The International Comparative Legal Guide to:

# Merger Control 2016

**12th Edition**

A practical cross-border insight into merger control issues

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## Country Question and Answer Chapters:



## EDITORIAL

Welcome to the twelfth edition of *The International Comparative Legal Guide to: Merger Control*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of merger control.

It is divided into two main sections:

Three general chapters. These chapters are designed to provide readers with a comprehensive overview of key issues affecting merger control, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in merger control laws and regulations in 50 jurisdictions.

All chapters are written by leading merger control lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Nigel Parr and Catherine Hammon of Ashurst LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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# Japan

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## 1 Relevant Authorities and Legislation

### 1.1 Who is/are the relevant merger authority(ies)?

The Fair Trade Commission of Japan (the "JFTC"), which consists of a chairman and four commissioners, is the sole agency in Japan in charge of the enforcement of the Law Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade, commonly called the Antimonopoly Law (the "Antimonopoly Law"), including regulation on mergers.

The Merger and Acquisition Division, which is one of the divisions of the Economic Affairs Bureau of the General Secretariat of the JFTC, is primarily in charge of the merger review.

In Japan, as with the importance of the Merger Guidelines (defined in question 1.2 below), through the examination of mergers cases, the role of the JFTC rather than the judicial court is viewed as quite important for practice in this area.

### 1.2 What is the merger legislation?

The Antimonopoly Law governs merger cases as the antitrust/competition law.

The major JFTC guidelines for the specific concentration (i.e., business combination) of economic power (such as mergers and acquisitions of business), as opposed to the regulations on the general concentration such as those under Article 9 (prohibition of incorporation of a company which may cause excessive concentration of economic power) and Article 11 (restriction on the stockholding by a bank or insurance company), are the "Guidelines Concerning Review of Business Combination" (the "Merger Guidelines"), launched on May 31, 2004 and amended from time to time to reflect the then most recent developments in this area.

### 1.3 Is there any other relevant legislation for foreign mergers?

Certain acquisitions of shares/equity in a Japanese company by a foreign entity are subject to the filing requirements with the Bank of Japan and relevant ministers under the Foreign Exchange and Foreign Trade Law (the "Forex Law").

Having said that, except for the cases described immediately below, no prior notice is required under the Forex Law. Only a very simple *post facto* report must be filed by the acquirer by the 15th day of the month immediately following the month in which the relevant acquisition takes place, if the Forex Law requires filing.

In certain sensitive business areas such as mining, petroleum, leather goods, fishing, forestry, agriculture, aircraft, weaponry, atomic energy and space development, a prior notice must be filed and a certain waiting period (usually 30 days) must be observed (a *post facto* report must also be filed within 30 days of the given acquisition under the Forex Law).

Filing under the Securities Law may be required.

### 1.4 Is there any other relevant legislation for mergers in particular sectors?

Mergers between the financial institutions (e.g., the banks and the insurance companies) are subject to the regulation under the applicable business affairs laws (e.g., the Banking Law and the Insurance Business Affairs Law) in addition to the Antimonopoly Law.

Moreover, acquisition of shares in the broadcasting companies, major airlines and Nippon Telephone & Telegraph companies by foreign entities are restricted under the applicable laws.

## 2 Transactions Caught by Merger Control Legislation

### 2.1 Which types of transaction are caught – in particular, what constitutes a "merger" and how is the concept of "control" defined?

There is no overarching and general definition of "merger" under the Antimonopoly Law. As for "control", in relation to the determination of the scope of the parents and subsidiaries, some guidance is provided for in the regulations relating the filing of merger control notification (see question 2.4 B 3(a)).

The merger control under the Antimonopoly Law can be divided into two categories, namely, general concentration and specific concentration of economic power. The details of each are as follows:

1. General concentration of economic power

   Article 9 of the Antimonopoly Law prohibits the incorporation of a company and/or becoming the company which may cause excessive concentration of economic power, and Article 11 of the Antimonopoly Law prohibits a bank or an insurance company from acquiring more than 5% or 10%, respectively, of the voting rights in a Japanese company, unless otherwise provided for under the Antimonopoly Law or approved by the JFTC prior to the given acquisition.

2. Specific concentration of economic power

The following specific concentrations which may substantially restrain competition in a particular field of trade are prohibited under the Antimonopoly Law:

- Acquisition of stock (i.e., voting rights) (Article 10).
- Interlocking directorates (Article 13).
- Merger (amalgamation) (Article 15).
- Acquisition of the entire or an important part of business/assets for business, etc. (Article 16).
- Company split involving a business combination (Article 15-2).
- Joint stock transfer involving a business combination (Article 15-3).

### 2.2 Can the acquisition of a minority shareholding amount to a "merger"?

According to the Merger Guidelines, the JFTC deems the "combination" of the party companies to be created through the acquisition of stock (i.e. voting rights) and reviewed by the JFTC in the following cases:

a. when the voting right ratio held by the acquiring company in the acquired company exceeds 50%;

b. when the voting right ratio held by the acquiring company in the acquired company exceeds 20%, and the acquiring company stands alone as the leading holder of voting rights; or

c. when the voting right ratio held by the acquiring company, in the acquired company, exceeds 10%, the acquiring company is ranked among the top three voting right holders, and a combination between the party companies is formed, maintained or strengthened through the given acquisition, which is determined by taking into consideration, among other things: (i) the extent of the ratio of voting rights to be held by the acquiring company; (ii) the rank as a voting right holder, differences in and distribution of the voting right ratios held among the holders; (iii) interlocking directorate; and (iv) transactions between such party companies.

For the filing requirements, 20% is a minimum threshold for the voting right ratio (see question 2.4 B) under the Antimonopoly Law. Therefore, minority shareholders may not be exempt from the filing requirements solely because they are a minority voting right holder.

### 2.3 Are joint ventures subject to merger control?

A joint venture project involving a formation of a joint venture company (an acquisition of voting rights), the acquisition of business/assets for business, a company split or joint stock transfer involving a business combination, both of which are set out in question 2.1 above, is subject to the JFTC's review, and the JFTC will review the formation of a company jointly owned by the parent companies (e.g., competitors) under the Merger Guidelines, taking account of the ancillary agreements. A filing therefore may be required in accordance with the types of transaction to be involved in the formation of a joint venture company, depending on the filing thresholds therefor.

A joint venture without involving such a specific concentration (e.g., an alliance or a joint venture solely based on an agreement) among competitors is subject to the prohibition under the Latter Part of Article 3 of the Antimonopoly Law, as an unreasonable restraint of trade.

### 2.4 What are the jurisdictional thresholds for application of merger control?

**A. Substantive law**

There are no *de minimis* rules (specific thresholds) for the application of the substantive law with regard to the prohibition of the specific concentration under the Antimonopoly Law. However, the Merger Guidelines provide that the acquisition of business that is not important (i.e., the business, the turnover of which is less than 100 million yen and 5% or less of the total turnover of the transferring company) is not usually subject to the JFTC's review. If the portion of the business to be combined into one through the company split satisfies the same criteria, such company split is not usually subject to the JFTC's review.

Note that the substantive law is applicable to a specific concentration, regardless of whether the filing is required under the Antimonopoly Law. Namely, if no filing is required under the Antimonopoly Law because the thresholds are not met, it is still possible that the specific concentration that may substantially restrain the competition in the relevant market in Japan is prohibited and therefore the JFTC may issue a cease and desist order under the Antimonopoly Law.

**B. Filing requirements**

1. The filing is required for the general concentration (see question 2.1) and specific concentration under the Antimonopoly Law if the thresholds under the Antimonopoly Law are met.
2. Certain companies with the amount of total assets prescribed under the Antimonopoly Law, the level of which may cause the excessive concentration, are required to file a report regarding its own business and that of its subsidiaries (Article 9).
3. The acquisition of voting rights (Article 10), mergers (Article 15), acquisitions of a business or assets for business (Article 16), company splits involving a business combination (Article 15-2) and joint stock transfer involving a business combination (Article 15-3) are also subject to the filing requirements under the Antimonopoly Law.

The filing requirements for such specific concentration are determined for each transaction involved. See question 2.8 below.

The filing requirements and thresholds thereof as provided for under the Antimonopoly Law are different depending on the types of transactions involved (e.g., a merger, acquisition of the whole or a part of the business/assets). The filing requirements for the transaction between domestic companies and those between foreign companies are the same under the Antimonopoly Law.

A prior filing may be required (as opposed to a *post facto* report) for all types of above transactions, if the filing requirements are satisfied.

While it is difficult to provide a short description of all of the filing requirements, in general, the following is the rule of thumb:

(a) In general, the thresholds for the filing requirements are the "domestic turnover" of a "corporate group" of 20 billion yen and 5 billion yen.

E.g., a filing is required for a merger between two companies, if the "domestic turnover" of the "corporate group" of one party exceeds 20 billion yen and that of the other party exceeds 5 billion yen. The "corporate group" is composed of the party company, its directly/indirectly owned subsidiaries, the ultimate parent of the party company and its directly/indirectly owned subsidiaries. Please note that, in general, the "parent" and "subsidiary" are defined using the concept of "control of finance and business" of another company, and

"control of finance and business" will be determined taking account of certain factors such as the voting right ratio, the number of directors, an agreement with respect thereto, and the ratio of loan as provided for under the JFTC rules. The details of the calculation method of the "domestic turnover" are also set forth in the JFTC's rules.

(b) Further, the filing requirements with regard to the acquisition of voting rights are as follows:

i) the amount of the domestic turnover of the acquiring company's corporate group exceeds 20 billion yen;

ii) the amount of the domestic turnover of the target company and its subsidiaries exceeds 5 billion yen; and

iii) the ratio of voting rights of the acquiring company's corporate group in the target company exceeds 20% or 50%, respectively, through the contemplated stock acquisition.

Note that transactions within a "corporate group" can be exempted from filing.

### 2.5 Does merger control apply in the absence of a substantive overlap?

The vertical merger and conglomerate merger, respectively, are also subject to scrutiny under the Antimonopoly Law.

If the increase in the market share of the party companies with regard to the overlapping products due to the given merger is insignificant or negligible, it does not necessarily mean the given merger is not problematic under the Antimonopoly Law. Namely, the JFTC will review the merger from various viewpoints, including the market foreclosure effects with regard to the vertical merger and conglomerate merger.

Having said that, to our knowledge, there is no vertical merger and conglomerate merger prohibited by the JFTC that has become public, while there are certain prohibited horizontal mergers.

### 2.6 In what circumstances is it likely that transactions between parties outside Japan ("foreign-to-foreign" transactions) would be caught by your merger control legislation?

The JFTC interprets that the mergers outside Japan are subject to the Antimonopoly Law so long as they may have an impact on the competition in the relevant market in Japan.

The same filing requirements as the business combination in Japan are applicable to those outside Japan. With regard to the filing requirements for business combination in Japan, please see question 2.4 above.

### 2.7 Please describe any mechanisms whereby the operation of the jurisdictional thresholds may be overridden by other provisions.

No such jurisdictional thresholds exist for either the application of the substantive law or filing requirements under the Antimonopoly Law.

### 2.8 Where a merger takes place in stages, what principles are applied in order to identify whether the various stages constitute a single transaction or a series of transactions?

The filing requirements for such specific concentrations are determined for each transaction involved. Namely, if the two party companies established a newco, and one of the party company transfers its business to the newco, the filing requirements for: (a) acquisition of voting rights in the newco by the respective party companies (i.e., each party company); and (b) the acquisition of transferred business by the newco, must be determined respectively. Such business combination outside Japan may also trigger the filing requirements under the Antimonopoly Law.

## 3 Notification and its Impact on the Transaction Timetable

### 3.1 Where the jurisdictional thresholds are met, is notification compulsory and is there a deadline for notification?

Notification is compulsory:

1. If the thresholds are met, the filing is compulsory.
2. The closing of a transaction involving a specific concentration is subject to a 30-day waiting period, which may be extended to the extent provided under the Antimonopoly Law or shortened at the JFTC's discretion. See question 3.6.

### 3.2 Please describe any exceptions where, even though the jurisdictional thresholds are met, clearance is not required.

No such exception exists so long as the filing is required (see question 2.4 B). No explicit clearance is required if the waiting period has expired without the JFTC's objection while the JFTC provide the notice.

### 3.3 Where a merger technically requires notification and clearance, what are the risks of not filing? Are there any formal sanctions?

A failure to file, or the making of any misrepresentations in a required notification, is subject to a criminal fine of up to 2 million yen.

The JFTC may file an action to void the merger, a company split or joint stock transfer involving a business combination closed without filing under the Antimonopoly Law.

If the business combination for which no filing is made is found as violation of substantive law, such business combination that is problematic under the Antimonopoly Law is subject to the JFTC's cease and desist order, even after the closing thereof.

### 3.4 Is it possible to carve out local completion of a merger to avoid delaying global completion?

In theory, it is possible if the portion which may affect the competition in the Japanese market is excluded from the transaction to be closed outside Japan.

### 3.5 At what stage in the transaction timetable can the notification be filed?

A notification may be filed if all of the necessary information has become available and the party companies have decided to proceed with the given business combination, even before the execution of the definitive agreement. However, if the notification is filed at too early a stage, e.g., if the market information may change at the time

of the closing, the JFTC is likely to request supplementation of the information with the extension of the waiting period or the filing of a new report with a new waiting period, as a matter of practice.

### 3.6 What is the timeframe for scrutiny of the merger by the merger authority? What are the main stages in the regulatory process? Can the timeframe be suspended by the authority?

**Primary Review**

During the waiting period, in principle 30 days, the JFTC is required to notify if it desires to issue a cease and desist order, such as divestiture, or inform the filing company that the JFTC will take an action against the planned business combination. This period may be shortened at the JFTC's discretion.

**Secondary Review**

If the JFTC requires the submission of any supplemental materials during the waiting period, a separate examination period will apply of up to: (a) 120 days after the receipt of the prior notification by the JFTC; or (b) 90 days after the completion of the submission of the supplemental materials, whichever is the longest. The JFTC is required to reach a conclusion, and inform the filing company thereof.

Although the JFTC may not extend the waiting period beyond the time period prescribed under the Antimonopoly Law for the secondary review, the JFTC may determine whether and when submission of the necessary documents are completed. Moreover, if the party companies provide the waivers, the waiting period may be extended.

Please see "Policies Concerning Procedures of Review of Business Combination" issued by the JFTC as of June 14, 2011.

### 3.7 Is there any prohibition on completing the transaction before clearance is received or any compulsory waiting period has ended? What are the risks in completing before clearance is received?

The mergers (Article 15), acquisitions of a business or assets for business (Article 16), company splits involving a business combination (Article 15-2), and joint stock transfer involving business combination (Article 15-3), may not be consummated before the expiration of the waiting period. The failure of the filing is subject to a criminal penalty (see question 3.3). See question 4.1, point 1.

### 3.8 Where notification is required, is there a prescribed format?

The JFTC has prescribed the format for the notification depending on the types of transactions. The party company which is required to file must complete the notification in the prescribed format in Japanese, with the necessary information and must attach certain prescribed documents (e.g., Articles of Incorporation, a copy of agreements, minutes of the meeting of appropriate corporate organisations, the business/financial report, etc.) with the Japanese translation (or at least a Japanese summary of the relevant parts) thereof.

### 3.9 Is there a short form or accelerated procedure for any types of mergers? Are there any informal ways in which the clearance timetable can be speeded up?

No short form, accelerated procedure or informal ways for speeding up the timetable exist.

### 3.10 Who is responsible for making the notification and are there any filing fees?

1. Party to file:
   (a) Mergers, company splits and joint stock transfer involving a business combination – all of the party companies.
   (b) Acquisitions of stock, acquisition of a business or assets for business – an acquiring party.
2. No filing fee is required.

### 3.11 What impact, if any, do rules governing a public offer for a listed business have on the merger control clearance process in such cases?

There are no provisions for public offer under the Antimonopoly Law. However, the JFTC may, when it finds necessary, at its sole discretion, shorten the waiting period under the Antimonopoly Law, and this provision seems to be used for the transaction involving the public bid for listed companies.

### 3.12 Will the notification be published?

Notification is not published. Having said this, with regard to the outcome of the primary review, i.e., a review undertaken by the JFTC during a first waiting period of up to 30 days upon the filing/acceptance of the notification, the JFTC will make a public announcement with regard to the business combination that will be informative for other corporations. Such cases include those deemed by the JFTC not to be problematic in light of the Antimonopoly Law, on the condition that the remedy is taken by the notifying corporations during the phase of the primary review. The JFTC usually makes public the outcome of the secondary review.

## 4 Substantive Assessment of the Merger and Outcome of the Process

### 4.1 What is the substantive test against which a merger will be assessed?

1. Antimonopoly Law

   A concentration that may substantially restrain competition in a particular field of trade (i.e., the relevant market) in Japan (or that has such impact on the Japanese market), or that involves unfair trade practice, is prohibited under the Antimonopoly Law. Party companies subject to the merger regulation are both: (a) a domestic company; and (b) a foreign company (if business combination outside Japan would have anticompetitive effects in the Japanese market). If such a transaction violates the substantive law, the JFTC is authorised to issue a cease and desist order to take certain measures necessary for eliminating that effect, including issuing, e.g., a divestiture order, an order to split a company into two or more entities, or to transfer shares in the acquired company. There are no recent cases, however, in which the sanctions have been actually imposed. It was considered that many companies conducted prior consultation with the JFTC, seeking clearance if they had antitrust concerns. (The prior consultation system, however, has been abolished.) Since the abolition of the prior consultation system, we believe party companies have changed their plans based on the discussion with the JFTC on suitable remedies during the process of the filing and the "prior consultation" for such filing.

2. M&A Guidelines

(a) The Merger Guidelines primarily cover: (a) the scope of the merger subject to the review by the JFTC, which is a business combination that forms, maintains or strengthens a "joint relationship" between party companies and the criteria therein (e.g., a stock acquisition through which the voting rights ratio achieves a certain ratio/rank) and which is not subject to the review of the JFTC (e.g., certain types of the affiliates which were already controlled by the parent company or the common parent company); (b) the approach to the definition of the relevant market; (c) the assessment of the impact on the competition in the relevant market; and (d) remedies. The Merger Guidelines take the approach for the definition of the relevant market (both a product market and a geographic market) and analysis, which is similar to (but not the same as) the merger guidelines and practice of other jurisdictions.

(b) The Merger Guidelines provide certain safe harbours for the horizontal concentration, including:

(i) the post-merger Herfindahl-Hirschmann Index ("HHI") is 1,500 or less;

(ii) the post-merger HHI is more than 1,500 but 2,500 or less, and the increased HHI is 250 or less; or

(iii) the post-merger HHI is more than 2,500, and the increased HHI is 150 or less.

Moreover, the Merger Guidelines provide that the JFTC would view the concentration to be unlikely to restrict the competition in the relevant market if the *post facto* HHI is 2,500 or less and the combined market share is 35% or less, based on the precedents reviewed by the JFTC.

The JFTC will review the proposed business combination which does not fall under the safe harbour set out above, from the perspective of "possible unilateral activities", taking account of the factors such as the status of the party companies and competitors (i.e., market shares, ranking, and the differences in the market shares between the party companies and their competitors before the merger and after the merger), the existing competition between the party companies, competitive pressures from competitors, any excess in capacity for supply and substitutability, and the degree of product differentiation. Other factors such as pressure from imports, possible entry into the market, competitive pressures from closely related markets (such as competitive products and a nearby geographic market), the total capability of business (such as market power in the procurement of materials, financial status and advertisement) and financial difficulties (such as a failing company) are also taken into account.

The Merger Guidelines provide that the JFTC will also examine the proposed concentration, in terms of coordinated effects, with regard to various factors (i.e., the number of market participants, existing competition between the party companies, any excess in supply capacity, the terms and conditions of the transactions and/or business practice in the market, competitive pressures from imports, potential entrants and (vertically) related markets).

(c) The Merger Guidelines set out the safe harbours for both vertical and conglomerate mergers as follows:

(i) where the combined market share of the parties in any of the relevant markets is 10% or less; or

(ii) where (x) the combined market share of the parties in any of the relevant markets is 25% or less, and (y) the post-merger HHI is 2,500 or less.

Moreover, the Merger Guidelines provide that the JFTC would view the concentration is not likely to restrict the competition in the relevant market if the post-merger HHI is 2,500 or less and the combined market share is 35% or less, based on the precedents reviewed by the JFTC.

3. No explicit provisions regarding the non-competition obligation exist under the Antimonopoly Law or the Merger Guidelines. In general, the non-competition obligation on the part of the transferring companies is allowed to a minimal (or economically reasonable) extent, to prevent the destruction of the transferred business's value.

### 4.2 To what extent are efficiency considerations taken into account?

It is in many cases difficult to provide the figures to show the level of increased efficiency, the JFTC usually requests to present the efficiency to be achieved through the given business combination.

### 4.3 Are non-competition issues taken into account in assessing the merger?

There is no explicit provision in the Antimonopoly Law or the relevant Guidelines. Moreover, we do not see any other issues such as national security or industrial policy concern taken into account by the JFTC in assessing the business combination.

### 4.4 What is the scope for the involvement of third parties (or complainants) in the regulatory scrutiny process?

Any person may file a complaint with the JFTC. If the complaint is filed with the specific facts in writing, the JFTC is required to investigate the case at least to a certain extent, and to notify the person who filed the complaint of the decision by the JFTC based on the results thereof.

The JFTC may seek opinions from a third party during the process of the examination of the business combination after the filing (i.e., second review).

The prior consultation, in which the party companies may conduct a prior consultation with the JFTC in which party companies may seek the clearance for the proposed business combination and a third party may submit its opinion, was abolished in 2011.

### 4.5 What information gathering powers does the regulator enjoy in relation to the scrutiny of a merger?

The JFTC is authorised to conduct a compulsory investigation regarding the violation of the Antimonopoly Law; provided, however, that, to our knowledge, there has been no such compulsory investigation such as a dawn raid published by the JFTC for the business combination as violation in recent years, and the JFTC usually requests the information on a voluntarily basis with regard to the business combination cases.

The making of a misrepresentation (or misrepresentations) in a required prior notification is subject to a criminal fine of up to 2 million yen. Such fine is imposed on the individual who is responsible for the filing and/or on the company which failed to make the filing or made the misrepresentation(s).

### 4.6 During the regulatory process, what provision is there for the protection of commercially sensitive information?

The JFTC officials are required under the Antimonopoly Law not to disclose confidential information such as the trade secrets, and the failure to meet such obligation is subject to imprisonment for up to one year or a fine up to 1 million yen or less under the Antimonopoly Law.

The JFTC will not make the information included in a notification filed by the party companies public. The JFTC may request information for secondary review and make seek opinions from a third party during the process of the examination of the business combination after the filing (i.e. secondary review).

## 5 The End of the Process: Remedies, Appeals and Enforcement

### 5.1 How does the regulatory process end?

See question 3.6 above.

### 5.2 Where competition problems are identified, is it possible to negotiate "remedies" which are acceptable to the parties?

Yes. The Merger Guidelines provide the remedies such as a transfer of the business, dissolution of the relationship with the affiliates, and the measures to accelerate the imports or new entries into the relevant market. However, if the proposed remedy is not acceptable to the JFTC, the JFTC will not approve the proposed concentration.

### 5.3 To what extent have remedies been imposed in foreign-to-foreign mergers?

There is no special rule for foreign-to-foreign business combinations regarding remedies, while we believe that the effect on the relevant market in Japan is at issue.

### 5.4 At what stage in the process can the negotiation of remedies be commenced? Please describe any relevant procedural steps and deadlines.

If and when the JFTC notifies the parties of the antitrust concern raised by the given project. It is usually during the process of the review by the JFTC of the notification, although some party companies offer remedies from the beginning based on their notion with regard to the antitrust issues in the given business combination.

### 5.5 If a divestment remedy is required, does the merger authority have a standard approach to the terms and conditions to be applied to the divestment?

The Merger Guidelines provide that the remedies should be the ones which require the changes to the structure of the industries in principle, and to this extent appropriate remedies regarding behaviour of the party companies may be considered. The remedies committed by the party companies are made public by the JFTC. The remedies in a particular case depend on the antitrust issues found in the given case, and may well depend on the facts and issues in the given case.

### 5.6 Can the parties complete the merger before the remedies have been complied with?

The Merger Guidelines provide that, in principle, the remedies should be implemented before the closing. However, the Merger Guidelines also provide that in exceptional cases the party companies may close the transaction before the implementation of the remedies, if the details thereof are approved and the deadlines are explicitly determined.

### 5.7 How are any negotiated remedies enforced?

If the commitment for remedies is not implemented, the JFTC may initiate procedures to issue a cease and desist order within one year from the deadline of implementation of such remedies.

### 5.8 Will a clearance decision cover ancillary restrictions?

If the party companies explained such ancillary restriction to the JFTC in the notification or through the process of the prior consultation, it is considered that the JFTC reviewed and approved the specific concentration, including such ancillary restriction.

### 5.9 Can a decision on merger clearance be appealed?

The cease and desist order issued by the JFTC, including that regarding the business combination, may be appealed. Under the current Antimonopoly Law, if the addressee of a JFTC decision is not satisfied with the decision and then files a lawsuit, such JFTC decision (including that related to merger clearance) is subject to direct review by judicial courts (as opposed to the previous regime of first going through administrative proceedings at the JFTC) under the applicable administrative procedures laws. More specifically, the addressee of the decision may file a complaint directly with the Tokyo District Court to quash JFTC decisions on the merger clearance. Complaints to quash the JFTC decisions will be examined by a panel of three or five court judges and the JFTC decision can be quashed if the court finds that the decision is contrary to the laws and the court is not bound by the substantial evidence rule that was applicable under the previous regime. Please note, however, that the substantial evidence rule applicable to actions for quashing JFTC decisions before the Tokyo High Court is still in force only with respect to the cases for which the prior notice of the JFTC's decision to the addressee was made on or before March 31, 2015.

### 5.10 What is the time limit for any appeal?

Under the Antimonopoly Law, the time limit for appeal is the earlier of six months after the addressee of the decision becomes aware of the decision or one year from the decision.

### 5.11 Is there a time limit for enforcement of merger control legislation?

For the waiting period at the time of filing for a business combination, see question 3.6.

## 6 Miscellaneous

### 6.1 To what extent does the merger authority in Japan liaise with those in other jurisdictions?

The Antimonopoly Law provides that the JFTC may disclose information to other competition authorities under conditions such as reciprocity, assurance of confidentiality, prohibition of information use for inappropriate purposes, and restrictions on use of information for criminal procedures.

**6.2 Are there any proposals for reform of the merger control regime in Japan?**

There are no proposals for reform as of the time of writing.

**6.3 Please identify the date as at which your answers are up to date.**

These answers are up to date as of September 1, 2015.



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