



**Asia-Pacific
Economic Cooperation**

2010/SOM1/CPLG/015
Agenda Item: 7 (Session 1)

Procedural Fairness in Merger Cases from a Business Perspective

Purpose: Information
Submitted by: Nippon Steel Corporation



**Competition Policy and Law Group Meeting
Hiroshima, Japan
28 February-1 March 2010**

Meeting of the APEC
Competition Policy and Law Group (CPLG)
Hiroshima, Japan
28 February 2010

Round Table with ABAC
on Procedural Fairness in Competition Cases

Session 1 “Procedural fairness in merger cases” *from a business perspective*

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*His presentation does not necessarily represent the views of Nippon Steel.

Overview

Past years

- Looking back to three decade ago
Exterritorial application of competition laws: “Legal imperialism”

Globalization



Recent developments

- International cartels and significant fines
- Multiple merger controls over multinational enterprises' transactions

Key Questions

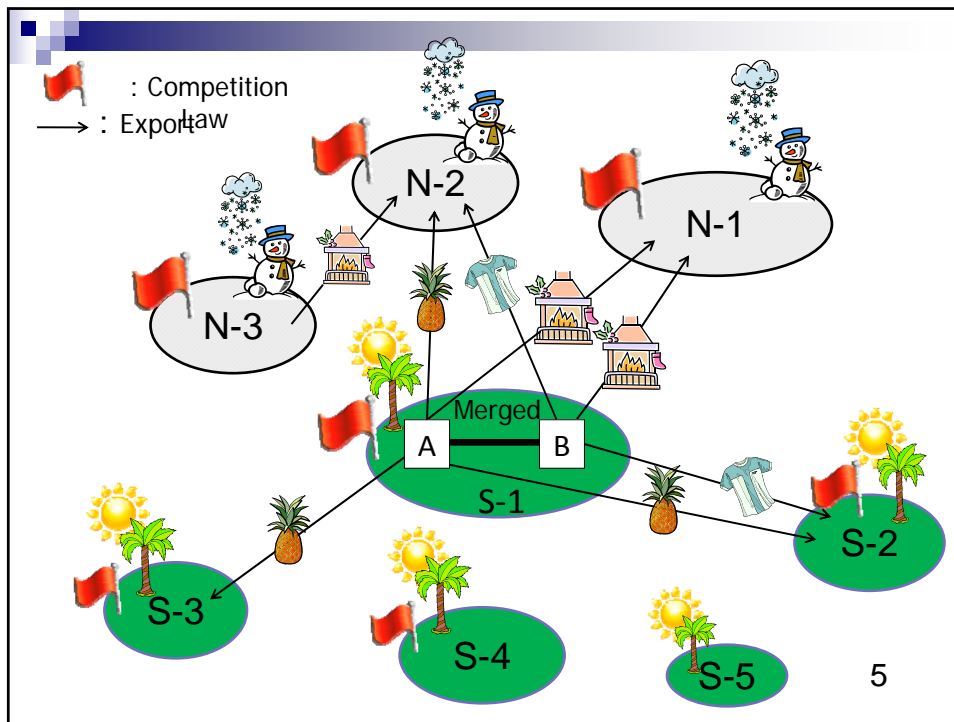
1. Which merger review is necessary or unnecessary?
2. What is a good or bad merger review ?

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1. Which merger review is necessary or unnecessary?

- We are prepared to accept “extraterritorial application of competition laws” so long as the review is substantially meaningful in light of the competition policy objective.
- Necessary review vs. unnecessary review
- Necessary merger notification vs. unnecessary merger notification

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2. What is a good or bad merger review ?

Principles

- 1) Proportionality
- 2) Predictability / transparency
- 3) Accountability

Procedures

- Timely
- Expeditiously
- Efficiently : should not be more costly or lengthier than needed to achieve the objective of merger review.

2. What is a good or bad merger review ?

Procedures (continued)

- Clear timeframe for completion of each procedure

- Clear organization to handle merger cases (including joint venture cases)

- Clear explanations for decisions made, approving or otherwise.

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2. What is a good or bad merger review ?

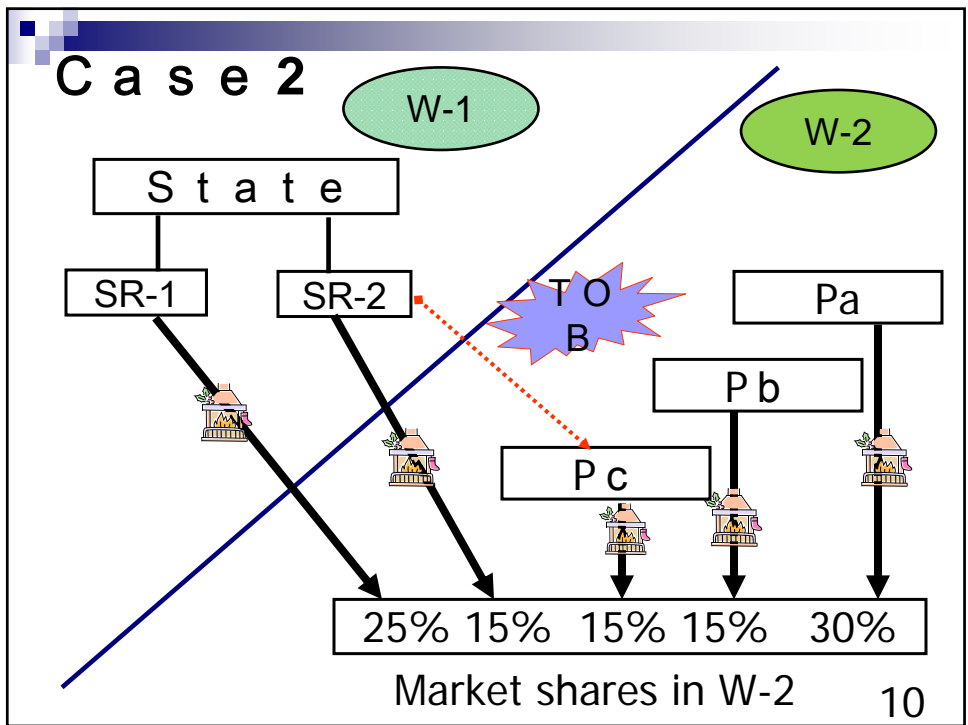
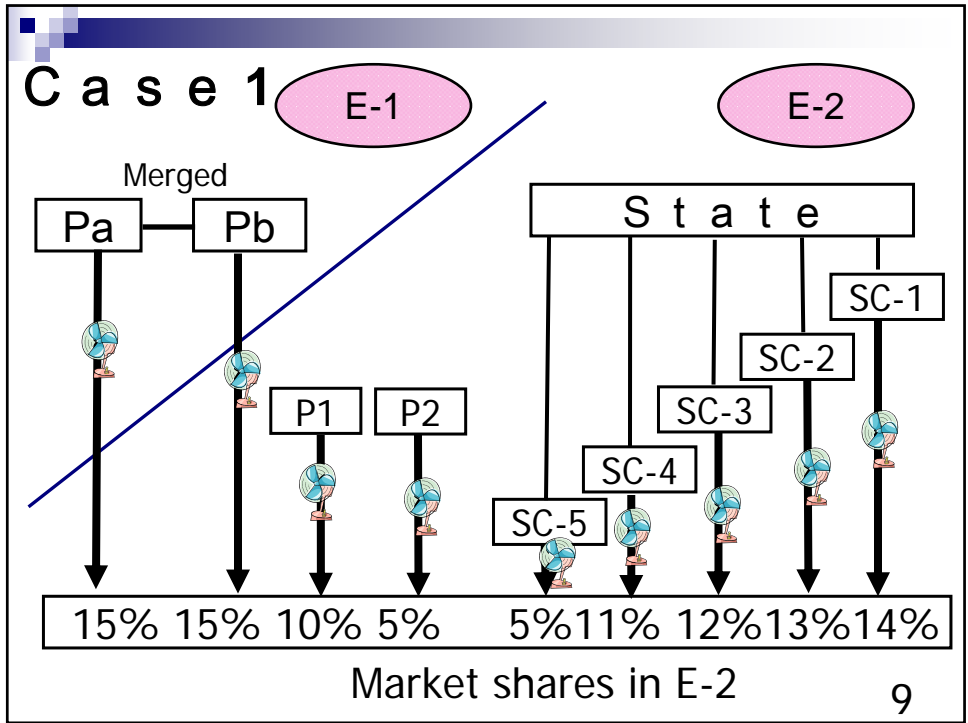
Substance

- Clear objective: to determine whether or not the merger affects effective competition.
 - Distinguish merger reviews from other interest reviews such as national security or industrial policy review.

- Non-discrimination

- Proper consideration of state-controlled enterprises

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Conclusion

- The globalization brings more and more merger cases under multiple merger controls.
- The increased complexity and overlapping calls for greater cooperation and harmonization among relevant authorities.
- Most importantly, each competition authority should establish and implement clear rules and procedures for a good merger review and avoid unnecessary reviews.

THANK YOU FOR YOUR KIND
ATTENTION.