



公正取引委員会

Japan Fair Trade Commission

The Relationship between Intellectual Property and the Antimonopoly Act in Japan



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September 14, 2011

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Purpose of the AMA and its Substantive Stipulations (1)

□ Types of prohibited conduct

➤ Private monopolization (Article 3, former clause)

Conducts that an enterprise substantially places a restriction on competition in a certain field by eliminating or controlling competitors unilaterally, or concertedly with other enterprises

- Exclusion-type private monopolization
- Control-type private monopolization

Purpose of the AMA and its Substantive Stipulations (2)

□ Types of prohibited conduct – continued –

➤ Unreasonable restraint of trade (Article 3, latter clause)

Conducts that an enterprise substantially places a restriction on competition in a certain field with other enterprises by limiting or implementing their activities mutually such as determining prices concertedly

The examples are as follows;

- Cartel
- Big-rigging

Purpose of the AMA and its Substantive Stipulations (3)

□ Types of prohibited conduct – continued –

➤ Unfair trade practices (Article 19)

Conducts which may hinder fair competition from a variety of viewpoints such as “concern about restraining free competition”, “unfairness in competition methods” and “possibility of violating the base of free competition”

Purpose of the AMA and its Substantive Stipulations (4)

□ Types of prohibited conduct – continued –

Following conducts are stipulated as types of the practice in the AMA

- Concerted refusal of trade
- Discriminatory pricing
- Unjust low price sale
- Resale price maintenance
- Abuse of superior bargaining position

Besides, any further conduct designated by the JFTC

Working Out Intellectual Property Guidelines (1)

- “Guidelines for the Use of Intellectual Property under the Antimonopoly Act” (Intellectual Property Guidelines) was formulated and publicized in 2007.

- The background of working out the guidelines
 - The trend of how the business community has utilized intellectual properties in a strategic way

 - Clarification of the AMA application for intellectual properties other than patent and know-how

 - The regulation revised by EU (2004)

□ Other JFTC's guidelines

- “Guidelines Concerning Joint Research and Development under the Antimonopoly Act” (1993)
- “Guidelines on Standardization and Patent Pool Arrangement”(2005)

□ Expansion in the range of intellectual properties covered by the guidelines (Guideline Part1(2))

All intellectual properties pertaining to technology

- Technologies protected under **the Utility Model Act, the Patent Act**, etc.
- Program works protected by **the Copyright Act**
- Technologies involving the figuration protected under **the Design Act**
- Technologies protected as **know-how**

□ The relationship between intellectual property rights and the AMA (Guideline Part1(1) and Part2(1))

➤ Article 21 of the AMA

“The provisions of this Act shall not apply to such conducts recognizable as the exercise of rights under the Copyright Act, the Patent Act, the Utility Model Act, the Design Act or the Trademark Act”

- This Article is just to confirm that the AMA will not be applied to an originally legitimate conduct.
- Intellectual property right and the AMA are complementary to each other.

Notes Concerning Intellectual Property Guidelines –Basic Principles (2) –

□ The relationship between intellectual property rights and the AMA (Guideline Part1(1) and Part2(1)) – continued –

➤ “ The conduct which is regarded as a proper exercise of rights”

- The conduct which is not regarded as a proper exercise of rights in the first place → **subject to the AMA**

- The conduct which seems to be a proper exercise of right, from its appearance.

⇒ Whether or not it complies with the purpose and objectives of the intellectual property systems.

Purpose and Objectives: To motivate enterprises to actualize their creative efforts and make use of technologies

- Yes → **not subject to the AMA**
- No → **decide whether it is against the AMA**

□ The method of defining the market (Guideline Part2(2))

- The market where the **product** is traded
- The market where the **technology** is traded

When evaluating any restrictions pertaining to the use of technology according to the AMA.

It is necessary to

- (1) identify the trades influenced by restrictions and then
- (2) examine how the impact of these restrictions lessen competition on the market involving the trades

□ How to analyze the effect in reducing competition (Guideline Part2(3))

- Determined by fully considering the following factors
 - The nature of the restrictions
 - How they are imposed
 - The use of the technology and its influence
 - Whether or not the parties pertaining to the restrictions are competitors in the market
 - Their market position (share, rank etc.)
 - The overall competitive conditions
 - Whether or not there are any reasons for imposing the restrictions
 - The effect on incentives of R&D and licensing

□ Cases where restrictions may have major impacts on competition

➤ Cases relating to conduct between competitors

This case is likely to result in evasion of competition and exclusion of other competitors. Therefore, this type is thought to have a relatively strong influence on competition.

➤ Cases relating to the use of influential technologies

Restrictions pertaining to the use of technology are likely to have a great effect on competition when the technology is influential.

□ Cases that are generally not in violation of the AMA (safe harbor) (Guideline Part2(5))

(1) In principle, enterprises using the technology have a total share in **the product market of 20% or less**

(2) Where the product share is unavailable or the product share is found not to be appropriate to determine the effect on the technology market.

There are **at least four parties holding rights to alternative technologies available** with no outstanding detriment to business activities.

Note: Safe harbor is not applicable to cases which impose restrictions involving sales price, sales quantity, etc.

Individual Violation Cases and Interpretation from the Viewpoint of the Guideline (1)

□ Consideration from the viewpoint of private monopolization

➤ An example of **inhibiting the use of technology** (August 6, 1997)

- In addition to association Y, Company X and nine other companies engaging in the manufacture of pachinko game machines and Association Y held a patent and other rights. It was difficult to manufacture the machines without their licenses
- Those ten companies commissioned Association Y to manage these rights and restrained any third party from entering the market by refusing to grant licenses

Individual Violation Cases and Interpretation from the Viewpoint of the Guideline (2)

□ Consideration from the viewpoint of private monopolization – continued –

- An example of **imposing restriction involving the use of the technology** (April 13, 2005)
 - Company X required five PC makers respectively, not to adopt CPU made by company X's competitors for their products
- Besides, the guideline mentions **“Limiting the Scope of the Use of Technology”**

Individual Violation Cases and Interpretation from the Viewpoint of the Guideline (3)

□ Consideration from the viewpoint of unreasonable restraint of trade

➤ The restriction on price of the products used by technology pertaining to multiple licenses (Sep. 10, 1993)

- With regard to iron-made manhole covers for public sewage systems to be purchased by local public entities, company X's utility model was adopted on the condition that the model would be licensed to other enterprises.
 - Company X granted the licenses with conditions such as 1) the prices which the six companies concerned offer are higher than the price of Company X, and 2) the margin of company X and the other six companies for the builders should be fixed.
- Besides, the guideline mentions “restriction in patent-pool” and “cross-licensing”

Individual Violation Cases and Interpretation from the Viewpoint of the Guideline (4)

❑ Consideration from the viewpoint of unfair trade practices

➤ Cases which **inhibit the use of technology** (Nov. 25, 2003)

- Company X imposed an obligation upon the processors of its product in its patent rights license agreement. In this agreement, Company X obliged those processors to restrict retail prices to consumers, which were supposed to be decided freely by retailers, at a certain fixed price.

Individual Violation Cases and Interpretation from the Viewpoint of the Guideline (5)

□ Consideration from the viewpoint of unfair trade practices— continued –

➤ Cases which **impose obligations on licensees to obtain a package license** (Dec. 14, 1998)

- Company X required PC manufactures to unjustly pre-install or enclose X's word processing software in their PCs when Company X licensed those PC manufactures the right to pre-install or to enclose X's spread-sheet software on their PCs to ship

➤ Besides, the guideline mentions **“imposing restrictions in relationship to the use of technology”**