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National Security Considerations in Competition Enforcement – Note by Japan

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1. Introduction

1. In January 2026, the Japan Fair Trade Commission (JFTC) published a statement entitled “Proactive Development of Competition Policy for the Promotion of Innovation,” which sets out its policy direction for the operation of competition policy going forward. In this statement, the JFTC expresses its commitment to steadily implementing various measures based on three pillars: (1) ensuring “a fair trading environment” by ensuring fair transactions; (2) “promoting a competitive market environment” through dialogue with stakeholders, etc.; and (3) “strict law enforcement” against violations. Furthermore, it outlines initiatives related to economic security as part of its efforts toward “promoting a competitive market environment” as follows:

While strengthening of economic security is required in Japan, supporting the creation of products and services that help ensure Japan’s autonomy and indispensability by promoting innovation by various enterprises through competition will also contribute to strengthening of economic security. When strengthening economic security, it is also important to clarify cases where an enterprise’s initiative does not pose a problem under the Antimonopoly Act (AMA). For that purpose, the JFTC published “Basic Approach to the Antimonopoly Act for Business Activities Related to Economic Security” and the “Casebook on Economic Security and the Antimonopoly Act” in November 2025 and will proactively respond to consultations from enterprises, etc. Through these initiatives, the JFTC will facilitate consultations with it, resolve compliance concerns of enterprises through individual consultations, etc., and support efforts of enterprises toward strengthening of economic security.

2. This contribution paper outlines both the “Basic Concept Under the Antimonopoly Act on Activities of Enterprises Related to Economic Security” and the “Casebook on Economic Security and the Antimonopoly Act.” These were compiled based on opinions presented at the Expert Meeting convened by the Ministry of Economy, Trade and Industry (METI) in April 2025, reflecting concerns that inter-company dialogues can be discouraged by vague concerns that actions undertaken by enterprises from the perspective of economic security—such as information exchange, collaboration, and restructuring—may violate the AMA. In addition, the following concerns were expressed by industry in the expert meeting:

- (1) Although there is a growing need for domestic companies to pursue business combinations in order to make large-scale, long-term investments to counter concerns such as excess supply and the monopolization of supply chains by foreign states, companies are often reluctant to place business combinations on the table for consideration due to vague concerns that such actions may violate business combination regulations; and
- (2) Vague concerns that “the content of information exchanged between companies may, in some cases, raise the risk of cartel violations,” combined with the tendency of corporate legal departments and attorneys to take conservative positions on the AMA, lead companies to hesitate to engage in inter-company dialogue.

2. Basic Concept Under the Antimonopoly Act on Activities of Enterprises Related to Economic Security

3. Considering that enterprises may need to exchange information regarding their activities when exploring joint activities or business combinations, the basic approach to such information exchange is set out as follows.

- If there is no exchange of information regarding matters that are important means of competition, including prices and quantities, there is usually no problem under the AMA.
- Even the exchange of information regarding matters that are important means of competition, including prices and quantities, does not normally pose a problem under the AMA if it is within what is regarded as the reasonably necessary scope for considering and implementing joint activities or business combinations and if necessary measures to block information are taken.
- On the other hand, if necessary measures to block information are not taken and if tacit agreement or common intention is formed between enterprises on future prices, etc. through exchange of information regarding matters that are important means of competition, including prices and quantities, this may pose a problem under the AMA.
- Matters that are important means of competition mean the facets of an enterprise's business activities that exert a direct influence on the market mechanism if restraints are posed on those facets, such as prices or quantities, the customers and sales channels for trade, and the equipment for supply.
- Necessary measures to block information refer to sharing information only with parties concerned (persons in charge) with regard to joint activities or consideration and implementation of business combinations, and prohibiting the use of information for other purposes.

4. Furthermore, the basic approach to situations where information exchange and joint activities by administrative organs and enterprises are necessary to secure essential raw materials is set out as follows. This applies to cases where, due to significant changes in international situation or other external shocks, a disruption of procurement equivalent to that experienced during the Great East Japan Earthquake occurs, specifically for the purpose of ensuring economic security.

5. (1) Information exchange and joint activities in the event of a procurement disruption

- In order to ensure stable procurement of critical raw materials, it does not, in principle, raise concerns under the AMA if an administrative organ gives instructions and guidance to enterprises, etc. on the quantity to be procured or procurement sources, etc. only during periods of severe shortages of critical raw materials, or if enterprises, etc. exchange and share information only on the quantity to be procured or procurement sources, etc., and carry out joint activities necessary for stable procurement.
- It is necessary to terminate the adjustment immediately after the shortage of critical raw materials has been resolved.

6. (2) Information exchange and joint activities in preparation for procurement disruption risks

- In principle, information exchange and joint activities do not raise concerns under the AMA in cases where the purchasing share of the participating enterprises in the market for the procurement of critical raw materials is low, where the market share of the participating enterprises in the product sales market or the ratio of their procurement cost of critical raw materials to the manufacturing cost is low, or where the circumstances such as users' countervailing bargaining power in the product sales market are recognized, which makes competitive pressure from the users strong.

7. Besides those, the basic approach covers various aspects of business combinations, including the basic principles and workflows of merger reviews, as well as past case studies. It also provides details on the JFTC's prior consultation services and other related initiatives.

3. Casebook on Economic Security and the Antimonopoly Act

8. The casebook outlines the JFTC's views on the AMA regarding 15 hypothetical scenarios related to economic security. These cases, which were provided by the METI and the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) cover information exchange, joint activities, business combinations, and other topics (such as restrictions on joint R&D). The JFTC's views are based on the specific details presented in these scenarios, and an overview of the key cases is as follows.

9. In preparing the casebook, the JFTC drew on existing guidelines and reports, such as the "Guidelines Concerning the Activities of Enterprises, etc. Toward the Realization of a Green Society Under the Antimonopoly Act," the "Guidelines Concerning the Activities of Trade Associations under the Antimonopoly Act," and the "Collection of Assumed Cases Related to Activities in the Case of Emergency such as Earthquake Disaster."

3.1. Information exchange regarding proposals for business alliances and acquisitions

10. When an overseas enterprise makes a proposal for a business alliance or acquisition to a domestic enterprise, information is exchanged among domestic enterprises, or through the competent ministry, or an industry association, concerning the fact of such proposal from the overseas enterprise.

11. JFTC's views based on the AMA: When an enterprise that has received a proposal for a business alliance or business combination from an overseas enterprise exchanges or shares information on the fact of such proposal with other enterprises, the competent ministry, or an industry association, this generally does not raise concerns under the AMA.

3.2. Information exchange regarding the scope of technologies that should be protected from leakage

12. Information is exchanged among domestic enterprises, or through the competent ministry or an industry association regarding the scope of technologies that should be protected from overseas leakage in technology fields where domestic enterprises hold a competitive advantage.

13. JFTC's views based on the AMA: The mere act of exchanging or sharing information between enterprises, competent ministries, or industry associations concerning the types or intended uses of important technologies or know-how that should be protected from overseas leakage generally does not raise concerns under the AMA.

14. However, if enterprises jointly agree on the content or level of technologies or know-how in a manner that adversely affects competition in technologies or products, this may constitute a technology-restriction cartel and could raise concerns under the AMA.

3.3. Information exchange and joint procurement concerning the sourcing of critical raw materials

15. With respect to critical raw materials essential for the operations of domestic manufacturers, (1) in an emergency where a procurement disruption has materialized due to significant changes in international circumstances or other external shocks, or where the government determines that there is a high likelihood of such a disruption occurring, or (2) where it is necessary to prepare for the risk of a procurement disruption caused by significant changes in international circumstances or other external shocks, enterprises exchange information on alternative procurement sources and specifications of critical raw materials and consider or implement joint procurement.

JFTC's views based on the AMA:

16. (Information exchange and joint procurement in an emergency where a procurement disruption of critical raw materials has materialized) [(1) above]

17. In an emergency where, due to significant changes in international circumstances or other external shocks, a disruption of procurement equivalent to that experienced during the Great East Japan Earthquake has occurred, or where the government as a whole determines that there is an objectively high likelihood of such a disruption occurring imminently, enterprises may, for the purpose of ensuring economic security and only for the duration of a severe shortage of critical raw materials, exchange only the necessary information such as procurement quantities and sources, and engage in joint procurement necessary to secure stable supply. Such conduct, in principle, does not raise concerns under the AMA.

18. Once the severe shortage of critical raw materials has been resolved, the joint procurement in question must be terminated immediately.

(Information exchange to prepare for the risk of procurement disruption of critical raw materials) [(2) above]

19. Even where the information exchange concerns important means of competition such as future procurement quantities, if the information is reasonably necessary for examining the risk of procurement disruption of critical raw materials and necessary measures to block information are implemented, such conduct generally does not raise concerns under the AMA.

20. On the other hand, attention should be paid to the risk that, without implementing necessary measures to block information, an exchange of information on important means of competition may lead to the formation of a tacit understanding or a common intent among enterprises regarding future procurement quantities, etc., which may raise concerns under the AMA.

(Joint Procurement to prepare for the risk of procurement disruption of critical raw materials) [(2) above]

21. Where the purchasing share of participating enterprises in the procurement market for critical raw materials is low, or where their market share in the product sales market or the proportion of procurement costs for critical raw materials in their manufacturing costs is low, or where buyers in the product sales market have countervailing bargaining power and competitive pressure from buyers is strong, such conduct generally does not raise concerns under the AMA.

22. It should be noted that, as a matter to be considered in connection with the joint procurement in question, if participation in the joint procurement is mandatory, there is a risk that such conduct may raise concerns under the AMA.

3.4. Integration or merger among multiple enterprises in an oligopolistic position in the domestic market

23. Amid exposure to competition in the global market, domestic companies alone cannot maintain production efficiency. Therefore, two companies holding an oligopolistic position in the domestic market integrate or merge. This case is modeled after the shipbuilding industry.

24. JFTC's views based on the AMA: With respect to the shipbuilding industry (ocean-going vessels), the geographic range is generally defined across national borders. If there are strong overseas competitors and the assumed case is deemed to have only an insignificant impact on competition, such case generally does not raise concerns under the AMA.

25. Regarding the views presented in this casebook, it should be noted that the final determination of whether a specific activity violates the AMA will be evaluated by the JFTC on a case-by-case basis. In addition, it is necessary to consider foreign competition laws and other relevant regulations.

26. The JFTC intends to continue raising awareness of this casebook among enterprises and will proactively respond to prior consultations from them.