

Presentation by Commissioner Fumio Sensui

The Asia Competition Association Annual Conference 2023

November 5, 2023

1. Introduction

Good morning, everyone.

I joined the JFTC as a Commissioner in April 2023. Before that, as some of you may know, I was a scholar of competition law. Today, we also have many antitrust academics, here in this room. As one of them, Professor Shingo Seryo of Doshisha University, who is in charge of organizing this conference, is a long-time friend of mine. So, I am very delighted to have this opportunity to speak as a Commissioner of the competition authority at this ACA Kyoto conference, in which not only practitioners but also many academics participate.

Today, I would like to introduce the JFTC's recent activities, starting from its recent law enforcement, followed by its advocacy activities, which are as important as strict law enforcement, and lastly, our efforts for smooth price pass-through and initiatives for innovation.

2. Recent Law Enforcement

First, let me talk about the most recent enforcement of the Antimonopoly Act. In the last fiscal year, from April 2022 to

March 2023, as a result of investigations into suspected antitrust cases, the JFTC took 11 legal measures. One of them are the cease and desist orders and surcharge payment orders against market division cartel in the electricity retail sector. Another one is the approval of commitment plans regarding MFN clauses by Expedia and Booking.com. The JFTC issued surcharge payment orders totaling approximately 102 billion yen.

As for the market division cartels in the electricity retail sector, six companies, including former general electric utilities, agreed to mutually restrain competition for customers in other parties' service areas, in order to avoid competition with other general electric utilities and secure their own profits. They thereby maintained or raised the level of electricity rates in their service areas.

In addition, regarding Tokyo Olympic and Paralympic Games held in 2021, we filed criminal accusation with the Prosecutor General against bid rigging related to the outsourcing contracts of planning test events and so on. In this case, seven companies, such as ad agencies, agreed to fix the predetermined winners for outsourcing contracts of planning test events, etc. and in accordance with the agreement, they nominated the

predetermined winners. A criminal trial is currently underway.

As for the merger review, we received 306 prior notifications of mergers last year, and conducted necessary review on these cases. Regarding the acquisition of Activision Blizzard Inc. by Microsoft cooperation, which is an international case in the digital fields, we made a decision in this March. The reason for the clearance of the case may be due to the fact that there are some competent competitors such as Nintendo, and shooter games are not very popular in Japan. In addition, we solicited comments on the integration of Adobe and Figma, and the review process is underway.

With regard to the enforcement of the Subcontract Act, in the last fiscal year, the JFTC made six recommendations and handled one voluntarily reported case equivalent to a recommendation. In addition, the JFTC provided administrative guidance on 8665 cases, which is a record high. A total of approximately one billion, one-hundred and 35 million yen worth of restitution was carried out with regard to the disadvantages suffered by subcontractors. As Subcontract Act and the Abuse of Superior Bargaining Position have strong relation to the efforts for Smooth Price Pass-Through, let me refer to it later again.

3. Importance of Advocacy Activities

These are the overview of our enforcement and let me turn to the other side, advocacy.

The JFTC is also focusing on advocacy activities that have the same importance as the strict enforcement of the Antimonopoly Act. We are promoting fair and free competition by both enforcement, which aims to restore competition through strictly implementing the Antimonopoly Act, and advocacy, which aims to improve the competitive environment, as two wheels of a cart.

Our advocacy activities cover various fields, and today, I would like to focus on our efforts in the digital and sustainability fields.

(1) Digital Field

In the digital field, we have been conducting market studies on various topics and have contributed to the development of rules throughout the government. Recently, for example, we published the report regarding Cloud Services in June last year.

In February this year, we compiled the results of the market study on Mobile OS and Mobile App Distribution. The results are utilized by Headquarters for Digital Market Competition in compiling their Final Report on Competition Assessment of the Mobile Ecosystem in June.

The JFTC's study illustrated that, in Japan, the smartphone operating system and app store are dominated by two companies, Apple and Google, and there is no competitive pressure.

This situation has led to the problems under the Antimonopoly Act, particularly in the app market and other adjacent markets, such as restrictions on payment and billing systems, restrictions on app distribution, self-preferencing, and exclusion of competitors. On the other hand, the enforcement of the Antimonopoly Act faces challenges such that it takes certain time to prove violations. Therefore, in order to complement ex-post law enforcement, we clarified that it is effective to implement legal systems including ex-ante regulations to the extent necessary. Going forward, Headquarters for Digital Market Competition will be conducting concrete studies on the necessary legal systems, and we will continue to actively participate in these discussions.

We conducted another market study in the digital field, and published Market Study Report on News Content Distribution in September this year.

With regard to transactions between news media operators and news platform operators, the JFTC's previous market study in 2021 clearly stated that, with regard to license fees for use of

news content and ranking on search results, defining transaction terms and conditions and having appropriate negotiations between the two sides are desirable from the viewpoint of competition policy. However, our hearings revealed that no substantial improvement has been made on these issues. Based on this situation, the purpose of this study was to make more effective proposals.

In this study, we clarified the actual status of transactions, including the average license fees, and made it clear the issues related to news portals. For example, it can be problematic under the Antimonopoly Act to determine remarkably low license fees by unilaterally changing contracts, and we pointed out it is encouraged to disclose the basis of the license fee levels to the media for the negotiation. We also clarified what actions are problematic or not, as ways of jointly negotiating for terms and conditions of transactions.

After the release of this report, Yahoo Japan, which is the top payers of license fees among Japanese news portal operators, announced that it would make serious efforts based on this report. Such efforts include enhancing and disclosing necessary data, such as content performance, and reviewing contract content in accordance with the performance. The JFTC will continue to monitor the progress of the efforts by the relevant

enterprises while communicating with them, so that both sides proceed with their efforts to resolve issues through negotiations between them.

We are also conducting a market study on connected TV-related areas. Furthermore, we would like to keep a close eye on generative AI, in terms of whether there are any problems under the competition policy, while paying full attention to the direction of its innovation, such as in which business areas and what kind of business models generative AI develops.

As for the digital field, in addition to conducting market studies and policy making such as institutional designs, we are also investigating cases as a matter of course. Other than cases on Expedia and Booking.com and the mergers of Microsoft and Activision as I mentioned earlier, there are also cases such as the case against Apple Inc., which was suspected of mandating in-app purchase and imposing high fees, and the case about Amazon Japan, which unjustly requested suppliers to reduce the price or provide money. This case was dealt with under the commitment procedure.

In addition, on October 25th, we announced the start of an investigation of Google's alleged violations of the Antimonopoly Act. We opened the investigation on the grounds that Google has

been suspected of restricting the business activities of competitors or counterparties. It entered into agreements with Android mobile device manufacturers on condition that they install Google Play on Android devices together with Google's applications such as Google Search. We are currently seeking information and comments from third parties.

(2) "Sustainability" Area

Then, I turn to the sustainability issue.

At the end of March this year, we published so-called Green Guidelines. The exact title is "Guidelines Concerning the Activities of Enterprises, etc. Toward the Realization of a Green Society Under the Antimonopoly Act," The purpose of these Guidelines is to support the efforts of companies for the realization of a green society by preventing anticompetitive conduct that lead to the loss of innovation and further improving both transparency and predictability of the application of the Antimonopoly Act for businesses. For this purpose, these Guidelines are meant to be comprehensive by showing 76 hypothetical cases, consisting of joint activities, unilateral conducts and mergers. In the future, we will actively respond to consultations from businesses in accordance with their specific initiatives and needs, and we will continuously review these Guidelines.

About Green related markets, we released the Market Study Report on the Electric Vehicle (EV) Charging Service on Expressways in July 2023. At the background of the study, the Japanese government declared that it aims to achieve carbon neutrality by 2050 and this aim is expected to expand the EV charging service market rapidly. We therefore believe it is important to realize a green society under fair and free competition through the promotion of new entrants and innovation in this market.

Furthermore, we released the Market Study Report on the Recycling of Used Plastic Bottles in October 2023.

The recycling rate of used plastic bottles in Japan reached about 86%. And the distribution channels are changing and diversifying, such as a growing initiative called “Bottle-to-Bottle.” It means those bottles are recycled back into plastic bottles. Therefore, we conducted the survey on the transactions related to the recycling of used plastic bottles, and presented four points of view on competition policy for supporting efforts to realize the green society.

First, about two-thirds of the bottles discharged from households and collected by municipalities are handed over through bids to recyclers selected by the JCPRA, (short for

Japan Containers and Packaging Recycling Association). Therefore, the report pointed out that it is desirable for the JCPRA to conduct constant examination of the bidding system to promote competition among recyclers.

Second, when municipalities independently select recyclers, many of them tend to enter into private contracts with recyclers. We conducted the economic analysis and found that delivery prices tend to be higher when the contracts are concluded through competitive biddings. We pointed out that it is desirable for municipalities to constantly examine the contract method, with regard to whether competitive biddings are preferable to private contracts.

Thirdly, we pointed out that it is expected to promote recycling efforts through market mechanisms for the bottles discharged by enterprises.

Fourth, we pointed out that it is desirable from the perspective of competition policy for individual consumers to discharge the bottles in ways that enhance their value as resources, such as washing and removing labels.

In this way, the Antimonopoly Act and competition policy indirectly contribute to the realization of a green society through promoting competition among companies by encouraging the efficient use of resources and triggering innovation such as new technologies. The JFTC will continue to implement initiatives

which aim at encouraging the realization of a green society.

These advocacy activities of the JFTC in the field were selected as the “Winner” in this year's "Advocacy Contest" by the International Competition Network and the World Bank Group. The Advocacy Contest is an annual contest that focuses on the successful advocacy efforts of competition authorities. It is a great pleasure that the JFTC has been recognized highly for taking the multi-pronged approach to GX (Green Transformation), not only by the formulation of the Guidelines, but also through the consultation and the implementation of market studies.

4. Efforts to Smooth Price “Pass-through” (Related to Protection of Small and Medium-sized Enterprises)

Next, I would like to talk about "Efforts to Smooth Price “Pass-through”."

It has become an urgent issue for the government as a whole to enable SMEs (small and medium enterprises) to appropriately pass through additional labor costs, raw material costs, energy costs and to develop environment which enables to increase wages. We have been working to realize a trade environment in which SMEs and subcontractors can appropriately pass on the rising costs of labor, raw material and energy to earn fair profits and secure funds for wage increases.

For example, over the past year, we have made efforts with an unprecedented scale in studying industries suspected of having a high number of cases about “the Abuse of superior bargaining position” under the Antimonopoly Act and “Unjust setting of low transaction price” under the Subcontract Act. In the study, we have focused on three pillars: Emergency Survey regarding the abuse of Superior Bargaining Position under the Antimonopoly Act, Implementation of on-site Investigations under the Subcontract Act, and Requests for self-inspections by relevant trade associations. At the end of last year, we compiled the results of the Emergency Survey, and issued letters of warning to 4,030 enterprises whose conducts were found to have the potential to lead to problems. We also published the names of 13 enterprises that were confirmed to have kept their prices unchanged without consultation for a large number of their business partners.

This year, we intend to continue to vigorously pursue further efforts, and we are strengthening our efforts for Smooth Price “Pass-through”.

5. Initiatives for “Innovation”

Finally, I would like to talk about “Innovation.” Innovation is essential for sustained economic growth as it leads to the

creation of innovative products and services as well as new markets. It is an important and contemporary policy agenda to ensure a competitive environment that can promote innovation. As digitalization progresses, market monopolization, oligopolization, and entrenchment by digital platforms should not reduce the dynamism of competition. To this end, we launched “The Study Group on Innovation and Competition Policy” to theoretically and systematically explore the mechanisms by which business conducts such as mergers affect innovation.

This panel compiled an interim report focusing on economic theory in June this year. We recently reopened the Study Group and decided to deepen further necessary deliberations. Through this process, we hope to gain new knowledge and insights into the impact of mergers and business alliances on innovation and future competition.

6. Summary

This concludes the overview of our recent activities.

Finally, in addition to actively disseminating our activities and ideas at gatherings like this ACA Conference in Kyoto, it is also important to cooperate with foreign competition authorities to exchange information and experiences. We not only cooperate on international mergers and other issues but also exchange

opinions with foreign competition authorities when we conducted the market studies in the digital field I explained earlier.

Based on the recognition that the need for international cooperation among competition authorities is ever-increasing, we would like to further expand our activities while collaborating with other countries, striving to vitalize markets and contribute to rule-making.

Thank you for your attention.