ACT
Association for Competitive Technology

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Mergers and Acquisitions Division
Economic Affairs Bureau, General Secretariat
Japan Fair Trade Commission
Toranomon Alcea Tower, 2-2-3 Toranomon, Minato-ku
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Japan

RE: Comments of the Association for Competitive Technology to the Japan Fair Trade Commission regarding the Draft Revised *Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination*

The Association for Competitive Technology (ACT) appreciates the opportunity to comment on the Japan Fair Trade Commission's (JFTC) proposed revisions to the *Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination* (the Guidelines), published for public comment on 17 July 2026.[1] Nearly seven years have passed since the December 2019 amendments, and in that time the JFTC has built up a substantial body of case experience under conditions that have changed a good deal, including digitalization, the response to climate change, a falling population and shrinking domestic markets, and stronger competitive pressure from abroad.[2] Our interest is in how the revised Guidelines will work for small and medium-sized enterprises (SMEs), whose ability to be bought, and to buy, depends on a merger review process that is predictable, proportionate, and based on evidence.

I. Statement of Interest and General Views

ACT represents small business software application developers and connected device companies around the world, including firms that build for the Japanese market, sell into it, and employ people there. The app economy our members work in is worth roughly ¥282 trillion and supports millions of jobs.[3] We have taken part in JFTC proceedings on generative artificial intelligence (AI) and competition and on the implementation of the Act on Promotion of Competition for Specified

[1] Japan Fair Trade Commission, Request for Public Comments on the Revised "Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination" (Draft) (17 July 2026), https://www.jftc.go.jp/en/pressreleases/yearly-2026/July/260717.html (comments due 6:00 p.m. JST, 31 Aug. 2026; draft Guidelines at https://www.jftc.go.jp/file/260717_3.pdf; summary at https://www.jftc.go.jp/file/260717_2.pdf).
[2] See JFTC, Summary of the Draft Revised Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination (17 July 2026), https://www.jftc.go.jp/file/260717_2.pdf.
[3] See Association for Competitive Technology, Submission to the JFTC Information Portal regarding the Act on Promotion of Competition for Specified Smartphone Software (24 Mar. 2026), https://actonline.org/wp-content/uploads/JFTC-info-portal-submission-re-Smartphone-Act-March-2026-English-1.pdf.

Smartphone Software.[4] We write to the JFTC about business combination review because few areas of competition law touch our members' everyday decisions as directly as merger policy does.

Merger review is not something that matters only to large firms. A small software or connected device company usually succeeds in one of three ways: by passing to the next generation of the family, by going public, or by being bought by a larger company. Acquisition is often the best of the three for the owners and for consumers, because an initial public offering is expensive, carries real risk, and in most markets is simply not available to companies of our members' size. Acquisitions therefore account for most exits by venture-backed software companies,[5] and investors weigh how easily and how quickly that exit can happen when they decide whether to fund a company at all. ACT has frequently argued to other competition authorities that constraints on exit end up operating as constraints on entry.[6] Merger rules that are hard to read, that treat ordinary growth transactions as suspect, or that impose delay out of proportion to the competitive question do more than inconvenience buyers; they also reduce how many small companies get founded and funded in the first place.[7] The four general views that follow proceed from that starting point.

- **Merger review should remain grounded in effects-based economic analysis.** The statutory question is whether a combination may substantially restrain competition in a particular field of trade, meaning whether it creates a state in which an operator or group of operators can control the market with some latitude at its own volition.[8] Market shares, concentration measures, diversion ratios, and safe harbors matter only so far as they help answer that question, and they are better understood as screening tools than as substitutes for the answer.
- **The cost of uncertainty does not fall evenly across firms of different sizes.** A small software development kit vendor working with a few months of runway cannot keep antitrust counsel on retainer or restructure a deal twice to meet shifting expectations, and information

[4] See, e.g., Comments of the Association for Competitive Technology to the JFTC regarding Generative AI and Competition (22 Nov. 2024), https://actonline.org/wp-content/uploads/App-Assn-Comments-re-JFTC-Gen-AI-JP-w-appendix.pdf; Comments of the Association for Competitive Technology regarding the JFTC's Proposed Implementation and Guidance under the Act on Promotion of Competition for Specified Smartphone Software (13 June 2025), https://actonline.org/wp-content/uploads/06.12.25_ACT-Comments-regarding-JFTC-Proposed-SSCPA-Implementation-and-Guidance-13-June-2025-EN.pdf.
[5] Association for Competitive Technology, M&A Review in the AI Era: Why Fast, Predictable Merger Timelines Matter for Small Businesses (June 2026), https://actonline.org/wp-content/uploads/MA-Review-in-the-AI-Era-June-2026.pdf (acquisitions are "the dominant and structurally necessary exit pathway for venture capital-backed startups").
[6] Comments of the Association for Competitive Technology on "Refining the UK Competition Regime" (31 Mar. 2026), https://actonline.org/wp-content/uploads/31-March-2026-ACT-comments-on-Refining-UK-Competition-Regime.pdf ("For our members, a barrier to exit is a barrier to entry.").
[7] Comments of the Association for Competitive Technology to the Competition Bureau of Canada on the Proposed Merger Enforcement Guidelines (11 Feb. 2026), https://actonline.org/wp-content/uploads/ACT-Comments-to-Competition-Bureau-on-Proposed-Merger-Enforcement-Guidelines-February-11-2026.pdf.
[8] JFTC, Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination, Part III, 1(1) (last amended 17 Dec. 2019) (tentative translation), https://www.jftc.go.jp/en/legislation_gls/imonopoly_guidelines_files/191217GL.pdf (a substantial restraint of competition is "a state in which competition itself has significantly decreased and a situation has been created in which a specific business operator or a group of business operators can control the market by determining price, quality, volume, and various other terms with some latitude at its or their own volition").

demands, waiting periods, and remedy negotiations that a large buyer treats as a cost of doing business can end that vendor's deal outright. Guidelines that let parties predict outcomes reliably therefore do more for SME participation in merger activity than any substantive presumption could.

- **Pro-competitive effects deserve the same care as theories of harm.** Merger guidelines around the world have long been more precise about how harm is proved than about how benefits are credited. The practical result is that benefits which are real but hard to quantify, such as new products, faster development, better resilience, and improved environmental performance, go unweighed.
- **Objectives beyond competition should enter merger analysis *through* competition rather than alongside it.** Recognizing that firms compete on security of supply and environmental performance makes sense, because those are things customers value and firms fight over. Treating them as free-standing public interest justifications would be a different matter. That would turn merger review into industrial policy, make outcomes depend on political judgment rather than evidence, and take away the legal certainty smaller parties rely on most.

II. Recognizing Security of Supply, Environmental Performance, and New Product Creation

JFTC proposes to recognize expressly that improvements in and maintenance of security of supply, better environmental performance including greenhouse gas emissions, and the creation of new products through expanded investment and innovation can count as pro-competitive effects. The draft would also confirm that security of supply and environmental performance are among the "various other terms" on which firms compete.[9] ACT supports the change and offers six recommendations to make sure it sharpens the JFTC's analysis rather than blurring it.

a. <u>Recognizing non-price parameters of competition reflects commercial reality.</u>

Our members compete every day on reliability, latency, security, privacy, update cadence, energy efficiency, and the environmental footprint of the infrastructure their software runs on. Japanese enterprise and public sector buyers increasingly make purchasing decisions on those grounds. We note that the draft already adds protection of personal information to the same list, which matches what our members are asked about in procurement. A framework that treated competition as a matter of price alone would mismeasure rivalry in software and connected device markets. The proposed clarification to Part III, 1(3) describes how competition actually works, and it fits the judicial formulation the Guidelines already use, which speaks of control over "price, quality, volume, and various other terms."[10]

[9] Draft Guidelines, supra note 1, Part III, 1(3) ("various other terms" include payment terms, security of supply, environmental performance including greenhouse gas emissions, and the protection of personal information, where users place importance on them).
[10] See supra note 8.

b. The three existing conditions in Part IV, 2(7) should remain the exclusive gateway.

ACT believes efficiencies belong inside the competitive effects analysis rather than off to one side, and that efficiencies which are merger-specific and supported by evidence should be able to answer structural concerns.[11] The proposed addition to Part IV, 2(7) moves in that direction by naming benefits that current practice tends to pass over, and ACT requests two clarifications that would help it hold up over time:

- The enumerated categories should be described as illustrative rather than exhaustive, so that a benefit is not disregarded merely because it does not appear on the list.
- The final Guidelines should say plainly that the three existing conditions apply in full to the new categories. Those conditions are merger-specificity, likelihood of realization, and contribution to the interests of users.[12]

Security of supply, environmental performance, and new product creation should count to the extent that they work as parameters of competition benefiting users in the particular field of trade under review. A claimed environmental or resilience benefit that is not merger-specific, that is unlikely to materialize, or that lands entirely outside the relevant market should not carry weight. Saying so in the text protects the revision from a criticism made of similar reforms elsewhere, which is that they create a public interest exception in all but name.

c. Benefits and harms should be held to the same evidentiary standard.

Our main concern with recent merger guideline revisions in other countries has been asymmetry. Predicted harms are accepted on the strength of theory and structural inference, while claimed benefits must be proved almost to a certainty.[13] We ask the JFTC to avoid that imbalance in either direction. If the Guidelines allow a forward-looking assessment of whether a combination will substantially restrain competition, they should allow the same kind of assessment of whether it will improve security of supply, environmental performance, or product innovation, and apply one standard to both, since consistency between the two sides of the analysis does more for predictability than the precise wording of any single factor.

[11] Canada Merger Enforcement Guidelines Comments, supra note 7 ("Efficiencies should be integrated into the competitive-effects analysis, not treated as peripheral"; "[w]here efficiencies are merger-specific and substantiated, they should be capable of rebutting structural concerns").

[12] Business Combination Guidelines, supra note 8, Part IV, 2(7) (providing that efficiencies are assessed from three aspects: "(i) efficiencies should be improved as effects specific to the business combination; (ii) improvements in efficiencies should be materialized; and (iii) improvements in efficiency contribute to the interests of users").

[13] Letter from the Association for Competitive Technology to Chairman Andrew Ferguson, U.S. Federal Trade Commission, re: the Federal Trade Commission and Department of Justice Merger Guidelines (26 Feb. 2025), https://actonline.org/wp-content/uploads/ACT-The-App-Association-Ltr-to-Chairman-Ferguson-re-FTC-DOJ-Merger-Guidelines-26-Feb-2025.pdf (merger guidelines should "avoid making policy-level decisions based on edge cases or hypotheticals" and should restore "a deference to thorough economic analysis").

d. The evidentiary showing should be proportionate.

A new category of pro-competitive effect can be useful only to parties who can pay for custom economic and environmental expert work. To avoid that, the final Guidelines should say the JFTC will judge the sufficiency of evidence in proportion to the size of the transaction and the position of the parties. Ordinary business records ought to be enough in many cases, including board materials, product roadmaps, engineering plans, supplier qualification records, procurement commitments, and internal emissions or resilience reporting. Putting a monetary figure on an environmental or resilience benefit should not be a precondition to considering it. ACT does not suggest that any category of transaction be exempted from review, since each should be assessed on its own facts.

e. New product creation should be expressly linked to acquisitions of small and nascent firms.

JFTC proposes to recognize the "creation of new products through expanded investment and promotion of innovation." That language describes the ordinary economics of a technology acquisition. A small team builds something it cannot scale on its own, and a buyer supplies the distribution, capital, compute, security engineering, and compliance work needed to put it in front of a mass market.[14] ACT examined this pattern at length in its 2025 report on antitrust and artificial intelligence, which found that for most startups scaling up ends in acquisition rather than a public offering, and which warned that treating investment and acquisition as presumptively harmful pushes capital and talent toward jurisdictions that take a lighter approach.[15] The JFTC's own study group on innovation and competition policy worked through much of this ground in 2024,[16] and the statement the JFTC issued in January 2026 on the proactive use of competition policy to promote innovation carries the same thinking forward, so the draft's new-product language reads as a continuation of that work.[17]

[14] Response of the Association for Competitive Technology to the European Commission consultation on the revision of the Merger Guidelines (3 Sept. 2025), https://actonline.org/wp-content/uploads/ACT-_-The-App-Association-response-on-the-merger-guidelines.pdf.
[15] Association for Competitive Technology, Antitrust at a Crossroads: Protecting Innovation in the Age of AI (12 June 2025), https://actonline.org/antitrust-at-a-crossroads-protecting-innovation-in-the-ai-era/ (recommending that competition authorities safeguard smaller rivals' access to capital and investment, including through mergers and acquisitions, and avoid claims built on hypothetical harms), full report at https://actonline.org/wp-content/uploads/Antitrust-at-a-Crossroads-Protecting-Innovation-in-the-Age-of-AI-June-12-2025.pdf.
[16] JFTC, Final Report of the Study Group on Innovation and Competition Policy (28 June 2024) (in Japanese), https://www.jftc.go.jp/houdou/pressrelease/2024/jun/240628_keitorikikaku.html.
[17] JFTC, Proactive Development of Competition Policy for the Promotion of Innovation: The Role of the Japan Fair Trade Commission in an Era of Change (28 Jan. 2026) (in Japanese), https://www.jftc.go.jp/houdou/teirei/2026/260128.html (statement released at the Secretary General's regular press conference; text at https://www.jftc.go.jp/soshiki/profile/promotion_of_innovation2/promotion_of_innovation2_files/promotion_of_innovation2.pdf).

ACT therefore requests two changes to ensure that JFTC's framework is not biased against the transactions small technology firms rely on:

- The final Guidelines should cross-reference the existing treatment of research and development in Part IV, 2(1)F.[18]
- The final Guidelines should make clear that where a transaction is expected to bring a product to market that neither party would have brought alone, or would have brought much later, that effect counts as a pro-competitive effect rather than as the elimination of potential competition.

ACT further notes that an acqui-hire or the purchase of a single product line tells little about whether the target would have grown into a rival on its own, and the Guidelines should say the claim has to rest on evidence about the target's actual plans and capacity.

f. Keep merger review separate from investment screening.

The revised Foreign Exchange and Foreign Trade Act was promulgated on June 5, 2026, and most of its provisions take effect on a date to be set by Cabinet Order. The Japan Foreign Investment Committee held its first meeting on June 29, 2026.[19] Adding security of supply to Part IV, 2(7) is sound as a description of how firms compete for customers. It should not turn business combination review into a second security screen run by a different agency under a different statute over the same transaction. For a small firm, a second screen means a second set of advisers and a minimum of several more months. We suggest the final Guidelines say that security of supply is assessed as a parameter of competition under the Antimonopoly Act, and that questions of national economic security belong to the investment screening process.

III. JFTC's Proposals Addressing Longer-Term Market Conditions

The JFTC's second proposed revision would allow consideration of longer-term market conditions, including future import pressure arising from structural shifts. It would extend that longer view to entry, competitive pressure from related markets, competitive pressure from users, efficiency including innovation, the financial condition of the company group, and the size of the particular field of trade. It would also confirm that a combination may be cleared where a shrinking market makes competition among several operators hard to sustain.[20] ACT generally supports this direction, subject to the three recommendations set out below.

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[18] Business Combination Guidelines, supra note 8, Part IV, 2(1)F (providing that where the parties are each engaged in the research and development of competing products, the JFTC will consider the actual condition of that research and development).

[19] The revised Foreign Exchange and Foreign Trade Act was promulgated on 5 June 2026 as Act No. 30 of 2026. The inter-agency consultation provision took effect on promulgation, and the remaining provisions take effect on a date to be set by Cabinet Order no later than 5 June 2027. The Japan Foreign Investment Committee held its first meeting on 29 June 2026. See Ministry of Finance, Japan Foreign Investment Committee, https://www.mof.go.jp/policy/international_policy/gaitame_kawase/fdi/index.htm.

[20] See supra note 2.

a. A longer horizon must apply symmetrically.

A transaction that looks significant in a snapshot may still increase competition.[21] In markets for software, cloud services, and AI models and tooling, the positions measured on the day of filing are often out of date before the review ends. Speed of development, access to compute, and how fast a firm can ship often matter more than share, and an advantage rarely lasts long.[22] Recent reviews show the JFTC already looking past a filing-day snapshot. In Synopsys and Ansys the JFTC weighed how the affected design-software markets would develop once the divested businesses were in the hands of a new owner, and in the Toyota Motor Corp. and Daimler Truck integration of Hino Motors and Mitsubishi Fuso it accepted remedies built to support a rival's entry until that rival reaches a set share of the market or 10 years pass.[23] The longer-horizon language should make that method explicit and apply it to the factors that constrain a company group as much as to theories of harm. If a longer horizon is used to credit speculative future harm while entry, imports, related-market pressure, and user pressure are still judged on present-day evidence,[24] clearance simply gets harder without the analysis getting better. The final Guidelines should say the extended time frame applies as much to the factors that constrain the company group as to the factors that suggest a restraint of competition.

b. Evidentiary weight should decline as the projection lengthens.

The Guidelines should acknowledge that forward-looking evidence, whether it points toward predicted benefits or toward predicted harms, loses probative value the further out it reaches. Where the JFTC relies on a longer horizon, it should identify what the projection rests on, such as customer testimony, supply contracts, capacity investment plans, regulatory timelines, or documented technology roadmaps, rather than a general sense of where a market is heading. Merger policy should not turn on edge cases or hypotheticals that do not match how businesses actually operate.[25]

c. Anchor the shrinking-market clarification in Part IV, 2(9), and confine it to markets that are actually shrinking.

The Guidelines already provide that where a particular field of trade is too small to support several efficient operators profitably, a combination that reduces the number of operators normally may not substantially restrain competition.[26] We read the proposed revision as extending that factor to

[21] Comments of the Association for Competitive Technology in response to the Joint Federal Trade Commission and Department of Justice Request for Public Comment on Improvements to the Premerger Notification and Report Form (26 May 2026), https://actonline.org/wp-content/uploads/ACT-Comments-Premerger-Notification-and-Report-Form.pdf.
[22] See supra note 5.
[23] See JFTC, review results in the acquisition of Ansys Inc. by Synopsys, Inc. (13 Mar. 2025) (in Japanese), https://www.jftc.go.jp/houdou/pressrelease/2025/mar/250313_kiketsu_sa.html, and in the business integration of Hino Motors, Ltd. and Mitsubishi Fuso Truck and Bus Corporation by Toyota Motor Corporation and Daimler Truck AG (26 Feb. 2026) (in Japanese), https://www.jftc.go.jp/houdou/pressrelease/2026/feb/260226kiketsu_hm.html.
[24] Business Combination Guidelines, supra note 8, Part IV, 2(2) to 2(5).
[25] See supra note 13.
[26] Business Combination Guidelines, supra note 8, Part IV, 2(9).

markets contracting because of demographic and structural change, which we generally support. The final text should say this analysis stands apart from the tougher financial-distress conditions in Part IV, 2(8),[27] and does not require them to be met.

Japan's demographic outlook is not a reason to ease scrutiny in markets that are growing. Many software, cloud, and AI markets serving Japanese customers are growing, and under Part II they are properly defined on a global rather than a national basis. The Guidelines should call for evidence that the relevant particular field of trade, defined under Part II and on the geographic basis actually established, is contracting, rather than an inference drawn from national demographic trends.

IV. JFTC's Proposed Case-Based Refinements

The JFTC's third group of proposed revisions would fold in points from its own recent review practice and from other authorities' guidelines. These include cases where imported products stayed competitive despite tariffs, competitive pressure from indirect users, cases involving remedies, and approaches to analyzing purchasing markets.[28] ACT supports each in principle and offers the following recommendations.

a. Tariffs alone should not discount import pressure.

ACT supports the point that a tariff or other trade measure does not by itself defeat a finding of import pressure. What matters is whether imports have in fact kept constraining domestic pricing and quality, and whether foreign suppliers still have the capacity and the incentive to expand. The final Guidelines should point reviewers to observed import volumes and price relationships, to how long the measure is likely to last, and to whether alternative sourcing routes exist, rather than to the nominal rate. Much of what constrains Japanese suppliers of interest to our members is delivered digitally and across borders. We therefore also ask the JFTC to confirm that the import analysis in Part IV, 2(2) covers cross-border supply of software and services and not only physical goods, a clarification that fits Japan's commitments under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership and the United States-Japan Digital Trade Agreement.

[27] Id., Part IV, 2(8).

[28] See supra note 2.

b. Indirect users exert real competitive pressure, and many of them are SMEs.

ACT strongly supports recognizing that competitive pressure can come from users who trade with the parties' direct customers rather than with the parties themselves. Our members routinely buy infrastructure, components, and development tools through resellers, distributors, system integrators, and marketplaces, which makes them indirect rather than direct customers of the firms whose combinations the JFTC reviews. How they switch in the aggregate, how readily they can redesign a product around a different input, and whether they can back a new entrant are all real constraints on upstream conduct. In elaborating Part IV, 2(5), the final Guidelines should do three things:

- Confirm that indirect users can exert competitive pressure in their own right.
- Direct the JFTC to ask whether those users can realistically switch, taking account of contractual lock-in, integration and porting costs, certification requirements, and data portability.
- Note that pressure from many small indirect users can matter in the aggregate even where no single user has bargaining power.

We also encourage the JFTC to treat indirect users as a source of evidence, so that the experience of smaller firms is available to reviewers alongside that of direct customers.

c. Purchasing-market analysis should apply the same substantial-restraint standard.

ACT asks the JFTC to ground any such guidance in the statutory standard rather than import newer theories from elsewhere, and suggests that the final Guidelines confirm the following three points:

- Buyer-side analysis proceeds under the same "substantial restraint of competition in a particular field of trade" standard, with the field of trade defined by the same substitutability analysis applied on the purchasing side.
- A reduction in prices paid to suppliers is not by itself a restraint of competition. The JFTC will look for effects on output, quality, innovation, or the viability of supply.
- Buyer-side theories rest on evidence about supplier alternatives rather than on inference from purchasing share alone.

d. **Remedy practice should be codified with proportionality in mind.**

ACT welcomes the addition of cases involving remedies and suggests that the JFTC set out two principles in the final text:

- Remedies should be tailored to the harm shown and should not reach conduct or assets unrelated to the theory of harm identified.[29]
- Structural remedies remain appropriate where there is a separable business to divest. Where the competitive asset is a license, an interface, or a support obligation rather than a business unit, an access remedy should be available if it fully addresses the theory of harm.

V. Further Recommendations for the Final Guidelines

ACT offers the following further recommendations for the JFTC's consideration as it settles the final text:

- **Keep the safe harbors and the lighter treatment of vertical and conglomerate combinations.** The concentration-based safe harbors in Part IV, 1(3),[30] and the recognition in Parts V and VI that vertical and conglomerate combinations affect competition less than horizontal ones,[31] let counsel tell a small client quickly and cheaply that a deal raises no serious issue, and for a firm with no in-house antitrust capability that early certainty is worth a great deal. Many transactions involving ACT members are vertical or conglomerate, such as a platform buying a tool its developers already use, and those are usually the deals that bring integrated products to market. We ask the JFTC to confirm that the revision narrows neither point.
- **Treat market share as a screen rather than a substitute for analysis.** Market structure on its own cannot stand in for analysis of actual competitive constraints.[32] That is especially so where entry is rapid, products are differentiated and multi-sided, and product cycles are short, because a share figure computed on a contested market definition can mislead badly. ACT is not asking the JFTC to revisit the approaches taken in other countries, only to refrain from adopting them here.
- **Publish timing and keep information demands proportionate.** The Merger Review Guidebook the JFTC published in June 2025 is a useful baseline and we suggest building on

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[29] Statement of the Association for Competitive Technology for the Record, U.S. House Committee on the Judiciary (15 Dec. 2025), https://actonline.org/wp-content/uploads/2025-12-15-ACT-Statement-for-the-Record-1.pdf ("In the United States, competition law has long been grounded in case-specific analysis, economic evidence, and remedies tailored to demonstrated harms.").
[30] Business Combination Guidelines, supra note 8, Part IV, 1(3) (post-combination HHI not more than 1,500; HHI above 1,500 but not more than 2,500 with an increment not more than 250; or HHI above 2,500 with an increment not more than 150).
[31] Id., Parts V, 1 and VI, 1 (vertical and conglomerate combinations "do not reduce the number of units in a particular field of trade," "have less impact on competition than horizontal ones," and generally, with certain exceptions, may not be substantially to restrain competition).
[32] Canada Merger Enforcement Guidelines Comments, supra note 7 ("Market structure alone cannot substitute for analysis of actual competitive constraints"; "[m]arket share does not equal market power").

it.[33] Delay on its own can force parties to walk away from a deal regardless of its merits, and the cost lands hardest on small firms with short financing runways.[34] Publishing figures on how long Phase I and Phase II reviews take, clearing cases early where no serious issue arises, and telling parties in good time which theories are in play would each help. Filing obligations should likewise be kept proportionate to the competitive question actually presented.[35] We would also ask that the new efficiencies and longer-horizon analysis not become a reason to draw ordinary tool acquisitions by small firms into a long review through the voluntary consultation route for transactions above ¥40 billion with a Japanese nexus.[36]

- **State in the Introduction that acquisition is a normal and often pro-competitive outcome for small firms.** Mergers and acquisitions are a natural and welcome outcome for many SMEs, and clear guidelines let them plan. The Introduction sets the frame for everything that follows, so we recommend adding language there recognizing that acquisition is a principal route by which small and innovative firms bring products to scale, and that keeping that route open supports entry and investment.

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[33] JFTC, Merger Review Guidebook (11 June 2025) (in Japanese), https://www.jftc.go.jp/houdou/panfu_files/kigyoketsugo.pdf.
[34] M&A Review in the AI Era, supra note 5 (the average duration of a significant U.S. merger investigation reached 12.3 months in 2025, and "delay alone can force parties to abandon a transaction, irrespective of the merits").
[35] Premerger Notification Comments, supra note 21 ("Merger review rules should be predictable, administrable, and proportionate to the competition policy questions presented"; "[t]he Agencies should identify categories of lower-risk transactions and calibrate filing obligations accordingly").
[36] JFTC, Policies Concerning Procedures of Review of Business Combination, section 6(2) (recommending voluntary consultation where the total consideration for an acquisition is expected to exceed 40 billion yen and the transaction is expected to affect domestic users), https://www.jftc.go.jp/en/legislation_gls/imonopoly_guidelines_files/191217policy.pdf.

VI. Conclusion

ACT shares the JFTC's goal of a merger review framework that matches how competition works in the Japanese economy today. Recognizing security of supply, environmental performance, and new product creation as pro-competitive effects, and taking a longer view of market conditions, both correct a framework that has been clearer about harms than about benefits. Whether they work in practice will turn on the evidence standard the JFTC applies to them. Predicted benefits and predicted harms need to be held to one standard, the longer horizon needs to reach the factors that constrain a company group and not only those that trouble a reviewer, and the analysis needs to stay tied to the statutory question throughout. Applied that way, the revisions will make Japanese merger review more accurate without making it less predictable, and the acquisition route our members depend on stays open. We would welcome the chance to meet with the Mergers and Acquisitions Division to discuss further at the JFTC's convenience.

Sincerely,

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