’s price) × Company B’s price / Company A’s price.” In the international air passenger transportation business, the GUPPI value for the FSCs of one Party was calculated by adding together the GUPPI for diversion from FSCs of one Party to FSCs of the other party and the GUPPI for diversion from FSCs of one party to the LCCs of the other party.

The “diversion ratio” in the GUPPI formula refers to the percentage of the volume of demand for one good or service that is transferred from the other good or service out of the volume of lost demand for the other good or service because of a price increase of the other product or service. It is an indicator used to evaluate the degree of competition among differentiated firms or goods or services. In addition, “marginal cost” refers to the cost required to provide one additional unit of goods or services.

(b) Details

a) Price analysis

First, the following three methods were used to confirm whether the result of the economic analysis that “the number of operators in the market will not affect fares unless the number of operators decreases from two to one”, obtained from the regression analysis*¹⁶

using the fare data submitted to the JFTC by Parties Group and the number of operators on each route, was robust. The results showed that the economic analysis by the Parties Group was not robust.

- ¹⁶ Specifically, the results of a linear regression model estimating the percentage of fare reduction when one more operator is added in the market showed that an increase in the number of operators does not have a significant effect on fares. A method called spline regression analysis, involving estimation using dummy variables (a dummy variable is a variable that is “1” if a condition is met and “0” if it is not met) for each number of operators, showed that fares would fall by about 6% if the number of operators in the market increased from one to two, but there was no significant fall in fares when the number of operators increased from two to three or from three to four (the coefficients were positive and not statistically significant).

In conducting the economic analysis, the Parties Group outsourced the work to an economic consulting firm other than UTEcon, which was commissioned by the JFTC.

a Analysis including excluded data

In the economic analysis by the Parties Group, routes with an average of less than 24 monthly flights and routes with 5 or more competitors were excluded from the analysis data. Therefore, as a first approach, the JFTC conducted an analysis including these factors and showed that the number of operators affects the FSC fares of the Parties even when the number of operators present in the market is other than reduced from two to one*¹⁷.

- ¹⁷ Specifically, the estimated results of the linear regression model indicated that an increase of one enterprise would decrease fares by about 2.6% (statistically significant at the 1% level). The estimated results of the spline regression analysis also showed that fares decreased significantly as the number of operators increased from one to two, four to five, five to six, and six to seven. In addition, the coefficient showing the effect of increasing the number of operators from two to three was a positive value (fares will increase) and not statistically significant in the economic analysis conducted by the Parties, whereas the estimated result in this analysis was a negative value (fares will decrease) and not statistically significant.

b Analysis incorporating which competitors are operating a route

Although the economic analysis by the Parties Group assumed that the presence of a competitor would have a similar impact on the fares of the Parties regardless of which airline it was, the impact on the fares of the Parties would vary depending on which specific

airline the competitor was. Therefore, the second method of analysis, which considered not the number of operators but whether or not each competitor is operating on each route as a dummy variable, showed that the presence of one of the Parties significantly lowered the FSC fares of the other Party and that the presence of most of the other competitors does not affect the FSC fares of the Parties.

c Analysis of the impact of one of the Parties on the FSC fares of the other Party

The impact of the presence of one of the Parties on the FSC fares of the other Party is expected to vary depending on the market structure (the number of competing LCCs and competing FSCs). Therefore, as a third method, the JFTC analyzed the impact of the presence or absence of one of the Parties on the FSC fares of the other Party based on the market structure*18. The results indicated that Korean Air fares fell significantly with the presence of Asiana Airlines in the market structure where neither a competing LCC nor a competing FSC exists and also in the market structure where only one competing LCC exists and no competing FSC exists. With regard to Asiana Airlines fares, the JFTC found that under a market structure with no competing FSCs, the fares significantly declined because of the presence of Korean Air regardless of whether there are 0, 1, 2, 3 or more competing LCCs (i.e., regardless of the number of competing LCCs) *19(these results are also consistent with the analysis in b), below).

¹⁸ Specifically, a dummy variable was created for each market structure, and the effect of each market structure was obtained by adding, with regard to the fares of one of the Parties, (1) the estimated coefficient value of the dummy variable related to the presence or absence of the other Party and (2) the estimated coefficient value of the intersection term between the dummy variable related to the presence or absence of the other Party and the dummy variable for each market structure.

When determining the effect of each market structure, a linear constraint test between the coefficients was performed (Wald test was performed to calculate the test statistic following the F distribution, and the statistical significance of the coefficients was confirmed by checking their p-values).

¹⁹ Regarding the market structure where other FSCs exist, there are no observed values (there are no routes with that market structure), or even if there are observed values, there is no variation in the presence of Korean Air, so it was not possible to estimate the effect of the presence or absence of Korean Air on Asiana Airlines fares.

b) Analysis of incentives to raise fares using GUPPI

a Purpose and method

Next, the GUPPI was calculated to estimate whether the Parties have an incentive to raise prices on each of the competing routes after the Action. The diversion ratio required to calculate the GUPPI were calculated based on market share for each of the competing routes²⁰. In addition, marginal costs were estimated by estimating the Parties' cost functions using the four models in c below (for convenience, referred to as "Models ① to ④"), using data on costs,²¹ number of passengers, and fuel unit prices²² submitted by the Parties.

²⁰ The diversion ratio based on market share is a method of calculating the diversion ratio as "diversion ratio from Company A to Company B = market share of Company B / (1 – market share of Company A). Since it is generally known that the calculation of diversion ratio using market shares is based on relatively strong assumptions, in this case, the JFTC decided to be very cautious and use diversion ratio based on market shares and GUPPI based on such diversion ratio. First, the direction of possible bias related to the diversion between FSCs and LCCs as a result of the above assumption was examined to confirm that the above assumption is a modest one in the analysis of international passenger transportation business. The JFTC made the additional assumption that 20% of the diversion to external goods (i.e., the amount of demand that shifts out of the market due to a price increase of one of the Parties alone, such as by the cancellation of travel by the Parties' users) occurs in the international passenger transportation business; further, even if the GUPPI value exceeds 5%, the JFTC did not immediately evaluate that there is an incentive to raise prices but instead verified for each route whether the critical diversion ratio to external goods at which the GUPPI value becomes 5% exceeds 20%. Based on this, the JFTC determined that there is an incentive to raise prices only in cases when the critical diversion ratio exceeds 20%.

²¹ The start of the period under analysis varies depending on which of the Parties is being examined, with the earliest being January 2013 and the latest being January 2018. In addition, since the accounting standards of one of the constituents of the Parties Group under analysis were changed in December 2019, the period covered by the analysis ended in November 2019.

²² The JFTC used the Singapore market transaction price index (MOPS = Mean of Platts Singapore) for kerosene, which is used as fuel for aircraft.

b Costs used to estimate marginal costs

The "marginal cost" in the air passenger transportation business is the additional cost of providing air passenger transportation service for one passenger. In addition to the variable costs of passenger transportation²³ that arise in proportion to the number of

passengers, the elements that make up marginal costs include the variable flight costs*²⁴, aircraft costs*²⁵, and fuel costs (hereinafter collectively referred to as “total variable flight costs”) that are linked to the number of passengers to a certain extent.

Here, the JFTC estimated the marginal costs for each route of the FSCs and LCCs of the Parties Group by adding up the variable passenger transportation costs (the “average variable passenger transportation costs”) estimated for each route in Table 12 and the increase in the total variable flight costs that arise from increasing the number of passengers by one (hereinafter referred to as “marginal total variable flight costs”).

²³ In-flight meals, in-flight service fees, ground passenger fees, passenger insurance, reservation agent fees, air facility charges, credit card fees, etc.

²⁴ Flight and accommodation allowances for flight crew and cabin crew, aircraft maintenance, etc.

²⁵ This includes depreciation and leasing costs, which initially appear similar to fixed costs, but with an additional variable aspect because as the number of passengers increases, more aircraft or larger aircraft will need to be deployed.

Table 12: Estimation methodology for average variable passenger transportation costs and marginal total variable flight costs

Average variable passenger transportation costs	Variable passenger transportation costs were expressed as a function with variables such as flight distance (the “variable passenger transportation cost function”), and the coefficient of this function was estimated econometrically.
Marginal total variable flight costs	Total variable flight costs were expressed as a function with variables such as passenger numbers, flight distance, and fuel unit price (the “total variable flight cost function”), and the coefficient of this function was estimated econometrically.

c Model used to estimate average variable passenger transportation costs and marginal total variable flight costs

A summary of the models ① through ④ used to estimate marginal costs, that is, average variable passenger transportation costs and marginal total variable flight costs is shown in Table 13*²⁶.

²⁶ Details are as follows (subscript a indicates airline, I indicates route, and t indicates year and month). First, the variable passenger transportation cost functions for Models ① and ③ are as follows:

$$\left(\frac{\text{Variable passenger transportation costs}}{\text{number of passengers}} \right)_{ait} = \gamma_0 + \gamma_1 \text{distance}_i + \gamma_2 \text{Asiana dummy}(d.)_a + \epsilon_{ait}$$

The variable passenger transportation cost function for Model ② is as follows:

$$\begin{aligned} & \left(\frac{\text{Variable passenger transportation costs}}{\text{number of passengers}} \right)_{ait} \\ &= \gamma_1 \text{distance}_i + \gamma_2 \text{Asiana } d.a \\ &+ \sum_j \gamma_{3j} \text{city } d.ij + \epsilon_{ait} \end{aligned}$$

The variable passenger transportation cost function for Model ④ is as follows:

$$\begin{aligned} & \left(\frac{\text{Variable passenger transportation costs}}{\text{number of passengers}} \right)_{ait} \\ &= \sum_j \gamma_{1j} \text{route } d.ij + \gamma_2 \text{Asiana } d.a + \epsilon_{ait} \end{aligned}$$

In addition, the total variable flight cost function for Model ① is as follows:

$$\begin{aligned} & (\text{Variable flight costs} + \text{aircraft costs} + \text{fuel costs})_{ait} \\ &= \beta_0 + \beta_1 \text{number of passengers}_{ait} \times \text{distance}_i \\ &+ \beta_2 \text{number of passengers}_{ait} \times \text{distance}_i \times \text{fuel unit price}_t \\ &+ \beta_3 \text{fuel unit price}_t + \beta_4 \text{Asiana } d.a + \epsilon_{ait} \end{aligned}$$

To these, city dummies were added for Model ② and route dummies for Model ③, respectively.

Furthermore, the total variable flight cost function for Model ④ is as follows:

$$\begin{aligned} & (\text{Variable flight costs} + \text{aircraft costs} + \text{fuel costs})_{ait} \\ &= \beta_0 + \beta_1 \text{number of passengers}_{ait} \times \text{route } d.i \\ &+ \beta_2 \text{number of passengers}_{ait} \times \text{route } d.i \times \text{fuel unit price}_t \\ &+ \beta_3 \text{fuel unit price}_t + \beta_4 \text{Asiana } d.ait + \epsilon_{ait} \end{aligned}$$

The summary of these is as follows:

$$\begin{aligned} & \text{Marginal cost}_{ait} \\ &= \hat{\gamma}_0 + \hat{\gamma}_1 \text{distance}_i + \hat{\gamma}_2 \text{Asiana } d.a \\ &+ \hat{\beta}_1 \text{distance}_i + \hat{\beta}_2 \text{distance}_i \times \text{fuel unit price}_t \\ &+ \hat{\beta}_4 \text{Asiana } d.a \end{aligned}$$

Each $\hat{\gamma}$ represents an estimate of the coefficient of the variable passenger transportation cost function, and each $\hat{\beta}$ represents an estimate of the coefficient of the total variable flight cost function. In Model ②, $\hat{\gamma}_0$ is replaced by $\sum_j \hat{\gamma}_{3j} \text{city } d.ij$, and in Model ③, $\hat{\gamma}_0$ is replaced by $\sum_j \hat{\gamma}_{4j} \text{route } d.ij$. In Model ④, $\hat{\gamma}_1 \text{distance}_i$ is replaced by $\sum_j \hat{\gamma}_{1j} \text{route } d.ij$.

Table 13: Summary of Models ① to ④

Model ①	The model is specified using “number of passengers × flight distance” as a quantitative variable but not using dummy variables representing routes or cities as explanatory variables.
Model ②	This model is based on Model ① but controls for city-specific fixed effects.
Model ③	This model is based on Model ① but controls for fixed effects by route rather than by city.
Model ④	This model is specified using “number of passengers” as the quantitative variable and allowing its coefficient to

	vary from route to route.
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The JFTC statistically tested which of these models ① through ④ was superior; Model ③ emerged as the recommended model based on statistical tests. *27

- ²⁷ When the Akaike Information Criterion (AIC), a statistical indicator used for model selection, was used to verify this, Model ③ had the smallest AIC value (the smaller the AIC value, the more predictive the model is; in addition, the results of the F-test and J-test were not contrary to the AIC results, which favored Model ③).

d Results

Base on, the above, the JFTC calculated the GUPPI for each of the 10 competing routes (Tokyo-Seoul, Osaka-Seoul, Sapporo-Seoul, Nagoya-Seoul, Fukuoka-Seoul, Okinawa-Seoul, Tokyo-Busan, Osaka-Busan, Sapporo-Busan, and Fukuoka-Busan). As a result, it was possible to broadly classify the routes into four patterns: (i) routes where an incentive to raise fares is recognized regardless of the model adopted to estimate marginal costs (hereinafter simply referred to as the “adopted model”); (ii) routes where an incentive to raise fares is recognized when the recommended model (Model ③) based on statistical testing is adopted although the conclusion differs depending on the adopted model; (iii) routes where an incentive to raise fares is not recognized when the recommended model (Model ③) based on statistical testing is adopted although the conclusion differs depending on the adopted model; and (iv) routes where an incentive to raise fares is not recognized regardless of the adopted model. Of these, (i) and (ii) were evaluated as routes where there is an incentive to raise fares. The JFTC concluded that for the seven routes other than Okinawa-Seoul, Sapporo-Busan, and Tokyo-Busan, at least one of the Parties has an incentive to raise fares.

The results of the above GUPPI analysis were based on market share data as of 2019 and did not incorporate the facts of subsequent withdrawals by enterprises, etc. Therefore, the JFTC updated the market share figures, which are the premise for the calculation, based on the facts of withdrawals by enterprises, etc. that occurred after 2019, and recalculated the GUPPI for each route. *28 The above recalculation results in an incentive to raise fares for at least one of the Parties for 8 of the 10 competing routes, excluding the Okinawa-Seoul and Tokyo-Busan routes.

- ²⁸ In recalculating the GUPPI, ① the JFTC decided to use more accurate aviation statistics data from the Korea Airports Corporation as the underlying market share data; ② in addition to analyzing the price increase incentives of the Parties (FSCs), ③ for routes where only LCCs belonging to the Parties Group competed

with each other due to the withdrawal of the Parties (FSCs), the price increase incentives for the LCCs were also analyzed by calculating the GUPPI of the LCCs in question.

G. Summary

As stated in A–F above, for 7 of the 10 overlapping routes (namely, Osaka-Seoul, Sapporo-Seoul, Nagoya-Seoul, Fukuoka-Seoul, Osaka-Busan, Sapporo-Busan, and Fukuoka-Busan), the following were recognized: ① the combined market share of the Parties Group after the Action will be high at approximately 50% to approximately 75%, ranking first in market share, and the gap with the second-placed and lower competitors will become large; ② especially for the Seoul routes (excluding the Tokyo-Seoul route), the Parties are the only FSCs, so competition between FSCs will be completely lost after the Action; ③ while some competitors plan to increase the number of flights, the Parties Group also plans to increase the number of flights, so the market share situation between the Parties Group and competitors will not change significantly, and the competitive constraint from competitors will be limited; ④ there is no pressure from new entrants, adjacent markets, or users. Furthermore, ⑤ the economic analysis showed that the Parties Group had an incentive to raise prices after the Action.

Therefore, on the above seven routes (Osaka-Seoul, Sapporo-Seoul, Nagoya-Seoul, Fukuoka-Seoul, Osaka-Busan, Sapporo-Busan, and Fukuoka-Busan), the Action could easily create a situation in which the Parties Group, on their own, could freely influence prices, etc. to some extent, which would substantially restrain competition.

With regard to the Tokyo-Seoul route, the economic analysis described in F above showed that there will be upward pressure on prices after the Action, but since competition between FSCs would remain after the Action and there would be pressure from an increase of the number of flights by competitors and new entries, unilateral conduct is not likely to substantially restrict competition.

(2) Substantially restraining competition through coordinated conduct

Owing to the existence of multiple competitors even after the Action and the fact that FSCs and LCCs have different business conditions and cost structures, meaning that coordinated conduct is considered difficult, it was not found that there would be substantial restraint on competition resulting from coordinated conduct between the Parties Group and competitors on any of the 10 competing routes.

(3) Summary

The Action will substantially restrain competition on 7 of the 10 overlapping routes (namely, Osaka-Seoul, Sapporo-Seoul, Nagoya-Seoul, Fukuoka-Seoul, Osaka-Busan, Sapporo-Busan, and Fukuoka-Busan) through the unilateral conduct of the Parties Group.

4. Proposal of Remedy by Korean Air*29

Korean Air proffered the following (①–⑤) as Remedies:

- ① The Parties shall transfer the slots held by one Party of the Parties Group to a specific international passenger air transportation enterprise (hereinafter referred to as the “Passenger Remedy Taker”) for the seven routes in 3(3) above (however, prior to the transfer of the slots by the Parties, the Passenger Remedy Taker will carry out the general IATA slot application procedure, and the Parties will transfer the slots only if the Passenger Remedy Taker is unable to obtain the slots through said application procedure; the same shall apply to ② below). The Parties shall contractually obligate the Passenger Remedy Taker to, among other things, continue to operate nonstop service for the number of slots acquired on the route to which the slots are transferred for a period of at least three years from the time the slots are acquired. (Remedial measure to achieve increased supply or entry of competitors.)
- ② If the number of slots to be transferred pursuant to ① above is fewer than the number of slots held by the relevant Party of the Parties Group, the Parties Group shall accept requests from unspecified international air passenger transportation enterprises to transfer slots for the shortfall (in principle, 10 years from the date of execution of the Action; hereinafter, this method is referred to as “Open Slot Commitment”). (Remedial measure to promote the expansion of supply or entry of competitors.)
- ③ To supplement the competitiveness of international air passenger transportation enterprises to which slots are transferred as a result of the remedial measures in ① and ② above, the Parties shall establish support measures such as concluding lounge use agreements, ground handling service agreements, etc., if desired by the said enterprises.
- ④ The Parties Group shall continue to take necessary remedial measures to maintain competition after the closing date of the Action until the time when the expansion of supply or entry by Passenger Remedy Takers becomes a reality (i.e., (i) the start of the 2025 IATA Winter Timetable or (ii) the time when a Passenger Remedy Taker to whom a slot is transferred starts selling tickets for passenger transportation services in the slot to be transferred, or the time when the necessary procedures for the slot transfer of the operation of the service start, whichever is earlier).
- ⑤ The Parties shall appoint an independent third party as a monitoring trustee (hereinafter referred to as the “Slot Transfer Monitoring Trustee”) and have the Slot Transfer Monitoring Trustee continuously monitor the implementation of measures ① to ④ above and report regularly to the JFTC.

In addition, Korean Air offered to make the following items a prerequisite for the Action:

- The Parties shall enter into an agreement with Passenger Remedy Takers for the slot transfer. If a Passenger Remedy Taker wishes to enter into any of the various agreements described in ③ above, the Parties shall also enter into such various agreements.
- The Parties shall select a person responsible for the slot transfer based on the remedial measures in ① and ② above within one week from the Article 9 Notice Date and report the name of such person to the JFTC.

- The Parties shall formulate the details of the remedial measures necessary to maintain competition based on the advice of the Slot Transfer Monitoring Trustee and submit said details to the JFTC for its confirmation within six months of the Article 9 Notice Date.
- The Parties shall submit to the JFTC a draft trustee mandate with the Slot Transfer Monitoring Trustee for confirmation within two weeks of the Article 9 Notice Date and shall execute such trustee mandate with the Slot Transfer Monitoring Trustee within one week of the date of such confirmation.
- The Parties shall receive (or have reasonable prospects of receiving) all confirmations, etc. necessary to implement the remedies from other authorities (including but not limited to the Korea Fair Trade Commission, the Ministry of Land, Infrastructure and Transport, and the European Commission) pertaining to the Action (this item is a matter common to the international air cargo transportation business).

As described in 4(3), Part V below, there are several preconditions for the implementation of the Action in the international air cargo transportation business, and all of these conditions must be met in order for the Parties to implement the Action.

- ²⁹ The description of the Remedy in this Case relates to the facts as of the date of the notice that a cease and desist order will not be issued (the date on which the JFTC notified Korean Air that it would not issue a notice regarding the Action [Notice of Hearing of Opinions Concerning the Cease and Desist Order] under Article 50, Paragraph 1 of the Antimonopoly Act, pursuant to Article 9 of the Rules on Applications for Authorizations, Reports, and Notifications Pursuant to Articles 9 to 16 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade [Fair Trade Commission Rules No. 1 of 1953]; hereinafter referred to as the “Article 9 Notice Date”) and does not, in principle, include any changes that occurred after the Article 9 Notice Date or any confirmation by the JFTC.

5. Assessment of the Remedy

(1) Review of the adequacy of the Remedy

A. Number of slots to be transferred, slot transferee, etc.

(a) Basic approach and results of review

A remedy, in principle, should be a structural one such as a business divestment and should be able to restore the competition lost through the business combination so that the Parties Group cannot freely influence prices, etc. to some extent. The most effective of such remedial measures are those that create new independent competitors or strengthen existing competitors so that they become effective competitive constraints (Guidelines 7-1 and 2(1)). In light of this principle, the basic remedy in the context of the passenger transportation business is considered to be the transfer of “all slots owned by either of the Parties of the Parties Group.” Furthermore, as described in 1(2) above in the scope of services, given that there is a difference in the assessment of

competitive pressure between FSCs and LCCs, the most straightforward remedy would be to transfer the slots owned by the Parties (FSCs) to competing FSCs and the slots owned by the LCCs belonging to the Parties Group (the “Parties Group LCCs”) to competing LCCs.

Although the Remedy described in 4 above may seem to partially deviate from the most straightforward remedy described in the following four points (from (b) to (e) below), it is possible to evaluate that the Remedy is intended to create new independent competitors or to create effective competitive constraints so that the Parties Group after the Action will not be able to freely influence prices, etc., and that the Remedy will restore the competition in the international air passenger transportation market that will be lost as a result of the Action*30.

- ³⁰ If the Parties Group was to transfer slots internally after the Action to increase or decrease the number of slots or/and the number of flights held by the group’s FSCs (i.e., the Parties) (hereinafter referred to as “internal transfer”; for example, all slots of an LCC of the Parties Group on the Osaka-Seoul route are internally transferred to the FSC within the group, or conversely, all slots of an FSC within the group are internally transferred to the LCC of the Parties Group), the effect of the remedial measure in this case, which involves the slot transfer, may be diminished depending on the specific content of the internal transfer. With respect to such internal transfer, it is considered necessary to make an individual evaluation based on the market conditions at that time. Therefore, in the event that the Parties intend to conduct internal transfer, the Parties shall report the specific details of the planned internal transfer to the JFTC and the Slot Transfer Monitoring Trustee in advance, and the JFTC will determine whether to approve it on a case-by-case basis, based on the advice of the Slot Transfer Monitoring Trustee.

(b) The Open-Slot Commitment is used on some routes

With respect to the routes for which the Open-Slot Commitment is to be adopted as described in 4 ② above, at the time at which the Action is implemented, Passenger Remedy Takers have not been identified for “all” of the slots owned by the Parties, and some slots will be offered under the Open Slot Commitment (a remedial measure to expand supply or promote entry by competitors). Since some slots subject to the Open Slot Commitment will continue to be used by the Parties Group as long as no slot transfer appears, there is a discrepancy from the most straightforward remedy described in (a) above to that extent *31.

However, in cases where it is deemed impossible to take a business transfer as a remedy owing to reasons such as a transferee of all or a part of a business division of the Parties Group not being readily available, it may be exceptionally determined that the problem of competition in a particular field of trade can be solved by promoting imports and market entry, etc. (Guidelines, Article 7-2(2) a.). In light of the following points, the JFTC exceptionally determined that the Open Slot Commitment is acceptable as a remedial measure to promote entry.

- ① Although the Parties approached several potential Passenger Remedy Takers for the slot transfer, taking into account the competitive situation such as existing competitors on each route and their market shares, one of the Parties of the Parties Group was unable to find a Passenger Remedy Taker who could take on “all” of the slots held by one of the Parties Group in terms of some routes.
- ② Considering that the availability of slots at congested airports may be a barrier to supply expansion and entry in the passenger business, the Open Slot Commitment can be evaluated as a remedial measure to remove such barriers.
- ③ The Parties shall supplement the competitiveness of the transferees by establishing supportive measures for the transferees under the Open Slot Commitment, such as entering into various agreements as described in 4 ③ above.
- ④ The Parties have committed to properly design and implement the specifics of the Open Slot Commitment, including factors such as the scope of recipients and the timing and content of communications regarding the Open Slot Commitment.

³¹ In the Open Slot Commitment, since it is not known to which competitor the slots will be transferred, there may be a discrepancy in that it is not known whether the slots held by the Parties (FSCs) will be offered to the competing FSCs and the slots held by the LCCs of the Parties Group will be offered to competing LCCs, but this point is omitted here since it is common to the considerations in (d) below.

(c) Only the slots owned by the Parties (FSCs) are transferred, not those owned by the LCCs of the Parties Group

The “all slots owned by either of the Parties Group” to be transferred could be considered to mean all slots owned by the FSCs and LCCs in one Party of the Parties Group on routes operated by both FSCs and LCCs in the same group (e.g., if Asiana Airlines Group’s slots were to be transferred, all slots held by Asiana Airlines, Air Seoul Co., Ltd. [JCN 1700150079184], and Air Busan Co., Ltd. [JCN 2700150004629] would be transferred), but the content of the Remedy proposed by Korean Air includes a case in which only the slots owned by the Parties (FSC) will be transferred, and the slots owned by the LCCs in the Parties Group will not be transferred.

In this case, after confirming the existing competitors on the route after the Action, the JFTC found that there were already many competing LCCs, and competition among LCCs was expected to be active even after the Action, so it was concluded that transferring the slots held by LCCs of the Parties Group was not necessarily needed, taking into account the individual circumstances of each route.

(d) Recipients of FSC/LCC slot transfers are not equivalent services (there is a possibility that the transferee of the Parties’ [FSC] slots may be a competing LCC rather than a compete-

ng FSC)

As stated in (a) above, the most straightforward remedy would be to transfer the slots held by the FSCs to the competing FSCs and the slots held by LCCs of the Parties Group to competing LCCs, but the Remedy proposed by Korean Air includes cases where the slots held by the FSCs could be transferred to LCCs instead of FSCs.

In this case, if there are reasonable circumstances such as the Parties' inability to find a competing FSC transferee despite the Parties' efforts to search for one, the JFTC has determined that even if the transferee is an LCC, this would be an effective constraint on the Parties Group after the Action, and therefore, it is acceptable considering the following points:

- ① It is recognized that there is a certain degree of substitutability between FSCs and LCCs, that they compete in the same market, and that the impact of differences in service levels, etc. is considered to be relatively small, especially since Japan-South Korea routes are short-haul flights. In addition, the Parties have agreed to support transferee (e.g. Passenger Remedy Takers), for example, by concluding a lounge use agreement, ground handling service agreement, etc., and have also made provisions for measures to supplement competitiveness in the event that a transfer recipient becomes an LCC.
- ② The competitive pressure of the competing LCCs as a whole on the Parties Group is expected to be strengthened by the slot transfer of one of the Parties Group (FSCs) to a competing LCC (although there are differences in the evaluation of competitive pressure between FSCs and LCCs, the competitive pressure of LCCs is considered to be effective to a certain extent against FSCs).

(e) There is a possibility that the number of slots held by the Parties Group may not be reduced

In the details of the Remedy proposed by Korean Air, as described in 4 ① and ② above, the slot transfer by the Parties is limited to cases where the transferees (Passenger Remedy Taker) applies for slots under the general IATA slot application procedures and is unable to obtain slots under the said application procedures. Thus, in theory, the number of slots held by a competitor (Passenger Remedy Taker) could theoretically increase on any of the seven routes subject to the Remedy, but the number of slots held by the Parties Group might not be reduced. This situation seems to be a deviation from the most straightforward remedy described in (a) above.

However, if such a situation arises, on routes other than Sapporo-Busan, considering the hypothetical market share based on the number of slots and seats (estimated) in case the number of slots owned by the Parties Group does not decrease and the number of slots of the competitor increases, and the fact that the competitor (Passenger Remedy Taker) that will enter the market or increase the number of slots as a result of the slot transfer (including LCCs), the competitiveness of the competitor

will be supplemented by the conclusion of the various contracts described in 4 ③ above, the Remedy proposed by Korean Air can be evaluated as a remedial measure that creates a new independent competitor or strengthens existing competitors so that they have an effective competitive constraints and, therefore, are deemed acceptable.

On the other hand, on the Sapporo-Busan route, if the number of slots held by the Parties Group had not decreased and the number of slots and seats (estimated) of the competitors increased, it was considered that even if the slot transfer (4①above) was implemented, it might still cause competition concerns, considering the hypothetical market share based on the number of slots and seats (estimated). Therefore, with respect to the Sapporo-Busan route, in the event that the number of slots held by the Parties Group does not decrease because of the general IATA slot application procedure on the part of the competitor (Passenger Remedy Taker), the Parties have proposed that the number of slots not decreased (i.e., those that are no longer subject to transfer) be made available for the Open Slot Commitment. With regard to the Sapporo-Busan route, the JFTC considered this additional proposal and determined that it would be exceptionally acceptable.

For the seven routes subject to the Remedy, at least one of the airports on either the South Korean or Japanese side is a congested airport that requires slot coordinators to adjust slots, so it is unlikely that competitors (Passenger Remedy Takers and transferees through the Open Slot Commitment) will be able to obtain slots during convenient peak hours through the general IATA slot application procedure (meaning that it is unlikely that the number of slots for the Parties Group will be reduced at all). Having said that, all of the seven routes was examined individually as described above, and the necessary remedial measures were included to ensure the adequate remedy is to be implemented.

B. Interim measures until the slot transfer becomes a reality

The Parties have committed to take “remedial measures necessary to maintain competition” even after the implementation of the Action until such time as the supply by Passenger Remedy Takers expands or they attain entry, and the time frame for the interim measures is considered reasonable.

The details of the “remedial measures necessary to maintain competition” are to be formulated by the Parties based on the advice of the Slot Transfer Monitoring Trustee and submitted to the JFTC within six months from the Article 9 Notice Date and approved by the JFTC by the date of execution of the Action (the JFTC’s confirmation in this regard approval is a prerequisite for the execution of the Action).

(2) Ensuring the implementation of the Remedy

The Parties shall appoint a Slot Transfer Monitoring Trustee and shall have the Slot Transfer Monitoring Trustee monitor the implementation of the Remedy and report periodically to the JFTC. In light of the following circumstances, monitoring by an independent third party may be a sufficient measure to ensure implementation.

First, the entity that will be the Slot Transfer Monitoring Trustee shall be confirmed to have no doubts about its eligibility from the standpoints of ① track record (confirming that it has experience as a monitoring trustee and knowledge of the aviation industry), ② capability (confirming the number of staff and their career histories, and whether or not they can communicate with the JFTC in Japanese), and ③ conflicts of interest and independence (confirming current or past transaction history with the Parties Group, whether there are interlocking officers with the Parties Group, and whether a remuneration system is in place to ensure the independence of the monitoring trustee) and shall be entrusted upon obtaining confirmation from the JFTC.

In addition, with respect to the details of mandates and authority to the Slot Transfer Monitoring Trustee, a draft trustee mandate is to be submitted by the Parties to the JFTC within two weeks from the Article 9 Notice Date and approved by the JFTC by the date of the execution of the Action (obtaining the JFTC's approval in this regard is a prerequisite for the execution of the Action).

Part V: International Air Cargo Transportation Business

1. Definition of particular field of trade, etc.

(1) Overview of international air cargo transportation business and commercial distribution

A. Overview

An “air cargo transportation business” refers to a business that transports cargo using aircraft for a fee in response to the demand of others, and an “international air cargo transportation business” refers to an air cargo transportation business conducted between a point in Japan and a point outside Japan or between various points outside Japan (see Article 2, Paragraphs 18 and 19 of the Civil Aeronautics Act).

International air cargo transportation enterprises include airlines (FSCs and LCCs) that operate international air passenger transportation businesses, as well as transportation enterprises called integrators that collect cargo from shippers and deliver it to destinations on a door-to-door basis (see Figure 2).

Further, among enterprises operating international passenger air transportation businesses, there are enterprises who own cargo aircraft (hereinafter referred to as “freighters”) and enterprises who do not own freighters and transport cargo only by loading it into the cargo compartment of passenger aircraft called “bellies” (hereinafter referred to as “passenger belly”), and there is a significant difference in the amount of cargo that can be loaded between the former and the latter.

Furthermore, even for enterprises that use passenger belly transport, there are differences in the amount and method of loading between relatively large aircraft (hereinafter referred to as “wide-body passenger aircraft”) that carry containers and pallets called Unit Load Devices (hereinafter referred to as “ULDs”), which are also used by freighters, and small aircraft (hereinafter referred to as “narrow-body passenger aircraft”) that do not carry ULDs and can only load small cargo packed in carton boxes in bulk.

Figure 1: Image of an air cargo container

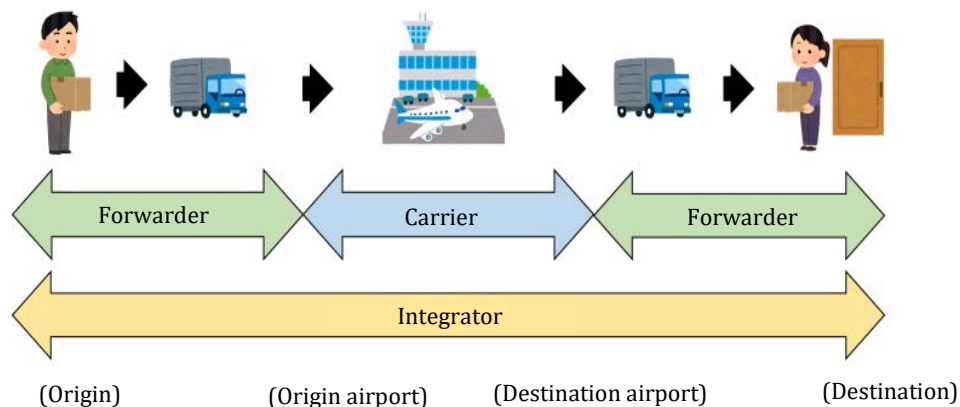


(Source: Korean Air website)

B. Commercial distribution

Airlines (carriers), including those of the Parties Group, enter into contracts with air transport enterprises (hereinafter referred to as “forwarders”) requested by shippers to transport air cargo from a specific airport to the destination airport. Forwarders enter into fixed-term contracts with airlines to basically secure a certain amount of cargo loading space (hereinafter referred to as “space”) on aircraft in advance but may also enter into spot contracts to purchase space each time sudden demand arises (see Figure 2).

Figure 2: Schematic diagram of air cargo transportation



Carriers (airlines):	Provide space and perform airport-to-airport transportation of cargo under a transportation contract with a forwarder
Forwarders:	Carry out a series of tasks required for cargo transportation on behalf of the shipper, such as collection from the shipper, transportation to the airport, assembly of the cargo, preparation of documents, customs clearance, and delivery to the consignee Forwarders do not have their own air transportation means but procure space mainly from airlines to transport cargo entrusted by shippers and consignees.
Integrators:	Own aircraft and provide door-to-door transportation services to shippers and consignees by integrating ground and air transportation

(2) Scope of services

A. Basic approach

The international air cargo transportation business involves transporting cargo for a fee using aircraft between points in Japan and points outside Japan

or between points outside Japan in response to demand from others. In the present Case, the scope of services was defined as “international air cargo transportation services” provided by airlines, including the Parties Group, considering the circumstances described below from B to E.

B. Substitutability among international air cargo transportation enterprises

Forwarders are the users of international air cargo transportation services provided by airlines, including the Parties Group, whereas shippers are usually the users of international air cargo transportation services, from pickup to delivery, supplied by integrators. In questionnaires and interviews with forwarders, many forwarders responded that integrators are not substitutes for airlines that mainly transport air cargo; thus, the demand-side substitutability between international air cargo transportation services provided by integrators and international air cargo transportation services provided by airlines is limited.

Therefore, the international air cargo transportation services provided by airlines, including those of the Parties Group, and the international air cargo transportation services provided by integrators were defined as a different scope of service.

C. Substitutability between cargo types

The types of cargo for air cargo transportation include normal cargo, called “general cargo,” as well as “special cargo,” such as dangerous goods and long cargo that must be transported by freighter rather than passenger belly. However, especially on routes from Japan to South Korea, airlines that own freighters account for the majority of air cargo transportation capacity, so even if the scope of services were defined as “special cargo” transportation only so that it excluded “general cargo” transportation, the competition situation would not change significantly.

Therefore, at least in this case, there is little need to subdivide the scope of services by the type of cargo.

D. Substitutability between aircraft types

Aircraft used for air cargo transportation include freighters, wide-body passenger aircraft, and narrow-body passenger aircraft, the difference being that the first two can carry ULDs, while the latter cannot carry ULDs and can only be loaded in bulk. However, especially on routes from Japan to South Korea, airlines that own freighters account for the majority of air cargo transportation capacity, so even if the scope of services were defined as cargo transport by aircraft that can accommodate ULDs so that it excluded cargo transport by narrow-body passenger aircraft that cannot accommodate ULDs, the competition situation would not change significantly.

Therefore, at least in this case, there is little need to subdivide the scope of services by the type of aircraft.

E. Substitutability between transportation methods

Cargo transportation between Japan and South Korea includes international

air cargo transportation services using aircraft as well as ocean cargo transportation using ships. There is also a method of ocean cargo transportation called Ro-Ro transportation (short for Rolling-on, Rolling-off), in which the cargo is loaded onto a truck in Japan, transported to South Korea by ship, and then transported to the destination on the truck without reloading after arriving in South Korea.

There is a considerable difference in price and transit time between international air cargo transportation services and ocean cargo transportation. Cargo transportation users usually use both ocean cargo transportation and international air cargo transportation services, choosing the less expensive ocean cargo transportation services when the shipper allows the use of ocean cargo transportation because of the time required or the type of cargo and using international air cargo transportation services when the aforementioned method is not allowed. Thus, demand-side substitutability between international air cargo transportation services and ocean cargo transportation is not recognized.

Therefore, international air cargo transportation services and ocean freight transportation (including Ro-Ro transportation) are defined as different scopes of service.

(3) Geographic scope

Forwarders, who are the users of air cargo transportation between Japan and South Korea, have established a nationwide domestic land transportation network. Thus, forwarders can alternatively select all routes to/from Japan and South Korea, rather than each route to/from a specific departure airport and arrival airport, as in air passenger transportation, and select an airline that offers more favorable conditions to the shipper in terms of lead time, fares, etc., without necessarily being bound by departure and arrival airports. In addition, international air cargo transportation services are not anticipated to be used for round-trip flights, and the main users are forwarders located in Japan for flights from Japan to South Korea and forwarders located in South Korea for flights from South Korea to Japan.

Therefore, with regard to the air cargo transportation business, in this case, the geographic scope was defined not for individual routes but for the entirety of the Japan-to-South Korea routes and the entirety of the South Korea-to-Japan routes. In particular, the Japan-to-South Korea route was reviewed from the perspective of the significant impact on Japanese users.

(4) Assumptions for consideration in the review of this case

In the international air cargo transportation business, the impact of COVID-19 has led to an increase in passenger flight cancellations and a decrease in passenger belly cargo transportation, while the disruption of ocean cargo transportation has led to an increase in cargo transportation by freighters. Therefore, the review of this case will be conducted based on a market environment that excludes the impact of COVID-19, and the market environment in 2019 (before the spread of COVID-19) will be used as the premise for the review as a similar market environment. Changes in market conditions after that year (e.g., competitors' operating conditions), which are expected to continue even if the impact of COVID-19 is no longer significant in the future, are to be separately considered.

(5) Form of business combination

Since both Parties of the Parties Group provide international air cargo transportation services within the geographic scope defined in (3) above, this case constitutes a horizontal business combination pertaining to international air cargo transportation services on routes from Japan to South Korea.

2. Applicability of Safe-Harbor criteria

The market share (based on payload) of routes from Japan to South Korea in 2019 is as shown in Table 14. Since the HHI after the Action is approximately 5,100 and the increase in HHI is approximately 2,200, it does not fall under the safe-harbor criteria for horizontal business combinations.

Therefore, the JFTC examines in 3 below whether the Action leads to a substantial restraint of competition.

Table 14: Market share of air cargo transportation from Japan to South Korea (2019)

Rank	Company Name	Market Share
1	Korean Air	Approx. 40%
2	Asiana Airlines	Approx. 25%
3	Company HH	Approx. 15%
4	Company II	Approx. 10%
5	Company JJ	Approx. 5%
6	Company KK	0%–5%
7	Company LL	0%–5%
-	Others	0%–5%
Total		100%
Combined share/rank: Approx. 70%, 1st rank		
HHI after the Action: Approx. 5,100		
HHI increments: Approx. 2,200		

3. Impact of this Action on competition**(1) Substantial restriction on competition through unilateral conduct****A. Positions of the Parties Group and competitors and the conditions of competition in the market, etc.****(a) Market share and rankings**

The market share and ranking of the air cargo transportation business on routes from Japan to South Korea in 2019 are as shown in Table 14. After the Action, the Parties' combined market share exceeded 60%, giving them a high position.

(b) Conditions of existing competition between the Parties, etc.

According to the results of the survey and interviews with forwarders, Korean Air offers relatively high fares and is unwilling to sell space at a reduced price, while Asiana Airlines tends to offer relatively low fares. In addition, as will be discussed in detail in Section F below, the results of

the economic analysis (user questionnaire and historical price measurement analysis) show that Korean Air and Asiana Airlines are the closest competitors. Since the Action will cause the loss of this close competition, the effect on competition is significant.

(c) Competitors' market share, excess capacity, and degree of differentiation

As shown in Table 14, the combined market share of the Parties after the Action is more than 60%, while the market share of the second and lower ranked competitors is approximately 15% or less, indicating a large disparity between the Parties and their competitors.

In addition, based on the following circumstances, considering the results of questionnaires and interviews with forwarders, the competitors have a certain degree of excess capacity but are significantly differentiated from the Parties Group in terms of whether they operate large freighters and whether they operate flights to and from airports in western Japan. The competitors are considered to be at a competitive disadvantage in this regard, so it is recognized that the competitive constraints from the competitors is limited.

- Certain competitors may not be able to stably supply sufficient space to forwarders, as they do not supply all of their space to forwarders because of contractual relationships with certain enterprises.
- Some competitors transport air cargo by freighter, but some only operate small aircraft with about half the payload of the freighters operated by the Parties.
- Many of the competitors do not transport air cargo to and from airports in Western Japan such as Kansai Airport and Kitakyushu Airport and are considered to be at a disadvantage in terms of competitiveness to the Parties, who transport air cargo by freighter to and from Kansai Airport and Kitakyushu Airport in addition to flights departing from and arriving at Narita Airport.
- There are several LCC airlines that provide air cargo transportation only by passenger belly on routes from Japan to South Korea, and there are airlines that operate wide-body passenger aircraft and narrow-body passenger aircraft, but all of them are smaller in capacity compared to freighters. In particular, narrow-body passenger aircraft are not equipped with ULDs and can only handle bulk cargo, which limits their carrying capacity and convenience compared to freighter.
- On routes from Japan to South Korea, it is possible to transport air cargo by chartering cargo aircraft, etc., known as charter flights, but the use of charter flights is considered to be limited to cases where there is a volume of cargo that can be chartered for the entire aircraft or where there is a volume of cargo that cannot be handled by a normal regular contract. Thus, the use of charter flights by forwarders is considered to be limited.

B. Entry

Entry pressure is considered limited for the following reasons.

Since 2019, there have been several competitors who have entered Japan-South Korea routes, but none of them have sufficient capacity, such as having freighters with the same capacity as the Parties. In the questionnaire and interviews with forwarders, some expressed opinions of concern about whether a new entrant would be able to operate a service stably and continuously, whether it would be able to handle situations such as cargo damage or loss, and whether it would be able to provide international cargo transportation services of the same quality as the Parties; and others said that they would have to be cautious about using a new entrants whose handling quality and operational stability are unclear.

C. Competitive pressure from adjacent markets

As a result of questionnaire and interviews with forwarders as users, many forwarders indicated that they did not use transit flights for routes from Japan to South Korea; thus, no competitive pressure from transit flights was recognized. Further, there are no circumstances that suggest competitive pressure from adjacent markets such as integrators, ocean cargo transportation, etc.

D. Competitive pressure from users

As a result of questionnaires and interviews with forwarders as users, many forwarders responded that it would be difficult to switch from the Parties to competitors because, as described in A(c) above, competitors are significantly differentiated from the Parties in terms of whether they operate large freighters and whether they have flights to and from airports in western Japan, etc.; thus, competitive pressure from users is limited.

E. Management situation of the Parties Group

As stated in 3(1)E, Part IV, above, there are no circumstances that fall under B.(a) and (b) of Part IV.2(8) of the Guidelines in this case.

F. Results of economic analysis

(a) Overview

Four economic analyses were conducted with regard to the air cargo transportation business, including ① price analysis (see (b)a) below; a review of whether the cargo fares of the Parties are mutually restrained by regression analysis using the prices of the Parties and their competitors); ② analysis based on customer surveys (see (b)b) below; a review of the closeness of competition between the Parties using the results of a user survey on where respondents would switch if one of the Parties increases its price); ③ simulation analysis (see (b)c) below; a review of whether there is an incentive to raise prices after the Action through a simulation analysis using the information from the user survey); and ④ GUPPI analysis (see (b)d) below for a review of whether there is an incentive to raise prices after the Action using GUPPI calculations). These

analyses resulted in the following findings: the Parties are in close competition in terms of fares; it is unlikely that users will switch to competitors in response to price increases by one of the Parties; and the Action will create incentives for the Parties to raise prices (see (b) below for details of the four economic analyses).

(b) Details

a) Price analysis

In the price analysis, to analyze the relationship between the fares of the Parties from a longer-term perspective and to verify whether the Parties are acting as a mutual restraint on each other, the JFTC conducted an econometric economic analysis based on monthly data on the fares of the Parties from January 2017 to December 2021, which was obtained from the Parties and other sources. In the analysis, the JFTC employed a model that takes into account the costs of the Parties (average variable costs), fares of competitors, share based on the supply capacity of the parties, real GDP in South Korea, and impact of COVID-19 likely to affect the fares of the Parties (simultaneous estimation of a fixed effects model using route-specific panel data; simultaneous equation model). After removing these effects and inherent differences by route, the existence of close competition in fares among the Parties was examined.

The results showed that Korean Air's fares have a strong impact on Asiana Airlines' fares and that the impact of Korean Air's fares is relatively larger than the impact of competitors' fares on Asiana Airlines' fares. Asiana Airlines' fares were also found to have a substantial impact on Korean Air's fares. These results suggest that the fares act as a mutual restraint between the Parties.

The results did not change significantly even if the model was modified by changing the fares of competitors, which is an exogenous variable, to a variable one period (one month) earlier or by not considering route-specific differences. This indicates that the analysis results are robust.

b) Analysis based on user surveys

First, to determine whether the Parties are close competitors, the JFTC conducted a user survey in which respondents were asked which airline they would switch to if one of the Parties raised its prices by 5%–10% (multiple responses allowed). The result showed that the percentage of users who would choose the other Party as an alternative was the highest, suggesting that the Parties are in the closest competitors with each other.

Next, when asked about the demand volume that would be considered for switching in the above scenario (hereinafter referred to as the "switched consigned volume") and the allocation of that volume to the alternative, the percentage of users who answered "will not switch" to the other Party and competitors was about 80%

(based on the consignment weight ratio as of 2020; the same applies below). Meanwhile, only about 17% of users responded that they “will partially switch” their demand to the other Party and competitors (the remaining responses were “unclear as to how exactly they would respond”). As a result, it was confirmed that if one of the Parties were to raise its prices by 5%–10%, the amount of demand from consumers switching to the other Party and competitors would be limited.

Furthermore, to understand how much demand would be switched to the other Party and competitors if one of the Parties were to raise fares by 5%–10%, the ratio of the switched consigned volume to the other Party and competitors by the survey respondents was calculated based on the demand of the survey respondents who answered “will not switch” and the demand that the survey respondents who answered “will partially switch” would maintain without switching, as well as the switched consigned volume to the other Party and competitors by the survey respondents who answered “will partially switch.” As a result, the percentage of such switched consigned volume was approximately 5% when Korean Air raised its prices by 5%–10% and approximately 8% when Asiana Airlines raised its prices similarly. This result suggests that the degree of impact on one party firm caused by consumers who responded “partially switch” to switch a portion of their demand volume to a competitor is limited.

c) Simulation analysis of incentives to raise prices due to the Action

If one of the Parties were to raise prices on a standalone basis, although the amount of sales per unit would increase by the price increase, it may not necessarily result in an increase in final sales due to a decrease in the demand as a result of the price increase. However, if a part (or all) of the decrease in demand due to the price increase of one of the Parties is converted to the other Party through the Action, then the relevant Parties can also capture such demand through the Action and the sales of the Parties after the Action may ultimately increase after the price increase. Based on this concept, a simple simulation analysis was conducted to verify whether or not there is an incentive^{*32} for the Parties to raise prices after the Action based on the data on switched consigned volume and its allocation to switching destinations obtained from the user questionnaire. The details are as follows.

First, for a 5%–10% price increase, the magnitude of one Party’s standalone profit before the price increase^{*33} and profit after the price increase^{*34} were compared in 1% increments (when the price increase rates were 5%, 6%, 7%, 8%, 9%, and 10%) to evaluate whether one of the Parties had an incentive to increase its prices alone (standalone profit case).

Next, since it is considered that after the Action, an incentive for

one of the Parties to raise prices would be created, taking into consideration the profits converted to the other Party, the JFTC evaluated the existence of an incentive to raise prices after the Action by comparing, for a price increase of 5%–10%, the size of the profits of one of the Parties before the price increase and the size of the joint profits of the two Parties,*³⁵ which are the sum of its own profits after the price increase, and the profits converted to the other Party, in the same manner in 1% increments to evaluate whether there is an incentive to raise prices after the Action (joint profit case). The JFTC then compared the standalone profit case with the joint profit case to see whether the Action would create an incentive for each of the Parties to raise prices.

As a result of the above analysis, the results for Korean Air showed that, with respect to the standalone profit case, there is no incentive for Korean Air to raise prices by more than 5% on a standalone basis since the profit in the case of a price increase of 5% or more is less than Korean Air's standalone profit before the price increase. However, with respect to the joint profits case, since the other Party's profits are incorporated as its own profits through the Action, the profits in the case of a price increase of 5% or more exceeded Korean Air's profits on a standalone basis before the price increase. Thus, the result was that Korean Air would have an incentive to raise prices due to the Action because profits would increase if prices were raised after the Action rather than on a standalone basis.

In the case of Asiana Airlines, with respect to the standalone profit case, there is no incentive for Asiana to raise prices by more than 5% on a standalone basis, since the profit in the case of a price increase of 5% or more is less than Asiana's standalone profit before the price increase. However, with respect to the joint profit case, the profit in the case of a price increase of 7% or more exceeded the profit of Asiana Airlines on a standalone basis before the price increase. Therefore, it was also found that the Action would create an incentive to raise prices for Asiana Airlines, although not as much as Korean Air.

³² An incentive to raise prices due to the Action is when the profits of one of the Parties alone will decrease when it raises prices compared to its profits before the price increase, while the profits of one of the Parties after the Action will increase compared to its profits before the price increase.

For the convenience of the simulation, the price preceding the Action was set to 1. Furthermore, for the sake of convenience in the calculation, it was assumed that the cost level did not change before and after the Action, the unit cost (unit cost of fixed and variable costs) was set to zero, and profits were assumed as equal to sales (if it is assumed that the cost level did not change before and after the Action, the simulation results will not be affected whether the unit cost is at a constant level or zero).

³³ Actual values for the year 2019 were used.

³⁴ $\text{Price of one of the Parties before the Action} \times (1 + \text{rate of price increase}) \times (\text{demand volume before the Action} - \text{quantity switched over to competitors after the price increase})$.

³⁵ $\text{Price of one of the Parties before the Action} \times (1 + \text{rate of price increase}) \times (\text{demand volume before the Action} - \text{quantity switched over to competitors after the price increase}) + \text{price of the other Party before the Action} \times \text{quantity switched over to the other Party}$.

d) Analysis of incentives to raise fares using GUPPI

In calculating the GUPPI, ³⁶ the JFTC used the average monthly fares of the Parties from 2017 to 2021 and the average variable costs obtained from the accounting data of the Parties as an approximation of the marginal costs. ³⁷ The JFTC also estimated the diversion ratio³⁸ using market share data obtained from the Parties and other sources.

The GUPPI from Korean Air to Asiana Airlines was calculated to be in excess of 5%, resulting in a price increase incentive to Korean Air as a result of the Action. Similarly, the GUPPI from Asiana Airlines to Korean Air was calculated to be in excess of 5%, indicating that Asiana Airlines would have an incentive to raise prices as a result of the Action.

³⁶ For more information on GUPPI, see footnote 15. To restate the definition of GUPPI, the GUPPI which represents an incentive for Company A to raise its price due to the business combination of Company A and Company B is defined as “diversion ratio from Company A to Company B $\times ((\text{Company B's price} - \text{Company B's marginal cost}) / \text{Company B's price}) \times \text{Company B's price} / \text{Company A's price}$.”

³⁷ Assuming a linear cost function, marginal costs and average variable costs are the same.

³⁸ See footnote 20 for diversion ratio. To restate the definition of diversion ratio based on market share, the diversion ratio from Company A to Company B is “Company B's market share / (1 – Company A's market share).”

G. Summary

As stated above, it was found that ① the combined market share of the Parties after the Action will exceed 60%, ranking first, and the gap with the second-ranked and lower companies would be significant; ② Asiana Airlines has a tendency to offer lower prices than Korean Air, and the close competition between the Parties will be lost post the Action, meaning that the Action will have a significant negative impact on competition; ③ Although the competitors have a certain degree of excess capacity, the Parties and competitors are differentiated in terms of whether they operate large freighters and whether they operate flights to and from airports in western Japan; ④ Many users have expressed concerns about the ability of new entrants to respond to unforeseen circumstances (damage or loss of cargo, etc.) and stable and continuous operation,

meaning that entry pressure is limited; ⑤ Competitive pressure from adjacent markets such as integrators, ocean cargo transportation, and transit flights is also limited; and ⑥ Because the Parties and competitors are differentiated, it is difficult for users to change their business partners, meaning that competitive pressure from users is limited. In addition, ⑦ the economic analysis suggested that the Parties exert a mutual restraining influence on each other and that the Parties will have an incentive to raise their prices after the Action.

Therefore, in the air cargo transportation market for routes from Japan to South Korea, it is considered that the Action could easily create a situation in which the Parties Group alone is able to freely influence prices, etc. to some extent, which would substantially restrain competition.

(2) Substantial restraint of competition through coordinated conduct

In the international air cargo market from Japan to South Korea, it was not found that the concerted actions of the Parties Group and competitors would substantially restrain competition, considering that there would still be many competitors after the Action and there is insufficient evidence to prove that information on competitors' trading conditions, such as prices and quantities, was easily available.

(3) Summary

The Action will substantially restrain competition in the international air cargo transportation market from Japan to South Korea by the unilateral conduct of the Parties Group.

4. Proposal of Remedy by Korean Air

In response to the concerns identified by the JFTC based on the Antimonopoly Act with regard to the air cargo transportation market on routes from Japan to South Korea, Korean Air proposed to divest Asiana Airlines' air cargo transportation business using freighters worldwide, including Japan, to a third party in its entirety, as outlined below (hereinafter referred to as the "Freighter Business Divestment"; the transferees is referred to as "Cargo Remedy Takers"). In addition, Korean Air proposed to enter into a so-called Block Space Agreement (BSA: A party with whom a BSA is concluded is referred to as a "BSA Remedy Taker") under which a certain amount of space provided by Korean Air would be provided to competitors and to encourage price competition by providing space to BSA Remedy Takers at a certain competitive price.

(1) Freighter business divestment

A. Scope of divested business

- The scope of the divested business includes all tangible assets such as aircraft, labor, facilities, equipment, etc. in the air cargo transportation business using freighters, as well as intangible assets such as contracts, authorizations, licenses, and slots (including all slots for freighter flights at Narita Airport and Kansai Airport) to enable effective business operations by a Cargo Remedy Taker (hereinafter referred to as the "Divested Business").
- The air cargo transportation business using passenger belly (hereinafter referred to as "Belly Operation") is not included in the scope of the

divested business (meaning that Belly Operation will remain with the Parties after the Action).

B. Covenants

- The Parties shall maintain or cause to be maintained the economic viability, marketability, and competitiveness of the Divested Business in accordance with “fair business practices” until the divestment of the Divested Business is implemented and shall minimize to the extent possible the risk of loss of the potential competitiveness of the Divested Business.
- Asiana Airlines shall maintain the entire scope of its cargo business, including the Divested Business, separate from Korean Air from the effective date (the Article 9 Notice Date or the date agreed upon by the JFTC and the Parties as the effective date of the Remedy with regard to the cargo business³⁹; the same applies below) until the closing of the Action. In addition, Korean Air shall appoint a Hold Separate Manager to operate the Divested Business under the supervision of the monitoring trustee (the monitoring trustee for the freighter business divestment is hereinafter referred to as the “divestment monitoring trustee”) immediately after the closing of the Action.
- Korean Air shall take necessary measures to ensure that it does not acquire confidential information regarding the Divested Business after the Action is implemented.

³⁹ Considering that a divestment of the freighter business is a remedy also in the European Commission’s decision (see European Commission/Case No. M.10149), the JFTC and Korean Air have agreed to set the effective date as February 13, 2024, the date on which the European Commission conditionally approved the Action.

C. Cargo Remedy Taker

- Cargo Remedy Taker is required to meet the following requirements:
 - ① It must be independent of, and not related to, the Parties Group.
 - ② It must have the financial resources, proven expertise, and incentive to maintain and develop the Divested Business as a viable and active competitor in competition with the Parties and other airlines.
 - ③ It must have an air operator certificate.
 - ④ The acquisition of the Divested Business by the Cargo Remedy Taker must not carry the risk of giving rise to significant competitive concerns.
- The Parties shall obtain the approval of the JFTC on the selection of the Cargo Remedy Taker and the terms and conditions of the divestment of the Divested Business prior to the closing of the Action. In addition, the divestment of the Divested Business to the Cargo Remedy Taker shall be implemented within six months of the closing of the Action.

D. Divestment monitoring trustee and Divestiture trustee

- The Parties shall appoint an independent third party, the divestment monitoring trustee, as an organization to monitor the status of compliance with the freighter business divestment and shall have it monitor the performance of the business divestment, monitor prevention of damage

to the value of the Divested Business before the implementation of the business divestment, and monitor separation of the business between Korean Air and Asiana Airlines until the closing of the Action. After the closing of the Action, the Parties shall have the divestment monitoring trustee observe the status of implementation of the Remedy such as segregation from the Parties any confidential information of the Divested Business and shall also have it report regularly to the JFTC.

- In the event that a Cargo Remedy Taker is not selected by the prescribed deadline, an independent third party, the Divestiture Trustee, shall sell the business on behalf of the Parties. The Parties shall have the Divestiture Trustee report periodically to the JFTC on the progress of the business divestment.

(2) Block Space Agreement (BSA)

A. Overview

- The Parties shall provide BSA Remedy Takers with defined space for cargo transportation on Korean Air aircraft at wholesale prices that the BSA Remedy Takers can offer to users at competitive prices.
- As support measures for BSA Remedy Takers, the Parties shall provide BSA Remedy Takers with measures including ground handling support and transport services by truck at airports in South Korea.

B. Target routes and quantities

- BSA Remedy Takers may choose from among routes departing from Narita Airport, Kansai Airport, and Kitakyushu Airport served by Korean Air and arriving at Incheon Airport or other airports in South Korea.
- If Korean Air suspends the operation of cargo aircraft on any of the above routes for a period of one IATA season or more (referring to one period during the summer schedule (late March to late October) or winter schedule (late October to late March)), it shall notify the JFTC in advance of such suspension, together with specific reasons (profit margin, utilization record of the BSA counterparty, etc.), through the monitoring trustee (see E. below; the monitoring trustee for the BSA is hereinafter referred to as the “BSA monitoring trustee”) who monitors the implementation status of the BSA and obtain the JFTC’s consent. However, for routes departing from Kitakyushu Airport, it is sufficient to notify the JFTC in advance of such suspension, and prior consent is not required only in cases where the cargo transportation volume of the space that the BSA Remedy Taker could have used at the airport is appropriately transferred to Kansai Airport, Narita Airport, and/or other airports in Japan, and the BSA Remedy Taker agrees to such transfer.
- The space that Korean Air will provide to BSA Remedy Takers via a BSA shall be in such volumes as to create a competitor comparable to Asiana Airlines.

C. BSA Remedy Taker

- BSA Remedy Taker is required to meet the following requirements:
 - ① It must be independent of, and not related to, the Parties Group.
 - ② It must have the financial resources, proven expertise, and incentive to

maintain and develop the air cargo transportation business as a viable and active competitor in competition with the Parties and other airlines.

- ③ It must have an air operator certificate.
- ④ The conclusion of a BSA by the BSA Remedy Taker must not carry the risk of giving rise to significant competitive concerns.
- The Parties shall obtain the approval of the JFTC for the selection of BSA Remedy Takers and the terms of the agreement before the execution of the Action and shall enter into a BSA with BSA Remedy Taker and commence operations (providing space by BSA) within six months of such execution.

D. Agreement period

- The term of a BSA shall be five years and shall be automatically renewed on a yearly basis thereafter unless otherwise requested in writing by the BSA Remedy Taker.
- When the total term of the BSA reaches nine years, Korean Air may request the JFTC to approve the termination of the BSA, giving specific reasons in light of the opinion of the BSA monitoring trustee, and if the JFTC approves the request, or if the JFTC does not raise any objections from the perspective of the Antimonopoly Act even after 120 days have passed since the date of the request for approval, the BSA will automatically terminate when the period of the BSA reaches 10 years. If the JFTC objects and requests a certain remedy, Korean Air shall consult with the JFTC regarding an alternative remedy to the BSA, and until such consultations are completed, the existing BSA shall continue.
- The Parties may terminate or reduce the volume of the BSA with prior approval by the JFTC in the event of a material change in supply and demand, even during the agreement period.

E. BSA monitoring trustee

The Parties shall appoint an independent third party, the BSA monitoring trustee, to monitor the performance of the BSA and shall have the BSA monitoring trustee monitor the performance of the BSA and report periodically to the JFTC.

F. Ringfencing measures

To ensure that a coordinated effect does not arise between the Parties and a BSA Remedy Taker in the implementation of the BSA, the Parties shall take appropriate ring fencing measures, such as not sharing confidential information of BSA Remedy Taker (customer name, quantity, price, etc.) obtained in the course of consultations between the Parties and the BSA Remedy Taker on the price of space offered, etc. The details of the ringfencing measures shall be approved in advance by the JFTC.

(3) Prerequisites for the Action

Korean Air also offered to make the following items a prerequisite for the Action.

- The business divestment monitoring trustee, an independent third party, has been appointed by Korean Air with the approval of the JFTC as an organization to monitor compliance with remedial measures related to the

sale of the Divested Business in the cargo business.

- The plan regarding the remedial measures to be taken prior to the execution of the Action in preparation for the company split and spin-off procedures shall be delivered by Korean Air to the business divestment monitoring trustee within six weeks of the effective date.
- Korean Air or the Divestiture Trustee has executed a binding purchase agreement for the sale of the Divested Business, and the JFTC has approved the buyer and terms of sale of the Divested Business in accordance with the Remedy for the cargo business.
- A BSA shall be concluded between Korean Air and BSA Remedy Takers.
- The Parties shall submit to the JFTC a draft trustee mandate with the BSA monitoring trustee within two weeks of the effective date for approval and shall execute such trustee mandate with the monitoring trustee with respect to the BSA within one week of the date of receipt of such approval.
- The Parties shall receive (or have reasonable prospects of receiving) all confirmations, etc. necessary to implement the remedies from other authorities (including but not limited to the Korea Fair Trade Commission, the Ministry of Land, Infrastructure and Transport, and the European Commission) pertaining to the Action (this is a matter common to the international air passenger transportation business).

As described in 4, Part IV above, there are also several preconditions for the implementation of the Action in the international air passenger transportation business as well, and all of these conditions must be met in order for the Parties to implement the Action.

5. Assessment of the Remedy

(1) General remarks

As stated in 5(1)A(a) in Part IV above, a remedy, in principle, should be a structural remedial measure such as a business divestment and should be able to restore the competition lost through the business combination so that the Parties Group cannot freely influence prices, etc. to some extent. The most effective remedial measures are those that create new independent competitors or strengthen existing competitors so that they become effective competitive constraints. (Guidelines 7-1 and 2(1)). In light of this basis, in the cargo business, the most straightforward remedy in the Action is to divest whole of Asiana Airlines' international air cargo transportation business to other enterprises.

Although it would be most desirable to include belly operations in the business divestment, it is considered acceptable to take multiple measures in combination rather than alone as long as that combination can restore the competition that would be lost (Guidelines, Article 7-2). The Remedy in 4 above, by combining multiple remedial measures, creates an effective competitive constraints that prevents the Parties Group from freely influencing prices, etc. to a certain extent after the Action, and can be evaluated as restoring the competition in the international air cargo transportation market that would be lost as a result of the Action.

As stated in 4(1)A above, belly operations are not included in the scope of Korean Air's proposed divestment of the freighter business, and Asiana Airlines' belly operations will remain with the Parties Group after the Action. Passenger flights are numerous on routes from Japan to South Korea, and belly operations account

for a certain amount of total traffic on Asiana's cargo business on routes from Japan to South Korea. Therefore, it can be evaluated that it is appropriate to use a BSA as a remedy in addition to the freighter business divestment because some additional remedy is considered necessary to compensate for the exclusion of belly operations from the scope of the freighter business divestment.

(2) Divestment of the freighter business

The proposal for the freighter business divestment can be evaluated as appropriate, with no particular problems regarding the type of remedies (effectiveness of the freighter business divestment itself as a remedy), transferee, timing of implementation, etc., as described below.

A. Type

As stated in 4(1) above, the freighter business divestment is the most straightforward remedy in the Action, as it divests Asiana Airlines' air cargo transportation business using freighters to a Cargo Remedy Taker and is, therefore, deemed effective.

B. Transferee (Cargo Remedy Taker)

This divestment can be evaluated as appropriate because the transferee, the Cargo Remedy Taker, will be selected before the execution of the Action, and the transfer agreement will be concluded after obtaining approval from the JFTC, including eligibility.

In addition, the Cargo Remedy Taker shall be considered to be an independent and strong competitor in the air cargo transportation market for routes from Japan to South Korea if it meets each of the requirements described in 4(1)C above.

C. Timing of implementation

This divestment can be evaluated as appropriate in the view point of the implementation timing, because, as stated in 4(1)C above, although the business divestment will not take place before the closing of the Action, the deadline for the divestment, within six months of the execution from the Action, is clearly stipulated.

D. Interim measures until the implementation of the Remedy

As described in 4(1)C above, the business divestment is to be implemented after the closing of the Action, so it is considered necessary to take interim measures such as measures to prevent negative effects on competition and measures to prevent damage to the value of the Divested Business, etc. until the divestment.

This divestment can be evaluated as appropriate because, as stated in 4(1)B above, the hold-separate between Asiana Airlines and Korean Air, including the Divested Business until the execution of the Action (maintaining the independence of the businesses of both companies) is assured in the Remedy, and the divestment monitoring trustee is to monitor such business separation and the value of the Divested Business until the execution of the business divestment.

(3) Regarding the BSA

The BSA proposed by the Parties can be evaluated as appropriate, with no particular problems regarding the type (effectiveness of the BSA itself as a remedy), counterparty, timing of implementation, etc., as described below.

A. Type

While a structural remedy such as a business divestment is a desirable remedy, in the event that demand is declining and it is not easy to find a buyer for all or part of the business divisions of the Parties Group (e.g., manufacturing, sales, and development divisions) and the product is mature and services such as research and development and product improvements in response to consumer demand are not very important, it may be deemed effective to set up a contractual right for a competitor to purchase a product at a price equivalent to the production cost of the product (by entering into a long-term supply contract) as a remedy (the so-called “establishment of a cost-based take-over right”; Guidelines, Article 7, Paragraph 2 (1)).

In principle, structural remedial measures such as business divestment should also be taken with regard to belly operations. However, belly operations are basically cargo transport services using passenger aircraft, with the premise of passenger transport. As described in 4, Part IV above, with the Open-Slot transfer in the Remedy for passenger business, some slots have been left open because no specified transferee could be found. Given these circumstances, it is thought to be difficult to find a recipient and to take structural remedial measures such as business divestment with respect to the belly operation.

Furthermore, since the BSA is to provide space supplied by Korean Air at a price that allows BSA Remedy Takers to offer it to users at competitive price, it is similar in structure to “establishing a contractual right for a competitor at a price equivalent to the production cost of the relevant goods” and can be evaluated as a measure to create new independent competitors or to strengthen existing competitors so that they have competitive constraints. Therefore, the BSA is deemed effective as a remedy.

B. Counterparty (BSA Remedy Taker)

This BSA can be evaluated as appropriate because the Parties are to obtain the approval of the JFTC on the selection of BSA Remedy Takers and the terms of the agreement before the execution of the Action and then enter into a BSA with BSA Remedy Taker.

In addition, the BSA Remedy Taker shall be considered to be an independent and strong competitor in the air cargo transportation market for routes from Japan to South Korea if it meets each of the requirements described in 4(2)C above.

C. Quantity of space provided through the BSA

As stated in 4(1)A above, Asiana Airlines’ belly operations are excluded from the scope of the freight business divestment; therefore, even if the freight business divestment is executed, Asiana Airlines’ belly operations will remain with the Parties Group after the Action.

From the perspective of “restoring the competition lost after the Action,” it would be appropriate for the BSA to provide BSA Remedy Taker with a quantity of space equivalent to Asiana Airlines’ belly operations. The quantity of space

provided by the BSA in this case is equivalent to the amount of transportation by Asiana Airlines' belly operations and can, therefore, be evaluated as appropriate from the viewpoint of quantitative comparison.

D. Timing of Implementation

As stated in 4(2)C above, the provision of space through the BSA from the Parties to BSA Remedy Taker will not take place prior to the closing of the Action; however, this BSA can be evaluated as appropriate because there are stipulations that said provision will begin within six months of the closing of the Action.

E. Interim measures until the implementation of the Remedy

As stated in 4(2)C above, since the provision of space by the BSA to BSA Remedy Takers from the Parties will begin after the closing of the Action, it is necessary to take interim measures to ensure that no negative effect on competition will occur in the meantime.

This BSA can be evaluated as appropriate in this regard too. Because, as stated in 4(1)B above, the separation of the Asiana Airlines and Korean Air businesses is assured in the Remedy as well as in the freighter business divestment, and the monitoring trustee is to monitor the separation including the said business separation.

F. Ringfencing measures

As described in 4(2)F above, the Parties proposed the measures to block information sharing with BSA Remedy Taker, the details of which are subject to prior approval by the JFTC, and these measures can be evaluated as appropriate from the perspective of preventing a possible coordinated effect from arising because of sharing of business information between the two parties.

(4) Ensuring the implementation of the Remedy

A. Monitoring trustee

The Parties shall appoint independent third-party monitoring trustees (the divestment monitoring trustee and the BSA monitoring trustee) and shall have such monitoring trustees monitor the implementation of the freighter business divestment and the BSA and report periodically to the JFTC.

In light of the following circumstances, monitoring by an independent third party may be a sufficient measure to ensure implementation.

- The Parties shall submit to the JFTC a draft trustee mandates detailing the delegation of duties and authority to the monitoring trustees within two weeks of the effective date, and upon obtaining the approval of the JFTC, shall enter into trustee mandates with the monitoring trustees within one week of receipt of said approval.
- The entity that will be monitoring trustee shall be confirmed by the JFTC to be eligible from the standpoints of ① track record (confirming that it has experience as a monitoring trustee and knowledge of the aviation industry), ② capability (confirming the number of staff and their career histories and whether or not they can communicate with the JFTC in Japanese), and ③ conflicts of interest and independence (confirming current or past transaction history with the Parties Group, whether there

are interlocking officers with the Parties Group, and whether a remuneration system is in place to ensure the independence of the monitoring trustee) and shall be selected upon obtaining confirmation from the JFTC.

B. Divestiture Trustee

In cases where a business divestment is included as part of a remedy package, such remedy package may include the condition that an independent third party, a divestiture trustee, may sell the business on behalf of the Parties if a transfer agreement is not executed within a certain period of time in order to avoid a situation where the business divestment is not implemented by the deadline specified in the remedy.

In this case, as described in 4(1)D above, said condition is included in the contents of the freighter business divestment, and if a Cargo Remedy Taker is not selected within a certain period of time, the divestiture trustee may sell the Divested Business on behalf of the Parties. Further, the JFTC will determine the eligibility of such business divestiture trustee from the same perspective as described in A. above, and the trustee will be appointed upon approval by the JFTC. Therefore, it is considered that this could be a sufficient measure to ensure performance.

Part VI: Conclusion

As a result of the review, based on the premise that the Remedies proposed by the Parties is implemented, the JFTC concluded that it could not establish the Action would substantially restrain competition in a particular field of trade.

Case 10 Absorption-type split of the headquarters business of the franchise chain of Culture Convenience Club Co., Ltd. by MPD Co., Ltd.

Part I The Parties

MPD Co., Ltd.^[1] (JCN 4010001098525) (hereinafter referred to as "MPD") is a joint venture of NIPPAN GROUP HOLDINGS, INC (JCN2010001033269) (hereinafter referred to as "NIPPAN GROUP HD") and Culture Convenience Club Co., Ltd, (JCN2120001077107) (hereinafter referred to as "CCC"). The company is engaged in the wholesale business of supplying merchandise to the members of the franchise chain called TSUTAYA chain (hereinafter referred to as the "FC")^[2]. In addition, CCC mainly engage in the headquarters business of the FC (hereinafter referred to as the "Subject Business").

In the following, the group of companies that have already formed a joint relationship with NIPPAN GROUP HD, the ultimate parent company of MPD, is referred to as the "NIPPAN Group."

Part II Outline of the Case and applicable provisions

This case is about MPD's plan to succeed to the Subject Business operated by CCC through an absorption-type company split (hereinafter referred to as the "Transaction").

The applicable provision is Article 15-2 of the Antimonopoly Act.

There are multiple competitive or business relationships between the business operated by the NIPPAN Group and the Subject Business. Among the results of the examination of these relationships, the following is a detailed description of the results of the examination of horizontal business combinations in the bookstore business, which were considered to have a relatively large impact on competition.

Part III Characteristics of the franchise system and the approach in the review

The NIPPAN Group operates a bookstore business, and some stores of the NIPPAN Group are members of the FC. Since the Subject Business is the franchiser business of the FC, the following arrangements, including the characteristics of the franchise system, were made in order to identify how the impact of the Transaction on competition should be examined.

1. Characteristics of the franchise system

In the franchise system, the franchiser grants the right to use a specific trademark

¹ MPD Co., Ltd. changed its name to "Culture Experience Co., Ltd" on October 1, 2023.

² Stores of TSUTAYA chain are named "TSUTAYA", "TSUTAYA Book Store" or "Kusamura Books".

or trade name to the franchisees, and controls, instructs, and supports the sales of goods, provision of services, and other business and management of the members in a uniform manner. In return, the members pay the franchiser money. In many cases, the franchiser and franchisees conclude a so-called franchise agreement, and the franchiser and franchisees conduct business under the agreement as if they were the head office and branches of an ordinary corporation. However, the franchisees are legally independent from the franchiser³.

As described above, franchisees are independent operators from the franchisers. However, in past reviews of business combinations, there are examples where the JFTC decided that a franchise chain which was formed of the franchisers and franchisees competed through franchisees, based on the fact that the franchisers required franchisees to comply with rules set forth in franchise agreements on the ground that uniformity in services among stores is necessary to win consumer trust, and in reality, most franchisees sold recommended products at prices recommended by the franchisers⁴.

2. The approach considering the franchise system in this case

(1) Actual situation of competition in the FC

As to the FC, in the bookstore operated by the franchisees (hereinafter referred to as the "Franchisees' bookstore") the franchisees, under the franchise agreement, shall purchase the recommended products presented by the franchiser from the traders designated by the franchiser, or shall purchase the products independently with the approval of the franchiser, and set the price and sell referring the prices presented by the franchiser. The franchisees also receive guidance and assistance from the franchiser regarding the opening of new stores, renovation of stores, shelving allocation of the Franchisees' bookstore.

Based on the above, it is considered that the FC competes with other bookstores through the Franchisees' bookstores.

(2) Policy of the review

A. Type of business combination

At a glance, the Transaction is not considered to be a horizontal business combination of the bookstore business because the Subject Business is the franchiser business of the FC and the bookstore business itself is not succeeded from CCC to the NIPPAN Group by the Transaction.

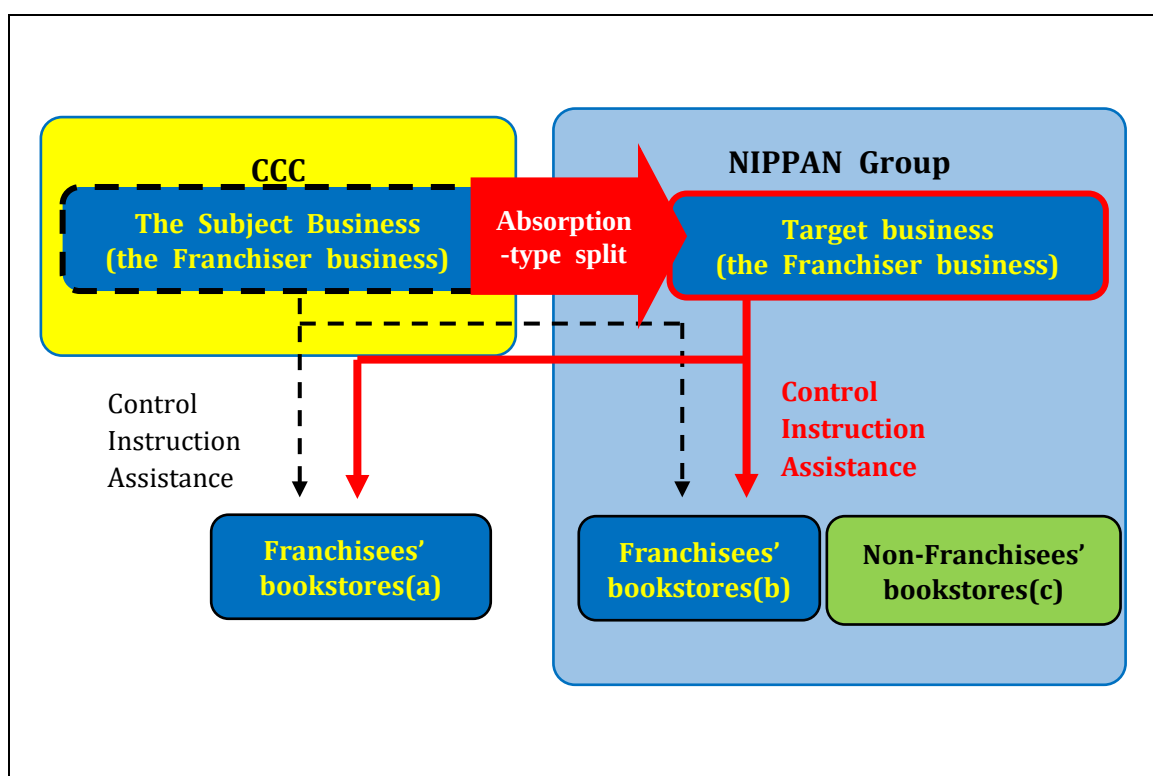
³ Refer 1 (1) and (2) of "GUIDELINES CONCERNING THE FRANCHISE SYSTEM UNDER THE ANTIMONOPOLY ACT"(Japan Fair Trade Commission, April 24, 2002)

⁴ Case 9: Management Integration of Family Mart Co., Ltd. and UNY Group Holdings, Inc., "Major Business Combinations in Fiscal 2015," (Japan Fair Trade Commission, June 8, 2016)

However, as described in (1) above, the FC is considered to be competing with other bookstores through the Franchisees' bookstores. After the Transaction, the NIPPAN Group will be involved in the conduction of the Franchisees' bookstores (the Franchisees' bookstores, other than those belonging to the NIPPAN Group, as indicated Figure 1(a)) and these of the NIPPAN Group ((b) in Figure 1)) in addition to the bookstores which the NIPPAN Group has operated and does not belong to the FC (hereinafter referred to as the "Non-Franchisees' bookstore") ((c) in Figure 1). For this reason, it is considered that NIPPAN Group (MPD) will be the actual operator of the Franchisees' bookstores, and appropriate to conduct the review from the viewpoint of horizontal business combinations in the bookstore business.

In reviewing horizontal business combinations in the bookstore industry, the state of competition at each store is reviewed, considering that competition is conducted at the store level.

Figure 1: Outline of the Transaction



Note: The dotted black line represents the FC before the Transaction, and the bold red line represents the FC after the Transaction.

B. Sorting out the targets of the review based on the product categories handled by each store

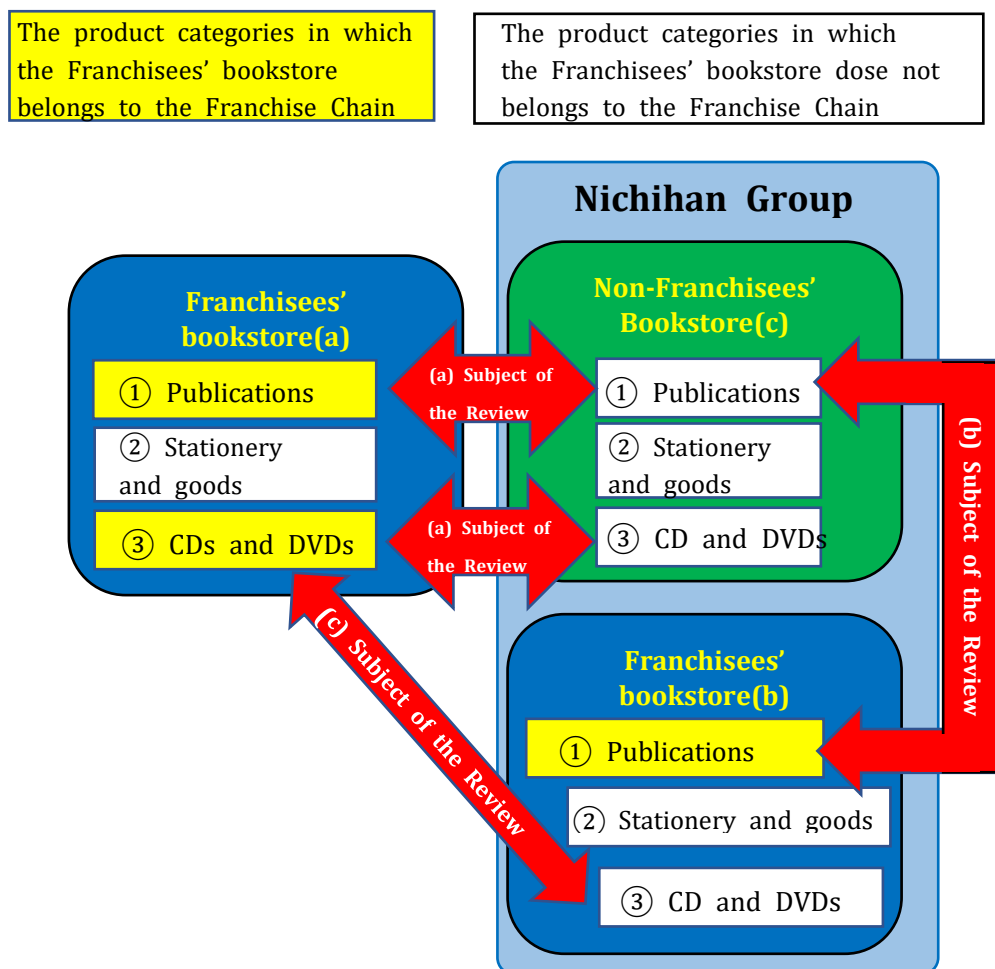
The franchisees' bookstore shall deal in not only books and magazines

(hereinafter referred to as "publications") but also stationery goods, CD and DVD to the public. As a circumstance peculiar to the FC, the Franchisees' bookstores can select whether to join the FC or not for each product category such as ① publications, ② stationery goods, and ③ CD / DVD. Therefore, there are cases where a Franchisees' bookstore belongs to one product category but not to another product category. As a result, even among the Franchisees' bookstores, there are cases where some are members and others are non-members in certain product categories. Although there is no competitive relationship in the product categories in which all of the Franchisees' bookstores belong to the FC, a certain level of competition has been conducted in the product categories in which one of the Franchisees' bookstores does not belong to the FC or in which none of the Franchisees' bookstore belongs to the FC.

C. Summary

Based on A and B above, the JFTC decided to conduct the review as follows, considering the impact of the Transaction on competition caused by the horizontal business combination in the bookstore business.

Figure 2 : Image of Product Categories Subject to review in the Horizontal Business Combination



(a) Between the FC member bookstores other than the NIPPAN Group and the non-FC member bookstores [between (a) and (c) in Figure 1]

As a result of the Transaction, the Franchisees' bookstores which do not belong to the NIPPAN Group((a) in Figure 1) are placed under the control of the NIPPAN Group (MPD), the franchiser of the FC, in the product categories in which the Franchisees' bookstore belongs to the FC. As a result, there is a possibility that competition will be lost between the Non-Franchisees' bookstores under the NIPPAN Group ((c) in Figure 1) and the Franchisees' bookstores outside NIPPAN Group ((a) in Figure 1) in the product categories in which the Franchisees' bookstores outside the NIPPAN Group have joined the FC (for example, ① publications and ③ CDs and DVDs handled by (a) and (c) in Figure 2).

Therefore, the review is conducted by focusing on the product categories in which the Franchisees' bookstores other than the NIPPAN Group join the FC (for example, "(a) Subject of the Review" in Figure 2).

(b) Between the Franchisees' bookstores of the NIPPAN Group and Non-franchisees' bookstore [between (b) and (c) in Figure 1]

As a result of the Transaction, the Franchisees' bookstores of the NIPPAN Group ((b) in Figure 1) are placed under the control of the NIPPAN Group (MPD), the franchiser of the FC, in the product categories in which the Franchisees' bookstores join the FC. As a result, there is a possibility that competition between the Non-Franchisees' bookstores under the NIPPAN Group ((c) in Figure 1) and the Franchisees' bookstores of NIPPAN Group ((b) in Figure 1) may be lost in the product categories in which the Franchisees' bookstores of the NIPPAN Group have joined the FC (for example, ① publications handled by (b) and (c) in Figure 2).

Therefore, the review is made by focusing on the product categories in which the Franchisees' bookstores of the NIPPAN Group are members of the FC (for example, "(b) Subject of the Review" in Figure 2).

(c) Between the Franchisees' bookstores other than the NIPPAN Group and the Franchisees' bookstores of the NIPPAN Group [between (a) and (b) in Figure 1]

As a result of the Transaction, the franchisees' bookstores other than the NIPPAN Group ((a) in Figure 1) are placed under the control of the NIPPAN Group (MPD), the franchiser of the FC, in the product categories in which the bookstores belong to the FC (the product categories that are not included in the FC are not controlled by the NIPPAN Group even after the Transaction.) As a result, there is a possibility that competition will be lost between the franchisees' bookstores other than the NIPPAN Group ((a) in Figure 1) and the Franchisees' bookstores of the NIPPAN Group ((b) in Figure 1) in the product categories in which the Franchisees' bookstores other than the NIPPAN Group ((a) in Figure 1) are members of the FC and the Franchisees' bookstores of the NIPPAN Group ((b) in Figure 1) are not members of the FC (for example, ③ CD / DVD handled by (a) and (b) in Figure 2).

Therefore, the review is conducted by focusing on the product categories in which the Franchisees' bookstores other than the NIPPAN Group are members of the FC and the Franchisees' bookstores of the NIPPAN Group are not members of the FC (for example, "(c) Subject of the Review" in Figure. 2).

PartIV Particular field of trade

1. Service scope

(1) Substitutability of Publication Formats and Sales by Business Category

Bookstores under consideration in this case sell paper publications. Besides bookstores, the main business category for selling paper publications to consumers is the Internet mail order business, which sells through the Internet websites.

In recent years, the use of electronic media for reading publications (hereinafter referred to as "electronic publications") by using a terminal such as a tablet has become increasingly common. The e-publication distribution business, which distributes e-books, has been increasing its sales volume⁵.

Accordingly, the following discussion examines the substitutability of these.

A. Substitutability of demand

From the viewpoint of consumers of publications, there are the following differences due to the difference in the medium between paper publications and electronic publications, and the difference in the method of providing publications between bookstores, and Internet mail order businesses and electronic publication distribution businesses.

	Bookstore (Paper Publications)	Internet Mail order (Paper Publications)	Electronic publication distribution (Electronic Publications)
Assortment	Physical constraints such as store floor space and layout affect the assortment (quantity and type).	There are no physical constraints like bookstores, so there is a wide variety of items.	
Searchability	Even if you can	The keyword search function allows	

⁵ According to the "Report on the Results of FY2022 E-Commerce Market Survey" (August 2023, Ministry of Economy, Trade and Industry, Commerce and Information Policy Bureau, Information Economy Division), the market size of "electronic publishing (electronic books and magazines)" is on the increase (from 127.6 billion yen (2014) to 625.3 billion yen (2022)), but most of the increase is comic books (books).

Case 10 Absorption-type split of the headquarters business of the franchise chain of Culture Convenience Club Co., Ltd. by MPD Co., Ltd.

	Bookstore (Paper Publications)	Internet Mail order (Paper Publications)	Electronic publication distribution (Electronic Publications)
	search for the stock, it takes time to get to the publication you want.	users to easily find the desired publication.	
Compare to others	You can actually pick up the publication you want to read and compare it with other publications.	When the trial reading function is set, it is possible to check the contents within a limited range, but it is not possible to actually compare the publications as you can in a bookstore.	
Time from purchase to acquisition	Read immediately after purchase.	It takes a certain amount of time for the ordered publication to arrive.	Read immediately after purchase.
Advantages due to the nature of the medium	You can read publications forever after purchase.		- You can freely browse the publications on a reading device (tablet, smartphone, etc.). Since a large number of publications can be stored in the terminal and the terminal can be easily carried, the burden of storage and carrying is small.

	Bookstore (Paper Publications)	Internet Mail order (Paper Publications)	Electronic publication distribution (Electronic Publications)
Disadvantages due to the nature of the medium	Since it is heavy and bulky, the burden of storage and carrying increases as the number of publications increases.		If the electronic publication distributor ends the distribution service, it may not be able to be viewed.

Based on the above, it is considered that consumers use bookstores, Internet mail order, and electronic publication distribution according to their purposes to a certain extent. Accordingly, the substitutability of demand among bookstores, Internet mail order businesses and electronic publication distribution businesses is limited.

B. Substitutability of supply

Next, the existence of substitutability of supply is examined from the viewpoint of business operators engaged in bookstores, Internet mail order businesses, and electronic publication distribution businesses.

The main requirements for running an Internet mail order business and an electronic book distribution business are the establishment of a system of transaction sites and the development of a maintenance management system. On the other hand, the main requirements for running a bookstore business are securing sufficient land, store facilities, and employees for stocking shelves and serving customers. Accordingly, the facilities and know-how required by the Internet mail order business and the electronic book distribution business are significantly different from those of the bookstore business, and it is not easy to switch between them. Therefore, the substitutability of supply between the Internet mail order business and the electronic book distribution business, and the bookstore business is limited.

In addition, although both Internet mail order businesses and electronic publication distribution businesses supply publications to consumers via the Internet, the media of the supplied publications are different, and the construction of the system of the transaction site and the sales know-how are

different, and it is considered that it is not easy to switch between them. Accordingly, the substitutability of supply between them is limited.

C. Summary

From the above, the bookstores, the Internet mail order businesses, and the electronic publication distribution businesses constitute different service scopes.

(2) Handling of products other than paper publications in bookstores

Some bookstores sell stationery goods, CDs and DVDs, but the main products sold are paper publications, and it is considered that bookstores handle these stationery goods as the second most important products after paper publications⁶.

(3) Summary

Based on the above, the service scope in this case was defined as "bookstores that mainly sell paper publications."

The competitive situation by product category was separately considered in the examination of the impact of the Transaction on competition in Part V below, according to the policy stated in 2. (2) C. of Part III above.

2. Geographical scope

Competition among bookstores is considered to be conducted on a store-by-store basis. In light of the location of bookstores, where cars and bicycles are the main means of transportation, and the trading area actually set by the stores to be examined in this case, the geographical area of the bookstores was defined as "a radius of 3 km from the store."

Part V Effect of the Transaction on Competition

As the NIPPAN Group operates a bookstore business and, as mentioned in 2. (2) A. of Part III above, it can be considered that the NIPPAN Group will substantially operate the Franchisees' bookstore by succeeding to the Subject Business, the Transaction meets a horizontal business combination in the bookstore business.

1. Status of competitors

Within the geographical area defined in 2 of Part IV above, the area where any of

⁶ Bookstores, Internet mail order businesses, rental services, subscription services for music and video contents, and the like in the case of CD / DVD constitute different service scopes, as in the case of the relationship between bookstores, Internet mail order businesses, and electronic publication distribution businesses in the publications.

the Franchisees' Bookstores other than the NIPPAN Group, the Franchisees' Bookstores of the NIPPAN Group, or the Non-Franchisees' bookstores coexist and where there is competition in the product category is 48 areas (hereinafter referred to as the "Competing Areas").

After the Transaction, except for four of the Competing Areas, there are at least one bookstore of a competitor that handles a competing product category within the geographical area, and consumers can use the bookstore located within the Competing Area.

Therefore, the restraining power from competing bookstores is recognized.

2. Conventional competition among stores in the four regions

As to the four regions where there are no bookstores of competitors that handle competing product categories (hereinafter referred to as the "Four Regions"), three of the regions have competition in the paper publication category, and one in the CD / DVD category.

3. Competitive pressure from adjacent markets

(1) Competitive pressure from business that sell paper publications like bookstores

There are areas, including the Four Regions, where the restraining power from competing bookstores is not sufficient.

However, the percentage of sales of paper publications and CDs / DVDs that are sold by Internet mail order is increasing⁷. Internet mail order is considered to have a certain presence as an option for purchasing paper publications at places other than bookstores. In addition, among paper publications, magazines in particular are purchased at general supermarkets, convenience stores, etc. This suggests that consumers are purchasing paper publications through Internet mail order services and other stores instead of bookstores.

Therefore, a certain amount of competitive pressure from Internet mail order businesses and other stores, which are businesses that sell paper publications like bookstores, can be recognized.

(2) Competitive pressure from businesses that offer electronic publications

It can be seen that consumers use sales of paper publications at bookstores or distribution of electronic publications, sales of CDs and DVDs at bookstores or

⁷ According to the "Report on Market Research on Electronic Commerce in 2022," the ratio of Internet shopping (EC ratio) of "books, video and music software (excluding online contents)" in 2022 was 52.2% (according to the same survey in 2018, the EC ratio in 2018 was 30.8%). Although the growth rate of books alone is unknown, the ratio of Internet mail order sales of books, CDs, and DVDs is increasing.

rental services of CDs and DVDs, and distribution services of music or video contents, depending on the purpose and price.

However, although there are differences in media and whether they are owned or not, there are no differences in the information that consumers can obtain. Therefore, it is considered that the existence of each can be a certain choice for consumers.

Therefore, there is a certain amount of competitive pressure from adjacent markets such as electronic publication distributors, CD / DVD rental service providers, and distributors of music and video contents.

(3) Competitive pressure from geographically adjacent markets

Consumers buy publications less frequently than food items they buy every day. Moreover, products that match their tastes and hobbies or products that includes specialized content are not always available at bookstores within 3 km of their homes. Therefore, it is considered that consumers often use bookstores located in areas where they usually do not go shopping.

There are some bookstores that do not belong to the NIPPAN Group and are not Franchisees' bookstores in the area adjacent to the Competing Area. In such cases, a certain amount of competitive pressure from the bookstores is recognized.

4. Summary

Based on the above, it is not found that the unilateral conduct of the NIPPAN Group or the coordinated conduct of the NIPPAN Group and competitors would substantially restrain competition in the field of trade related to the bookstore business.

Part VI Conclusion

The JFTC concluded that the Transaction would not substantially restrain competition in a particular field of trade.