

# Yahoo Japan's Use of Technological Service Such As Search Engine Provided by Google

<Tentative translation>

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Japan Fair Trade Commission

The Japan Fair Trade Commission (JFTC), in July 2010, after reviewing the plan that Yahoo Japan Corporation (Yahoo Japan) would use search engine <sup>note1</sup> and search-advertising platform <sup>note2</sup> (hereinafter referred to as “search engine etc.”) provided by Google Inc. (Google), upon the request for consultation process from Yahoo Japan and Google (hereinafter referred to as “the two companies”), responded to the two companies that Yahoo Japan's use of search engine etc. provided by Google (hereinafter referred to as “*the provision of technology*”) would not violate the Antimonopoly Act (AMA) on the assumption of the two companies' explanation (mentioned below 1).

On the other hand, because *the provision of technology* raises Google's share of technology of search engine etc. in Japan to about 90%, *the provision of technology*, if it is implemented in a different manner from the two companies' explanation, may have a strong anticompetitive impact on the online search engine and online search advertising market. The JFTC, with respect to *the provision of technology*, has received various opinions and information from various third parties, including complaints pursuant to Paragraph 1 of Article 45 of the AMA. Therefore, the JFTC has been conducting a preliminary investigation into the progress toward implementation etc. of *the provision of technology* after the JFTC had responded to the consultation process. The JFTC completed the preliminary investigation and today published the results (mentioned below 2).

Note1) A search engine is a program to search information in the internet with a key word.

Note 2) A search-advertising platform is a system to show advertisements which are related to a searched key word.

## 1. The consultation process

(1) Explanation of the two companies

(i) Since Yahoo Japan did not have search engine etc. for its own website etc., it had so far been provided search engine etc. from Yahoo! Inc. (US Yahoo). However, since it became impossible for Yahoo Japan to continuously use search engine etc. provided by US Yahoo, Yahoo Japan has decided to newly select search engine etc. provided by Google as the most suitable search engine etc. for it.

(ii) The two companies will independently operate their own online search services and online search advertising after implementing *the provision of technology* and will totally separately hold information about advertisers and their bidding prices etc., so that the two companies will remain competitive.

(iii) The contract period for *the provision of technology* is two years. After the end of the contract, Yahoo Japan will be able to select a new search engine etc., and also even in the middle of the contract period, Yahoo Japan will never be impeded from using other search engine etc.

(2) Interpretation under the AMA

On the assumption of the two companies' explanation, *the provision of technology* means that Yahoo Japan, as a user of search engine etc., selects the search engine etc. provided by Google as the most suitable one for it, and after implementing *the provision of technology*, the two companies will remain competitive in terms of online search service and online search advertising, thereby, *the provision of technology* would not immediately constitute a violation under the AMA.

2. Results of the preliminary investigation etc.

(1) Preliminary investigation

The JFTC conducted the Preliminary Investigation focusing on the following issues: whether it was considered that Yahoo Japan decided to receive *the provision of technology* from Google since they thought it was the most suitable for the company itself (as mentioned below in (3)-(i)); whether *the provision of technology* is in progress toward implementation in line with the explanation made by the two companies in the consultation process (as

mentioned below in (3)-(ii)); whether there is any other action which may raise a problem under the AMA (as mentioned in (3)-(iii)).

(2) Method of the preliminary investigation

The preliminary investigation was conducted by the hearing of the complainants and two companies, scrutinizing the written contract relating to *the provision of technology*, and the hearing opinions from third parties, etc.

(3) Results of the preliminary investigations

(i) Whether it was considered that Yahoo Japan decided to receive *the provision of technology* from Google since it thought it to be the most suitable for the company itself.

Since Yahoo Japan did not have search engine etc. for its own website etc., it has so far been provided with search engine etc. from US Yahoo. In July 2009, US Yahoo decided to stop developing its own search engine etc. and to receive the provision of search engine etc. from Microsoft Corporation (Microsoft).

Accordingly, as Yahoo Japan had to select another search engine etc. other than that of US Yahoo, it compared and examined the performance of other search engine etc. In this process of comparison and examination, Yahoo Japan especially focused on the evaluation of performance of Microsoft's search engine etc, at the same time Yahoo Japan made discussions with Microsoft the schedule etc. of the beginning of the provision of technology. As a result, Yahoo Japan judged that the performance of Microsoft's search engine was not superior to that of US Yahoo's search engine, and also Yahoo Japan concluded that it would take a long time to start receiving the service of an online advertising system from Microsoft since Yahoo Japan decides to receive the service from Microsoft.

In view of these situations, Yahoo Japan concluded that it should not receive the provision of search engine etc. from Microsoft, and selected Google since Yahoo Japan assessed that Google was providing the most excellent search engine etc. among the others which were so far available.

Thus, with regard to *the provision of technology*, it is considered that Google has provided search engine etc. to Yahoo Japan, in response to its request based on its own judgment that Google's search engine etc. is the

most suitable.

(ii) Whether *the provision of technology* is in progress toward implementation in line with the explanation made by the two companies in the consultation process.

*The provision of technology*, as described below, has been in progress toward implementation in line with the explanation made by the two companies in the consultation process. And also as the result of hearing opinions from the third parties, the JFTC has not received any information showing that *the provision of technology* will not be implemented in line with the explanation made by the two companies in the consultation process.

In addition, any fact that the two companies are taking coordinated actions by means of sharing commercially sensitive information relating to advertising price, etc. has not been found at present.

a. Securing originality regarding online search service and online search advertising.

As shown below, it is considered that the two companies have taken measures to secure originality in their own online search service and online search advertising.

(a) Online search services

Yahoo Japan sends the search keyword to Google's search engine after independently analyzing the search keyword input by the user. Thereby, even if the search is done with the same keyword on the two companies' websites, the search data which is input in Google's search engine is not always the same in content between the one via the Yahoo Japan website and the one searched directly through Google's website. In cases where the search data which is input in the search engine is different, the search results which are displayed on the two companies' websites will be different.

The two companies explained that they would vigorously continue to compete with each other in online search services, and additionally, Yahoo Japan explained that it would add its own information when displaying the search result. The written contract of *the provision of technology* stipulates that Yahoo Japan shall not be prevented from adding its original information to the search result.

(b) Online search advertising

As the two companies independently operate their own online search advertising business such as inviting advertisers and implementing a bid etc., their advertisers, bidding price by advertisers, and conditions to place advertisements are different between the two companies. Therefore, even if the search is done with the same search keyword on each company's website, the online search advertisement displayed on the two companies' websites shall be different.

Regarding advertising price of online search advertisement, auction method, under which advertisers freely decide bidding prices according to keywords, is adopted, and advertising prices are decided depending on the bidding prices of advertisers and quality of placed advertisement (clicking rate of the advertisement etc.). Due to these factors and the two companies' policies to independently operate online search advertising, even if an online search advertiser places an online search advertisement with the same contents respectively to the two companies, and the advertising is displayed on each website, each advertising price shall be basically different.

In addition, the two companies explained that they would vigorously continue to compete with each other in the operation of online search advertising. The written contract of *the provision of technology* stipulates that Yahoo Japan shall not be prevented from independently operating advertising business, and that the two companies do not share information about advertisers and advertising prices, etc.

b. Information separation about online search advertising

As shown below, it was considered that the two companies have taken measures to secure information separation about online search advertising.

(a) Yahoo Japan explained that those who have access to information about its online search advertising would be restricted to the limited number of Google's employees in the technology division, etc. (excluding employees in the sales division), and also the access would be limited only for the technological task such as maintenance of the

search-advertising platform. Additionally, Yahoo Japan explained that it would send, in encrypted codes, the additional information which is not necessary to operate the search-advertising platform (such as name of advertiser, etc.) to Google. Yahoo Japan also explained that the two companies would not share information such as quality of online search advertisement, bidding prices by advertisers, and number of displayed advertisements, which are factors in deciding the price of online search advertising.

- (b) The written contract of *the provision of technology* stipulates that the two companies shall not share information about advertisers and advertising prices, etc.

(iii) Whether there is any other action which may raise a problem under the AMA

Any specific example that the two companies are taking any action which may raise a problem under the AMA such as listed in the following items has not been found at present.

- a. Coordinated actions; for example, one of the two companies (a) does not enter into the field in which the other has been already conducting business activities, or (b) does not conduct sales activities targeting the other's syndication partners.
- b. Actions to cause difficulties to business activities of other enterprises; for example by making the other enterprise's information and advertisement, etc. harder to be displayed in the search result, through intentionally raising the ranking for display of information and advertisement etc. dealt with by the two companies, or lowering the ranking for display of information and advertisement etc. handled by other enterprises.

(iv) JFTC's judgment at this moment

As mentioned in (i) – (iii), the JFTC concluded that it was not necessary for the JFTC to conduct further investigation toward taking legal measures of the AMA into *the provision of technology* at this moment.

### 3. JFTC's action

- (1) Continuous monitoring

Since *the provision of technology* has been progressing toward implementation, the JFTC will continuously monitor it, and when finding any specific fact that may constitute a violation of the AMA, the JFTC will vigorously address it by conducting necessary investigations etc.

The JFTC will also continue to proactively collect information not only through the existing contact window for consultation and complaint, but also by establishing an e-mail address (kensakukoukoku@jftc.go.jp) for exclusively receiving information on *the provision of technology*.

(2) Explanation etc. for the two companies

The JFTC explained to the two companies the results of the preliminary investigation, and also demanded that the two companies shall not engage in conduct which may raise a problem under the AMA, for example, Google unilaterally or in conspiracy with Yahoo Japan causes difficulties to the business activities of their competitors, or the two companies take coordinated actions regarding the prices of online search advertising etc.

(3) Explanation etc. for the reporters

The JFTC explained the reporters the results of the preliminary investigation. The JFTC also informed them that it had not taken any measure in this case at this moment after conducting the necessary investigation pursuant to the provision of Paragraph 2, Article 45 of the AMA, and asked them to provide any further information relating to this case if there was any.