

## **Statement of Commissioner Reiko Aoki**

### **USC Competition Law Conference**

**May 18, 2023**

Thank you very much for inviting me to the USC Competition Law Conference. It's a great honor to deliver the keynote speech. Today, I would like to introduce Japan Fair Trade Commission's (JFTC's) recent initiatives in the areas of Tech (digital) and Green.

Needless to say, various innovative products and services have been produced by Tech companies. The speed of such development has been remarkably fast, and for example, recently, generated AI has become a hot topic worldwide in a very short period of time.

To respond to the rapidly developing reality of the Tech field, competition authorities around the world are making much progress in competition law enforcement and competition policies in the Tech (digital) sector, and today I would like to introduce some of the JFTC's recent initiatives.

In addition to tackling individual cases of anticompetitive practices and mergers, the JFTC has been contributing to the Japanese government's consideration of appropriate rules by actively conducting various market studies regarding competition concerns in the digital sector and making proposals for the development of rules.

Since 2021, regarding digital sector, there were three investigation cases in which the JFTC approved commitment plans, and other three cases in which the JFTC completed investigations after we had confirmed voluntary corrective measures submitted by business operators.

As the speed of technological change in the digital field is very fast, it is important to quickly restore the competitive environment through law enforcement. Therefore, JFTC conducts enforcement flexibly in accordance with each case by not relying solely on cease and desist orders

but also using a variety of enforcement measures, such as an approval of commitment plan, through communication with business operators.

Let me show you some actual cases. (i) In Booking.com and Expedia cases, they were suspected of engaging in trading on restrictive terms by imposing parity clauses on accommodation operators. The JFTC closed these cases by approving commitment plans proposed by them. (ii) In Apple case, when operating App Store, Apple was suspected of restricting the business activities of app developers by prohibiting them from navigating to external websites. the JFTC decided to close its investigation after Apple had offered corrective measures that allow developers to include in-app links to their websites for reader apps and revise the App Store Review Guidelines. (iii) As for the case where a Japanese digital platform operator, the Rakuten Group, a Japanese digital platform operator, which operates online shopping malls, was suspected of forcing businesses opening a store in Rakuten's online malls to accept the free shipping terms, the JFTC closed its investigation after confirming that the company had implemented voluntary corrective measures.

In merger cases, to conduct quick and accurate merger reviews for cases in the digital sector where market conditions are complicated and rapidly changing and the future competitive environment is difficult to foresee, the JFTC seeks to obtain information and opinions from third parties even from the initial stage of the investigation, if necessary, and to actively request the companies to submit their internal documents.

In March of this year, we made public the results of the merger review of Microsoft Corporation and Activision Blizzard Inc. After publicly requesting information and opinions from third parties and considering the information and opinions the JFTC received, the JFTC concluded that this merger did not substantially restrain competition and completed the review. In addition, we are currently investigating the impact of the merger between Adobe Inc. and Figma Inc. on competition, and we sought information and opinions from third parties from the beginning of April to the beginning of May.

Like these cases, the JFTC has been conducting effective merger reviews in the digital field, actively gathering information and opinions from third parties as necessary.

In addition to law enforcement, the JFTC actively engages in advocacy activities to improve the competitive environment. Last year, the JFTC made it clear in the statement that it would advance cooperation and strengthening of advocacy and enforcement. And as the JFTC conducts advocacy initiatives in various areas, today I would like to introduce some of the recent market studies on the digital sector.

In June last year, we published the survey report on the results of a survey regarding trade practices in the cloud service sector. In this report, (i) first, we conducted a detailed analysis of the characteristics of the cloud services market and evaluated that market concentration will continue and that the market is likely to change to a non-competitive structure in the future. (ii) Second, we summarized the measures that should be made by both cloud providers and users to prevent adverse effects that may be caused by the concentration of market share in cloud services, and to realize fairness and transparency in transactions.

In February of this year, we also compiled and published a market study report on mobile OS and mobile app distribution. This report points out that the market for smartphone operating systems and app stores is dominated by two companies, Apple and Google, and thus there is no competitive pressure on them, and that such a position can be used to self-preferencing and other conducts that could be problem under competition law. Based on this, the report identifies desirable measures in terms of competition policy, such as preventing self-preferencing in the app market and other smartphone-related markets, and ensuring a healthy competitive environment in the mobile OS market and the app distribution services market, such as promoting consumer switching and the entry of new mobile OS and app stores. Based on the results of this study as well, the Japanese government is expected to consider the rules for digital sector. The JFTC will continue to actively contribute to discussions in the Japanese government.

In addition, I would like to introduce some ongoing market studies.

First, since November last year, we have been conducting a market study on news content distribution. As a background to the implementation of this survey, in the report of the market study on transactions in the field of digital advertising, which was released in February 2021, we clarified that, in terms of competition policy, it is desirable to clarify the terms and conditions of transactions between news platforms and news media and to conduct appropriate negotiations between the parties with regard to the distribution fees of news content and the order of display on search sites. However, a subsequent hearing survey of news media did not show any improvement on the issues identified in the report. Therefore, we are conducting a market study with the aim of taking more effective measures to resolve the issues.

Second, since March of this year, we have launched a survey covering connected TV related areas. When it comes to video distribution services through so-called "connected TVs," such as smart TVs with Internet connection functions and streaming devices for connecting TVs to the Internet, we can see a layer structure that contains devices, TV operating systems, video distribution services, and video content. And, in particular, there are concerns about the growing dominance of global platform operators providing TV operating systems. Thus, we are conducting the survey on the reality of transactions and competition in the connected TV-related field, including whether competition policy issues have arisen, for example, TV operating system providers, using their position to provide TV operating systems, manipulate rankings and recommendations on home screen to lead consumers to choose the content they distribute or unilaterally change their terms and conditions to charge significantly higher fees.

Next, I would like to talk about our efforts to realize a green society. This is one of our recent priorities other than the Tech areas.

At the end of March, this year, JFTC announced its Green Guidelines ("Guidelines Concerning the Activities of Enterprises, etc. Toward the Realization of a Green Society Under the Antimonopoly Act").

The Japanese government has announced its greenhouse gas reduction targets for 2050, and it is expected that the efforts of companies to realize decarbonization will be in earnest in the very near future. So, JFTC promptly formulated these guidelines with the aim of preventing anticompetitive practices that could lead to a loss of innovation in new technologies and other areas, as well as to further improve transparency and predictability in the application and enforcement of the competition law, thereby encouraging businesses and other entities to make efforts toward the transition to a "green society".

The Guidelines was made as a comprehensive one that provides 76 hypothetical examples with an explanation of our thinking, and it covers all types of conduct, including not only agreements and concerted practices but also unilateral conducts and mergers.

In addition, the JFTC has set up specialized contact points to respond to specific consultation from companies, and indicated a policy of open-door and flexible approach such as providing proactive consultation in response to moves of the companies to decarbonize their businesses.

In addition, JFTC is also actively conducting market studies regarding the green sector.

From February this year, we are conducting a market study on the recycling of used plastic bottles. In Japan, the majority of transactions involving used plastic bottles, which were previously considered waste, are now being traded for a fee, which has led to a diversification of distribution methods and increased trading activities. However, the actual circumstances of such transactions and the state of recycling practices bottles are not necessarily clear, so we are conducting the survey to understand competitive conditions. Although we are not conducting the survey having any specific concerns in mind, if we find problems from competition policy viewpoints, we would like to present our views on competition policy to ensure a fair and free trading environment and also to make recommendations from the perspective of competition policy to support the SDGs efforts.

Furthermore, last month (April), we launched a survey on electric vehicle (EV) charging services on expressways. EV charging service market is expected to grow rapidly in the coming years, and the market environment is also expected to undergo significant changes, including related regulations. So, the JFTC believes it is important to make proactive recommendations to improve the competition environment, based on a prompt and accurate assessment of the competitive situation.

In particular, from the perspective of the spread of EV, it is important to first dispel concerns about EV charging for long-distance travel, such as expressway travel, so the JFTC is conducting a survey regarding EV charging services on expressways.

Again, the survey is not conducted with specific concerns in mind, but if any problem is found in transactions related to EV charging services as a result of the survey, we will point them out and present our views on these issues from the standpoint of the Antimonopoly Act and competition policy, and make recommendations on them. Thereby, we aim to promote fair and free competition by encouraging new entrants and promoting innovation in the development of charging infrastructure, and also to support the realization of a green society from the perspective of competition policy.

There are active discussions on sustainability in various countries and regions around the world, the JFTC would like to continue cooperation with global competition authorities to realize a green society.

Let me close my keynote speech, although I used this valuable time as a promotion of JFTC's recent initiatives.

I know, today and tomorrow, there will be discussions on a wide range of topics: merger enforcement, ESG and competition, labor issues, antitrust and IP, finance and competition, and Tech regulation and litigation. I sincerely look forward to listening to lively discussions from all of you who are active on the cutting edge of your field. Thank you very much.