

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 use of e-commerce has been expanding with the development of Internet technology (Part II-1 (p.4)), and according to the results of a questionnaire for enterprises, on the one hand, enterprises enjoy such benefits as expanding new business areas, customer bases and sales channels (II-2(2)A(A) (p.11)), 3(2)B(C) (p.48)), but are also faced with greater competition than in the past over prices and product lineup (II-2(2)C(B) (p.18)).

On the other hand, according to the results of the questionnaire for enterprises, some retailers have had restrictions imposed on their online sales by the manufacturers and others (II-2(3)A(A) (p.36)). Moreover, there are a large number of enterprises that check the sales prices of other enterprises by browsing their online sales sites (II-2(2)E(B)c (p.26)), 3(4)B(C)(p. 64), C(C) (p.65)). In addition, since a large number of manufacturers stated that, with regard to the retail prices of the manufacturer's own products, it was easier to ascertain the online sales prices than the sales prices at brick and mortar stores (II-3(4)B(B)(p.63)), it was confirmed to a certain degree that retailers engaging in online sales were more likely to receive instructions and demands from manufacturers and others relating to sales prices and advertising or display of sales prices (II-2(3)B(B) (p.42)), and it was also confirmed that in recent years, there is an increasing tendency for distributors to make requests and offer opinions to the manufacturers relating to the sales prices etc. of other retailers (II-3(3)C(C) (p.61)).

According to the results of the questionnaire for enterprises, the use of automatic pricing tools and other such tools are currently limited to a number of large-scale retailers and manufacturers (II-2(2)H(A)(p.33), 3(5)C (p.70)). In addition, the main purpose of using automatic price renewal tools by retailers was to offer competitive prices, but there was also a tendency for enterprises that were aware of other companies using automatic price renewal tools to counteract by making it difficult for their sales prices to be gauged from the outside (II-2(2)H (p.33)).

B Evaluation and future policy

Online sales have become an important tool for enterprises, including manufacturers, to expand their business areas, customer bases and sales channels. Moreover, the expansion of online sales has significant benefits such as ramping up competition among retailers in the prices and product lineup, as well as benefits for consumers since they have a greater choice when purchasing products. In this way, it is thought that e-commerce has pro-competitive effects, bringing great benefits to both enterprises and consumers.

On the other hand, due to retailers engaging in online sales, a situation may arise where it becomes easier for a retailer's state of transactions to be ascertained by other enterprises. This raises the concern that manufacturers will be able to gauge the retail prices and therefore control the retail prices much more easily, as well as the emergence of adverse effects on competition such as the promotion of concerted action on prices among manufacturers or among retailers.⁶³

For this reason, 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 (p. 112 to p.116) 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.

In recent years, issues relating to cartels (so-called digital cartels) which use AI and algorithms are attracting attention, but in Japan, the effect of the use of automatic price renewing tools and other tools on competition is thought to be acting in the direction of ramping up price competition. However, with increased use of such tools, adverse effects on competition may emerge in the future such as the promotion of concerted practices, and therefore, there is a need to closely monitor the actual use of such tools.

(2) The position of online shopping mall operators in the market

A Survey results

According to the results of the questionnaire for enterprises and the questionnaire for consumers, it can be seen that three major online shopping malls

⁶³ In situations where the transactions of retailers are likely to be easily ascertained by other enterprises, since a retailer's attempts to obtain profits by deviating from the collaborative relationship built between manufacturers or between retailers will be easily discovered by other enterprises and may be retaliated against, there is reduced incentive for retailers to deviate from the collaborative relationship. Therefore, it is thought that the collaborative relationship is more likely to be maintained in such a situation than when the retailers' transactions are not easily ascertained.

dominate in terms of merchants opening stores at the online shopping mall and use by customers (II-4(2)A (p.72), 5(1)A (p. 91))

According to the results of the questionnaire for enterprises, when choosing which online shopping mall to open a store at, many merchants prioritize online shopping malls with a large number of consumers, and according to the results of the questionnaire for consumers, when choosing an online shopping mall for their purchases, many consumers prioritize there being a large number of products, and therefore, it seems that there is a two-sided indirect network effect (II-4(2)B(A) (p.75), 5(1)B (p.91)).

The e-commerce market has been expanding year by year. This is thought to be due to the increase in sales amounts at online shopping malls rather than an increase in sales amounts through the enterprise's own website (II-2(1)D(B) (p.10), 3(2)B(B) (p.46)). In addition, with regard to selling at online shopping malls, retailers with a smaller start-up capital tended to respond that they wanted to increase or start sales at the online shopping malls (II-2 (2)D (p.20)), and therefore, online shopping malls are considered to be an important sales tool, especially for small and medium-sized businesses.

B Evaluation and future policy

In the B2C e-commerce market in Japan, the stores and consumers tend to be concentrated at the top three online shopping malls. Where online shopping malls are concerned, in light of the fact there is an indirect network effect where the greater the number of consumers, the more stores gather there, and the greater the selection of products, the more consumers gather there, it is thought that the 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 operations, and that they will have a superior bargaining position against the other transacting party.⁶⁴ Naturally, the fact that the online shopping mall operators are in such a position is not a problem in itself, but 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

⁶⁴ An online shopping mall operator might not have an influential position in the market or have a relatively superior bargaining position against the other transacting party throughout the entire B2C e-commerce market. Even if this is not the case for the entire B2C e-commerce market, such an online shopping mall operator may be in such a position in a specific field of product. In addition, since the indirect network effect works in the online shopping malls, at present, even if an online shopping mall does not have an influential position in the market or does not have a superior bargaining position against the other transacting party, it may quickly increase its position in the market or its position relative to the transacting party.

unfairly change the trade terms with the stores, it is highly likely that these practices will constitute a problem under the Antimonopoly Act.

In addition, as abovementioned in A, online shopping malls are an important sales tool in the Japanese B2C e-commerce market for small and medium-size retailers in particular, and they are also thought to play a significant role in ramping up competition. For this reason, if fair trade terms are not assured when selling products at an online shopping mall, enterprises with large sales amounts or a high degree of dependence on the online shopping malls, in particular, may unexpectedly suffer an unfair disadvantage leading to a situation in which their business opportunities are unfairly restricted, eventually leading to the impeding of fair competition throughout the Japanese B2C e-commerce market.

Therefore, in light of the position of the online shopping mall operators in the market mentioned above, the Japan Fair Trade Commission, as described later in 3 (p.117 to p.122) 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.

(3) Substitution of online sales and sales at brick and mortar stores

A Survey results

According to the results of the questionnaire for enterprises, it was confirmed that there is not that much of a difference between online selling and selling at brick and mortar stores regarding the product lineup, pricing, and frequency of price revisions (II-2(2)B(B)b (p.14), 3(5)B(B) (p.69), (C) (p.69)). On the other hand, with regard to the differences in customer bases, opinions were divided almost equally into responses stating the customer bases differed and responses stating the customer bases did not differ, and many retailers cited the same sales style of other retailers as the source of reference for other competitors and their prices, while many retailers also responded that the sales strategy differed depending on the sales style (II-2(2)B(B)a (p.3), E(A) (p.23), (B)b (p.26), C(A) (p. 17)).

In addition, based on the results of the questionnaire for consumers, it is thought that there is a certain degree of substitution for the consumers between the online shopping malls and other sellers (II-5(3) (p.97).

B Evaluation and future policy

It is not possible at the moment to give a definitive evaluation of whether online sales and brick and mortar store sales, and online sales and brick and mortar store sales as well as sales through the retailer's own site, in general, share the same market. Moreover, there are also slight differences in the degree of substitution for the consumers depending on the product category. Since Internet technology is progressing day by day, and e-commerce is becoming even more convenient, the situation of the market is likely to change with the passing of time⁶⁵, and therefore, if the need arises to specifically examine the degree of substitution in applying the Antimonopoly Act, an examination needs to be conducted on a case-by-case basis.

2 Acts that present a problem between manufacturers and retailers

(1) Resale price maintenance practices, etc.

A Survey results

According to the results of the questionnaire for enterprises, 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 (II-2(3)B(A) (p.40), 3(4)D (p.66)), and in addition, retailers were making requests to the manufacturers about the sales prices, etc. of other retailers (II-3(3)C(B) (p.60)).

Moreover, according to the results of the questionnaire for enterprises, there are a large number of enterprises that check the sales prices of other enterprises by browsing the online sales sites of other enterprises (II-2(2)E(B)c (p.26), 3(4)B(C) (p.64), C(C) (p. 5)). In addition, with regard to the retail prices of the manufacturer's own products, since a large number of manufacturers stated that it was easier for them to check the sales prices through online selling than through brick and mortar store sales (II-3(4)B(B) (p. 63)), there was a certain tendency for manufacturers to issue instructions and demands to retailers in relation to the sales prices and advertising and display of sales prices due to retailers engaging in online sales (II-2(3)B(B) (p.42)). In addition, in recent years, a trend was confirmed of an increasing number of requests and opinions from distributors to

⁶⁵ Looking at the substitutability of purchases for consumers at brick and mortar stores and online purchases, with regard to consumers who purchase at a brick and mortar store due to this being more convenient than online purchases, the substitutability of the two choices is likely to increase due to developments in e-commerce, while with regard to consumers who make online purchases due to this being more convenient than brick and mortar stores, since they are expected to make further online purchases, it is thought that the substitutability of the two choices will decrease as e-commerce further develops.

the manufacturers relating to the sales prices and other information of other retailers (II-3(3)C(C) (p.61)).

B Evaluation and future policy

Compared to when products are sold only at brick and mortar stores, when retailers engage in online sales, it is easier for manufacturers to check the sales prices and other information online, and if they engage in resale price maintenance practices, it is easier for them to ensure the effectiveness of such conduct. Likewise, it is easier for retailers to gauge sales prices and other information among themselves, and it is thought that concerted practices on prices will also be easier to engage in.

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 are not simply limited to indicating a reference price, but 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 (Distribution Systems and Business Practices Guidelines Part I, Chapter 2, Section 6, Subsection (3))).

In addition, 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

According to the results of the questionnaire for enterprises, 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 (II-2 (3)A(B) (p.37), 3(3)B(B) (p.57)).

According to the results of the questionnaire for enterprises, 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. (II-2(3)A(B)(p.37),3(3)B(B)(p.57)). In addition, there were some manufacturers who adopted selective distribution in that they only allowed distributors to handle their products if they fulfilled certain set criteria, and prohibited the distributors from reselling to distributors other than those who were permitted to handle their products. Some of the criteria that distributors had to fulfill in the selective distribution were having a brick and mortar store in order to ensure proper use of the products, and having staff on hand with the relevant expertise to be able to adequately explain the characteristics of the products, which in some cases, in practical terms, had the effect of restricting online sales (II-3(3)A(B) (p.53)).

Furthermore, some cases were confirmed where manufacturers restricted online sales in order to maintain the sales prices (II-2(3)A(B) (p.37)) or adopted selective distribution to prevent discount prices (II-3(3)A(B) (p.53)).

B Evaluation and future policy

In general, e-commerce has the effect of promoting competition, and it is thought that online sales are an important sales tool for enterprises, and there are great benefits for consumers as well. In such a situation, restrictions imposed by manufacturers on online selling by retailers will not only greatly restrict the business opportunities available to retailers, but will also impose a great disadvantage on consumers. In addition, as greater restrictions are imposed on online selling, there will be a greater adverse effect on competition.⁶⁶ On the other hand, in order for retailers to be able to sell goods appropriately and for consumers to be able to properly use their purchases, there are some instances where there are sufficient justification for manufacturers to restrict online selling, such as when confirmation or adjustments made in person are indispensable.

Regarding such restrictions on online sales, the opinions under the Antimonopoly Act of the Japan Fair Trade Commission have been compiled as follows.

⁶⁶ For example, if manufacturers prohibit retailers from any form of online sales including selling on their own websites, it is thought that the adverse effect on competition will generally be greater than when only prohibiting sales at online shopping malls.

(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 (Distribution Systems and Business Practices Guidelines Part I, Chapter 2, Section 6)).

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

- a. There are some cases where the manufacturer prohibits the retailer from engaging in any form of online sales, including sales on the retailer's own website, or prohibits selling at an online shopping mall by means of adopting selective distribution and in some cases without adopting selective distribution. In either case, such prohibitions not only have the effect of imposing restrictions on the retailers' sales methods, but also have the nature of limiting the actual distributors who handle the goods, and therefore, the adverse effect on competition is thought to be greater than when the retailers' sales methods are simply being restricted.⁶⁷
- b. The Distribution Systems and Business Practices Guidelines state with regard to selective distribution that, "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

⁶⁷ Selective distribution is a system of limiting a distributor's trading partners by prohibiting reselling to distributors other than those who have been approved by the manufacturer to handle their products, and the adverse effect on competition is thought to be greater than cases where the retailer's sales methods are merely being restricted.

In addition, if retailers are completely prohibited from selling online as a restriction on sales methods, since (1) it is easy for manufacturers to find those retailers who are selling online contrary to these restrictions compared to when retailers are simply selling at brick and mortar stores, it would not be easy for such retailers to continue selling online which means that retailers who specialize in online sales would not, in practice, be able to sell the products, and (2) there is the possibility that if restrictions are imposed on online selling that generally leads to expansion in business areas and customer bases, the resulting impact would have nationwide repercussions, and therefore, there would be a greater adverse effect on competition than when restrictions are simply imposed on the retailers' sales methods.

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.”⁶⁸

It cannot be said that “it is generally not problematic” when it comes to prohibiting selling online in any form or prohibiting selling at online shopping malls when there is no plausibly rational reason for this restriction from the viewpoint of consumer interests such as for the sake of maintaining the quality of the goods or ensuring proper use, or when such restriction is deemed to be based on plausibly rational reasons but is not applied equally to all distributors wishing to handle the products. Therefore, 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. Specifically, these actions limit intra-brand competition, and are considered to be a problem under the Antimonopoly Act when the effect of price maintenance occurs.⁶⁹ Conversely, when pro-competitive effects emerge and intra-brand competition is promoted such as in cases where a “free rider” problem is resolved through these restrictions, these pro-competitive effects also need to be taken into consideration.⁷⁰

On the other hand, when the act of prohibiting online sales in any form or prohibiting selling at an online shopping mall in order to limit the purchase of products to face-to-face sales, such as when confirmation or adjustment is required in person due to the characteristics of the product, is deemed to be based on plausibly rational reasons from the viewpoint not of the enterprise but the consumer, and it is deemed that the same criteria are being applied to other distributors who wish to handle the goods, such act is usually not considered to constitute a problem under the Antimonopoly Act.

c. The points to keep in mind are as follows:

First of all, it is illegal in principle for a manufacturer to discontinue

⁶⁸ Distribution Systems and Business Practices Guidelines Part I, Chapter 2, Section 5

⁶⁹ This refers to the risk of a state where competition between the transacting party (in this case, the retailer) and competitors is impeded through acts of non-price restraints, and the retailer is able to freely influence the prices at will to maintain or raise the prices of the products (Distribution Systems and Business Practices Guidelines Part I, Section 3, Subsection (2), (b)).

⁷⁰ Distribution Systems and Business Practices Guidelines Part I, Section 3, Subsection (1)

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 (Distribution Systems and Business Practices Guidelines Part I, Chapter 2, Section 4, Subsection (4))).

With regard to whether or not there are plausibly rational reasons for these acts being carried out from the viewpoint of consumer interests, such as the need to maintain the quality of the goods and to ensure proper use, even when, at present, the necessary confirmation or adjustment has to be done in person, there will be an increasing number of cases in the future where it will be possible to perform such necessary actions via the Internet due to developments in Internet technology. For this reason, even if plausibly rational reasons are accepted at the present time from the viewpoint of consumer interests with regard to restricting the purchase of the products to face-to-face sales, it should be noted such grounds might not apply in the future.

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 and payment methods

A Survey results

According to the results of the questionnaire for enterprises, 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 (II-4(2)E(A) (p.82)).

On the other hand, according to the results of the interview survey of online shopping malls, the usage fees were described in a standard contract, and

in some cases specific payment methods were specified from the viewpoint of providing greater convenience for the consumers (II-4 (2)E(B) (p.84)).

B Evaluation and future policy

As stated in I(2)(p.109) above, online shopping malls are an important sales tool especially for small and medium-sized retailers in the Japanese B2C e-commerce market, and are also considered to play a significant role in ramping up competition.

Online shopping mall operators stipulate the online shopping mall usage fees and payment methods in standard contracts or other agreements, but if they unilaterally raise the fees or restrict the payment methods, retailers with large amounts of sales or retailers who are highly dependent on the online shopping mall may, in particular, unexpectedly suffer an unfair disadvantage or find their business opportunities unfairly restricted, which may impede fair competition in the entire B2C e-commerce market in Japan.

Therefore, from the viewpoint of securing an environment of fair competition, online shopping mall operators should continue to work on making the trade terms as transparent as possible for the stores in order to ensure that the stores do not unexpectedly suffer an unfair disadvantage such as a unilateral change in the usage fees or payment methods, and that sufficient negotiations and explanations in relation to the trade terms are conducted beforehand and that a certain degree of predictability is ensured.

In addition, 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 status 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

According to the results of the questionnaire for enterprises, 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 (II-4(2)D(A) (p.81)).

On the other hand, according to the results of an interview survey of online shopping malls, although there were no details prohibiting selling at the online shopping mall in standard contracts or other agreements or any clear criteria preventing unscrupulous enterprises from taking measures, some online shopping malls stated that in some cases where an enterprise, which had previously caused problems such as committing a fraudulent act, might be refused permission to open a store at the online shopping mall (II-4(2)D(B) (p.82)).

B Evaluation and future policy

As stated in I(2) (p.109) above, online shopping malls are an important sales tool especially for small and medium-sized retailers in the B2C e-commerce market in Japan, and are also thought to play a significant role in ramping up competition.

Although there were cases where some of the screening criteria were not disclosed in the screening of the opening of a store or display of products at an online shopping mall, there were cases where there were reasonable justification for the screening criteria not being disclosed in detail from the viewpoint of consumer interests such as it being necessary to prevent unscrupulous enterprises from taking measures. However, in cases where the opening of a store or the display of products is denied or a store is made to leave the online shopping mall due to ambiguous reasons, enterprises with large amounts of sales or which are highly dependent on the online shopping malls may sometimes unexpectedly suffer an unfair disadvantage or find their business opportunities unreasonably restricted, which may eventually lead to the impeding of fair competition in the entire B2C e-commerce market in Japan.

Therefore, in order to avoid retailers who wish to open a store at an online shopping mall unexpectedly suffering a disadvantage such as being refused permission to open a store or display goods or being told to leave the online shopping mall due to ambiguous reasons, from the viewpoint of ensuring fair competition, online shopping mall operators should continue to make the trade terms as transparent as possible for the stores so that predictability is ensured regarding the screening criteria.

In addition, 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 (Distribution Systems and Business Practices Guidelines Part II, Chapter 3, 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 (II-4(2)F (p.85)).

B Evaluation and future policy

Online shopping malls are thought to play a significant role in ramping up competition in the B2C e-commerce market in Japan, but for this to occur, it is important that there is strong competition not only among the stores but also among the online shopping malls.

As described in I(2)A (p.109) above, a two-sided indirect network effect arises in the online shopping malls, but in order for the online shopping mall to function as an effective competitive unit in the market, it is thought that it is necessary for the online shopping mall to secure a certain constant number of stores and consumers. For this reason, if an online shopping mall operator which has an influential position in the market restricts merchants from opening a store at another online shopping mall and prevents other online shopping malls from acquiring a sufficient number of stores, there is the possibility that such acts will render new entry into the market difficult, and also make it more difficult for small and medium-size online shopping mall operators to continue

operating when compared to other markets where an indirect network effect does not arise. In this way, restrictions imposed by online shopping mall operators on retailers to stop them opening a store at another online shopping mall serves to hinder competition among the online shopping malls, and eventually leads to impeding fair competition in the entire B2C e-commerce market in Japan.

Regarding the act of online shopping mall operators restricting merchants from opening a store at another online shopping mall, the Japan Fair Trade Commission published a case on May 23, 2018 of suspicion of violating the Antimonopoly Act against Minnanopetto Online Corporation, and published a case on October 10, 2018 of suspicion of violation of the Antimonopoly Act against Airbnb Ireland UC and Airbnb Japan⁷¹, and with regard to such acts, 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 occurring,⁷² there is the risk that a problem will arise under the Antimonopoly Act (Refusals to Deal in Concert with Competitors (Distribution Systems and Business Practices Guidelines Part I, Chapter 2, Section 2)).

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.

(4) MFN clauses

A Survey results

It was confirmed through the survey that online shopping mall operators

⁷¹ Regarding online shopping mall operators, as described in footnote 3 in this report, a platform operated as a “place to sell products” constitutes an “online shopping mall”, but Minnanopetto Online Corporation operates a website to broker transactions between breeders and ordinary customers for transactions relating to dogs and cats (the dogs and cats are not bought or sold on the website), and Airbnb Ireland UC operates a website that brokers accommodation services. Therefore, although the act of suspected violation in both cases is not an act by the online shopping mall operator referred to in this report, it serves as a reference as acts of so-called platform businesses.

⁷² 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 products (Distribution Systems and Business Practices Guidelines Part I, Section 3, Subsection (2), a).

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 (establishment of equivalent price clauses or equivalent product lineup clauses in the contract with stores) (II-4 (2)G (p.85)).

B Evaluation and future policy

Online shopping malls are also thought to play a significant role in terms of ramping up competition in the B2C e-commerce market in Japan, but for this to occur, there needs to be strong competition not only among the stores but also among the online shopping malls.

When an online shopping mall operator establishes so-called MFN clauses⁷³ such as equivalent price clauses and equivalent product lineup clauses in contracts entered into with stores, it becomes impossible, for example, for stores to cut prices or expand their product lineup at specific online shopping malls, which means there will be reduced incentive to cut prices and expand the product lineup, and even if another online shopping mall operator were to request price cuts or expanded product lineups at their online shopping mall, since prices would have to be cut and the product lineup expanded at the same time at the online shopping mall where the MFN clause was established, there will be reduced incentive for other online shopping malls to make such requests. In this way, the establishment of MFN clauses by online shopping mall operators hinders competition among the stores and online shopping malls, which in turn will eventually impair fair competition in the entire B2C e-commerce market in Japan.

Regarding the establishment of MFN clauses in contracts concluded with stores by online shopping mall operators, the Japan Fair Trade Commission published a case on June 1, 2017 of a suspected violation of the Antimonopoly Act by Amazon Japan, and with regard to such acts, 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.). In

⁷³ Here an example is given of a so-called MFN clause such as when an online shopping mall operator demands that the store sells at a price at or below the price when selling the same product on its own site or at another online shopping mall, or with an equivalent or greater product lineup, but the same also applies in terms of the impact on competition in general when the effectiveness of the act is secured through imposing such trade terms on the store.

addition, 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.

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

A Survey results

In the results of the questionnaire for enterprises, 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 (II-4(2)H(A) (p.87)). Also in the interview survey of online shopping mall operators, the online shopping malls responded that they gather customer information in compliance with standard contracts, and provide customer information to the stores only to the extent necessary in shipping the products, and in addition prohibit use by the store for purposes other than the purpose of use, and prohibit customer information being taken out or used after the store leaves the online shopping mall (II-4(2)H(B) (p.89)).⁷⁴

B Evaluation and future policy

In order for the B2C e-commerce market to develop and to provide greater convenience for the consumers, enterprises that engage in e-commerce related business activities should use the customer information appropriately, and achieve more efficient product development, sales methods and marketing.

The fact that the stores on online shopping malls are not freely able to use customer information does not immediately constitute a problem under the Antimonopoly Act, and there are cases where there are reasonable justification

⁷⁴ A proposal was made in the 2016 survey report on the actual situation conducted by the Japan Fair Trade Commission (“Survey Report Relating to B2C E-commerce Transactions of Electronic Shopping Malls, etc.”) concerning restrictions on use of customer information after leaving the online shopping mall that “in cases where a store operator is restricted from freely moving to another electronic shopping mall even when it cannot be said that such restriction is necessary to protect information and there is the risk of an adverse effect on competition among electronic shopping centers in the B2C e-commerce market”, this could constitute a problem under the Antimonopoly Act.

for restricting the acquisition and use of information on account of the need to prevent “free rider” problems, and protect personal information. However, 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.

In addition, 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 stores, and deal strictly with acts that violate the Antimonopoly Act.

4 Others

(1) Survey results

In the questionnaire for enterprises, some criticism was expressed about the deterioration in distribution conditions, and the leaking of personal information, etc. as problems of e-commerce (II-6 (p.106)).

(2) Evaluation

In general, the view of the Japan Fair Trade Commission is that the various issues in the area of e-commerce are not problems in terms of the Antimonopoly Act or competition policies, but there is the possibility that, in part, for example, acts that fall under the abuse of a superior bargaining position or which violate The Subcontract Act may be a contributing factor to deterioration in the distribution conditions. Therefore, persons engaging in business related to e-

commerce should not only comply with the items of the abovementioned 2 and 3 (p.112 to p.122), but should also comply with a wide range of laws including the Antimonopoly Act.

IV Future responses of the Japan Fair Trade Commission

The rapidly growing B2C e-commerce market environment has undergone a massive change in recent years, and e-commerce is proving to be an important sales channel for retailers and manufacturers. Also, along with this, the trade practices related to B2C e-commerce are also likely to undergo major changes.

Under such circumstances, it will be easier than in the past for acts related to B2C e-commerce between manufacturers and retailers and between online shopping mall operators and stores, which constitute a problem under the Antimonopoly Act, to be carried out. In addition to the actions described above in 3, there is the possibility that future developments in digital technology will create new Antimonopoly Act issues and concerns in terms of competition policies.

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 engaging in resale price maintenance acts or imposing restrictions on online sales thus causing a price maintenance effect, or 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. With this in mind, 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 deal strictly with acts that violate the Antimonopoly Act.