

# Why and How to prioritise cases in digital sector?



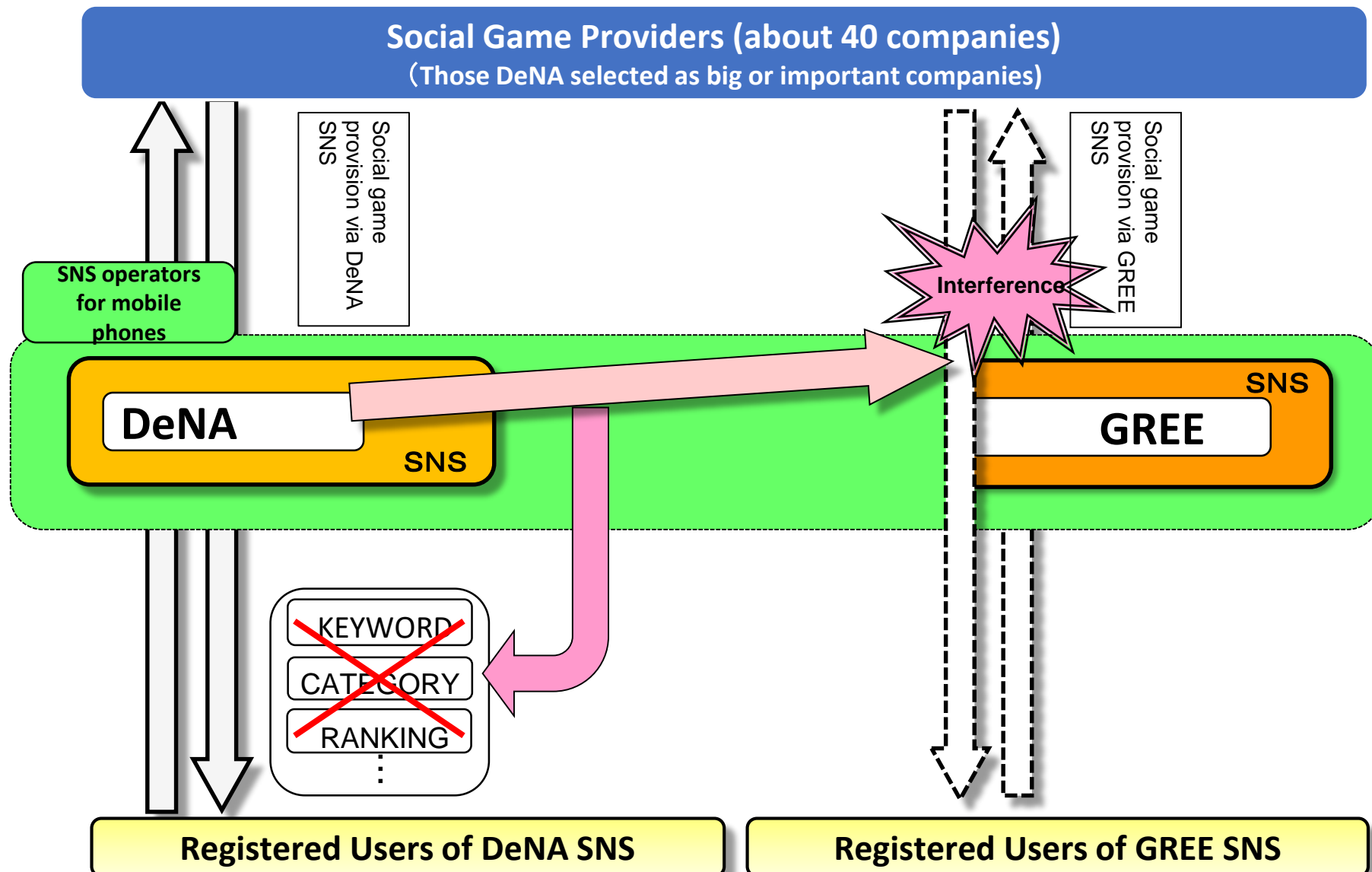
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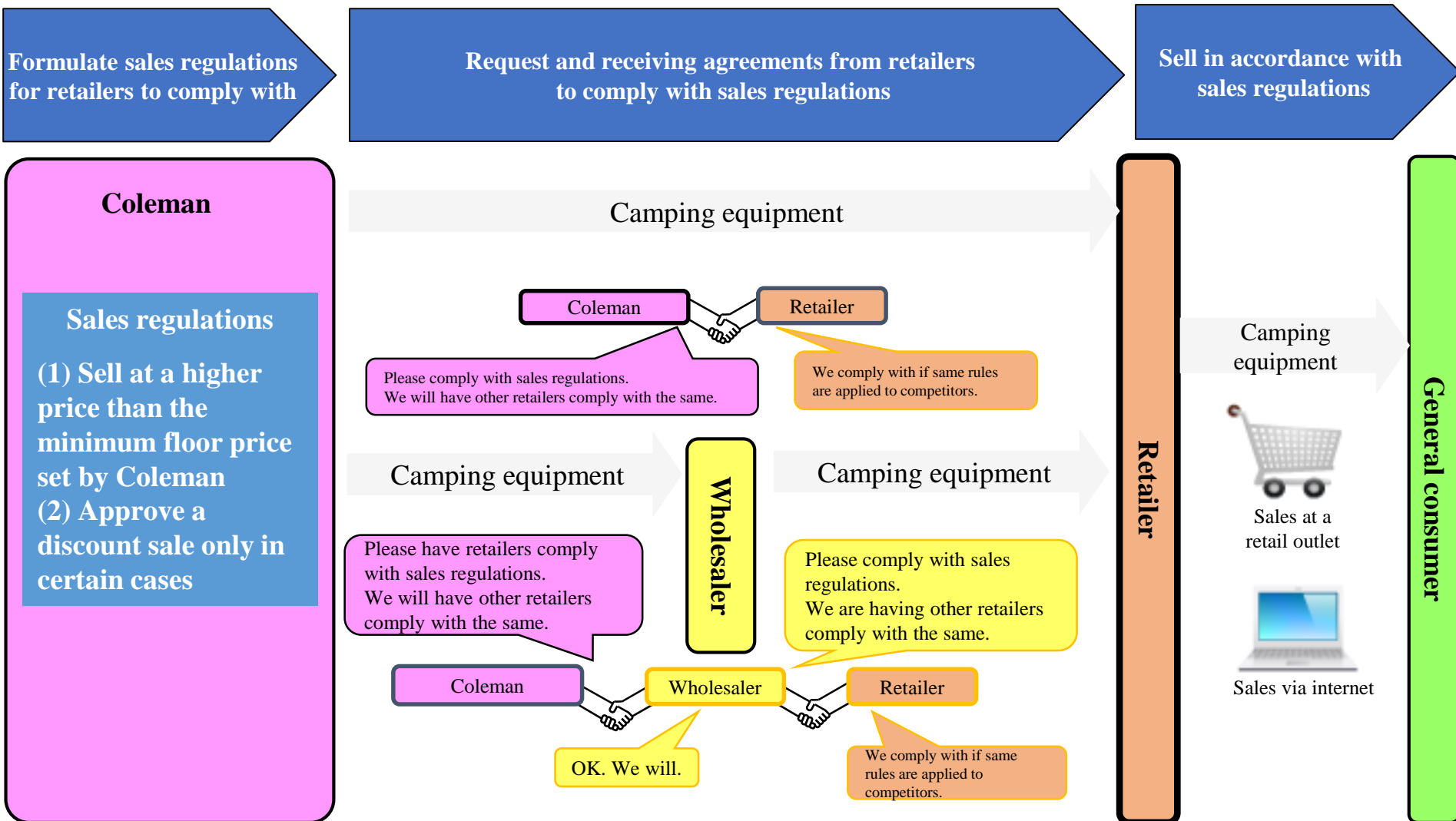
December, 2019

3<sup>rd</sup> Meeting of High Level Representatives of Asia-Pacific Competition Authorities



## Investigation Timeline

- ✓ August 10, 2010: DeNA started an operation to exclude its competitor
- ✓ December 8, 2010: JFTC conducted a dawn raid on DeNA to investigate its exclusionary conduct
- ✓ December 15, 2010: DeNA voluntarily announced to stop its exclusionary conduct
- ✓ June 6, 2011: JFTC issued cease and desist order to DeNA
- ✓ Relevant article: Article 19 of Japanese Anti-monopoly Act



Enforcement Activities	Non-Enforcement Activities
Cease and Desist Order to DeNA (June 2011)	
Cease and Desist Order to Coleman Japan (June 2016)	Launch of the information-offering special contact point in Investigation Bureau (October 2016)
Accepting the offer of Amazon Japan to change its business terms (June 2017)	Issue "Report of Study Group on Data and Competition Policy" (June 2017)
Accepting the offer of Minna no Pet Online to change its business terms (May 2018)	
Accepting the offer of Apple to change its business terms (July 2018)	
Accepting the offer of Airbnb to change its business terms (October 2018)	Fundamental Principles for Improvement of Rules Corresponding to the Rise of Digital Platform Businesses (December 2018)

## Enforcement Activities

## Non-Enforcement Activities

Approval of the Commitment Plan submitted  
by Rakuten (October 2019)

Launch of the information-offering form for  
trade practices and usage regarding digital  
platform operators (January 2019)

Issue "Interim report regarding trade  
practices on digital platforms" (April 2019)

Public Comments on "Guidelines Concerning  
Abuse of Superior Bargaining Position in  
Transactions between Digital Platform  
Operators and Consumers that Provide  
Personal Information" (August 2019)

Public Comments on the revised "Guidelines  
to Application of the Antimonopoly Act  
Concerning Review of Business Combination"  
(October 2019)

Issue "Report regarding trade practices on  
digital platforms" (October 2019)

# Outline of Amendments (draft) Guidelines to Application of the Antimonopoly Act concerning Review of Business Combination and Amendments (draft) to Policies concerning Procedures of Review of Business Combination (October, 2019)

## Background and Purpose

Due to increased necessity of properly dealing with business combinations in the digital market in recent years and other reasons, based on Action Plan of the Growth Strategy (June 21 2019 Cabinet Decision), etc., Guidelines on Business Combination and Policies concerning Procedures of Business Combination are amended.

## Overview of Amendments to Business Combination Guidelines

- 1 Particular Field of Trade
  - To stipulate way of considering the definition of a particular field of trade of a business combination in a multi-sided market which is characteristic of digital service
  - To stipulate way of considering the definition of a particular field of trade where competition occurs through quality, etc., not price
  - To stipulate considerations in defining a particular field of trade of a business combination related to digital service, etc.
- 2 Substantial Restraint of Competition
  - To stipulate considerations of competition analysis, based on characteristics of digital service such as multi-sided markets, network effects and switching costs
  - To stipulate way of considering when companies doing research and development conduct a business combination
  - To stipulate, in vertical and conglomerate business combinations, details based on recent review results and way of considering when a digital platform operator acquires a start-up, etc. having important data, etc., for instance,
    - Refusal to supply data when such data are traded in the market
    - Elimination of the possibility of new entrant by an acquired start-up, etc. and others
  - To stipulate way of considering when it is difficult for several companies to keep competing in the market

## Overview of Amendments to Business Combination Procedures Policies

- To stipulate that even if a business combination plan that only the amount related to domestic sales, etc. does not meet notification standards ("Notification-free business combination plan"), when the total consideration for the acquisition is large, and the business combination plan is expected to affect domestic consumers, the JFTC requests the parties to submit documents, etc. and conduct a business combination review.
- To stipulate regarding notification-free business combination plan, when the total consideration for the acquisition exceeds 40 billion yen, and the notification-free business combination plan is expected to affect domestic consumers such as satisfying one of the following ① to ③, it is recommended that the parties having the notification-free business combination plan consult the JFTC
  - ① When the business base or research and development base of the acquired company is located in Japan
  - ② When the acquired company conducts sales activities targeting domestic consumers, such as opening a Japanese website or using a Japanese pamphlet
  - ③ When the total domestic sales of the acquired company exceed 100 million yen  
(To stipulate that if there is no consultation from the parties, the JFTC requests the parties to submit the documents, etc. and reviews the business combination plan)

## Method

(1) Information-offering  
form  
(As of Sept. 30, 2019)



- Online retail platform	795
- App store	20
- Others	99
<b>Total</b>	<b>914</b>

(2) Questionnaire (Feb. - Mar. ,2019)



Surveys regarding trade practices on  
**online retail platform**

Surveys regarding practices on **app store**

Surveys regarding **users (consumers) of  
digital platforms**

※Interim report published April 17, 2019

(3) Voluntary interview  
(As of Sept. 30, 2019)



Online retail platform operator

5

Seller on online retail platform

42

App store operator

3

App vendor

43

**Total**

**93**



### ★ Conduct Providing Disadvantage to a Seller

As a digital platform operator may have a superior bargaining position against sellers due to lock-in effect, it may, for example, make a unilateral revision of a contract.

When a digital platform operator with a superior bargaining position provides disadvantage to a seller unreasonably in the light of normal business practice, **this could be a violation of the AMA as an Abuse of Superior Bargaining Position.**

### ★ Conduct Excluding a Competitor

A digital platform operator competes with other digital platform operators in attracting sellers and consumers, and, for example, the digital platform operator may restrict downloading other app stores operated by other digital platform operators.

When a digital platform operator unjustly interferes with a transaction between other digital platform operators and the sellers or consumers, **this could be a violation of the AMA as Interference with a Competitor's Transactions.**

As a digital platform operator is in a position where it can operate and manage its platform by itself, it may, for example, make use of a transaction data, etc. to its sales promotion, and arbitrarily manipulate search algorithm.

When a digital platform operator provides a good, etc. directly through its own digital platform and unjustly interferes with a transaction by giving itself or its related companies preferential treatment, **this could be a violation of the AMA as Interference with a Competitor's Transactions.**

### ★ Conduct Restricting Customer's Business Practices

As a digital platform operator is in a position where it can operate and manage its platform by itself, they may, for example, unreasonably force to use an electronic payment through an app and prohibit a payment outside of an app, restrict a price of a payment outside of an app, or prevent a seller unreasonably from providing information on the payment outside of an app.

When a digital platform operator unreasonably forces to use an electronic payment through an app and prohibits a payment outside of an app, restricts a price of a payment outside of an app, or prevents a seller unreasonably from providing information on the payment outside of an app, **this could be a violation of the AMA as Trading on Restrictive Terms.**

Thank you very much  
for your attention !



<http://www.jftc.go.jp/en/index.html>