The Merger Control Review

Sixth Edition

Editor
Ilene Knable Gotts

Law Business Research

The Merger Control Review

The Merger Control Review
Reproduced with permission from Law Business Research Ltd.

This article was first published in The Merger Control Review - Edition 6
(published in July 2015 – editor Ilene Knable Gotts)

For further information please email
Nick.Barette@lbresearch.com

The Merger Control Review

Sixth Edition

Editor
Ilene Knable Gotts

Law Business Research Ltd

PUBLISHER
Gideon Roberton

BUSINESS DEVELOPMENT MANAGER
Nick Barette

SENIOR ACCOUNT MANAGERS
Katherine Jablonowska, Thomas Lee, Felicity Bown

ACCOUNT MANAGER
Joel Woods

PUBLISHING MANAGER
Lucy Brewer

MARKETING ASSISTANT
Rebecca Mogridge

EDITORIAL COORDINATOR
Shani Bans

HEAD OF PRODUCTION
Adam Myers

PRODUCTION EDITOR
Anne Borthwick

SUBEDITOR
Caroline Herbert

MANAGING DIRECTOR
Richard Davey

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
© 2015 Law Business Research Ltd
www.TheLawReviews.co.uk
No photocopying: copyright licences do not apply.
The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients. Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of July 2015, be advised that this is a developing area.
Enquiries concerning reproduction should be sent to Law Business Research, at the address above. Enquiries concerning editorial content should be directed to the Publisher – gideon.roberton@lbresearch.com

ISBN 978-1-909830-60-8

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW

THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

THE DISPUTE RESOLUTION REVIEW

THE EMPLOYMENT LAW REVIEW

THE PUBLIC COMPETITION ENFORCEMENT REVIEW

THE BANKING REGULATION REVIEW

THE INTERNATIONAL ARBITRATION REVIEW

THE MERGER CONTROL REVIEW

THE TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS REVIEW

THE INWARD INVESTMENT AND INTERNATIONAL TAXATION REVIEW

THE CORPORATE GOVERNANCE REVIEW

THE CORPORATE IMMIGRATION REVIEW

THE INTERNATIONAL INVESTIGATIONS REVIEW

THE PROJECTS AND CONSTRUCTION REVIEW

THE INTERNATIONAL CAPITAL MARKETS REVIEW

THE REAL ESTATE LAW REVIEW

THE PRIVATE EQUITY REVIEW

THE ENERGY REGULATION AND MARKETS REVIEW

THE INTELLECTUAL PROPERTY REVIEW

THE ASSET MANAGEMENT REVIEW

THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

THE MINING LAW REVIEW

THE EXECUTIVE REMUNERATION REVIEW

THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW

THE CARTELS AND LENIENCY REVIEW

THE TAX DISPUTES AND LITIGATION REVIEW

THE LIFE SCIENCES LAW REVIEW

THE INSURANCE AND REINSURANCE LAW REVIEW

THE GOVERNMENT PROCUREMENT REVIEW

THE DOMINANCE AND MONOPOLIES REVIEW

THE AVIATION LAW REVIEW

THE FOREIGN INVESTMENT REGULATION REVIEW

THE ASSET TRACING AND RECOVERY REVIEW

THE INTERNATIONAL INSOLVENCY REVIEW

THE OIL AND GAS LAW REVIEW

THE FRANCHISE LAW REVIEW

THE PRODUCT REGULATION AND LIABILITY REVIEW

THE SHIPPING LAW REVIEW

THE ACQUISITION AND LEVERAGED FINANCE REVIEW

THE PRIVACY, DATA PROTECTION AND CYBERSECURITY LAW REVIEW

THE PUBLIC-PRIVATE PARTNERSHIP LAW REVIEW

THE TRANSPORT FINANCE LAW REVIEW

THE SECURITIES LITIGATION REVIEW

www.TheLawReviews.co.uk

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ALI BUDIARDJO, NUGROHO, REKSODIPUTRO

ALTIUS

ANDERSON MŌRI & TOMOTSUNE

ARAQUEREYNA

ARNTZEN DE BESCHE ADVOKATFIRMA AS

ASHURST

AZB & PARTNERS

BENTSI-ENCHILL, LETSA & ANKOMAH

BPV HÜGEL RECHTSANWÄLTE OG

BREDIN PRAT

CAIAZZO DONNINI PAPPALARDO & ASSOCIATI – CDP STUDIO LEGALE

CASTRÉN & SNELLMAN ATTORNEYS LTD

CHAPMAN TRIPP

CMS VON ERLACH PONCET LTD

CUATRECASAS, GONÇALVES PEREIRA, RL

DLA PIPER

EGOROV PUGINSKY AFANASIEV & PARTNERS

ELIG, ATTORNEYS-AT-LAW

ENSAFRICA (EDWARD NATHAN SONNENBERGS)

GIBSON, DUNN & CRUTCHER LLP

GROSS, KLEINHENDLER, HODAK, HALEVY, GREENBERG & CO

HOUTHOFF BURUMA

JEFF LEONG, POON & WONG

KARANOVIĆ & NIKOLIĆ

KAYE SCHOLER LLP

KING & WOOD MALLESONS

LCS & PARTNERS

LINKLATERS C WIŚNIEWSKI I WSPÓLNICY SPÓŁKA KOMANDYTOWA

MATTOS FILHO, VEIGA FILHO, MARREY JR E QUIROGA ADVOGADOS

MOTIEKA & AUDZEVIČIUS

NAVIGANT ECONOMICS

PACHECO, ODIO & ALFARO

PELIFILIP

PÉREZ BUSTAMANTE & PONCE

POLENAK LAW FIRM

SAYENKO KHARENKO

SLAUGHTER AND MAY

STRACHAN PARTNERS

TORYS LLP

VALDÉS ABASCAL ABOGADOS, SC

WACHTELL, LIPTON, ROSEN & KATZ

WEERAWONG, CHINNAVAT & PEANGPANOR LTD

WILMER CUTLER PICKERING HALE AND DORR LLP

WILSON SONSINI GOODRICH & ROSATI

YULCHON LLC

CONTENTS

EDITOR'S PREFACE

Pre-merger competition review has advanced significantly since its creation in 1976 in the United States. As this book evidences, today almost all competition authorities have a notification process in place – with most requiring pre-merger notification for transactions that meet certain prescribed minimum thresholds. Additional jurisdictions, particularly in Asia, are poised to add pre-merger notification regimes in the next year or so. The 10 Member States of the Association of Southeast Asian Nations, for example, have agreed to introduce national competition policies and laws by year-end 2015. We have expanded the jurisdictions covered by this book to include the newer regimes as well in our endeavour to keep our readers well informed.

Given the ability of most competition agencies with pre-merger notification laws to delay, and even block, a transaction, it is imperative to take each jurisdiction – small or large, new or mature – seriously. China, for instance, in 2009 blocked the Coca-Cola Company's proposed acquisition of China Huiyuan Juice Group Limited and imposed conditions on four mergers involving non-Chinese domiciled firms. In *Phonak/ReSound* (a merger between a Swiss undertaking and a Danish undertaking, each with a German subsidiary), the German Federal Cartel Office blocked the entire merger even though less than 10 per cent of each of the undertakings was attributable to Germany. It is, therefore, imperative that counsel for a transaction develops a comprehensive plan prior to, or immediately upon, execution of the agreement concerning where and when to file notification with competition authorities regarding the transaction. In this regard, this book provides an overview of the process in 43 jurisdictions, as well as a discussion of recent decisions, strategic considerations and likely upcoming developments. Given the number of recent significant M&A transactions involving pharma and high-technology companies, we have added to this year's edition chapters focusing on the US and EU enforcement trends in these important sectors. In addition, as merger review increasingly includes economic analysis in most, if not all, jurisdictions, we have added a chapter discussing the various economic tools used to analyse transactions. The intended readership of this book comprises both in-house and outside counsel who may be involved in the competition review of cross-border transactions.

Some common threads in institutional design underlie most of the merger review mandates, although there are some outliers as well as nuances that necessitate careful consideration when advising clients on a particular transaction. Almost all jurisdictions vest exclusive authority to review transactions in one agency. The US and China may end up being the exceptions in this regard. Most jurisdictions provide for objective monetary size thresholds (e.g., the turnover of the parties, the size of the transaction) to determine whether a filing is required. Germany, for instance, provides for a *de minimis* exception for transactions occurring in markets with sales of less than €15 million. There are some jurisdictions, however, that still use 'market share' indicia (e.g., Bosnia and Herzegovina, Colombia, Lithuania, Portugal, Spain, Ukraine and the UK). Most jurisdictions require that both parties have some turnover or nexus to their jurisdiction. However, there are some jurisdictions that take a more expansive view. For instance, Turkey recently issued a decision finding that a joint venture (JV) that produced no effect in Turkish markets was reportable because the JV's products 'could be' imported into Turkey. Germany also takes an expansive view by adopting as one of its thresholds a transaction of 'competitively significant influence'. Although a few merger notification jurisdictions remain 'voluntary' (e.g., Australia, Singapore, the UK and Venezuela), the vast majority impose mandatory notification requirements.

The potential consequences for failing to file in jurisdictions with mandatory requirements varies. Almost all jurisdictions require that the notification process be concluded prior to completion (e.g., pre-merger, suspensory regimes), rather than permitting the transaction to close as long as notification is made prior to closing. Many of these jurisdictions can impose a significant fine for failure to notify before closing even where the transaction raises no competition concerns (e.g., Austria, Cyprus, India, the Netherlands, Romania, Spain and Turkey). In France, for instance, the Authority imposed a €4 million fine on Castel Frères for failure to notify its acquisition of part of Patriache group. Some jurisdictions impose strict time frames within which the parties must file their notification. For instance, Cyprus requires filing within one week of signing of the relevant documents and agreements; Serbia and India provide for 15 days after signing the agreement; and Hungary, Ireland and Romania have a 30-calendar-day time limit commencing with the entering into the agreement for filing the notification. Some jurisdictions that mandate filings within specified periods after execution of the agreement also have the authority to impose fines for 'late' notifications (e.g., Bosnia and Herzegovina, India and Serbia). Most jurisdictions also have the ability to impose significant fines for failure to notify or for closing before the end of the waiting period, or both (e.g., Greece, Portugal, Ukraine and the US). In Macedonia, the failure to file can result in a misdemeanour and a monetary fine of up to 10 per cent of the worldwide turnover.

In addition, other jurisdictions have joined the EU and US in focusing on interim conduct of the transaction parties. Brazil, for instance, issued its first 'gun jumping' fine last year and recently issued guidelines on gun jumping violations. In most jurisdictions, a transaction that does not meet the pre-merger notification thresholds is not subject to review and challenge by the competition authority. In Canada – like the US – however, the agency can challenge mergers that were not required to be notified under the pre-merger statute. In 2014 alone, the Canadian Competition Bureau took enforcement action in three non-notifiable mergers.

In almost all jurisdictions, very few transactions undergo a full investigation, although some require that the notification provide detailed information regarding the markets, competitors, competition, suppliers, customers and entry conditions. Most jurisdictions that have filing fees specify a flat fee or state in advance a schedule of fees based upon the size of the transaction; some jurisdictions, however, determine the fee after filing or provide different fees based on the complexity of the transaction. For instance, Cyprus is now considering charging a higher fee for acquisitions that are subjected to a full Phase II investigation.

Most jurisdictions more closely resemble the EU model than the US model. In these jurisdictions, pre-filing consultations are more common (and even encouraged); parties can offer undertakings during the initial stage to resolve competitive concerns; and there is a set period during the second phase for providing additional information and for the agency to reach a decision. In Japan, however, the Japanese Federal Trade Commission (JFTC) announced in June 2011 that it would abolish the prior consultation procedure option. When combined with the inability to 'stop the clock' on the review periods, counsel may find it more challenging in transactions involving multiple filings to avoid the potential for the entry of conflicting remedies or even a prohibition decision at the end of a JFTC review. Some jurisdictions, such as Croatia, are still aligning their threshold criteria and process with the EU model. There remain some jurisdictions even within the EU that differ procedurally from the EU model. For instance, in Austria, the obligation to file can be triggered if only one of the involved undertakings has sales in Austria, as long as both parties satisfy a minimum global turnover and have a sizeable combined turnover in Austria.

The role of third parties also varies across jurisdictions. In some jurisdictions (e.g., Japan) there is no explicit right of intervention by third parties, but the authorities can choose to allow it on a case-by-case basis. In contrast, in South Africa, registered trade unions or representatives of employees are to be provided with a redacted copy of the merger notification from the outset and have the right to participate in merger hearings before the Competition Tribunal: the Tribunal will typically also permit other third parties to participate. Bulgaria has announced a process by which transaction parties even consent to disclosure of their confidential information to third parties. In some jurisdictions (e.g., Australia, the EU and Germany), third parties may file an objection to a clearance decision. In some jurisdictions (including Canada, the EU and the US), third parties (e.g., competitors) are required to provide information and data if requested by the antitrust authority. In Israel, a third party that did not comply with such a request was recently fined by the Authority.

In almost all jurisdictions, once the authority approves the transaction, it cannot later challenge the transaction's legality. The US is one significant outlier with no bar for subsequent challenge, even decades following the closing, if the transaction is later believed to have substantially lessened competition. Canada, in contrast, provides a more limited time period of one year for challenging a notified transaction (see the recent *CSC/Complete* transaction). Norway is a bit unusual, in that the Authority has the ability to mandate notification of a transaction for a period of up to three months following the transaction's consummation.

It is becoming the norm in large cross-border transactions raising competition concerns for the US, Canadian, Mexican and EU authorities to work closely together during the investigative stages, and even in determining remedies, minimising the potential of arriving at diverging outcomes. The Korean Fair Trade Commission has stated that it will engage in even greater cooperation with foreign competition authorities, particularly those of China and Japan, which are similar to Korea in their industrial structure. Regional cooperation among some of the newer agencies has also become more common; for example, the Argentinian authority has worked with Brazil's CADE, which in turn has worked with the Chilean authority. Competition authorities in Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Montenegro, Serbia, Slovenia and Turkey similarly maintain close ties and cooperate on transactions. Taiwan is part of the Asia-Pacific Economic Cooperation Forum, which shares a database. In transactions not requiring filings in multiple EU jurisdictions, Member States often keep each other informed during the course of an investigation. In addition, transactions not meeting the EU threshold can nevertheless be referred to the Commission in appropriate circumstances. In 2009, the US signed a memorandum of understanding with the Russian Competition Authority to facilitate cooperation; China has 'consulted' with the US and the EU on some mergers and entered into a cooperation agreement with the US authorities in 2011. The US also has recently entered into a cooperation agreement with India.

Although some jurisdictions have recently raised the size threshold at which filings are mandated, others have broadened the scope of their legislation to include, for instance, partial ownership interests. Some jurisdictions continue to have as their threshold test for pre-merger notification whether there is an 'acquisition of control'. Many of these jurisdictions, however, will include as a reportable situation the creation of 'joint control', 'negative (e.g., veto) control' rights to the extent that they may give rise to *de jure* or *de facto* control (e.g., Turkey), or a change from 'joint control' to 'sole control' (e.g., the EU and Lithuania). Minority holdings and concerns over 'creeping acquisitions', in which an industry may consolidate before the agencies become fully aware, have become the focus of many jurisdictions. Some jurisdictions will consider as reviewable acquisitions in which only a 10 per cent or less interest is being acquired (e.g., Serbia for certain financial and insurance mergers), although most jurisdictions have somewhat higher thresholds (e.g., Korea sets the threshold at 15 per cent of a public company and otherwise at 20 per cent of a target; and Japan and Russia at any amount exceeding 20 per cent of the target). Others use as the benchmark the impact that the partial shareholding has on competition; Norway, for instance, can challenge a minority shareholding that creates or strengthens a significant restriction on competition. The UK also focuses on whether the minority shareholder has 'material influence' (i.e., the ability to make or influence commercial policy) over the entity. Several agencies during the past few years have analysed partial ownership acquisitions on a standalone basis as well as in connection with JVs (e.g., Canada, China, Cyprus, Finland and Switzerland). Vertical mergers were also a subject of review (and even resulted in some enforcement actions) in a number of jurisdictions (e.g., Belgium, Canada, China, Sweden and Taiwan). Portugal even viewed as an 'acquisition' subject to notification the non-binding transfer of a customer base.

For transactions that raise competition issues, the need to plan and to coordinate among counsel has become particularly acute. Multijurisdictional cooperation facilitates the development of cross-border remedies packages that effectively address competitive concerns while permitting the transaction to proceed. The consents adopted by the US and Canada in the *Holcim/Lafarge* merger exemplify such a cross-border package. As discussed in the International Merger Remedies chapter, it is no longer prudent to focus merely on the larger mature authorities, with the expectation that other jurisdictions will follow their lead or defer to their review. In the current environment, obtaining the approval of jurisdictions such as Brazil and China can be as important as the approval of the EU or the US. Moreover, the need to coordinate is particularly acute to the extent that multiple agencies decide to impose conditions on the transaction. Although most jurisdictions indicate that 'structural' remedies are preferable to 'behavioural' conditions, a number of jurisdictions in the past few years have imposed a variety of such behavioural remedies (e.g., China, the EU, France, the Netherlands, Norway, South Africa, Ukraine and the US). For instance, some recent decisions have included as behavioural remedies pricing, sales tariffs and terms of sale conditions (e.g., Ukraine and Serbia), employee retrenchment (South Africa) and restrictions on bringing antidumping suits (e.g., Mexico). Many recent decisions have imposed behavioural remedies to strengthen the effectiveness of divestitures (e.g., Canada's decision in the *Loblaw/Shoppers* transaction, China's MOFCOM remedy in *Glencore/Xstrata*, France's decision in the *Numericable/SFR* transaction). This book should provide a useful starting point in navigating cross-border transactions in the current enforcement environment.

Ilene Knable Gotts
Wachtell, Lipton, Rosen & Katz
New York
July 2015

Chapter 19

JAPAN

Yusuke Nakano, Vassili Moussis and Kiyoko Yagami[1]

I INTRODUCTION

Merger control was introduced in Japan by the 1947 Japanese Antimonopoly Act (AMA) together with Japan's first competition rules. Merger control is enforced by the Japan Fair Trade Commission (JFTC), which was established as an independent administrative office with broad enforcement powers and is composed of a chair and four commissioners. The JFTC has primary jurisdiction over the enforcement of merger control under the AMA.

i Pre-merger notification

Types of regulated mergers and thresholds

Share acquisitions (including joint ventures), mergers,[2] joint share transfers, business transfers and corporate splits (or demergers) are subject to prior notification under the AMA if they exceed certain thresholds. Mergers and acquisitions (M&A) transactions whose schemes involve more than one of these transactions (e.g., an acquirer merges with a target after acquiring shares in the target) are separately analysed at each step of the transaction and may require separate filings for each of the various transactional steps.

Joint ventures are also notifiable as long as they satisfy the thresholds for share acquisitions. Unlike the regime in the EU, Japanese law does not make a distinction between full-function and non-full function joint ventures. A notification is also required when a partnership (including a limited liability partnership) formed under Japanese law or under foreign laws acquires shares in another company through the partnership. The

1 Yusuke Nakano is a partner, Vassili Moussis is a senior foreign counsel and Kiyoko Yagami is a senior associate at Anderson Mōri & Tomotsune.

2 The JFTC uses the term 'merger' in its English translation of the AMA to describe what is called 'amalgamation' in many other jurisdictions.

controlling company of such partnership should file a prior notification if the filing thresholds are otherwise satisfied.[3]

Generally speaking, no notification is required for transactions that amount to internal reorganisations of companies within a combined business group.[4]

Domestic turnover

Domestic turnover, which is defined as the total amount of the price of goods and services supplied in Japan during the latest fiscal year,[5] is used as a decisive factor in the calculation of thresholds. The same thresholds will apply to both domestic and foreign companies.

According to the Merger Notification Rules,[6] the domestic turnover of a company includes the sales amount accrued through direct importing into Japan regardless of whether the company has a presence in Japan.

To be precise, domestic turnover is the total amount of the following three categories of sales:[7]

a sales amount derived from the sale of goods (including services) sold to domestic consumers (excluding individuals who are transacting business);

b sales amount derived from the sale of goods (including services) supplied in Japan to business entities or individuals who are transacting business (business entities) (excluding sales of goods where it is known that such goods will be shipped outside Japan at the time of entering into the contract, without any changes made to their nature or characteristics); and

c sales amount derived from the sale of goods (including services) supplied outside Japan to business entities where it is known that such goods will be shipped into Japan at the time of entering into the contract, without any changes made to their nature or characteristics.

3 Article 10, paragraph 5 of the AMA.

4 A combined business group consists of all of the subsidiaries of the ultimate parent company. It should be noted that a company will generally be considered to be part of a combined business group not only when more than 50 per cent of the voting rights of a company are held by another company, but also if its financial and business policies are 'controlled' by the other company. The Merger Notification Rules specify detailed thresholds for 'control' to exist, which might be found even in cases where the ratio of beneficially owned voting rights is as low as, or even slightly lower than, 40 per cent. The concept of 'control' to decide which companies are to be included in the combined business group is in line with the concept of 'control' used to define group companies under the Ordinance for the Enforcement of Companies Act. This concept of 'control' aligns Japanese merger control with the merger rules of other jurisdictions, especially those of the EU.

5 Article 10, paragraph 2 of the AMA.

6 The Rules on Applications for Approval, Reporting, Notification, etc. Pursuant to Articles 9 to 16 of the AMA (as amended in 2011).

7 Article 2, paragraph 1 of the Merger Notification Rules.

In cases where the calculation of domestic turnover cannot be made in strict compliance with these rules, it is also permitted to use a different method to calculate the amount of the domestic turnover as long as it is in line with the purpose of the above-specified method and in accordance with generally accepted accounting principles.[8]

Notification thresholds for each type of transaction

Under the AMA, different notification thresholds apply depending on the different types of transactions, namely, share acquisitions, mergers, joint share transfers, business transfers and corporate splits.

For share acquisitions (including joint ventures), the thresholds are based both on domestic turnover and the level of shareholding in the target. First, the aggregate domestic turnover of all corporations within the combined business group of the acquiring corporation must exceed ¥20 billion, and the aggregate domestic turnover of the target corporation and its subsidiaries must exceed ¥5 billion to meet the filing requirement.[9] Second, such acquisition must result in the acquirer holding more than 20 or 50 per cent of the total voting rights of all the shareholders of the target (i.e., an acquisition that increases a shareholding from 19 to 21 per cent is subject to a filing, while an acquisition that increases a shareholding from 21 to 49 per cent does not require one).[10] It should be noted that a minority ownership of over 20 per cent may be caught regardless of whether the acquirer will take control of the target company.

For mergers and joint share transfers,[11] the thresholds are based on domestic turnover. The aggregate domestic turnover of the combined business group of one of the merging companies, or of one of the companies intending to conduct the joint share transfer, must exceed ¥20 billion to meet the filing requirement. Furthermore, the aggregate domestic turnover of the combined business group of one other participating company must exceed ¥5 billion.[12]

For business transfers, the thresholds are based on domestic turnover. The aggregate domestic turnover of all companies within the combined business group of the acquiring company must exceed ¥20 billion to meet the filing requirement. For the transferring company, separate thresholds are applied depending on whether the target business is the whole business of the company or a substantial part of the business thereof. In the former case, a threshold of ¥3 billion of domestic turnover applies to the transferring company; in the latter, the same shall apply to that attributable to the target business.[13]

8 Article 2, paragraph 2 of the Merger Notification Rules.

9 Article 10, paragraph 2 of the AMA.

10 Article 16, paragraph 3 of the Implementation Rules of the AMA.

11 Under Japanese law, 'joint share transfer' refers to a specific structure that involves two or more companies transferring their shares into a new holding company in exchange for shares from that holding company.

12 Article 15, paragraph 2 and Article 15-3, paragraph 2 of the AMA.

13 Article 16, paragraph 2 of the AMA.

For corporate splits, there are a number of relevant thresholds depending upon the structure of the transactions, but the ¥20 billion and ¥5 billion thresholds described above (or lower thresholds) similarly apply.[14]

In the case of a merger, corporate split or joint share transfer, both companies intending to effect such transactions have to jointly file.[15] On the other hand, in the case of a share acquisition or business transfer, only the acquiring company is responsible for the filing. There are no filing fees under the AMA.

ii Regulations and guidelines relating to merger control issued in the past year

Amendment of the Antimonopoly Act

In December 2013, the amendment bill of the AMA, which abolished the hearing procedure of the JFTC for administrative appeals, passed the Diet of Japan. This fundamentally revises the appeal procedure for JFTC decisions by:

a abolishing the JFTC's hearing procedure for administrative appeals;

b abolishing the exclusive jurisdiction of the Tokyo High Court as the court that reviews at first instance any appeal suits pertaining to administrative hearing decisions of the JFTC;

c introducing a system where any first instance appeals pertaining to cease-and-desist orders, etc., shall be to the Tokyo District Court only (with a panel of three or five judges); and

d streamlining procedures for a hearing of opinions prior to issuing a cease-and-desist order and surcharge payment order to ensure increased rights to due process.

The amendment came into effect on 1 April 2015, along with the corresponding amendment of the related regulations. New rules on the procedures for hearing of opinions prior to the issuance of a cease-and-desist order and surcharge payment order, etc. (see (d) above), also came into effect on the same date, while the regulations relating to the JFTC's hearing procedure for administrative appeals were abolished.

II YEAR IN REVIEW

During the 2014 fiscal year (from 1 April 2014 to 31 March 2015) (FY 2014), the JFTC conducted Phase II reviews in three cases: the integration between Zimmer, Inc (Zimmer) and Biomet, Inc (Biomet); the acquisition of shares of Chuetsu Pulp & Paper Co, Ltd (Chuetsu) by Oji Holdings Corporation (Oji); and the integration between Applied Materials, Inc (AMAT) and Tokyo Electron Ltd (TEL). The JFTC cleared the *Zimmer and Biomet* case in March 2015 and the *Oji and Chuetsu* case in May 2015 with conditions, while the *AMAT and TEL* case seems to have been withdrawn due to the

14 Article 15-2, paragraphs 2 and 3 of the AMA.

15 Article 5, paragraph 2, Article 5-2, paragraph 3 and Article 5-3, paragraph 2 of the Merger Notification Rules.

termination of the parties' business combination agreement.[16] As of the date of this chapter, the *Chuetsu and Oji* case is still pending before the JFTC.

i Integration between Zimmer and Biomet[17]

Zimmer and Biomet are both US-based companies that conduct medical device marketing business worldwide, including in Japan. The notified integration is expected to take two steps: a subsidiary of Zimmer to merge with the parent company of Biomet, whereby the parent company of Biomet becomes a surviving company; and Zimmer acquiring all the shares of the parent company of Biomet (transaction).

There is a wide range of overlapping products sold by both parties. Among these products, the JFTC carried out an in-depth review for several types of artificial joints for which both parties maintain a higher share in the Japanese market, and investigated the following five relevant product markets:

a artificial hip joints;
b artificial knee joints used for total knee arthroplasty (TKA);
c artificial knee joints used for unicompartmental knee arthroplasty (UKA);
d artificial shoulder joints; and
e artificial elbow joints.

For these product markets, the JFTC defined the relevant geographical market as 'all regions of Japan', by finding that medical institutions, as the users of these products, purchase the products (including both domestically-manufactured products and imported products) approved under the laws of Japan, via wholesalers in Japan.

With respect to artificial hip joints, the JFTC did not raise any concern as this comes under the safe harbour rules for horizontal business combination (for the safe harbour rules, see Section III.vii, *infra*). With respect to TKA and artificial shoulder joints, the JFTC found that, *inter alia*, more than one influential competitor (which means, in this context, competitors with 10 per cent or more of the market share) with a certain level of excess capacity will still exist even after the transaction, and concluded that the transaction would not restrain competition in any of the relevant markets in Japan.

With respect to UKA and artificial elbow joints, the JFTC examined the fact that the combined market share of Zimmer and Biomet, which actively competed in the respective markets in the past, would become as high as 90 per cent and 60 to 70 per cent, respectively, and that there will be a significant gap in respect of other competitors. The JFTC further asserted that entry pressure and competitive pressure from users or adjacent markets for these products is not active, and finally concluded that the transaction would result in creating a situation where the parties would be able to freely control the prices to a certain degree.

16 It was announced by TEL in a press release that there remained a gap between the views of TEL and AMAT and the view of the US Department of Justice, and it became apparent that such gap would not be able to be bridged: www.tel.com/news/2015/0427_003.htm.

17 JFTC press release of 25 March 2015, available in English at www.jftc.go.jp/en/pressreleases/yearly-2015/March/150325.files/150325.pdf.

When drawing the above conclusion, the JFTC referred to the results of an econometric analysis that showed that, if a transaction similar to the transaction hypothetically took place in FY 2011, the degree of increase in manufacturers' prices in the following fiscal year for UKA and artificial elbow joints is estimated to have been higher than that for artificial hip joints, TKA and artificial shoulder joints. What is noteworthy about this decision is that the JFTC explicitly mentioned that it took into account the results of the econometric analysis based upon simulation to assess the impact of the contemplated transaction. The JFTC also made clear in one of the notes to the same decision that simulation results should only be interpreted as 'supplementary information to the results of qualitative investigation' and not as a 'definitive conclusion on the effects of this consolidation'.

Based on the explanations on the points of issue by the JFTC, the parties submitted proposed remedies in relation to UKA and artificial elbow joints to the JFTC, which included divestiture of tangible assets and intellectual properties related to leading brands of the parties corresponding to a 50 per cent market share in the UKA market; and divestiture of tangible assets and intellectual properties related to leading brands of the parties corresponding to a 20 per cent market share in the artificial elbow joints market. As part of the conditions, the parties were required to find a third-party buyer of the divested business with adequate experience and capability in the orthopaedics and artificial joints business within a certain period of time, and to obtain an approval from the JFTC on the qualification of such buyer, or alternatively to ensure that an independent third party (divestiture trustee) will carry out the disposal of the above businesses.

Upon its assessment of the above remedy, the JFTC finally concluded that, on the premise that the above remedy would be implemented, the transaction would not substantially restrain competition in any particular fields of trade.

ii Acquisition of shares of Chuetsu by Oji[18]

Oji and Chuetsu are both Japan-based companies that are engaged in manufacturing and selling paper and pulp products. Oji, one of the two largest paper manufacturing groups in Japan, which held nearly 10 per cent of the shares in Chuetsu, proposed to acquire additional shares in Chuetsu and thereby obtain 20.9 per cent of its voting rights (acquisition).

The JFTC reviewed about 35 product markets where Oji and Chuetsu compete with or have transactions with each other. Among these, it conducted an in-depth review of the markets for six types of paper products: tissue printing paper, art paper, carbonising base paper, unglazed craft paper for heavy-duty sack, specialty unglazed craft paper, and unglazed and bleached craft paper.

The relevant geographical market for the above products was defined as 'all regions of Japan', as the JFTC found that the buyers tended to procure the above-mentioned

18 JFTC press release of 26 May 2015, available in English at www.jftc.go.jp/en/pressreleases/yearly-2015/May/150526.files/150526.pdf.

products regardless of region and that the prices of these products did not vary from region to region.

As a result of the acquisition, the combined entity would hold the top share in each of the above six product markets, and the combined market share in each market would range from 45 to as high as 80 per cent. In addition, the JFTC examined various other facts concerning the six relevant markets, including the following:

a that the number of market players is limited or the market shares of a few players are highly concentrated;

b that excess supply power of other paper manufacturers is generally limited;

c that paper manufacturers are able to obtain price information of their competitors through distributors;

d that demand fluctuations in the relevant market are limited and the relevant industry is less innovative; and

e that paper manufacturers tend to raise their prices simultaneously.

Based on the above fact-finding investigation, the JFTC concluded that the acquisition would create a situation where the combined group and other competitors could easily coordinate their conduct, and thereby restrain competition in the relevant markets.

The parties then proposed various measures to respond to the JFTC's concerns, including the following:

a the parties each will independently operate the business relating to the above six products, and will obtain prior approval from the JFTC whenever they enter into any concentration or collaboration on these products:

b the parties will not disclose confidential information relating to the above six products to each other:

c the number of directors or employees that Oji can send to the board of directors of Chuetsu will be limited to one, and his or her capacity will be limited to that of outside director:

d the parties will maintain internal employment regulations that clearly indicate that any violation of the AMA will be subject to disciplinary actions, and will conduct regular training sessions for the relevant directors and employees who are in charge of manufacturing and selling the above six products; and

e the parties will report the implementation status of these remedial measures to the JFTC annually.

Based on the premise that Oji and Chuetsu will implement the above remedies, the JFTC concluded that the acquisition would not substantially restrain competition in the particular fields of trade thereby clearing the acquisition.

iii Statistics of the JFTC's activity

According to the JFTC, the total number of merger notifications filed in FY 2014 was 289.

Since the thresholds for notification were amended as of January 2010, from the previous general thresholds of ¥10 billion and ¥1 billion, to the new general thresholds of ¥20 billion and ¥5 billion, the number of transactions notified to the JFTC has decreased rapidly. There are a few cases that were brought into Phase II review every year, while there were no formal prohibition decisions made by the JFTC. According to the JFTC's statistics, the number of filings and the cases cleared after Phase II review is as follows:

	FY 2009	*FY 2010*	*FY 2011*	*FY 2012*	*FY 2013*	*FY 2014*
No. of filings	985	265	275	349	264	289
No. of cases cleared after Phase II review	0	4	3	5	3	1

III THE MERGER CONTROL REGIME

i Waiting periods and time frames

In terms of time frames, the standard 30-day waiting period will apply, which may be shortened in certain cases (see Section III.ii, *infra*). If the JFTC intends to order necessary measures regarding the notified transaction, it will do so within the 30-day (or shortened) waiting period (which is extremely rare) or, if a Phase II review is opened, within the longer period of either 120 calendar days from the date of receipt of the initial notification or 90 calendar days from the date of the JFTC's receipt of all of the additionally requested information. It should be noted that the JFTC does not have the power to 'stop the clock' in either the Phase I or Phase II review periods. It is, however, possible for the notifying party to 'pull and re-file' the notification during the Phase I period, thereby effectively re-starting the clock, if that proves necessary.

ii Parties' ability to accelerate the review procedure

It is generally possible to accelerate the review process by way of submitting a written request to the JFTC. The Merger Guidelines[19] state that the JFTC may shorten the waiting period when it is evident that the notified merger may not substantially restrain competition in any relevant market.

iii Third-party access to the file and rights to challenge mergers

Access to the file

Generally speaking, no third party has access to the merger notification files. Further, the JFTC does not even disclose the fact of the filing of a merger notification or clearance thereof, except for cases in which a Phase II review is commenced (in which case the JFTC discloses the identity of the companies involved in the notified transactions[20]). This means that third parties cannot even confirm whether a merger has actually been

19 The Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination (31 May 2004 (as amended)).

20 Policies Concerning Procedures of Review of Business Combination (14 June 2011; Policies for Merger Review).

notified, unless the case has moved on to Phase II. Apart from the above limited disclosure, although not timely, the JFTC usually discloses details of major merger notification cases as part of its annual review.

Rights to challenge mergers

Interventions by interested parties in JFTC proceedings have not historically been common; however, there was one case in which interventions were made by Japanese steel manufacturers before the JFTC in relation to the proposed hostile takeover attempt by BHP Billiton of Rio Tinto, first announced in 2007.

Although third parties may file a lawsuit to ask the court to order the JFTC to issue a cease-and-desist order, the legal path to successfully do so is extremely narrow and does not merit a detailed explanation here. There are two ways for third parties to submit complaints to the JFTC in the course of a merger review: one way is to notify the investigation bureau of the JFTC of a possible breach of the AMA;[21] and the other is to submit complaints to the mergers and acquisitions division of the JFTC.

In addition, as stated in the Policies for Merger Review, in the event that a merger review moves on to Phase II, the JFTC will publicly invite opinions and comments from third parties. Public hearings can be held[22] if deemed necessary, but they have been extremely rare to date. The JFTC sometimes conducts informal hearings with third parties, including competitors and customers, in the course of its review, as it did in the review of the *Zimmer and Biomet* case (see Section II.i, *supra*).

iv Resolution of authorities' competition concerns, appeals and judicial review

The JFTC can issue a cease-and-desist order when it believes that a proposed transaction has the effect of substantially restraining competition in a particular field of trade (i.e., a relevant market). Prior to issuing a cease-and-desist order, the JFTC will provide information about, *inter alia*, the outlines of the contemplated order as well as the underlying facts and the list of supporting evidence to the potential recipients of such order in advance to give them an opportunity to review and make copies of the evidence (to the extent possible) and to submit opinions as to the possible order.[23]

When the JFTC issues a cease-and-desist order, as explained in Section I.ii, *supra*, the parties to the transaction can now appeal to the Tokyo District Court (instead of resorting to the JFTC administrative hearing procedure, as was the case in the past) for annulment of the JFTC order.

v Effect of regulatory review

The JFTC frequently holds consultations with sector-specific regulators with regard to general issues as to the relationship between the JFTC's competition policy and sector-specific public and industrial policies. In this regard, it is generally understood that the JFTC takes into consideration relevant public and industrial policy issues when

21 Article 45, paragraph 1 of the AMA.

22 Article 42 of the AMA.

23 Article 9 of the Rules on the Procedures of Hearing of Opinions.

ruling on a given transaction, without prejudice to the independence of its competition policy review and merger review. Among the various government ministries, the Ministry of Economy, Trade and Industry has been active in advocating competition policy, but depending on the specifics of each case, other ministries may also be involved.

vi Substantive review

The Merger Guidelines set out the various factors that may be taken into account by the JFTC when assessing the impact of notified transactions on the competitive situation. Specifically, the Merger Guidelines provide an analysis of the substantive test for each type of transaction (e.g., horizontal, vertical and conglomerate M&A transactions). One of the important parts of the substantive test analysis is the use of 'safe harbours' measured by the Herfindahl-Herschman Index (HHI) for each of the above three categories (see Section III.vii, *infra*). It is also suggested in the Merger Guidelines that, both before and after the transaction, the JFTC will closely analyse market conditions from various viewpoints, including whether the transaction may facilitate concentration between market players, to ultimately determine the actual impact on competition of the notified transaction.

The detailed method to define the 'particular field of trade' (i.e., relevant market) is also provided in the Merger Guidelines. Importantly, the Merger Guidelines were amended in 2007 to clarify that the geographic market may be wider than the geographical boundaries of Japan, depending upon the international nature of the relevant business. Following the 2007 amendment, there have been several JFTC cases where the JFTC defined the relevant geographical market to extend beyond Japan. One involved TDK Corporation's acquisition of Alps Electric Co, Ltd's magnetic heads business in 2007, in which the JFTC found that the relevant geographical market consisted of the worldwide market for magnetic heads since magnetic head manufacturers sell their products at the same price regardless of the customers' geographical locations. The JFTC reached a similar conclusion in many subsequent cases, including the merger of *NEC Electronics and Renesas Technology* in 2009, two *HDD* cases (*Western Digital* and *Seagate Technology*) in 2012, and the *ASML and Cymer* case in 2013. It is likely that the JFTC will continue to define geographical markets that extend beyond Japan when assessing notified transactions, depending on the actual conditions of competition.

vii Safe harbours

In the 'safe harbour' analysis, if any of the following conditions is satisfied, the JFTC is likely to consider that the notified transaction does not substantially restrain competition in a relevant market:[24]

a horizontal transactions:
- the HHI after the notified transaction is not more than 1,500);
- the HHI after the notified transaction exceeds 1,500 but is not more than 2,500, and the increased HHI (delta) is not more than 250; or

24 Part IV, 1(3) and part V, 1(3) of the Merger Guidelines.

- the HHI after the notified transaction exceeds 2,500 and the delta is not more than 150;

b vertical and conglomerate transactions:
- the merging parties' market share after the notified transaction is not more than 10 per cent; or
- the merging parties' market share after the notified transaction is not more than 25 per cent and the HHI after the notified transaction is not more than 2,500; or

c quasi-safe harbour for any transactions:
- there is also a 'quasi-safe harbour' that is common to any types of transactions, namely, the HHI after the notified transaction is not more than 2,500, and the merging parties' market share is not more than 35 per cent.

If the notified transaction does not satisfy the requirements for any of the above, the JFTC will likely conduct more in-depth analysis of the non-coordinated (or unilateral) and coordinated effects of the notified transactions.

IV OTHER STRATEGIC CONSIDERATIONS

i Coordination with other jurisdictions

Cooperation between the JFTC and foreign competition authorities

In principle, the JFTC is entitled to exchange information with competition authorities of other jurisdictions based on the conditions set out in the AMA.[25] In addition, the JFTC has entered into bilateral cooperation agreements with the competition authorities of the United States, the European Union, Canada, the Philippines, Vietnam, Brazil, Korea and Australia.[26] Furthermore, the JFTC propounded the establishment of an international cooperative framework for merger review at the 11th ICN Annual Conference held in April 2012, which was approved at that Conference. Under these agreements and frameworks, it is expected that various levels of information exchanges and discussions will be carried out between the participating authorities.

The JFTC has a good track record of closely working with other competition authorities. In the review of the acquisition of Sanyo Electric by Panasonic in 2009, the JFTC reported that 10 competition authorities reviewed the transaction, and that the JFTC worked with its counterparts in the US and the EU, in particular. Likewise, the JFTC exchanged information with various authorities in the two *HDD* cases in 2012, and in the business combination of *ASML and Cymer* and the *Thermo Fisher and Life Technologies* case in 2013.

25 Article 43-2 of the AMA.

26 Recently, the JFTC concluded bilateral cooperation arrangements with the Administrative Council for Economic Defense of the Federative Republic of Brazil on 24 April 2014, with the Fair Trade Commission of the Republic of Korea on 25 July 2014, and with the Australian Competition and Consumer Commission on 29 April 2015, respectively.

Coordination among attorneys from various jurisdictions

As explained in Section IV.ii, *infra*, the JFTC abolished the voluntary consultation procedure (prior consultation procedure) as of 1 July 2011, which means that the substantive review of a proposed transaction would only start at the formal notification stage. In addition, as explained in Section III.i, *supra*, each of the Phase I and Phase II review periods cannot be extended even in cases where parties submit a remedy proposal to the JFTC; nor can the JFTC stop the clock. This might cause difficulties, especially in global merger notifications where the management of the filing schedule is important to avoid conflicting remedies or prohibition decisions at the end of the merger review procedure in various jurisdictions. Thus, coordination among Japanese and foreign attorneys is of even greater importance following the abolition of the prior consultation procedure.

ii Pre-filing consultation with the JFTC

Until the end of June 2011, notification materials were usually submitted to the JFTC under the prior consultation procedure, in which the substantive issues were discussed by the JFTC and the parties to the consultation before the formal statutory filing of a notifiable transaction. In contrast, upon the abolition of the prior consultation procedure in July 2011, the JFTC no longer provides its opinion at the pre-notification stage, and the review officially starts at the formal notification stage.

At first, many practitioners considered that such rigid practice might cause difficulties, especially in global merger notifications. However, in practice, the JFTC is flexible about having informal discussions with potential notifying parties upon request or voluntary submission of relevant materials prior to formal filings. Interestingly, in almost all cases that the JFTC cleared recently after Phase II review, including the *Zimmer and Biomet* case and the *Oji and Chuetsu* case (see Section II.i and ii, *supra*), the JFTC made specific notes in its announcements that the parties had submitted supporting documents and opinions to the JFTC on a voluntary basis a few months prior to officially filing the notifications. It is understood that parties to complicated mergers make use of that informal procedure to try and alleviate any potential concerns early. So far, the JFTC seems to be receptive to such informal prior communications.

iii Special situations

Failing company doctrine

The Merger Guidelines recognise the 'failing company doctrine', and state that the effect of a horizontal merger would not be substantial if a party to the merger has recorded continuous and significant ordinary losses, has excess debt or is unable to obtain finance for working capital, and it is obvious that the party would be highly likely to go bankrupt and exit the market in the near future without the merger, and so it is difficult to find any business operator that could rescue the party with a merger that would have less impact on competition than the business operator that is the other party to the merger.

The precedents in which the failing company doctrine was applied were the acquisition of Showa Aluminum Powder KK by Toyo Aluminium KK and the acquisition of Kishimoto Medical Science Laboratory by BML Inc in 2010. The JFTC cleared both transactions by taking into account, *inter alia*, the failing firm doctrine. More specifically, with respect to the *Showa and Toyo* case, the JFTC cleared the acquisition on the grounds, *inter alia*, that Showa had excessive levels of debt and was unable to get finance for working capital, as well as because it was highly likely that Showa would withdraw from the relevant markets in the near future. The JFTC also mentioned that it would have been very difficult for Showa to enter into a merger with another candidate that would have a lesser impact on competition compared with the merger with Toyo.

Minority ownership interests

It should be noted that minority ownership of over 20 per cent of the issued shares in a company is notifiable regardless of whether the acquirer will take control of the target company (see Section I.i, *supra*). In addition, in the JFTC's substantive review, any companies that are in a close relationship with an acquirer or a target may be deemed to be in a 'joint relationship'. Accordingly, these companies could be treated as an integrated group for the purpose of the substantive analysis and, for example, the HHI will also be calculated based on the sales data of the integrated group as a whole. The joint relationship will be determined by taking into account various factors although, according to the Merger Guidelines, a minority shareholding of over 20 per cent and the absence of shareholders with the same or higher shareholding ratios would suffice to find such relationship.

iv Foreign-to-foreign mergers

The amendment to the AMA effective as of January 2010 has made foreign-to-foreign mergers between undertakings that have no Japanese subsidiary or branch office in Japan, but that have substantial domestic turnover in Japan, notifiable (see Section I.i, *supra*). As in BHP Billiton's attempt to take over Rio Tinto through a hostile bid, the JFTC will not hesitate to fully investigate foreign-to-foreign mergers that may have a substantial impact on competition in Japan by cooperating and exchanging information with foreign competition authorities as necessary (see Section IV.i, *supra*).

v Transactions below the notification thresholds

It is important to note that, under the AMA, the JFTC can theoretically review any M&A transactions under the substantive test, regardless of whether the thresholds described above are met. The JFTC has actually investigated transactions that had not been notified to it, including foreign-to-foreign transactions such as the above-mentioned attempt by BHP Billiton to take over Rio Tinto through a hostile bid.[27]

V OUTLOOK AND CONCLUSIONS

i Amendment of the AMA

As mentioned in Section I.ii, *supra*, the amendment of the AMA finally came into force on 1 April 2015, which abolished the hearing procedure of the JFTC for administrative

27 At the time, qualifying share acquisitions were subject to *ex post facto* reporting requirements.

appeals. Going forward, all appeals against JFTC cease-and-desist orders, etc., will be dealt with by the Tokyo District Court instead of through the JFTC's administrative hearing procedure. This means that addressees of JFTC orders will be able to appeal to the Tokyo District Court, then to the Tokyo High Court and finally to the Supreme Court, thereby having potential access to three levels of judicial review.

ii Developments following the introduction of the new Merger Review Rules and Policies for Merger Review

Four years have passed since the amendments to the Merger Review Rules and the Policies for Merger Review were introduced in June 2011. These amendments primarily concern the procedural aspects of merger reviews by the JFTC, while some clarifications were also made to the substance of the JFTC's review policies. Since these amendments, the JFTC has already cleared 13 cases following Phase II reviews, and has made some disclosures as part of its annual review about recent major cases it has handled. These disclosures have been welcomed by practitioners, as they have made the new merger filing procedures clearer and more predictable. However, there are still some areas where further clarification or improvements seem necessary. One such example of an apparent lack of clarity is the reference to the terms 'input foreclosure' and 'customer foreclosure' in the publication made by the JFTC about the *ASML US and Cymer* business combination cleared in May 2013. Neither of those terms appears in any of the JFTC guidelines. It is hoped that the JFTC will take action, including through the publication of new or updated guidelines, in these areas in the near future.

Appendix 1

ABOUT THE AUTHORS

YUSUKE NAKANO

Anderson Mōri & Tomotsune

Yusuke Nakano is a partner at Anderson Mōri & Tomotsune with broad experience in all aspects of antitrust and competition regulation. He has represented a variety of companies with respect to administrative investigations and hearing procedures conducted by the JFTC, as well as in criminal and civil antitrust cases. He has extensive knowledge and experience in merger control, and was involved in the first foreign-to-foreign merger case against which the JFTC launched an investigation.

Mr Nakano has assisted many Japanese companies and individuals involved in antitrust cases in foreign jurisdictions, in close cooperation with co-counsel in those jurisdictions. As a result, Mr Nakano has gained substantial experience in the actual enforcement of competition law by foreign authorities, such as the US Department of Justice and the European Commission.

Mr Nakano is a graduate of the University of Tokyo (LLB, 1994) and Harvard Law School (LLM, 2001). He is admitted to the Bar in Japan and New York, and used to be a lecturer at Hitotsubashi University Law School. He is a co-author of 'Leniency Regimes' (*European Lawyer Reference*, fifth edition, 2015) and the Japanese chapters of various other publications.

VASSILI MOUSSIS

Anderson Mōri & Tomotsune

Vassili Moussis is a senior foreign counsel at Anderson Mōri & Tomotsune. He is an English-qualified solicitor and a registered foreign lawyer (*Gaikokuho jimu bengoshi*) with the Japanese Bar. Prior to joining Anderson Mōri & Tomotsune in Tokyo, he practised EU, UK and international competition law in Brussels and London for close to 10 years at leading UK and US firms, mainly advising on merger control matters and antitrust investigations.

Mr Moussis studied law in Belgium (*Licence en droit*, 1994) and in the UK, and holds an LLM (1995) as well as a PhD (2003) from University College London on comparative EU and Japanese competition law. He also worked for a year at the European Commission's Directorate General for Competition as an administrative trainee (1995–1996). At Anderson Mōri & Tomotsune, his practice focuses on EU and international competition law with a particular emphasis on merger control and international cartel matters.

KIYOKO YAGAMI

Anderson Mōri & Tomotsune

Kiyoko Yagami is a senior associate at Anderson Mōri & Tomotsune working mainly in the fields of antitrust and competition law, foreign direct investment and other corporate legal affairs.

Ms Yagami is a graduate of Chuo University (LLB 2000), Temple University Beasley School of Law (LLM 2001), China University of Political Science and Law (LLM 2002) and Waseda Law School (JD 2007), and is admitted to the Bar in Japan and New York. She worked as a trainee in the Beijing office of a leading global firm and in the Economic Affairs Bureau of the Ministry of Foreign Affairs of Japan prior to joining Anderson Mōri & Tomotsune in 2008.

ANDERSON MŌRI & TOMOTSUNE

Akasaka K-Tower
2-7, Motoakasaka 1-chome
Minato-ku, Tokyo 107-0051
Japan
Tel: +81 3 6888 1000
Fax: +81 3 6888 3065
yusuke.nakano@amt-law.com
vassili.moussis@amt-law.com
kiyoko.yagami@amt-law.com
www.amt-law.com/en