



The Japan Fair Trade Commission's Challenges with Apple



Platform companies provide an undeniably tremendous benefit to consumers. On the other hand, “Platform companies can expand their businesses easily, so those with substantial market power will manifest themselves sooner, which in turn allows for the emergence of a few monopolies and oligopolies that amass large profits. Here comes Japan Fair Trade Commission’s challenges with digital platformers.”

Sugimoto Kazuyuki, former Chairman of the Japan Fair Trade Commission

The Japan Fair Trade Commission (JFTC)’s investigations into Apple Inc. effectively came to a close on September 1, 2021 when Apple [announced](#) it would make changes to some global regulations in 2022. Apple submitted an application for changes to regulations that would let users avoid the 15–30% delivery commission for “reader apps” that offer subscriptions for content like books, music, videos, etc., which some media outlets have called an “unusual conciliation.”

Currently, all applications (hereinafter “apps”) used by iPhones and other Apple products must be downloaded from the App Store. Until now, application developers had to pay a commission to sell their apps, the so-called “Apple Tax.” In other words, they paid a “protection price” to a “bookmaker.” With the new decision by Apple, developers won’t have to pay the “Apple Tax” in reader apps and Apple will recognize outlinks to external payment methods.

On September 2, the JFTC confirmed the revised regulations and [announced](#) the end of their investigation. Strengthening regulations on giant IT companies is a global trend and the JFTC is also halting actions by Apple, the world’s largest company, which would constrain free and fair competition. This is an important step for innovation in Japan.

Removing the 30% commission fee means that application developers can anticipate increased profits and this should lead to lower contents prices. Close to half of all smartphones in Japan are iPhones and in the modern age where living without a smartphone is hard, this ruling will have far-reaching impacts for everyone.

However, this is no more than the first step. We must ask how we confront not just Apple, but also Google, Facebook and Amazon— the so-called GAFA—and other large platform companies with global operations. This is an important topic that penetrates the Japanese economy and society.

In February 2016, I initiated the investigation into the “Apple Tax” issue as the Chairman of the JFTC. We first worked with the Ministry of Economy, Trade and Industry (METI), then conducted interviews with relevant companies and individuals, and confirmed that developers cannot avoid paying a commission when they sell apps through the App Store. We contemplated whether this created an unreasonable disadvantage for developers, obstructed free and fair economic activities, and stifled competition.

Intense Discussions with Apple

The JFTC was established as an enforcement agency under the Antimonopoly Law passed in 1947 following the war. The most critical aspect of this law is the assurance of a market environment that ensures free and fair competition. If Apple gains an unfair advantage and obstructs free and fair competition by restricting the payment method used by reader apps so that they can get this “Apple Tax,” then the JFTC must take an interest in the matter. Intense discussions unfolded between the JFTC and Apple.

Approximately five years passed before this investigation announced its results. We faced obstacles like confidentiality obligations, etc. and needed time to both conduct interviews and understand the situation from the application developer side. Initially, Apple paid this investigation little mind.

One turning point was certainly the “Facebook-Cambridge Analytica data scandal.” In 2018, it was revealed that the election consulting firm Cambridge Analytica, Ltd. (CA) obtained personal information from 87 million users of the SNS giant Facebook during the 2016 United States presidential election without their permission. A torrent of criticism followed regarding whether that personal data was used to manipulate public opinion.

The data they collected contained a wealth of personal information and people were concerned that the data would be used in ways not intended by the users. This incident alerted the world to the dangers inherent in the increasingly large platform companies. And the “Fortnite trial” also shone light on this issue. In August 2020, Epic Games, publishers of the popular game Fortnite that can be downloaded from the App Store, claimed that the “Apple Tax” violated United States antitrust laws and introduced an external payment system inside the game to avoid the “Apple Tax.” Apple consequently removed Fortnite from the App Store, which sparked a global debate on the topic. This incident most likely influenced Apple’s decision to allow outlinks.

We Can’t Live Without Google

This topic is not limited to the above issues with Apple. We must consider how we stand up to giant platform companies to protect Japanese markets and the Japanese economy. The digitization of the

economy that began in the latter part of the 20th century has quickly transformed everyday life, because we live in a data standard age where digital information creates value.

Modern humans connect to SNS, messenger apps, email, e-commerce and more in one form or another and it's no overstatement to say that we cannot live without updating those services. Honestly, imagining a life without Google or Amazon is nigh on impossible. Amazon delivers many items the following day with one click, which provides an undeniably tremendous benefit to consumers. Even I come home to find a stack of cardboard boxes from my wife's Amazon purchases piled up in our room and taking them out to the recycling is one of my important household tasks [laugh]. That service effectively expands the marketplace for small- and medium-sized businesses.

However, digital platform businesses tend to operate as winner-take-all systems. Digital platformers provide convenient services used by many people and then use data to improve the performance of their products and services. If the quality of the service improves, that leads to more people using the service, which then enables the collection of even more data. These "network effects" further concentrate users to a specific platform.

Until now, economic activities have placed certain limitations on production capacity. However, whether a Google service has one thousand users or one million doesn't require that service to invest the additional resources or production lines that a manufacturing business would. Platform companies can expand their businesses easily, so those with substantial market power will manifest themselves sooner, which in turn allows for the emergence of a few monopolies and oligopolies that amass large profits.

Will Japan Become a GAFA Subcontractor?

The JFTC has conventionally focused on price, the crux of the Antimonopoly Law, and checked for illegal price hikes through cartels or collusion. But this approach cannot understand the monopolies created by platform companies. Google searches are free, as are SNS accounts. Amazon has a vastly wider selection of goods than other commerce sites, is cheaper, and is more convenient.

These are free or cheap services for users, but the information on each user's actions acts as input goods for the platformers to collect money from the advertisers who send advertisements to their target audience. This "double-sided market" is a feature unique to platformers. The problem with this market isn't price, but the unauthorized handling of user information and whether privacy is protected. That is to say, we must pay attention to the quality of information that is being exchanged. Beyond that, there is the question of whether a company with tremendous market power is blocking competition and whether they provide unfair advantages to related parties like trading partners. The role of the JFTC is to monitor whether market mechanisms are working properly.

I worked as the Chairman of the JFTC from 2013 until 2020 and since my time in office I have worried whether we have created a structure where the Japanese economy becomes a subcontractor for gigantic companies like GAFA. From my point of view, modern Japanese business has fallen behind.

Originally, I worked in the Ministry of Finance for a long time and worked in the Budget Bureau during the 1990s, when the Japanese economy underwent significant structural changes, like the working age population of 15–64-year-olds peaking in 1995. The 1990s formed a border after which we transitioned from a time of a demographic dividend to one of a population onus.

Also, around 1990, Japan's GDP per capita led the major developed countries and was feverishly pursued by the other developed countries. When an economy enters the maturity stage, however, the supply side must pull the economy, not the demand side like before. In other words, we have entered a time where innovation in the digital economy is essential, but for some reason the current Japanese economy is focused inward.

The Semiconductor “Failure”

The Japan-US Semiconductor Agreement signed in 1986 stands as one representative case of Japanese businesses turning inward. At the time, the Japanese semiconductor industry was hailed as the best in the world, but agreements between government offices essentially formed an anti-competitive environment that hamstrung price and market share. The Agreement pushed against Japanese companies whose products had been prevailing in the world market, and the Japanese electronics industry was a victim.

However, after that, Japanese businesses remained in a market where competition was limited. That is to say, they stalled. This “stalling” is a testimony to the decrease in business innovation from an environment with limited competition. Japan then has fallen behind in new fields like advanced types of semiconductors for computers, etc. and has been overtaken by other countries like Korea in existing fields. At its peak in 1998, Japan boasted approximately 50% of the semiconductor market share, but it now represents less than 10%. It is not even currently in the top ranks and the business is now led by the United States, Korea and Taiwan.

Losing a free and fair competition environment negatively affects an economy. Japan has no global platform companies and was robbed of the de facto standard by GAFA.

I am seriously concerned that Japan will become a subcontractor to big companies like GAFA. In recent years, GAFA have expanded from digital businesses into “real” business areas like finance, autonomous driving, the health care industry and so on. If we cannot ensure a free and fair market environment for information, Japanese businesses will be put in a position of subcontracting and providing parts under the intense market power of GAFA and risk falling into a state of continuing deterioration.

Business executives must not turn inward but seek new innovation and adopt a mindset of investing through risk taking. Otherwise, the Japanese economy cannot advance, which will eventually hinder employment opportunities and affect the lives of the Japanese people.

The Digital Reviving of Socialism

I believe that the modern digital economy is compatible with socialism. By that I mean that the source of China's economic development is inseparable from its trend toward digitalization. Looking back through history, the Cold War pitted capitalism and socialism against each other, resulting in the defeat of socialism at the hands of capitalism.

A significant factor in that defeat was that socialist economies under dictatorships did not have enough information on hand and so could not allocate resources efficiently. Without enough information, a socialist state under a dictatorship trying to operate a planned economy becomes

inefficient and does not develop. That is why the Soviet Union could not create a better life for its people; its economic power was sluggish and the union fell.

Capitalistic states, on the other hand, are market economies. Marketplaces produce a wealth of information and can use market mechanisms to allocate resources effectively. As a result, the economic power of capitalist states increases and leads to richer lives for its people, thereby overcoming socialism.

However, the development of digital economies enables socialist systems to obtain reams of information. By doing so, they can use that information to create efficient economies, even under dictatorships. The German political scientist Sebastian Heilmann has called the socialist system with digital technologies “Digital Leninism,” but if a country has a large enough collection of data, the economy can improve even under a socialist system.

That is precisely how China is advancing. They are taking digital technologies developed by countries with advanced IT like the United States and deploying them in a socialist system. Therefore, they can use the efficiency of digitalization to overcome the weaknesses of a planned economy.

However, digital technologies progress rapidly. If China contains their technologies internally, they may miss the “next” innovation. Perhaps innovation can only emerge through free and fair competition.

Japan’s “Loose Regulations”

There are various movements around the globe to deal with actions from GAFA and their tremendous market power that constrain free and fair competition.

A major turning point was the agreement of the 2019 [“Common Understanding of G7 Competition Authorities on ‘Competition and the Digital Economy.’”](#) Competition authorities such as the Directorate-General for Competition of the European Commission, the US Federal Trade Commission and Ministry of Justice, the JFT, and others agreed to work together and address issues involving competition in digital economies.

The EU has always taken a tough stance on giant platform companies and even the more hands-off US has changed its attitude in response to rising public opinion. Against that background, they reached an agreement at the G7 and created a common understanding towards stricter monitoring of platform companies. This was a major advancement in responding to GAFA’s market power as a global collective. The JFTC also helped build consensus.

Methods for regulations vary by country. In Europe and the US, platforms may be subject to sanctions and fines amounting to huge sums of money, in some cases exceeding 100 million yen.

On the other hand, the goal of the Antimonopoly Law is to correct anti-competitive actions, so enforcement focuses on how to eliminate actions that inhibit competition.

In Japan, the [Act on Improving Transparency and Fairness of Digital Platforms](#) (TFDPA) was implemented in February 2021, but this Act creates self-regulation on unfair trading methods by ensuring transparency in transactions between platforms and users or between trading partners—or at least it aims to create such a preventive effect. Japan hopes such regulations result in companies voluntarily stopping unfair transactions by using the law to ensure transparency.

Also, the EU and US are currently discussing whether they can match platform companies’ speed of change using only current competition laws. Even if they crack down on unfair competition in

accordance with competition laws, those investigations take time, as will proving wrongdoing in court after additional measures have been taken.

Towards Additional Regulations in the EU and US

That is where the discussion on ex-ante regulation comes into play. The EU announced the Digital Services Act (DSA) and the Digital Markets Act (DMA) in December 2020. The former makes companies responsible for their content by, for example, imposing fines if no action is taken after illegal content is posted. The latter aims to preemptively regulate anti-competitive action from platform companies.

In the United States, Lina Khan was elected Chair of the Federal Trade Commission, the youngest in history at 32 years old. She is said to favor proactive action towards GAFA. US authorities have filed a complaint that Facebook's acquisition of Instagram and WhatsApp was an anticompetitive act and has also filed proceedings stating that Google violated antitrust laws in past deals. Six bills related to competition laws (antitrust laws) were passed in June 2021 based on an investigative report on GAFA by the US House Judiciary Committee. Amid this global trend, Japan must also continue considering how to secure fair and competitive digital marketplaces.

The last thing I would like to suggest is the creation of common data spaces that treat data as public goods. In other words, we should establish a foundation where information is not contained inside platform companies, but instead can be easily accessed by anyone.

To do so would mean that in the case of data on individuals, they are not held by platform companies, but rather each individual retains the data portability rights to their own data. Establishing common data spaces is also an issue that should be discussed. The common data spaces would lead to a level playing field (fair competition environment) with the platform companies that have a huge amount of information, which would probably be the ultimate countermeasure against GAFA.

Translated from "Appuru to kaku tatakaeri (The Japan Fair Trade Commission's Challenges with Apple)," Bungeishunju, November 2021, pp. 270-277. (Courtesy of Bungeishunju, Ltd.) [November 2021].

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