

Japanese FTC Streamlines Merger Review Process

June 23, 2011

The Japanese Fair Trade Commission (the JFTC) has adopted new rules that should streamline Japan's review process for both domestic and global transactions. The new rules will end the JFTC's practice of holding "preconsultations" with companies pursuing mergers or acquisitions that would impact competition in Japan. The JFTC adopted the new rules on June 14, 2011, and they will become effective on July 1, 2011.

Under the prior rules and practice, M&A parties were typically required to consult with the JFTC prior to submitting any official notification of their transaction—in effect, obtaining informal approval of the transaction prior to any filing. However, this preconsultation process was unpredictable and could often take considerable time, with the timing of JFTC approval not known until after the preconsultation was completed. This was particularly problematic for deals done outside of Japan, where filings in Japan had to be coordinated with other global filings.

Under the JFTC's new rules, parties will first notify the JFTC of the terms of their transaction through an official submission that does not require any consultation with the JFTC. The JFTC will then have 30 days to review the submission and decide if a more in-depth review is necessary. After 30 days, if no further request is made by the JFTC, consent will be deemed to have been granted. Consultations with the JFTC will only be required if the 30-day period is extended for a more in-depth review.

These new rules will further align the policies of the JFTC with merger-control authorities in both the United States and the European Union. In addition, it is hoped that this will streamline the Japanese approval process for the great majority of transactions that require notification.

However, there are concerns that this new policy will prolong the review period for transactions that may materially impact competition in Japan. Under the prior procedures, parties may be able to shape the JFTC's impression of a transaction during the preconsultation period, thereby reducing the amount of time the JFTC takes to make its decision. Under the new procedures, however, the parties will not be able to have any consultations with the JFTC until after the initial 30-day period expires.

If you have any questions about these changes to the Japanese antitrust review procedures, please contact either of the following Morgan Lewis attorneys:

Tokyo

Gregory R. Salathé

+81 3 4578 2509

gsalathe@morganlewis.com

New York

Harry T. Robins

+1.212.309.6728

hrobins@morganlewis.com**About Morgan Lewis–TMI**

Morgan Lewis–TMI is a unique joint venture in Japan formed by Morgan, Lewis & Bockius LLP and TMI Associates. This is the first joint venture of its kind between major U.S. and Japanese law firms. Morgan Lewis–TMI is an equal partnership designed to leverage the strengths of both firms in serving our clients.

About Morgan, Lewis & Bockius LLP

With 22 offices in the United States, Europe, and Asia, Morgan Lewis provides comprehensive transactional, litigation, labor and employment, regulatory, and intellectual property legal services to clients of all sizes—from global Fortune 100 companies to just-conceived startups—across all major industries. Our international team of attorneys, patent agents, employee benefits advisors, regulatory scientists, and other specialists—nearly 3,000 professionals total—serves clients from locations in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, Washington, D.C., and Wilmington. For more information about Morgan Lewis or its practices, please visit us online at www.morganlewis.com.

This LawFlash is provided as a general informational service to clients and friends of Morgan Lewis–TMI and Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **Attorney Advertising** in some states. Please note that the prior results discussed in the material do not guarantee similar outcomes.

© 2011 Morgan Lewis-TMI. All Rights Reserved.