

Closing the Investigation on the Suspected Violation of the Antimonopoly Act by Apple Inc.

September 2, 2021
Japan Fair Trade Commission

The Japan Fair Trade Commission (hereinafter referred to as the “JFTC”) has investigated Apple Inc. (hereinafter referred to as “Apple”) in accordance with the provisions of the Antimonopoly Act since October 2016. Apple has been suspected ^(Note 1) of restricting business activities, such as selling digital contents ^(Note 2), etc., of enterprises that distribute applications (hereinafter the enterprises referred to as “developers” and the applications as “apps”) based on App Store Review Guidelines (hereinafter referred to as “Guideline”) as Apple operates App Store, where the developers distribute apps for iPhone.

During the JFTC’s investigation, Apple proposed to take measures such as revising the Guideline related to the alleged conduct above. As a result of the JFTC’s review on this proposal, the JFTC recognized it would eliminate the abovementioned suspicion and decided to close the investigation on this case after the JFTC confirms the measure has been taken.

(Note 1) Suspected violation of the provisions of Article 3 (private monopolization) and Article 19 (paragraph 12 [Trading on Restrictive Terms] of the Designation of Unfair Trade Practices, etc.) of the Antimonopoly Act

(Note 2) Digital contents such as music, e-books, videos, etc., paid additional functions of apps, and subscription services such as unlimited music streaming service, etc.

I. Overview of the Case

1. Overview of Apple Inc.

Name of Company	Apple Inc.
Address	One Apple Park Way; Cupertino, CA 95014, United States
Representative	Timothy Donald Cook

2. Market of Sales of Smartphones

The volume of smartphone shipments in Japan exceeds 30 million per year and iPhone supplied by Apple Japan G. K. have 46.5 % market share ^(Note 3).

(Note3) Source: Japan Fair Trade Commission, “Issues Concerning Competition Policy in the Mobile Phone Market” (June, 2021), page. 3-4

3. Overview of App Store

(1) App Store is the only place where iPhone users are able to download native apps. Apple has published the Guideline with which apps in the App Store are to comply and reviews these apps based on the guideline. In the process of the review, when Apple finds that the app does not comply with the Guideline, the app may not be allowed to be distributed via App Store (hereinafter Apple’s judgement that the app does not comply with the Guideline referred to as “rejection”).

(2) Apple, based on the Guideline, requires developers to use the means of payment which Apple specifies (hereinafter referred to as “IAP”) for sales of digital contents, etc. within the apps, and charge developers with fee, amounts to 15 or 30 percent ^(Note 4) of sales through IAP.

(Note 4) Apple charges developers with 15 percent of 1) sales in case of subscription over a year and 2) total annual App Store proceeds (sales net of Apple’s commission and certain taxes and adjustments) less than 1 million dollars.

4. Music streaming, e-books, and video streaming service for smartphone

Each market size of music streaming service, e-books distribution service, and video streaming service offered through the Internet are as follows: 78.3 billion JPY, 456.9 billion JPY, and 320.0 billion JPY ^(Note 5).

In the sectors of music streaming, e-books, video streaming service for smartphone (hereinafter referred to as “music streaming service, etc.”), developers have difficulty to cut further costs in general, because of their heavy burden such as copyright fee for contents holders.

Some developers of music streaming service, etc. distribute apps which are used not to sell their digital contents but mainly to listen, read, watch the digital contents (hereinafter referred to as “reader apps”) which users bought through websites, etc. Some of these developers sell their digital contents, etc. only through websites.

Apple distributes its own apps of music streaming service, etc. and sells digital contents, etc. as well.

(Note 5) Source: Ministry of Economy, Trade and Industry, “Results of FY2020 E-Commerce Market Survey” (July, 2021) page.69

5. Facts and evaluations

(1) Use of IAP

(a) Facts

The Guideline stipulates that developers are required to use IAP for sales of digital contents, etc., and prohibits from including external links or buttons within the app to induce consumers into purchase other than using IAP.

(b) Evaluation under the Antimonopoly Act

Digital contents, etc. are also distributed outside of apps such as on websites. Therefore, consumers may visit developers’ websites where businesses distribute such contents and pay for them. As such, providing sales channel using means of payment other than IAP may create price-reduction effect, and consequently benefit consumers ^(Note 6).

In the situation described above and 3(2), prohibiting developers from including an in-app link could be a problem under the Antimonopoly Act because it gives concerns on developers’ sales channel using means of payment other than IAP, such as insufficient functions and abandon of introducing them.

(Note 6) Reference: Japan Fair Trade Commission, “Report regarding trade practices on digital platforms (Business-to-Business transactions on online retail platform and app store)” (October, 2019) page. 76

(c) Report from Apple

After the JFTC pointed out the concern described in (b) above in the process of this investigation, Apple reported to the JFTC to take measures to allow developers to include an in-app link within reader apps ^(Note 7) of music streaming service, etc. ^(Note 8) and to revise the Guideline.

(Note 7) It will not be prohibited for developers that distribute non-reader apps to change non-reader apps to reader apps or to start distributing reader apps.

(Note 8) Apple reported that it would take the same measures for developers of reader apps of digital magazines and newspaper in addition to music streaming service, etc.

(d) JFTC's position to the report

According to Apple's report mentioned in (c) above, developers will become enable to display the link of their own websites on their reader apps, and the concerns that it prevents developers from providing sales channel using means of payment other than IAP will be eliminated.

Therefore, the JFTC recognized that the measure proposed by Apple outlined in (c) above would eliminate the suspicion of the violation of the Antimonopoly Act in music streaming service, etc.

(2) Other alleged conducts

(a) Facts

Many developers point out that the Guideline includes ambiguous articles and the reasons of rejection are unclear.

(b) Evaluation under the Antimonopoly Act

It could be recognized as a problem under the Antimonopoly Act if Apple, as the operator of App Store, applies the unclear standard of review to developers and rejects their apps in order to achieve unjustifiable purpose under the Antimonopoly Act.

In addition, rejection or deleting apps from App Store have a great influence on business activities of developers even if there is no unjustifiable purpose. Also, unclear phrases in the Guideline and reason of rejection impair the predictability of business activities of developers and have a restrictive effect on new entry or investment. In these points, these conducts could have an adverse effect on competition.

(c) Report from Apple

In addition to the measure described in 5(1)(c) above, Apple reported to the JFTC to work on clarifying the Guideline and improving the transparency of app review in order to improve the predictability of developers and report the status of them to the JFTC once a year for three years.

6. Closing of this Case

The JFTC recognized that the measure proposed by Apple mentioned in 5(1) above would eliminate the suspected violation of the Antimonopoly Act and decided to close

the investigation on this case after confirming that the measure has been actually taken.

II. The JFTC's Initiatives against Suspected Violations of the Antimonopoly Act in the IT/Digital Sector

In the case where the JFTC receives information regarding a suspected violation of the Antimonopoly Act in the IT/Digital sector, its IT/Digital Task Force ^(Note 9) conducts an investigation in an efficient manner.

Also, for the purpose of receiving the information regarding a suspected violation of the Antimonopoly Act in the IT/Digital sector, the JFTC has set the special contact point (see the following website for details).

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

The JFTC will continuously monitor the status of the competition in the IT/Digital sector including the smartphone business from the perspective of promoting free and fair competition.

(Note 9) The name changed from "IT Task Force" in August 2021.

* Every announcement is tentative translation.