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USING MARKET STUDIES TO TACKLE EMERGING COMPETITION ISSUES – Contribution from Japan

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Using market studies to tackle emerging competition issues

- Contribution from Japan –

1. Introduction

1. The Japan Fair Trade Commission (hereinafter referred to as the “JFTC”), as a competition authority in charge of designing the competition policy and enforcing the Antimonopoly Act (hereinafter referred to as the “AMA”), has been conducting market studies almost every year since 1947 when the AMA was enacted. For the purpose of grasping and updating a full picture of market structures or trade practices in each sector, market studies have had a significant role to provide reliable factual findings, which are necessary to ensure appropriate implementation of competition law and policy.

2. Especially, every competition authority has been recently facing and tackling more or less common challenges generated from fast-moving digitalization of each market. For example, how should we catch up with the new characteristics of services achieved by recent digital transformations? How should we analyze competitive situation or relationship in the market accompanying multi-sided platforms or being affected by network effects? And finally, how should we elicit emerging competition issues and implement the AMA and the competition policy to those issues? In order to tackle these rising issues, utilizing the results of proactive market studies are becoming significantly important.

3. This contribution paper comprises three parts: (i) Overview of Targets and Applications of Market Studies (section 2), (ii) Actual Case of Fact-Finding Survey (section 3), and (iii) Conclusion (section 4).

2. Overview of Targets and Applications of Market Studies

2.1. Overview of Fact-Finding Surveys

4. Market studies, which are called “fact-finding surveys” in the JFTC are generally conducted on a voluntary basis, and have an important role to reveal actual business activities in an entire industry, and to provide the JFTC’s perspectives as to whether some trade practices or conducts would be potentially problematic under the AMA or the competition policy. Fact-finding surveys aim to prevent violations against the AMA in advance and to maintain and promote fair and free competition in the market.

2.2. Legal Grounds of Fact-Finding Surveys

5. The legal basis of fact-finding surveys is as follows: Article 27-2 of the AMA states that, in order to achieve the purposes of the AMA, the JFTC shall take charge of matters relating to regulation on private monopolization, unreasonable restraints of trade and unfair trade practices, as well as pertaining to monopolistic situations and other issues. According to the article, the JFTC has been considered to have the authority to exercise related surveys as one of the tools to fulfill the missions of achieving the purposes of the AMA.

2.3. Coverage of Fact-Finding Surveys

6. In general, targets of fact-finding surveys are chosen from markets or industries which have characteristics of having new trade practices, facing dynamic changes in competitive environment, or having unreasonable trade practices. The attached Annex shows fact-finding surveys carried out by the JFTC for the past ten years, of which the number amounts to 35 at the end of September in 2020.

2.4. Complementary Relationship with Investigations of Alleged AMA Violations

7. Fact-finding surveys have no direct complementary relationship with investigations on alleged AMA violations. In contrast with fact-finding surveys described in 2.1 which are generally conducted by the Economic Affairs Bureau in the JFTC, investigations are conducted against individual parties by the Investigation Bureau. The investigations are initiated as *ex-officio* or based on complaints. The JFTC utilizes investigative tools including compulsory measures such as dawn raids or request for information, and determines whether alleged conducts would fall under the infringement of the AMA. Therefore, fact-finding surveys are conducted by the Economic Affairs Bureau without any coordination with the Investigation Bureau.

2.5. Recommendations based on Fact-Findings in promoting competition

8. In the case where the JFTC finds out that some trade practices in targeted industries or markets may potentially be problematic from the perspective of competition policy or the AMA, the JFTC publishes fact-finding reports which point out competitive concerns or refer to some examples of potential infringements of the AMA. In survey reports, the JFTC encourages companies or business associations of the industries to voluntarily improve such practices in pro-competitive way, even though the JFTC hasn't found any established violations of the AMA.

9. One recent example is that the fact-finding report of the trade practices and relationship between convenience store headquarters and their franchisee stores which was released in September 2020. In the report, the JFTC pointed out some potential competitive concerns under the AMA such as forced purchase quota, and then, sent letters to convenience store headquarters requesting i) follow-up reviews, ii) voluntary improvements in a timely manner, and iii) publication of their results to the JFTC and, desirably, to the public. Also, the JFTC requested the relevant business association, whose members are top eight convenience store headquarters and many other franchise headquarters, to inform all members of the JFTC's fact-finding report.

2.6. Surveys for Regulatory Reform

10. The JFTC's fact-finding surveys have another proactive role to promote competition in regulated sectors. The JFTC undertakes surveys on the regulated fields for the purpose of promoting regulatory reforms by clarifying the impact on competition. Corresponding to the result of the surveys, the JFTC recommends, as necessary, the abolishment or readjustment of existing regulations, in order to prevent their negative impact on competition, and to propose desirable regulations in the view of further promoting competition in the markets. Some of the examples of the targeted sectors are as follows: electricity sector (2012), childcare sector (2014), mobile phones sector (2016), nursing-care sector (2016), and city-gas sector (2019).

11. For example, in the city gas sector, the JFTC published the “Survey report on the current situation of transactions in the city gas business area” in June 2008 and made a recommendation, which proposed to consider expanding the area of liberalization into the retail market for customers consuming relatively large volume of city gas. After the survey, in April 2017, the retail market of the city gas sector was fully liberalized.

3. Actual Case of Fact-Finding Surveys: “Survey on Cashless Payments with QR Code and barcode”

3.1. Overview

12. As briefly mentioned in the introduction (section 1), the JFTC recognizes the usefulness of the fact-finding surveys and has recently conducted several surveys which targeted newly emerging markets generated from digitalization. In the financial sector, where new entrants such as businesses other than banks have recently started to provide new types of financial services utilizing information technologies (fintech), the JFTC conducted the “Survey on Cashless Payments with QR Code and barcode” to grasp the actual market environment, which was published in April 2020. In the survey report, the JFTC pointed out some concerns under the AMA and the competition policy and made some recommendations to ensure and improve competitive environment in the sector.

3.2. Targets of the Survey

13. From November 2019 to January 2020, the JFTC conducted a survey on cashless code payment services such as those using QR codes¹ or barcodes in order to ascertain issues concerning the competition policy in these fields. The survey was carried out via interviews to 55 businesses including 21 banks and 15 fintech-companies, and the paper-based and web-based questionnaires, of which answers were collected from 129 banks, 48 fund transfer providers² (hereinafter referred to as “nonbank code payment providers”), two providers of retail payment infrastructure such as CAFIS³, and 4,000 users of code payment services.

3.3. Market Structure

14. Code payment is one of the methods of cashless payments rapidly spreading at the moment using a smartphone-based payment app, which enables customers to read QR codes or barcodes and make a payment. The code payment services are provided by both banks and nonbank code payment providers.

15. The transactional flow of code payment services provided by nonbank code payment providers is divided into two stages: (i) the flow of deposition by users, and (ii) the flow of disbursement to member merchants.

¹ QR code payment is one of the most popular payment systems in Japan. The size of the market for domestic code payments is projected to grow from 0.5 trillion yen in 2019 to 9.7 trillion yen in 2025.

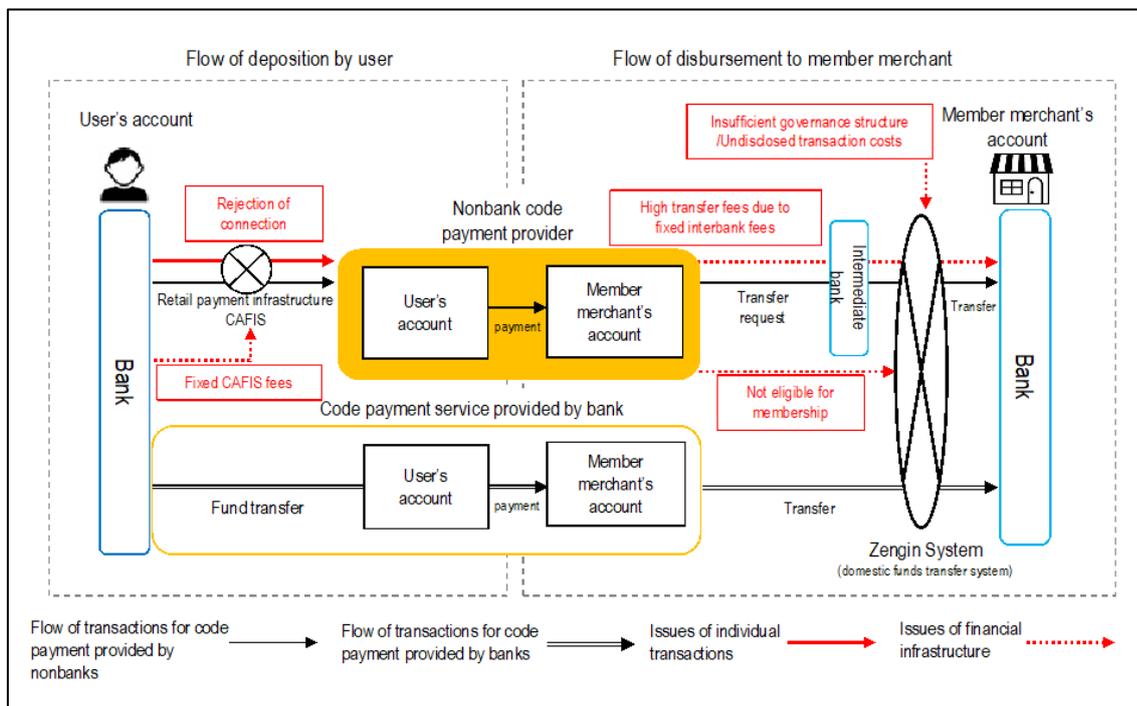
² Almost all code payment providers are registered as fund transfer provider, which refers to nonbank business operators that are registered under the Payment Service Act.

³ CAFIS is an essential retail payment infrastructure used to connect bank accounts to nonbank code payment providers’ accounts, and operated by NTT DATA Corporation.

16. In the charging process in (i) the flow of deposition by users, charging from a bank account to a nonbank code payment provider's account is processed through a retail payment infrastructure called CAFIS, which is essential to connect bank accounts to nonbank code payment providers' accounts.

17. In the charging process in (ii) the flow of disbursement to member merchants, a nonbank code payment provider needs to request an intermediate bank to transfer a certain amount of money, in order to disburse sales into a member merchant's bank account from a nonbank code payment provider's account. It is because a nonbank code payment provider does not have an access to the "Zengin-domestic funds transfer system"⁴, which allows online domestic funds transfers between banks.

18. Through these processes of (i) and (ii) above, nonbank code payment providers can complete making payments from users' bank accounts to member merchants' bank accounts (The figure below shows the flow of transactions for code payments and the issues concerning the AMA and the competition policy).



3.4. Fact-Findings and Competitive Concerns

3.4.1. Competition Issues in the Flow of Deposition by Users

19. In the survey report, the JFTC mentioned its consideration in light of the AMA and the competition policy.

(i) Potential AMA Infringements in Transactions between Banks and Nonbank Code Payment Providers

- Refusal of Transaction

⁴ Zengin-domestic funds transfer system is operated by a general incorporated association, Zengin-Net, which is Japanese banks' payment clearing network. Currently, over 1200 financial institutions are members of the domestic funds transfer system.

20. The JFTC pointed out that it would be problematic under the AMA if banks who also provide code payment services refused to transact with nonbank code payment providers in the charging process in the flow of deposition by users.

21. The result of survey revealed that about 60% of users of code payment services used top five major banks for the deposition, and it was indispensable for nonbank code payment providers to make contracts with banks which allow accesses to the users' bank accounts and enable the users to charge from their bank accounts to nonbank code payment providers' accounts. Under the situation, banks which also provide code payment services had an incentive to exclude nonbank code payment providers from the market. For example, in case where a bank with powerful position in the market of bank accounts connected for charging in the flow of deposition by users refuses to transact with nonbank code payment providers, such as rejecting an access to users' bank accounts, and increasing the fee of charging to the extent that it can be regarded as a refusal of transaction for the purpose of excluding competitors from the market, it could be problematic as "a refusal to deal by a single enterprise" under the AMA.

- Abuses of Superior Bargaining Position

22. The survey report also showed other examples of potential AMA infringements. For example, it would fall under abuses of superior bargaining position if a bank in an advantageous position to a nonbank code payment provider forces the nonbank code payment provider (i) to develop new member merchants for the bank's code payment service, (ii) to bear costs of promotion campaign which would not benefit the nonbank code payment provider, or (iii) to provide payment data unilaterally for the purpose of its own marketing, in a way of unjustly imposing a disadvantage on nonbank code payment providers in light of normal business practices.

(ii) Improving Market Structure from the Viewpoint of Competition Policy: The Needs for Updating CAFIS Fees and Improving an Access to Read/Write APIs

- Fixed CAFIS Fee

23. The JFTC stated in the survey report that the provider of CAFIS, NTT DATA Corporation, had not revised its fee for more than 10 years, and pointed out that the fee should be determined appropriately through negotiations with users.

- Access to Read/Write APIs

24. The JFTC recommended that banks should consider developing an environment in which nonbank code payment providers could introduce read/write APIs (Application Programming Interfaces), which could be a substitute for CAFIS, in order to increase competitive pressure on CAFIS.

3.4.2. Competition Issues in the Flow of Disbursement

25. In the survey report, the JFTC mentioned its consideration in light of the competition policy.

(i) Improving Market Structure from the Viewpoint of Competition Policy

- Fixed Interbank Fees

26. In the flow of disbursement, when a nonbank code payment provider wanted to transfer a certain amount of money from its bank account to a member merchant's bank account, and the bank used by the member merchant and the one used by the nonbank payment provider was different, they needed to use the system of interbank exchange. In the

process, interbank fees⁵ were paid by a sending bank to a receiving bank per transfer, and the fees had been fixed for more than 40 years. While interbank fees were to be determined through mutual negotiations between banks, the interbank fees were set at the same prices at a high level by all banks. Banks should amend interbank fees which might exceed the actual administrative costs to reduce a total amount of fees burdened on end-users.

- Opening Access to Zengin-Domestic Fund Transfer System

27. Another concern was that nonbank code payment providers were not authorized to join Zengin-domestic funds transfer system. If nonbank code payment providers were able to connect to the system directly without using an intermediary bank, the costs for nonbank code payment providers could be reduced. From the perspective of an equal footing in competitive conditions, it would be desirable for Zengin-domestic funds transfer system to be opened to nonbank code payment providers.

- Lack of Governance of Zengin-Net

28. Some external experts and banks pointed out a lack of sufficient opportunities to discuss improvement of Zengin-domestic funds transfer system or to reflect the needs of end users on its improvement. It did not appear that the Zengin-Net, the operator of the Zengin-domestic funds transfer system, had an effective governance system to help improve structural issues in the system. In addition, the fees of Zengin-domestic funds transfer system had not been disclosed to end users although they bear the costs in the end. The Zengin-Net should improve its governance structure to reflect the needs of end users.

3.5. Policy Recommendations by the JFTC

29. The JFTC's policy recommendations based on the results of surveys are often reflected in the Japanese government's policies.

In this year's "Action Plan of the Growth Strategy" (hereinafter referred to as the "Action Plan") and "Follow-up on the Growth Strategy"⁶ (hereinafter referred to as the "Follow-up"), which set a basic framework and prioritized issues for economic revitalization, the Government of Japan clearly indicated, based on the policy recommendation made by the JFTC, the policy of enhancing cashless payments as one of the top priorities (e.g. promoting the review of the interbank fees, facilitating the new entrance of nonbank businesses, and improving the governance of Zengin-Net).

4. Conclusion

30. As discussed above, the JFTC considers that market studies or fact-finding surveys are significantly beneficial to grasp emerging competition issues in rising markets such as the market of cashless code payment services from the viewpoint of appropriately implementing the AMA and designing the competition policy. The JFTC continues to utilize market studies or fact-finding surveys to ensure and improve competitive environment of every market.

⁵ The fees are 117 yen (tax excluded) for transfers of less than 30,000 yen and 162 yen (tax excluded) for transfers of 30,000 yen or more

⁶ The "Action Plan of the Growth Strategy" and the "Follow-up on the Growth Strategy" are drafted by the headquarters for Japan's economic revitalization at the Prime Minister's Office under the cabinet secretariat, and are approved by the Cabinet each year.

ANNEX

Annex Table 0.1. List of Fact-Finding Surveys by the JFTC since FY 2011

	Title	Date of Publication of the Report
1	Follow-up Study on Transactions Practices between Financial Institutions and Corporations	Jun 15, 2011
2	Study on Transactions between Franchise Chain Head Office and Franchisee	Jul 7, 2011
3	Fact-Finding Survey on the Transactions between Food Manufacturers and Wholesalers	Oct 19, 2011
4	Fact-Finding Survey on the Transactions between Hotels and Suppliers	May 16, 2012
5	Fact-Finding Survey on the Transactions between Large-Scale Retailers and Suppliers	Jul 11, 2012
6	Proposals for the Electricity Market from the viewpoint of Competition Policy	Sep 21, 2012
7	Fact-Finding Survey on Transactions between Food Service Operators and Suppliers	May 27, 2013
8	Follow-up Study on Gasoline Transactions	Jul 23, 2013
9	Fact-Finding Survey on Transactions Involving the Use of Logistics Centers	Aug 8, 2013
10	Fact-Finding Survey on Transactions of Private Brand Products in the Food Sector	Jun 20, 2014
11	Study on the Childcare Sector	Jun 25, 2014
12	Study on Transactions between Shippers and Logistics Companies	Mar 11, 2015
13	Fact-Finding Survey on Transactions for the Production of TV Programs	Jul 29, 2015
14	Review of the System for Exemption from the Antimonopoly Act for International Ocean Shipping	Feb 4, 2016
15	Follow-up Study on Gasoline Transactions	Apr 28, 2016
16	Issues Concerning Competition Policy in the Mobile Phone Market	Aug 2, 2016
17	Study on the Nursing-Care Sector	Sep 5, 2016
18	Fact-Finding Survey on Transactions in the Bridal Industry	Mar 22, 2017
19	Fact-Finding Survey on Transactions in the Funeral Industry	Mar 22, 2017
20	Survey on LNG Trades	June 28, 2017
21	Survey on Trades of School Uniforms at Public Junior High Schools	Nov 29, 2017
22	Survey on Trades between Large-Scale Retailers and Suppliers	Jan 31, 2018
23	Issues Concerning Competition Policy in the Mobile Phone Market	Jun 28, 2018
24	Survey on Transactions in B2C E-Commerce	Jan 29, 2019
25	Survey on Credit Card Market	Mar 13, 2019
26	Fact-Finding Survey on Transactions in Security Service	May 29, 2019
27	Fact-Finding Survey on the Status of Abuse of Superior Bargaining Position involving Intellectual Property and Know-How of Manufactures	Jun 14, 2019
28	Survey on the City-Gas Business Sector after the Complete Liberalization in the Retail Market	Jun 28, 2019
29	Survey on Trade Practices on Digital Platforms (Business-to-Business Transactions on Online Retail Platform and App Store)	Oct 31, 2019
30	Survey on Trade Practices of Online Restaurant-Review Portal Sites	Mar 18, 2020
31	Issues Concerning Competition Policy towards Improvement of Financial Services Using Fin-Tech ("Survey on Household Accounting Services" and "Survey on Cashless Payments Including Using QR Codes")	Apr 21, 2020
32	Survey on Digital Advertising (Interim Report)	Apr 28, 2020
33	Survey on Transactions in Common Point Service	Jun 12, 2020
34	Fact-Finding Survey on Transactions of Start-ups	Jun 30, 2020
35	Fact-Finding Survey on Trades between Convenience Store Headquarters and Franchisee Stores	Sep 2, 2020