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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 3 on Co-operation and Enforcement

Co-operative Antitrust in Remedy Design – Note by Japan

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This document reproduces a written contribution from Japan submitted for Item 3 of the 142nd meeting of Working Party 3 on 3 December 2025.

More documentation related to this discussion can be found at: oe.cd/card.

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1. Overview

1. The Antimonopoly Act prohibits business combinations that may substantially restrain competition in any particular field of trade. However, even if an initial business combination plan is found that it may substantially restrain competition, the parties concerned may be able to resolve the problems by taking certain appropriate measures (remedies), such as transferring business at the initiative of the parties.
2. The Commitment Procedures under the Antimonopoly Act facilitate cooperative resolution through consent between the Japan Fair Trade Commission (JFTC) and enterprises in cases of suspected violations of the Antimonopoly Act, which is achieved through JFTC's approval of a commitment plan submitted by the enterprise.
3. In any of these procedures, it is essential to design highly effective remedies and ensure prompt enforcement of the Antimonopoly Act to resolve competitive concerns. To achieve this, ensuring smooth communication between the JFTC and relevant parties is key. Therefore, the JFTC shows its policy in guidelines or policy statements that the JFTC will provide appropriate consultations and communications in designing remedies or commitment plans.
4. For example, in business combination reviews, the JFTC gathers relevant information and opinions from third parties, through interviews with users. In addition, the JFTC solicits comments from third parties in parallel with the commencement of a second phase review. Furthermore, the JFTC requests comments to reflect the wider range of views of third parties, whenever it deems necessary, particularly in complex and rapidly changing market conditions, such as those in the digital market. This occurs regardless of whether a second phase review is opened.
5. This contribution paper outlines those procedures that facilitate appropriate communication with enterprises and others when designing remedies.

2. Remedies in Business Combination Reviews

2.1. Remedies

6. The Antimonopoly Act prohibits business combinations that may substantially restrain competition in any particular field of trade. However, even if an initial business combination plan is found that it may substantially restrain competition, the parties concerned may be able to resolve the problems through proposing and implementing certain appropriate measures, such as the transfer of business. The JFTC examines whether the remedies proposed are appropriate through close communication with the parties.
7. The number of business combinations over the past five Japanese fiscal years that were found not to be problematic under the Antimonopoly Act with remedies proposed by the parties, is shown in the table below.

Table 1. Number of Business Combinations Found not to be Problematic

FY2020	FY2021	FY2022	FY2023	FY2024
6	2	1	1	3

2.2. Communication with Parties

8. In the “Policies Concerning Procedures of Review of Business Combination (June 14, 2011)”, the JFTC states that it shall appropriately communicate with the parties as follows.

Ensuring close communications between the JFTC and notifying corporations enables swift and highly transparent review of business combination and is thought to be beneficial both for the JFTC and notifying corporations. Therefore, when during the period of a primary or secondary review, a notifying corporation requests explanation about issues, etc. in a review of business combination or the JFTC finds such explanation necessary, the JFTC will explain the current issues.

Also, pursuant to provisions of Article 7-2 of the Notification Rules, the parties can submit to the JFTC written opinions or any other materials it believes necessary for the review (including offers to take remed(ies) in question) anytime during the reviewing period.

9. The JFTC communicates its concerns to the parties throughout the review process. In return, the parties present their views or opinions regarding the JFTC’s concerns. This dialogue helps narrow down and clarify the issues. This sufficient exchanges of the JFTC’s reasoning and the parties’ counterarguments is expected to lead to the review that is nonetheless acceptable to the parties, even for issues that the JFTC ultimately determines to be problematic under the Antimonopoly Act, though it may not be fully satisfying.

10. Typically, the JFTC and the parties identify competitive issues arising from the business combination through communication as described above. To address these issues, the parties then conduct specific considerations to resolve competitive concerns and propose remedies to the JFTC. The JFTC thoroughly examines the proposed remedies to determine whether they are sufficient to resolve the concerns. If those remedies are deemed insufficient, the JFTC points this out and encourages the parties to reconsider. In this way, the JFTC facilitates sufficient communication with the parties regarding the contents of the remedies.

2.3. Call for Information and Comments from Third-parties

11. The JFTC actively communicates with not only merging parties but also third parties such as competitors and consumers during its business combination reviews.

12. Specifically, the JFTC gathers information necessary for the review from third parties, through interviews with consumers of goods and services subject to the review. The JFTC also solicits opinions from third parties upon initiating a second phase review. Furthermore, the JFTC requests comments to reflect the wider range of views of third parties, whenever it deems necessary, particularly in complex and rapidly changing market

conditions, such as those in the digital market. This occurs regardless of whether a second phase review¹ is opened.

13. The JFTC examines remedies proposed by merging parties. This examination involves communicating with merging parties' group (as described in Section (2) above) and conducting hearings with third parties as part of a market test. These hearings aim to evaluate whether the proposed remedies can address the competition concerns and those raised by users in each particular field of trade.

14. As a recent case example, the JFTC reviewed a proposed acquisition of ANSYS, Inc. by SYNOPSIS, INC. (publicized on March 13, 2025) .

15. Given that this case involves the digital sector, the impact of the business combination was anticipated to be multifaceted and wide-ranging. Therefore, to accurately analyze the impact on the market, the JFTC called for information and comment from third parties (starting July 26, 2024, with a submission deadline of August 30, 2024). Through this process, the JFTC gathered diverse information from a broader range of enterprises and other stakeholders. Additionally, the JFTC held multiple rounds of discussions with the parties.

16. Furthermore, once the parties proposed remedies in this case, the JFTC examined the adequacy of these remedies through communication with the parties. In addition, the JFTC conducted a market test on these remedies, targeting third parties, including customers and competitors located in Japan. As a result, they raised no objections.

2.4. Cooperation with Overseas Competition Authorities

17. The JFTC actively exchanges information with competition authorities in multiple jurisdictions regarding international business combinations that affect those jurisdictions, after obtaining the consent of the parties concerned. For example, concerning the design of remedies in the acquisition of Fitbit, Inc. by Google LLC (announced January 14, 2021), the JFTC had exchanged broad range of information with the European Commission, the Australian Competition & Consumer Commission, the Competition Commission South Africa and others, covering the necessity and contents of remedies.²

3. Commitment Procedures under the Antimonopoly Act

3.1. Commitment Procedures

18. Compared to the procedures regarding cease and desist orders, the commitment procedures broaden the range of cooperative resolution between the JFTC and enterprises, and contribute to efficient and effective enforcement of the Antimonopoly Act.

¹ In cases of business combinations that require notification to the JFTC, the first phase review refers to the examination conducted within 30 days from the time the JFTC accepts the notification. If a more detailed examination is necessary, the JFTC requests the parties to submit reports. The second phase review begins after all responses have been submitted by the parties.

² Regarding cooperation with overseas competition authorities, please refer to the JFTC's contribution paper for the Roundtable on Cross-border Mergers at the 23rd Global Forum on Competition in December 2024.

19. To ensure transparency and predictability of its law enforcement regarding the commitment procedures, the JFTC released the “Policies Concerning Commitment Procedures” on September 26, 2018.

20. The commitment procedures will be commenced when the JFTC believes that there is a fact in violation of the provisions of the Antimonopoly Act and finds it appropriate to apply the commitment procedures to the suspected conduct, by issuing a written notice (notice of commitment procedures)³ to the enterprise engaging or having engaged in the suspected conduct (hereinafter referred to as the “suspected violator”).

21. Upon receiving a notice of commitment procedures, the suspected violator may apply for the JFTC’s approval by submitting a commitment plan that includes voluntarily measures to eliminate the suspected conduct (hereinafter referred to as “commitment measures”). The JFTC approves the commitment plan when it recognizes that the plan is sufficient to eliminate (or ensure the elimination of) the suspected conduct, and the commitment measures are expected to be reliably implemented.

22. When the JFTC approves a commitment plan, the JFTC will not issue a cease and desist order and a surcharge payment order regarding the suspected conduct. Furthermore, the JFTC’s approval on the commitment plan doesn’t constitute a determination that the suspected conduct violates the provisions of the Antimonopoly Act.

3.2. Scope of Commitment Procedures

23. Pursuant to the provisions of the Antimonopoly Act, all prohibited conduct under the Antimonopoly Act are possibly subject to the commitment procedures. However, the JFTC has publicly stated in the “Policies Concerning Commitment Procedures” that the following cases are excluded from the commitment procedures. This is because strict law enforcement is necessary – requiring finding of violations and legal measures – and the use of commitment procedures cannot be considered appropriate to promote fair and free competition:

- Suspected violations regarding conduct such as bid-rigging and price cartels;
- Cases in which a suspected violator has been subject to legal measures for an equivalent violation within the past ten years; and
- Malicious and serious suspected violations sufficient to warrant criminal accusation.

24. Since the introduction of the commitment procedures in December 2018, the JFTC has approved commitment plans in 21 cases related to unfair trade practices as of the end of Japanese fiscal year 2024 (March of 2025).

³ A notice of commitment procedures consists of document stating: (i) an overview of the suspected conduct, (ii) the provisions of the Antimonopoly Act allegedly violated, and (iii) the fact that suspected violator may apply for the JFTC’s approval of a commitment plan containing measures to eliminate the suspected conduct (commitment measures).

Table 2. JFTC Approves Commitment Plans in 21 Cases

FY2019	FY2020	FY2021	FY2022	FY2023	FY2024
2	6	2	3	5	3

3.3. Consultations with the JFTC

25. An enterprise under the JFTC’s investigation may, at any time even before receiving a notice of commitment procedures, consult with the JFTC regarding the conduct subject to the investigation. During this consultation, an enterprise could ask the JFTC whether the commitment procedures are applicable to the case, or indicate its intention to apply for the commitment procedures. Such an effort may enable the commitment procedures to proceed more quickly, even though the process will be officially commenced with a notice of commitment procedures issued by the JFTC.

3.4. Communication with Third-parties

26. The JFTC may ask third parties, such as competitors and trading partners of the suspected violator applying for the commitment procedures, to confirm facts related to the commitment plan.

27. Furthermore, if the JFTC needs a broad range of opinions from third parties as a reference in assessing whether an applied commitment plan satisfies the requirements for approval, the JFTC seeks third parties’ opinions regarding an overview of the commitment plan, through its website or other means. This submission period will not exceed thirty days, in principle. Any party with an opinion on the overview of the commitment plan may submit written opinions to the JFTC within the period.

3.5. Monitoring by External Expert

28. Since July 2024, the JFTC has adopted a policy to actively utilize external experts to monitor the implementation of the entire commitment measures. Ensuring the implementation of the commitment measures with the objective monitoring of independent external experts is considered more reliable than relying solely on the enterprise itself.

3.6. Merits of Cooperative Resolution with Suspected Violator

29. The commitment procedures have the advantage to resolve competitive concern efficiently and effectively. Additionally, it allows a suspected violator to reduce costs associated with the JFTC’s investigation, as competitive concern is resolved by a voluntary implementing commitment plan prior to the JFTC’s official finding of violation of Antimonopoly Act.

30. Furthermore, depending on the case, applying to the commitment procedures may involve measures that are not usually required under a cease and desist order. For example, measures for monetary recovery have been included in the commitment plans in six cases related to abuse of superior bargaining position.⁴ The JFTC believes that these measures contribute not only to the restoration of proper competitive orders and prevention of

⁴ As of the end of September 2025

recurrences of suspected violations, but also to the compensation for the losses suffered by affected enterprises and the restoration of their market position.