

Revision of the Business Combination Guidelines

Introduction

On 17 July 2026, the Japan Fair Trade Commission (“JFTC”) published a draft revision of the Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination (the “Business Combination Guidelines”)¹. The background to this revision includes the growing importance of promoting innovation and strengthening international competitiveness amid changes in the economic environment surrounding Japan, such as advances in digital technology, the issue of climate change and market shrink resulting from population decline. It also includes new societal challenges such as security of supply and environmental performance, the accumulation of recent business combination review cases, and reviews of merger guidelines in the United States, the EU, the United Kingdom and other jurisdictions.

This newsletter provides an overview of the key points of the proposed revision and considers the impact that the revision may have on future reviews of business combinations and relevant practice.²

Consideration of Stability of Supply, Environmental Performance, Innovation and Other Factors

The first point is that the proposed revision clarifies and expands the competitive factors to be considered in business combination reviews. The draft expressly states that stability of supply and environmental performance (including reduction of greenhouse gas emissions) may also constitute parameters of competition for attracting customers.

In recent years, strengthening supply-chain resilience and addressing decarbonisation have become important management issues for companies. Having a more stable supply system than competitors or offering products with better environmental performance may in itself constitute a competitive advantage in attracting customers. The proposed revision can be read as express incorporation of such competitive realities into review of business combinations.

The draft also expressly states that, where efficiency gains resulting from a business combination lead to improvements in or maintenance of stability of supply, improvements in environmental performance, increased investment, or creation of new products through promotion of innovation, these factors are taken into account as procompetitive effects.

¹ Comparative table / revised Guidelines:
https://www.jftc.go.jp/file/260717_3.pdf

² Overview of the revision:
https://www.jftc.go.jp/file/260717_2.pdf

Consideration of Long-Term Market Conditions in Competitive Assessment

The second point is that the proposed revision clarifies that longer-term changes in market conditions are to be taken into account when assessing the post-transaction competitive situation. For example, the draft expressly states that assessment of competitive pressure from imports should consider long-term market conditions where, due to expected future changes in market structure or other factors, imports are expected to exert competitive pressure at that point in time.

The current Guidelines also provide that the “certain period” over which competitive pressure from imports and other factors is assessed should be approximately two years or less as a general guide, although it may be shorter or longer depending on the characteristics of the industry. The proposed revision can be seen as clarifying that this “certain period” is to be determined in light of the actual circumstances, taking into account the characteristics of the industry and other relevant factors.

This approach is not limited to competitive pressure from imports. The draft also provides that consideration of long-term market conditions should similarly apply to entry, competitive pressure from related markets, competitive pressure from users, efficiencies (such as the promotion of innovation), the financial conditions of the company group, and market size.

Additional Text Reflecting Recent Review Cases and Overseas Developments

The third point is that the proposed revision crystallizes the existing Business Combination Guidelines in light of recent business combination review cases and merger guidelines in other jurisdictions. For example, additional text has been included regarding cases in which imported products remain competitive even where tariffs are in place, cases in which indirect competitive pressure is exerted by the users of the products supplied by a direct user, and remedies. In addition, texts regarding competitive analysis in purchasing markets have also been added by reference to merger guidelines and other materials in overseas jurisdictions.

For example, with respect to remedies, the proposed revision appears to expressly set out and give greater specificity to measures that have already been used in business combination review practice, including interim measures (such as measures to ensure the independence of the parties) pending implementation of the remedies, and the monitoring of the implementation of remedies by an independent third party (monitoring trustee).³ Accordingly, the revision is not expected to result in any major change in practice.

On the other hand, now that these approaches are expressly set out in the Business Combination Guidelines, they are expected to serve as important guidance in designing remedies in future business combinations where remedies are required.

Future Schedule for the Revision Process

The Business Combination Guidelines published on this occasion are, at present, still in draft form, and the JFTC invited public comments until 31 August 2026. The draft will subsequently be considered in light of the comments received through the public consultation process, following which the formally revised Business Combination Guidelines will be published. At the time this newsletter was prepared, the timing of publication of the final revised version had not been announced.

Conclusion

The revision will need to be assessed after carefully examining the final revised version to be published in due course. However, judging from the draft revision, it would be more appropriate to understand the revision not simply as a “relaxation” or “tightening” of merger control, but rather as clarifying an approach under which the anticompetitive effects and procompetitive effects of business combinations are assessed

³ Cases involving monitoring trustees (Japanese only):
<https://www.jftc.go.jp/dk/kiketsu/toukeishiryō/trustee/index.html>

with greater emphasis on the medium to long term and in a manner that more closely reflects actual conditions.

The efficiency gains and future changes in market conditions expressly referred to in the proposed revision are not necessarily easy to quantify. Accordingly, it will be important for companies, from an early stage of the business combination notification process, to set out in concrete terms the efficiency gains expected from the business combination and anticipated future changes in market conditions, and to engage in sufficient discussions with the JFTC officials responsible for the review as to what information and supporting materials will be required for these factors to be taken into account in the competitive assessment.

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