

Closing the investigation on the suspected violation of the Antimonopoly Act by Apple Inc.
regarding its agreements with mobile network operators

July 11, 2018
Japan Fair Trade Commission

Japan Fair Trade Commission has investigated Apple Inc. (“Apple”), the ultimate parent company of Apple Japan G.K. (“Apple Japan”), in accordance with the provisions of the Antimonopoly Act since October 2016. Apple Japan has, based on the agreements with NTT Docomo K.K., KDDI K.K. and SoftBank K.K. (collectively “3 MNOs ^(Note 1)”), been suspected ^(Note 2) of restricting the business activities of 3 MNOs regarding the followings:

- (i) Quantities of iPhones which 3 MNOs order from Apple Japan,
- (ii) Telecommunication service plans which 3 MNOs offer iPhone users,
- (iii) iPhones which users traded in to 3 MNOs, and
- (iv) Subsidies which 3 MNOs and others offer users purchasing iPhones.

During the investigation, Apple reported to JFTC that it would amend a part of the agreements. JFTC reviewed those amendments. Consequently, JFTC decided to close the investigation, concluding that the amendments would eliminate the suspicion of the violation mentioned above.

(Note 1) An “MNO” is an abbreviation for a “Mobile Network Operator”, a telecommunication carrier who establishes and operates its own radio stations to provide mobile telecommunication services.

(Note 2) The suspected violation of the provisions of Article 19 (paragraph 12 [Trading on Restrictive Terms]) of the Antimonopoly Act

I. Case

1. Apple Japan and Apple

Corporate Name	Apple Japan G.K.
Corporate No.	3011103003992
Address	6-10-1, Roppongi, Minato-ku, Tokyo
Managing Member	Apple South Asia Pte Ltd.
Executive Officers	Daniel DiCicco, Damon Lee Nakamura

Corporate Name	Apple Inc.
Address	1 Apple Park Way, Cupertino, CA 95014 United States
Chief Executive Officer	Timothy Donald Cook

2. Smartphone market

In Japan, the possession of smartphones by consumers is on the increasing trend. It seems that over 60% of consumers own smartphones ^(Note 3). The number of smartphone shipments exceeds over 30 million units per year, out of which the recent share of iPhones shipped by Apple Japan is about 50% ^(Note 4).

SoftBank, KDDI, and NTT Docomo launched the sales of iPhones in July 2008, October 2011 and September 2013, respectively.

(Note 3) Source: section 3 on page 3 of “Highlights of the Communications Usage Trend Survey in 2017” by Ministry of Internal Affairs and Communications

(Note 4) Source: section 3 on page 2 of “Issues Concerning Competition Policy in the Mobile Phone Market (FY2018 Survey)” by Japan Fair Trade Commission

3. Facts and evaluations

Apple Japan concluded “iPhone Agreements” with 3 MNOs and sells iPhones to them.

The iPhone Agreements include provisions regarding 3 MNOs’ purchase and sale of iPhone products, iPhone service and support to users purchasing iPhones, and telecommunication services provided to users purchasing iPhones.

JFTC investigated the following provisions (1) to (4) in the iPhone Agreements ^(Note 5).

(Note 5) The details of the iPhone Agreements differ among 3 MNOs and can be the secrets of enterprises to be protected. Hence, it is not identified which MNO is a party to each iPhone Agreement in the followings (1) to (3).

(1) Provisions regarding Order Quantities of iPhones

i. Facts

In the iPhone Agreements with 3 MNOs, the specific quantity of iPhones an MNO orders from Apple Japan in a year (“Order Quantity”) was set out in advance for certain years.

a. In the iPhone Agreement with one of 3 MNOs, a specific Order Quantity was not set out, except for a limited year. Also, it stipulated that an Order Quantity was only a target for the MNO and that a failure to meet an Order Quantity would not be a breach of contract.

b. In the iPhone Agreement with one of 3 MNOs, a specific Order Quantity was not set out, except for a limited year.

c. In the iPhone Agreement with one of 3 MNOs, a specific Order Quantity was set out for several years. However, in most of the years, a stipulated Order Quantity was not met, and no disadvantage was imposed for a failure to meet an Order Quantity.

Also, after the JFTC's investigation started, Apple Japan stipulated that an Order Quantity was only a target for the MNO and that a failure to meet an Order Quantity would not be a breach of contract.

ii. Evaluation under the Antimonopoly Act

Apple Japan's obligating an MNO to order a specific Order Quantity of iPhones can be a problem under the Antimonopoly Act if, for example, it reduces the sales opportunities of other smartphone makers.

However, considering the fact that a specific Order Quantity was not set out in the iPhone Agreements except for limited years, the fact that a stipulated Order Quantity did not appear to obligate an MNO to order the quantity, and other facts, it was not recognized that Apple Japan restricted an MNO's business activities.

iii. Report from Apple

Apple reported to JFTC that, when concluding a new iPhone Agreement with the MNO abovementioned in i (b), it would stipulate that an Order Quantity would be a target for the MNO and that a failure to meet an Order Quantity would not be a breach of contract.

(2) Provisions regarding iPhone Plans

i. Facts

Basic fees, voice fees, data communication fees, and others were stipulated in the iPhone Agreements with 3 MNOs, as a specific telecommunication service plan an MNO offers iPhone users ("iPhone Plan").

a. In the iPhone Agreement with one of 3 MNOs, other service plans than an iPhone Plan have been able to be offered, too. Also, a stipulated iPhone Plan had not been offered since September 2014 at the latest.

In addition, after the JFTC's investigation started, Apple Japan abolished provisions regarding an iPhone Plan.

b. In the iPhone Agreements with two of 3 MNOs, other service plans than an iPhone Plan have been able to be offered, too. Also, a stipulated iPhone Plan had not been offered since September 2015 at the latest.

ii. Evaluation under the Antimonopoly Act

Apple Japan's obligating an MNO to offer only an iPhone Plan can be a problem under the Antimonopoly Act if, for example, it lessens competition on service plans among MNOs.

However, considering the fact that other service plans than an iPhone Plan have been able to be offered under the iPhone Agreements, the fact that a stipulated iPhone Plan had not been offered, and other facts, it was not recognized that Apple Japan restricted an MNO's business activities.

iii. Report from Apple

Apple reported to JFTC that it would amend the iPhone Agreements with the two MNOs abovementioned in i b and abolish the provisions regarding an iPhone Plan.

(3) Provisions regarding Traded-in iPhones

i. Facts

In the iPhone Agreement with one of 3 MNOs, the purpose of use of iPhones that iPhone users traded in to the MNO ("Traded-in iPhones") was stipulated.

a. In the iPhone Agreement with one of the 3 MNOs, it was stipulated that, in Japan, Traded-in iPhones would only be used for the MNO's handset insurance service.

Also, after the JFTC's investigation started, Apple Japan abolished the provisions regarding Traded-in iPhones.

In addition, after the publication of the JFTC's "Issues Concerning Competition Policy in the Mobile Phone Market" (August 2016), Apple Japan notified 3 MNOs that the iPhone Agreements did not restrict the sales of Traded-in iPhones within Japan.

b. In the iPhone Agreements with two of 3 MNOs, provisions regarding the Traded-in iPhones did not exist.

ii. Evaluation under the Antimonopoly Act

Apple Japan's restricting an MNO of its sales of Traded-in iPhones within Japan can be a problem under the Antimonopoly Act, if, for example, it maintains or enhances the status of Apple Japan in the smartphone market, or it maintains the sales prices of iPhones, by promoting Apple Japan's sales of iPhones. Also, it is concerned that such restriction could hinder competition between MNOs and

MVNOs ^(Note 6), which offer telecommunication services to users who possess used handsets or which sell used handsets ^(Note 7).

However, considering the fact that the provisions regarding Traded-in iPhones only defined the purpose of use within Japan of Traded-in iPhones for one of the 3 MNOs and other facts, it was not recognized that Apple Japan restricted the domestic distribution of Traded-in iPhones.

(Note 6) An “MVNO” is an abbreviation for a “Mobile Virtual Network Operator”, a telecommunication carrier who provides mobile communication services by using a MNO's mobile communication services or by interconnecting with a MNO's network, not by establishing and operating its own radio stations for the mobile communication services.

(Note 7) In section 4 (2) on page 16 of JFTC’s “Issues Concerning Competition Policy in the Mobile Phone Market” (August 2016), JFTC’s views on device makers’ conduct of restricting the distribution of used handsets are described.

(4) Provisions on Subsidy

i. Facts

In the iPhone Agreements with 3 MNOs, it was stipulated that an MNO or its sales agents, etc. to which the MNO sold iPhones (“Locations”) provided “Subsidy” to users purchasing iPhones.

a. In the iPhone Agreements with 3 MNOs, when a user purchasing an iPhone subscribed to a telecommunication service contract with a specific term (“Term Contract”), 3 MNOs or Locations were supposed to provide Subsidy to such a user. The amount of Subsidy was the difference between the wholesale price of the iPhone sold from Apple Japan to 3 MNOs and the amount paid by a user to purchase an iPhone. The specific amount of minimum Subsidy was agreed for each of 3 MNOs.

b. 3 MNOs had provided subsidies such as discounts from telecommunication services fees ^(Note 8) to users purchasing handsets. Apple and 3 MNOs recognized that such subsidies provided to users purchasing iPhones fell under the Subsidies in the iPhone Agreements.

(Note 8) NTT Docomo, KDDI and SoftBank offer discounts named “Monthly Support”, “Monthly Discount” and “*Tsukidukiwarai*”, respectively.

c. In July 2017, KDDI out of 3 MNOs launched a service plan that lowered telecommunication services fees than before, while no subsidies, which were discounts from telecommunication service fees for certain periods, were provided. That service plan, which was a Term Contract, did not satisfy the Subsidy provisions of the iPhone Agreement. KDDI had not offered such a new service plan to users purchasing iPhones until September 2017 because KDDI could not obtain a consent from Apple Japan.

ii. Evaluation under the Antimonopoly Act

A subsidy provided to users purchasing smartphones is considered to lessen users' substantial cost in purchasing smartphones and to have promoted the wide use of smartphones.

However, Apple Japan's obligating an MNO to provide a certain amount of subsidy can be a problem under the Antimonopoly Act if, for example, it lessens competition among mobile telecommunication businesses through smooth offering of low-price and diverse service plans, by constraining the price reduction of telecommunication services and the price combination of smartphones and telecommunication services under the current situation where MNOs bundle smartphones and telecommunication services to many users.

iii. Report from Apple

JFTC pointed out such a problem abovementioned in ii to Apple. Apple proposed to amend the iPhone Agreements with 3 MNOs so that they may offer, even if users purchasing iPhones subscribed to a Term Contract, service plans without subsidies ("Alternate Plans"), on the condition that 3 MNOs provide clear, fair and informed choices to select between the service plans with subsidies ("Standard Plans") and the Alternate Plans to the users and other conditions. Apple agreed on such amendments with 3 MNOs and then reported them to JFTC.

iv. JFTC's position to the report

Even after the amendments in the abovementioned iii, 3 MNOs' obligation to provide Subsidies to users purchasing iPhones will still partly remain. However, it becomes possible for 3 MNOs to offer Alternate Plans without Subsidy obligation to such users, not causing any doubt of a breach of the iPhone Agreements ^(Note 9).

Also, after the amendments, it will be required in the iPhone Agreements to fulfill obligations such as to provide fair choices to select between Standard Plans and Alternate Plans, when 3 MNOs offer Alternate Plans to users purchasing iPhones. However, as long as 3 MNOs' sales promotion activities of Alternate Plans are not

hindered, it is considered that presentation in such a way will be able to make users to select the most optimal service plans for each of users from a variety of service plans, promoting competition through users' reasonable choice among telecommunication businesses ^(Note 10).

Considering those points, it is recognized that the amendments will eliminate the suspicion of the violation of the Antimonopoly Act.

(Note 9) Some MNOs have introduced handset purchase programs that a handset is paid in installments for four years and the remaining installment payments for two years at most are waived, on the conditions that the used handset is traded in after a certain period, that the same program is subscribed for a new handset, and others (so-called "Four-Year Restriction"). The iPhone Agreements do not require MNOs to offer such programs.

The subscription conditions for some of the handset purchase program include subscription to the Alternate Plans of telecommunication services. In this case, JFTC positively evaluated Apple's report because telecommunication service plans, which were not permitted to be offered under the current Subsidy provisions, would become possible to be offered, and JFTC did not endorse the "Four-Year Restriction" offered by MNOs. JFTC's view on the "Four-Year Restriction" under competition policy is described in the section 6 (3) on page 16 of JFTC's "Issues Concerning Competition Policy in the Mobile Phone Market (FY2018 Survey)" (June 2018).

(Note 10) In the section 6 (7) on page 18 of JFTC's "Issues Concerning Competition Policy in the Mobile Phone Market (FY2018 Survey)" (June 2018), its view is described as "considering the fact that MNOs are aware of consumers' usage status, it also seems desirable to actively promote measures including presentation of the most suitable service plans to consumers on a regular basis, based on each consumer's usage status."

4. Closing the case

JFTC concluded that the provisions regarding (i) the Order Quantities of iPhones, (ii) iPhone Plans and (iii) Traded-in iPhones in the iPhone Agreements did not restrict an MNO's business activities and others. JFTC also concluded that the amendments of the provisions regarding (iv) Subsidies would eliminate the suspicion of the violation of the Antimonopoly Act. Therefore, JFTC decided to close the investigation of this case.

II. JFTC's initiatives against suspected violations of the Antimonopoly Act in the IT/digital sectors

In the case where JFTC receives information regarding a suspected violation of the Antimonopoly Act in the IT/digital sectors, its IT Task Force conducts an investigation in an efficient manner.

Also, for the purpose of receiving the information regarding such a suspected violation, JFTC has already set a special contact point. (See the following website for details.)

https://www.jftc.go.jp/houdou/pressrelease/h28/oct/161021_3.html

JFTC continuously monitors the status of the competition in the IT/digital sectors including the smartphone market from the perspective of promoting free and fair competition.