

Hearing Decision Against Sony Music Entertainment (Japan) Inc. and
Three Other Corporations (Hearing on Case Against Song Ringtone Providers)
(Tentative Translation)

July 28, 2008
Japan Fair Trade Commission

The Japan Fair Trade Commission (JFTC) decided on April 26, 2005 to commence the hearing against Sony Music Entertainment (Japan) Inc.(hereinafter referred to as the “ Respondent SME ”), Avex Marketing Inc., Victor Entertainment, Inc., and Universal Music K.K., (these four corporations are hereinafter referred to as the “ Respondents ”) and subsequently instructed the hearing examiners to go through the hearing procedures. On July 24, 2008, the JFTC issued a hearing decision against the Respondents in accordance with the provision under Paragraph 1, Article 54 of the Antimonopoly Act before amendment by Law No. 35 of 2005.

Outlines of the Respondents are as follows:

1. Outline of the Respondents

Entrepreneur	Address	Representative
Sony Music Entertainment (Japan) Inc.	4-5, Rokubancho, Chiyoda-ku, Tokyo	Naoki Kitagawa
Avex Marketing Inc.	1-30, Minami-aoyama 3-chome, Minato-ku, Tokyo	Takashi Araki
Victor Entertainment, Inc.	21-1, Jingumae 2-chome, Shibuya-ku, Tokyo	Yuichi Kato
Universal Music K.K.	5-30, Akasaka 8-chome, Minato-ku, Tokyo	Keiichi Ishizaka

2. Progress

March 24, 2005	Recommendation (Recommendation No. 3 of 2005 against the Respondents ^(Note 1) and Toshiba-EMI Ltd. ^(Note 2))
April 26	Decision to commence the hearing (for the Respondents)
June 22	The first hearing
April 11, 2007	The 11 th hearing (closing of hearing procedures)
May 28, 2008	Service of the draft decision to the Respondents
June 11	Deadline of objection or direct statement application from the Respondents
July 8	Direct statement hearing
July 24	Hearing Decision

(Note 1) Among the Respondents, Avex Network Inc., which was a respondent

when commencement of hearing was decided was, on April 1, 2007, merged into Avex Marketing Inc., which is the current respondent.

(Note 2) Toshiba-EMI Ltd. accepted the recommendation and received a decision with the same purpose as the recommendation on April 26, 2005.

The Respondents and Toshiba-EMI Ltd. are hereinafter collectively referred to as the “ Five Companies ” .

3. Outline of the Decision

(1) Progress

Five Companies entrust Label Mobile Inc. (hereinafter referred to as “Label Mobile”), which was established jointly by the Five Companies, with the music distribution business to enable setting of a part of singing voice or the like of performers in a master recording as the ringtone of mobile phones (hereinafter referred to as the “Song Ringtone Provision Service”). On the other hand, they do not grant to other song ringtone providers the license to enable partial transmission of performers’ singing voice or the like in a master recording (hereinafter referred to as the “Master Right”)^(Note 3).

(Note 3) The Respondent SME has its subsidiaries holding the Master Rights refuse to grant such license.

(2) Outline of the violation

Concerted action of the Respondents (Five Companies in concert before April 26, 2005 approximately) to stop licensing the Master Right to other song ringtone providers falls under the provision of Item 1, Paragraph 1 of Unfair Trade Practices (Designation of Japan Fair Trade Commission No. 15, 1982) and is in violation of the provision under Article 19 of the Antimonopoly Act.

(3) Outline of the principal text

A. The Respondents shall stop the action described in (2) above.

B. Each of the Respondents shall notify the following matters to the three other companies among the Respondents and Toshiba-EMI Ltd. as well as Label Mobile and have them disseminated among its employees and other song ringtone providers. The method of such notification and dissemination shall be approved in advance by JFTC.

(a) Measures taken on the basis of A. above;

(b) The conclusion that it will not take any action similar to that in (2) above and each of the Respondents will respectively and independently decide whether to license the Master Right^(Note 4);

C. The Respondents shall respectively and independently decide whether to license the Master Right^(Note 4) in future.

D. The Respondents shall, to avoid any action similar to that described in (2) above, respectively take necessary measures for training their staffs in charge of licensing of the Master Rights about the Antimonopoly Act based on the guidelines concerning compliance with the Act and periodic audit by legal staffs in future.

(Note 4) In case of the Respondent SME, this text should read “ whether to have its subsidiaries license the right ” .

(4) Issues

A. Whether the Five Companies refused to grant a license in concert (Whether they were in concert or not)

B. Necessity of the measures

(5) Judgment on the issues

A. Whether the Five Companies refused to grant a license in concert (whether they were in concert or not)

For refusal to grant a license by the Five Companies, there is no direct evidence that they had communications of intention clearly among them. However, (1) the fact that they entrusted the Song Ringtone Provision Service to Label Mobile, which they jointly established and managed, but granted a license substantially to no other song ringtone provider when other providers requested a license to use the relevant songs as well as the response by the Five Companies to such request, (2) Backgrounds and motive when they started the Song Ringtone Provision Service through Label Mobile and (3) Affiliation strategy at Label Mobile they were studying ^(Note 5) can be considered. Based on these indirect facts comprehensively, it is supposed that, among these Five Companies, each company refused to license upon request from other song ringtone providers while recognizing and accepting one another that the four other companies would also refuse such request. It can be judged that there was communications of intention among the Five Companies to refuse to license in concert.

(Note 5) Upon request from other song ringtone providers for licensing, they will not grant a license, but guide the user who wants to download the applicable piece from the website of the other song ringtone provider to the Label Mobile website by affiliation.

Affiliation generally means a method to link a website with another corporation site so that the viewer can purchase goods or the like from such other corporation website via the link.

B. Necessity of Measures

The Respondents have refused to license in concert as described in A. above and they are not found to have taken any action to clarify their cessation of such refusal in concert publicly so far. In addition, no circumstances by which to ascertain that they have started such licensing can be found. It should be judged that the above action by the Respondents is still continuing. Therefore, for avoidance of such refusal, it is appropriate to issue orders as described in the principal text as necessary measures.