Exhibit 8

Japan

Akinori Uesugi and Kaori Yamada
Freshfields Bruckhaus Deringer

Legislation and jurisdiction

1 What is the relevant legislation and who enforces it?

Chapter 4 of the Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (Law No. 54 of 1947, as amended) (the Antimonopoly Act or the Law) along with the relevant provisions of the Cabinet Ordinance and Regulations for the Law (the Ordinance and Regulations) prohibits certain forms of transactions including mergers and acquisitions, and sets out a filing requirement for certain transactions. The thresholds and detailed filing requirements are provided in the Law together with its Ordinance and Regulations. Criteria for business combinations that would cause substantive restraint to market competition and therefore are prohibited are set out in the 2004 Guidelines on the Application of the Antimonopoly Act for Reviewing Business Combinations as amended in June 2011 (the Merger Guidelines).

The Law is enforced by the Fair Trade Commission (FTC). The FTC is an external agency of the Cabinet Office (which is in principle equated with other government ministries positioned under the Cabinet), but the Law declares its independence from any external pressure as regards its operation. The empowered authority under the Law is the FTC but almost all the implementation procedures are delegated to the General Secretariat except for the ultimate high-level decision-making.

2 What kinds of mergers are caught?

Share acquisitions, statutory mergers, statutory demergers, business transfers (ie, transfer of all or a significant part of the business of another company, transfer of all or significant business fixed assets of another company, leases of all or significant businesses of another company, delegation of management regarding all or significant businesses of another company, and contractual arrangements to share business profits and losses of another company) and the appointment of interlocking directorships are the categories of transaction regulated by the Law. Such transactions (or personnel arrangements) are prohibited if they cause substantial restraint of competition.

The Law sets out special rules for companies engaged in banking and insurance. Such companies are prohibited from acquiring more than 5 per cent (for companies engaged in insurance businesses, 10 per cent) of voting rights in another Japanese company, except for certain special cases, including when an approval by the FTC is obtained.

Share acquisitions, statutory mergers, statutory demergers and business transfers (transfer of businesses or business-related fixed assets only), if certain thresholds are met, are subject to a prior notification requirement. No filing requirement is imposed with respect to the creation of interlocking directorships.

3 What types of joint ventures are caught?

There are no specific separate rules for joint ventures. Typically, the establishment of a joint venture is caught by the filing requirement as are the respective acquisitions of shares in the joint-venture company by the investors, exceeding either the 20 or 50 per cent threshold. In contrast to the EU rules, no prima facie exemption is available based on the nature of the joint venture, such as whether it is full-function or whether it is not-for-profit, although such factors may be taken into account in the FTC's substantive review if it takes place.

The FTC normally examines, in the assessment of a joint venture, not only the possible unilateral anti-competitive effect potentially created by the joint venture itself, but also any coordinated anti-competitive effect on the competitive relationship between the parties to the joint venture. According to the Merger Guidelines, when each party transfers the entire business of a certain section or department to the joint venture, thereby creating a clear separation between the businesses of the joint venture and the parent companies, FTC's examination is primarily limited to the unilateral anti-competitive impact of the joint venture itself. In other cases, the FTC also examines the risk that the parents of the joint venture collude with each other via the joint venture.

4 Is there a definition of 'control' and are minority and other interests less than control caught?

In terms of the thresholds for the formal filing requirements, the present Japanese rules take a relatively simple approach. For share acquisitions, the Law provides thresholds defined by percentages (share acquisition to exceed 20 or 50 per cent), without using the concept of 'control' as in some other jurisdictions.

The concept of 'control' is, however, used to define the scope of a group company. Given that the filing thresholds rely on the Japanese turnover on a group company basis, the concept of control plays a significant role. It is provided by the relevant regulation that a parent-subsidiary relationship is recognised when a company has control over another company's business or financial decision-making, taking into account various factors such as a minimum voting stake of over 40 per cent, board representation and loans.

For the purposes of substantive review the concept of 'control' is also relevant. The Merger Guidelines provide detailed criteria to decide whether a share acquisition should fall under the scope of the FTC's examinations as to the competitive impact, and the criteria are primarily based on the concept of 'control', although the word 'control' itself is not used. For example, when the share acquisition results in a stake of over 50 per cent in the target company, or when the share acquisition results in over 20 per cent stake in the target company and the acquirer alone becomes the largest shareholder therein, the share acquisition qualifies for the FTC review (subject to certain exceptions) regardless of whether a formal filing obligation exists or not. Also, when the share acquisition results in a stake of over 10 per cent in the target company and the acquirer ranks within the top three shareholders, various factors are considered in order to determine whether the FTC's substantive review should take place, such as the percentage of the resulting shareholding, distribution of stake between shareholders, mutual shareholding between the acquirer and the target, interlocking directorships between them, and their business relationships.

5 What are the jurisdictional thresholds for notification and are there circumstances in which transactions falling below these thresholds may be investigated?

Different thresholds apply, depending on the transaction structures as illustrated below. The categorisation is based on structures used in the Japanese Companies Act and, as a result, it is often difficult to decide which category a foreign transaction would fall under. Generally speaking, the FTC tends to take an analytical approach looking to the exact contractual formats rather than the 'big picture'. For example, a foreign transaction that would be perceived as a transfer of business could be interpreted under Japanese law as a combination of multiple share acquisitions. When the reportability is unclear it is safest to consult the FTC.

Share acquisition

A company acquiring shares in another company (where both are above a certain size, as described below) must file a notification with the FTC prior to the transaction, when all of the following thresholds are met:

- the ratio of voting rights held by an acquiring company in an issuing company exceeds either of the 20 or 50 per cent thresholds;
- the acquiring party as a group has Japanese turnover of more than ¥20 billion; and
- the target as a group (the target entities and subsidiaries, not including the entities staying with the seller) has Japanese turnover of more than ¥5 billion.

When calculating Japanese turnover, in principle both direct and indirect sales in and into Japan made by the company group during the most recent financial year should be included except for intra-group captured sales.

There are separate rules for collective share transfer, which is a transaction form available under Japanese corporate law that allows more than two companies to create a common holding company. For this form of transaction, when one of the parties as a group has Japanese turnover of more than ¥20 billion and the other (another) party has Japanese turnover of more than ¥5 billion, the FTC filing is triggered.

Statutory merger or demerger

In respect of statutory mergers, a filing must be made with the FTC when both of the following thresholds are met:

- one of the parties as a group has Japanese turnover of more than ¥20 billion; and
- the other party as a group has Japanese turnover of more than ¥5 billion.

There are more detailed rules for statutory demergers.

Business asset transfer

Regarding business or business-related fixed-asset transfers, a filing must be made with the FTC when the following thresholds are met:

- the transferee company as a group has Japanese turnover of more than ¥20 billion and the target business or business-related assets satisfies any of the following:
- whole business of another company with Japanese turnover of more than ¥3 billion;
- key business of another company with corresponding Japanese turnover of more than ¥3 billion; or
- whole or key part of another company's business-related fixed assets with corresponding Japanese turnover of more than ¥3 billion.

Substantive test

It should be noted that even if a transaction does not meet this threshold, technically it is still subject to the substantive test set out in question 19. When the application of the substantive test is expected, parties are recommended to go through voluntary consultation with the FTC to avoid post-transaction remedy orders. This is not a legally binding rule and the Law does not stipulate any threshold for parties to consider voluntary consultation. The Merger Guidelines, however, provide useful yardsticks in this respect. The substantive test would catch non-notifiable transactions if the anti-competitive effect is material, in which case parties are advised to engage in voluntary consultation. In particular, when a transaction is subject to merger control in other jurisdictions (especially the US and EU) and the anti-competitive impact in Japan is expected to be substantial, the FTC tends to obtain such information via intergovernmental channels and sometimes contacts the parties, even in the absence of a filing obligation.

6 Is the filing mandatory or voluntary? If mandatory, do any exceptions exist?

Filing is mandatory if the conditions discussed above are met. Transactions within the same company group are exempted from the filing requirement.

7 Do foreign-to-foreign mergers have to be notified and is there a local effects test?

Yes, foreign-to-foreign mergers have to be notified. The same criteria apply to foreign-to-foreign transactions.

8 Are there also rules on foreign investment, special sectors or other relevant approvals?

Yes. In respect of foreign shareholdings in Japanese companies, there are some regulated industries where foreign ownership levels are limited by specific sectoral legislation. For example, NTT, a holding company of the dominant national telephone carrier, must be less than 33.3 per cent foreign-owned. Also, foreign shareholdings must be less than 20 per cent for terrestrial and radio broadcasters and less than 33.3 per cent for domestic airlines.

Also, the Foreign Exchange and Foreign Trade Law applies to foreign direct inward investments to Japan, requiring a party that has made an investment in Japan to make a post-fact filing with the Ministry of Finance through the Bank of Japan within 15 days of such an investment in most cases. For certain industries (such as the energy sector) prior filing is required.

Notification and clearance timetable

9 What are the deadlines for filing? Are there sanctions for not filing and are they applied in practice?

There is no deadline requiring a notification within a certain period of time following a particular transactional event (signing or board resolution, etc), although a notification must be made with the FTC 30 days prior to the closing of the transaction. When a notification is submitted, the FTC issues an acceptance notice to confirm the filing date, and the parties are subject to a 30-day waiting period following such date. If the parties fail to make the required filing or close in breach of the waiting period, a fine of up to ¥2 million may be imposed. However, to our knowledge no such criminal sanctions have ever been imposed, although parties that have failed to file are often requested to file a delayed report with a brief explanatory note setting out the reason for such delay and measures to be taken to avoid future negligence. The FTC can also apply to the court for annulment of any statutory merger or demerger for which the parties failed to file, but it has never yet done so.

10 Who is responsible for filing and are filing fees required?

In the case of a statutory merger or demerger, both companies intending to effect the merger or demerger are jointly responsible for filing. For a business transfer or business-related fixed-asset transfer and share acquisition, the acquiring company is responsible. The FTC does not charge any filing fees.

11 What are the waiting periods and does implementation of the transaction have to be suspended prior to clearance?

Where a notification to the FTC is required, the parties cannot close the transaction for 30 days following the filing. When a notification is submitted, the FTC issues an acceptance notice to confirm the filing date. It is possible that the FTC does not accept an initial submission as a sufficient notification, in which case the parties should revise the notification to ensure that all required information is provided in the notification. To avoid such uncertainties, as a practice recommended by the FTC, companies normally submit a draft notification informally to the FTC in advance for the FTC to review even if there is no substantive competition issue.

As in pre-notification consultation in the EU, the parties can discuss the substantive issues with the FTC before submitting the notification formally, and this process can take several months if there are several rounds of questions and market testing is conducted, before the FTC grants an informal greenlight to submit formally.

As a unique rule of Japanese law, which is different from many other jurisdictions, once the 30-day waiting period lapses the parties can close the transaction legally even if the FTC has not completed its substantive review, although as explained below the FTC can reserve the right to take action for a certain period of time by requesting additional material or information before the expiry of the 30-day waiting period.

If the FTC asks one or more of the companies during the waiting period to submit additional material or information, the FTC may still take action even after the expiry of the waiting period, subject to statutory time limitation: any action must be taken prior to the later of 120 days from the date of acceptance of the notification or 90 days from the date of submission of the additional material.

The FTC has the discretion to shorten the 30-day waiting period. In the old regime before the 2011 Amendment, the FTC was reluctant to shorten the waiting period except for very rare cases. However, in the new regime the FTC is likely to be more generous in agreeing to shorten the waiting period, although there is some uncertainty as to whether a shorter period is always available if applied.

12 What are the possible sanctions involved in closing before clearance and are they applied in practice?

There has been no precedent where the FTC challenged 'gun-jumping'. It is, however, possible under the Law for the FTC to take measures against transaction parties who have actually or effectively closed the transaction before the required clearance. Considering the increasing global trend to regulate 'gun-jumping', a similar level of caution as in the most aggressive jurisdictions such as the US and EU is also prudent with regard to the FTC.

Criminal penalty

A person who closes a transaction (executing a share transfer or registering a merger or demerger in the relevant company registry) before the expiry of the waiting period is subject to a criminal penalty of up to ¥2 million. As is the case for other criminal penalties under the merger control regime, in practice the FTC has so far not imposed such sanctions.

Remedies

Apart from the criminal sanctions, the FTC may also order remedies that require the parties to take certain measures to restore competition in the relevant market if the transaction may restrict competition.

Court action for annulment

Further, the FTC may petition the court for annulment of a merger or demerger on the ground that a transaction requiring a notification has been closed during the 30-day period described above, and the court may invalidate the transaction. The FTC has, however, never yet done so.

13 Are sanctions applied in cases involving closing before clearance in foreign-to-foreign mergers?

As discussed above, there have been no cases in which a sanction has been imposed against any company, either Japanese or foreign, for closing before clearance. However, the rules do allow the FTC to challenge foreign-to-foreign mergers as long as an impact exists and affects the Japanese market. In fact, the FTC proactively investigated BHP Billiton at the time of its merger discussions with Rio Tinto, which indicates the FTC's general policy not to hesitate to investigate foreign transactions.

14 What solutions might be acceptable to permit closing before clearance in a foreign-to-foreign merger?

Under the Japanese rules, as long as the 30-day waiting period has lapsed, technically the parties can close a transaction legally without waiting for the FTC's substantive clearance (completion of substantive review). However, even after the expiry of the 30 days, the parties remain exposed to the risk of receiving an FTC remedy order in a case where substantial antitrust concerns are raised by the FTC. Very occasionally, closing before clearance could become an issue in a foreign-to-foreign merger under a pressing schedule that cannot afford even the 30-day waiting period, but because of this risk, most companies choose not to close before clearance. The prohibition of closing itself does not extend beyond the 30 days, but the FTC may petition a court for an interim suspension of the deal.

It is not theoretically precluded that the parties try to agree with the FTC on a 'hold-separate' arrangement, but there is no precedent for such an attempt.

15 Are there any special merger control rules applicable to public takeover bids?

There are no competition law rules specifically applicable to public takeover bids. There is no clear rule as to when a notification can be filed with the FTC in the case of a takeover bid, but the announcement of the takeover bid is likely to become an important milestone for deciding the timing of notification, subject to case-by-case consultation with the FTC. It is generally understood that when a takeover bid requires a FTC notification, the registration statement for a takeover bid to be filed with the Japanese Financial Services Agency needs to disclose the merger filing requirements under the Law, and the offeror can express in the registration statement that failure to obtain the required antitrust clearance may cause the offeror to withdraw from the takeover bid.

16 What is the level of detail required in the preparation of a filing?

To file a transaction with the FTC, a company must comply with the format prescribed by the FTC (different forms are set out for each transaction category), which can be downloaded from the website of the FTC. The filing, including parts of the additional documents to be attached to the form, must be in the Japanese language. As a result, when a foreign company prepares for a notification, sufficient time should be allowed for translation. Unlike Form CO in the EU, which has to be prepared in narratives, the Japanese form simply sets out tables into which reporting parties insert relevant information and data. An applicant is not expected to provide its own economic analysis of the market or detailed market data (except for very high-level data) in the filing. The FTC format on its own does not require notifying parties to fully express its own argument to justify the transaction.

The following are the details, among other things, that should be included in the form:

- descriptions of the companies involved including their affiliated entities and economic importance measured by assets or sales;
- the purpose and background of the transaction;
- information regarding shareholding relationships between the companies involved; and
- high-level market information, including types of products or services subject to horizontal overlap or vertical relationship between the parties, geographical coverage of such businesses, ranking and market shares of key players.

Additional documents must be provided (different requirements apply depending on the transactional category of share acquisition, statutory merger, demerger, and business transfer respectively), including the latest annual report, balance sheet, a profit and loss statement, articles of incorporation, a copy of the transaction agreement, and a record of the shareholders' approval of the transaction.

To supplement the relatively simple notification form for a difficult matter, parties can submit additional information to supplement the notification form in the course of pre-notification consultation with FTC, as in the EU, in order to avoid Phase II, which makes the timetable more unpredictable. The 2011 amendment clarified in the implementation regulations that parties can submit such supplementary documents.

17 What is the statutory timetable for clearance? Can it be speeded up?

Following the submission of a notification, the FTC issues a notice that confirms the date when the FTC officially accepted the notification. The parties are subject to a 30-day waiting period starting from such date (Phase I). If the FTC requires one or more parties to the transaction to submit additional materials or information (report request) before the expiry of the waiting period, Phase II review is triggered. According to a literal reading of the Law, the parties can still complete the transaction upon the expiry of the 30-day period even when the FTC has not completed their substantive review, but once Phase II is triggered, the FTC may take action even after the expiry of the 30-day waiting period prior to the later of 120 days from the date of the FTC's acceptance of the notification or 90 days from the date of submission of the additional materials or information. Thus the parties are subject to de facto prohibition from closing until a clearance is given.

The FTC issues a written confirmation of its clearance at the end of both Phase I and Phase II.

The FTC often shortens the waiting period in response to the parties' specific request. When Phase II review is triggered, the case is disclosed on the FTC website for third-party comments, and a summary of FTC's analysis also appears on the website after the completion of the review.

It is important to note that before the formal timeline starts, usually, in particular in a difficult case, there are informal pre-notification discussions as in the EU. Especially where the FTC conducts market testing and there are several rounds of questions, this process can take several months.

18 What are the typical steps and different phases of the investigation?

Parties can discuss issues with the FTC through pre-notification consultation as in the EU. Companies are encouraged to use pre-notification consultation to avoid Phase II review, by submitting extensive information proactively at this stage if the transaction is potentially problematic.

Once a notification is submitted, if the FTC finds that the filing raises any issues under the Law in Phase I, it is likely to contact the parties informally first. The FTC can also formally request more information by a written request (report request) as mentioned in question 17 above, although such a formal request triggers Phase II review. Further, if the parties fail to respond properly to the FTC's request for information or otherwise the FTC considers that more proactive investigation is necessary, it may commence a formal investigation and has the power to interview relevant parties (eg, suppliers, competitors, employees, executives, customers) and examine related documents.

The FTC often interviews customers of the parties in addition to carrying out document-based assessment. If the parties are manufacturers with substantial production facilities, the FTC may visit such facilities. Such interviews and site visits could potentially take place, either during Phase II review, or depending on the case, at the pre-notification stage.

Substantive assessment

19 What is the substantive test for clearance?

The FTC reviews individual mergers and acquisitions in light of whether competition in the defined market will be substantially restrained.

Safe harbour

For horizontal transactions, criteria suggested by the Merger Guidelines are:

- HHI after the business combination (post-HHI) is not more than 1,500;
- post-HHI is over 1,500 and not more than 2,500 and the increase in HHI is not more than 250; or
- post-HHI is more than 2,500 and the increase of HHI is less than 150.

For vertical and conglomerate transactions, the suggested criteria are:

- the combined market share is not more than 10 per cent in any related markets; and
- post-HHI is not more than 2,500 and the combined market share is not more than 25 per cent in any related market.

These numerical thresholds are not absolute but merely for indicative purposes, and the actual review process is conducted in the light of a number of factual elements, which are listed in the Merger Guidelines. It is also suggested in the Merger Guidelines that if the post-HHI is not more than 2,500 and the combined market share is not more than 35 per cent, the business combination is less likely to be regarded as restraining competition.

Factors to be considered

Different sets of factors apply to assess unilateral conduct and coordinated conduct that are expected as a result of the transaction, but generally speaking, the following are among the factors listed in the Merger Guidelines: market position of the parties and the state of competitors, imports, entry, competitive pressure from related or neighbouring markets, competitive pressure from users, overall business capabilities, efficiency and financial strength of the company parties.

2011 amendment of guidelines

More detailed rules were included in the Merger Guidelines for the analysis of import pressure, and the possibility of defining 'global market' beyond the national market. This was to more accurately reflect the existing review practice of the FTC and no significant change to its review policy in substance has been observed so far.

20 Is there a special substantive test for joint ventures?

There are no specific criteria for joint ventures and, in principle, the substantive test set out in question 19 also applies to joint ventures. The Merger Guidelines, however, include a few general statements regarding anti-competitive behaviour that may arise in joint ventures. For example, it is stated that in assessing the effect of a joint venture on competition the commercial relationship between the investors in the joint venture should be examined, given that the investors could, without having any direct capital tie-up between them, indirectly create an anti-competitive business combination. In this respect, whether the investors have transferred the business in a given sector to the joint venture entirely or partially is also taken into account. In the case of partial transfer of business where the investors still retain some interest or activities in the same business sector, the risk of anti-competitive effect is likely to be higher as compared with a case of complete transfer in a certain sector.

21 What are the 'theories of harm' that the authorities will investigate?

As a general principle, the Law prohibits and regulates three categories of anti-competitive activities of undertakings: private monopolisation, unreasonable restraint of trade (including cartels) and unfair trade practices. The rationale behind the merger control regulation is primarily to prevent private monopolisation. The Merger Guidelines do not directly address 'theories of harm' per se, and the underlying philosophy for merger control is ultimately governed by the general principle of 'whether a transaction would substantially restrain market competition'. However, it does provide different evaluation yardsticks for different transaction categories identified based on the structure and nature of the transaction. The Merger Guidelines have chapters on horizontal business combinations and vertical or conglomerate business combinations, or both, and also differentiate between the anti-competitive impact of unilateral conduct and that of coordinated conduct.

22 To what extent are non-competition issues relevant in the review process?

The Merger Guidelines do not expressly include non-competition issues to be considered in the review process.

Merger control in the context of specific industries

In certain regulated sectors, non-competition issues may be considered as part of the process of consultation with regulatory authorities. For example, for the purpose of certain telecommunications businesses, the transfer of a business licence as a result of a merger or acquisition is subject to approval by the Ministry of Internal Affairs. Likewise, as regards air transport, approval from the Ministry of Land, Infrastructure and Transport is mandatory with a view to transferring business licences following a merger or acquisition. The Law includes special rules for share acquisitions in the banking and insurance sector as described above, and in examining applications for approvals, the FTC must consult with the Financial Services Agency (FSA). In addition to the Law, the Banking Law and the Law concerning Insurance Businesses require banks and insurance companies to obtain FSA approval for certain mergers and acquisitions.

Public interest

Public interest per se is not mentioned as a factor in the FTC review process, but especially in the context of regulatory assessment in a specific industry, public interest would be taken into account.

23 To what extent does the authority take into account economic efficiencies in the review process?

Economic efficiency is listed in the Merger Guidelines as a factor to be considered in the review process. However, the extent to which the improvement of economic efficiency offsets the anti-competitive impact is restricted by the following conditions: the efficiency improvement must be specific to the business combination and not capable of being achieved by other available means; the efficiency improvement must be practically possible; and it must enhance users' welfare. The Merger Guidelines also state that a merger or acquisition would rarely fulfil these three conditions when it generates a monopoly or a situation close to monopoly.

Remedies and ancillary restraints

24 What powers do the authorities have to prohibit or otherwise interfere with a transaction?

The FTC can either issue remedy orders to rectify a breach of the Law or petition a court for annulment of the transaction, although no precedents exist for the latter. For the purposes of the former, the FTC is required to give prior notice and provide the parties concerned with an opportunity to make submissions. If the FTC issues such an order and the parties are dissatisfied, they may request the FTC to hold a hearing.

25 Is it possible to remedy competition issues, for example by giving divestment undertakings or behavioural remedies?

Yes. The Merger Guidelines clearly state that remedies can relate to the behaviour of the parties, although in principle a structural measure such as divestment is preferable. The Merger Guidelines list possible remedies, including divestment, such as partial transfer of business in a given sector, or termination of business or capital relationship with other entities, or alternatively long-term supply agreements regarding the product concerned if the former is difficult to achieve. When such primary measures are not viable, the parties are advised to take, as secondary remedies, measures to promote imports or new entry into the relevant market, or to increase the independence of each undertaking (eg, by setting up an information firewall or prohibiting the purchase of raw materials from a communal seller).

Types of remedy that have been ordered in the past include partial disposal of shareholding, abolition of interlocking directorships, partial transfer of business facilities, technology licensing to a competitor, production of certain competitors' products and prohibition of the acquirer's intervention in the target's own business decision-making. Compared to the general tendency for example in the EU and US to clearly prefer divestiture, it appears that the JFTC may be more open to behavioural remedy options.

26 What are the basic conditions and timing issues applicable to a divestment or other remedy?

Conditions

The basic condition applicable to a divestment order or other remedy is that the remedy is able to restore the competition that is likely to be undermined, by limiting the freedom of the merging parties to set market prices and other market conditions. Upon request by the parties, the FTC sometimes permits the parties to modify or terminate later on the initially agreed remedies, provided that this would not result in a substantive restraint to competition.

There is no independent format to submit a proposed remedy or to agree on a remedy. When a remedy is agreed between the parties and the FTC during the review, either Phase I or Phase II, after the submission of notification, the parties are requested to submit an amendment of the original notification to reflect the agreed remedy.

Timing

In principle, remedy measures should be implemented before a transaction comes into effect. However, when a remedy is to be implemented only after the transaction enters into force, the deadline to implement the remedy needs to be specified clearly and appropriately. In particular, in the case of a partial business transfer, ideally the purchaser should be decided and approval obtained from the FTC before the transaction takes effect, although unlike some other jurisdictions the requirement to secure and have approved upfront buyers is not regarded as an established precondition for the FTC's clearance. At present, there is no EU-style rule or practice of involving trustees.

27 What is the track record of the authority in requiring remedies in foreign-to-foreign mergers?

As long as a substantial restraint to competition in the Japanese market is expected, remedies are required even for foreign-to-foreign transactions. Indeed, foreign companies have agreed and implemented remedies in a number of previous transactions reviewed by the FTC. There is no recent precedent where a cease-and-desist remedy order was issued for a foreign-to-foreign transaction, but this does not mean that the FTC is reluctant to order remedies regarding foreign-to-foreign transactions. It is simply due to the common practice, up until now, of arranging remedies on a voluntary basis before a cease-and-desist order is issued. If remedies cannot be agreed by the end of Phase II, a cease-and-desist order may indeed be possible.

28 In what circumstances will the clearance decision cover related arrangements (ancillary restrictions)?

There is no express guidance in this respect either in the Law or the Merger Guidelines. In general, however, even if the FTC does not request or order remedies or bring court action for annulment regarding a transaction, the FTC can still challenge certain ancillary restrictions between the parties. In that sense, a merger clearance does not protect ancillary restrictions, and therefore ancillary restrictions are still subject to challenges on the basis of other competition rules. It is very likely, however, that the FTC would order the parties to exclude or amend anti-competitive ancillary provisions, if such arrangements are obvious at the time of merger control review. To that extent it is worth considering putting any ancillary arrangements before the FTC, since this may implicitly or explicitly provide a degree of comfort in implementing the arrangement.

Involvement of other parties or authorities

29 Are customers and competitors involved in the review process and what rights do complainants have?

Yes. The FTC often interviews customers of the parties as well as competitors.

Also, the law stipulates as general rights that anyone (therefore including customers and competitors) who perceives an infringement of the law, may report to the FTC the relevant facts and call for appropriate measures to be taken. It is possible, although, at present, uncommon, for customers or competitors to make a complaint to the FTC in respect of certain transactions during the course of review process. In this event, the FTC is then required to investigate and, even if it decides not to take any measures, it must inform the complainant of its decision.

There has been a precedent where the FTC started to investigate a foreign-to-foreign merger in response to a complaint raised by customers, even though a transaction did not trigger a filing.

30 What publicity is given to the process and how do you protect commercial information, including business secrets, from disclosure?

Information set out in a formal filing

Reports filed with the FTC are not made public, although the contents could be partially summarised and disclosed if the transaction, either at Phase I or Phase II, has value as a precedent. In addition, in the rare event that the FTC issues a remedy order, detailed information will be fully disclosed.

Website disclosure of Phase II cases

When Phase II is triggered, the case is disclosed on the FTC website for third-party comments. Further, in the case of a Phase II review, the final analysis and observations are made public as 'major business combinations' as an annual report on the FTC website, which is published every June. The FTC contacts the parties prior to such publication to ensure that such public disclosure does not include trade secrets or any other commercial information that the parties would not wish to be made public. The parties can request the FTC to limit the information disclosed on the website so as to omit certain sensitive information. Some cases are disclosed on the website without disclosing the names of parties involved.

31 Do the authorities cooperate with antitrust authorities in other jurisdictions?

The FTC cooperates very actively with other major jurisdictions on specific cases. It is, therefore, very important that submissions to the FTC are consistent with those made in other jurisdictions, particularly the US, the EU and Korea.

Cooperation in individual cases

In 1999, the governments of Japan and the US concluded an agreement concerning Cooperation on Anti-Competitive Activities. Similar agreements were signed in 2003 with the EU and in 2005 with Canada. The primary

Update and trends

It appears that there have been very few Phase II cases in recent months. After the abolition in 2011 of the old 'prior consultation' system, initially the FTC seemed to be keen to review mergers under a formal timeline, which is clearly defined by law and therefore regarded as more transparent, rather than through informal pre-notification discussions. However, it appears that there is now a trend back to dealing with substantive issues as far as possible during pre-notification in order to avoid a Phase II review, which requires official disclosure on the FTC website for third-party comments. This is likely to be partly driven by the notifying parties' preference rather than the FTC's guidance, but is a development worth noting. The risk of relying too much on the informal procedure is the absence of strict time frame, and indeed pre-notification discussions do last several months in some cases.

purpose of these bilateral frameworks is to promote collaboration between the competition authorities of both parties in terms of information gathering and implementation of each party's antitrust legislation. Japan has also signed economic partnership agreements with Brunei, Chile, India, Indonesia, Malaysia, Mexico, Peru, the Philippines, Singapore, Thailand and Vietnam, and these contain a chapter on collaboration on antitrust issues. The actual status and development in the implementation of these bilateral instruments is not clear, particularly given the less active enforcement of merger regulations in some countries, but it seems that as regards large-scale multi-jurisdictional transactions (especially when involving US, EU and Korean authorities) the FTC does have extensive exchange of detailed information with other authorities in the course of its merger control review.

Other policy discussions

The FTC has been active in various international forums (ICN, OECD, APEC, etc) including general policy discussions and capacity building for developing countries in connection with antitrust legislation.

Judicial review

32 What are the opportunities for appeal or judicial review?

Under the previous rules, when the FTC issued a cease-and-desist order and the parties to the transaction were dissatisfied, they could request the FTC to initiate the procedure for a hearing, and file a court challenge if they were dissatisfied with the FTC's decision. Since April 2015 the FTC hearing proceeding has been abolished and instead the first-stage appeal of the FTC's cease-and-desist order will be made to the Tokyo District Court. There are currently various discussions among practitioners as to how this new system should be used in practice.

33 What is the usual time frame for appeal or judicial review?

As described in question 32, a legal action to challenge the decision of the FTC must be filed within 30 days from the date on which the decision became effective. According to a report by the FTC, the Tokyo High Court has rendered its decision within one year in recent cases.

After the amendment, although the technical details of the new system are still under consideration, the time limit for filing an appeal with the Tokyo District Court will be subject to the general rules, under which the plaintiff must file an appeal within six months.

Enforcement practice and future developments

34 What is the recent enforcement record and what are the current enforcement concerns of the authorities?

The latest data publicly available is for fiscal year 2014 (1 April 2014 to 31 March 2015). In this period a total of 289 filings were made, including 12 filings for statutory mergers, 20 filings for demergers, seven filings for collective share transfer, 19 filings for business transfer, and 231 filings for share acquisition.

The number of notified transactions slightly decreased compared with fiscal year 2013, by 9.4 per cent.

Out of the 289 cases filed during the fiscal year 2014, 275 cases were cleared in Phase I (95.2 per cent) and only three cases were reviewed in Phase II (1 per cent).

In 2008, the FTC investigated the proposed acquisition of Rio Tinto by BHP Billiton. Under the old rules before the 2009 Amendment the acquisition did not trigger the formal filing requirement, but the combined market share via direct export into Japan was high. The acquisition in 2008 was aborted and the investigation did not reach a final conclusion, but this case is a clear manifestation of the FTC's intention to intervene in foreign-to-foreign transactions as strictly as in domestic transactions.

35 Are there current proposals to change the legislation?

A significant change took place in 2011, including abolition of prior consultation where a final clearance used to be informally given for difficult mergers. An EU-style pre-notification process has replaced this and, therefore, a final clearance will not be made until the legislative Phase I or Phase II review as provided by the Law. The Merger Guidelines were amended to include more detail on evaluating import pressure and assessing a global market. A further amendment was adopted in the Diet in December 2013 (to come into force in the first half of 2015 at the latest) to abolish the FTC hearing proceedings as a first-stage appeal and also to improve due process by expanding the scope of evidence disclosure at pre-decision stage and introducing a more systematic oral hearing as available in the EU.