



Asia-Pacific Antitrust Review

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**Japan: authorities prepare to use
bolstered anti-monopoly framework to
scrutinise digital sector**

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GCR's *Asia-Pacific Antitrust Review 2025* delivers specialist intelligence to help readers – in-house counsel, government agencies and private practitioners – navigate increasingly complex competition regimes across the Asia-Pacific region.

Fresh legislation and evolving enforcement tactics continue to impact the landscape, as highlighted by recent developments to merger control frameworks and enforcement across the region, while cartels remain an area of particular focus in Australia, Malaysia and Japan.

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Japan: authorities prepare to use bolstered anti-monopoly framework to scrutinise digital sector

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IN SUMMARY

This article provides an overview of the recent Antimonopoly Act (private monopolisation and unfair trade practice regulation) enforcement in Japan up to December 2024, including enforcement actions by the Japan Fair Trade Commission and developments in the private enforcement front. It also highlights the new legislation to regulate mobile software service providers and developments on the policy front.

DISCUSSION POINTS

- Enforcement trends concerning big tech
 - New legislation to introduce ex-ante regulation for mobile software
 - Use of unfair trade practice regulation to combat deflation
 - Recent decision on AI/algorithm
 - Amendment to the Green Guidelines
 - Policy discussion concerning generative AI
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REFERENCED IN THIS ARTICLE

- Google's commitment on mobile syndication transaction
 - The Act on Promotion of Competition for Specified Smartphone Software
 - Abuse of Superior Bargaining Position
 - Guidelines for Price Negotiations to Appropriately Pass Through Labor Cost
 - 'Tabelog' case (the 19 January 2024 Tokyo High Court decision)
 - Green Guidelines
 - Generative AI
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INTRODUCTION

Throughout 2024, the Japan Fair Trade Commission (JFTC) maintained vigorous enforcement of primary anti-monopoly law, the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (the Antimonopoly Act) in terms of private monopolisation and unfair trade practice regulations.

There were some notable investigations into big tech companies on one hand, while on the other hand, the JFTC utilised unfair trade practice regulations to assist small to medium-sized companies combat deflation by encouraging those companies to pass on the rising cost of inputs to downstream customers.

The JFTC was instrumental in enacting the new legislation to introduce ex-ante regulation against providers of software used in smartphones that is expected to come into force by December 2025.

On the private enforcement front, there was interesting development in the case law concerning the use of AI or algorithm in online restaurant review platform.

Furthermore, on the policy front, the JFTC revised the so-called Green Guidelines and issued several market studies and discussion papers in areas like EV battery charging services, connected TV or video streaming services and generative AI.

BIG TECH

The JFTC has continued a vigorous enforcement of the Antimonopoly Act against big tech companies. In October 2023, the agency opened an investigation against Google for suspected violation of the Antimonopoly Act concerning pre-installation arrangements of its search engine, web browser and app store with Android mobile device manufacturers.-

^[1] In April 2024, the JFTC closed another investigation against Google by approving a commitment plan submitted by Google concerning the provision of technologies for search engines and search advertising to Yahoo.^[2] In November 2024, the JFTC initiated investigation against Amazon concerning some of the restrictions imposed against sellers on its e-commerce platform.^[3]

These investigations reflect the JFTC's resolve to strengthen enforcement and advocacy of the Antimonopoly Act in the digital sector to promote innovation by safeguarding fair competition in this rapidly changing environment.^[4] As in the *Google/Yahoo* case mentioned above, many of the investigations in the recent years concluded in the commitment procedure with some remedial measures offered by the companies under investigation to address competition concerns raised by the JFTC and without finding of illegality.^[5] In Japan, a new legislation, the Act on Promotion of Competition for Specified Smartphone Software (the Mobile Software Competition Act or MSCA),^[6] is expected to come into force by December 2025. Some of the antitrust issues addressed in the investigations mentioned here may be addressed by the new legislation going forward, however the enforcement trend in this sector in general is expected to continue.

Google On Pre-installment Arrangement

In October 2023, the JFTC opened an investigation against Google for suspected violation of the Antimonopoly Act by entering into licence agreements with Android mobile device manufacturers that require them to:

- pre-install Google's search engine, web browser and app store and display icons on their mobile screens as default setting; and
- not pre-install search engines of competing firms.^[7]

The JFTC for the first time in history (according to the JFTC) solicited information and comments from the public regarding the allegations at an early stage of the investigation.-^[8] The investigation is ongoing as of date.

Google On Mobile Syndication Transaction

In April 2024, the JFTC closed another investigation against Google by approving a commitment plan submitted by Google concerning the provision of technologies for search engines and search advertising to Yahoo Japan (now LY Corporation after the merger with Z Holdings Corporation). The JFTC had been conducting investigation against Google for suspected violation of Antimonopoly Act (on the grounds of private monopolisation

and unfair trade practices) by amending the agreement with Yahoo Japan that resulted in restriction of the provision of the said technologies necessary for the so called 'mobile syndication transactions' to Yahoo Japan who relied on those technologies from Google to compete against it in the field of mobile syndication transactions.^[9]

The commitment plan submitted by Google confirmed, among others, that the conduct at issue had been ceased and Google would not engage in such restriction for the next three years unless it obtains prior approval from the JFTC.^[10] The JFTC closed the investigation without finding of illegality.

Amazon On E-commerce Transaction

In November 2024, the JFTC opened an investigation against Amazon for suspected violation of the Antimonopoly Act by restricting the business of the sellers on its e-commerce platform to:

- set the price at 'competitive' level; and
- use its service called Fulfilment by Amazon.^[11]

The investigation is ongoing as of date.

ENACTMENT OF THE MOBILE SOFTWARE COMPETITION ACT

After several years of conducting market studies, public hearings and discussions among relevant stakeholders, the Japanese government came to a conclusion that a new legislation is necessary to address competition issues especially in the mobile phone software sector so that those issues can be addressed in a timely fashion against the backdrop of rapidly evolving technological advancement.^[12]

Under the Mobile Software Competition Act, the JFTC would designate software service providers of a certain scale for each type of specified software. These designated providers are prohibited from engaging in certain conducts, including:

- interfering without justification with the provision of app store by third-party providers;^[13]
- interfering without justification with the use of billing system by third-party providers;^[14]
- interfering without justification with the provision of web browser by third-party providers;^[15]
- preferential treatment of its own search result against that of competitors;^[16]
- use of data acquired from the usage of app in competing goods or services of other app developers;^[17] and
- interfering without justification with the use of functionalities controlled by the operating system by app developers at the same level as the designated providers uses.^[18]

In the event of a violation of the prohibition mentioned above, the JFTC can issue a cease-and-desist order, and for some violations a surcharge payment order of 20 per cent of the relevant turnover.^[19]

In addition, the designated providers are required to:

- disclose to other app developers and users the status of acquisition or usage of data that the designated providers acquired;^[20]
- ensure the transfer of certain specified data at the request of the users;^[21] and
- submit annual report to the JFTC on the summary of business activities and compliance with the provisions of the Mobile Software Competition Act.^[22]

The Mobile Software Competition Act is expected to come into force by December 2025.

USE OF UNFAIR TRADE PRACTICE REGULATION TO COMBAT DEFLATION AND SUPPLY CHAIN ISSUE

Through several rounds of market surveys, the JFTC has recognised that the rise in cost of inputs, energy and labour in recent years has not been passed on to downstream customers in some sectors of the Japanese economy, causing stagnation of the economy and difficulty for the country to overcome deflation.^[23] The JFTC attributed the problem to the inability of the medium to small-sized business operators to pass on the rise in cost of inputs, etc, to their downstream customers due to their relatively weak bargaining position vis-à-vis their downstream customers who happen to be large corporations. To address this problem, the JFTC on 29 November 2023 published new guidelines called 'Guidelines on Price Negotiation for Appropriate Pass-through of Labor Costs', in which it made clear, among others, that maintaining the same price over a year without engaging in review and re-negotiation (if necessary) of the price (even when there is no contractual obligation to do so) or failure to even offer the opportunity for such price review or re-negotiation in and of itself might constitute unfair trade practice, more specifically, the abuse of superior bargaining position under the Antimonopoly Act.

The abuse of superior bargaining position refers to a situation where a party that has a superior bargaining position vis-a-vis the other party engages in an abusive conduct that is disadvantageous to the other party by taking advantage of its bargaining position.^[24] The abuse of superior bargaining position is distinct from 'abuse of dominance' under the European competition law as it does not require a dominant position in a market, rather focuses on relative strength of bargaining position between the parties at issue and it would suffice if one's bargaining position is superior relative to that of the counterparty.^[25]

By publishing the above-mentioned guidelines, the JFTC in effect encouraged large corporations to offer the opportunity to medium to small-sized business operators who supply goods or services to these corporations to review the price and re-negotiate (if it does not sufficiently reflect the rise in cost of inputs, etc), even when there is no contractual obligation for large corporations to do so.^[26] The JFTC has been conducting market survey every year since 2022 to monitor the situation by sending questionnaires to thousands of companies across the nation. Following the survey, in an effort to promote price review and re-negotiation, the JFTC published the name of some of the companies who it determined had maintained the same price without engaging in price review or re-negotiation or failed to offer the opportunity for price review or re-negotiation to a fair amount of business partners.^[27]

PRIVATE ENFORCEMENT FRONT – THE TABELOG DECISION

Tabelog is a Japanese online restaurant review and booking site operated by [Kakaku.com](https://www.kakaku.com/). It provides customer reviews, ratings on a five-star scale and online reservation services. Kakaku implemented a certain change to its algorithm used for calculating the ratings

of the restaurants based on customers' voting for the purpose of accurately reflecting reviews by customers with actual experience of dining at the restaurant to avoid intentional manipulation by restaurant operators that undermines the integrity of the rating system. The plaintiff was the owner of a restaurant chain whose rating was negatively affected by the change in the algorithm and filed a lawsuit against Kakaku seeking monetary compensation for damages (eg, loss of revenue, etc). The plaintiff alleged that Kakaku's change in the algorithm constituted discriminatory treatment and abuse of superior bargaining position both of which are subcategories of unfair trade practice under Article 19 of the Antimonopoly Act.^[28]

The Tokyo District Court affirmed that Kakaku's change in the algorithm constituted the abuse of superior bargaining position and ordered Kakaku to compensate for the damages caused.^[29]

However, on appeal, the Tokyo High Court reversed the District Court's finding and dismissed the plaintiff's allegations.^[30] In so ruling, the High Court stated that to constitute abuse (ie, 'unreasonable restraint under the normal business practices'), there has to be a restraint of the counterparty's ability to conduct business that imposes unpredictable or unreasonable burden upon the counterparty. The High Court concluded that the intention behind the change in the algorithm was reasonable and the effect on the counterparty was not unpredictable nor unreasonable, and thus it was not abuse. The High Court also rejected the plaintiff's allegation that the change in the algorithm constituted discriminatory treatment. The High Court stated that to be discriminatory, the treatment at issue has to be 'unreasonable' in the sense that it places the counterparty at a significant disadvantage from competition point of view. The High Court concluded that the plaintiff suffered lower rating as a result of the change, but the effect was limited, and it was not such a disadvantage that the court would deem unreasonable.

POLICY FRONT – THE GREEN GUIDELINES AND RECENT MARKET STUDIES

Green Guidelines

In March 2023, the JFTC published the 'Guidelines Concerning the Activities of Enterprises, etc. Toward the Realization of a Green Society Under the Antimonopoly Act' (the Green Guidelines).^[31] The Japanese government has declared goals of reducing greenhouse gas emission by 2030 and 2050.^[32] The JFTC published the Green Guidelines to offer transparency and predictability in the application of the Antimonopoly Act for businesses and industries that are considering various initiatives and collaborations towards achieving these goals. The Green Guidelines take a holistic approach and address potential competition issues that may arise in the context of:

- horizontal collaboration among competitors;
- vertical restraints on business activities with trading partners;
- abuse of superior bargaining position; and
- merger and acquisitions.

In April 2024, the JFTC revised the Green Guidelines to reflect the result of some individual consultation it has carried out with businesses and other developments since March 2023.^[33]

Market Studies

Throughout 2024, the JFTC continued to conduct market surveys, studies and public comment processes on various competition policy issues.

In March 2024, the JFTC published the result of a market study into connected TV and video streaming services.^[34] It looked into competition in the connected TV (ie, smart TV and TV with a streaming device that are connected to the internet) and video streaming service sectors and identified potential competition concerns that can be posed by the dominant players.

In May 2024, the JFTC published the result of market survey concerning the EV battery charging services.^[35] The JFTC conducted the survey to assist the development of EV battery charging infrastructure by promoting competition for infrastructure projects initiated by local governments to develop EV battery charging facilities across the country.

In October 2024, the JFTC published a discussion paper titled 'Requests for Information and Comments Concerning Generative AI and Competition' and solicited comments from the public.^[36] The discussion paper provides analysis of the status of competition concerning the generative AI technology and potential competition issues that can present in the form of exclusionary practices, self-preferencing, tying or bundling, horizontal coordination and hiring of highly skilled professionals. The JFTC announced in the paper that it would continue to conduct hearing of relevant stakeholders, consider the feedback from the public and publish a report in the near future.

Endnotes

- 1 The JFTC press release can be found at:
<https://www.jftc.go.jp/en/pressreleases/yearly-2023/October/231023.html>. ^ [Back to section](#)
- 2 The JFTC press release can be found at:
<https://www.jftc.go.jp/en/pressreleases/yearly-2024/April/240422.html>. ^ [Back to section](#)
- 3 The JFTC press release can be found (only in Japanese) at:
<https://www.jftc.go.jp/soudan/jyohoteikyo/1204.html>. ^ [Back to section](#)
- 4 In June 2022, the JFTC announced a statement titled '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', in which the JFTC discusses the promotion of advocacy and enforcement of Antimonopoly Act in the digital sector. It can be found at:
https://www.jftc.go.jp/en/policy_enforcement/220616_1.pdf. ^ [Back to section](#)
- 5 A list of investigations conducted by the JFTC in the recent years concerning the digital sector can be found at:
https://www.jftc.go.jp/en/policy_enforcement/digital/index.html. ^ [Back to section](#)
- 6 Act No. 58 of 2024. ^ [Back to section](#)

- 7 <https://www.jftc.go.jp/en/pressreleases/yearly-2023/October/231023.htm>
[^ Back to section](#)
- 8 The JFTC earlier announced that it would make use of public comments in investigations concerning digital platformers:
https://www.jftc.go.jp/en/policy_enforcement/220616_1.pdf. [^ Back to section](#)
- 9 The term ‘mobile syndication transactions’ was defined as ‘[t]ransactions in which a business entity distributes search advertising to the advertising spaces provided from, and shares a portion of the revenue generated by the search advertising with, Website Operators, etc’. See footnote 6 of section 2(5) at <https://www.jftc.go.jp/en/pressreleases/yearly-2024/April/240422.html>. [^ Back to section](#)
- 10 Section 5 at <https://www.jftc.go.jp/en/pressreleases/yearly-2024/April/240422.html>.-
[^ Back to section](#)
- 11 <https://www.jftc.go.jp/soudan/jyohoteikyo/1204.html>. [^ Back to section](#)
- 12 For example, the Secretariat of the Headquarters for Digital Market Competition under the Cabinet Secretariat published a report titled ‘Competition Assessment of the Mobile Ecosystem Final Report’ on 16 June 2023, calling for a new approach that is different from conventional competition law approach which would enable an ‘ex ante regulatory framework’ to address competition issues before ‘tipping’ occurs leading to a ‘winner-takes-all situation’. See, for example, page 10 at: https://www.kantei.go.jp/jp/singi/digitalmarket/pdf_e/documents_230616.pdf. [^ Back to section](#)
- 13 Article 7(i) of the MSCA. [^ Back to section](#)
- 14 Article 8(i) of the MSCA. [^ Back to section](#)
- 15 Article 8(iii) of the MSCA. [^ Back to section](#)
- 16 Article 9 of the MSCA. [^ Back to section](#)
- 17 Article 5 of the MSCA. [^ Back to section](#)
- 18 Article 7(ii) of the MSCA. [^ Back to section](#)
- 19 Articles 18 and 19 of the MSCA. [^ Back to section](#)
- 20 Article 10 of the MSCA. [^ Back to section](#)
- 21 Article 11 of the MSCA. [^ Back to section](#)
- 22 Article 14 of the MSCA. [^ Back to section](#)

- 23** See, for example, the results of market survey published (only available in Japanese) at: https://www.jftc.go.jp/houdou/pressrelease/2022/dec/221227_kinkyuchos_akekka.html (December 2022); https://www.jftc.go.jp/houdou/pressrelease/2023/dec/231227_tokubetucy_osaekka.html (December 2023); and https://www.jftc.go.jp/houdou/pressrelease/2024/dec/241216_tokubetucy_osaekka.html (December 2024). [^ Back to section](#)
- 24** Article 2(9)v of the Antimonopoly Act. [^ Back to section](#)
- 25** See Section II.1 of the JFTC's Guidelines Concerning Abuse of Superior Bargaining Position under the Antimonopoly Act at: https://www.jftc.go.jp/en/legislation_gls/imonopoly_guidelines_files/101130GL.pdf. [^ Back to section](#)
- 26** Note that the Antimonopoly Act does not require large corporations in this instance to agree to an increase in price. [^ Back to section](#)
- 27** See for example, the statement published by the JFTC on 15 March 2024 titled "The Publication of the Name of Companies based on the Market Survey Concerning the Smooth Pass Through of Cost Increase in relation to the Abuse of Superior Bargaining Position under the Anti-Monopoly Act" (only available in Japanese) at: https://www.jftc.go.jp/houdou/pressrelease/2024/mar/240315_kakakutenk_a.pdf. [^ Back to section](#)
- 28** Article 19 of the Anti-Monopoly Act prohibits unfair trade practice. [^ Back to section](#)
- 29** The Tokyo District Court, 16 June 2022 decision (case No. 2020(Wa) 12735), Section 5.1. [^ Back to section](#)
- 30** The Tokyo High Court, 19 January 2024 decision (case No. 2022(Ne) 3422), Section 7.1. [^ Back to section](#)
- 31** The public release can be found at: <https://www.jftc.go.jp/en/pressreleases/yearly-2023/March/230331.html>. [^ Back to section](#)
- 32** <https://www.env.go.jp/en/headline/2551.html>. [^ Back to section](#)
- 33** <https://www.jftc.go.jp/en/pressreleases/yearly-2024/April/240424.html>. [^ Back to section](#)
- 34** <https://www.jftc.go.jp/en/pressreleases/yearly-2024/March/240306.html>. [^ Back to section](#)
- 35** The report is only available in Japanese at: https://www.jftc.go.jp/houdou/pressrelease/2024/may/240529_ev2.html. [^ Back to section](#)

36 <https://www.jftc.go.jp/en/pressreleases/yearly-2024/October/1002.html>. [^ Back to section](#)

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