



M&A Regulation under Competition Law in Japan

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I Regulatory Scheme under Competition Law in Japan.

Why Competition Law matters?

- The Anti-Monopoly Act (AMA) prohibits not only Cartel and Monopolization but also M&A if it would be anti-competitive.
 - ✓ M&As are usual business activities, they may
 - reduce costs or improve products in ways unavailable to the individual competitor.
 - improve the profitability of the acquired assets by replacing ineffective management.
 - ✓ However, in specific cases, they shall
 - reduce competition by altering the structure of markets, changing the number, identity, size, and other characteristics, such as incentive structure, of competitors.



Who plays the role?

- Japan Fair Trade Commission (JFTC) is the only administrative agency entitled to enforce the AMA.
 - ✓ JFTC is primarily responsible for M&A regulation under the AMA.
 - ✓ JFTC has the discretionary powers over development and operation of M&A regulation system under the AMA.
 - ✓ JFTC, in some cases, reviews M&A cases concurrently, but independently from different policy goals, with specific industry regulators (Banking Sector, Telecommunication Sector, Cargo transportation Sector...).

Why M&A regulations are unique?

- The two problems for effective regulations.
 - ✓ Almost all M&A plans go with secret negotiation, so hardly come to the attention of the JFTC prior to their consummation.
 - ✓ M&A transaction is a complex and irreversible process, so once consummated divestiture remedy could be impractical.
i.e. It is difficult to "unscramble scrambled eggs."



How the AMA resolve the problems?

- To deal with the problems the AMA stipulates as follows.
 - ✓ The company that intends to acquire or merge another company must give the JFTC prior notification of the plan. (Prior-notification System)
 - ✓ No company that gave notification above may acquire the shares under the notification until the expiration of the thirty-day waiting period from the date of acceptance of the notification.



II JFTC's policies on the operation of the regulation.

How to alleviate the burden on the businesses?

- To improve “swiftness” and “transparency” of review procedures.
 - ✓ The JFTC clarifies a threshold (w.r.t. an annual turnover) for screening the plans that need the prior-notification.
 - ✓ The JFTC judge during the waiting period, either the plan
 - is not problematic and declare not to challengeor
 - might be problematic so more detailed review is necessary and extend the waiting period.



How to minimize the distortion on the transaction?

- To maintain “confidentiality” of the notified plan the following policies are applied.
 - ✓ Practice review, depending generally on documents and materials submitted by notifying parties and publicized information.
 - ✓ Not disclose any information about the review unless notifying parties approve it.
- To improve “predictability” of the result of the review the following policies are applied.
 - ✓ Publish guidelines on application of the AMA for review and, as a part of it, clarifies a Safe harbor. Adding that, publish the results of the reviews of major business combination cases annually.
 - ✓ Accept Consultation from those planning to submit the notification.

How to evaluate the merit of the plan?

- Most M&As have merits to bring about various kind of efficiency.
 - ✓ The plans that may reduce competition could be justified by such merits, if the likely efficiency
 - cannot be achieved by other means that seems less likely to reduce competition.
 - can be explained by objective materials .
 - shall be lead specifically to the merit of users.



How to solve competitive concerns on the plan?

- Basic principles for the review procedure.
 - ✓ Ensuring close communications with notifying parties enables swift and transparent review.
 - The JFTC will explain the prospective issues that the notified plan may have.
 - The notifying parties can offer the JFTC written opinions or any other materials necessary for the review, including offers to take remedies they believe necessary to solve the issues.
 - The JFTC will either (1) judge that the plan is not problematic considering the modification, or (2) provide prior notice for Administrative Actions.

What measures are required as remedy?

- Typical measures for remedy are as follows. In principle they should be structural, however, appropriate ones could be selected on the facts of individual cases.
 - ✓ Measures to establish new competitors, or to strengthen existing competitors
 - transfer of all or part of the business, dissolution of the business combination,
 - ✓ Measures to Promote Imports and Market Entry
 - making storage facilities or distribution service divisions required for imports available to importers.
 - granting licenses of relevant IPs under appropriate conditions to competitors at their request.
 - ✓ Measures Concerning Behavior of the Company Group
 - prohibit discriminatory treatment w.r.t. the use of essential facilities for the business.



Thank you very much
for your kind attention.

(Opinions expressed in this presentation are
those of the speaker and are not those of JFTC.)