



# the Dynamics of Competition Law Enforcement in Japan

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# Objectives of the talk

- Introduce the Japanese antitrust framework applicable to Google's unilateral conducts
- Overview & timeline of the Google cases
- Japanese approach: how different legal tools have been mobilized, and its background
- Dynamics and Implications

# Japanese Legal Toolbox (Substantive)

## **(1) Antimonopoly Act (AMA): JFTC**

- Two digital sector specific statutes

## **(2) Act on Improving Transparency and Fairness of Digital Platforms (2020)**

- Cf. EU P2B Reg.

## **(3) Smartphone Software Competition Promotion Act (2024)**

- Cf. EU DMA

# (1) Antimonopoly Act (AMA): Substantial

## Conduct types

- **Private monopolization** (Art. 2(5) & 3)
- (Cartel)
- **Unfair trade practices** (defined in AMA and administrative legislation, prohibited by Art. 19):
  - **List of typical anticompetitive conducts** based on “incipiency doctrine”
  - For unilateral conduct in digital sectors, more used are:
    - Trading on Restrictive Terms
    - Interference with a Competitor’s Transactions
    - Abuse of a Superior Bargaining Position
  - Easier to use
    - **Requirement clearly specified**
    - **Lower standard for anticompetitive effect**: “tend to impede fair competition” Art. 2 (9) (vi)
    - Cf. “substantially restrain fair competition” for Private monopolization and Cartels

# Antimonopoly Act (AMA): Procedural

- Formal proceedings (binding)
  - **Cease and Desist Orders**
  - **Approval of commitment orders**
- Less formal (mostly binding)
  - Remedies through guidance
    - **Warnings** (Administrative Guidance, JFTC Rules on Investigation, Art. 26): Dubious but not enough evidence
    - **Cautions** (Administrative guidance, no written legal basis): conduct that may lead to a violation, or necessary to prevent such a violation in advance
- Informal resolution (Improvement)
  - **Voluntary measures** --> closure

	2020	2021	2022	2023	2024
Cease & Desist order	9	3	8	4	21
Commitment plan	6	2	3	5	3
Warning	0	0	0	3	8
Cautions	208 (136)	336 (244)	257 (192)	411 (317)	322 (253)
Closed (published)	2	3	1	1	0

Figures in parentheses indicate the expedited handling of unjust low price sales cases.

## (2) Transparency Act for Digital Platforms, 2020

- Regulator: METI in cooperation with JFTC, MIC
- Goals: improving **transparency and fairness of trade terms** between P2B
- Scope: designated undertakings in designated fields
  - Designation threshold: sales in Japan. (50-300 Billion yen €0.28 – €1.7 billion)
  - Obligations...in voluntary manner,
    - disclose terms and conditions and other information
    - develop procedures and systems to ensure their fairness
    - submit an annual report
- Rather weak remedies
  - Recommendations
  - If not corrected, Cease and Desist Orders with fines

Online shopping mall operatorsT	providers	services
Online shopping mall operators	Aazon Japan	Amazon.co.jp
	Rakuten group	Rakuten Ichiba
	LY Corporation	Yahoo! Shopping
Application stores	Apple Inc. and iTunes KK	App Store
	Google LLC	Google Play Store
digital ad platforms providers (Platforms placing advertisers' ads on their own website)	Google LLC	advertisements on "Google Search" or "YouTube" through "Google Ads", "Display & Video360", etc.
	Meta Platforms, Inc	advertisements on "Facebook (including Messenger)" or "Instagram" through "Facebook Ads"
	LY Corporation	Advertisements on Yahoo! JAPAN (including Yahoo! Search) or LINE and family services through Yahoo! Ads
	TikTok Pte. Ltd.	advertisements on "TikTok" or "TikTok Lite" through "TikTok for Business"
ad intermediary by mainly using auctions	Google LLC	displays advertisements in media owners' advertising space using "AdMob", "AdSense", etc. through "Google Ads", <sup>7</sup> "Display & Video360", etc.

## (2) Transparency Act for Digital Platforms, 2020

- Enforcement so far:
  - **Recommendations** regarding apt disclosure of the conditions for deals
    - Amazon Japan (2 Aug. 2024, Art. 5(1) & 4 (2))
    - Apple/ iTunes (2 Aug. 2024, Art. 5(1))
  - Annual monitoring reviews done



# (3) Smartphone Software Competition Promotion Act (2024)

- Complementary to AMA
- Regulator: JFTC
- Goals: fostering innovation and expanding options for consumers by ensuring a fair and competitive environment in the digital field
- Limited scope: mobile OS, app stores, browsers and search engines (exhaustive list)
- Designation of software providers by JFTC
  - Threshold: over 40 million monthly active user (monthly average counted by year)
- Ex-ante behavior regulations
  - Prohibitions
  - Obligations

prohibitions	OS	App Store	Browser	Search Engine
Use of acquired data to compete (Art. 5)	✓	✓	✓	-
Discrimination and unfair treatment of app providers (Art. 6)	✓	✓	-	-
Restricting alternative App stores (Art. 7 (1))	✓	✓	-	-
Limiting the use of OS features for apps (Art. 7 (2))	✓	✓	-	-
Restricting the use of alternative payment system (Art. 8 (1))	-	✓	-	-
Anti-steering (Art. 8 (2))	-	✓	-	-
Restricting the use of alternative browser engine (Art. 8 (3))	-	✓	-	-
Forcing to use own identification method (Art. 8 (4))	-	✓	-	-
Self-preferencing regarding products and services (Art. 9)	-	-	-	✓
Obligations	OS	App Store	Browser	Search Engine
Disclosing conditions regarding acquisition and use of data (Art. 10)	✓	✓	✓	-
Data portability (Art. 11)	✓	✓	✓	-
Default setting and adding & deleting apps (Art. 12)	✓	-	✓	-
Measures to enable smooth adjust to changes etc	✓	✓	✓	-
Annual report	✓	✓	✓	✓

# (3) Smartphone Software Competition Promotion Act (2024)

- Designation (26 Mar. 2025)
  - Apple Inc. (for OS, app store and browser) and iTunes K.K. (Apple's Japanese subsidiary jointly operating the App Store in Japan)
  - Google LLC (OS, app store, browser and search engine)
- Subordinate legislations and Guidelines published (29 Jul. 2025)
- **Coming into effect on (18 Dec. 2025)**

# Other Tools of JFTC

- Guidelines
- Market studies
- Study group at attached Competition Policy Research Center (CPRC)

→ underpin the JFTC's **evidence-based and preventive approach.**

## Coordination and Strengthening of Advocacy and Enforcement

- Towards the Active Promotion of Competition Policy in response to Socioeconomic Changes as represented by Digitalization - Coordination and Strengthening of Competition Policy Advocacy and Law Enforcement - (Tentative Title) 2022/6/16

## Guidelines

- Amendments of the "Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination" and the "Policies Concerning Procedures of Review of Business Combination" 2019/12/17
- Release of the "Guidelines Concerning Abuse of a Superior Bargaining Position in Transactions between Digital Platform Operators and Consumers that Provide Personal Information, etc." 2019/12/17

## Market studies

- About the Report Regarding Generative AI, Version. 1.0 2025/06/06
- Requests for Information and Comments Concerning Generative AI and Competition 2024/10/2
- Market Study Report on Connected TV and Video On-demand Service, etc. 2024/3/6
- Market Study Report on News Content Distribution 2023/9/21
- Report Regarding Mobile OS and Mobile App Distribution 2023/2/9
- Report Regarding Subcontracting Transactions in Software Services 2022/6/29(Only available in Japanese)
- Report Regarding Cloud Services 2022/6/28
- Report Regarding Public Procurement for Information Systems 2022/2/8(Only available in Japanese)
- Final Report Regarding Digital Advertising 2021/2/17
- Report Regarding Common Point Services 2020/6/12(Only available in Japanese)
- Report Regarding Household Accounting Services and Cashless Payments with QR Code and barcode 2020/6/12
- Report Regarding Trading Practices of Online Restaurant-Review Portal Site 2020/3/18(Only available in Japanese)
- Report regarding trade practices on digital platforms (Business-to-Business transactions on online retail platform app store) 2019/10/31

## Study group

- The Study Group on Competition Policy for Data Market

# Google Cases in Japan

- 2024 Google – Yahoo! Japan (approval of commitment plan)
- 2025 Google App (cease and desist order)
- My perspective: cease and desist order, private monopolization,

# Google-Yahoo! Japan: search engines and search advertising case (2024)

## Fact

- Background: In 2010, Google began providing search and search advertising technologies to Yahoo! Japan, after the JFTC cleared the arrangement as it was explained that they would remain competitors.
- Both Google and Yahoo! Japan provides **Mobile Syndication Transactions** service.
- Later, changes were made in their agreement as to restrict the provision of technologies for search engines and search advertising to Yahoo that are necessary for Mobile Syndication Transactions.
- By this change, it became difficult for Yahoo to provide Mobile Syndication Transactions from September 2, 2015 at the latest through October 31, 2022
- (Unclear fact about the conducts in question because...)

# Google search engines and search advertising case (2024)

- Investigation under:
  - Private Monopolisation (Art. 2(5) & 3)
  - Unfair Trade Practice
    - Unilateral refusal to trade (Designation Para. 2)
    - Interference with a competitor's transactions (Designation Para. 14)
      - "Unjustly interfering with a transaction between another entrepreneur who is in a domestic competitive relationship with oneself or with the corporation of which one is a stockholder or an officer, and its transacting party, by preventing the effecting of a contract, or by inducing the breach of a contract, or by any other means whatsoever."
- Ended in **approval of commitment plan**
  - **Limited information published**
- Possible leeway to hide from JFTC's eyes, market study worked

# Google Play case (2025)

- Facts
  - Contracts between Google LLC and Smartphone manufacturers
  - Google Play license under following conditions:
    - Google Search App: default installation, placing widget & icon on the home screen
    - Chrome browser: default installation, placing its icon on the home screen
  - Profit sharing agreement under following conditions:
    - Search: no installation of other search function, all search functions of browser should be served by Google's search service, placing Google's search widget on the home screen
    - Chrome browser: default, locate Chrome icon on dock, not to change search function setting from Google's to other, no steering about search function setting
- Anticompetitive effects
  - Smartphone manufacturers' business is restricted
  - Alternative search functions are not installed
  - Google Search app & Chrome default installation etc.: 80% of Android smartphones
  - Profit sharing : more than half of Android smartphones
- Cease and desist order



# Google Play case (15 April, 2025)

- Why cease and desist order? Reportedly...
  - 23 Dec, 2024 Asahi-Shinbun (National wide newspaper)
- Legal tool used: Trading on Restrictive Terms (Unfair trade practice, Designation para. 12)
- No fine imposed
- Background
  - Private monopolisation: 50%+ share needed
  - Smartphone OS share in Japan
    - Apple 63.9%
    - Android 35.9%
  - Appeal?

# Unintended consequences?: Google Play case (2025)

- When the infringement decision becomes final and binding...
  - **No payment from Google to smartphone manufacturers**
  - Maybe, payment for Apps (Chrome, Maps and YouTubes etc...) from smartphone manufacturers to Google
- As globally said, **the prices of smartphone devices might increase**
- + In Japan, some says JFTC gave the **final blow to the remaining Japanese smartphone manufacturers** struggling to survive?
  - Economic security issue?
  - Competence of JFTC limited to AMA enforcement
  - Cf. remarks and other types of unintended consequences, see,
    - Cappai & Colangelo (2020) “Taming digital gatekeepers: the ‘more regulatory approach’ to antitrust law ”(reduction of the innovation)
    - CMA “Mobile Ecosystems Market Study Final Report” (2022)

# Features of Japanese Enforcement

- Preference for commitment and unfair trade practices
- **Pragmatic resolution** rather than strict precedential rulings

	substantive	procedural	outcome
Japan	Mix Antimonopoly Act + sector-specific new laws (one not yet in effect)	Less formal remedies Informal flexible tools Less case law	Mosaic of tools tailored to each cases
EU	Art. 102 TFEU as backbone Reinforced by DMA, B2B Reg	More reliance on formal decisions case law accumulations	Doctrinal backbone



Two distinct regulatory philosophies

Where is the  
Japanese pragmatism from?  
-three drivers

# 1. Structural constraints (external)

- Financial resources
- Human resources

	Financial resources	Human resources	GDP
Japan	¥15.8billion =€90.5million (2025)	957(2025)	~ 4.0 trillion USD (2024 estimates)
EU	€154.8 million(2021)	DG COMP 888+ seconded national officials (2025)	~ 20.0 trillion USD (2024 estimates)

Sources: JFTC website on “Outline of the Budget of the Japan Fair Trade Commission for FY2025”, Global Competition Review, Key figures on Commission Staff (2025), IMF data mapper

## 2. Policy driver:

### Timely, flexible resolution in Digital economy

- **Greater emphasis is placed on restoring a competitive market environment at an early stage.**
- JFTC's latest annual report (April 2025)
  - **“Proactive enforcement against** diverse cases in response to social needs (e.g. obstruction in regulatory reform and digital markets).”
  - **Timely and Flexible response** to cases in the fast-changing digital sector.
- **JFTC policy paper** “Towards the Active Promotion of Competition Policy in response to Socioeconomic Changes as represented by Digitalization - Coordination and Strengthening of Competition Policy Advocacy and Law Enforcement –” (2022)
- JFTC “Policy on Commitment Procedures” (2018)
  - “Compared with cease-and-desist or surcharge payment orders, the commitment procedure enables the competition authority to remedy competitive concerns more swiftly, while expanding the scope of cooperative problem-solving with undertakings.”
- **Litigation risk: a decade-long Qualcomm case (down raid in 2009, High court decision in 2019)**

### 3. Other institutional drivers

- **Consensus building preference of public employees** (Ginsburg, Administrative Procedure Reform 2001)
- **Institutional risk averse culture** of public employees (Hayashi et al. 2022, Brown 1994)
  - Appeals as risks: JFTC might lose the case

# Where is the Japanese pragmatism from? :

## Three drivers

Structural constraints



Policy



Institutional Driver



- Less number of formal cases
  - Preference for less formal way to solve the issue (faster, no litigation, still solve the problems) (Haley 1991)
- Taking cases **in best-substantiated form** (unfair trade practice > private monopolisation)
  - Avoidance of appeal by relying conduct type without fine
    - “No fine, no appeal” (faster, no chance to lose)



# Possible criticism of the current enforcement

- No fine, **no deterrence**
- Discretion of JFTC to the detriment of **equality before the law?**
- **Low transparency** in procedures other than the cease and desist order
- Lack of case law accumulation → **low legal predictability**
  - Less information is published in the Commitment Plans compared with Art. 9 commitment decision in EU
- **Antitrust damage claims become more difficult** if no cease and desist order issued, which lift some burden of proof (Art. 25 AMA)
  - Maybe justifiable if less/non-official solution are mainly used for cases where damages are spread wide and thin so that damage litigations are unlikely, but JFTC never mentioned such standard for choosing tools

# Future Challenges

- Need for **transparency and predictability**
- **Balancing** case-specific pragmatism with systemic consistency
- Ensuring **alignment with global enforcement**
- New tools
- **National industry** wide considerations