Recommendation Decision No. 21 of 2003

Mr. Daryl E. Green
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2-5-1, Atago, Minato-ku, Tokyo

The Japan Fair Trade Commission (JFTC) made the recommendation to the above party under the provisions of the Section 48(2) of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (hereinafter referred to as “Antimonopoly Act”) on July 28, 2003. As the above party has accepted it, the JFTC hereby issues the following decision under the provisions of Section 48(4) of the Antimonopoly Act in line with the said recommendation.

Main Text

1. The J-PHONE Corporation shall make sure that it has ceased the conducts that it forced its sales agents and retailers purchasing through the agents to display on price tags at shops and on advertising leaflets the "reference price" or "assumed price" which the J-PHONE Corporation designated as guides of selling prices to consumers regarding new and popular models of J-PHONE branded mobile phones with camera for newly contracting consumers of its mobile phone service in the region of Ibaraki, Tochigi, Gunma, Saitama, Chiba, Kanagawa, Yamanashi and Nagano prefectures and Tokyo metropolis.

2. The J-PHONE Corporation shall thoroughly inform the sales agents, the retailers who are purchasing through the agents and consumers in the region of Ibaraki, Tochigi, Gunma, Saitama, Chiba, Kanagawa, Yamanashi and Nagano prefectures and Tokyo metropolis of the following matters. The manner of this shall be subject to the approval of the JFTC.
   (1) The measures taken in accordance with the preceding paragraph, and
   (2) The commitment to the effect that it will refrain from the conducts similar to that described in the preceding paragraph in the future.

3. The J-PHONE Corporation shall not restrict the prices at retail shops and on advertising leaflets of the sales agents and the retailers who are purchasing through the agents as to the mobile phone sales business through the conduct similar to 1 above in the future.

4. The J-PHONE Corporation shall promptly notify the JFTC with regard to the measures it has taken in accordance with the preceding three paragraphs.
Findings of Fact

The findings of the JFTC are the followings:

1 (1) The J-PHONE Corporation (hereinafter referred to as “J-PHONE”) is headquartered at the address shown above and a telecommunications carrier who provides telecommunication service relating to mobile phones as the first-class licensed telecommunications carrier by the Telecommunications Business Law and sells the mobile phones with the trademark of “J-PHONE” (hereinafter referred to as the “J-PHONE branded mobile phones”).

(2) J-PHONE entrusts manufacturers of mobile phones to produce the J-PHONE branded mobile phones and sells them to consumers through the agencies or the retailers who are supplied through the agencies (hereinafter referred to as the “retailers through agencies”) most of whose phones are sold to the sales agents.

(3) J-PHONE sets the selling prices and commission fees to the sales agents based on the retail price standards called “reference price” or “assumed price” (hereinafter referred to as the “reference price”) decided in consideration for the market prices of mobile phones sold by the competing telecommunications carriers in the sale of the J-PHONE branded mobile phones. And J-PHONE has notified the sales agents of the reference price upon sales of new and popular models of J-PHONE branded mobile phones with camera (hereinafter referred to as the “J-PHONE’s leading products”) for newly contracting consumers of its mobile phone service (hereinafter referred to as the “new sales”) in the area of Ibaraki, Tochigi, Gunma, Saitama, Chiba, Kanagawa, Yamanashi and Nagano prefectures and Tokyo metropolis (hereinafter referred to as the “Kanto Koshin region”).

(4) The J-PHONE branded mobile phones with camera among others have a dominant bargaining position as a leading brand and are well-known to the consumers. As many consumers specify them upon purchasing, it is advantageous for the mobile phone retailers to deal in them.

2 (1) a. In January 2002, J-PHONE set up a business policy to secure the profit of the sales agents by raising levels of the retail prices of the J-PHONE leading products in the Kanto Koshin region, in respond to the decision on operating cost reduction by reducing the commission fees provided to the sales agents since February of the same year, and decided to force the sales agents and the retailers to display the reference price as the presentation of selling prices.
because there was a tendency that actual retail price would go up if the price displayed at shops or on advertising leaflets of the sales agents and the retailers raised.

And J-PHONE, around the end of January 2002, requested the agencies in the Kanto Koshin region to display and force the retailers to display the reference price when indicating the selling price at shops or on advertising leaflets after February 1 of the same year. At the same time, J-PHONE conveyed the possibility of restricting its shipment to the sales agents unless they comply with the request.

b. J-PHONE notified the reference prices of the J-PHONE’s leading products and requested to display such reference prices when indicating the prices at shops or on advertising leaflets to the sales agents in the Kanto Koshin region at monthly business meetings also after February 2002. As J-PHONE was asked to raise the selling price in the market by the sales agent who were concerned with the decrease of profits due to the drop of the actual retail prices of the J-PHONE’s leading products in the summer sales campaign of the same year, around on July 30 and September 27 of the same year, it requested the sales agents to display and forced the retailers to display the reference price when indicating the selling price at shops or on advertising leaflets after August 1 and October 1 of the same year respectively, calling as a price reset.

c. The agencies and the retailers through agencies received the J-PHONE’s request described in a. & b. above mostly accepted the request and displayed the reference price at shops or on advertising leaflets after February 1, 2002, because the actual retail price would be maintained if other sales agents and the retailers who sell the J-PHONE leading products also display the same reference price.

(2) In order to maintain the situation described in 2 (1) above, when JPHONE learned that some sales agents or retailers displayed the price lower than the reference price as to the J-PHONE’s leading products, it forced the said sales agents or the retailers to switch the indicated price to the reference price at shops or on advertising leaflets, as illustrated in the following:

a. Around in June 2002, J-PHONE required a sales agent whose main shop is
located in Ibaraki prefecture and was indicating the price lower than the reference price at the shop in the same prefecture to stop indicating the said price, and forced the sales agent to revise the price at the shop, upon complaints from the neighboring retailers.

b. Around in October 2002, J-PHONE required a retailer whose main shop is located in Gunma prefecture, and was indicating the price lower than the reference price at the shop in Kanagawa prefecture to stop indicating the said price, and forced the retailer to revise the price at the shop, upon complaints from the neighboring retailers.

3. Due to the conducts by J-PHONE described in 2 above, most of the sales agents and retailers in Kanto Koshin region displayed the reference prices for the J-PHONE’s leading products when indicating the prices at their shops or on advertising leaflets.

4. On November 20, 2002, the JFTC initiated the investigation into this case in accordance with the provisions of the Antimonopoly Act. J-PHONE has subsequently ceased to notify the sales agents and retailers in Kanto Koshin region of the reference prices for the J-PHONE’s leading products and to force them to display the reference prices when indicating the price at shops or on advertising leaflets since around December 3 in the same year.

Application of the Law

The application of the Law to the findings described above results in as follows; J-PHONE restricted the retail prices indicated at shops or on advertising leaflets of the sales agents and retailers with regard to the J-PHONE’s leading products sales in the Kanto Koshin region for newly contracting consumers of its mobile phone service. This conduct is to impose business terms unjustly restricting the business transactions with the sales agents, therefore, falls under the provisions of Paragraph 13 of the Unfair Trade Practices (Fair Trade Commission Notification No.15 of 1982), and violates the provision of Section 19 of the Antimonopoly Act. Thereby, JFTC issues the decision as stated in the Main Text.

September 4, 2003

Kazuhiko Takeshima, Chairman
Tadayoshi Honma, Commissioner
Makoto Kobayashi, Commissioner
Aiko Shibata, Commissioner
Hiroshi Mitani, Commissioner
Japan Fair Trade Commission