

# Competition (private company acquisitions) Q&A: Japan

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This Q&A provides country-specific commentary on *Practice note, Competition (private company acquisitions): Cross-border*, and forms part of *Cross-border private company acquisitions*.

## Competition

### 1. What are the triggering events/ jurisdictional thresholds for the application of national competition rules? How is the acquisition of a non-controlling minority interest treated under merger control law in your jurisdiction?

Japan's national competition rules, including merger control regulations, are primarily constituted by the Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (Act No. 54 of 14 April 1947, as amended (Anti-Monopoly Act)), which is enforced by the Japan Fair Trade Commission (JFTC). Certain transactions require prior notification to the JFTC, if they meet the thresholds and conditions set by the Anti-Monopoly Act.

The Anti-Monopoly Act covers share acquisitions, statutory mergers, joint stock transfers (a form of transaction available under Japanese corporate law that allows more than two companies to create a common holding company), acquisitions of business or assets and statutory demergers.

Prior notification to the JFTC is required for the above transactions if the following thresholds are met:

- **Share acquisitions.** These will require notification if:
  - the domestic turnover of the buyer exceeds JPY20 billion; and
  - the domestic turnover of the target exceeds JPY5 billion on a consolidated basis.

Thresholds for notification are triggered when the acquirer's ownership ratio exceeds 20% or 50% of all the voting rights of the target company.

- **Statutory mergers and joint stock transfers.** These will require notification if:
  - the domestic turnover of one of the parties to the statutory merger or joint stock transfer exceeds JPY20 billion; and

- the domestic turnover of any of the other participating parties exceeds JPY5 billion on a consolidated basis.

- **Acquisitions of a business or assets.** These will require notification if:

- the domestic turnover of the buyer exceeds JPY20 billion; and

- the domestic turnover of the business to be transferred exceeds JPY3 billion on a consolidated basis.

- **Statutory demergers.** These will require notification if:

- the domestic turnover of one party exceeds JPY20 billion; and

- the domestic turnover of the other party exceeds JPY5 billion on a consolidated basis.

### 2. Is notification mandatory or voluntary, and is there an obligation to suspend? Where notification is mandatory, what is the deadline for notifying and what sanctions can be imposed for failure to notify?

Prior notification to the JFTC is mandatory (see [Question 1](#)).

Prior notification must be filed at least 30 days before the closing date of the transaction. Following the filing, the JFTC will issue an acceptance notice confirming the date of filing. The official 30-day waiting period for closing the proposed transaction commences on the date confirmed by the JFTC as the date of filing. The companies must not close the transaction during the waiting period, unless cleared to do so by the JFTC.

For sanctions or penalties for failure to notify, see [Question 12](#).

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Country Q&A

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### 3. Who notifies?

The party responsible for filing is determined by the type of transaction:

- If the transaction is a share acquisition or business acquisition, the acquiring company is responsible for filing the notification.
- If the transaction is a statutory merger, statutory demerger or joint stock transfer, the parties to the relevant transaction are jointly responsible for filing the notification.

### 4. What authority do you inform?

The notifications must be filed with the JFTC.

### 5. What is the substantive test?

The “substantive test” is set out in the Guidelines to the Application of the Anti-Monopoly Act Concerning Review of Business Combination (as amended in 2011) (Merger Guidelines).

Under the Merger Guidelines, horizontal mergers meeting any one of the following conditions will not be prohibited: The Herfindahl-Herschman Index (HHI) resulting from the transaction will be not more than 1,500. The HHI resulting from the transaction will be not more than 2,500, and the increment of HHI is not more than 250. The HHI resulting from the transaction will be more than 2,500, but the increment of HHI is not more than 150.

However, the HHI alone is not determinative, and the JFTC may also look at the facts of each case. The Merger Guidelines provide, by way of an example, that if the HHI as a result of the transaction is not more than 2,500, and the market share of the combined business is not more than 35%, then the JFTC will likely have no concern over the transaction.

The Merger Guidelines also provide that vertical or conglomerate mergers meeting either of the following sets of conditions will not be prohibited: The market share of the combined group after combination will not be more than 10%. The HHI as a result of the transaction will not be more than 2,500, and the market share of the company group after combination not more than 25% in all of the particular fields of trade in which the company group is involved.

### 6. What is the time limit for the first-stage decision?

Following the filing of a notification, Phase 1 of the assessment process commences. Within 30 days from the date of filing, the JFTC may either:

- Issue a notice requiring a party to submit more information, at which point Phase 2 commences.
- Issue a notice indicating that it will not take any action against the proposed transaction.

If the JFTC issues a notice indicating that it will not take any action, or takes no action before the end of the waiting period, the parties may close the transaction. The transaction will not subsequently be prohibited by the JFTC.

If Phase 2 commences, the JFTC may investigate the proposed transaction within the earlier of:

- 120 business days from the date of receipt of the initial notification.
- 90 business days from the date of the JFTC’s receipt of all requested additional information.

Within those periods, the JFTC must decide whether to initiate an open hearing procedure to determine whether to issue a cease-and-desist order (or other sanctions), or alternatively, to issue a notice indicating that it will not take any action against the proposed transaction.

In the event that the JFTC does not initiate any actions within the Phase 2 deadline above, or issues a notice indicating that it will not take any actions against the proposed transaction, the parties may close the proposed transaction.

### 7. Are any remedies available at phase 1 of a merger review (for example, undertakings in lieu of reference to phase 2)?

It is possible for the parties to propose potential remedies (including undertakings) during Phase 1, in order to avoid Phase 2.

### 8. What is the time limit for a final decision? What decisions can be made and what remedies are available?

See [Question 6](#).

The JFTC may issue a notice indicating that it will not take any action against the proposed transaction, or it may make orders as to sanctions, remedies or undertakings, including a cease-and-desist order against the proposed transaction.

The parties to the relevant transaction can propose structural or behavioural remedies (as indicated by the Merger Guidelines) to avoid the JFTC's order above.

### 9. Who do you appeal to?

The recipient of a cease-and-desist order issued by the JFTC may appeal to the Tokyo District Court.

### 10. What are the filing fees?

There is no filing fee.

### 11. Can you complain about competitors?

It is possible to complain about competitors.

### 12. What are the penalties for breaking the law?

The penalty for failure to notify the JFTC is a fine of up to JPY2 million.

If the parties complete the transaction before the expiry of the 30-day waiting period, a fine of up to JPY2 million may be imposed.

The penalty for breaching a cease-and-desist order is a fine of up to JPY3 million and/or imprisonment of for up to two years for individuals, and a fine of up to JPY300 million for corporations.

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