

ICN MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Merger Working Group

Japan Fair Trade Commission

Date

IMPORTANT NOTE: This template is intended to provide background on ICN jurisdiction’s merger notification and review procedures.

Reading the template is not a substitute for consulting the referenced statutes and regulations.

[Please include, where applicable, any references to relevant statutory provisions, regulations, or policies as well as references to publicly accessible sources, if any.]¹

1. Merger notification and review materials [references to publicly accessible sources (homepage address) and indication of the languages in which these materials are available]

Statutory Laws

A. Notification provisions	Article 10, 15, 15-2, 15-3 and 16 of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (hereinafter the “Antimonopoly Act”). The Antimonopoly Act is available at https://www.jftc.go.jp/en/legislation_gls/amended_ama09/20122501.pdf (in English) or https://www.jftc.go.jp/dk/guideline/lawdk.html (in Japanese) (Only Japanese version is authentic.)
B. Substantive merger review Provisions	Article 10, 13, 14, 15, 15-2, 15-3, 16 and 17 of the Antimonopoly Act

¹ Editor’s note: all the comments in [square brackets] are intended to assist the agency when answering this template but will be removed once the completed template is made public.

C. Implementing regulations	Rules on Applications for Approval, Reporting, Notification, etc. Pursuant to the Provisions of Articles 9 to 16 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (hereinafter the “Rules”.) They are available at https://www.jftc.go.jp/en/legislation_gls/antimonopoly_rules_files/rules_on_reporting_notification_etc.pdf (in English) or https://www.jftc.go.jp/dk/kiketsu/guideline/horei/kisoku/ninka.html (in Japanese)(Only Japanese version is authentic.)
D. Notification forms or information requirements	They are available at https://www.jftc.go.jp/dk/kiketsu/kigyoketsugo/dl/kaiseiyoushiki.html (in Japanese only)
Interpretative Guidelines and Notices	
E. Guidance on Merger Notification Process [e.g., information on calculation of thresholds, etc.]	Policies Concerning Procedures of Review of Business Combination Notification (hereinafter the “Policies”) They are available at https://www.jftc.go.jp/en/legislation_gls/imonopoly_guidelines_files/191217policy.pdf (in English) or https://www.jftc.go.jp/dk/kiketsu/guideline/guideline/taiouhoushin.html (in Japanese)(Only Japanese version is authentic.)
F. Guidance on Substantive Assessment in Merger Review [Please include reference separately, if applicable]	Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination (hereinafter the “Guidelines”) They are available at https://www.jftc.go.jp/en/legislation_gls/imonopoly_guidelines_files/191217GL.pdf (in English) or https://www.jftc.go.jp/dk/kiketsu/guideline/guideline/shishin.html (in Japanese) (Only Japanese version is authentic.)
G. Has your agency published guidelines or directives on notification of mergers	There are no guidelines related to specific sectors such as digital economy.

<p>involving specific sectors (e.g., digital economy)? [If affirmative, please provide references and languages available]</p>	<p>However, due to increased necessity of properly reviewing digital merger cases, the JFTC amended Guidelines regarding the way of assessing competition in quality, multi-sided markets, network effects, importance of data for competition and other characteristics for digital services. See the Guidelines V-2 and VI-2(2). In addition, the JFTC amended Policies to express that the JFTC would review business combination plan, in which the total amount of consideration for acquisitions is large and local nexus to the Japanese markets are found. This amendment is expected to cover acquisitions of start-ups in digital sectors. See 4H below.</p>
<p>H. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the agency's decision-making process</p>	<p>They are available at https://www.jftc.go.jp/dk/kiketsu/guideline/index.html (in Japanese) (Only Japanese version is authentic.)</p> <p>Some of them are available at https://www.jftc.go.jp/en/legislation_gls/imonopoly_guidelines.html (in English)</p>

<p>2. Agency (or Agencies) responsible for merger enforcement.</p>	
<p>A. Name of the Agency which reviews mergers. If there is more than one agency, please describe the allocation of responsibilities.</p>	<p>Japan Fair Trade Commission (JFTC)</p>
<p>B. Contact details of the agency [address and telephone including the country code, email, website address and languages available on the website]</p>	<p>Address: 1-1-1 Kasumigaseki, Chiyoda-ku, Tokyo 100-8987 Japan Mergers and Acquisitions Division Tel : (+81)-3-3581-3719 Fax: (+81)-3-3581-5771 E-mail : merger@jftc.go.jp URL: https://www.jftc.go.jp/en/index.html (in English) URL: https://www.jftc.go.jp/index.html (in Japanese)</p>

<p>C. Is agency staff available for jurisdiction/filing guidance? [If yes, please provide contact points for questions on merger filing requirements and/or consultations]</p>	<p>Mergers and Acquisitions Division is responsible for questions on merger filing requirements and/or consultations. Mergers and Acquisitions Division Tel : (+81)-3-3581-3719 Fax: (+81)-3-3581-5771</p>
---	---

<p>3. Covered transactions</p>	
<p>A. Thorough definition of potentially covered transactions [i.e., share acquisitions, asset acquisitions, mergers, de-mergers, consolidations, consortia, amalgamations, joint ventures or other forms of contractual relationships, such as partnerships and alliance agreements]</p>	<p>They are provided in the Antimonopoly Act according to the types of M&As. Shareholding (Article 10), interlocking directorates (Article 13), shareholding by a person other than a company (Article 14), merger (Article 15), company split (Article 15-2), joint share transfer(Article 15-3) and acquisition of business (Article 16). (Note) Interlocking directorates and shareholding by a person other than a company are not subject to notification.</p>
<p>B. What is the geographic scope of transactions covered?</p>	<p>The thresholds for notification are based on the concept of “domestic sales,” which means the total amount of value of goods and services supplied in Japan. See 4A below. In the substantive assessment, the JFTC defines the various range of geographic scope on case by case basis from local level to worldwide considering the demand and supply side substitutability. See II -3 in the Guidelines above in 1.F.</p>
<p>C. If change of control is a determining factor, how is control defined and interpreted in practice?</p>	<p>Change of control is not a determining factor in notification thresholds. In the substantive assessment, however, the transaction is subject to review by the JFTC if the joint relationship between the parties is formed, maintained or strengthened by the transaction. See the Guidelines above in 1. F.</p>
<p>D. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels? Are acquisitions of assets ever covered? If so, do the assets</p>	<p>Yes. See 4A below. In the substantive assessment, a joint relationship between the acquirer and share-issuing company is considered to be formed, maintained or strengthened by partial share acquisitions in the following cases and the shareholding can be subject to the JFTC’s review.</p>

<p>have to form a free-standing business or can the combination of the assets with the business of the acquirer be considered in order to have jurisdiction? Does the authority have jurisdiction over “bare” asset purchases, e.g. where the assets purchased do not relate to the acquirer’s existing business?</p>	<p>a. the case that the holding rate of the voting rights (the rate of shares possessed by the acquiring company group to the total voting rights of the acquired company, hereinafter the same shall apply) exceeds 50%</p> <p>b. the case that the holding rate of the voting rights exceeds 20% and the acquiring company group is the sole leading holder</p> <p>c. the case that the holding rate of the voting rights exceeds 10% and the acquiring company group is ranked among the top 3 holders (in this case, the joint relationship is judged to be formed, maintained or strengthened under the comprehensive consideration with other factors). See the Guidelines above in 1. F.</p> <p>In addition, all or important part of acquired companies’ assets are covered under Japanese law regardless of the relation to the acquirer’s existing business.</p>
--	--

4. Thresholds for notification	
<p>A. What are the general thresholds for notification? [If the thresholds are subject to adjustment, state on what basis and how frequently (e.g., for inflation, annually)]</p>	<p>Notification thresholds are set according to the types of M&As. Shareholding (Article 10), merger (Article 15), company split (Article 15-2), joint share transfer (Article 15-3) and acquisition of business (Article 16).</p> <p>e.g.</p> <p>Share acquisition (paragraph (2), Article 10)</p> <p>If the following three conditions are met, a plan of the proposed share acquisition has to be filed with the JFTC within 30 days prior to the date of completion of the acquisition.</p> <p>a) The total amount of domestic sales (Note 1) of the company intending to acquire the shares and the companies etc. other than the said company in a combined group of companies (Note 2) to which the said company belongs exceeds 20 billion JPY.</p> <p>b) The total amount of domestic sales of a share issuing company (a company whose shares are to be acquired) and its subsidiaries exceeds 5 billion JPY.</p> <p>c) The ratio of the total number of voting rights of the shares of the share issuing company to be held by the share acquiring company and companies, etc. in the combined group of companies to which the share acquiring company belongs to the number of voting rights held by all shareholders of the share issuing company will exceeds 20% or 50% after acquiring the shares.</p> <p>Acquisition of business, etc. (paragraph (2), Article 16)</p>

If the following two conditions are met, a plan of the proposed acquisitions has to be filed to JFTC within 30 days prior to the date of completion of the acquisitions of the business, etc..

a) The total amount of domestic sales of a combined group of companies to which the company that acquires business, etc. belongs exceeds 20 billion JPY,

b) Any one of the following conditions is met.

i. Intending to acquire the whole business of another company whose domestic sales exceed 3 billion JPY;

ii. Intending to acquire a substantial part of the business of another company and when domestic sales pertaining to that part exceed 3 billion JPY;

iii. Intending to acquire the whole or a substantial part of fixed assets of business of another company and when the domestic sales pertaining to that part exceed 3 billion JPY.

For other types of transactions, please refer to the following:

https://www.jftc.go.jp/en/policy_enforcement/mergers/index_files/ThresholdforNotification.pdf

(in English)

Provided, however, that if the acquiring company and the company intending to transfer business, etc. belong to the same combined group of companies, the notification is not required.

The above thresholds are not subject to periodical adjustment.

(Note 1) The total amount of domestic sales means the sum of domestic sales of all companies, etc. that belong to a combined group of companies.

(Note 2) A combined group of companies (paragraph (2), Article 10) means a group that consists of a company and its subsidiaries (Note 3) and an ultimate parent company (Note 4) of the company and the subsidiaries (excluding the said company and its subsidiaries) of the said ultimate parent company.

However, when the said company does not have a parent company, a group that consists of the said company and its subsidiaries becomes a combined group of companies, as the said company becomes the ultimate parent company.

(Note 3) Subsidiaries (paragraph (6), Article 10 of the Antimonopoly Act) mean stock companies of which a majority of the voting rights of all shareholders are held by a company or any other companies, etc. whose financial and business policies are controlled by the relevant company.

(Note 4) The ultimate parent company means a parent company (Note 5) that is not a subsidiary of another company.

	(Note 5) A parent company (paragraph (7), Article 10 of the Antimonopoly Act) means a company that controls the financial and business policies of another company, etc.
B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?	See 4A above.
C. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an “effects doctrine”, please describe how this is applied in practice. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?”	In case of mergers of foreign companies, notification thresholds are defined by domestic sales in Japan. See 4A above.
D. Can a single party trigger the notification threshold (e.g., one party’s sales, assets, or market share)?	No.
E. Are any sectors excluded from notification requirements? If so, which sectors? To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?	No.

<p>F. Are there special threshold calculations for specific sectors (e.g., banking, airlines, media, digital markets) or specific types of transactions (e.g., joint ventures, partnerships, financial investments)? If yes, for which sectors and types of transactions?</p>	<p>No.</p>
<p>G. Are there special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign (foreign-to-foreign transactions)? [Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets]</p>	<p>No.</p>
<p>H. Does the agency have the authority to review transactions that fall below the thresholds or otherwise do not meet notification requirements? If so, what is the procedure to initiate a review? [Describe methodology for calculating exchange rates]</p>	<p>Yes. It is generally possible for the JFTC to review transactions that do not meet the notification thresholds. In particular, as provided in the paragraph 6(2) of the Policies above in 1.E, the JFTC will conduct a substantive business combination review of such business combination plans, which fall below the thresholds for notification only because of the small domestic sales of the substantially acquired corporation, while the total consideration for the combination is large and the business combination is expected to affect domestic consumers. The JFTC recommend the parties to consult with the JFTC if the total amount of consideration for acquisition is over 40 billion JPY and the business combination plan meets several criteria provided in the Policies.</p>
<p>I. Are current notification criteria catching relevant transactions related to digital markets?</p>	<p>Though the JFTC does not have any specific notification criteria for the digital market, Paragraph 6(2) of the Policies above in 1.E, shows that the JFTC will review business combination plan with large amount of total</p>

	consideration for acquisitions, which is expected to cover acquisitions of start-ups of digital markets, etc. See 4H above.
--	---

Calculation Guidance and related issues

<p>J. If thresholds are based on any of the following values, please describe how they are identified and calculated to determine if notification is required:</p> <ul style="list-style-type: none"> i) the value of the transaction; ii) the relevant sales or turnover; iii) the relevant assets; iv) market shares; v) other (please describe). 	<p>(ii). See 4.A. above. Domestic sales mean the total amount of value of goods and services supplied in Japan during the latest business year.</p>
---	---

<p>K. Which entities are included in determining relevant investment funds for threshold purposes? If based on control, is the definition of control in these cases any different from the definition of control in general (question 3C)? If yes, how?</p>	<p>There are no particular notification thresholds for investment funds. Therefore, the general thresholds listed below apply. See 4A for more information.</p> <p>In case of Shareholding (Article 10): the group of combined companies to which acquiring company belong, acquired company and its subsidiary companies</p> <p>In case of Merger (Article 15): the groups of combined companies to which each merging company belong.</p> <p>In case of joint incorporation-type company split (Article 15-2): the groups of combined companies to which the companies belong, the company (or the companies)</p> <p>In case of absorption-type company split (Article 15-2) and joint share transfer (Article 15-3): the groups of combined companies to which the companies belong.</p> <p>In case of acquisition of business (Article 16): the groups of combined companies to which the companies belong, the company (or the companies)</p>
--	--

<p>L. In case an investment fund is part of a transaction, are its controllers required to present turnover information related to other funds under same manager (general partner) control? Are those other funds</p>	<p>Yes.</p> <p>As far as the transaction meets notification criteria mentioned in 4A above, turnover information of other funds under the same general partner is required to be presented to the JFTC. Those other funds under the same general partner are likely to be considered as part of the transaction for turnover purposes.</p>
---	--

considered as part of the transaction for turnover purposes?	
M. Describe the methodology applied for currency conversion [e.g. which exchange rates are used].	
	Exchange rate used by the party in producing financial statements. If the party do not use any exchange rate in producing financial statements, the party may calculate the average market price during the period by using the exchange rate (TTS or TTM) and convert into Japanese currency.
5. Pre-notification	
A. If applicable, please describe the pre-notification procedure and whether it can be mandatory or not [e.g., time limits, type of guidance given, etc.].	A corporation planning to notify the JFTC concerning a business combination plan may have consultation with the JFTC regarding the said business combination plan. In such consultation, a corporation planning to give notification may consult regarding how to make entries on the notification form, etc. If a corporation planning to give notification consults the JFTC about matters related to contents to be described in the section of the notification form, the JFTC shall collect information necessary for giving explanations concerning the consultation from the said corporation planning to give notification, for example, and then provide whatever explanations it can based on the currently available information in light of the Guidelines (See 1.F.above) and views it presented in past cases. This pre-notification consultation is not mandatory and there is no time limits.
B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?	A corporation planning to give notification can submit to the JFTC materials that it believes necessary for receiving appropriate explanations concerning the consultation prior to notification.
6. Notification requirements and timing of notification	
A. Is notification mandatory? [Please describe if notification is mandatory in pre-notification phase, post-merger or voluntary]	Yes. Notification is mandatory in pre-merger phase.
B. If parties can make a voluntary merger filing when may they do so?	N/A

	<p>There is no voluntary merger filing system. Instead, to avoid a cease and desist order, parties can consult the JFTC about business combination plans that do not require notification, by showing specific contents of the merger plan as same as merger plan which require notification.</p> <p>Please see paragraph 6 of the Policies above in 1. E.</p>
<p>C. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)</p>	<p>There is no particular legal requirement.</p>
<p>D. When must notification be made? If there is a triggering event, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?</p>	<p>There is no notification deadline, but the parties cannot close transaction until the expiration of the 30 days waiting period from the date of acceptance of the notification and the parties should be mindful that the waiting period would be expired before the closing date.</p> <p>Paragraph (8), Article 10 of the Antimonopoly Act authorizes the JFTC, when it deems necessary, to shorten the above waiting period.</p> <p>There are no special rules for public takeover bids.</p>
<p>E. If there is a notification deadline, can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.</p>	<p>There is no notification deadline.</p>

7. Simplified Procedures	
A. Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain information requirements, etc.).	There is no simplified procedures of merger notification in Japan. However, when the notifying company requests shortening of the waiting period in writing and the JFTC judges that the business combination in question is not problematic in light of the Antimonopoly Act, the JFTC promptly notifies to the company that it will not issue a cease and desist order and shortens the waiting period until the date of the said notification.
B. Describe the criteria adopted to consider a transaction under the simplified procedure.	N/A

8. Information and documents to be submitted with a notification	
A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).	Please see the following articles in the Rules in 1C above.) -Article 2-6(2) (Shareholding) -Article 5(2) (Mergers) -Article 5-2(4) (Company Split) -Article 5-3(3) (Joint Share Transfer) -Article 6(2) (Acquisition of Business, etc.)
B. Is there a distinction between tangible and intangible (e.g., customer portfolio, data on consumers, etc.) assets in the description of the transaction? [In respect to digital markets, state if the agency considers the amount of user data the companies have, and which will be passed on in the transaction]	No. As for the substantive review, the JFTC amended the Guidelines and made it clear that the JFTC would review the importance of intangible assets including IP and data that the companies have (See the Guidelines V-2 and VI-2(2)).

C. Are documents proving the efficiencies of the transaction required? [If applicable, please provide the type of documents normally required]	Not required at the time of notification but the party/parties may submit such documents if they hope. In the substantive review, the JFTC may request the party/parties to submit relevant documents and information.
D. What information is required in case the target company is experiencing financial insolvency?	Not required at the time of notification but the party/parties may submit such documents if they hope. In the substantive review, the JFTC may request the party/parties to submit relevant documents and information.
E. Is there a specific procedure for obtaining information from target companies in the case of hostile/unsolicited bids?	No.
F. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalized?	In principle, copies of the articles of incorporation, contract of transaction, or the record of shareholder meeting are required to have certificates of original.
G. What are the agency's rules and practice regarding exemptions from information requirements (e.g., information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign (foreign-to-foreign transaction)?	There is no practice regarding exemptions from information requirements for transactions in which the parties are foreign.

<p>H. Can the agency require third parties to submit information during the review process? Can third parties voluntarily submit information or otherwise contact the agency to intervene?</p>	<p>The JFTC usually requests third parties to cooperate with the JFTC’s review and voluntarily submit information. It is also possible for the JFTC to order third parties to do so. Opinions from the third parties can be submitted to the JFTC during its merger review. In case Phase 2 review is conducted by JFTC, any party with an opinion about the business combination plan can submit a written opinion to the JFTC within 30 days after the JFTC publicized its request for a reports, etc.</p>
<p>I. Are parties allowed to submit information beyond what is required in the initial filing voluntarily (e.g., to help narrow or resolve potential competitive concerns)?</p>	<p>Yes. The JFTC allows the parties to submit additional materials or explanations voluntarily to narrow or resolve potential competition concern.</p>
<p>J. Are there different forms for different types of transactions or sectors?</p>	<p>Yes. Please see 8.A. above.</p>
<p>K. With respect to investment funds:</p> <p>i) Is it requested that an investment fund taking part in a transaction provide a statement that its controllers do not manage any other investment funds in the same relevant market?</p> <p>ii) Should an investment fund be controlled by an entity that is also responsible for other funds in the same relevant market, are such funds considered part of the transaction? Is it requested that the</p>	<p>We do not have any special rules on investment funds, and hence, investment funds are subject to normal filing requirements stated in 4A above. Therefore;</p> <p>i) No. ii)Yes, as long as the funds are controlled by the same entity which is the ultimate parent company of the group (See 4A above.). iii)No.</p>

<p>controlling entity provide market information (e.g., market share) related to the other funds it manages and which are in the same relevant market?</p> <p>iii) Should there be no classic concentration, is there any sort of exemption regarding presenting certain information requested in the form?</p>	
---	--

<p>9. Translation</p>	
<p>A. In what language(s) can the notification forms be submitted?</p>	<p>Japanese.</p>
<p></p>	
<p>B. Describe any requirements to submit translations of documents:</p> <p>i) with the initial notification; and</p> <p>ii) later in response to requests for information.</p> <p>In addition:</p> <p>iii) what are the categories or types of documents for which translation is required;</p> <p>iv) what are the requirements for certification of the translation;</p> <p>v) which language(s) is/are accepted; and</p>	<p>i) The JFTC only accepts a notification written in Japanese.</p> <p>ii) to vi) If the whole translation into Japanese of the documents to be submitted is available, it should be submitted. However, if the whole translation is not available, partial translation should be submitted.</p>

vi) are summaries or excerpts accepted in lieu of complete translations and in which languages are summaries accepted?	
--	--

10. Review Periods	
A. Describe any applicable review periods following notification.	1) 30 days from the date of acceptance of the notification (Phase I). 2) If during 30 days above the JFTC considers that more detailed review is necessary and requires the parties to submit necessary reports, the review period is extended to 120 days from the date of acceptance of the notification or 90 days from the date of acceptance of all necessary reports, whichever is later (Phase II). The above review periods are also applicable to mergers that do not meet the requirement for notification but the parties voluntary consulted with the JFTC.
B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?	No.
C. What are the procedures for an extension of the review periods, if any? Do requests for additional information suspend or re-start the review period?	There is no provision for an extension of the review periods.
D. Is there a statutory or other maximum duration for extensions?	No.
E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?	No.

F. What are the time periods for accelerated review of non-problematic transactions, if any?	The JFTC may, when it finds it necessary, shorten the 30 days waiting period.
G. If remedies are offered, do they impact the timing of the review?	<p>A notifying corporation can submit to the JFTC written opinions or any other materials it believes necessary for the review, including offers to take remedies (behavioral and/or structural) in question, anytime during the reviewing period.</p> <p>How this impacts the timing of the review depends upon the case and the contents of the remedies. However, the statutory review period cannot be extended.</p>

11. Waiting periods / suspension obligations	
A. Describe any waiting periods/suspension obligations following notification (e.g., full suspension from implementation, restrictions on adopting specific measures) during any initial review period and/or further review period.	<p>The parties cannot close transaction until the expiration of the 30 days waiting period from the date of acceptance of the notification.</p> <p>There is no suspension obligation during the extended review period (Phase II).</p>
B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?	<p>Yes.</p> <p>The JFTC may, when it finds it necessary, shorten the waiting periods. The shortening of the waiting period is permitted, in principle, under the condition that 1) it is evident that the effect may not substantially restrain competition in any relevant market; and 2) the notifying company requests in writing to shorten the waiting period.</p>
C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the agency's jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to	<p>No.</p> <p>The 30 days waiting period are not limited to the transaction that occurs in Japan.</p>

<p>what extent can the parties implement the transaction outside the agency's jurisdiction prior to clearance (e.g., through derogation from suspension, hold separate arrangements)?</p>	
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>Yes.</p>
<p>E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.</p>	<p>Waiting period cannot be extended.</p>
<p>F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.</p>	<p>See 11.B. above.</p>
<p>G. Describe any provisions or procedures allowing the parties to close the transaction at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).</p>	<p>There is no such provision in the Antimonopoly Act.</p>

<p>12. Responsibility for notification / representation</p>
--

<p>A. Who is responsible for notifying – the acquiring company(ies), acquired company(ies), or both? Does each party have to make its own filing?</p>	<p>Shareholding: The shareholding party Acquisitions of business: The acquiring party Merger, company split and joint share transfer: The parties concerned.</p>
<p>B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?</p>	<p>No.</p>
<p>C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?</p>	<p>Nothing provided in the Antimonopoly Act, but attorneys qualified in Japan are usually representing the parties.</p>
<p>D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized, or apostilled?</p>	<p>Power of attorney. There is no special rule for foreign representatives or firms. A power of attorney does not have to be legalized.</p>

<p>13. Filing fees</p>	
<p>A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)? [Please provide the amount in local currency and in USD as of December 31st, 2020]</p>	<p>No fee is required.</p>

B. Who is responsible for payment?	N/A
C. When is payment required?	N/A
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	N/A

14. Process for substantive analysis and decisions [Please give a brief summary and provide information on relevant Guidance papers]	
A. What are the key procedural stages in the substantive assessment (e.g., screening mergers, consulting third parties)?	The key procedural stages are the Phase I review and the Phase II review (See 10.A. above). The Phase II review typically includes requests for reports, etc. and hearing of third party opinion.
B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?	The JFTC reviews the business combination if they may substantially restrain competition in a particular field of trade. This test is also applicable to mergers that do not require notification.
C. What theories of harm does the agency consider in practice?	Please see the Part III, IV, V and VI in the Guidelines above in 1.F.
D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?	Key stages include defining a particular field of trade and assessing whether a business combination may be substantially to restrain competition in terms of both unilateral conduct and coordinated conduct. It does not differ depending on the type of transaction.

E. Are non-competition issues ever considered (in practice or by law) by the agency? If so, can they override or displace a finding based on competition issues?	No.
F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?	<p>Whether in Phase I or Phase II, the possible outcomes of the review are:</p> <ul style="list-style-type: none"> • Unconditional/conditional clearance, • a cease and desist order. <p>The same applies for non-notifiable transactions reviewed by the JFTC.</p>
G. What types of remedies does the agency accept? Is there a preference on any particular type of remedies? How is the process initiated and conducted?	<p>The remedies should, in principle, be structural measures such as the transfer of business and should basically be those that restore competition lost as a result of the combination in order to prevent the company group from controlling the price and other factors to a certain extent. However, in a market featuring a rapidly changing market structure through, for example, technological innovations, there may be cases where it is appropriate to take certain types of behavioral measures.</p> <p>The remedies should be completed before the implementation of the combination in principle. Even if the remedies are to be taken without fail after the implementation of the combination, then an appropriate and definite deadline for the remedies should be determined.</p>

15. Confidentiality	
A. To what extent, if any, does the agency make public the fact that a premerger notification filing was made or the contents of the notification? If applicable, when is this disclosure made?	<p>The JFTC does not announce the fact that a notification filing has been made unless the companies concerned announce it.</p> <p>On the other hand, the JFTC will make public announcement of the results of Phase II review. In addition, the JFTC will invite comments from the public when it starts Phase II review.</p> <p>The JFTC may make public announcement of the results of other case that was cleared in Phase I review and the JFTC considers it will be informative for other corporations to share the result of the case. Such cases include those cleared with remedies.</p> <p>In addition, the JFTC publishes the results of the reviews of major business combination cases (see 16B), as well as the list of companies which have received the notification to the effect that the JFTC will not issue a cease and desist order (see 16E for more details.) .</p>

<p>B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?</p>	<p>Yes. The notifying parties can request to disclose information based on the Act on Access to Information Held by Administrative Organs and such information can be disclosed except for Non-Disclosure Information defined in the said law.</p>
<p>C. Can third parties or other government agencies obtain access to notification materials and any other information provided by the parties (including confidential and non-confidential information)? If so, under what circumstances?</p>	<p>Yes. The third parties can request to disclose information based on the Act on Access to Information Held by Administrative Organs and such information can be disclosed except for Non-Disclosure Information defined in the said law.</p>
<p>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</p>	<p>Yes. The JFTC does not announce the fact that a notification filing has been made unless the companies concerned announce it. Also the JFTC staff shall not divulge to others or make surreptitious use of the secrets of entrepreneurs that came to their knowledge in the course of their duties. (Article 39 of Antimonopoly Act)</p>
<p>E. Can the agency deny a party's claim that certain information contained in notification materials is confidential? Are there procedures to challenge a decision that information is not confidential? If so, please describe.</p>	<p>N/A</p>
<p>F. Does the agency have procedures to provide public and non-public versions of agency orders, decisions, and court filings? If so, what steps are taken to prevent or limit public disclosure of</p>	<p>No, the JFTC does not have procedures to provide public and non-public versions of agency orders and so on.</p>

<p>information designated as confidential that is contained in these documents?</p>	
---	--

<p>16. Transparency</p>	
<p>A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.</p>	<p>Yes. Authentic version of the annual report is available at https://www.jftc.go.jp/soshiki/nenpou/index.html (in Japanese) Outline of the annual report and Annual report for the OECD Competition Committee is available at https://www.jftc.go.jp/en/about_jftc/annual_reports/index.html (in English)</p>
<p>B. Does the agency publish press releases related to merger policy or investigations/reviews? If so, how can these be accessed (if available online, please provide a link)? How often are they published (e.g., for each decision)?</p>	<p>Yes. They are available at https://www.jftc.go.jp/en/pressreleases/index.html (in English) or https://www.jftc.go.jp/houdou/pressrelease/index.html (in Japanese) The JFTC makes public announcement of for each decision as described in 15A above. In addition, around in June, the JFTC makes public announcement of its major decisions that were made in the previous business year (April to March).</p>
<p>C. Does the agency publish decisions on why it challenged, blocked, or cleared a transaction? If available online, provide a</p>	<p>Yes. In addition to the press releases of decisions, the JFTC publishes details of the review on some cases among those in which notification has been accepted or prior consultation has been made and which are thought to be helpful as a reference to entrepreneurs planning business combinations.</p>

<p>link. If not available online, describe how one can obtain a copy of decisions.</p>	<p>They are available at https://www.jftc.go.jp/en/pressreleases/categories/mergers/index.html (in English) or https://www.jftc.go.jp/houdou/pressrelease/ma/index.html (in Japanese)</p>
<p>E. Does the agency publish statistics or the number of annual notifications received, clearances, prohibitions, etc.? [if applicable, please provide a link for these figures]</p>	<p>Yes. They are available at https://www.jftc.go.jp/en/policy_enforcement/mergers/index.html (in English) or https://www.jftc.go.jp/dk/kiketsu/toukeishiryoyoujoukou.html (in Japanese)</p> <p>In addition, for the purpose of ensuring the transparency and improving the predictability of the business combination reviews, the JFTC publishes quarterly the list of companies which have received the notification to the effect that the JFTC will not issue a cease and desist order. The list includes notification date, the name of the parties, main business of the submitting party, merger type, etc.</p> <p>https://www.jftc.go.jp/dk/kiketsu/toukeishiryoyouichiran.html (in Japanese)</p>

<p>17. Cooperation</p>	
<p>A. Is the agency able to exchange information or documents with international counterparts?</p>	<p>Yes.</p>
<p>B. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which</p>	<p>Yes.</p>

foreign authorities? Are the agreements publicly available?	<p>The JFTC concludes Antimonopoly Cooperation Agreement with the United States, European Union and Canada, and Economic Partnership Agreement with Singapore, Mexico, Malaysia, Philippines, Chile, Thailand, Indonesia, Vietnam, Switzerland, India, Peru, Australia, Mongolia, ASEAN, TPP11 and EU.</p> <p>These agreements are available at https://www.jftc.go.jp/en/int_relations/agreements.html (in English) or https://www.jftc.go.jp/kokusai/kokusaikyoutei/index.html (in Japanese)</p>
C. Does the agency need consent from the parties who submitted confidential information to share such information with foreign competition authorities? If the agency has a model waiver, please provide a link to it here, or state whether the agency accepts the ICN's model waiver of confidentiality in merger investigations form.	<p>Yes, it needs the consent from the parties. The JFTC refers to the ICN's model waiver of confidentiality in merger.</p>
D. Is the agency able to exchange information or documents with other domestic regulators?	<p>No. However, other domestic regulators may submit its opinion to the JFTC.</p>

18.Sanctions/penalties	
A. What are the sanctions/penalties for: i) failure to file a notification; ii) incorrect/misleading information in a notification;	<p>i) ii) iv) vi) Fine of not more than 2 million yen (Article 91-2) are applied for failure to file a notification, incorrect/misleading information in a notification or failure to observe waiting periods.</p> <p>iii) Imprisonment with work for not more than 1 years or fine of not more than 3 million yen for a natural person (Article 94) and fine of not more than 200 million yen for a juridical person (i.e., corporation. Article 95) are</p>

<p>iii) failure to comply with information requests; iv) failure to observe a waiting period/suspension obligation; v) breach of interim measures; vi) failure to observe or delay in implementation of remedies; vii) implementation of transaction despite the prohibition from the agency?</p>	<p>applied for failure to comply with order to report. (Note: This is applicable only when JFTC issued not a request for cooperation but an order to report.)</p> <p>v) Non-penal fine of not more than 300 thousand yen (Article 98) for any person is applied if the parties implement the transaction against the urgent suspension order by the court.</p> <p>vii) Imprisonment with work for not more than 2 years or fine of not more than 3 million yen for a natural person (Article 90) and fine of not more than 300 million yen for a juridical person (i.e., corporation. Article 95) are applied for failure to comply with a cease and desist order after it has become final and binding. Non-penal fine of not more than 500 thousand yen (Article 97) is applied to any person who has violated a cease and desist order.</p>
<p>B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(vii)?</p>	<p>- The party/parties who ought to notify. - The natural person who is in charge at the party/parties who ought to notify.</p>
<p>C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.</p>	<p>The JFTC cannot impose criminal penalties and other sanctions directly. Criminal penalties are considered after the accusation is filed with the Prosecutor General by the JFTC (Article 74(2)) and the case is brought to the court.</p>
<p>D. Are there any recent or significant fining decisions?</p>	<p>No.</p>
<p>19. Independence</p>	
<p>A. Is there possibility for any ministry or a cabinet of ministries to abrogate, challenge or change merger decisions</p>	<p>No. The JFTC chairman and commissioners shall perform their authority independently.(Article 28)</p>

issued by the agency or by a court? If yes, to which merger decisions does this apply (e.g., any decision, prohibitions, clearances, remedies)?	
B. What are the grounds for such ministerial intervention?	N/A
C. Please provide any description or guidance regarding the ministerial intervention process and procedures [If applicable]	N/A

20. Administrative and judicial processes/review	
A. Describe the timetable for judicial and administrative review related to merger transactions.	<p>In the case of protesting the cease and desist order imposed by the JFTC, in accordance with Administrative Case Litigation Act, any party may file an appeal for the revocation of the said order against the JFTC with the Tokyo District Court within six months from the day on which the party became aware of the fact that the JFTC issued the said order or within one year from the date on which the certified copy of the said order was received. (Article 14 (1) and (2) of Administrative Case Litigation Act, Article 77 and 85(1) of the Antimonopoly Act)</p> <p>In case of protesting the judgment of the Tokyo District Court, any party may file an appeal to the Tokyo High Court within two weeks from the day on which a service of a judgment document is received.</p> <p>In the case of protesting the judgment of the Tokyo High Court, any party may file a final appeal or file a petition of acceptance of final appeal to the Supreme Court within two weeks from the day on which a service of a judgment document is received.</p>
B. Describe the procedures for protecting confidential information used in	N/A

judicial proceedings or in an appeal/review of an agency decision.	
C. Are there any limitations on the time during which an appeal may be filed?	See 20. A. above.

21. Additional filings	
A. Are any additional filings/clearances required for some types of transactions (e.g., sectoral or securities regulators or national security or foreign investment review)?	No banking company, in principle, shall acquire or hold the voting rights of other companies in Japan if by doing so it holds in excess of 5% (10% in the case of an insurance company) of the total voting rights, unless otherwise authorized by the JFTC or the acquisition/holding falls under any of the exceptions provided in Article 11 of the Antimonopoly Act.

22. Closing Deadlines	
A. When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized? If yes, can the parties obtain an extension of the deadline to close?	No.

23. Post Merger review of transactions	
A. Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?	Yes. If remedies which the parties notify are not carried out by the deadline, the JFTC can take action within a year from the deadline (Article 10-10).

B. Does the agency publish studies regarding ex-post analysis of reportable transactions which have been cleared by the agency? Are these studies publicly available? How does the agency obtain data for carrying out these studies?	Yes. They are available at https://www.jftc.go.jp/cprc/discussionpapers/h30/index_files/CPDP-71-J.pdf https://www.jftc.go.jp/cprc/reports/index_files/cr-0316.pdf (in Japanese)
--	--