

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

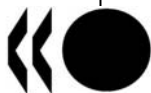
ROUNDTABLE ON TWO-SIDED MARKETS

-- Note by the Delegation of Japan --

This note is submitted by the Delegation of Japan to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 9 - 11 June 2009.

JT03265491

Document complet disponible sur OLIS dans son format d'origine
Complete document available on OLIS in its original format



TWO-SIDED MARKETS

-- Contribution from Japan --

1. Introduction

1. When investigating a case or surveying a market, the Japan Fair Trade Commission (JFTC) has not given special consideration about whether a market has the characteristic features of a two-sided market.

2. However, there are some cases in which the JFTC has taken legal measures and conducted surveys concerning goods and services generally regarded as having the characteristic features of two-sided markets. In addition, the Competition Policy Research Center (CPRC) established within the JFTC has conducted some studies on the analytical methods and competition policy implications related to two-sided markets. This contribution paper summarizes these efforts.

2. JFTC activities

3. In the services generally regarded as having the characteristic features of two-sided markets (such as web-based businesses, media), the JFTC conducts fact-finding surveys and evaluates the results from the viewpoint of competition policy. In addition, the JFTC has taken actions in some cases concerning goods and services generally regarded as having the characteristic features of two-sided markets (such as PC operating systems (OS), video game consoles, newspapers). However, it should also be mentioned that in these efforts, the characteristic features of two-sided markets are not necessarily points of issue or objects of analysis.

2.1 *Web-based businesses*

2.1.1 *Fact-finding Survey of B2C E-Commerce such as Electronic Shopping Malls (published in December 2006)*

4. Regarding the businesses of so-called electronic shopping malls, which constitute one form of electronic commerce for consumers (hereinafter referred to as “B2C E-commerce”), the JFTC surveyed (i) transactions between operators of so-called electronic shopping malls and entrepreneurs running shops (“shop owners”) in such malls, and (ii) the relationships between entrepreneurs aspiring to enter and develop their business in the B2C E-commerce field and existing entrepreneurs. Subsequently, the JFTC published its opinions under competition policy and the Antimonopoly Act (AMA).

The features of the market

5. The B2C E-commerce business, whose scale is expanding yearly, is conducted by entrepreneurs opening virtual shops on the Internet, operators managing virtual shopping malls that are composed of virtual shops on the Internet and consumers. The existence of B2C E-commerce is important, for example, because the expansion of sales channels and an increase in sales are advantages for shop owners and the

wide selection of goods and the low prices are merits for consumers. The B2C E-commerce transactions are concentrated in the top three operators.

6. While the scale of operation of the top three operators is large, smaller entrepreneurs account for a large share of shop owners. In addition, as the top three operators dominate transactions, shop owners depend very heavily on electronic shopping mall transactions in general and sometimes have difficulty changing business partner operators. Hence, there is an operator that holds a dominant bargaining position in dealing with its shop owners among the top three operators.

Evaluation viewed from competition policy

7. Based on the survey findings, the JFTC showed the perspective of the AMA on transactions between operators and shop owners, including the following points: (1) restrictions on business activities including sending direct mails, (2) the unilateral change of commission rate, (3) the imposition of bearing excessive funds for reward systems, and (4) the obligatory use of a card transaction service offered by operators. In addition, the JFTC pointed out that such acts by operators might pose problems with the AMA. Based on its survey findings, the JFTC also suggested that related entrepreneurs involving operators need to improve the B2C E-commerce business overall, including to inspect trade practices and to review restrictive practices on competition.

2.2 *Media*

2.2.1 *Fact-finding Survey on Transactions in the Advertising Industry (published in November 2005)*

8. The Japanese advertising trade is conducted mainly by advertising companies, media companies (television stations, newspaper publishers, etc) and advertisers. Problems such as the lack of transparency in the advertising space trade (trade by advertising companies involving the selling of the advertising space of television stations, newspaper publishers, etc. to advertisers) have been identified by small and medium-sized advertising companies. Given this situation, the JFTC presented its viewpoint of these problems based on competition policy, while also illustrating current conditions and problem areas in the structure and trade practices of the advertising industry, with a focus on the advertising space trade of television and newspapers, which were the major forms of media.

The features of the market

9. The market structure of advertising companies is polarized into major advertising companies and other small and medium-sized advertising companies, and the total share of the top three companies is increasing. In the advertising space trade, the commission system is the major system used by media companies (television stations, newspaper publishers, etc) to pay a reward to advertising companies.

Evaluation viewed from competition policy

10. As results of the survey, the JFTC highlighted the trade practices of the advertising industry, including the following points: (1) in the television advertising (program commercials) trade, television stations are not disclosing necessary information enough, therefore it is very difficult for new advertising companies to enter the trade; and (2) in the television advertising (spot commercials) trade, disparities in the reward payments among advertising companies (maximum of 20%) result in differences in the price competitiveness of advertising companies. Furthermore, based on the survey findings, the JFTC issued some proposals from the standpoint of promoting fair and free competition, including (1) to further disclose information concerning the program commercial trade, (2) to establish standards for calculating the rate of reward payments for advertising companies and (3) to improve trade practices among media companies, advertising companies and advertisers.

2.3 OSs for PCs

2.3.1 Case against Microsoft Corporation (hearing decision issued on 16 September 2008)¹

The features of the market

11. Microsoft Corporation (hereinafter referred to as “Microsoft”) has a dominant position in the market of PC OSs. In the year 2000, the PC OS, named “Windows” and owned by Microsoft, represented 90% of all PC OSs worldwide and this percentage was increasing yearly. Obtaining a license for OEM sales of Windows was indispensable for PC manufacturers in order to continue in the business of manufacturing and selling PCs.

Outline of violations

12. When executing licensing agreements for OEM sales of Windows, Microsoft forced licensed PC manufacturers to execute agreements containing a clause according to which they agreed not to initiate any lawsuit against Microsoft or any other licensee arising out of any infringement of the patent rights for the relevant PC OS, and did business with OEMs on terms that unjustly restricted their business activities.

13. The JFTC found these actions may adversely affect the fair competitive environment in the PC AV technology market and they tend to impede fair competition, fall within Section 13 (Trading on Restrictive Terms) of the “Designation of Unfair Trade Practices”, and are in violation of the provisions of Article 19 of the AMA. Therefore, the JFTC issued a hearing decision against Microsoft.

2.4 Video Game Consoles

2.4.1 Case against Sony Computer Entertainment Inc. (hearing decision issued on 1 August 2001)

The features of the market

14. Sony Computer Entertainment Inc (hereinafter referred to as “SCE”)’s shipment values in 1996 for sales of game consoles and game software attained first place in the market. As a game software seller, SCE was the dominant supplier of software for PlayStation (hereinafter referred to as “PS Software”), a home video game console sold by SCE. Consumers had high expectations of PS products as Sony, one of the joint investors in SCE, had its own brand power as an electronic manufacturer. In addition, as people already knew that certain predominant game software manufacturers would launch the development and production of new PS software, there was a growing recognition among video game console sellers that carrying PS products was advantageous for doing business or necessary for their assortment planning.

Outline of violations

- SCE forced retailers to provide new PS software to consumer at recommended retail prices in principle, and made wholesalers provide PS Software to customer retailers at recommended retail prices in principle.
- SCE forced retailers to provide PS software to only general consumers, and made wholesalers provide PS software to only retailers as well as made such retailers provide PS software to only general consumers.

¹ <http://www.jftc.go.jp/e-page/pressreleases/2008/September/080918.pdf>

15. The JFTC found these acts to be in violation of the provisions of Article 19 of the AMA (falling within Section 12 (Resale Price Restriction) and 13 (Trading on Restrictive Terms) of the “Designation of Unfair Trade Practices”) and issued a hearing decision against SCE.

2.5 *Newspapers*

2.5.1 *Case against Hokkaido Shimbun Press (Consent decision issued on 28 February 2000)*

The features of the market

16. Hokkaido Shimbun Press published a general daily newspaper in Hokkaido. Their newspaper issues accounted for over half of the morning newspaper issues in the Hokkaido area, as well as the majority of the total issues of general daily newspaper publications in the Hakodate area.

Outline of violations

17. When Hakodate Shimbun tried to enter the evening newspaper market in the Hakodate area, Hokkaido Shimbun carried out the following actions:

- filing applications for trademark registrations of newspaper title lettering considered to be used by Hakodate Shimbun;
- implicitly pressuring Jiji Press Co. not to agree with news distribution requests from Hakodate Shimbun; and
- lowering the rate for advertising fees in the local information edition (e.g. to bring down the fee for inserting basic advertisements in the local information edition to half the price of the main edition of the newspaper) with the intention of making it difficult for Hakodate Shimbun to acquire and assemble advertisements.

18. Through these acts, Hokkaido Shimbun excluded Hakodate Shimbun activities and substantially restricted competition in general daily newspaper operations in the Hakodate area.

19. The JFTC issued a recommendation against Hokkaido Shimbun as these acts violated provisions of Article 3 (Private Monopolization) of the AMA. Hokkaido Shimbun appealed for a hearing procedure against this recommendation but later accepted the consent decision. The JFTC then issued the decision without the later hearing procedures.

3. **Competition Policy Research Center studies**

20. The CPRC recognizes that the issue of two-sided markets has aroused public notice recently, and conducts collaborative research related to two-sided markets.

3.1 *Platform Competition and Vertical Restraints -Based on an Analysis of the Sony Computer Entertainment Case-² (published on 31 March 2009)*

21. In this study, the authors focus on a case of resale price maintenance by Sony Computer Entertainment (SCE) (2(4) above). They explain the background and the decision in the SCE case in detail.

² Tamada, Ishida, Yamagata, Yokota, Uno (CPRC Report 05-08, 2009.3.31) (available at <http://www.jftc.go.jp/cprc/english/reports.html>)

Then, on the basis of the background of the case, they aimed to make it clear how the resale price maintenance by the platform can be evaluated based on economic theory and to analyze the meaning of the behavior from the viewpoint of competition policy.

3.1.2 *Summary of the report*

22. The platform typically faces two-sided markets in which usages by customers from each side create cross-group network externalities, and the benefits enjoyed by a customer of one side depends upon how well the platform does in attracting customers of the other side. So far, the central topic of economic analysis concerning the platform and the two-sided markets was the elucidation of the price structure that the platform assigns on each side. Typically, the optimum price structure has a property that the platform assigns a low price on one side in order to enlarge the size of the customer group and assigns a high price on the other side to treat it as the profit center. In addition, because this price structure internalizes the network externality across both sides, there is no big inconsistency with economic welfare. However, there are only a few studies that concern the vertical restriction by the platform.

23. The decision in the SCE case has not been conscious of the role of the videogame as a platform explicitly from the viewpoint of a two-sided market. Considering the circumstances of the videogame market of that time, however, the distribution policy adopted by SCE was considered to be based on the following three purposes: (1) prevention of price falling of the software, (2) reduction of the demand uncertainty risk faced by game developers and retailers and (3) reduction of the distribution margins. In this study, the authors conduct economics analyses on these three issues.

24. As results, this study suggests that the resale price maintenance by the platform can internalize the network externalities, which may result in an increase of economic welfare on theoretical grounds. It is also suggested that analyzing two-sided markets in view of the externalities is important. The competition policy challenge for the future is to verify which of the likelihoods proposed in this study is the most likely scenario that is consistent with the reality.

3.2 *“Economic analysis on two-sided markets”*

25. This study, one of the collaborative research projects begun in FY 2008, is conducted with the aim of providing a suggestion on what competition policy should be in two-sided markets and platform businesses, through a case study of the magazine market in Japan.

26. More specifically, while estimating the price elasticity of the demand function in the magazine and advertisement market, CPRC researchers are analyzing the importance of indirect network effects in the magazine and advertisement industry, which is currently suffering from a decline in sales, and assessing the competitive effects of hypothetical mergers by using simulation methods.

27. The report of this study is scheduled to be published in 2009.