

Factors for Assessing Whether Conduct Falls under Exclusionary Conduct

- Exclusionary Conduct refers to various conducts that would cause difficulty for other entrepreneurs to continue their business activities or for new market entrants to commence their business activities, thereby would be likely to cause a substantial restraint of competition in a particular field of trade.
- When the JFTC determines whether the alleged conduct falls under Exclusionary Conduct or not, it will, in general, comprehensively consider the conditions of the entire market of the product, positions of the alleged entrepreneur and its competitors in the market, period of the conduct, conditions of the conduct, etc.

Below-cost Pricing

(X: alleged entrepreneur, Y: competitor, A: trade partner)

Definition

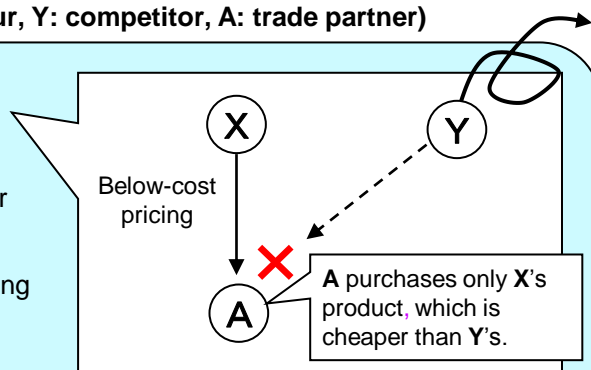
Setting a product price below the cost that would not be generated unless the product was supplied (Average Avoidable Cost)

Required Effect

Causing difficulty in the business activities of an equally or more efficient competitor

Feature

Setting a product price below the cost required for supplying the product (Average Total Cost) and not less than the Average Avoidable Cost is unlikely to fall under Exclusive Conduct, except in extraordinary circumstances.



Exclusive Dealing

(X: entrepreneur concerned, Y: competitor, A: trade partner)

Definition

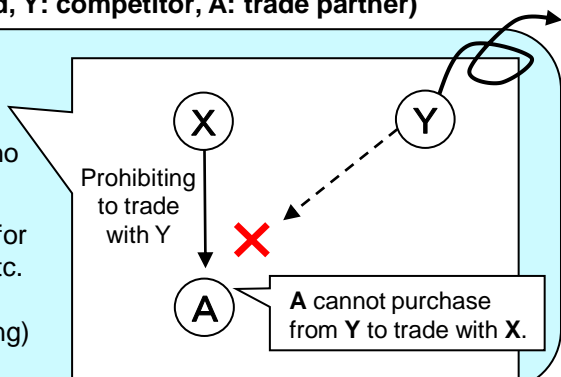
Dealing with the trade partners on the condition of prohibition or restraint of transactions with the competitors

Required Effect

Causing difficulty in the business activities of competitors who are unable to easily find an alternative trade partner

Feature

Where rebates-giving to the trade partners on the condition for certain amount of purchase from the alleged entrepreneur etc. has effects in restraining the trade partners' dealings of the competitors' products, such conduct (Exclusive Rebate-giving) may have the same effect as Exclusive Dealing.



Tying

(X: alleged entrepreneur, Y: competitor, A: trade partner)

Definition

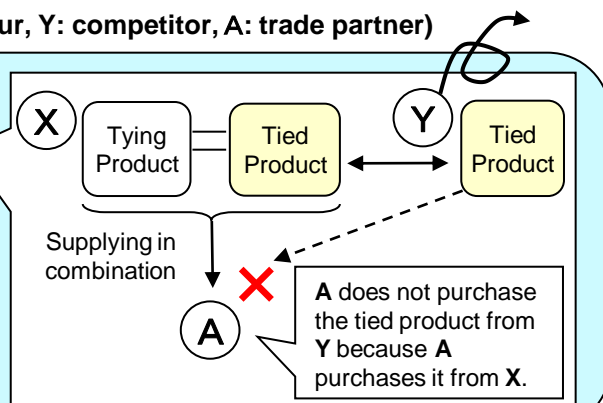
Supplying one product only on the condition that the trade partners also purchase another product

Required Effect

Causing difficulty in the business activities of competitors who are unable to easily find an alternative trade partner in the market of the tied product

Feature

"Another product" is assessed from the viewpoint of whether or not each of the combined product has a distinctive character and is traded independently.



(X: alleged entrepreneur, Y: competitor, A/B: trading customers, a/b: trade partners)

Refusal to Supply and Discriminatory Treatment

Definition

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

Required Effect

Causing difficulty in the business activities in the downstream market of the trading customers who are unable to easily find an alternative supplier in the upstream market

Feature

"A product necessary for trading customers" is the product that is unsubstitutable and indispensable for the trading customers to carry out business activities in the downstream market and is impossible for the trading customers to produce.

"Reasonable degree" is assessed from the viewpoint of the details and results of transactions for supply.

