

The Guidelines for Exclusionary Private Monopolization under the Antimonopoly Act

Exclusionary Private Monopolization

Excluding the business activities of other entrepreneurs, thereby causing, contrary to public interest, a substantial restraint of competition in any particular field of trade.

Part I. Enforcement Policy of the JFTC

✓ The JFTC will prioritize investigation of the following cases:

The share of the product exceeds about 50%

and where the conduct is deemed to have a serious impact on the lives of the citizenry

- The entrepreneurs concerned in past cases had large market share.
- Where the share is large, its conduct would be effective in foreclosing the market.

- Even if a case does not meet these criteria, the JFTC would investigate, when appropriate.
- Where the conduct is not found to fall under Exclusionary Private Monopolization, it may fall under Unfair Trade Practices.

Part II. Exclusionary Conduct

Typical Conducts

(1) Below-cost Pricing

Setting a product price below the cost that would not be generated unless the product was supplied

(2) Exclusive Dealing (including Exclusive Rebate-giving)

Dealing with the trade partners on the condition of prohibition or restraint of transactions with the competitors

(3) Tying

Supplying (or purchasing) one product only on the condition that the trade partners also purchase (or supply) another product

(4) Refusal to Supply and Discriminatory Treatment

Refusing to supply or applying discriminatory treatment beyond reasonable degree concerning a product necessary for the trading customers to carry out business activities in the downstream market

The JFTC will comprehensively consider the following factors to assess whether or not the alleged conduct falls under Exclusionary Conduct

- Conditions of the entire market of the product
- Positions of the alleged entrepreneur and the competitors in the market
- Period of the conduct
- Conditions of the conduct etc.

✳️ Nontypical conduct may fall under Exclusionary Conduct

E.g., Setting a price exclusively either in the sales territory where an entrepreneur competes with others or for customers, for whom an entrepreneur competes with others, or interfering with the business activities of other entrepreneurs

Part III. Substantial Restraint of Competition in Any Particular Field of Trade

A Particular Field of Trade

The scope influenced by Exclusionary Conduct

The JFTC will consider the scope of products and/or the geographical scope, as necessary.

Substantial Restraint of Competition

This requirement is interpreted to mean that the state of market control is established, maintained, or strengthened

The JFTC will comprehensively consider the following factors:

- Position of the alleged entrepreneur and the conditions of the competitors
- Potential competitive pressure
- Users' countervailing bargaining power
- Efficiency
- Extraordinary circumstances to assure consumer interests