

Survey Report Regarding Transactions in B2C E-Commerce

January 29, 2019
Japan Fair Trade Commission

I Purpose of the Survey

In recent years, the size of the B2C e-commerce market in Japan has seen rapid expansion, and the market environment has undergone a major transformation such as with the emergence of new online shopping mall operators. The development of such e-commerce ramps up competition in the retail market which is thought to benefit consumer interests. On the other hand, there are concerns that acts that restrict competition will be easily conducted as it is easy for companies to grasp the actions of their competitors and transacting parties.

Based on those awareness of the issues, a survey was conducted on trade practices regarding B2C e-commerce in general, such as trade terms between manufacturers and distributors, the sales methods of manufacturers and distributors' websites, and the state of transactions at online shopping malls. The survey was conducted broadly from two viewpoints: the pro-competitive effects and the anti-competitive effects based on the acts of manufacturers, retailers and online shopping mall operators, while comparing the trade practices of brick and mortar stores. A survey was also conducted on the consumption habits of consumers pertaining to e-commerce.

II Subjects of the Survey, etc.

1 Subjects of the survey

Transactions regarding products that consumers purchase from enterprises through the Internet

2 Survey method

The survey was conducted in the following manner from January to November 2018.

(1) Questionnaire for enterprises (January to February 2018)

A questionnaire was sent to 4,339 enterprises and 1,208 responses were obtained (848 retailers, 360 manufacturers - response rate: 27.8%).

(2) Interview survey (as needed)

The survey was conducted for a total of 117 enterprises (retailers, manufacturers, online shopping mall operators, price survey companies, automatic pricing tool providers, and price comparison website operators)

(3) Questionnaire for consumers (September 2018)

The survey was conducted for 2,000 general consumers who purchased products at least once a month through online shopping malls (contract survey).

III Summary of the Survey Results and Evaluation from the Perspective of the Antimonopoly Act and Competition Policies

1 Characteristics of the B2C e-commerce market

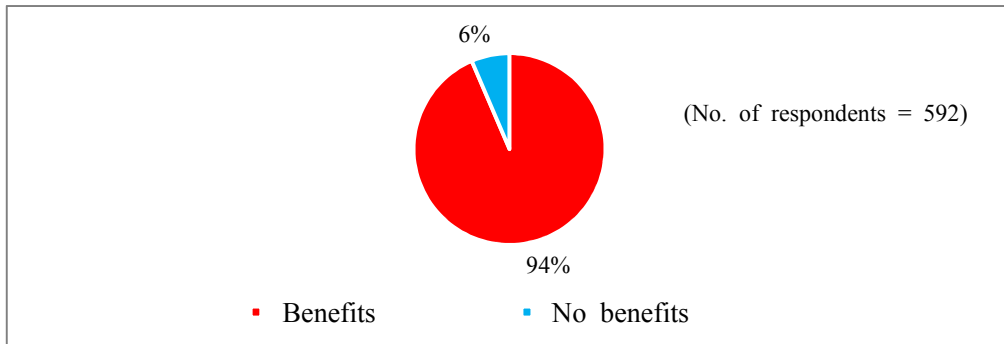
(1) Impact on competition caused by the expansion of e-commerce

A Survey results

- The market scale of the entire consumer e-commerce market has increased by 73.5% over a five-year period from 2012 (9.513 trillion yen) to 2017 (16.5054 trillion yen).

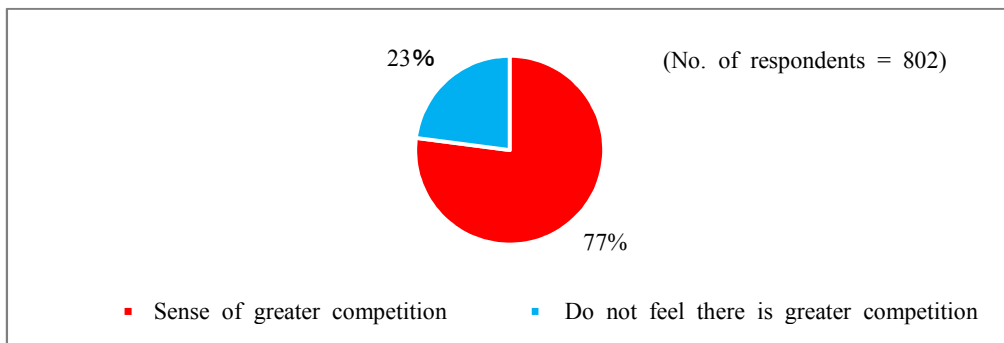
- Enterprises enjoy the benefits of expanding new business areas through online sales, but they also face strong competition in terms of price, product lineup, etc.

Fig. 1 Benefits acquired through online sales (retailer responses)



Prepared based on Fig. 2-7 of the Report

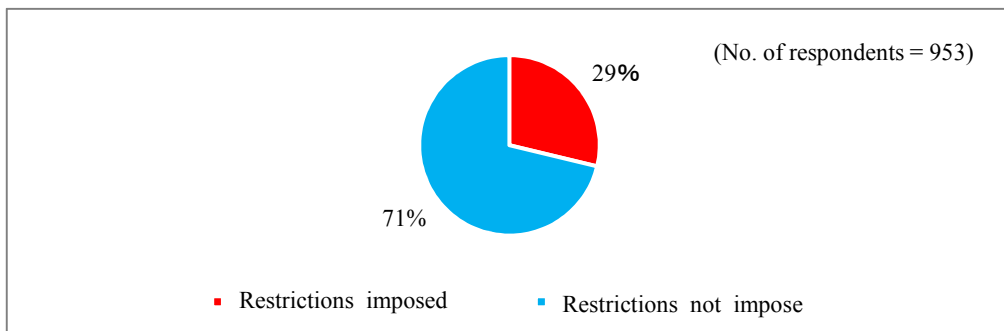
Fig. 2 Impact of development / expansion of e-commerce on the state of competition (retailer responses)



Prepared based on Fig. 2-20 of the Report

- Some retailers have had restrictions on online sales imposed by manufacturers or others.

Fig. 3 Restrictions on online sales (retailer responses)



Prepared based on Fig. 2-50 of the Report

B Evaluation and future policy

- E-commerce has pro-competitive effects, which is thought to bring major benefits for both enterprises and consumers.
- Since it becomes easier for enterprises to ascertain the state of transactions of other retailers, there are concerns that this may results in anti-competitive effects such as

control of the retail prices by the manufacturers or concerted practices between the manufacturers and retailers.

- From the viewpoint of encouraging fair and free competition in B2C e-commerce business, the Japan Fair Trade Commission will clarify as outlined in 2 below its opinion under the Antimonopoly Act in relation to acts conducted between manufacturers and retailers that constitute a problem, and will strive to prevent acts in violation of the Antimonopoly Act, as well as gather information on the state of transactions in e-commerce, and deal strictly with acts in violation of the Antimonopoly Act.

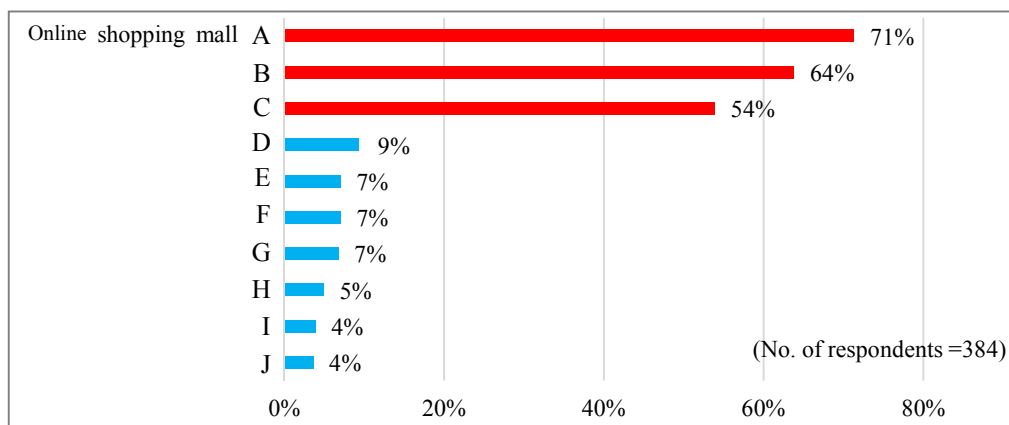
(2) Position of Online shopping mall operators in the market

A Survey results

- Stores and consumers seem to be concentrated in the top three online shopping malls.

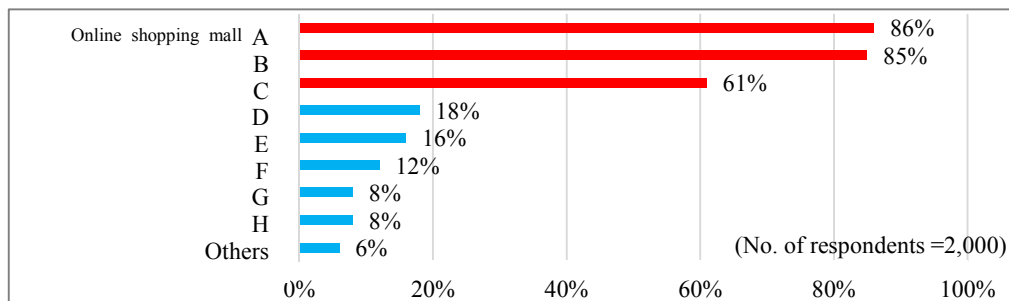
Fig. 4 Concentration of stores on online shopping malls

(retailer responses, top 10 responses, may respond with up to the 10 sites)



Prepared based on Fig. 4-1 of the Report

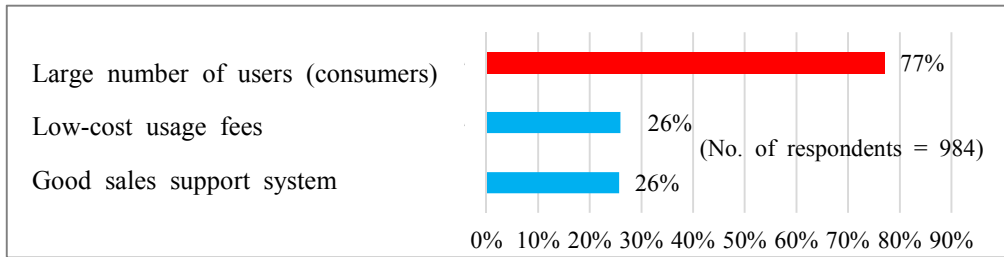
Fig. 5 Online shopping malls consumers had used (consumer responses, multiple responses possible)



Prepared based on Fig. 5-1 of the Report

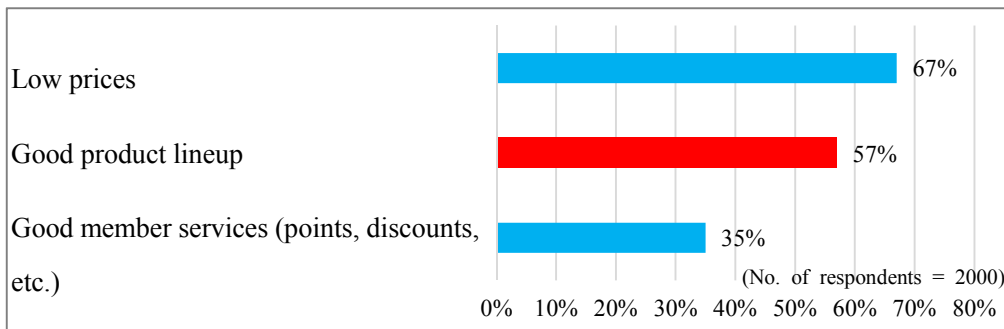
- Two-sided indirect network effect (see note 1) is seemed to work for online shopping malls.

Fig. 6 Reason for opening a store at the online shopping mall
(retailer responses, top 3 responses given, multiple responses possible)



Prepared based on Fig. 4-5 of the Report

Fig. 7 Reason for choosing online shopping mall for purchase
(consumer respondents, top 3 responses, up to 3 responses possible)

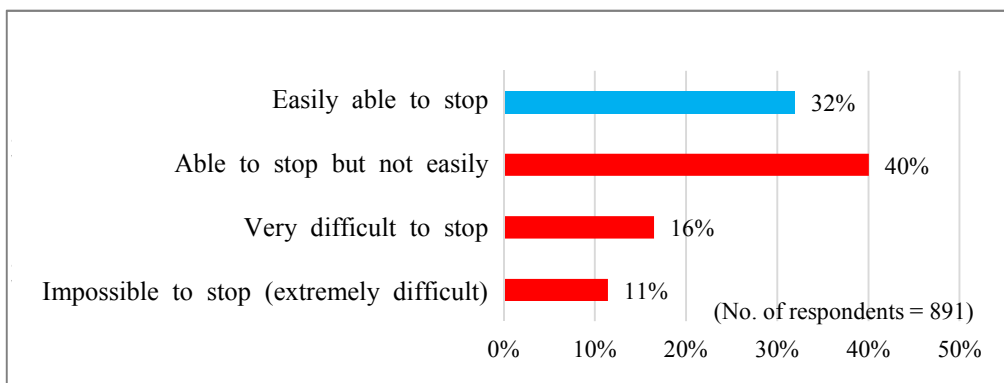


Prepared based on Fig. 5-2 of the Report

(Note 1) The indirect network effect means that if there are two user groups conducting transactions via a platform, as the number of users belonging to one user group increases, there are increased benefits and utilities for users belonging to the other user group conducting transactions via the platform.

- From the perspective of depending on the transactions, in some cases, it is difficult for merchants to stop selling at an online shopping mall where it has opened a store.

Fig. 8 Difficulty for merchants to stop selling at an online shopping mall (retailer responses)



Prepared based on Fig. 4-8 of the Report

B Evaluation and future policy

- Online shopping mall operators which have a particularly large concentration of stores and consumers will be an influential enterprise in the area of online shopping

mall operation, and that they will have a superior bargaining position against the other transacting party. Therefore, if the online shopping mall operators where there are a large concentration of stores and consumers exclude other competing online shopping malls or unilaterally and unfairly change the trade terms with the stores, it is highly likely that these practices will constitute a problem under the Antimonopoly Act.

- Online shopping malls are an important sales tool, especially for small and medium-size retailers, and unless fair trade terms are secured when selling products at an online shopping mall, enterprises with a high degree of dependence on online shopping malls, may unexpectedly suffer an unfair disadvantage leading to a situation in which their business opportunities are unfairly restricted, eventually leading to impeding fair competition in the entire B2C e-commerce market.
- In light of the position of online shopping mall operators in the market, as described later in 3, the Japan Fair Trade Commission will clarify its opinion that online shopping mall operators should work on ensuring transparency in their trade terms with stores from the perspective of ensuring fair competition, and identify the acts of online shopping mall operators that constitute a problem under the Antimonopoly Act, as well as strive to gather information on the state of transactions by online shopping malls and deal strictly with acts that violate the Antimonopoly Act.

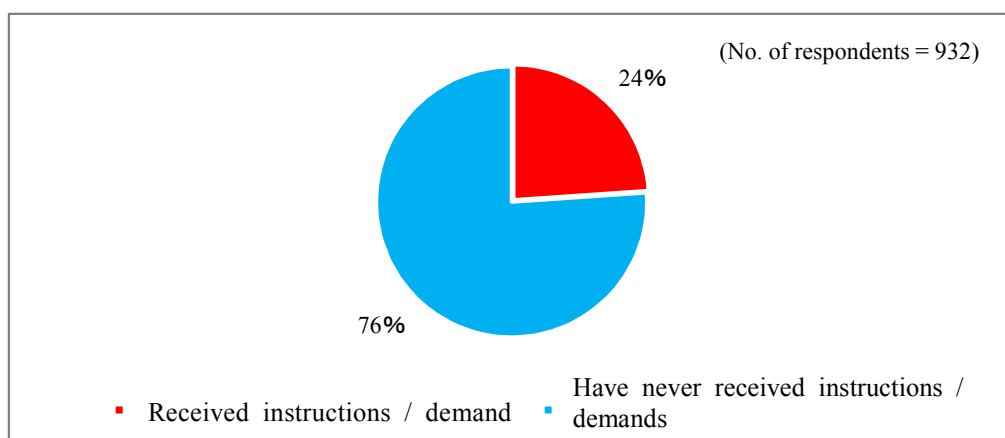
2 Acts that present a problem between manufacturers and retailers

(1) Resale price maintenance practices, etc.

A Survey results

- Some manufacturers were seen to be issuing instructions or demands to the retailers in relation to the sales prices or advertising and display of the sales prices.

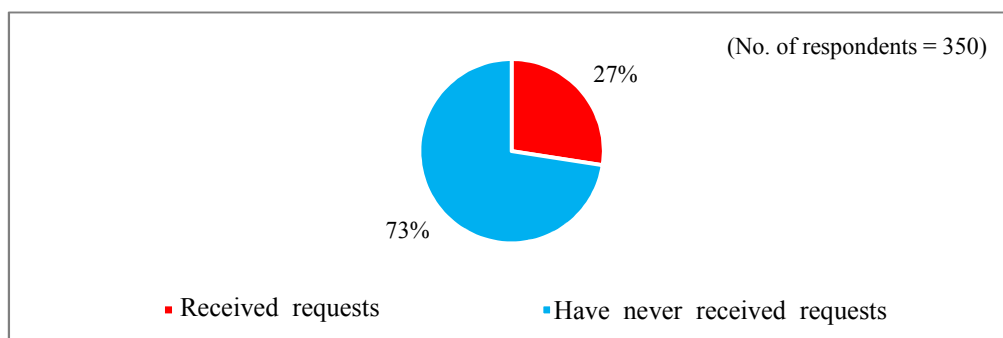
Fig. 9 Instructions / demands relating to sales prices or advertising or display of sales prices (retailer responses)



Prepared based on Fig. 2-59 of the Report

- Retailers were also seen to be making requests to the manufacturers about the sales prices, etc. of other retailers.

Fig. 10 Requests/opinions stated by distributors (manufacturer responses)



Prepared based on Fig. 3-31 of the Report

B Evaluation and future policy

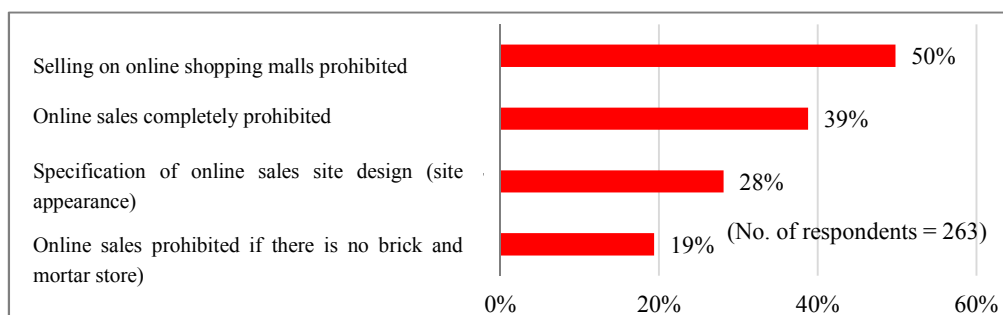
- In terms of the instructions and demands issued by manufacturers to retailers relating to retail prices and methods of advertising and displaying sales prices, the act of issuing instructions or demands, which have the effect of ensuring retailers sell the products at the price indicated by the manufacturer, in principle, are deemed illegal (restriction of resale prices, restrictions on ways of advertisements and representations).
- The act of a retailer making a request to a manufacturer relating to the sales prices or other information of another retailer has the risk of inducing an act of resale price maintenance by the manufacturer, and becomes a way for the manufacturer to ensure the effectiveness of such conduct, and therefore may constitute a problem under the Antimonopoly Act as unreasonable restraints on trade by retailers (using the manufacturer as a hub), and manufacturers.
- While paying close attention to the progress and spread of technology that facilitates price monitoring, the Japan Fair Trade Commission will strive to gather information on the state of transactions between manufacturers and retailers from the viewpoint of determining whether manufacturers are engaging in acts of resale price maintenance, whether retailers are inducing such acts, and also, whether unfair restrictions are being imposed on transactions by retailers and manufacturers, and deal strictly with acts that violate the Antimonopoly Act.

(2) Acts of restricting online sales

A Survey results

- Manufacturers were seen to be specifying the design of the online sales sites of the retailers in order to maintain the brand image of the products.
- Manufacturers were seen to be prohibiting retailers from engaging in any form of online sales, including selling on their own site for the purpose of maintaining the brand image, etc.

Fig. 11 Contents of online sales restrictions by manufacturers
(retailer responses, top 4 responses, multiple responses possible)



Prepared based on Fig. 2-53 of the Report

B Evaluation and future policy

(A) Specification of the design of the online sales site

- Acts by the manufacturer of specifying the design for a retailer's online sales site within the scope of the objective of maintaining the brand image, are generally accepted to be with plausibly rational reasons for the proper sale of goods, and if the same condition is imposed on other retailers, such acts themselves do not constitute a problem under the Antimonopoly Act (restrictions on retailers' sales methods).

(B) Complete prohibition of selling online and prohibition of sales at online shopping malls

- "It is generally not problematic in itself even if, as a result of any enterprise's adoption of the selective distribution, certain price-cutters (and/or other distributors) that do not satisfy the enterprise's criteria are prevented from handling the enterprise's product, to the extent that such criteria are deemed to have plausibly rational reasons from the viewpoint of the consumers' interests such as preservation of quality of the product and/or assurance of appropriate use of the product and that such criteria are equally applied to other distributors who want to deal in the product." However, if these criteria are not met, judgments need to be made on a case-by-case basis as to whether these actions constitute a problem under the Antimonopoly Act by weighing up the anti-competitive effects as well as the pro-competitive effects.
- In principle, it is illegal for manufacturers to curtail shipments to a distributor that is its current customer on account of the distributor's online price-cutting (prohibition of sales to price-cutting retailers).
- While bearing in mind that the criteria for whether plausibly rational reasons exist in relation to restricting online sales from the viewpoint of consumer interests such as maintaining the quality of the product and ensuring proper use will change with

the development of Internet technology, the Japan Fair Trade Commission will strive to gather information on the state of transactions between manufacturers and retailers to determine whether manufacturers are restricting selling online by retailers, and deal strictly with acts that violate the Antimonopoly Act.

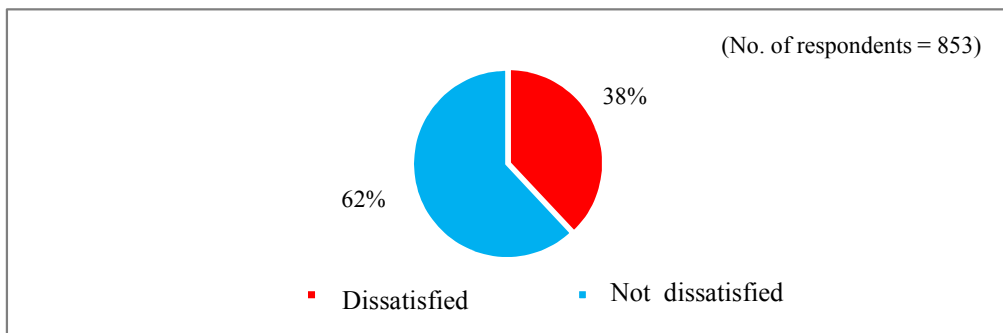
3 Problematic acts by online shopping mall operators

(1) Online shopping mall usage fees / payment methods

A Survey results

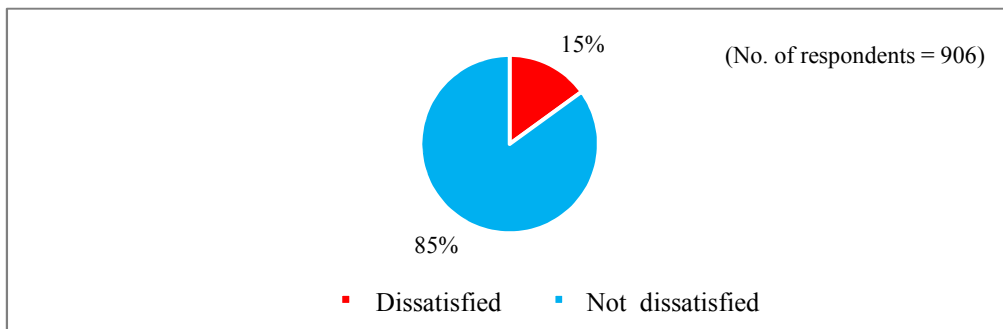
- A number of retailers were dissatisfied with the trade terms imposed by the online shopping mall operators since the online shopping malls were able to unilaterally increase the usage fees or the enterprises were only able to use the stipulated payment methods.

Fig. 12 Dissatisfaction with usage fees (retailer responses)



Prepared based on Fig. 4-18 of the Report

Fig. 13 Dissatisfaction with payment methods (retailer responses)



Prepared based on Fig. 4-22 of the Report

B Evaluation and Future Policy

- There is the risk that a problem will arise under the Antimonopoly Act in cases where an online shopping mall operator, which is in a superior bargaining position against the other transacting party, in light of normal business practices, unfairly changes the usage fees and payment methods and imposes a disadvantage (abuse of a superior position, etc.).
- The Japan Fair Trade Commission will strive to gather information on the state of

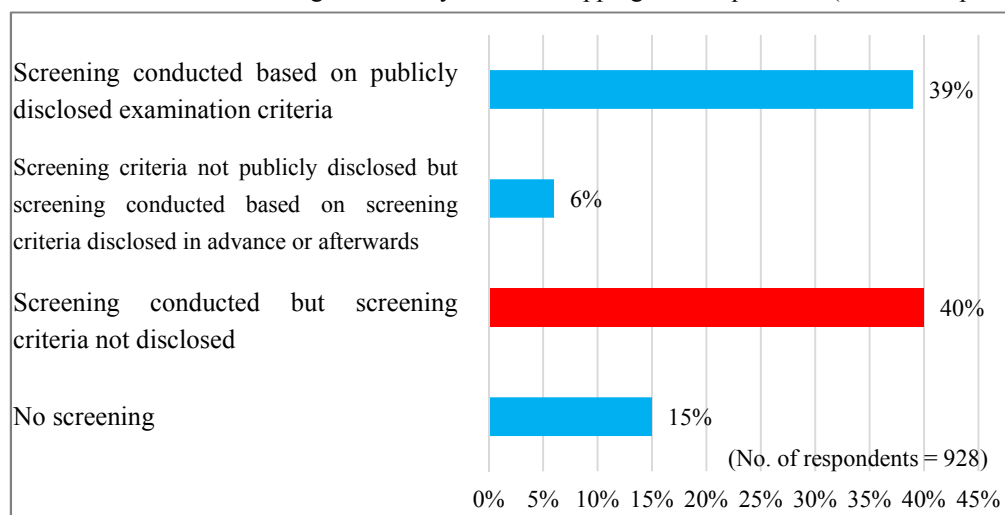
transactions between online shopping mall operators and stores so that online shopping mall operators do not unjustly change the online shopping mall usage fees and payment methods, and deal strictly with acts that violate the Antimonopoly Act.

(2) Screening for the opening of stores or display of products at the online shopping mall

A Survey results

- Some retailers responded that the screening criteria were not disclosed at the time of the screening of the opening of a store or the display of products at the online shopping mall.

Fig. 14 Disclosure of screening criteria by online shopping mall operators (retailer responses)



Prepared based on Fig. 4-16 of the Report

B Evaluation and future policy

- From the viewpoint of ensuring fair competition, online shopping mall operators should continue to make the trade terms transparent as possible for the stores so that predictability is ensured regarding the screening criteria.
- There is the possibility that cases where online shopping mall operators that refuse an application to open a store or display products as a means of securing the effectiveness of illegal acts under the Antimonopoly Act, or cases where online shopping mall operators, which are influential enterprises in the retail market, refuse an application to open a store or display products or force a store to leave the online shopping mall as a means of achieving an unfair purpose under the Antimonopoly Act, such as excluding competitors from the retail market, will constitute a problem under the Antimonopoly Act (Primary Refusals to Deal by a Single Enterprise, etc.).
- The Japan Fair Trade Commission will strive to gather information on the state of transactions between online shopping mall operators and stores to ensure that online shopping mall operators do not unjustly refuse to allow the opening of a store or the

display of products at an online shopping mall or force a store to unfairly leave the online shopping mall, and deal strictly with acts that violate the Antimonopoly Act.

(3) Restrictions on opening stores at other online shopping malls

A Survey results

- It was not confirmed through the survey whether online shopping mall operators imposed restrictions on stores in connection with opening a store at other online shopping malls.

B Evaluation and future policy

- Regarding the act of online shopping mall operators restricting merchants from opening a store at another online shopping mall, if an influential enterprise in the market engages in such conduct, there is the possibility that such acts will hinder the business activities of existing competitors or raise entry barriers to the market, and in the event of a market foreclosure effect(see note 2) occurring, there is the risk that a problem will arise under the Antimonopoly Act (Refusals to Deal in Concert with Competitors).
- The Japan Fair Trade Commission will strive to gather information on the state of transactions between online shopping mall operators and stores from the viewpoint of determining whether online shopping mall operators are restricting merchants from opening a store at another online shopping malls, and in the event of such restrictions being imposed, what effect this act has on the market, and deal strictly with acts that violate the Antimonopoly Act.

(Note 2) This refers to a state where due to acts of non-price restraint, it becomes impossible for new businesses to enter the market and for existing competitors (in this case, other online shopping mall operators) to secure alternative trading partners, and moreover, increased costs are required for business activities, which causes the possibility of new businesses and existing competitors being excluded or of there being fewer business opportunities available to them due to reduced motivation for new businesses to enter the market and for existing competitors to develop new product.

(4) MFN clauses (see note 3)

A Survey results

- It was confirmed through the survey that online shopping mall operators demand stores to sell at or below the sales price when selling the same product on the retailer's own site or at other online shopping malls, or to offer an equal or greater product lineup.

B Evaluation and future policy

- Regarding the establishment of MFN clauses in contracts concluded with stores by online shopping mall operators, if an influential enterprise in the market engages in such conduct, there is the risk of reduced competition in price and product lineup among online shopping malls and stores, and of impeding the willingness of other online shopping mall operators to adopt innovative selling methods, and of hindering the motivation of new businesses to enter the market, and in the event of such risks occurring, problems may arise under the Antimonopoly Act (trading with restrictive conditions, etc.).
- When multiple online shopping mall operators establish MFN clauses, the probability of such problems under the Antimonopoly Act occurring are likely to increase compared to cases where such clauses are not established.
- The Japan Fair Trade Commission will strive to gather information on the state of transactions between online shopping mall operators and stores from the viewpoint of determining whether online shopping mall operators have been establishing MFN clauses in the contracts with the stores, and in cases where they have established such clauses, how these MFN clauses affect the market, and deal strictly with acts that violate the Antimonopoly Act.

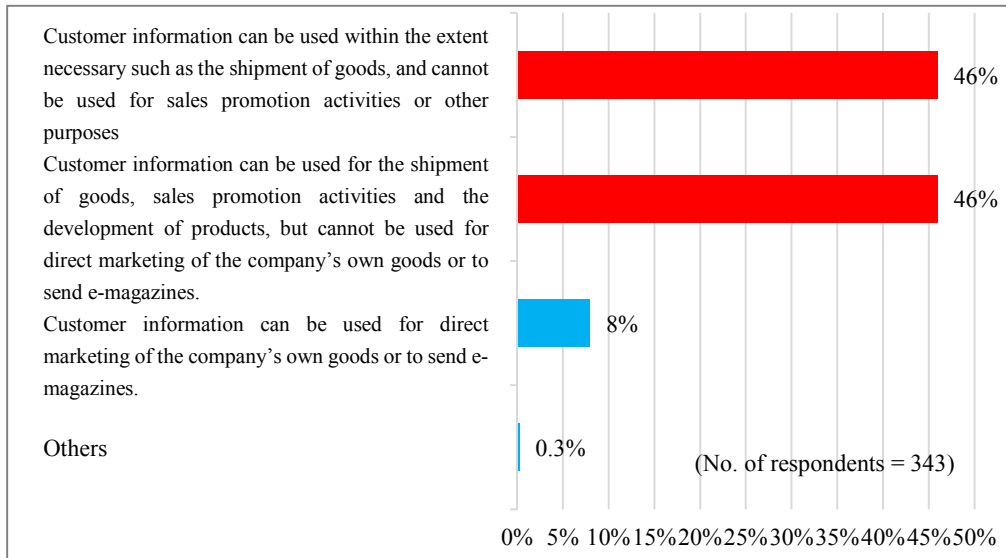
(Note 3) Of the trade terms between online shopping mall operators and stores, MFN clauses refer to contents that obligate the transacting party to sell products at or below the sales price when selling on the transacting party's own site or at another online shopping mall, or to sell with an equivalent or greater product lineup.

(5) Restrictions on use of the customer information at online shopping malls

A Survey results

- There were stores which stated that they were not allowed to use customer information for purposes other than shipping the products, as well as enterprises which stated that customer information could not be used after leaving the online shopping mall.

Fig. 15 Conditions on use of customer information (retailer responses)



Prepared based on Fig. 4-32 of the Report

B Evaluation and future policy

- From the viewpoint of securing fair competition, online shopping mall operators should continue to work on making the trade terms as transparent as possible so that stores operating at online shopping malls will be ensured predictability with regard to the conditions of use of the customer information at the online shopping malls so that they do not suffer an unexpected disadvantage such as the available customer information or conditions of use being unilaterally changed.
- There is the risk that if an online shopping mall operator that is itself operating a retail business uses the customer information obtained through sales conducted by one of the stores operating on its online shopping mall in order to gain an advantage in carrying out its own retail business on the online shopping mall, but does not allow the store to similarly use the customer information, thus unfairly interfering with the retail business of the store, this act may constitute a problem under the Antimonopoly Act (obstruction of the trade of competitors, etc.).
- The Japan Fair Trade Commission will strive to gather information on the state of transactions between online shopping mall operators and stores as well as the state of use of customer information by the online shopping mall operators from the viewpoint of whether online shopping mall operators are imposing unfair conditions on the use of customer information against, and strictly deal with acts that violate the Antimonopoly Act.

IV Future responses of the Japan Fair Trade Commission

E-commerce is thought to generally have the effect of promoting competition, bringing great benefits for both consumers and enterprises, but if acts that restrict competition are carried out, this will impede the development of the B2C e-commerce market in Japan.

Therefore, the Japan Fair Trade Commission expects that competition in the entire retail market will be further promoted and that consumers will be able to more easily obtain low-priced products of good quality without manufacturers and online shopping mall operators engaging in acts that constitute a problem under the Antimonopoly Act in the B2C e-commerce market.

Since online shopping malls play an important role in the B2C e-commerce market in Japan and because specific online shopping malls are more likely to have a superior position in the market owing to the existence of an indirect network effect, the Japan Fair Trade Commission believe that if acts by online shopping mall operators which hamper fair and free competition are carried out, this could lead to impeding fair competition in the entire B2C e-commerce market.

The Japan Fair Trade Commission will strive to gather information on trends in B2C e-commerce business, especially acts conducted by online shopping mall operators, and strictly deal with acts that violate the Antimonopoly Act.