

Japan Fair Trade Commission's Report on the Actual Status of Consumer e-Commerce Transactions

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The Japan Fair Trade Commission (“JFTC”) published the *Report on the Actual Status of Consumer e-Commerce Transactions* (the “Report”) on January 29, 2019. The rapid expansion of consumer e-commerce in Japan in recent years has promoted competition in the retail market, but at the same time, it has also raised concerns that the availability of information and the transparency of competitors’ actions have rendered it easier for anticompetitive behaviors to be carried out.

In this context, the Report aims to illustrate the results of the JFTC’s investigation of the actual status of consumer e-commerce. The investigation was conducted from January to November 2018 by way of questionnaires and hearings from retailers, manufacturers, online mall operators and price research companies, as well as surveys from consumers.

In recent years, competition policy on the digital economy is a subject that competition authorities are actively discussing in various countries. In Japan, the “Future Investment Strategy 2018”, decided by the Cabinet in June of last year (2018), was set out to establish basic principles for the development of regulations in response to the rise of platform businesses within the year. In line with the above, the Ministry of Economy, Trade and Industry, the JFTC and the Ministry of Internal Affairs and Communications introduced the *Fundamental Principles for Rule Making to Address the Rise of Platform Businesses* on December 18, 2018. Furthermore, the JFTC commenced the “investigation on the transaction practice of digital platformers” on January 23, 2019. The interim report of this investigation is expected to be issued by summer of 2019.

In the Report, the JFTC appreciates the enhanced competition and great benefits for both consumers and business operators brought by e-commerce. At the same time, however, it points out as a matter of concern that e-commerce may cause anticompetitive effects such as manufacturers’ control of retail prices and cooperation among manufacturers or retailers. In addition, the Report suggests that the development of digital technology may cause new problems and concerns for the Antitrust Act and competition policy in the future. In this article, we will discuss some of the points raised in the Report that are particularly noteworthy.

Characteristics of consumer e-commerce market

With the development of Internet technology, the use of e-commerce is expanding; the market size of the consumer e-commerce market as a whole was ¥9.513 trillion in 2012, but it increased by 73.5 percent over the next five years to ¥16.051 trillion in 2017.

While online malls are becoming an important sales tool, especially for small- to medium-sized retailers, sellers and consumers are concentrated in three major online malls in Japan. The operators of these major online malls occupy a dominant position in related markets and may hold a superior position to the retailers who wish to use the online malls.

Actions between manufacturers and retailers which may lead to a problem

According to the Report, there have been some cases where manufacturers gave instructions or requests to the retailers about the advertisement and display of retail prices or selling prices. As it is easy for manufacturers to know the retail prices in online sales, resale price maintenance may occur, in which case, its effectiveness would be easily maintained.

Moreover, the availability of information on selling prices among the retailers online may lead to cooperative acts in terms of pricing, which may in turn amount to an unfair trade restriction.

Furthermore, some manufacturers have been found to have prohibited retailers from selling their products online or utilizing online malls in order to maintain the brand image of their products. This would not be an issue if “it is deemed to be reasonable based on reasonable consumer interests” and “an equivalent standard applies to other distributors”; for example, where it is necessary to maintain the quality of the product and to secure appropriate use. If these criteria are not met, compliance with the Antitrust Act must be examined individually, taking both the anticompetitive effect as well as the enhancement of competition into consideration.

Actions of online mall operators

The Report recognizes that online malls are an important sales tool for small- and medium-sized retailers and play a major role in active competition. On the other hand, where operators of online malls have a superior position to retailers, making changes in usage fees or payment methods that would be disadvantageous to retailers may amount to an abuse of dominant bargaining position.

The JFTC expressed that it intends to make every effort to collect information on the status of consumer e-commerce transactions and to have a stern position on violations of the Antitrust Act. On the part of corporations, it is advisable to keep an eye on the JFTC's enforcement policy with regard to e-commerce transactions, along with the investigation into digital platformers mentioned in this article.

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