

A considerable reliance in Japan, as in the U.S., is placed on quantitative tests for notification of mergers. The threshold tests, among others, include: (a) the market share of one company or the total share of two merging firms is 25% or more, or in the case of the three merging companies the total market share is 50% or more; (b) one or both merging firms rank at the top and occupy a 15% market share; or (c) the total assets of one the merging companies is above ¥10 billion and those of the other company is ¥1 billion, or (d) there is a small number of competitors in the merging firm's market. As for the investigation criteria, the JFTC considers economic or qualitative factors such as the conditions of competition in the relevant and the related markets in horizontal mergers and the degree of foreclosure of the market in vertical mergers.¹⁵³

In summary, common to all in the Triad is the pre-merger notification requirement and the rule of reason civil control of mergers. However, the threshold levels beyond which a merger case becomes a reviewable matter is the lowest in the U.S. among the Triad, while the levels in the EU and Japan are quite high.

The U.S. competition philosophy with regard to the use of low threshold levels reflects that even "small-sized" transactions leading to business consolidation could compromise individualistic freedoms, economic efficiency and competition in the marketplace. Moreover, in emphasizing quantifiable over qualitative elements in examining specific merger cases, the U.S. allows less play for other factors that could possibly balance the negative effects of a small-sized merger. The reliance on quantitative factors in Japanese competition law, such as market shares and concentration indices, in assessing the anti-competitive potential in Japan of a proposed merger appears to reflect elements of U.S. competition law. However, Japan has a higher threshold for reportable cases. Neither Japan nor the U.S. nor the EU provides for an explicit efficiency defence. On the other hand, in the EU considerations of public interest and the integration motive provide some room for counterbalancing mergers that might be found objectionable on efficiency grounds.

- **Vertical arrangements**

¹⁵³Mitsuo Matsushita, *op. cit.*, 1993, pp. 130-1.