



Japan Global merger control handbook – update

APRIL 2020

Merger control legislation updates since 1 July 2018

Due to an increased need to properly regulate business combinations in the digital market in recent years and other reasons, Japan Fair Trade Commission (the “JFTC”) has amended the Guidelines to Application of the Antimonopoly Act concerning Review of Business Combination (the “Business Combination Guideline”) and Policies concerning Procedures of Review of Business Combination (the “Business Combination Procedures Policies”) on December 17, 2019.

Key highlights of the amendments are as follows:

1. The amendment of the Business Combination Guideline
 - Define Particular Field of Trade regarding the scope of competition restriction in case of digital service market. Under the amendment, the JFTC will consider the following factors to define Product Range and Geographic Range:

(i) Product Range

Qualities (such as sound quality, image quality, communication speed, and the level of security), user-friendliness (such as usable languages and terminals) and other features of the available service will be taken into consideration.

(ii) Geographic Range

Geographic Range is defined as a geographic area within which a user can enjoy the service provided by a supplier on the same terms and quality.

- Substantial Restraint of Trade in the case of Horizontal Business Combination
The JFTC provides guidance on competition analysis based on the characteristics of digital service (multi-sided market, network effect, switching cost, etc.)
- Substantial Restraint of Trade in the case of Vertical Business Combination and Conglomerate Business Combination

The JFTC provides general guidance of analysis of vertical and conglomerate business combinations. The JFTC also provides analysis guidance through some examples. For example, the JFTC analyzed an acquisition where the target company of a vertical business combination has important resources that affect the competition between the acquiring company and the target company (please refer to the following case of Nihon Ultmarc Inc/M3, Inc.¹).

2. The amendment of the Business Combination Procedures Policies

- In order to confirm the motivation or plan of the parties, the JFTC may request the parties to submit internal documents such as materials used at board meetings of the parties and minutes of the board meetings.

Landmark merger control cases since 1 July 2018

- Fukuoka Financial Group/The Eighteenth Bank²
The JFTC reviewed the acquisition of shares of The Eighteenth Bank Ltd. (the headquarter of which is in Nagasaki prefecture) by Fukuoka Financial Group, Ltd. and concluded that, although the acquisition has negative impact on the loan business of small and medium-sized companies in Nagasaki prefecture, given the remedial measures proposed by the parties (e.g., to transfer the debts of the small and mid-sized companies in Nagasaki prefecture to other financial institutions), competition in any particular field of trade is unlikely to be substantially restrained. Therefore, the JFTC notified the parties its approval of the acquisition on August 24, 2018.
- Mitsubishi Paper Mills Limited/Oji Holdings Corporation³
The JFTC reviewed the plan under which Oji HD (one of the most famous paper manufacturing companies in Japan) would acquire the shares of Mitsubishi Paper and thereby obtain 33 percent of Mitsubishi Paper's voting rights. The JFTC considered the impact of the acquisition on relevant markets (e.g., the market of coated paper and the market of pressboard) and determined that competition in any particular field of trade is unlikely to be substantially restrained. Hence, the JFTC notified the parties its approval of the acquisition on December 25, 2018.
- Sanyo Special Steel Co., Ltd./NIPPON STEEL & SUMITOMO METAL CORPORATION⁴
The JFTC reviewed the acquisition of shares of Sanyo Special Steel Co., Ltd. by NIPPON STEEL & SUMITOMO METAL CORPORATION. The JFTC determined that, although the acquisition has negative impact on the market of some steel

materials, given the remedial measures proposed by the parties (e.g., to provide the sales and technical support for Kobe Steel to make a new entry into the market), competition in any particular field of trade is unlikely to be substantially restrained. The JFTC notified the parties its approval of the acquisition on January 18, 2019.

- Nihon Ultmarc Inc/M3, Inc.⁵
The acquisition of shares of Nihon Ultmarc Inc, which operates medical information databases, by M3, Inc., which operates drug information platforms on April 1, 2019 did not meet notification criteria stipulated in Japan Anti-Trust Act. However, the JFTC reviewed the acquisition since the JFTC had concerns about restraint of competition caused by the acquisition. As a result of the review, the JFTC determined that, although there are some negative impacts on the competition of pharmaceutical information platforms (which provide information for medical practitioners), based on the proposed remedial measures the parties promised to take (e.g., to avoid refusing to provide data to medical practitioners and discriminatory treatment, etc.), the JFTC determined that the acquisition would not substantially restrain competition in any particular field of trade and notified the parties its conclusion on October 24, 2019.

Web link to the national competition authority

Fair Trade Commission: <https://www.jftc.go.jp/en/>

"Amendments to Guidelines to Application of the Antimonopoly Act concerning Review of Business Combination and to Policies concerning Procedures of Review of Business Combination"

<https://www.jftc.go.jp/en/pressreleases/yearly-2019/December/1912172Summary.pdf>

"GUIDELINES TO APPLICATION OF THE ANTIMONOPOLY ACT

CONCERNING REVIEW OF BUSINESS COMBINATION (Revised as of December 17, 2019)"

<https://www.jftc.go.jp/en/pressreleases/yearly-2019/December/1912173GL.pdf>

"Policies Concerning Procedures of Review of Business Combination(Revised as of December 17, 2019)"

https://www.jftc.go.jp/en/legislation_gls/imonopoly_guidelines_files/191217GL.pdf

1 <https://www.jftc.go.jp/en/pressreleases/yearly-2019/October/191024.html>

2 <https://www.jftc.go.jp/en/pressreleases/yearly-2018/August/180824.html>

3 <https://www.jftc.go.jp/en/pressreleases/yearly-2018/December/181225.html>

4 <https://www.jftc.go.jp/en/pressreleases/yearly-2019/January/190118.html>

5 <https://www.jftc.go.jp/en/pressreleases/yearly-2019/October/191024.html>

Your merger control contact in Japan

DLA Piper Tokyo Partnership Gaikokuho Kyodojigyo

Horitsu Jimusho

Meiji Seimei Kan 7F
2-1-1 Marunouchi, Chiyoda-ku
Tokyo
100-0005
Japan



Takahiro Nonaka

Partner
takahiro.nonaka@dlapiper.com



Yuya Aoki

Associate
yuya.aoki@dlapiper.com