JAPAN’S EXPERIENCE on VERTICAL RESTRAINTS for E-COMMERCE

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Disclaimer: The views and opinions in this presentation are those of the speakers and do not necessarily reflect the official policy or position of JFTC and other Japan’s government agencies.
1. Developed and Enhanced E-commerce in Japan
2. Antimonopoly Act and Vertical Restraints
3. Vertical Restraints in E-Commerce in Japan
4. Revision of DSBP Guidelines
1. Developed and Enhanced E-commerce in Japan
Developed and Enhanced E-Commerce in Japan

- Almost doubled in 5 years*
  from \(7.8\)T (2010) to \(13.8\)T (2015) (B2C E-commerce)

  - Sectoral breakdown (2015):
    - Goods (incl. Foods, Clothes, home appliances/PCs/audiovisuals, etc.) \(7.2\)T
    - Services (incl. Travel services, ticket sales, etc.) \(4.9\)T
    - Digital contents (incl. online game/music/video distribution, e-book, etc.) \(1.6\)T

- Rising online platformer in B2C market
- Emerging online retailer without brick and mortar store

Large Impact on business practices!

*source: 2015 e-Commerce Market Survey conducted by METI
2.  *Vertical Restraints in E-Commerce in Japan*
Antimonopoly Act (AMA)

Antimonopoly Act (1947) – four pillars:

- Private Monopolizations (Article 3)  
  (≈ abuse of dominance)
- Unreasonable Restraints of Trade (cartels, bid-riggings) (Article 3)
- **Unfair Trade Practices**  
  (resale price maintenance, non-price vertical restrictions, etc.) (Article 19)
  - Article19 often enforced as preventive measures of Article 3
- Regulation on Mergers and Acquisitions  
  (Chapter 4)
AMA on Vertical Restraints

Vertical Restraints in Japan

- Vertical restraints mainly regulated:
  - as unilateral conduct (≠ agreements), and
  - by Article 19 of AMA (unfair trade practices)

- RPMs and non-price vertical restrictions differently regulated by statute

- Analyzed under rule of reason approach provided in Guidelines (currently revised)
3. *Vertical Restraints in E-Commerce in Japan*
Resale Price Maintenance/ Restriction to Display Sale Price

Classic and Online

✓ Hamanaka Case (Resale Price Maintenance)
  • Yarn for Hand-Knitting or Handicraft
    (Cease and desist order in 2008; upheld by Tokyo High Court in 2011)

✓ Johnson & Johnson K.K. Case (Restriction to Display Selling Price)
  • Vision Corrective Contact lenses
    (Cease and desist order in June 2010)

✓ Adidas Japan Case (Resale Price Maintenance)
  • Toning Shoes
    (Cease and desist order in June 2012)

✓ Coleman Case (Resale Price Maintenance)
  • Camping Equipment (tent, tarp, sleeping bag, lighting equipment, cooking equipment, fuel, table, chair, cold box, jug, etc.)
    (Cease and desist order in June 2016)
When Coleman found that a retailer had not complied with the sales policy by other retailers’ complaints, Coleman repeatedly asked the retailer to follow the policy thereby making the retailer sell following the policy.
Exclusive Dealing

By Online Platformer

DeNA Case

DeNA’s Business
- Operation of mobile social networking service (SNS)
- Development and provision of social games
- Business to have other companies provide social game

Outline of the violation
- DeNA forced “Specified Social Game Developers” not to provide the games through “GREE”, the social networking service operated by one of its competitors.

* The term “Specified Social Game Developers” refers to the dozens of social game developers which DeNA deemed potent and selected.
**DeNA Case**  
(Cease and Desist Order of June 9, 2011)

**Specified Social Game Providers**

- **DeNA**
  - **Mobage-Town**  
    - (No.1 provider)
    - SNS provider for mobile phone

- **GREE, Inc**
  - **GREE**  
    - (No.2 provider)

- Interfering competitor’s transactions

- Providing social games through Mobage-town
- Providing social games through GREE

- Difficult to have the social game providers to supply games through GREE

**Registered Users of Mobage-town**

**Registered Users of GREE**
4. Revision of DSBP Guidelines
DSBP Guidelines


- Mainly focus on supplier-led vertical restraints
- Specific guidance for what is legal or illegal with regard to typical trade practices
  - RPM, and non-price vertical restriction (such as single branding, exclusive territory or customer, selective distribution)
- Clarification on vertical restraints (2015)
  - Analytical framework of vertical restraints, typical examples of possible procompetitive effects (e.g. solving “free-rider problems”), etc.
- Update of Safe harbor (2016)
  - For certain non-price vertical restrictions: below 20% of a supplier’s share
Further Revision of DSBP Guidelines

- In 2016, JFTC held the study group consisting of academics and business experts.
  - Main Agenda:
    - Assessing changes in distributions and trade practices incl. development of e-commerce
    - Considering direction of the review of DSBP Guidelines

- The study group made public its report in December 2016.
  - Report’s views on vertical restraints in e-commerce:
    - Analytical Framework assuming off-line sales can also apply to online sales in general.
    - Additional factors for assessment should be considered. (e.g. indirect network effects, and so on)

- JFTC is now in the process of drawing the draft revision of DSBP Guidelines in light of these views.