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Competition in the Circular Economy – Note by Japan

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More documents related to this discussion can be found at
<https://www.oecd.org/competition/competition-in-the-circular-economy.htm>

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1. Introduction

1. The Japanese government declared goals of reducing greenhouse gas emission as of 2030 and 2050 in “Plan for Global Warming Countermeasures” (Cabinet decision, October 22, 2021). For achieving those goals, it is needed to build the “Green Society,” which realizes both reduction of environmental impact and economic growth. Toward the realization of the green society, it is expected that the efforts of enterprises and trade associations (hereinafter collectively referred to as (an) “enterprise(s)”) will become more active and concrete. However, if it is not sufficiently clear how to apply and enforce the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947; hereinafter referred to as the “Antimonopoly Act”), it may possibly cause concerns for enterprises that their various efforts toward the realization of a green society might pose problems under the Antimonopoly Act.

2. The Japan Fair Trade Commission (hereinafter referred to as the “JFTC”) has long been involved in advocacy activities to support the activities of enterprises that promote the circular economy, including the formulation of the “Guidelines Concerning Joint Activities for Recycling under the Antimonopoly Act” (hereinafter referred to as the “Recycle Guidelines”) in 2001 and the publications of collections of major consultation cases that compile major consultations from enterprises and the responses by the JFTC to those consultations¹, in order to present viewpoints based on the Antimonopoly Act concerning the acts of enterprises conducted for the circular economy or the sustainability. Given that enterprises are expected to be more active and concrete in their efforts to realize a green society in years to come, the JFTC is also required to promote such efforts more than ever.

3. With this background, the JFTC formulated “Guidelines Concerning the Activities of Enterprises, etc. Toward the Realization of a Green Society Under the Antimonopoly Act” (hereinafter referred to as the “Green Guidelines” or simply the “Guidelines”), which was published on March 31, 2023, for the purposes of preventing anticompetitive conduct that stifles innovation such as the creation of new technologies, and of encouraging the activities of enterprises toward the realization of a green society, by further improving predictability for enterprises and transparency in the application and enforcement of the Antimonopoly Act in relation to the activities of enterprises.²

4. The Green Guidelines do not change the JFTC's existing views on the Antimonopoly Act. However, based on the above objectives, the Guidelines explain the JFTC's views regarding Antimonopoly Act and green initiatives comprehensively in terms of all types of conducts including not only joint activities but also vertical restrains, abuse of a superior bargaining position and mergers, providing as many as 76 supposed cases of acts which pose problems under the Antimonopoly Act and acts which do not. This is one of the features of the Guidelines, which provides overall information to enterprises and

¹ The JFTC provides consultation for enterprises on whether the specific details of their future activities will be problematic under the Antimonopoly Act. The JFTC publishes a collection of major consultation cases annually.

² See the following link for the text of the Green Guidelines, etc. <https://www.jftc.go.jp/en/pressreleases/yearly-2023/March/230331.html>

thereby enables them to understand and utilize the Guidelines easily. The contents of the Green Guidelines are expected to be continuously reviewed according to future changes in markets and business activities, specific cases of law enforcement and consultation, and other relevant factors.

5. This note briefly explains the Recycle Guidelines and past consultation cases in Section 2, and then, provides the overview of the Green Guidelines in Sections 3 to 8.

2. Overview of the Recycle Guidelines and past consultation cases

6. In 2001, the JFTC formulated and published the Recycle Guidelines, with the expectation of contributing to the formation and promotion of a recycling-oriented society through the smooth promotion of recycling without impeding competition, by clarifying the approach under the Antimonopoly Act with regard to joint activities by enterprises for reduction, collection, transportation and recycling of waste.³ The Recycle Guidelines clarify, with specific examples, when joint activities such as joint development and operation of recycling systems do not pose problems under the Antimonopoly Act.⁴

7. Furthermore, the JFTC has presented viewpoints based on the Antimonopoly Act concerning the acts of enterprises for promoting circular economy or sustainability by publishing collections of major consultation cases. For example, in the collection of major consultation cases published in July 2008 includes a case in which a city government, the resident groups, and participating retailers in the city concluded an agreement under which the retailers should charge for provision of plastic shopping bags and the unit price should be five Japanese yen in order to reduce the use of plastic bags. In this case, the JFTC responded that this initiative would not immediately constitute a violation of the Antimonopoly Act, taking into consideration the fact that this initiative was based on a legitimate purpose.⁵

3. Basic concept of the Green Guidelines

8. The activities of enterprises toward the realization of a green society do not pose problems under the Antimonopoly Act in most cases. On the other hand, if activities of enterprises have solely anti-competitive effects to restrain fair and free competition among enterprises, by imposing restraints on factors such as prices, quantities, customers, distributions, technologies and facilities of respective enterprises, and do not have pro-competitive effects, such activities pose problems under the Antimonopoly Act, even if those are nominally aimed at contributing to the realization of a green society. Furthermore, if specific activities of enterprises are considered to have pro-competitive effects as well as anti-competitive effects, whether those activities pose any problem under the Antimonopoly Act is found by comprehensively considering both types of effects generated by the activities, taking into account the rationality of the activity's purpose and the adequacy as the means to achieve it.

³ https://www.jftc.go.jp/en/legislation_gls/imonopoly_guidelines_files/recycle.pdf

⁴ See section 4.2 of Japan's contribution for the Roundtable on Waste Management Services held by WP2 in October 2013 for details.

⁵ See section 4.2 of Japan's contribution for the Roundtable on Waste Management Services held by WP2 in October 2013 for details.

9. Based on the above perspective, the Guidelines present the framework and factors to be considered in determining whether or not green initiatives by enterprises pose problems under the Antimonopoly Act, in terms of “joint activities,” “restraint on trading partners’ business activities or the selection of trading partners,” “abuse of superior bargaining position” and mergers (“business combinations”), providing supposed cases regarding acts which pose problems under the Antimonopoly Act and acts which do not.

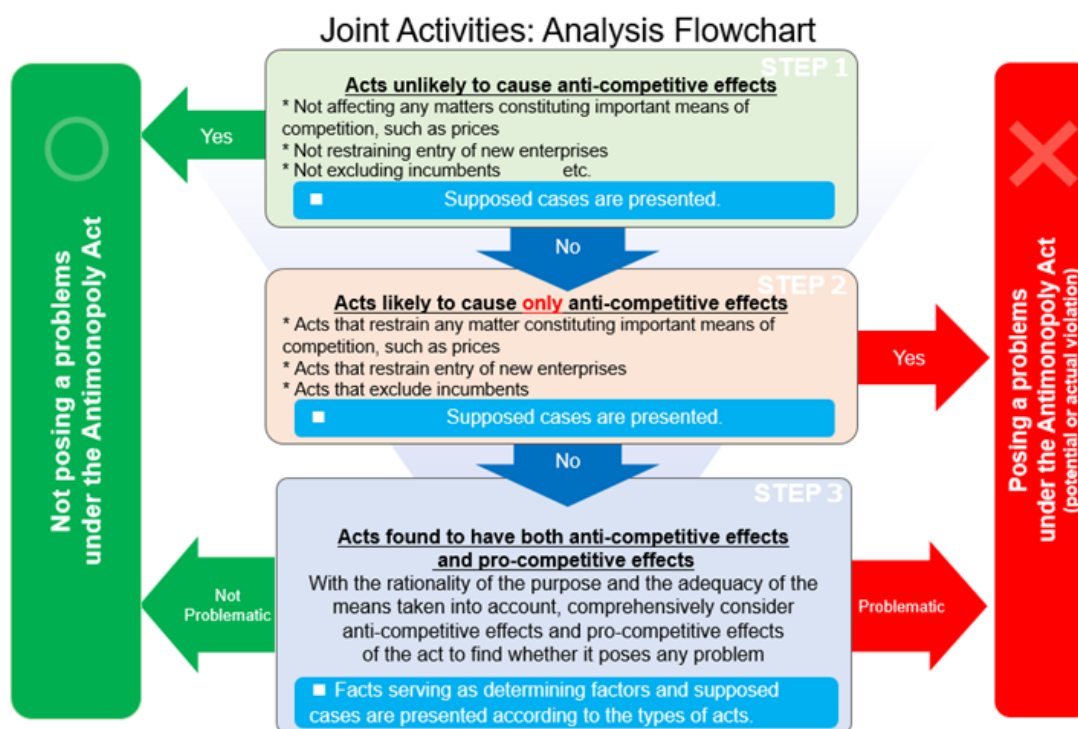
10. Given that enterprises currently focus on activities to reduce greenhouse gas emissions as their efforts toward the realization of a green society, such activities are basically addressed by the Guidelines in presenting supposed cases and viewpoints based on the Antimonopoly Act.

4. Joint Activities

4.1. Analysis framework

11. Enterprises sometimes implement joint activities such as setting self-imposed standard and joint R&D, as steps toward the realization of a green society. The Guidelines state that the review of joint activities under the Antimonopoly Act is conducted according to the below framework.

Figure 1. Joint Activities – Analysis Flowchart



12. Regarding the condition of “[n]ot affecting any matters constituting important means of competition, such as prices” described in “STEP 1” of the above flowchart, the Guidelines indicate that hard-core cartels, which are joint activities that restrain any important means of competition such as prices, including bid rigging, price-fixing and output cartels, pose problems under the Antimonopoly Act in general even if those acts are

aimed at contributing to the realization of a green society, because those acts cause anti-competitive effects but do not normally lead to any pro-competitive effects.

4.2. Acts unlikely to cause anti-competitive effects

13. The Guidelines provide supposed cases of joint activities of enterprises that are not likely to have any anticompetitive effect including the followings.

Box 1. Supposed cases that do not pose problems under the Antimonopoly Act

Industry-wide awareness-raising campaign

Trade Association X has decided to organize an awareness-raising campaign to promote the activities of individual enterprises in the industry toward the realization of a green society. In the implementation of the campaign, X ensures the followings: it is to be implemented to the extent that it does not affect any factors constituting important means of competition; entry of new enterprises is not restrained; existing enterprises are not excluded from the market; and it does not restrict the business activities of individual enterprises.

Information exchange irrelevant to important means of competition

Enterprises X, Y, and Z, which are manufacturers of Product A, exchanged among them information on how to calculate greenhouse gas emissions and save the energy in the manufacturing process of Product A, and on experiences in leveraging greenhouse gas reductions to gain new transaction opportunities, as a reference for their respective efforts. Factors constituting their important means of competition, such as their respective prices of Product A, were not subject to the information exchange.

4.3. Acts likely to cause only anti-competitive effects

14. The Guidelines provide supposed cases of joint activities of enterprises that are likely to have only anti-competitive effects and thereby pose problems under the Antimonopoly Act in principle including the followings.

Box 2. Supposed cases that pose problems under the Antimonopoly Act

Joint disposal of production facilities

In order to reduce the amount of greenhouse gas emissions generated in the manufacturing processes of Product A, Enterprises X, Y, and Z, which are manufacturers of Product A, individually considered switching their existing production equipment to new equipment featuring a new technology for less greenhouse gas emissions. Under such circumstances, X, Y, and Z communicated with one another to align their approaches and decided jointly the time of disposal of their existing production equipment and specific pieces of their existing equipment to be disposed.

(This activity poses problems under the Antimonopoly Act because the enterprises jointly decided the important means of competition, such as the timing of disposal of their existing production equipment.)

Restraints on technological development

Enterprises X, Y, and Z, which are manufacturers of Product A, were strongly required by Product A users to develop technologies to reduce greenhouse gas emissions. In order to avoid the escalation of competition in the development of new technologies, X, Y, and Z exchanged information among them on their respective R&D statuses and also restrained the new technologies adopted for the product to be offered to users in the future.

4.4. Acts found to have both anti-competitive effects and pro-competitive effects

15. When a joint activity is considered to have both anti-competitive effects and pro-competitive effects, whether such an activity poses any problem under the Antimonopoly Act is assessed by comprehensively considering the anti-competitive effects and pro-competitive effects generated by the activity, taking into account the rationality of the activity's purpose and the adequacy as the means to achieve it.

16. The Guidelines explain what facts are specifically assessed as factors for consideration for two types of joint activities: setting self-imposed standards and business alliances.

4.4.1. Concerted Setting of self-imposed standards

17. In many cases, self-imposed standards can be established concertedly without posing any problem under the Antimonopoly Act, as such conduct has pro-competitive effects; for example, unifying specifications may have pro-competitive effects such as prompt launch of a market for the product following the unified specifications or an expansion of the demands.

18. However, setting self-imposed standards sometimes poses problems under the Antimonopoly Act depending on the contents or implementation methods of the standards. In determining if such problems be posed, it is taken into account, among others, whether the conduct unjustly harms the interests of users by restraining means of competition and whether it unjustly discriminates among enterprises. For example, if setting self-imposed standards restrains the development or supply of specific products and restrains means of competition, thereby unjustly harms the interests of users, it may pose problems under the Antimonopoly Act. Also, setting discriminatory standards or restraining the use of standards may pose problems under the Antimonopoly Act, when it constitutes discriminatory treatment, etc. in a trade association and leads to impede competition in, e.g. development or supply of diverse products or services. In addition, the use of and compliance with self-imposed standards should be left to the discretion of each member enterprise; forcing member enterprises to use or comply with self-imposed standards may pose problems under the Antimonopoly Act.

19. Besides, if, corresponding to self-imposed standard setting, the enterprises restrain any factor constituting important means of competition, such as prices, it poses problems under the Antimonopoly Act.

20. The Guidelines provide supposed cases where setting self-imposed standards is, or is not, to pose problems under the Antimonopoly Act including the followings.

Box 3. Supposed cases that do not pose problems under the Antimonopoly Act

Setting specifications for products/services toward the reduction of greenhouse gas emissions (i)

In the manufacturing processes of Product A, the use of Raw Material B causes a large amount of greenhouse gas emissions, and it has been found preferable to use Raw Material C in place of Raw Material B to reduce the greenhouse gas emissions. In order to reduce the greenhouse gas emissions generated in the manufacturing processes of Product A on an industry-wide basis, enterprises X, Y, and Z, which are manufacturers of Product A, have decided to set specifications for Product A to replace Raw Material B with Raw Material C, and to arrange that each company can sell Product A compliant with the specifications with a certification label indicating that it is a decarbonized product.

Although the use of Raw Material C is expected to increase the cost of Product A to a certain extent, Product A made from Raw Material C is found to have clearly improved quality including better durability and lighter weight compared to the previous version of Product A. There is no raw material other than C that can be substituted for Raw Material B to reduce greenhouse gas emissions.

(Although there is a concern that the price of Product A will increase because of expected cost increase owing to the use of Raw Material C, this act can be evaluated as not problematic under the Antimonopoly Act, under overall consideration, if clearly improved quality is achieved and it does not unjustly harm the interests of users.)

Setting specifications for products/services toward the reduction of greenhouse gas emissions (ii)

When Service A is provided, Consumables C, which are usually placed in containers made with Raw Material B, are frequently used. However, it has been found that the use of a container made with Raw Material D instead of Raw Material B can lead to some reductions in greenhouse gas emissions. In order to reduce greenhouse gas emissions generated in the use of Consumable C, Enterprises X, Y, and Z, which provide Service A, have decided to set self-imposed standards stating that, in providing Service A, it is preferable for them to use Consumables C placed in containers made with Raw Material D, and have decided that each of the companies is to switch as much as possible to Consumables C placed in containers made with Raw Material D.

Although the switch to containers made with Raw Material D is expected to increase the cost of containers to a certain extent, the ratio of the cost of Consumables C to the cost of providing A is extremely small even when Raw Material D is used.

Box 4. Supposed case that poses problems under the Antimonopoly Act

Restraining prices, or the like, accompanied with self-imposed standard setting

For the purpose of reducing greenhouse gas emissions generated in manufacturing Product A, Enterprises X, Y, and Z, which are manufacturers of Product A, set self-

imposed standards for desirable business activities for decarbonization in manufacturing process of Product A. Receiving requests for a certain amount of price reduction in conjunction with requests for decarbonization from users each year, the three companies set, in the self-imposed standards, a rough indication of how much cost should be passed on to the price of Product A in order to improve the severe situation of price negotiations with users.

4.4.2. Business alliances

21. The Guidelines explain what facts are assessed as factors for determining whether a business alliance poses any problem under the Antimonopoly Act for the types of business alliances: i.e., joint R&D, technical collaboration, standardization, joint purchasing, joint logistics, joint production or OEM, sales cooperation, and Data sharing.

22. For example, the Guidelines indicate that in many cases, joint R&D is implemented among a small number of enterprises which do not affect competition in a market, and such collaboration can make R&D active and efficient, promote technological innovation, and generate pro-competitive effects in many cases, and thus in such cases, joint R&D is unlikely to pose problems under the Antimonopoly Act. On the other hand, the Guidelines also indicate that problems under the Antimonopoly Act arise in the case where, for example, joint R&D restrains competition substantially in the relevant technology market or product market. The Guidelines state that, in assessing whether joint R&D poses any problem under the Antimonopoly Act, the presence and degree of any anti-competitive effects are assessed with consideration given to the following points.

1. **The number and market shares of participants in the joint R&D** (with respect to joint R&D for modification of a product or for development of a substitute conducted by enterprises competing with one another in the relevant product market, it will not normally pose problems under the Antimonopoly Act if the total market share of the participants in the relevant product market is 20% or less)
 2. **The characteristics of the joint R&D** (e.g., whether it is basic, applied, or developmental research). R&D projects can be classified into basic, applied and development researches. These differences in stages are important factors in deciding whether the impact of a joint R&D on competition in the product market is direct or indirect. If a basic research not for developing a specific product is jointly conducted, it usually has little effect on competition in the product market, and is less likely to pose problems under the Antimonopoly Act. On the other hand, if it is a developmental research, since the results have a more direct impact on the product market, it is more likely to pose problems under the Antimonopoly Act.
 3. **The need for the joint R&D** (e.g., cost apportionment)
 4. **The scope and duration of the joint R&D** (e.g., whether they are unnecessarily extensive or long)
23. The Guidelines provide the following supposed cases of joint R&D posing, or not posing problems under the Antimonopoly Act.

Box 5. Supposed case that does not pose problems under the Antimonopoly Act

Joint R&D on a greenhouse gas reduction technology , for which it is difficult for an enterprise to conduct R&D individually

While there has been an increased need for creating a new manufacturing method to significantly reduce the greenhouse gas emissions generated in the manufacturing processes of Product A, it is difficult for an enterprise to conduct the necessary R&D individually due to its enormous cost. For this reason, Enterprises X, Y, and Z, which are manufacturers of Product A, have decided to jointly conduct the R&D. In implementing the joint R&D, X, Y, and Z are to take the measures necessary for preventing the exchange of information on any factors constituting their important means of competition, such as their prices of Product A, and are to impose no restraint on their manufacturing and sales activities based on the results of the joint R&D, or on their respective R&D activities. Although the total market share of X, Y, and Z in the market of Product A exceeds 70%, they will license other competitors to access the results of the joint R&D on the condition that those competitors bear reasonable costs.

Box 6. Supposed cases that pose problems under the Antimonopoly Act

Joint R&D that excludes alternative technologies

For the purpose of reducing the greenhouse gas emissions generated in the provision of Service A, Trade Association X, which consists of enterprises providing Service A, has decided to develop technology to improve Equipment B that is required for the provision of Service A in cooperation with its member enterprises. In order for its member enterprises to concentrate on the joint R&D to improve Equipment B, X has prohibited its member enterprises from developing alternative technologies on their own.

Joint R&D involving restraints on prices

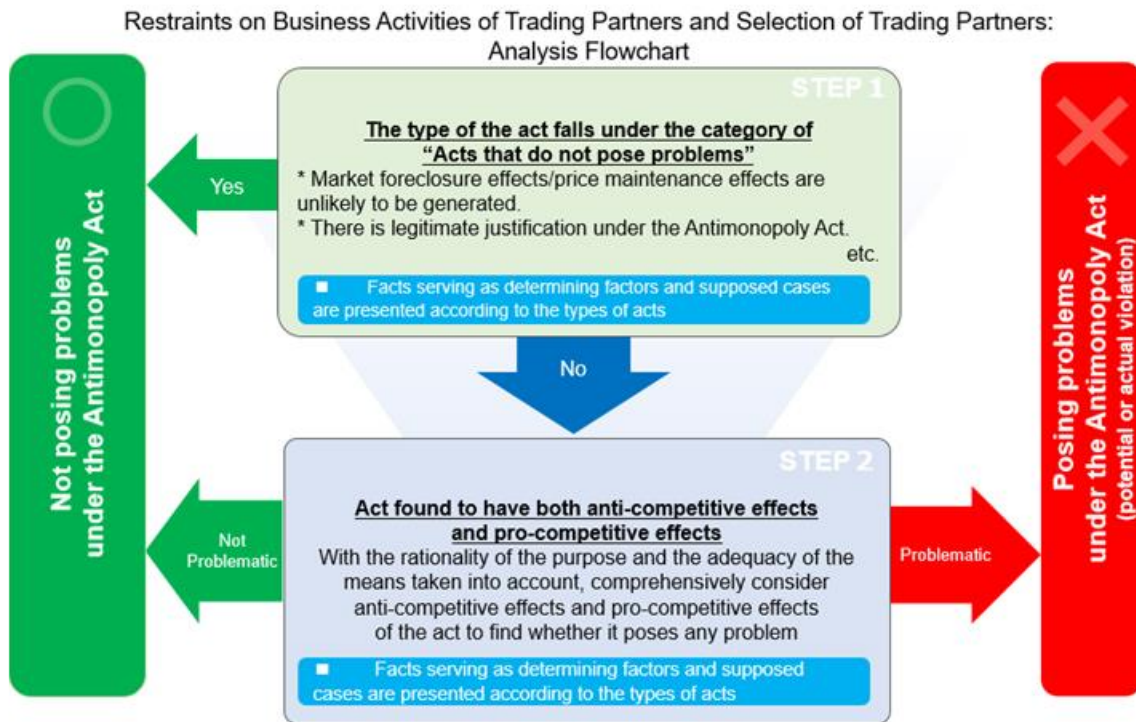
For the purpose of reducing the greenhouse gas emissions generated in the manufacturing processes of Product A, Enterprises X, Y, and Z, which are manufacturers of Product A, jointly developed a new manufacturing method which can significantly reduce the greenhouse gas emissions. In order to efficiently recover the cost of their joint R&D, X, Y, and Z has jointly decided to raise their selling prices of Product A.

24. The Guidelines also explain what factors are assessed in determining whether other types of business alliances, including technical collaboration, standardization activities and joint purchasing, pose any problem under the Antimonopoly Act, and provide supposed cases of such business alliances that are, or are not, to pose problems under the Antimonopoly Act.

5. Restraints on Business Activities of Trading Partners and Selection of Trading Partners

25. For the purpose of reducing greenhouse gas emissions, enterprises may restrain trading partners’ businesses regarding e.g. products for sale, sales territories, purchasers and sales methods, or terminate transactions with trading partners. The Guidelines indicate that whether such restraints on businesses of trading partners and selection of trading partners pose problems under the Antimonopoly Act is found under the framework below.

Figure 2. Restraints on Business Activities of Trading Partners and Selection of Trading Partners



26. The Guidelines indicate that restraints on trading partners with regard to dealings with competitors and handling of competing products do not pose problems under the Antimonopoly Act in the following cases.

- Case where there is no risk of market foreclosure effects due to the substance and form of the restraint and the market condition

For example, when an enterprise with market share of no more than 20% or a new entrant restrains its trading partners from dealing with competitors or from handling competing products usually does not tend to impede fair competition and does not violate the Antimonopoly Act
- Case where there is legitimate justification under the Antimonopoly Act for the restraint, such as the followings:
 - case where a finished product manufacturer supplies raw materials to a parts manufacturer for the production of parts, and the former requires the latter to sell those parts exclusively to the former
 - case where a finished product manufacturer supplies know-how on industrial technologies (excluding any know-how that is not secret) to a parts manufacturer for the production of parts, and the former requires the latter to

sell those parts exclusively to the former, when such restriction is deemed necessary for maintaining the confidentiality of the know-how or for preventing its unauthorized diversion

27. On the other hand, when market foreclosure effects are generated by the restriction, it poses a problem under the Antimonopoly Act. Such an effect may be generated, for example, when an influential enterprise in a market restrains its trading partners from dealings with the enterprise's competitors or from handling of competing products. In such a case, the following factors are comprehensively considered in addition to the type of the restriction concerned.

- The actual conditions of interbrand competition (such as the degree of market concentration, the characteristics of the relevant products, the degree of product differentiation, distribution channels, and the difficulty in newly entering the market)
- The actual conditions of intrabrand competition (such as the degree of dispersion in prices and the business types of distributors, etc. handling the relevant products)
- The position in the market of the enterprise that conducts the act concerned (in terms of the market share, rank, brand value, etc.)
- The impact on the business activities of the trading partners subject to the act concerned (such as the degree and form of the restraints)
- The number of the trading partners subject to the restraints and their positions in the market

28. The Guidelines provide the following supposed cases of restraints on business activities of trading partners and selection of trading partners: each of the restrictions is, or is not, to pose problems under the Antimonopoly Act.

Box 7. Supposed case that does not pose problems under the Antimonopoly Act

Requiring continuous purchase as a condition for supplying products that require further investment in equipment

Enterprise X, which is a manufacturer of Component A, has a share of 25% in the market of Component A, and there are other manufacturers such as Enterprise Y with a share of 20% and Enterprise Z with a share of 15% in the market. X developed a new version of Component A, which emits significantly less greenhouse gases in its manufacturing processes compared with conventional products.

Component A is used for the manufacturing of Finished Product B, and multiple manufacturers of Finished Product B have indicated their intention to purchase a large volume of Component A on a continuous basis into the future. In order for X to produce Component A in large volume, it is necessary to make certain investment to reinforce its production equipment. In order to ensure the recovery of its investment cost, X has put an obligation on those trading partners which wish to purchase its Component A to continuously purchase its Component A in a certain amount for the next three years, which is the necessary duration to recover its investment cost. Y and Z have also started selling a new version of Component A whose manufacturing processes emit significantly less greenhouse gases compared with its previous version, and Y and Z can

secure business opportunity with enterprises which intend to procure the new version of Component A continuously.

Box 8. Supposed case that poses problems under the Antimonopoly Act

Prohibiting retailers from handling competing products

Product A sold by Enterprise X, which is a manufacturer of Product A, is differentiated from other products of the same type and is highly regarded by general consumers.

In commencing the sale of a new version of Product A with a lower environmental burden compared with the previous one, X has decided to make it obligatory for retailers intending to sell its new version of Product A not to handle competing products in the future, in order to ensure demand for the new version of Product A.

X is an influential enterprise in the market. The requirement to exclusively sell the new version of Product A supplied by X prevents a substantial number of retailers from handling competing products so that other manufacturers of Product A will be unable to find alternative purchasers.

29. The Guidelines also explain what factors are assessed in determining whether other types of restraints on business activities of trading partners and selection of trading partners, i.e. restraints on sales territories, selective distribution, restraints on retailers' sales methods, individual refusal to deal and boycotts, pose any problem under the Antimonopoly Act, and provide supposed cases of such conducts that are, or are not, to pose problems under the Antimonopoly Act.

6. Abuse of Superior Bargaining Position

30. If an enterprise takes advantage of its superior bargaining position over the other party to engage in any of the conducts below, for example, and the conduct is found unjust in light of normal business practices even after taking into consideration the social and public purpose of reducing greenhouse gas emissions, such conduct poses a problem under the Antimonopoly Act (Article 19 of the Antimonopoly Act) as abuse of a superior bargaining position, one of the conduct types of unfair trade practices.

- To make a request to the counterparty for the purpose of greenhouse gas reduction and unilaterally sets a price without considering the counterparty's cost necessary to fulfill the request
- To have the counterparty provide economic benefits without any compensation on the grounds of greenhouse gas reduction

31. The Guidelines present the framework for determining whether specific acts constitute abuse of a superior bargaining position. The Guidelines also provide supposed cases that are, or are not, to pose problems under the Antimonopoly Act including the followings.

Box 9. Supposed cases that pose problems under the Antimonopoly Act

Request for bearing a financial burden in the name of greenhouse gas reduction

In order to ensure its profit, Enterprise X, which provides Transportation Service A, decided to charge its counterparty, to which X had outsourced a part of its Transportation Service A, a certain amount of a “greenhouse gas reduction fee,” nominally for the purpose of reducing greenhouse gas emissions. X did not make clear the basis for calculation of the fee or the specific usage of the fee, and actually X did not use the collected fee for activities that directly benefited the counterparty.

Request for provision of a service such as waste collection which is not included in the initial order

In order to reduce its amount of waste, Retailer X had its supplier collect packing materials of delivered goods on the spot without any compensation, even though such collection was not stipulated in their contract. In some cases, the collection by the supplier involved the collection of packing materials of goods delivered by other suppliers. This collection causes the supplier a certain amount of cost for subsequent disposal or reuse of the collected packing materials, and did not generate any profit to the supplier.

Unilateral decision on the consideration of an order including specifications for less greenhouse gas emissions compared with conventional products

Enterprise X is a manufacturer of Product A, and has been outsourcing the manufacturing of Component B of Product A to Enterprises Y and Z. X has required Y and Z to manufacture Component B in the future based on the new specifications that incorporate the reduction of the greenhouse gas emissions generated in the manufacturing processes of Component B. In order to fulfill the specifications, Y and Z are to incur an increase in R&D costs and new costs for the procurement of different raw materials compared with those for the previous specifications. X has kept the transaction price of Component B at the same level as that for Component B based on the previous specifications without explicitly consulting with either of Y or Z on the additionally generated costs in price negotiations with those enterprises.

7. Mergers

32. Enterprises may implement mergers, for the purposes of strengthening their R&D capabilities and streamlining their business activities, among other purposes, in their efforts toward the realization of a green society. The Guidelines present, in addition to the flow and basic concept of merger review, supposed cases of merger that are, or are not, to pose problems under the Antimonopoly Act as well as supposed cases of defining a particular field of trade, including the following case.

Box 10. Supposed case of merger that poses problems under the Antimonopoly Act

Horizontal merger that creates a near monopoly in a specific product market

Companies X and Y, which are engaged in the manufacturing and sale of Product A, have actively conducted their respective R&D activities with the aim of further reducing greenhouse gas emissions generated in their manufacturing processes of a new version of Product A that is compatible with new environmental regulations. With the demand for Product A forecast to expand in the future, X and Y have decided to merge in order to avoid tougher competition in the manufacturing and sale of Product A and control increases in their costs for R&D activities.

This merger will lead to the situation where, aside from the parties to the merger, there is only one company engaged in the manufacturing and sale of Product A, and the business scale of this company is significantly smaller than those of X and Y. In addition, since high technical capabilities are required to commence the manufacturing of Product A, it is difficult for others to newly enter the market. Furthermore, there is no other product that can be substituted for Product A, and it is not manufactured or sold overseas. Therefore, any competitive pressure from adjacent markets, including overseas markets, is not expected to arise.

8. Consultation with the JFTC

33. The JFTC has a policy of actively responding to requests of enterprises for advice in order to encourage their activities toward the realization of a green society, and has established “contact point for green related case consultation” exclusively for consultations regarding such activities. The Guidelines declare the above policy and provide the method of prior consultation with the JFTC (written consultation and unwritten consultation), desirable preparation by enterprises for consultation with the JFTC and the contact points for consultation. In addition, the JFTC is continuously disseminating the JFTC’s consultation service for the activities toward the realization of a green society, for example, by introducing “contact point for green related case consultation” at briefing sessions for enterprises and on a special page titled "The JFTC's efforts toward the realization of a green society" newly established on the JFTC’s website⁶.

⁶ <https://www.jftc.go.jp/dk/greentorikumi/.html> (Japanese)