

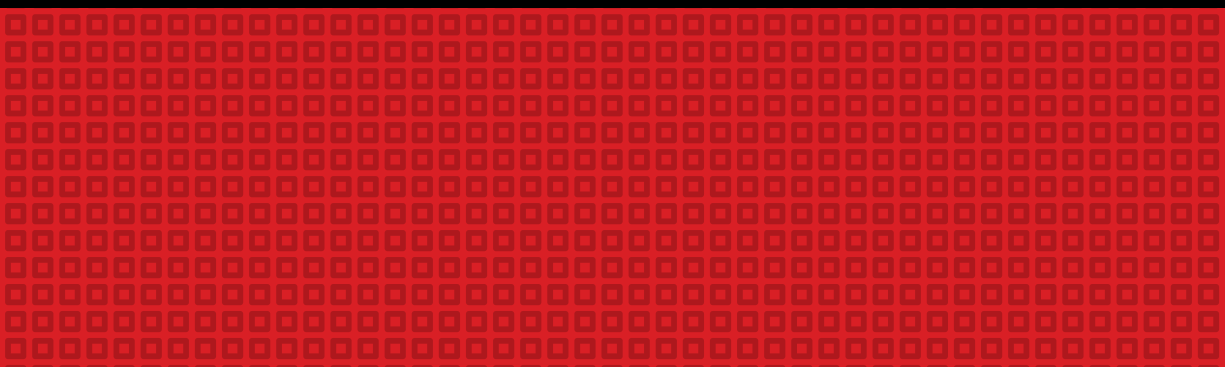


# MERGER REMEDIES GUIDE

FIFTH EDITION

Editors

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## CHAPTER 17

# Japan: JFTC Prepared to Conduct Market Testing Early to Accelerate Formal Review Procedure

Vassili Moussis, Yoshiharu Usuki and Kiyoko Yagami<sup>1</sup>

### 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 currently composed of a chair and four commissioners. The JFTC has primary jurisdiction over the enforcement of merger control under the AMA. The AMA does not set out any specific procedural steps in relation to remedies. The JFTC's basic stance towards merger remedies is set out in a series of its own guidelines, including 'Policies Concerning Procedures of Review of Business Combination' (the Policies) and 'Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination' (the Guidelines), both of which have been revised to reflect developments in merger control.<sup>2</sup>

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1 Vassili Moussis, Yoshiharu Usuki and Kiyoko Yagami are partners at Anderson Mōri & Tomotsune.

2 See [https://www.jftc.go.jp/en/legislation\\_gls/imonopoly\\_guidelines\\_files/191217policy.pdf](https://www.jftc.go.jp/en/legislation_gls/imonopoly_guidelines_files/191217policy.pdf) (Policies, first published in 2011, revised in 2019); [https://www.jftc.go.jp/en/legislation\\_gls/imonopoly\\_guidelines\\_files/191217GL.pdf](https://www.jftc.go.jp/en/legislation_gls/imonopoly_guidelines_files/191217GL.pdf) (Guidelines, first published in 2004, revised in 2019). Note that English language translations are tentative, and that the Japanese versions of both the Policies and the Guidelines remain the authoritative guides.

Although the number of cases involving merger remedies is smaller than in the European Union or the United States, the JFTC takes a broadly similar attitude to its EU and US counterparts towards assessing both competition issues and proposed remedies.

### **Remedies: basic framework**

Parties can propose remedies to the JFTC at any stage of its review, including at the pre-notification stage or during the Phase I or Phase II reviews. The JFTC will consider, in each case, approving the proposed transaction based, where relevant, on voluntary undertakings proposed by the transaction parties. In broad terms, the Guidelines are in line with the European Commission's 2008 Notice on Remedies<sup>3</sup> (although less detailed in their content) and share the general objective of ensuring a competitive market structure through appropriate remedies to competition issues. The JFTC's willingness to consider such remedies is set out in Part IV of the Guidelines, which stipulates that appropriate remedies will be considered based on the facts of individual cases.

As in many other jurisdictions, the JFTC prefers that remedies should, in principle, be structural, such as the transfer of all or part of a particular business with the aim of restoring competition lost as a result of the transaction to prevent the resultant group from controlling pricing or other market factors. However, the JFTC acknowledges that there may be cases where behavioural remedies are appropriate. For example, in 2021, the JFTC cleared the proposed merger of the road fence businesses of Nippon Steel Metal Products and Kobelco Engineered Construction Materials, based on the premise that the parties agreed to transfer part shares of the production facility and provide manufacturing services to a third party instead of transferring the entire production facility, as the facility produces many other products than the products at issue and cannot be physically separated for divestiture. Behavioural remedies were also accepted in the case of a vertical integration between Google and Fitbit. A detailed explanation of the behavioural remedies used in these cases is set out below.

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3 Commission Notice on remedies acceptable under the Council Regulation (EC) No. 139/2004 and under Commission Regulation (EC) No. 802/2004.

## Procedural issues

### Consultation prior to notification

As in many other jurisdictions, parties are able to engage with the JFTC in consultations (including possible remedial commitments) well before formal notification is due. In practice, the pre-notification consultation system in Japan differs from that of many other jurisdictions in terms of the depth of feedback that the JFTC may provide at this early stage. Rather than having to wait until competition concerns have been identified by the authority before initiating remedy discussions, parties can (and are advised to) approach the JFTC to discuss a potential solution well in advance of filing a formal notification.

As discussed below, in Nippon Steel's share acquisition of Tokyo Rope, the JFTC showed its willingness to investigate transactions that are below the notification thresholds but may raise competition concerns. The pre-notification consultation is also used to consult with the JFTC on whether a voluntary notification is recommended for those below-threshold transactions.

Experience suggests the JFTC adopts quite a flexible approach towards topics to be discussed during the prior consultation stage, and the scope of the JFTC's pre-notification review remains relatively wide. This is influenced in part by the fact that the JFTC, like the transacting entities, cannot 'stop the clock' of the Phase I review period once formal notification has been received (as explained below). The JFTC therefore often prefers to commence discussions prior to formal notification, to allow itself sufficient time to analyse complex cases.

Indeed, the JFTC may engage in market testing during the pre-notification period. The case team conducts market testing by issuing questionnaires to competitors, customers and other interested third parties. The JFTC has been known to conduct hearings and interviews even at this stage. This permits the JFTC to address relatively substantive issues promptly and to evaluate any remedial measures offered by the parties, thereby allowing the transacting parties time to prepare counterarguments or rebuttals to any negative feedback received from third parties during the market testing, and to prepare further remedial measures to propose to the JFTC. The informal pre-notification consultation process relies on a reciprocal relationship of trust and cooperation, as the JFTC may, depending on the case, invest significant resources in a transaction even prior to receiving formal notification of the proposed merger, and the transacting parties will be expected to engage fully and provide significant amounts of information at this preliminary stage. The system relies on the close working relationship between the JFTC and Japanese counsel, who work together to ensure that viable solutions are agreed in a timely fashion.

The JFTC will not issue binding guidance as to its substantive review of the case during the pre-notification phase. However, in practice, provided that the companies in question have fully cooperated with the JFTC in providing the fullest amount of information possible, and that the JFTC is able to gather enough data on the industry and market liable to be affected, the JFTC rarely diverges from the advice it provided at the pre-notification stage, unless some material difference comes to light that necessitates a re-evaluation of the potential effect of the transaction on competition. Consultation with the JFTC at an early stage is vital for the smooth operation of the review. This is particularly important given the inflexibility of review timetables in Japan, as outlined in the following section.

## Procedure after notification

### *Phase I review*

When a company submits a notification form to the JFTC, that company is prohibited from effecting the contemplated transaction until the expiry of a 30-calendar-day review period. The JFTC may permit a shortening of the Phase I review period in response to a formal request by a company; however, once the review period has begun, it cannot be extended by either the JFTC or a notifying party. A request for further information from the JFTC as part of a Phase I review does not stall or restart this review period.

Instead, where discussion with the JFTC suggests that the transaction will not be cleared under the Phase I review, the usual practice is for the parties to withdraw the notification and refile it at a later date once further appropriate remedies have been agreed between the parties. As well as the benefits of avoiding a lengthy Phase II review, under the Japanese system this has the additional benefit of protecting the confidentiality of the transaction and of the remedies agreed. When opening any Phase II review, the JFTC will publicly announce that it has begun, thereby making the proposed transaction public, even if it is not yet in the public domain. Because of this, where confidentiality of the transaction is important, companies often prefer to withdraw their notification and conduct private discussions with the JFTC regarding further remedies, in an attempt to ensure that the transaction is cleared under a Phase I review, to maintain the confidential nature of the transaction.

Remedies are proposed by the parties rather than the JFTC. Usually, the JFTC will first indicate its competitive concerns to the parties, who will then offer merger remedies to address those concerns. However, in some cases, the parties will pre-emptively offer merger remedies themselves, without the JFTC having to raise concerns about the transaction, thus increasing the chances of



the JFTC being able to clear the transaction within the 30-day Phase I review period. Pre-notification consultation assists parties in preparing merger remedies in this way.

Although the JFTC publishes a quarterly summary of cases that it has cleared, the summary provides no information regarding remedies that contributed to the transaction's clearance. Nevertheless, some limited information about cleared cases that have involved merger remedies is disclosed as part of the JFTC's annual review or in a press release regarding the clearance. Therefore, notifying corporations often find a lack of public precedents to indicate the remedies that have been acceptable to the JFTC in past cases. This lack of publicly available information increases the importance of both (1) involving experienced Japanese counsel early in the discussions of proposed remedies where the transaction is likely to be caught by the AMA, and (2) timely pre-notification consultation with the JFTC.

### *Phase II review*

At the close of the 30-day Phase I review period, the JFTC will normally either (1) judge that the business combination in question is not problematic and give a notification to the effect that it will not issue a cease-and-desist order, or (2) indicate that a more detailed review is necessary. In the latter case, the JFTC will usually request that the notifying entity submit further reports and documentation. When the JFTC requires the notifying party to submit these reports, it will release a statement to the public to that effect. The JFTC will confirm to the notifying party when it has received all the information it requires.

The Phase II review period will conclude at the expiry of the later of (1) 120 calendar days after the JFTC's receipt of the formal notification of the proposed transaction, or (2) 90 calendar days after the JFTC confirms that it has received all required information.<sup>4</sup> Because option (2) is conditional on the JFTC being satisfied that it has all the necessary information, there is always some uncertainty at the outset of a filing as to the latest date on which clearance (or notice of a cease-and-desist order) can be received. Clients are often keen to establish the maximum possible time frame for the JFTC's review, particularly when the transaction involves multiple jurisdictions (as the parties will usually wish to coordinate their applications and the likely clearance dates with the various authorities involved). However, as a practice, the JFTC has discretion as to when it feels that it has received all the information it requires. As Phase II is limited only by the later of the dates described in options (1) and (2) above,

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4 See Policies Concerning Procedures of Review of Business Combination, p. 11.

the inability to predict when the 90-day period will begin casts uncertainty over the overall long-stop date for a Phase II review. This uncertainty adds to the importance of pre-notification discussions with the JFTC, to ensure that as much information as possible is provided early to allow the JFTC to review as swiftly as it can.

At the end of the Phase II review period, the JFTC will either:

- decide, based on the additional information or as a result of additional remedies proposed, that the merger in question will not be problematic and notify the parties that it does not intend to issue a cease-and-desist order (although the JFTC reserves the right to issue such an order at a later date if remedies are not properly implemented); or
- provide 'prior notice' of a cease-and-desist order. Prior notice is provided by the JFTC to the transaction parties to permit them increased rights of defence; the receipt of the notice allows the parties to discuss and rebut the JFTC's arguments in favour of issuing a cease-and-desist order, see evidence used in forming these arguments, and engage in formal meetings with a separate officer of the JFTC.

### Types of merger remedies

The Guidelines set out the basic forms of remedies that are typically acceptable to the JFTC. These measures can be taken either independently or in combination, as appropriate in the circumstances.

The JFTC considers that the most effective remedies are those that either establish a new independent competitor or strengthen existing competitors, so that these competitors can serve as an effective check on competition. These measures include the transfer of all or part of the business of the post-merger group, the dissolution of an existing business combination (such as through the disposition of some or all of the voting rights held in another company) or the elimination of business alliances or agreements with third parties. Although where the remedy takes the form of a transfer the JFTC prefers that a buyer is found and identified to the case team prior to the JFTC's approval of the transaction, this is not always necessary.

However, the Japanese system differs from the European model in that a monitoring trustee is rarely used (for example, it was considered in the *Zimmer/Biomet* case of 2015).<sup>5</sup> Instead, it is the JFTC's case team that monitors

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<sup>5</sup> In this case, the JFTC approved the following remedy; if a buyer cannot be found within a certain period, a third party as trustee will be given the authority to sell at a price without a

the implementation of merger remedies and, where a transfer has been proposed and accepted as a suitable remedy, the JFTC will assess the viability of a proposed third-party purchaser, whether they are identified before or after the conclusion of its review. In its assessment of a 'suitable buyer' for the divestiture offered by the parties, the JFTC will basically consider whether:

- the proposed buyer has adequate experience and capability in the relevant product market;
- the buyer is independent of and financially unrelated to the parties;
- the buyer has sufficient funds, expertise and incentives to maintain and develop the business that is the subject of the divestiture; and
- the divestiture will not substantially restrain competition in the relevant market.

The JFTC usually remains involved in the process, and retains the right to issue a cease-and-desist order if the merger remedies are not correctly implemented or it is the JFTC's belief that transfer to the proposed transferee will not sufficiently promote competition, notwithstanding that the formal review process concluded with the JFTC's approval.

Should it prove disproportionate to take a structural remedy or difficult to find a suitable transferee to participate in one of the above remedies (for instance, if there is declining demand in the relevant sector), other effective remedies may be used, such as setting up cost-based purchasing rights for competitors through entry into long-term supply agreements. Other exceptional remedies include measures to promote imports and market entry, such as assisting imports by making group company facilities available to competitors, or granting licences in respect of company group-owned patents to competitors or new market entrants. Additional behavioural remedies such as prohibiting discriminatory treatment of non-affiliated companies with respect to the use of essential facilities for the business or 'firewalling' the exchange of information between various group companies will also be considered if appropriate. When behavioural remedies are accepted, the JFTC will also often remain involved in the monitoring of the implementation and effectiveness of these remedies, such as by requiring regular reports by the parties or independent third parties.

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lower limitation.

## Multi-jurisdictional remedy coordination

### Information exchange and collaboration

The JFTC works actively with other major competition authorities on specific cases, including through the exchange of information with its foreign counterparts, and is entitled to share with foreign competition authorities information that is deemed helpful and necessary for the performance of the foreign competition authority's duties when the duties are equivalent to those of the JFTC under the AMA. In addition, the JFTC has entered into bilateral and multilateral cooperation agreements with various competition authorities, including those of the United States, the European Union, Canada, the Philippines, Vietnam, Brazil, Korea, Australia, China, Kenya, Mongolia, Singapore and the United Kingdom.<sup>6</sup> In respect of large-scale multi-jurisdictional transactions, the JFTC does participate in significant exchanges of information with other authorities; for example, it was reported that the JFTC communicated with the competition authorities of Australia, the United Kingdom, European Union, the United States and Korea in the review of Microsoft's acquisition of Activision Blizzard in 2023, and with authorities in Singapore and the United States in the review of Global Wafers' acquisition of Siltronic in 2021.<sup>7</sup> It is important, therefore, that information given, and submissions made, to the JFTC are consistent with those made to other competition authorities.

### Timing considerations

As explained above, even in cases where the parties submit a proposed remedy to the JFTC early on, the review periods at either Phase I or Phase II cannot be extended, nor can the JFTC 'stop the clock' while remedies are being discussed. This has the potential to cause difficulties in a multi-jurisdictional merger, in which the timings for the filings of multiple notifications must be carefully managed to avoid conflicting remedies or prohibition decisions. Problems can also arise in situations where a client wishes to guarantee clearance by a particular date to coordinate with its applications in other jurisdictions, since, as detailed above, the latest possible date on which the review could finish if it progresses to Phase II cannot be ascertained at the time of filing.

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6 A list of all international agreements and memoranda concerning competition law is available at [https://www.jftc.go.jp/en/int\\_relations/agreements.html](https://www.jftc.go.jp/en/int_relations/agreements.html).

7 See JFTC press release, at <https://www.jftc.go.jp/en/pressreleases/yearly-2021/November/211126.html>.

Solutions to the above problems include engaging in in-depth pre-notification discussions with the JFTC to ascertain whether a Phase II review is likely to be necessary and, if not, delaying filing of the formal notification until 30 days before a decision is required. This method relies on the provision of large amounts of information to the JFTC prior to filing, and is based on mutual trust and negotiation between Japanese counsel and the JFTC to establish whether a Phase II review is likely.

On the other hand, since neither the parties nor the JFTC can extend the amount of time for either a Phase I or Phase II review, in the event that a decision in another jurisdiction is delayed or a review period is extended, it may be necessary to pull and refile the relevant application with the JFTC to coordinate the timing of the JFTC's and other authorities' decisions.

Each of these solutions requires an in-depth understanding of the Japanese system, and high levels of communication with the JFTC at a very early stage in the transaction. Early coordination between Japanese counsel and counsel working on the transaction across the globe is therefore of great importance.

### Foreign-to-foreign mergers

Foreign-to-foreign mergers are caught by the AMA in the same way as domestic mergers if they will have an effect on the Japanese market and, therefore, must be notified in the same way. In the 2019 amendment of the Policies, the JFTC, in a manner clearer than ever before, indicated its willingness to review merger and acquisition transactions, including foreign-to-foreign mergers, that have a large value and are likely to affect Japanese consumers, but that do not meet the reporting threshold based on the (aggregate) domestic turnover of the target (non-reportable transactions).

Further, the amendment encourages a voluntary filing for non-reportable transactions with an acquisition value exceeding ¥40 billion, if one or more of the following conditions are met:

- the business base or the research and development base of the acquired company is located in Japan;
- the acquired company conducts sales activities targeting Japanese consumers, such as providing a website or a pamphlet in Japanese; or
- the aggregate domestic turnover of the acquired company and its subsidiaries exceeds ¥100 million.

Given how easily the above conditions can be satisfied and considering that the JFTC reviewed the *Google/Fitbit* case after the announcement of the transaction, even though that case did not meet the notification thresholds, foreign companies engaging in non-reportable transactions should pay close attention to the potential need to make a voluntary filing with the JFTC.

### **Recent trends**

The merger of the road fence businesses of Nippon Steel Metal Products and Kobelco Engineered Construction Materials<sup>8</sup>

Nippon Steel Metal Products and Kobelco Engineered Construction Materials were Japanese steelmakers' subsidiaries that manufacture road fence products, and were found to have a 70 per cent share in the guardrail market, 65 per cent of the guard pipe market and 60 per cent of the guard cable market, when combined. Customers of road fences include expressway operators, the infrastructure ministry and local municipalities.

#### *The JFTC's concerns*

Without competition pressure from imported products or new entrants, the JFTC found that, upon the merger of the road fence businesses of Kobelco Engineered Construction Materials and Nippon Steel Metal Products, the merged company would hold dominant positions in the guardrail market, the guard pipe market and the guard cable market, thereby causing a restraint of competition in these relevant markets.

#### *Measures*

As remedies to the transaction, the merging parties proposed to transfer a 45 per cent holding of production facilities used to produce the three products at Kobelco Engineered Construction Materials' Amagasaki factory to a third-party remedy taker.

Daikure, a privately owned grating maker based in Kure, was found to be a suitable new entrant to the road fence market. Daikure had the top market share for grating or metal bar products used for platforms, drain covers and other products, and had the intention of becoming a comprehensive supplier of construction materials.

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8 See JFTC press release (Japanese only): [https://www.jftc.go.jp/dk/kiketsu/jirei/r3nendo\\_files/r3jirei03.pdf](https://www.jftc.go.jp/dk/kiketsu/jirei/r3nendo_files/r3jirei03.pdf).

The ratio of 45 per cent is equivalent to the output level of a smaller producer of either Kobelco Engineered Construction Materials or Nippon Steel Metal Products. The merged company would manufacture all types of the three products for Daikure, up to the same volume as the smaller producer of either Nippon Steel Metal Products or Kobelco Engineered Construction Materials. Accordingly, Daikure could be expected to gain the same level of production capability as either of the merging parties.

The prices must be approved by the JFTC in advance, and for the first five years Daikure will receive these road fence products at below-cost levels from the merged company. If Daikure has questions about pricing, an independent accountant or other specialist should be nominated upon the JFTC's approval to examine the situation and propose an appropriate price for the parties.

The merged company will also be required to submit annual compliance reports to the JFTC for seven years (or longer, if the remedies continue to exist).

The JFTC said that, although a remedy should be structural in principle, if a production facility produces many other products than the products in question and cannot be physically separated for divestiture, then the transfer of the production facility's holding shares to a third party can be a valid option. It then concluded that the transaction would not cause a restraint of competition with the remedies proposed by the merging parties.

### Investigation of non-reportable transactions: Nippon Steel's share acquisition of Tokyo Rope<sup>9</sup>

Nippon Steel is engaged in the manufacture and sale of steel products. Tokyo Rope is engaged in the manufacture and sale of wire ropes and steel cords. Nippon Steel acquired shares in Tokyo Rope through a hostile tender offer to increase its voting rights from 9.91 per cent to 19.91 percent, aiming to improve the company value of Tokyo Rope by re-establishing its governance system upon completion of the acquisition.

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9 See JFTC press release [Japanese only]: [https://www.jftc.go.jp/dk/kiketsu/jirei/r3nendo\\_files/r3jirei01.pdf](https://www.jftc.go.jp/dk/kiketsu/jirei/r3nendo_files/r3jirei01.pdf).

### *The JFTC's concerns*

Under the AMA, a pre-merger notification is required when a transaction results in the acquirer holding more than 20 per cent of the total voting rights, while the JFTC may intervene in transactions that do not meet the notification thresholds. In this case, the JFTC found that a joint relationship between the two companies has been established because:

- Nippon Steel holds the largest stake in voting rights of Tokyo Rope while none of other shareholders hold voting rights of 10 per cent or more;
- the two companies are engaged in a supply relationship (where Nippon Steel supplies raw materials to Tokyo Rope) and various joint development activities; and
- all of Tokyo Rope's board members were replaced to reflect Nippon Steel's intent to improve Tokyo Rope's corporate governance post-acquisition. Consequently, the JFTC told Nippon Steel it intends to conduct a merger review on the said share acquisition.

### *Measures*

After receiving notice of its intention to conduct a review, Nippon Steel proposed to the JFTC several measures to unwind the joint relationship with Tokyo Rope, including the sale of approximately 1.6 million shares, which is equivalent to the number of shares Nippon Steel obtained through the tender. After selling 1.6 million shares, Nippon Steel would be able to reduce its voting rights in Tokyo Rope to 10 per cent or less. Nippon Steel plans to sell the shares when the market price reaches ¥1,500, which was the tender price. It would refrain from exercising its voting rights beyond 10 per cent until the sale is completed. The JFTC found that the proposed measures were appropriate to unwind the joint relationship between Nippon Steel and Tokyo Rope and decided not to conduct a merger review with respect to the share acquisition.

Historically, the JFTC rarely intervenes in non-reportable minority transactions. This case, however, indicates that the JFTC will not hesitate to open investigations on non-reportable transactions when it deems that a joint relationship has been formed between parties with horizontal, vertical or conglomerate overlaps.



## Investigation of non-reportable transactions: Google and Fitbit

Another matter that caught the regulator's attention was the acquisition of Fitbit by Google.<sup>10</sup> The Google group is active in a wide range of areas, including digital advertising, internet search engines, cloud computing, software and hardware. The Fitbit group mainly manufactures and distributes wrist-worn wearable devices. Google's proposed acquisition of Fitbit did not trigger the mandatory filing requirements in Japan because Fitbit's turnover in Japan was less than the ¥5 billion threshold. However, the JFTC initiated an investigation based on the transaction's value and its likely effects on domestic customers.

### *The JFTC's concerns*

The JFTC was concerned about the parties' vertical relationships concerning the operating system for smartphones and wristwatch-type wearable devices, and the vertical business combination regarding healthcare databases and health applications. In particular, it was concerned that Google may block its competitors in the downstream markets by refusing access to the Android API<sup>11</sup> and health-related data provided by Google. The regulator was also concerned about the conglomerate effect that may arise from the use of Fitbit's healthcare database for the benefit of Google's digital advertising, which could further strengthen Google's position in the digital advertising market.

### *Remedies*

To address the JFTC's concerns, the parties proposed to provide access to the Android API and health-related data free of charge for 10 years. Further, Google proposed that it (1) would not use health-related data for its digital advertising business, and (2) would maintain the health-related data separately from other data sets within the Google group.

Subject to these remedies, the JFTC concluded that the transaction would not substantially restrain competition in the relevant fields. However, this case is particularly notable as it is the first published case in which the JFTC has applied the valued-based threshold for an investigation.

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10 See JFTC press release, 'The JFTC's Review Results Concerning Acquisition of Fitbit, Inc. by Google LLC', at <https://www.jftc.go.jp/en/pressreleases/yearly-2021/January/210114r.pdf>.

11 API is the acronym for Application Programming Interface, which is a software intermediary that allows two applications to 'talk' to each other.

## Conclusion

Although the JFTC process in respect of remedies has some specificities, by and large there is a lot of consistency with the approach to remedies in other major jurisdictions, such as the European Union and the United States.

As in other jurisdictions, there is a strong case for approaching the JFTC early with viable remedies. Unlike in many other regimes, however, the JFTC is prepared to conduct market testing at a very early stage, in some cases even before the formal notification, in an effort to accelerate the formal review procedure. This feature of the Japanese regime, coupled with the JFTC's inability to 'stop the clock' during the formal review period, means that effective and timely cooperation between the notifying parties and the JFTC case team can bring significant benefits, both in terms of the overall review period and the results achieved.

Importantly, the JFTC has articulated in its 2019 amendment of the Policies that it will seek to review transactions that, although they do not meet the mandatory filing thresholds, may affect competition in Japan. The JFTC's publication of the *Nippon Steel/Tokyo Rope* and *Google/Fitbit* cases is a clear warning that the Japanese enforcer will continue reviewing cases of interest even if they are non-reportable transactions but will also not hesitate to request remedies, if deemed necessary.