

Investigation of Parity Clauses in Japan

Isao KASUBUCHI (Mr.)

Director General for Trade Practices Department

Japan Fair Trade Commission

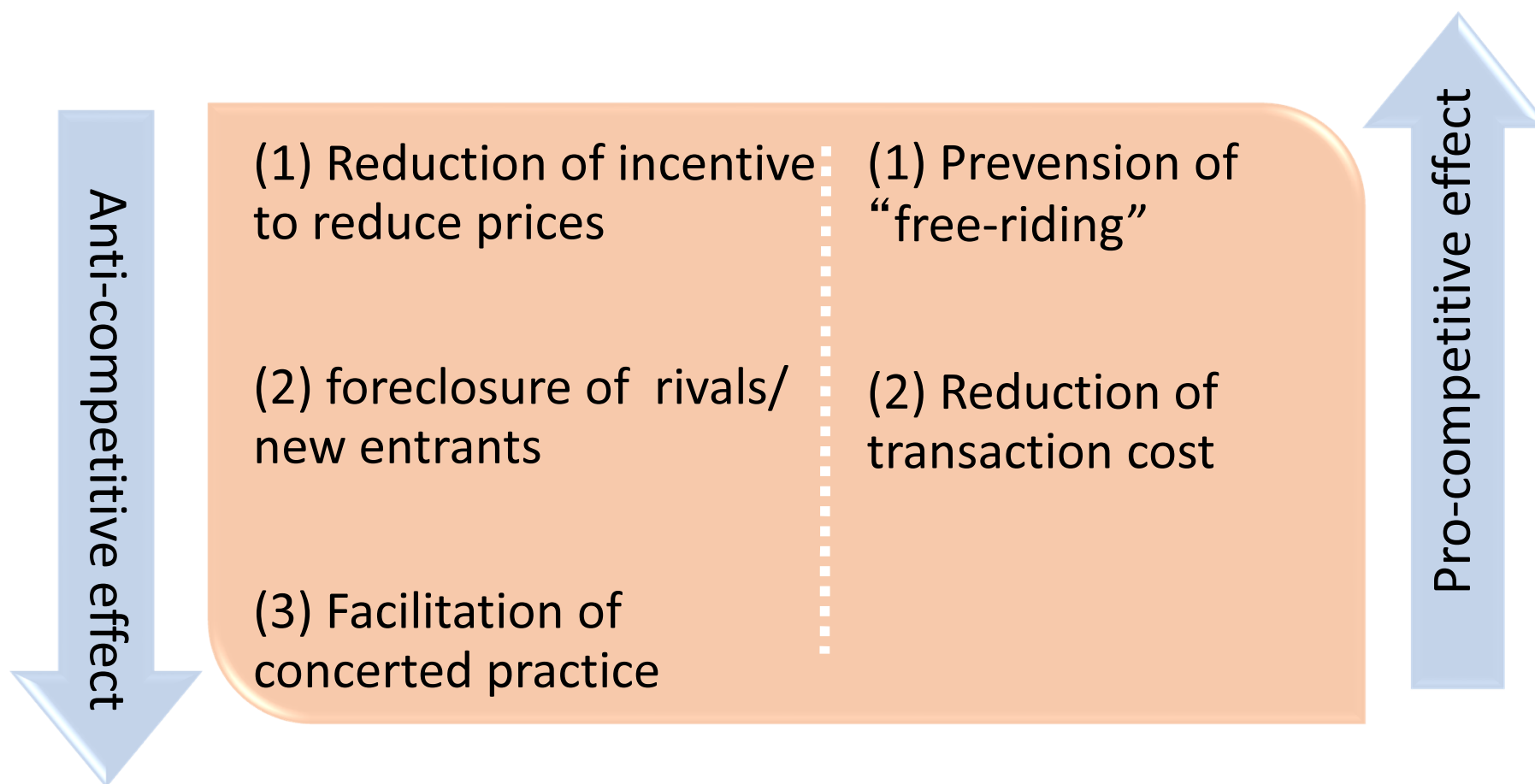
ICN Unilateral Conduct WS, 1 Dec, 2017 in Rome, Italy

The views expressed in this presentation are solely those of the author and do not necessarily reflect the views of the JFTC.

Contents

1. Competitive effects of parity clauses (in general)
2. Investigation against Amazon Japan G.K.
 - (1) Flow of the investigation
 - (2) Online shopping Mall Market in Japan
 - (3) Parity Clauses in the Seller Contracts on Amazon Marketplace
 - (4) The JFTC's concerns over the Influence of the Parity Clauses on Competition
 - (5) Measures Proposed by Amazon Japan G.K.
3. Subsequent event
4. Challenges/ issues

1. Competitive effects of parity clauses (in general)



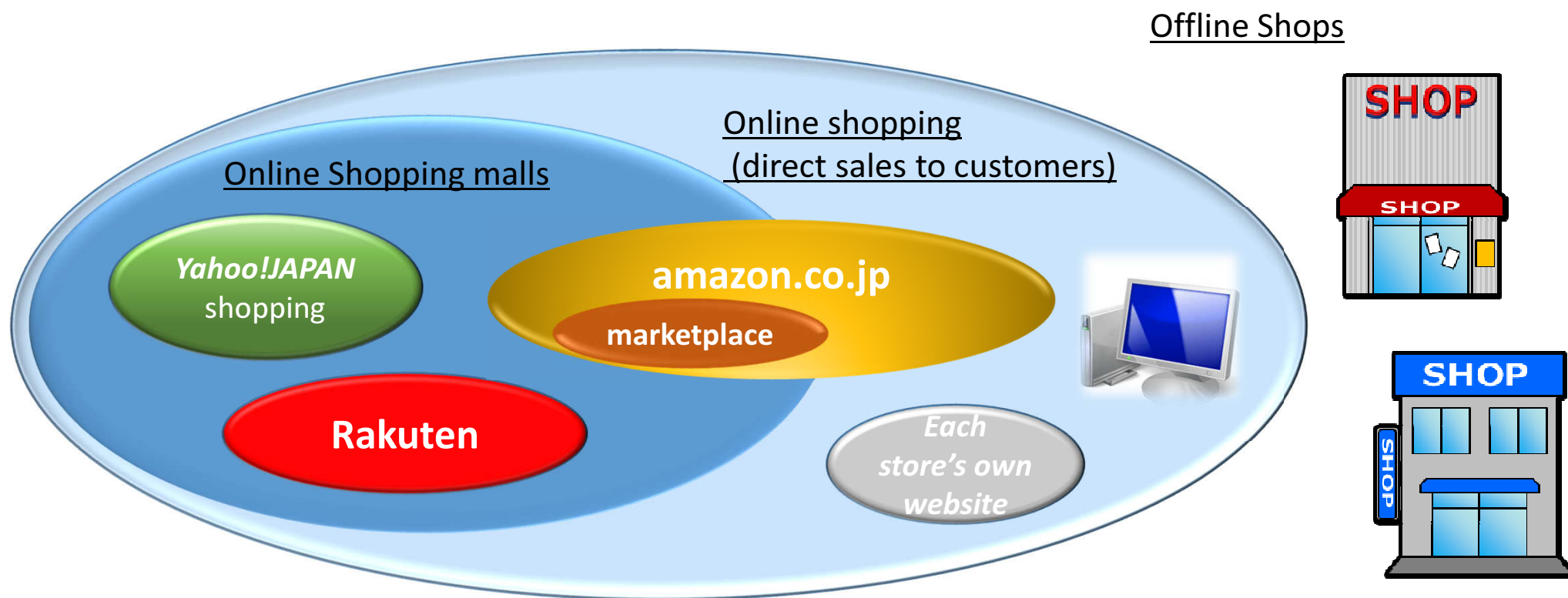
2. Investigation against Amazon Japan G.K.

(1) Flow of the investigation

Investigation of parity clauses in Amazon Marketplace

- August 2016: the JFTC conducted a dawn raid on Amazon Japan G.K. (hereinafter called “Amazon JP”) to investigate its price parity clauses and selection parity clauses in the seller contracts on Amazon Marketplace.
 - Relevant article : Article 19 (paragraph 12 [trading on restrictive terms]) of Japanese Anti-monopoly Act.
- April 2017: Amazon JP proposed to take voluntary measures.
- June 2017: The JFTC recognized these measures would eliminate the suspected violation and decided to close the investigation on this case.

2.(2)Online shopping Mall Market in Japan



2.(3) Parity Clauses in the Seller Contracts on Amazon Marketplace

Price Parity Clauses

- → Clauses to require sellers to ensure that prices and sales terms for products they sell in Amazon Marketplace are the most advantageous for purchasers among the ones for the identical products they sell via other sales channels

Selection Parity Clauses

- → Clauses to require sellers to offer in Amazon Marketplace all variations in color and size, etc. of all products they sell via other sales channels.

Wide Parity
Clauses

Seller S

Selection parity clauses

Lineup N_A of goods that Seller S offers in Online Shopping Mall A must be equal to or exceed N_B and N_S .

$$(N_A \geq N_B \text{ and } N_A \geq N_S)$$

Price parity clauses

Selection parity clauses

Offering N_A types of goods

1 2 ... N_A

Online Shopping Mall A

Selling Product 1 for Price P_A

Offering N_B types of goods

1 2 ... N_B

Online Shopping Mall B

Selling Product 1 for Price P_B

Offering N_S types of goods

1 2 ... N_S

S's Own Website

Selling Product 1 for Price P_S

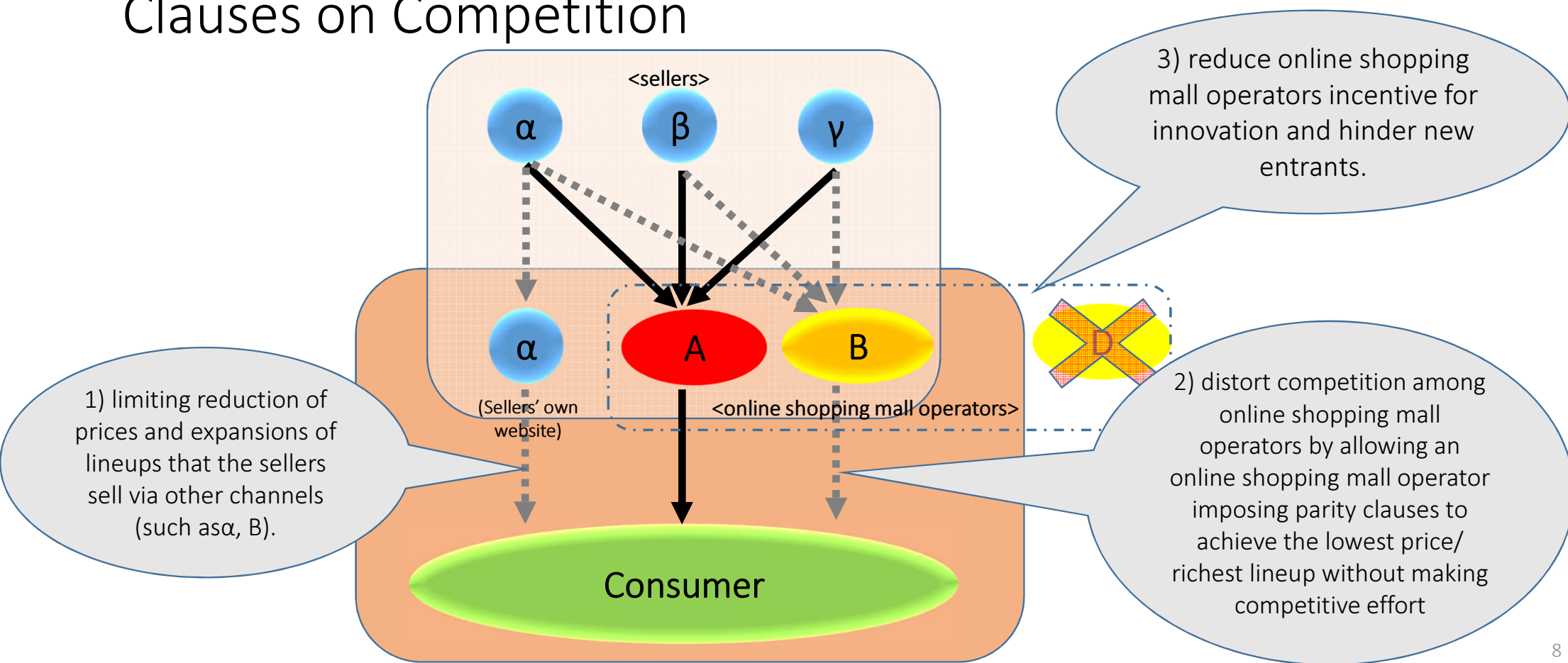
Price parity clauses

Price P_A for which Seller S sells Product 1 in Online Shopping Mall A must be equal to or lower than P_B and P_S .

$$(P_A \leq P_B \text{ and } P_A \leq P_S)$$

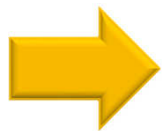
Consumers (Purchasers)

2.(4) The JFTC's concerns over the Influence of the Parity Clauses on Competition



2.(5) Measures Proposed by Amazon Japan G.K.

- Measures proposed by Amazon JP (summary)
 - Amazon JP will delete the price parity clauses from concluded seller contracts, or will waive and will not exercise the rights of the price parity and selection parity clauses.
 - It will not provide those parity clauses in seller contracts.
 - Amazon JP will notify all sellers of these measures.
 - Amazon JP will annually report the implementation status to the JFTC in writing for 3 years.



The JFTC recognized that these measures would eliminate the suspected violation of the Antimonopoly Act and decided to close the investigation on this case.

3. Subsequent event

<Report on e-Books Agreements from Amazon Services International, Inc.>

- On June 2017, the JFTC received a report from Amazon Services International, Inc. that they would take voluntary measures on the parity clauses contained in the agreements with publishers or distributors regarding the e-books delivered from Amazon.co.jp website.
 - <summary of the measures>
 - It will not enforce the contractual obligations of publishers, etc. regarding the parity clauses.
 - It will notify publishers, etc. of the measures it took.
 - It will not provide the parity clauses in e-books agreements.
 - It will have taken those measures for at least five years.
- The JFTC recognized these measures would eliminate the anticompetitive concerns. Additionally, the JFTC requested to have sufficient consultation with publishers and distributors when it intends to alter other clauses as a result of taking the measures.

4. Challenges/ issues

- Factors to be considered to prove the anticompetitive effects of the parity clauses used in online marketplaces
- Effective investigation methods when there are a number of sellers in a transaction with the target company
- Appropriate remedies to address parity clauses

Thank you very much!!!

