Competition-IP Interface: Transactions, Collaboration, and Unilateral Conduct (Japan)

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A Practice Note examining the complex interface between competition law and intellectual property (IP) rights in Japan under the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade, generally referred to as the Antimonopoly Act (AMA). This Practice Note outlines the regulatory framework enforced by the Japan Fair Trade Commission (JFTC), highlighting how antitrust rules apply to transactions, joint ventures, and licensing collaborations. It analyzes potential competition risks associated with restrictive covenants, such as exclusive grantbacks, non-assertion clauses, resale price maintenance, and tying arrangements. Additionally, this Practice Note explores the competition law implications of unilateral conduct, including refusal to license standard-essential patents (SEPs), abuse of a superior bargaining position, and patent system disputes. Finally, it provides insights into market definition, safe harbors, and practical mitigation strategies to help legal professionals and corporate counsel manage antitrust exposure in IP-related transactions and litigation.

Companies encounter the interface between competition law and *intellectual property* (IP) when IP rights:

- Are transferred as part of a transaction.
- Form the subject of a collaboration.
- Lead to disputes and litigation.

Within these scenarios, there can be a tension and sometimes conflict between competition and IP considerations. In certain circumstances, companies are under a special responsibility not to exploit their IP in ways that would otherwise be considered ordinary business practices. This is particularly the case where competitors are involved.

Accordingly, companies (and their counsel) should have an appreciation of the complex interplay between the competition and IP rules. This Note explores this interface and provides guidance to help manage the risks.

For an overview of Global resources on this subject, see *Competition-IP Interface Toolkit (International)*.

Regulatory Framework

In Japan, the *Act on Prohibition of Private Monopolization and Maintenance of Fair Trade* (Act No. 54 of 14 April 1947) (generally referred to as the Antimonopoly Act (AMA)) sets out the basic rules of competition law. The *Japan Fair Trade Commission* (JFTC), an independent administrative committee responsible for competition-related matters, has general jurisdiction to review and investigate the competitive effects of certain conduct, including in relation to IP rights. For more information on the JFTC, see *Practice Note, Japan Fair Trade Commission: Overview*.

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The Tokyo District Court reviews the JFTC's orders when an appeal is filed. The courts can also review the competitive effect of business practices if civil or criminal lawsuits raise issues involving an effect on competition.

Competition Legislation

Broadly, the AMA prohibits:

- Private monopolization, which is business activity that excludes or controls the business activities of other enterprises.
- Unreasonable restraints of trade, which are restrictive or coordinated business activities that:
    - fix, maintain, or increase prices;
    - limit production or products; or
    - involve other similar behavior.
- Unfair trade practices, which are acts that tend to impede fair competition, such as boycotts, unjust price discrimination, predatory pricing, resale price maintenance, and abuse of a superior bargaining position.

(Articles 2, 3, and 19, AMA.)

A private monopolization is broadly equivalent to an abuse of a dominant position under EU competition law. Unreasonable restraints of trade include almost all forms of illegal cartels.

As defined, both private monopolization and unreasonable restraints of trade must result in a substantial restraint of competition (Article 2(5)-(6), AMA). This contrasts with the position in those jurisdictions where there may be a presumption of anti-competitive effects in certain circumstances. An example of a private monopolization is predatory pricing that excludes business activities of other firms, thereby causing a substantial restraint of competition.

By contrast, unfair trade practices only require a tendency to impede fair competition (that is, a high probability of the impediment occurring). There is a lower standard of proof for unfair trade practices than for private monopolization.

Conduct that is not a private monopolization can still be regulated as an unfair trade practice. Unfair trade practices do not necessarily require proof of a dominant position and include both unilateral conduct and joint conduct, such as a concerted refusal to trade (also labeled as a collective boycott).

The AMA does not apply to acts that are recognizable as the exercise of rights under either:

- The *Copyright Act* (Act No. 48 of 6 May 1970).
- The *Patent Act* (Act No. 121 of 13 April 1959).

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- The *Utility Model Act* (Act No. 123 of 13 April 1959).
- The *Design Act* (Act No. 125 of 13 April 1959).
- The *Trademark Act* (Act No. 127 of 13 April 1959).

(Article 21, AMA.)

However, holders of IP rights should not rely on this provision without careful consideration of competition law, as it is only a general principle.

Other important legislation with aspects of competition law includes:

- The *Act Against Unjustifiable Premiums and Misleading Representations* (Act No. 134 of 15 May 1962), which prevents unjustifiable premiums and misleading representations regarding the trade of goods and services.
- The *Unfair Competition Prevention Act* (Act No. 47 of 19 May 1993), which provides measures to prohibit unfair competition and special rules regarding compensation for damages caused.
- The *Civil Code* (Act No. 89 of 27 April 1896), which provides the general rules for claiming damages (see *Private Enforcement*).

Competition Guidelines

The JFTC enforces the AMA. In addition to comparative and industry-specific research, the JFTC has issued the following guidance regarding the overlap of competition law and IP rights:

- The *Guidelines for the Use of IP under the AMA* (IP Guidelines), which discuss how to analyze legal issues arising from the interaction of competition law and IP rights.
- The *Guidelines Concerning Joint Research and Development under the AMA* (Joint R&D Guidelines), which provide that joint research activity, by itself, is normally lawful if the total market share of the participants is no more than 20%. Covenants ancillary to joint research and development (R&D) activities can be lawful, based on various factors including combined market share.
- The *Guidelines on Standardization and Patent Pool Arrangements* (Patent Pool Guidelines), which specify where patent pools or the licensing for standardization through patent pools can give rise to competition concerns.
- The interim *Views on Software Licensing Agreements, etc. under the AMA*, which cover various issues arising from software licensing agreements, including abusive conduct by developers of operating systems software and restrictive covenants in software licensing agreements.

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- The *Guidelines to Application of the AMA Concerning Review of Business Combination* (Merger Guidelines).
- The *Policies Concerning Procedures of Review of Business Combination* (Merger Policies).
- The *Guidelines Concerning Unjust Low Price Sales Under the AMA* (Low Price Guidelines).
- The *Guidelines Concerning Distribution Systems and Business Practices Under the AMA* (Distribution Systems Guidelines). The JFTC launched a public consultation process from 13 May to 11 June 2026 for the proposed amendments to these guidelines to include additional criteria and specific examples of cases in which resale price maintenance is not considered a violation of the AMA.
- The *Guidelines for Exclusionary Private Monopolization Under the AMA* (Exclusionary Private Monopolization Guidelines).

In addition to the guidelines above, on 24 June 2026, the JFTC, the Small and Medium Enterprise Agency, and the Japan Patent Office published the *Guidelines Concerning Abuse of Superior Bargaining Position, etc. for Proper Transactions of IP Rights, Know-How, and Data* (IP Transaction Guidelines) (see also *JFTC: IP Field*). These Guidelines respond to the concern that disparities among businesses would become entrenched and innovation would be hindered unless small and medium-sized enterprises are protected from having their IP and know-how exploited by large companies and other entities free of charge or at low prices. The IP Transaction Guidelines:

- Give examples of conduct where transactions involving IP rights, know-how, and data may raise concerns of abuse of a superior bargaining position.
- Provide contract templates for non-disclosure agreements (NDAs), joint development agreements, development outsourcing agreements, and manufacturing outsourcing agreements for small and medium-sized businesses to use.

Private Enforcement

There are private enforcement mechanisms available for a party regarding the interface between competition and IP rights, which include:

- A follow-on claim for competition-related damages caused by the exercise, license, or transfer of IP rights (Article 25, AMA). This claim requires a final and conclusive JFTC formal order finding a competition violation (Article 26(1), AMA).
- A standalone claim based on the general tort provision for competition-related damages caused by the exercise, license, or transfer of IP rights (Article 709, Civil Code).
- An injunction where an unfair trade practice:
    - infringes or is likely to infringe the party's interests; and

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- causes the party to suffer, or be likely to suffer, extreme damage.

(Article 24, AMA.)

Parties can seek an injunction against an unfair trade practice without a final JFTC order.

A follow-on claim for competition-related damages does not require the defendant to have acted intentionally or negligently, unlike general standalone compensation claims (Article 25(2), AMA and Article 709, Civil Code).

Parties often assert competition violations in private litigation to challenge the effectiveness or enforceability of another party's contractual arrangements or IP rights. For example, there has been much litigation concerning recycled ink toner cartridges in Japan based on claims that the enforcement of IP rights violates the AMA (see *Other Considerations*).

Mergers and Acquisitions Involving IP

The merger control provisions of the AMA regulate the following transactions:

- A share acquisition (Article 14, AMA).
- A statutory merger (Article 15, AMA).
- A statutory demerger (Article 15-2, AMA).
- A joint share transfer (Article 15-3, AMA).
- A business transfer, which includes:
  - the transfer of all (or a significant part of) the business of another company;
  - the transfer of all (or significant) business-related fixed assets of another company;
  - a lease of all (or significant) businesses of another company;
  - the delegation of management regarding all (or significant) businesses of another company; and
  - a contractual arrangement to share in the profits and losses of another company.

(Article 16, AMA.)

- The appointment of interlocking directorships (that is, the appointment of directors who serve on the boards of multiple companies) (Article 13, AMA).

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Among the above transactions, where a share acquisition by a company, statutory merger, statutory demerger, joint share transfer, transfer of businesses, or transfer of business-related fixed assets satisfies the jurisdictional thresholds, the merging parties must notify the JFTC of that transaction (Articles 10(2), 15(2), 15-2(2), 15-3(2), and 16(2), AMA). The transaction must not be implemented before the waiting period expires (Articles 10(8), 15(3), 15-2(4), 15-3(3), and 16(3), AMA and see *Quick Compare Chart, Merger Control: Jurisdictional Thresholds*).

The JFTC's authority to review mergers involving IP rights is the same as for other mergers. There are no special jurisdictional thresholds for transactions involving IP rights under the AMA's merger control provisions. However, the JFTC amended the Merger Policies in 2019 to address "killer acquisitions" (where a large company, often in the pharmaceutical or technology sector, buys out a potential competitor before the latter can challenge its competitive position). The amendment clarifies that the JFTC can review mergers that do not meet the mandatory notification thresholds if both:

- The total consideration for the merger is substantial.
- The merger is expected to have a negative impact on domestic consumers.

The JFTC recommends filing a voluntary notification for transactions that are not subject to the mandatory notification requirement if both:

- The total consideration for the acquisition exceeds JPY40 billion.
- The transaction is expected to negatively affect domestic consumers (for example, the target company has domestic sales of more than JPY100 million).

(Section 6(2), Merger Policies.)

The JFTC's general standard of review for mergers (which includes mergers involving IP rights) is whether the merger may substantially restrain competition. The AMA prohibits transactions that result in a substantial restraint of competition (Articles 10(1), 13(1), 14, 15(1)(i), 15-2(1)(i), 15-3(1)(i), and 16(1), AMA).

In horizontal mergers, the JFTC can consider the parties' R&D activities as a factor in assessing their impact on competition (Part IV(2)(1)(F), Merger Guidelines). For example, if one merger party is developing a product that is expected to compete strongly with another merger party's product, the JFTC may find the transaction would have a significant impact on competition.

In practice, the impact of IP rights can be limited when the JFTC is reviewing a horizontal merger. Factors that are more likely to carry practical importance during the JFTC's review process include:

- The *Herfindahl-Hirschman Index* before and after the merger (for more information, see *Practice Note, How to conduct an HHI analysis*).
- Whether the merged entity could unilaterally increase prices.

IP rights can, however, play a significant role in vertical mergers and conglomerations. This was highlighted in the 2019 revision of the Merger Guidelines for mergers involving parties that have certain important assets for competition, including IP.

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For more information on merger control in Japan, see:

- *Private Mergers & Acquisitions Toolkit (Japan)*.
- *Public Mergers and Acquisitions in Japan*.
- *Japan Merger Notifications Flowchart*.

To view and customize comparison charts on merger control, see *Quick Compare Chart, Merger Control*.

Application of Merger Control to IP Transfers

In Japan, merger control under the AMA is generally limited to specific categories of transactions (see *Mergers and Acquisitions Involving IP*). Transactions involving IP rights transfers or licensing that do not fall under these categories (for example, strategic alliances) are not subject to the merger control rules under the AMA, although the parties still need to comply with the behavioral rules.

Competition Restrictions Ancillary to M&A

Competition restrictions between merger parties, such as those related to licensing IP rights to ensure the buyer has full use of the transferred assets, are subject to scrutiny under the AMA. There are no explicit guidelines or published cases from the JFTC that specifically address these ancillary restrictions. The JFTC evaluates the impact of these restrictions on competition during its merger review process.

In a transaction that includes restrictions on the buyer's use of transferred IP rights, the JFTC considers these restrictions as part of its overall assessment of the merger's impact on competition. The JFTC can conduct a separate investigation to ascertain whether these restrictions could violate competition law.

Competition Remedies

The JFTC can mandate any remedies necessary to cure or prevent violations of the AMA's merger control provisions (Article 17-2, AMA). Theoretically, these remedies can include divestiture of IP rights or licensing arrangements to address competition concerns arising from a notifiable merger.

During the merger review process, the merger parties can propose specific measures to mitigate competition concerns, including IP-specific remedies.

The JFTC's 2019 revision of the Merger Guidelines addressed potential input foreclosure concerns in vertical and conglomerate mergers. The Merger Guidelines clarified that the JFTC's approach to data that can be shared in the downstream market also applies to input goods, such as IP rights, which are crucial to competition.

Currently, no JFTC merger control case has directly involved IP rights. However, a 2019 vertical and conglomerate merger control case could serve as a reference for future mergers involving IP rights (see *Box, M3: Nihon Ultmarc*).

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M3: Nihon Ultmarc
The JFTC investigated a (non-reportable) share acquisition and cleared it with conditions. The remedies proposed by the parties included commitments to:

- Provide important data to competitors on a continual and indefinite basis.
- Refrain indefinitely from discriminatory treatment of competitors regarding prices and other trade terms.

(See JFTC, *Results of review on the Acquisition by M3, Inc. of the Shares in Nihon Ultmarc Inc.*)

For more information on the remedies the JFTC can order, see *Practice Note, Japan Fair Trade Commission: Overview: Scope of Enforcement Authority*.

Foreign Investment Control

Under the *Foreign Exchange and Foreign Trade Act* (Act No. 228 of 1 December 1949) (Foreign Exchange Act), the *Ministry of Economy, Trade and Industry of Japan* (METI) oversees trade control. This regulatory framework determines whether inward investment in Japanese companies triggers obligations under Japan's foreign investment regime. For example, the acquisition of technology by acquiring a certain percentage of shares in a defense-industry-related company that owns that technology requires pre-notification to the *Ministry of Finance* and competent ministry for the business. Certain acquisitions of shares or equity in Japan from another foreign investor are also subject to prior notification or a post-investment report.

For more information, see *Practice Note, Regulation of Foreign Investment in Japan*. To view and customize comparison charts on foreign direct investment, see *Quick Compare Chart, Regulation of Foreign Investment*.

Joint Ventures Involving IP

A joint venture (irrespective of whether it is a full-function joint venture) is subject to a prior notification requirement if the transaction to form that joint venture:

- Falls under any of the transaction categories subject to the prior notification requirement (such as a share acquisition).
- Meets the jurisdictional thresholds specified for that category.

(See *Mergers and Acquisitions Involving IP*.)

Additionally, notification can be required when a partnership (including a limited liability partnership) is formed, which then acquires shares in another company. In these cases, the controlling company of the partnership should file a prior notification if the filing thresholds are met.

When reviewing a joint venture under the merger rules of the AMA, the JFTC assesses whether it may substantially restrain competition, regardless of whether the joint venture involves IP rights. This was confirmed in the 2019 revision to the Merger

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Guidelines regarding mergers involving parties with certain important assets for competition, including IP rights (see *Mergers and Acquisitions Involving IP*).

Under the AMA, a joint relationship, where two or more companies operate business activities to a certain extent or in their entirety, is subject to merger control review. The relationship may be indirectly formed, maintained, or strengthened through a joint venture even if there is no direct shareholding relationship between the parent companies. Where the parent companies' business activities are integrated through forming a joint venture, the JFTC views this as affecting competition. (Part I(1)(1)(C), Merger Guidelines.)

In practice, the JFTC reviews whether there is a horizontal, vertical, or conglomerate relationship between the business activities of the joint venture and those of the parent companies. On the other hand, the JFTC is unlikely to review the relationship between standalone business activities of the parent companies where these are not relevant to the joint venture.

IP Licensing and Collaboration Agreements

Commercial arrangements, such as IP licensing, joint production agreements, R&D agreements, strategic alliances, and other commercial arrangements, can pose significant competition law risks. These risks are primarily assessed under the AMA, and various guidelines provide further clarification (see *Competition Guidelines*).

IP licensing agreements that restrict competition can violate the AMA. The IP Guidelines provide numerous examples of problematic transactions. For example, licensing agreements that include restrictive clauses, such as exclusive grantbacks, non-compete clauses, or price-fixing arrangements, can be anti-competitive. The IP Transaction Guidelines provide guidance on the application of the AMA framework to transactions regarding IP rights, know-how, and data. They include illustrative examples of conduct that may constitute an abuse of a superior bargaining position if performed by a party in a superior bargaining position, such as:

- Unilaterally determining the license fee or the method for setting such license fee.
- Requesting the transfer or license of copyright or the licensing of IP rights without compensation.
- Requesting technical guidance, technical verification (proof of concept (PoC)), prototype manufacturing, or testing free of charge.

R&D agreements are generally pro-competitive, as they lead to innovation and improved products. However, the Joint R&D Guidelines highlight situations where these agreements can be problematic (see *Information Exchange*).

Standardization and patent pool arrangements can facilitate innovation and interoperability. However, the Patent Pool Guidelines caution against practices that can harm competition (see *Patent Pools*).

Exclusivity

Exclusive Licenses

The grant of an exclusive license, by itself, does not generally violate the AMA. However, competition law issues can arise where an ancillary agreement to an IP licensing agreement or the implementation of a joint R&D project imposes exclusivity requirements. The IP Guidelines specify conduct that can be an unfair trade practice, such as when a licensee who improves

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licensed technology must hand over IP rights over those improvements to the licensor or grant it an exclusive license to use them (see *Grantback Obligations*).

Exclusive Dealing

The IP Guidelines and Joint R&D Guidelines provide examples where exclusive dealing can be an unfair trade practice, including an IP license that restricts the licensee from:

- Manufacturing or using competing products.
- Adopting competing technologies.

Unfair trade practices can include deals with exclusive or restrictive terms, particularly where those terms have a tendency to impede fair competition in the market. Restrictions that are imposed after a licensing agreement expires are highly likely to be an unfair trade practice. (Part 4(4)(iv) and (5)(iii), IP Guidelines.)

A restriction in a joint R&D project that prevents the project's participants from adopting a third-party technology that competes with the technology being created through that project can be an unfair trade practice if this restriction is not necessary to implement the project. The restriction should not prohibit a participant in a joint R&D project from withdrawing by surrendering its rights in the project and then adopting the third-party technology itself. (Part II(2)(1)(b)(2), Joint R&D Guidelines.)

Other Customer or Territorial Restrictions on Resellers

The IP Guidelines provide guidance on customer and territorial restrictions. For example, where a licensor grants a technology license to another company to sell a product incorporating that technology (the licensed product), it can be unlawful for the license to limit any of the following:

- The licensee's sales area.
- The quantity of the licensed products (including copies of computer programs) that the licensee can sell.
- The licensee's choice of counterparties (for example, distributors) for selling the licensed product.
- The trademarks the licensee can use if trademarks are crucial competitive tools in the market.

(Part 4(4)(ii), IP Guidelines and see *Unfair or Discriminatory Licensing Practices*.)

Resale Price Maintenance

In principle, it is an unfair trade practice for a technology license to set minimum resale prices for licensees selling licensed products. Notably, in Japan this vertical restraint is typically considered an unfair trade practice rather than an unreasonable restraint of trade, unlike in many other jurisdictions. A license restricting the sale or resale prices of products that incorporate a licensed technology fundamentally limits the licensee's ability to compete in the market in which it is active (Part 4(4)(iii), IP Guidelines).

Information Exchange

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Multiple firms can undertake a joint R&D project to achieve a common purpose. The Joint R&D Guidelines mostly regulate the participants' arrangements to implement this project. The IP Guidelines can also apply when forming a license agreement with a third party to use the results of a joint R&D project. (Part II(1), Joint R&D Guidelines.)

An arrangement related to the implementation of a joint R&D project is an unfair trade practice when it unjustly restricts a participant's business activities and may impede fair competition. When competing firms in a product market implement a joint R&D project, agreeing to restrict their respective business activities in terms of pricing, volume, or similar factors, the project is mainly reviewed under the rules governing unreasonable restraints of trade. (Part II(1), Joint R&D Guidelines.)

For information exchanges under a joint R&D project, a requirement to disclose technical information necessary for the project among the participants is generally not considered an unfair trade practice. These required disclosures can include the information obtained in the course of the joint R&D project. (Part II(2)(1)(a)(2), Joint R&D Guidelines.)

There are no specific guidelines for information exchanges that are not part of a joint R&D project, such as when negotiating a licensing agreement. Therefore, the general rules of the AMA apply. An unreasonable restraint of trade can occur if a licensor and licensee collude in or restrict their business activities.

Grantback Obligations

The IP Guidelines offer detailed guidance on grantback obligations, particularly focusing on the differences between:

- Exclusive grantbacks (see *Exclusive Grantbacks*).
- Non-exclusive grantbacks (see *Non-Exclusive Grantbacks*).

Exclusive Grantbacks

An exclusive grantback requires a licensee who improves a licensed technology either to:

- Transfer the rights of any improvements the licensee develops to the licensor.
- Grant the licensor an exclusive license to use these improvements.

Generally, an exclusive grantback is an unfair trade practice, as there is no justification for imposing the restriction. That restriction can:

- Enhance the licensor's position in the technology or product market.
- Discourage licensees from engaging in R&D, as it restricts their ability to use their own improved technology.

(Part 4(5)(viii)(a), IP Guidelines.)

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Requirements that licensees co-own the rights to their improvements with the licensor also restrict the licensees' freedom to use or dispose of the results of their own research. While these restrictions may be less concerning than an exclusive grantback, they can still be an unfair trade practice if they tend to impede fair competition. (Part 4(5)(viii)(b), IP Guidelines.)

If it is not possible to use the licensee's improvements without the original licensed technology, an obligation on the licensee to assign the rights to the improvements to the licensor for fair consideration can be key for promoting technology transactions. This type of obligation is:

- Not considered to undermine the licensee's motivation to undertake R&D.
- Generally viewed as not impeding fair competition.

(Part 4(5)(viii)(c), IP Guidelines.)

Non-Exclusive Grantbacks

A non-exclusive grantback requires a licensee who improves a licensed technology to grant the licensor a non-exclusive license for these improvements. This requirement is generally not considered an unfair trade practice if the licensee can continue to use their improvements, as the requirement:

- Has a minimal impact on the licensee's business activities.
- Does not typically discourage a licensee from engaging in R&D.

(Part 4(5)(ix)(a), IP Guidelines.)

However, a non-exclusive grantback is an unfair trade practice if it:

- Restricts which third parties can receive licenses to use the improvements, such as prohibiting licenses to the licensor's competitors or other parties.
- Has a tendency to impede fair competition.

These restrictions can:

- Reduce the licensee's motivation to undertake R&D.
- Enhance the licensor's market position.

(Part 4(5)(ix)(b), IP Guidelines.)

If it is not possible to use the licensee's improvements without the original licensed technology, requiring the licensee to obtain the licensor's approval before granting a license to another party is not an unfair trade practice in principle (Part 4(5)(ix)(b), IP Guidelines).

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Non-Assertion Clauses

A non-assertion clause requires a licensee to refrain from exercising any IP rights it owns or acquires (whether the licensee's ownership is full or partial) against the licensor (or any other person the licensor designates). In effect, a non-assertion clause can require the licensee to allow the licensor to use those IP rights. (Part 4(5)(vi), IP Guidelines.)

Non-assertion clauses can be an unfair trade practice tending to impede fair competition if they:

- Enhance the licensor's influential position in a product or technology market.
- Impede the licensee's incentive to engage in R&D, and therefore the development of new technologies, by restricting the exercise of the licensee's rights and similar concerns.

However, a non-assertion clause is generally not an unfair trade practice if the licensee, in substance, is only required to grant a non-exclusive license for any improvements it made to the licensed technology. (Part 4(5)(vi), IP Guidelines and see *Non-Exclusive Grantbacks*.)

The JFTC has enforced the AMA in response to non-assertion clauses:

Microsoft Corporation

The JFTC held that Microsoft engaged in unfair trade practices by entering into licensing agreements for its Windows operating system with computer manufacturers that included a non-assertion of patents clause preventing those manufacturers from asserting patent infringement claims against Microsoft and other designated computer manufacturers.

(JFTC, *Hearing Decision against Microsoft Corporation*.)

QUALCOMM Incorporated

The JFTC investigated QUALCOMM for a non-assertion clause in its cross-licensing program with Japanese manufacturers for code-division multiple access (CDMA, an integral part of the 3G standards for mobile communications) technology:

- The JFTC found the non-assertion clause violated Article 19 of the AMA.
- On 28 September 2009, the JFTC issued a cease-and-desist order, requiring *rescission* of the non-assertion clause (see JFTC translation of *Hearing Decision against Qualcomm Incorporated*).

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- In 2019, following lengthy proceedings with QUALCOMM, the JFTC revoked its 2009 cease-and-desist order.

No-Challenge Clauses

A no-challenge clause in a technology license prohibits a licensee from challenging the validity of the IP rights protecting the licensed technology. For example, a no-challenge clause can require a licensee not to launch a legal action to invalidate a licensed patent protecting an invention. (Part 4(4)(vii), IP Guidelines.)

No-challenge clauses have aspects that promote competition by facilitating technology transactions and are unlikely to reduce competition directly. However, a no-challenge clause can be an unfair trade practice if it tends to impede fair competition by maintaining IP rights that would otherwise be invalidated by any challenge, and therefore restricts the wider use of the technology those IP rights protect. (Part 4(4)(vii), IP Guidelines.)

Termination Right If Licensee Challenges IP (Terminate-on-Challenge Clauses)

This termination right is also described as a terminate-on-challenge clause in some jurisdictions. The IP Guidelines set out where terminating a technology licensing agreement for a licensee that challenges the validity of rights may not be an unfair trade practice (see *No-Challenge Clauses* and *Non-Assertion Clauses*).

However, a terminate-on-challenge clause is an unfair trade practice if it is:

- Unilaterally disadvantageous to the licensee.
- Combined with other restrictions that infringe the AMA.
- Used as a tool to enforce those other restrictions.

(Part 4(5)(i), IP Guidelines.)

Tying Arrangements

Tying occurs when a licensor requires a licensee to obtain a package license that covers:

- IP rights protecting technology the licensee intends to use (the tying technology).
- Other IP rights protecting other technology (the tied technology).

The JFTC reviews whether a tying arrangement makes it substantially difficult for the licensee to choose technology other than that designated by the licensor. (Part 4(5)(iv), IP Guidelines.)

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The JFTC reviews whether the tying arrangement is essential to ensure the functioning of the tying technology. A tying arrangement is an unfair trade practice if it tends to impede fair competition, which applies if the arrangement either:

- Is not necessary for the functionality of the licensed technology.
- Requires the licensee to obtain a technology license beyond that which is necessary.

(Part 4(5)(iv), IP Guidelines.)

Notably, a package licensing agreement is not a tying arrangement when an agreement covering multiple patents requires a licensee to pay royalties only for the patent and other rights that the licensee uses and not for the other licensed items (Part 4(5)(iv), IP Guidelines).

The JFTC issued a recommendation decision against Microsoft advising it against tying its Microsoft Word and Outlook software to its Microsoft Excel software in licensing arrangements with computer manufacturers. Although this conduct may appear to be an exercise of IP rights, it cannot be substantially recognized as such, because the exercise of IP rights and tie-in sales are subject to scrutiny under the AMA for their impact on the market.

Settlement of IP Litigation

While there are no current published cases or investigations where the JFTC applied competition law to a settlement agreement resolving an infringement dispute over IP rights, the JFTC is likely to rely on existing laws and guidelines (including the IP Guidelines and Joint R&D Guidelines) to assess these agreements.

The IP Guidelines provide guidance on scenarios where a technology license restricts the licensee from manufacturing or selling competing products or adopting competing technologies. These restrictions can be unfair trade practices, specifically regarding exclusive or restrictive terms (see *Exclusivity*).

For example, if the parties to a patent infringement claim enter into a settlement agreement where one party agrees to not compete regarding the patented product and that agreement includes a licensing agreement, the published guidelines can apply from a vertical restrictions perspective. The settlement agreement can be examined as an unreasonable restraint of trade from a horizontal restrictions perspective.

The JFTC has never officially applied competition laws to pay-for-delay clauses or reverse payments. Nevertheless, the JFTC might be interested in applying the prohibition of unfair trade practices related to dealing on restrictive terms.

The *Competition Policy Research Center*, which is a cooperative platform of JFTC staff members and outside practitioners and researchers, published the *Competition and Research and Development Incentives in the Pharmaceutical Market Through Examinations of the Impact of the Entry of Generic Drugs on the Market* (Generic Drugs Report). The Generic Drugs Report:

- Finds that, under the current system and market structure in Japan, reverse payments are less likely to occur and be a competition issue than in many other jurisdictions, including the EU (see *Practice Note, Competition-IP Interface: Transactions, Collaboration, and Unilateral Conduct (EU): Settlement of IP Litigation*) and the US.
- Notes that if the market share of generic pharmaceutical products increases, the incentives to engage in a reverse payment scheme might increase.

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- Suggests that the JFTC should continue to monitor the situation and be prepared to be proactive in enforcing the AMA if necessary.

Patent Pools

In a patent pool, parties that hold the IP rights protecting a particular technology concentrate their individual IP rights (or their rights to grant licenses to use that technology) into a single entity, which then grants licenses to pool members or third parties. This licensor entity (or patent pool administrator) can be either:

- A new entity set up for the patent pool.
- An existing entity appointed by the pool members.

(Part 3(2)(i), IP Guidelines.)

For more information, see *Practice Note, FRAND Framework: Patent Pools*.

A patent pool, by itself, is not an unreasonable restraint of trade. A patent pool can usefully promote the effective use of technologies required for business activities. (Part 3(2)(i), IP Guidelines.)

However, a patent pool can be an unreasonable restraint of trade where the patent pool members, for example:

- Hold the rights to substitute technologies in a particular technology market and:
  - jointly set out licensing conditions (including the scope of use of technologies) for their rights to the substitute technologies and substantially restrain competition in the field of trade associated with those technologies; or
  - substantially restrain competition in the field of trade associated with those technologies by colluding to restrict any improvements.
- Compete with each other in a particular product market, establish a patent pool for the mutually used technologies required to supply their product, and obtain licenses for these technologies from the patent pool, if their conduct:
  - jointly determines the price, quantity, or customers of their products using the licensed technologies; and
  - substantially restrains competition in the product's field of trade.
- Compete with each other in a particular product market and establish a patent pool as the only licensor to parties that are not pool members for technologies required to supply their product, and then the patent pool refuses to grant licenses to new entrants or certain existing enterprises, without reasonable grounds, and this refusal:
  - impedes new entries or hampers the business activities of the existing enterprises; and

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- substantially restrains competition in the product's field of trade.

(Part 3(2)(i), IP Guidelines.)

Patent pools can also be an unlawful private monopolization. For example, the participants in a patent pool cannot refuse to grant a license to a new entrant or particular existing enterprise, without reasonable grounds, to hinder it from using the pooled technology. (Part 3(1)(i)(a), IP Guidelines.)

The JFTC issued a recommendation decision advising ten companies not to:

- Prevent new entries into the pachinko (a popular Japanese pinball game) machine manufacturing market.
- Refuse licenses of their patents to anyone other than the existing pachinko manufacturers in the market.

It is important to standardize specifications for new product interfaces in industries experiencing innovation and technical change, such as the information technology sector, to assure compatibility among new products and encourage market expansion (Part 1, Patent Pool Guidelines). The JFTC reviews patent pools formed for standardization-related issues in accordance with the Patent Pool Guidelines on an individual basis. For more information, see *Practice Note, FRAND Framework: Purpose of Standard Setting*.

In 2022, the METI published the *Good Faith Negotiation Guidelines for Standard Essential Patent Licenses*, which set out more subjective guidelines from a Japanese industrial policy perspective. These guidelines apply to licensing negotiations for *standard essential patents* (SEPs) subject to obligations to grant licenses on *FRAND* terms.

Safe Harbors

Restrictions with a Minor Effect on Reducing Competition

Restrictions in technology licenses that only have a minor effect on reducing competition do not violate the AMA. Generally, restrictions are considered to have a minor effect when the enterprises using the restricted technology collectively hold a 20% or lower market share in the relevant product market. Where this product market share is unavailable or inappropriate for determining the effect on the technology market, a reduction in competition is considered minor if there are at least four parties holding rights to alternative technologies that do not significantly hinder general business activities. (Part 2(5), IP Guidelines and see *Defining the Relevant Market*.)

The minor effect safe harbor does not apply to:

- Restrictions on sale prices, sale quantities, market shares, sales territories, or customers for products incorporating the technology.
- Restrictions on R&D activities.

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- Requirements on licensees to assign rights or grant exclusive licenses for improvements to the licensed technology (see *Grantback Obligations*).

(Part 2(5), IP Guidelines.)

Trademark Licensing

Generally, a technology license requiring a licensee to use a specific trademark is not an unfair trade practice, as this requirement is not considered to reduce competition. However, this safe harbor does not apply if the trademark is a crucial competitive tool and the licensee is forbidden from using other trademarks. (Part 4(4)(ii)(c), IP Guidelines.)

Joint Research and Development

A joint R&D project aimed at improving or developing an alternative to a product typically does not raise competition concerns if the combined market share of the participants is no more than 20% (Part I(2)(1)(i), Joint R&D Guidelines).

However, a market share above 20% does not automatically raise competition concerns. The JFTC makes a comprehensive assessment considering factors such as:

- The number of participants.
- Their market shares.
- The nature of the research.
- The necessity for the joint project.
- The scope of the project's objectives.
- The duration of the project.

(Part I(2)(1), Joint R&D Guidelines.)

The IP Transaction Guidelines provide certain guidance on the application of the AMA framework in relation to joint research and development. They include illustrative examples of conduct that may constitute an abuse of a superior bargaining position if performed by a party in a superior bargaining position, such as:

- Unilaterally holding ownership of IP based on the results of joint research and development.
- Restricting use of joint research and development outputs.

Effects Analysis

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For IP arrangements that do not benefit from any of the safe harbors, the IP Guidelines provide a detailed framework for analyzing the effects that restrictions related to the use of a technology have on competition in the market. A determination on whether these restrictions reduce competition involves a detailed consideration of several factors, including:

- The nature of the restrictions.
- How the restrictions are imposed.
- How the technology is used in business activities.
- The impact of the restrictions on business activities.

(Part 2(3), IP Guidelines.)

An assessment of whether the parties involved in the restrictions are competitors in the market, their market positions (such as market share and rank), and the overall competitive conditions in the market is also required. This assessment considers:

- The number of competing companies.
- The degree of market concentration.
- The characteristics and differentiation of the products involved.
- The distribution channels.
- The difficulty in entering the market.

The analysis also considers:

- Whether there are reasonable grounds for imposing the restrictions.
- The effects of the restrictions on incentives for research, development, and licensing.

(Part 2(3), IP Guidelines.)

When evaluating competitors in a market, the analysis considers whether the parties:

- Were competitors before the license was granted.
- Became competitors due to the license.

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- Remain as non-competitors after the license is granted.

In many instances, the market share in the technology market can be approximated by the market share of the product utilizing the technology in question. (Part 2(3), IP Guidelines and see *Relevant Market and Dominance*.)

Individual Exemptions

The AMA does not apply to acts that are recognizable as the exercise of rights under the Copyright Act, Patent Act, Utility Model Act, Design Act, or Trademark Act (Article 21, AMA). However, the AMA applies to acts that appear to be an exercise of IP rights but are inconsistent with the purpose of the IP systems, which is to:

- Motivate businesses and enterprises to actualize creative efforts.
- Facilitate their use of technology.

This assessment considers the intent, manner, and degree of the impact on competition. (Part 2(1), IP Guidelines.)

There is an exemption from the AMA for resale price maintenance for copyright works between enterprises (Article 23(4), AMA). For this exemption, the JFTC interprets copyright works to:

- Include books, magazines, newspapers, and music records, tapes, and compact discs.
- Exclude DVDs and other media formats.

Mitigation Strategies

Competitors should generally refrain from exchanging competitively sensitive information. This information exchange among competitors can reduce the uncertainties of competition and facilitate coordination, which would raise serious concerns under the AMA, such as illegal cartel conduct. This rule applies to communications in transactions involving IP rights.

Where competitors are required to exchange competitively sensitive information for legitimate objectives, they should first implement all necessary measures to ensure that the exchange only takes place with appropriate safeguards, including:

- Establishing a system to limit the information recipients.
- Not using the information beyond its legitimate objectives.

Each competitor should set up a clean team, which is a limited number of identified individuals that manage competitively sensitive information. The clean team should not include employees involved in making decisions on sales, purchases, pricing, marketing, or any other competitively sensitive decision-making process.

Unilateral Conduct

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Private monopolization under the AMA is similar to an abuse of a dominant position under EU competition law. An abusive act is a private monopolization if an enterprise (or combination of enterprises) in a dominant position excludes or controls the business activities of other enterprises, causing a substantial restraint of competition (Article 2(5), AMA).

The IP Transaction Guidelines provide guidance on the application of the AMA framework in relation to transactions regarding IP rights, know-how, and data. They include illustrative examples of conduct that may constitute an abuse of a superior bargaining position if performed by a party in a superior bargaining position such as:

- Unilaterally requesting disclosure of know-how such as technical information.
- Refusing to execute an NDA.
- Executing a unilateral NDA.
- Unilaterally requesting a restriction on a patent application.
- Imposing a risk of damages, without considering mutual liability or liability proportions.

The AMA applies to restrictions relating to the use of technology that are not considered to be the legitimate exercise of rights under the Copyright Act, Patent Act, Utility Model Act, Design Act, or Trademark Act (Article 21, AMA and see *Individual Exemptions*). Article 21 of the AMA is understood to apply to technology whose exclusive use is authorized by any act other than those listed in that article (Part 2(1), IP Guidelines).

There is no legislation in Japan granting exclusive rights for technology protected as know-how, therefore, Article 21 of the AMA does not apply. However, due to the specific characteristics of technology protected as know-how, in practice it is treated like technology covered by Article 21 of the AMA. (Part 2(1), IP Guidelines.)

Pricing Conduct

A seller's different transaction prices for the same product do not by themselves impede fair competition. For example, different product prices can be justified by differences in:

- Costs, due to the transaction quantity.
- Supply and demand.

However, competition issues can arise when an influential enterprise, which is an enterprise that has more than 20% market share in a relevant market, selectively cuts prices in sales territories or to customers to eliminate a competitor. (Part 5(1)(B), Low Price Guidelines.)

Rebates, by themselves, also do not violate the AMA. However, the provision of rebates can raise competition issues under the AMA, such as exclusivity rebates that restrict competitors' business activities by making it difficult for them to find alternative business partners. (Chapter 1, Part 3(1), Distribution Systems Guidelines.)

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Generally, patent pools for technology standards can license their patents with different conditions, such as different licensing royalties. However, patent pools risk violating the AMA when they impose different conditions in licensing agreements with specific businesses without reasonable grounds when the discriminatory conduct has a direct and serious impact on a licensee's ability to compete, such as charging one business a high licensing fee compared with other licensees. To avoid violating the AMA, patent pools must grant licenses on a non-discriminatory basis if there are no reasonable grounds for imposing different conditions. (Part 3(3)(1), Patent Pool Guidelines and see *Patent Pools*.)

A licensor's royalty standards that are unrelated to the use of the licensed technology, such as requiring royalty payments according to the quantity of products manufactured or sold without the licensed technology, can hinder licensees from using competing products or technologies and be an unfair trade practice if this conduct tends to impede fair competition. In principle, however, it is not an unfair trade practice if the licensed technology is used as part of the manufacturing process or is associated with a component, and the method used is a reasonable means of calculating royalties, such as by using:

- The manufactured or sales quantity or value of the final product using licensed technology or components.
- The quantity of raw materials and components used where this is recognized as reasonable for the convenience of computation.

(Part 4(5)(ii), IP Guidelines.)

Gaming the Patent System

Currently, there is no JFTC guidance on conduct that games the patent system through practices such as:

- Making misleading representations before patent offices.
- Strategically filing and withdrawing divisional patent applications to frustrate competitors.

The JFTC's review of this conduct might be under the framework of Article 21 of the AMA, which can apply to restrictions relating to the use of technology that are not fundamental to the exercise of IP rights. Conduct that is an abuse of the patent system, such as filing multiple divisional patent applications and not a legitimate exercise of patent rights, could fall under the remit of the AMA.

Misuse of a Regulatory Process

The JFTC has issued no specific guidance on the misuse of the regulatory process. However, Japanese case law has illustrated the complexities of the regulatory process and the fine line between legitimate patent protection actions and potential misuse of regulatory mechanisms to hinder competition (see *Box, Samsung Bioepis*).

Samsung Bioepis

To ensure a stable supply of generic drugs, the *Ministry of Health, Labour and Welfare of Japan* (MHLW) uses a patent linkage system to collect patent information on original drugs and reviews potential patent infringements during the approval process for generic drugs.

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Bayer provided information to the MHLW asserting that Samsung's products infringed its patent. In response, Samsung filed a motion for a provisional disposition under the Unfair Competition Prevention Act, which prohibits a competitor from making a false statement that harms another party's business reputation. The court determined Bayer's conduct was not:

- A false statement of fact.
- Materially inadequate for the purposes of the patent linkage program.

(*Tokyo District Court, 2024 (Yo)30029, 28 October 2024*, *Intellectual Property High Court, 2025 (Ra)10003, 13 August 2025*. On 12 December 2025, the Supreme Court dismissed the special appeal and the judgment became final.)

Misuse of the Litigation Process

There is no JFTC guidance or precedent in Japan on the misuse of the litigation process regarding IP rights, such as anti-suit injunctions or patent ambushes. However, certain frameworks and legal provisions may still apply.

The JFTC is likely to examine conduct like patent ambush under the framework of Article 21 of the AMA. Article 21 provides a basis for addressing unfair trade practices, in particular, scrutinizing and penalizing patent ambush (see *Unilateral Conduct*).

In an alleged patent hold-up (see *Practice Note, FRAND Framework: Hold-Up*), the JFTC might assess whether the conduct is an unfair trade practice. This is particularly relevant to abuse of a superior bargaining position. In these cases, the JFTC can impose a surcharge, which is a type of administrative fine, to penalize the offending party if the conduct occurs on a regular basis.

Unfair or Discriminatory Licensing Practices

In Japan, unfair or discriminatory licensing practices for technology can include:

- Inhibiting the use of technology (see *Inhibiting the Use of Technology*).
- Limiting the scope of the use of technology (see *Limiting the Scope of the Use of Technology*).
- Imposing conditions on the use of technology (see *Imposing Conditions on the Use of Technology*).

These restrictions can violate the AMA as either:

- A private monopolization.
- An unreasonable restraint of trade.

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- An unfair trade practice.

(See Part 4(1)(i), IP Guidelines, Part 3(2), Patent Pool Guidelines, and *Competition Legislation*.)

Inhibiting the Use of Technology

Certain unilateral conduct by an IP rightsholder inhibiting the use of technology, by itself, does not create a competition issue and is viewed as a legitimate or recognizable exercise of IP rights. For example:

- Refusing to grant an enterprise a license for technology.
- Requesting prohibitively expensive royalties that have the effect of refusing to grant a license.
- Filing a lawsuit against any unlicensed enterprise using the technology.

(Part 3(1)(i), IP Guidelines.)

However, a restriction that deviates from or runs counter to the intent and objectives of the IP systems is not a recognizable exercise of rights. A unilateral restriction is a private monopolization if it substantially restrains competition in a particular field of trade. For example, a patent pool that refuses to grant a license to a new entrant or an existing enterprise without any reasonable grounds to hinder the latter from using the technology can violate the AMA. (Part 3(1)(i), IP Guidelines.)

Examples of conduct inhibiting the use of technology that can be an unfair trade practice include when an enterprise:

- Purchases IP rights knowing other enterprises use them.
- Accumulates IP rights that it does not use but its competitors do use.
- Uses inappropriate measures to have its IP rights incorporated into a technical standard (see *Practice Note, FRAND Framework: Purpose of Standard Setting*).

(Part 4(2), IP Guidelines.)

No court judgment or JFTC decision has found a single enterprise's genuine unilateral refusal to license violates the AMA. However, a single IP rightsholder's refusal to provide a critical IP license to another enterprise, thereby causing significant business difficulties for that enterprise, can be a private monopolization or unfair trade practice.

Where multiple IP rightsholders jointly refuse to grant a license without reasonable grounds to effectively exclude competitors, such as through a patent pool, the refusal can be a private monopolization or unfair trade practice (see *Patent Pools*).

No JFTC decision or court judgment has explicitly mentioned the essential facilities doctrine. However, a refusal to license SEPs can be a private monopolization or unfair trade practice in a standard-setting context, including when a holder of a FRAND-encumbered SEP:

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- Refuses to grant a license.
- Seeks an injunction against a party who is willing to take a license.
- Withdraws its FRAND declaration for the SEP and:
  - refuses to grant a license; or
  - seeks an injunction against a party who is willing to take a license.

(Part 3(1)(i)(e) and Part 4(2)(iv), IP Guidelines.)

Whether a party is a willing licensee is determined on an individual basis factoring in the behavior of both the licensor and potential licensee during licensing negotiations, including:

- Whether the licensor specified how the potential licensee infringed the licensor's SEPs.
- Whether the licensor made a license offer with an explanation of a reasonable basis for its proposed FRAND terms.
- How the potential licensee responded to the licensor's offers, such as by making prompt and reasonable counteroffers.
- Whether the parties engaged in good-faith licensing negotiations considering normal business practices.

A party that challenges the validity, essentiality, or infringement of an SEP can still be a willing licensee if it engages in good-faith licensing negotiations. (Part 3(1)(i)(e), IP Guidelines.)

A patent holder that made FRAND declarations regarding an SEP cannot seek injunctive relief against a manufacturer that intends to obtain the necessary license on FRAND terms from that patent holder (*Intellectual Property High Court, 2013 (Ne)10043, 16 May 2014*). While this court decision was not based on competition law grounds, the JFTC seems to have considered it when drafting the IP Guidelines.

Limiting the Scope of the Use of Technology

Generally, when an IP rightholder grants other enterprises a license to use a technology within a limited scope, it is an exercise of rights that does not raise competition law issues. However, acts that specify and enforce the scope of the authorized use of technology can control the business activities of a licensee by deviating from the intent of the IP systems and are not recognizable as a legitimate exercise of rights. These acts are a private monopolization if they substantially restrain competition in a particular field of trade and can also be an unfair trade practice. (Part 3(1)(ii) and Part 4(3), IP Guidelines.)

A patent pool that limits the scope of authorized use of the pool's patents, such as limiting use to certain technical fields or geographical regions, can violate the AMA (Part 3(3)(1), Patent Pool Guidelines and see *Patent Pools*).

Imposing Conditions on the Use of Technology

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An IP rightsholder that sets a condition for granting a technology license to other enterprises can control the business activities of licensees or exclude the business activities of other enterprises. A condition that substantially restricts competition in a particular field of trade can be a private monopolization. (Part 3(1)(iii), IP Guidelines.)

For example, an IP rightsholder can control the business activities of enterprises by both:

- Implementing a licensing scheme with multiple options (multi-licensing scheme) for different enterprises wanting to conduct business activities using the technology.
- Issuing instructions the licensees must follow on sales price, sales quantity, customers, and other factors concerning the products supplied using the technology.

(Part 3(1)(iii)(a), IP Guidelines.)

Relevant Market and Dominance

Defining the Relevant Market

Evaluating a restriction on the use of a specific technology under the AMA requires first defining:

- The technology market, where the technology is bought or sold.
- The product market or markets, where any product incorporating the technology is bought or sold.
- The markets where related technologies and products are bought or sold.

These markets must be defined before examining the impact on competition based on the transactions affected by the restriction. (Part 2(2)(ii), IP Guidelines.)

The above methodology is the same methodology that is generally used to define the relevant product or service market, looking primarily from the viewpoint of substitutability to consumers. The relevant technology may receive a relatively broad definition because:

- Trade in technology is not normally subject to transport constraints.
- It is more likely that the market will divert technology from its current usage to other fields of business.

(Part 2(2)(iii), IP Guidelines.)

The defined technology market can also include fields where the technology is not currently traded but where its adoption is likely or at least plausible. In contrast, however, the technology market can sometimes be defined by one technology if a large number of enterprises in a specific field of business use that technology and it is extremely difficult for them to develop an alternative technology or switch to a technical substitute. (Part 2(2)(iii), IP Guidelines.)

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Restrictions on the use of technology can affect competition in developing technologies. However, pure R&D activities by themselves do not constitute a market. Therefore, the effect of developing technologies on competition is evaluated by considering the effect on competition in the trade of either future:

- Technologies that may result from these activities.
- Products that may incorporate those future technologies.

(Part 2(2)(iii), IP Guidelines.)

Establishing Dominance

For private monopolization to restrain competition substantially in a particular field of trade, it must establish, maintain, or strengthen the ability of an enterprise (or group of enterprises) to control the market at will, by influencing price, quality, quantity, or other conditions, after having lessened competition. Competition is restrained if this definition is met, even if prices do not in fact increase. (Part 3, IP Guidelines and see Tokyo High Court, 29 May 2009 and Article 2(5), AMA.)

Objective Justification for Unilateral Conduct

No specific sectors of the economy are exempt from the AMA.

Mitigation Strategies for Unilateral Conduct

Enterprises can mitigate commonly encountered competition risks by being aware of the JFTC's enforcement priorities. The Exclusionary Private Monopolization Guidelines set out the JFTC's enforcement policy in that:

- The JFTC prioritizes investigations of exclusionary private monopolization where:
  - the enterprise has a market share exceeding approximately 50% after the conduct commences; and
  - the conduct has a serious impact on the lives of citizens.
- The JFTC's assessment considers various factors, including market size, the scope of the enterprise's business activities, and the characteristics of the products in question.
- A case that does not meet the primary criteria in the above bullets may still be subject to investigation by the JFTC based on the type of conduct, market conditions, positions of competitors, and other relevant factors.
- If the JFTC's investigation finds that alleged conduct is not exclusionary private monopolization, the JFTC can still regulate this conduct as:
  - an unfair trade practice; or
  - conduct that violates other AMA provisions.

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Exhaustion of IP Rights

Exhaustion of IP rights means that once specific units of a product incorporating IP rights have been sold on a market, the IP rightsholder cannot assert those IP rights to prevent further circulation or resale of those units in that market. Their IP rights over those units are exhausted. Different jurisdictions have national, international, or asymmetric exhaustion regimes.

In Japan, various legislative acts and judicial decisions address the exhaustion of IP rights. Article 26-2(2) of the Copyright Act explicitly acknowledges the doctrine of exhaustion regarding copyright works (other than cinematographic works). Supreme Court decisions have recognized the same doctrine for cinematographic works.

The Copyright Act also addresses international exhaustion under certain conditions. Importing records that were lawfully sold outside Japan for resale within Japan can still be copyright infringement (Article 113, Copyright Act). The copyright protecting those records is not exhausted.

Additional legislation that acknowledges the exhaustion of IP rights includes:

- Article 12(3) of the *Act on the Circuit Layout of Semiconductor Integrated Circuits* (Act No. 43 of 31 May 1985), which has similar provisions to those in the Copyright Act.
- Article 21(2) of the *Plant Variety Protection and Seed Act* (Act No. 83 of 29 May 1998).

In practice, disputes relating to the exhaustion of IP rights have focused on patents and trademarks, particularly in parallel imports (or the gray market). Regardless of the lack of specific provisions on exhaustion in the Patent Act and Trademark Act, a principle of domestic (national) exhaustion is generally accepted.

The courts have recognized international exhaustion and dismissed claims for injunctions by patent or trademark holders (or their licensees) against parallel importers who import genuine products. Notable cases include:

- *BBS Kraftfahrzeugtechnik v Racimex Japan*, *Supreme Court of Japan, 1995 (O)1988, 1 July 1997* for patents.
- *NMC v Shriro Trading*, *Osaka District Court, 1968 (Wa)7003, 27 February 1970* for trademarks.
- *3M v Hit Union*, *Supreme Court of Japan, 2002 (Ju)1100, 27 February 2003* for trademarks.

Other Considerations

The recycling of ink toner cartridges is highly litigated in Japan and a notable example of the interface between IP rights enforcement and allegations of violating the AMA. In 2004, the JFTC issued a publication titled "Concept under the AMA concerning mounting of IC chips on toner cartridges installed in laser printers and recycling of toner cartridges." The JFTC indicated that a printer manufacturer can violate the AMA by preventing users from using recycled products through:

- Using tie-in sales for new cartridges.

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- Interfering with a competitor's transactions by rendering its printers incompatible with that competitor's products.

These measures were a violation of competition law if either:

- They were not justified by a rational reason, such as a technical necessity.
- They went beyond the scope of that necessity.

(See *Box, Elecom*).

Notably, not all cases have led to a court finding a violation of competition law (see *Box, Ricoh*).

Elecom

Elecom, a producer and seller of ink cartridges that are compatible with Brother inkjet printers, argued that Brother unfairly excluded it from the ink cartridge market by altering the circuit design of Brother's printers, which made them incompatible with Elecom's cartridges.

The court found that Brother's actions were:

- Tie-in sales.
- An interference with a competitor's transactions.
- Amounted to unfair trade practices under the AMA.

The court's decision aligns with the JFTC's established concepts and reinforces the idea that manufacturers should not unreasonably restrict the use of compatible or recycled products.

(*Tokyo District Court, 2019 (Wa)35167, 30 September 2021*.)

Ricoh

Ricoh, a printer manufacturer, held patents for an electronic component of an ink toner cartridge that could prevent the manufacturer's printers from displaying the remaining ink for a refilled ink cartridge. Ricoh claimed Ds Japan infringed its patents when it sold refilled cartridges with a replaced electronic component that allowed printers to function with its refilled cartridges.

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The Tokyo District Court held that Ricoh's measures were unfair trade practices, as the recycled ink cartridge manufacturers had to sell refilled cartridges that could not utilize the printer's functionality, which made Ds Japan's cartridges substantially less attractive to consumers.

The Intellectual Property High Court reversed this decision, noting that:

- The printing functionality still worked with the refilled cartridges and Ricoh's electric component.
- It was possible to replace the electronic component at issue without implementing Ricoh's patents.

Therefore, the Intellectual Property High Court found no abuse of IP rights, as the exclusionary effect of Ricoh's measures was minimal and there were certain elements of the matter that could reasonably explain Ricoh's motive as not being solely to exclude competition.

(*Intellectual Property High Court, 2020 (Ne)10057, 29 March 2022*.)

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