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GEOGRAPHIC MARKET DEFINITION

-- Note by Japan --

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More documents related to this discussion can be found at [ww.oecd.org/daf/competition/geographic-market-definition.htm](http://www.oecd.org/daf/competition/geographic-market-definition.htm)

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-- JAPAN --

1. Introduction

1. The Japan Fair Trade Commission (hereinafter referred to as the “JFTC”) defines “a particular field of trade” in the investigations into unreasonable restraint of trade (i.e. cartel), private monopolization and the review of business combination, and then the JFTC considers an impact on competition in such a field and determines an illegality.

2. The Guidelines Concerning Distribution Systems and Business Practices under the Antimonopoly Act provide the so-called safe harbor, saying that there will normally be no problem even if a firm which has a market share of 20% or less conducts a certain vertical non-price restraints, such as a restraint of transactions with its competitors on its customers or suppliers. In this manner, it is necessary to define a market (a particular field of trade) in order to check whether a firm corresponds to the safe harbor.

3. Thus, defining a market is an important element for enforcement, etc. of the Antimonopoly Act (hereinafter referred to as the “AMA”).

4. In this contribution paper, we would like to introduce the view of definition of the geographic range in the review of business combination where it would be particularly regarded as important to define a market in the enforcement, etc. of the AMA.

2. Basic view of definition of the geographic range in the review of business combination

5. The view of defining a market is described in the Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination (hereinafter referred to as the “Business Combination Guidelines”), and the JFTC has defined a market (including a geographic range) in each case according to the Business Combination Guidelines.

6. As the basic view of defining the geographic range, as well as the product range, it is determined from the perspective of substitutability for users between the products supplied in each area. The degree of substitutability between the products supplied in each area can very often be determined by the behavior of users and suppliers, and the existence of problems regarding the transportation of the product.

7. In addition, when the geographic range is defined, besides the substitutability for users, if necessary, consideration would also be given to whether suppliers are able to switch the manufacture and sale of one area to another without substantially added cost and risk within a short period of time (the substitutability for producers.).

8. To assess the behavior of users and suppliers and the existence of problems regarding the transportation of the product, the following factors are considered: (i) business area of suppliers, the area for users to purchase, etc.; (ii) features of goods; and (iii) type or cost of transportation.

2.1 Business area of suppliers, the area for users to purchase, etc.

9. With regard to the business area of suppliers and the area for users to purchase, etc., the Business Combination Guidelines provide that “In assessing the range of the region in which users can usually purchase the product, the area around which users purchase the product (such as the purchasing behavior of consumers), the business area such as the distribution network of suppliers and their supply capacity are considered. Consideration is also given to which region’s suppliers the users purchased the product when the price of the product in a certain region was increased in the past.”

10. Recently, transactions via internet have been on the increase. In the case of the acquisition of shares of BEST DENKI Co., Ltd. by YAMADA DENKI Co., Ltd., both mass electric appliance retailers having stores across Japan (Major Business Combination Cases in Fiscal Year 2012, Case 9)¹, the JFTC defined the geographic range as the area within a 10 kilometers radius of each store, considering that competition among mass electric appliance retailers generally took place on a store-by-store basis and that the parties defined, based on consumer shopping areas, the trading area within a certain distance from each of its stores (the area approximately within a 10 kilometers radius of the store). In addition, the JFTC considered the transactions via internet as competitive pressure from related markets.

2.2 Features of goods

11. With regard to the features of goods, the Business Combination Guidelines provide that “Features of goods such as perishability, heaviness and fragility affect the range of transportation or the degree of difficulty in transporting the goods. These features are taken into consideration in determining in which regions users can purchase the goods in general.”

12. For example, in the case of integration of Zimmer and Biomet (Major Business Combination Cases in Fiscal Year 2014, Case 7), although both of the parties are the company groups doing business in multiple countries, the JFTC defined the geographic range as “all regions of Japan”. This was because (1) “regarding artificial hip joints, artificial knee joints, artificial shoulder joints (excludes reverse type) and artificial elbow joints, sales of individual products by domestic manufacturers, Japanese subsidiaries of overseas manufacturer or sole import distributorships required an approval based on the Pharmaceuticals and Medical Devices Act, (2) current situation is that medical institutions as users purchased the approved goods designed for marketing in Japan via wholesalers.”

2.3 Type or cost of transportation

13. With regard to the cost of transportation, the Business Combination Guidelines provide that “The range of regions in which users can normally purchase the goods is also considered based on the modes of transportation, the ratio of the transportation cost to the price of goods, and whether the transportation cost is larger than the regional price difference.”

3. Definition of the geographic range with consideration of the features as multi-sided markets, or aftermarkets

3.1 Definition of the geographic range in multi-sided markets

14. With regard to the multi-sided markets, in the case of acquisition of shares of Ikkyu Co., Ltd that engages in the business of providing travel, restaurant or other reservation services mainly via internet by Yahoo Japan Co., Ltd that engages in the administration of portal sites and other businesses (Major

¹ The JFTC has published “Major Business Combination Cases” every fiscal year (<http://www.jftc.go.jp/en/pressreleases/categories/mergers/index.html>).

Business combination Cases in Fiscal Year 2015, Case 8), the JFTC considered the online travel reservation and other service operations based on the features as the two-sided markets having different bases of customers (i.e., hotels and other accommodations enterprises, and users. More specifically, (i) to provide hotels and other accommodations enterprises with services that enable them to promote their travel services, such as lodging, transportation, etc. as well as acceptance and management of reservations; and (ii) to provide users with services that enable them to get information on lodging, transportation and other travel services, as well as reservations). Regarding hotels and other accommodations enterprises which were one-sided users, there were a lot of those enterprises outside of Japan. However, the other-sided users had basically lived in Japan and were provided such online travel reservation services in “Japanese language.” Therefore, the JFTC defined the geographic range as “all regions of Japan,” not “the whole world”

3.2 Definition of the geographic range with consideration of aftermarkets

15. Relating to the aftermarkets, in the case of integration in thermal power generation system businesses of Mitsubishi Heavy Industries, Ltd. and Hitachi, Ltd.” (Major Business Combination Cases in Fiscal Year 2013, Case 10), the JFTC defined the geographic range based on the demands for the aftermarket services. With regard to such definition of the geographic range, the JFTC provided the following explanations: “Domestic manufacturers provide products and services to not only domestic customers but also overseas customers. On the other hand, in selecting suppliers, domestic customers take into consideration past supply records in Japan, the presence of maintenance systems, etc. Accordingly, suppliers which meet the needs of domestic customers are limited to domestic manufacturers, etc. Therefore, all regions of Japan (the market for customers in all regions of Japan) is defined as being the geographic range for these products and services.”

.4. Definition of geographic range across borders

16. The Business Combination Guidelines mention that the basic view of defining the geographic range described in Section 2 above is also applied when the geographic range is defined across borders, and provide that “if users, both inside and outside Japan for a certain product, are conducting business without segregating domestic and foreign suppliers, even if the prices have been raised in Japan, the users in Japan will be able to substitute the purchase of products from overseas suppliers, which may obstruct the raising of prices in Japan. In that case, a geographical range has been determined across the border.”

17. As detailed explanation for geographic range across borders, the Business Combination Guidelines provide that “if a major domestic and overseas supplier is selling at a materially equivalent price in the sales areas worldwide (or in East Asia), and if the user is selecting their major supply source from suppliers around the world (or in East Asia), then a world (or East Asia) market will be determined.” Actually, there are some cases in which the JFTC defined the geographic range across borders. In the Major Business Combination Cases in Fiscal Year 2015 published on June 8, 2016, in the four out of the eleven cases cited therein, the JFTC defined the geographic range as “the whole world” in relation to the semiconductors, virtualization software and other products.

18. For example, in the case of integration of Intel Corporation and Altera Corporation (Major Business Combination Cases in Fiscal Year 2015, Case 4), with regard to CPUs for x86 servers for datacenters, etc., the JFTC defined the geographic range as “the whole world”. The reasons were that users were conducting business without discriminating between Japanese and overseas suppliers, and suppliers were also conducting business regardless of the countries where users reside, because there was not much price difference between Japan and other countries reflecting the fact that transportation costs and tariffs, etc. were almost not required. With regard to the contract semiconductor manufacturing services, the JFTC also defined the geographic range as “the whole world” because major suppliers were offering such services around the world, major customers expanded business around the world, and transportation costs of semiconductors were almost not required.