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On the Japan Fair Trade Commission's Google Decision: Some Early Reflections

Sangyun Lee (Kyoto University) · Tuesday, April 29th, 2025

Google's 'Be Evil' transformation (if not merely a narrative) and the antitrust efforts to avenge it (if not exact revenge) are no longer novel. Most notably, following Judge Amit P. Mehta's historic 2024 ruling from the U.S. District Court for the District of Columbia against Google's exclusive agreements, including ISA (Internet Services Agreement), MADAs (Mobile Application Distribution Agreements), and RSAs (Revenue Share Agreements), Judge Leonie Brinkema of the Eastern District of Virginia delivered another landmark decision on April 17, this time targeting Google's digital advertising business model. Of course, these cases were preceded by the EU's pioneering decisions, such as *Google Shopping*, *Android*, and *AdSense*.

While Judge Brinkema's latest ruling has drawn most of the spotlight lately, there has also been a noteworthy development in Japan. On April 15, for the first time in a formal infringement decision accompanied by a cease-and-desist order against a Big Tech company, the Japan Fair Trade Commission (JFTC) found that Google violated Japan's competition law, commonly referred to as the Anti-Monopoly Act (AMA), through contracts with smartphone makers and mobile carriers aimed at promoting its search engine and Chrome browser.

Although the JFTC's decision may not appear particularly novel—largely echoing competition concerns already well documented and addressed in other jurisdictions, notably the EU's *Google Android* case—it nonetheless deserves attention. Not only does this case contribute to global efforts to rein in tech giants, but it also gives rise to cautious optimism that Japan's competition enforcement may be entering a more proactive phase (although, as I will note at the end of this piece, such cautious optimism is somewhat tempered by concerns, about whether any meaningful change will actually take hold).

Facts and Key Findings

To begin with, let us outline the key facts and findings. The practices challenged by the JFTC were not substantially different from the practices sanctioned by the European Commission in July 2018. In its 2018 decision, the Commission found the following three contractual practices to be anticompetitive: MADAs, RSAs, and AFAs (Anti-Fragmentation Agreements). These findings (except the RSAs) were broadly upheld by the General Court in September 2022.

Similarly, in October 2023, a year after the General Court's decision, the JFTC launched an enforcement action against Google alleging that the first two practices, MADAs and RSAs, had the potential to exclude competitors or restrict other firms' business activities, thereby violating the AMA. Just a year and a half after the announcement, in April 2025, the JFTC issued its formal decision finding that the two practices violated Article 19 of the AMA, which prohibits unfair trade practices (UTPs).

Specifically, the JFTC identified the following two practices as illegal, implemented since July 2020 (Decision, p.8):

- (MADAs). In a situation where pre-installing Google Play was 'necessary' for Android smartphone makers—since (i) Android smartphone users 'typically' installed apps via app stores, (ii) Google Play was 'the most widely used' among them, and (iii) Google did not offer users a way to install Google Play independently (Decision, p.6)—conditioning the license of the Play Store on Android smartphone makers' agreements to preinstall Google Search and Chrome on Android smartphones, place their widget and icons on the initial home screen, and not change Chrome's default settings where Google Search is selected (which served as '*de facto* restrictions' that made it difficult to install or feature competing search apps or browsers). (Decision, pp. 6-7 and 8)
- (RSAs). In exchange for sharing revenues from search advertising, requiring makers and mobile carriers of Play Store–licensed Android smartphones to comply with several conditions favoring Google's search and browser services, such as excluding and restricting other search services and setting Google Search and Chrome as defaults, and/or placing them in advantageous positions. (For details, see Decision, pp. 7, and 8-9).

The practices were found to be, among the various types of UTPs, imposing restrictive conditions, as defined and prohibited under paragraph 12 of the General Designation (GD). The paragraph describes "trading with another party on conditions which unjustly restrict any trade between the said party and its other transacting party or other business activities of the said party" as a type of UTP prohibited under Article 19 of the AMA. The GD is a notice issued by the JFTC pursuant to Article 2(9)(vi) of the AMA, which designates specific types of UTPs that are not explicitly listed under Article 2(9)(i) to (v). While the latter statutory UTPs must be sanctioned with administrative fines (see Articles 20-2 to 20-6 of the AMA), the designated UTPs under the GD are not subject to such financial penalties.

Upon finding the violation, the JFTC ordered Google to stop the practices and imposed several behavioral remedies, including passing a board resolution to end the conduct, notifying business partners about the changes, and training staff, as well as appointing an independent third party to monitor compliance for five years and submit reports annually. No fine was imposed.

Among other aspects, what I find particularly noteworthy in this case is that the JFTC addressed Google's practices—widely challenged around the world—not through concerns over dominance or market power, which could have been pursued under Article 3 of the AMA (akin to illegal monopolization under Section 2 of the Sherman Act or the prohibition of abuse under Article 102 TFEU), but through the frame of UTPs. The practical and legal implications of this approach will be discussed below.

Legal Discussion

Legally speaking, the application of UTP framework, by framing the conduct as the imposition of restrictive conditions, entails that Google's practices were sanctioned not because they substantially restricted competition, but because they only *lessened* it. (Not all types of UTPs are interpreted as requiring a lessening of competition, see Masako Wakui (2018), pp. 141-142 for a quick overview.)

As I understand it, the threshold for establishing a lessening competition in Japan is lower than the threshold placed for finding a substantial restriction of competition—much like the incipient violation doctrine under Section 5 of the U.S. Federal Trade Commission (FTC) Act, which prohibits unfair methods of competition (UMC). Of course, whether UMC—beyond its historical origins—can serve as an appropriate yardstick to UTPs is open to debate. However, at least following the stance of the FTC's 2022 Policy Statement, which departed from the rescinded 2015 Statement's narrower approach and embraced a broader interpretation of UMC, I find that it still offers a meaningful point of comparison with the UTP framework in Japan.

Once a practice is framed as a (lessening-competition-type) UTP, the burden of proof borne by the JFTC becomes considerably lighter—even though administrative fines cannot be imposed for those designated UTPs, as mentioned above. No relevant market definition is required, and no full-scale analysis of anti-competitive effects needs to be conducted. The JFTC can establish a breach *without* having to demonstrate a "substantial restraint of competition" (required in private monopolization cases, under Article 2(5) of the AMA)—that is, establishing or reinforcing market dominant power, which is, roughly speaking, equivalent to those required in cases of exclusionary abuse of dominance or more closely aligned with illegal monopolization under the Sherman Act. Additionally, the "restrictive condition" under paragraph 12 of the GD need not take the form of 'exclusive' dealing (unlike paragraph 11 of the GD, which does).

Indeed, the Google decision illustrates this point. In the section discussing the consequences of the conduct (Decision, p. 9), which spans less than half a page, the JFTC merely stated the following: that in at least 80% of Android smartphones (excluding Pixel phones) sold in Japan, the Google Search app and Chrome browser were pre-installed, their icons and/or widget were placed on the initial home screen, and in Chrome's case, the browser's search setting was selected to use Google's search function; and that more than 50% of Android smartphones licensed with the Play Store in Japan were partially or entirely subject to the RSAs.

From these descriptions, one might infer some relevant markets and exclusionary effects the JFTC may have considered, but these were neither explicitly defined nor substantively analyzed in the decision. Had the JFTC engaged in a more detailed market definition and economic analysis, as is often the case in other jurisdictions, the decision would likely have included discussions on the validity of the market definition, the existence of market power, and the capability of the conduct to exclude efficient rivals. And if the JFTC had done so, the decision would have been substantially longer than the current 16-page version.

To be clear, I am not arguing that such deliberation on economic effects lacks value. Rather, I am simply describing the succinct approach the JFTC took in this case. As a general rule, of course, and particularly in light of the legitimacy of competition law enforcement, such deliberation is essential. In fact, I personally find that this case, by being resolved without detailed assessment, raises certain legitimacy-related concerns—namely, whether such an approach sufficiently

revealed the competitive harm posed by the conduct in question, and whether the decision served as a meaningful precedent capable of guiding firms to self-assess and appropriately modify their conduct in the future. Still, in this specific case against Google, such concerns are unlikely to draw much attention in Japan, given the extensive global precedents against Google's similar practices.

At any rate, the absence of requirements for sophisticated market definition and full-scale effects analysis may make the prohibition of UTPs seem like an ideal tool, especially for competition authorities eager to modify the practices of large tech platforms without bearing a heavy burden of proof. Indeed, Saiko Nakajima, a senior digital platform investigator at the JFTC, reportedly stated that the agency chose to rely on the UTP tool to address the issue 'speedily' (given the drastic changes happening in the market with the rise of generative AI), while other experts have commented that the JFTC's choice of framework may also have been intended to reduce the risk of losing in court and its potential consequences. As a purely personal observation, considering the ongoing efforts by other competition authorities to ease the evidentiary burden in abuse cases (for instance, the EU's current discussions on 'naked restrictions' in the context of abuse) and assuming that such efforts are seen as legitimate and necessary, the fact that the JFTC already has such an efficient and flexible tool, and has made effective use of it, might be worth celebrating.

Some Early Reflections

Given the JFTC's traditionally milder approach (the JFTC has resolved most cases through commitments or voluntary measures, see Simon Vande Walle's summary of the JFTC's enforcement record from 2013 to 2022) compared to that of its counterparts (see my comparison of enforcement in Korea and Japan, at 14-15), the fact that it has now issued its first formal infringement decision against a major Big Tech company is certainly encouraging. This case is significant not only because it contributes to global efforts to rein in tech giants, but also because it raises expectations for a more proactive enforcement stance from the JFTC going forward.

That said, from the perspective of a non-Japanese researcher based in Japan, it is true that the recent decision, in which the JFTC sanctioned Google's practices by using the existing competition tool, the prohibition of UTPs, still raises some lingering questions. Among other aspects, the necessity for, or justification of, *ex ante* platform regulation in Japan, remain somewhat an uneasy question for me.

The *ex ante* platform regulation refers to the Smartphone Software Competition Promotion Act (SSCPA, or the Smartphone Act). As Alba Ribera Martínez and I once wrote, Japan recently introduced the SSCPA, inspired by the EU's Digital Markets Act. The JFTC is now set to enforce it by designating Google (as an OS, app store, browser, and search engine operator) and Apple (as an OS, app store, and browser operator) in March 2025, and undoubtedly, this Google decision will embolden the JFTC's further enforcement of the SSCPA, which will enter fully into force by the end of this year.

Assuming that there is a market failure in Japan's mobile ecosystem jointly dominated by Google and Apple (setting aside counterarguments for now), enabling such an effective governmental response could undoubtedly be a welcome development. However, before celebrating too quickly, it may be worth asking whether, and why, Japan needed to introduce the SSCPA in the first place—particularly given that, unlike the EU, it already had a competition law tool, like the UTPs

prohibition, which is, at least theoretically, capable of addressing concerns more flexibly and across a broader scope. For example, the SSCPA is unlikely to cover issues such as those arising from RSAs.

If the introduction of the SSCPA can still be justified despite the presence of existing legal tools, the most compelling argument would likely be that the current AMA provisions, while adequate on paper, may not, in practice, function as effectively as expected. Because, from a normative perspective, competition-related regulation is, arguably, best justified when the following two conditions are met: first, there is a market failure; and second, competition law, either in its statutory scope or in practical application, is insufficient to address it. In this case, we have already assumed the existence of a market failure and confirmed that, from a substantive perspective, the AMA offers a sufficiently broad and flexible set of tools to address abusive conduct—even in the absence of dominance or market power.

If, as the Google case seems to suggest, UTPs may be able to serve as a functional tool to complement the AMA's monopolization provision, but such success remains an exception rather than the rule, and if we cannot reasonably expect the AMA to operate as a generally effective and robust mechanism for addressing market failures, then the question arises: why is that the case?

While still purely hypothetical, I find that the suspected (not yet established) unworkability of the AMA in practice may plausibly be attributable to several institutional, organizational, and/or political factors. These may include: a lack of incentives for enforcers to pursue more experimental enforcement efforts, particularly when facing the risk of losing in court; the agency's budget or staffing constraints; the judiciary's conservative interpretation of competition law provisions, especially in monopolization cases; limited political backing for the JFTC; and, more fundamentally, the absence of broad-based public support for an assertive competition policy.

Of course, these remain hypotheses. It is far from certain which of these accounts will ultimately prove most compelling. Nevertheless, it is worth noting that if the AMA's unworkability is indeed attributable to these such structural and societal barriers, then the global contribution and revitalization of Japan's competition enforcement—which I had cautiously hoped for through the recent Google decision—may be constrained, at a more fundamental level, by the deeper and hardly resolved barriers. If such barriers do exist, they are highly likely to erode the foundations of the SSCPA's effectiveness over time -not to mention the forthcoming appeal (should there be one) and other major enforcement cases that may follow the Google case. And that, frankly, gives me pause.

The recent Google case in Japan is indeed a noteworthy one. This is not only because it forms part of the global efforts toward tougher antitrust scrutiny, particularly of Big Tech, but also because it raises hopes for a more vigorous future of competition enforcement in Japan, while at the same time highlighting persistent, and perhaps systemic, barriers that may possibly continue to impede such progress. This case seems to stand at the intersection of promise and constraint, after all.

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