

**EU:** Until the *Merger Regulation* of 1990, the power to control the emergence of dominant positions was largely absent in the EU. A merger has an EU dimension where: (a) aggregate worldwide turnover of all the firms concerned exceeds ECU5 billion; and (b) the aggregate EU-wide turnover of at least two of the firms concerned is more than ECU250 million. As in the U.S. and Canada, there is a pre-merger notification requirement in the EU.

Mergers that create or strengthen a dominant position and significantly impede competition in the EU are prohibited. In examining merger cases, the Commission considers factors such as: market structure; actual and potential competition from firms located both within and outside the EU; the market position, and economic and financial power of the firms; the opportunities available to suppliers and users; access to supplies and markets; barriers to entry; supply and demand trends for the relevant goods and services; the interests of consumers; and the development of technical and economic progress, provided that it is to the consumer's advantage and does not form an obstacle to competition.

The philosophy behind the control of mergers in the EU appears to be that mergers between firms with "small market shares" are unlikely to impede competition. Unlike Canada, the EU does not have an explicit efficiency defence in merger cases. Overall, however, merger control in the EU follows the rule of reason approach, which is also the case in the U.S..

**Japan:** Mergers that substantially restrain competition or are carried out through an unfair business practice are illegal. As in all other Triad jurisdictions, there is pre-merger filing requirement with the Japanese Fair Trade Commission (JFTC). In the *Yawata-Fuji* case, which was settled by a consent decision, the JFTC did not even consider whether efficiency issues would be relevant in the case.<sup>152</sup> Unlike the U.S., but as in the EU, there is no efficiency defence in Japan when large parties merge. In theory, JFTC can issue, as a measure of last resort, an order to break-up or split a monopolistic situation in Japan. However, in practice such deconcentration measures are nearly impossible to implement.

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<sup>152</sup>JFTC Decision, 30 Oct. 1970, *Shinketsushū*, 16 (1970).