

Abuse of Dominance in Japan (Overview)

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A Practice Note discussing the laws and regulations governing abuse of dominance and monopolization in Japan. The Note discusses the antitrust and competition laws that govern abuse of dominance, how these laws are enforced, how to determine if a company is dominant or has monopoly power, types of conduct by dominant companies that may face competition scrutiny, and the key enforcement priorities of competition authorities regarding dominant companies in Japan.

The competition laws against abuse of dominance and monopolization can have a significant impact on how companies conduct business in jurisdictions where they have an important market position. Certain activities that are legitimate for non-dominant companies to engage in can infringe these laws when they involve a dominant company. However, jurisdictions can differ in how their competition laws determine dominance and in the types of conduct that are prohibited.

Companies (and their counsel) should therefore understand the risk of being considered dominant and of infringing these competition laws in any jurisdiction in which they do business. This Practice Note explains the competition laws addressing dominance in Japan.

Laws and Regulations Governing Abuse of Dominance

The behavior of dominant firms is regulated under 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)).

The AMA prohibits two types of conduct by dominant firms:

- Private monopolization.
- Unfair trade practices.

The AMA is not limited to specific areas and applies across industries.

The [Japan Fair Trade Commission](#) (JFTC) is responsible for the enforcement of the AMA.

Private Monopolization

Private monopolization is prohibited under Article 3 of the AMA. Article 2, paragraph 5 of the AMA defines private monopolization as "such business activities, by which any enterprise, individually or by combination, in conspiracy with other enterprises, or by any other manner, excludes or controls the business activities of other enterprises, thereby causing, contrary to the public interest, a substantial restraint of competition in any particular field of trade."

There are two types of private monopolization:

- Exclusionary private monopolization, which occurs when a firm, alone or in conspiracy with another firm, attempts to exclude competitors from the market or hinder new entrants.
- Control private monopolization, which occurs when a firm tries to dominate the market by restraining other firms' business activities, for example, through acquiring shares to obtain control of competitor firms in conspiracy with third parties or unilaterally.

The JFTC published the [Guidelines on Exclusionary Private Monopolization under the AMA](#) (Exclusionary Private Monopolization Guidelines) on 28 October 2009 (last amended on 25 December 2020). The Guidelines mainly deal with exclusionary private monopolization but are also useful when analyzing control private monopolization.

Unfair Trade Practices

Unfair trade practices are prohibited under Article 19 of the AMA. Article 2, paragraph 9(i) to (v) of the AMA provides a list of five types of conduct that constitute unfair trade practices. Among them, Article 2, paragraph 9(v) prohibits certain conduct by a firm that has a relatively superior bargaining position over a business partner (abuse of superior bargaining position). In addition, the JFTC has further clarified that there are 15 specific types of conduct that constitute unfair trade practices in addition to the five statutory conducts in a General Designation ([Designation of Unfair Trade Practices](#) (Fair Trade Commission Public Notice No. 15 of 18 June 1982) last amended on 28 October 2009) including:

- Refusal to deal.
- Discriminatory treatment.
- Tie-in sales.
- Exclusive dealing.
- Interfering with a competitor's dealings.
- Unjust low price sales.

The JFTC published the [Guidelines Concerning Abuse of Superior Bargaining Position](#) under the Antimonopoly Act (Superior Bargaining Position Guidelines) on 30 November 2010.

Further guidance is provided in the [Guidelines Concerning Distribution Systems and Business Practices](#) (Business Practice Guidelines) issued on 11 July 1991 and last amended on 16 June 2017.

Specific Business Fields

There are also a variety of guidelines regarding specific industries (for example, the gasoline, electricity, home electric appliance, and other industries) or types of conduct (for example, below-cost pricing, intellectual property rights, and

franchising). The guidelines explain which types of conduct are likely to raise concerns of private monopolization and unfair trade practices in these fields and include:

- *Guidelines Concerning Unjust Low Price Sales under the AMA.*
- *Guidelines for the Use of Intellectual Property under the AMA.*
- *Guidelines Concerning the Franchise System under the AMA.*

Methods of Enforcement

The JFTC is responsible for the enforcement of the AMA. The JFTC identifies potential misconduct through:

- *Ex officio* detections.
- Complaints from the general public.
- Leniency applications.

The largest number of preliminary investigations derives from complaints raised by the general public. Any individual who suspects that there has been an infringement of the AMA can report the relevant facts to the JFTC and request that appropriate measures be taken. In such cases, the JFTC is required to carry out at least a preliminary investigation. Based on the information obtained and a preliminary investigation, the JFTC determines whether there is any conduct that may violate the AMA and whether to start a formal investigation.

For private monopolization cases, there are two types of formal investigation procedures:

- Administrative.
- Criminal.

The JFTC usually conducts administrative investigations. However, it conducts criminal investigation procedures where either:

- Cases are malicious, serious, and expected to have a broad impact on the livelihood of citizens.
- The purpose of the AMA cannot be achieved by administrative measures, such as in cases of repeated violations.

For unfair trade practice cases, the JFTC can only conduct administrative investigation procedures. Criminal investigations are not available for unfair trade practice cases.

Under the AMA, the JFTC has the authority to conduct on-site inspections (dawn raids), issue document submission orders, and issue interrogation orders.

If the JFTC finds a violation of the AMA, it will issue a cease-and-desist order, a surcharge payment order, or both, without the involvement of any other authority (see [Remedies](#)). Before issuing these orders, the JFTC must conduct a hearing of opinions with the intended addressee of the orders (Article 49, AMA). In the hearing, the addressee can present its opinions and supporting evidence. The offending firm has the right to appeal the JFTC's orders to the Tokyo District Court.

There are no settlement procedures under the AMA. However, the JFTC may also close an investigation without acknowledging a violation of the AMA through:

- Commitment procedures. Commitment procedures are applicable to suspected violations of the AMA, including private monopolization and unfair trade practices, except in the following cases:
 - where a firm has repeatedly violated the same provisions of the AMA within ten years; or
 - where the suspected violations are malicious and serious in nature, in respect of which criminal prosecution is considered to be appropriate.

Commitment procedures allow an investigated firm to submit voluntary measures to address competition concerns raised by the JFTC and enable the JFTC to close the case without formally acknowledging that illegal conduct has occurred. To do this, the JFTC must be satisfied that the measures proposed by the firm are sufficient to eliminate the suspected conduct. The JFTC has full discretion in determining whether a case is suitable to benefit from commitment procedures.

- Voluntary commitments. As with commitment procedures, the JFTC can close an investigation without formally acknowledging that illegal conduct has occurred when the investigated firm voluntarily offers to take reasonable measures to remove the JFTC's competition concerns. However, in contrast to commitment procedures, the JFTC can reopen the investigation into the alleged conduct by the investigated firm.

Private Enforcement

In cases where a third party has suffered and is requesting damages resulting from a violation of the AMA, a claim based on Article 709 of the [Civil Code](#) (Act No. 89 of 27 April 1896) and a claim under Article 25 of the AMA can be made.

To claim damages based on the Civil Code, the claimant is required to establish:

- An infringement of rights.
- Damage.
- Causation.
- Intention or negligence.

A claim under Article 25 of the AMA can be made when the defendant is subject to a final and binding cease-and-desist order or a surcharge payment order. The element of intention or negligence is not required.

Regarding unfair trade practices, it is also possible for any individual to file a lawsuit with a court seeking an injunction. These injunctions are not available in cases of private monopolization.

Remedies

Cease-and-Desist Orders

In cases of private monopolization and unfair trade practices, the JFTC can issue an administrative order called a "cease-and-desist order." The AMA provides that the JFTC can order the offending firm to:

- Cease and desist the conduct.
- Divestiture of a part of the party's business.
- Take any other measures necessary to eliminate the conduct.

(Articles 7, 8-2, and 20, AMA.)

Therefore, the JFTC has broad discretion to order necessary measures to eliminate violations, as appropriate to each individual case.

Cease-and-desist orders in recent years typically order the offending firm to:

- Cease the violation.
- Make the violation known to the stakeholders.
- Refrain from repeating the same violation.
- Report the measures taken to eliminate the violation and prevent its reoccurrence to the JFTC.
- Establish a compliance program.

Surcharge Payment Orders

The JFTC can impose a surcharge (that is, an administrative fine) on the offending firm for private monopolization and five types of unfair trade practices (concerted refusal to trade, discriminatory treatment, resale price maintenance, predatory pricing, and abuse of superior bargaining position).

In cases of private monopolization, the amount of the surcharge is calculated by multiplying the amount of sales of the relevant products or services during the period in which private monopolization was implemented (for a maximum period of ten years,

or more in certain circumstances) by the surcharge calculation rate of 6% for exclusionary private monopolization conduct and 10% for control monopolization conduct.

A firm that engages in private monopolization is also subject to a criminal penalty under the AMA. However, to date, the JFTC has not issued criminal penalties for private monopolization.

In cases of the unfair trade practices listed above, other than abuse of superior bargaining position, a firm may be subject to the imposition of a surcharge if it either:

- Repeatedly conducts the same type of unfair trade practice within a ten-year period.
- Is a wholly owned subsidiary of another firm that has also engaged in an unfair trade practice, and it repeatedly conducts the same type of unfair trade practice within the most recent ten-year period.

The surcharge calculation rate for concerted refusal to trade, discriminatory treatment, resale price maintenance, and predatory pricing is 3%. The surcharge calculation rate for abuse of superior bargaining position is 1%.

Unlike cases of private monopolization, a firm that engages in unfair trade practices is not subject to a criminal penalty.

Determining Dominance in Japan

Methodology

Private Monopolization

Compared to other competition regimes, Japanese competition law theoretically does not place emphasis on the concept of "dominance" and the AMA does not provide a definition of dominance. In practice, however, proving a substantial restraint on competition requires showing that a firm possesses the market power necessary to control or exclude other companies. This assessment considers factors such as:

- The company's market share.
- The company's ranking in the market.
- The conditions of competition in the market.
- Potential competitive pressure (entry barriers, degree of substitutability between products, and customers' countervailing bargaining power).
- Efficiency and any other extraordinary circumstances that might protect the interests of consumers.

The basic framework provided by the Exclusionary Private Monopolization Guidelines states that whether conduct qualifies as exclusionary private monopolization is assessed by examining whether the conduct causes a substantial restraint on competition in the particular field of trade (that is, the relevant market).

The product market is determined mainly from the viewpoint of demand-side substitutability, meaning the products that users would view as substitutable. In assessing demand-side substitutability, factors such as usage, changes in price, quantity, and recognition and behavior of users are considered. The JFTC can, if needed, also examine supply-side substitutability.

The geographic market is also determined mainly from the viewpoint of demand-side substitutability by examining which products users in a particular area would view as being substitutable. Factors considered are the business area of suppliers and the area in which the users purchase, the characteristics of the products, and the means and cost of transport.

Defenses

The AMA contains no exemptions for specific types of entities or industries.

However, in general, an offending firm is permitted to mount a defense against allegations of private monopolization or unfair trade practices on the basis that the conduct was justified.

The Exclusionary Private Monopolization Guidelines state that in determining whether the conduct causes a "substantial restraint of competition" in the relevant market the following may be considered:

- Efficiency of business activities that is caused by economies of scale, integration of production facilities, specialization of facilities, reduction of transportation costs, and improvement of the efficiency of research and development systems.
- Special circumstances in relation to the protection of consumer interests.

The Exclusionary Private Monopolization Guidelines set out the following scenario as an illustration of special circumstances:

- A gas equipment company with approximately 50% market share in a region sells gas equipment with a device that prevents imperfect combustion.
- The target customers are those who still use gas equipment without the device. The company sells this upgraded equipment at a price below-cost, with the aim of stimulating demand for gas equipment with safety devices and to prevent serious accidents caused by carbon monoxide poisoning.

Under these circumstances, the conduct could be considered to be justified for the purpose of preventing serious accidents before they occur. Further, the conduct could be considered to serve the interests of general consumers.

Market Share Benchmarks

There are no market share benchmarks that create either a presumption of dominance or a safe harbor that rules out dominance. However, market share is a crucial element when analyzing whether conduct amounts to private monopolization.

The Exclusionary Private Monopolization Guidelines state that when deciding whether to investigate a case as constituting exclusionary private monopolization, the JFTC will prioritize the case if both:

- The share of the product that the firm supplies exceeds approximately 50% after the commencement of the conduct.

- The conduct is deemed to have a serious impact on the lives of citizens after comprehensively considering relevant factors, such as market size, the scope of the business activities of the firm, and the characteristics of the product.

Because there is no safe harbor where the share of the products a firm supplies is less than 50%, the firm's conduct may still be subject to investigation as constituting exclusionary private monopolization depending on the type of conduct, market conditions, positions of the competitors, and other factors.

Joint or Collective Dominance

The AMA recognizes the concept of collective dominance, as reflected by the definition of private monopolization (see [Private Monopolization](#)). As such, the AMA covers both single-firm dominance and dominance of multiple parties connected by way of mutual agreement or arrangement.

Monopsonies

The AMA does not have a specific provision that regulates monopsonies but does not otherwise distinguish between dominant suppliers and purchasers. As such, the AMA applies to conduct by dominant purchasers which constitutes private monopolization or unfair trade practices.

Types of Conduct That May Be Deemed Abuses of Dominance

Overview

Japan's competition regime does not specifically address "abuse" of dominance. The AMA does not require a position of dominance, and abuse is not directly defined under the AMA. Instead, the JFTC regulates the conduct of dominant firms by prohibiting private monopolization and unfair trade practices as types of problematic conduct that are somewhat analogous to the types of conduct that constitute abuses of dominance under other competition regimes.

Additionally, for both private monopolization and unfair trade practices, there is no conduct that is per se illegal under the AMA. For all offenses, the JFTC must prove anti-competitive effects. For private monopolization, the JFTC must prove that the conduct has substantially restrained competition in the relevant market. For unfair trade practices the JFTC must prove that the conduct has the tendency to impede fair competition in the relevant market.

Private Monopolization

The AMA and the Exclusionary Private Monopolization Guidelines provide a non-exhaustive list of prohibited conduct. In particular, the Exclusionary Private Monopolization Guidelines list four typical types of exclusionary conduct with illustrative examples of each:

- Below-cost pricing: where a firm deprives competitors of customers by setting such a low price that does not reflect normal business efforts or normal competitive behavior, making it difficult for an equally (or more) efficient competitor to compete, thereby possibly undermining competition.

- Exclusive dealing: where a firm deals with its trade partners on the condition that transactions with the firm's competitors are prohibited or restrained, and the competitors cannot easily find an alternative supply destination, causing difficulties to the competitors' business activities and undermining competition.
- Tying: where a firm supplies one product only on the condition that its trade partner purchases another product, causing difficulties in the business activities of competitors who are unable to easily find alternative customers in the market for the tied product and undermining competition in the market for the tied product.
- Refusal to supply and discriminatory treatment: where a firm, beyond reasonable degree, refuses to supply, imposes quantity or content restrictions, or engages in discriminatory treatment in the upstream market concerning a product necessary for customers to carry out business in the downstream market, causing difficulties for customers who are unable to easily find an alternative upstream supplier and undermining competition in the downstream market.

Whether a product in the upstream market can be considered necessary for the other party to carry out business activities in the downstream market will be assessed from the viewpoint of whether:

- the product is indispensable for the other party to carry out business activities in the downstream market; and
- it is impossible in reality for the other party to produce the product through its own effort, such as investment and technological development.

For each type of conduct, the Exclusionary Private Monopolization Guidelines provide factors to be considered when assessing whether the alleged conduct is exclusionary.

Recent Enforcement Cases Against Private Monopolization

In 2020, the JFTC issued a cease-and-desist order to Mainami Aviation Services Co., Ltd. (Mainami) on the grounds that it had engaged in exclusionary private monopolization and issued a surcharge payment order of JPY6.12 million in 2021 (see [Legal Update, Japan: JFTC issues surcharge payment orders against Mainami Aviation Services](#)).

Mainami sells aviation fuel purchased from domestic oil refiners at Narita, Haneda, Chubu Centrair International, Kansai International, Itami, New Chitose, Yao, and other airports. SGC Saga Aviation Co., Ltd. (SGC) sells aviation fuel imported from foreign oil refiners at Yao, Saga, and other airports. SGC obtained a certification from the foreign oil refiners stating that the quality of their aviation fuel conformed to international standards and engaged a domestic petroleum-product analysis company to examine the imported aviation fuel and issue a report on the results. Until SGC's November 2016 market entry, Mainami was the only fueling company at Yao Airport.

The JFTC deemed the following conduct by Mainami in reaction to SGC's market entry at Yao Airport exclusionary:

- Notifying its customers that it would not be able to continue fueling their aircraft if they continued receiving fueling from SGC, alleging that it could not bear responsibility for aircraft-related accidents caused by mixing SGC's aviation fuel with its own.

- As a condition to providing fuel to users who also received fueling from SGC, insisting that those users sign a disclaimer stating they would not hold Mainami liable for any accidents caused due to mixing aviation fuel from the two sources or that they would remove SGC's aviation fuel from their aircraft.

While the surcharge amount was not particularly high, the case is noteworthy because it is the first precedent of the JFTC imposing a monetary penalty for exclusionary private monopolization following the 2009 amendment to the AMA. Mainami filed lawsuits seeking revocation of the cease-and-desist and surcharge payment orders. After two unsuccessful appeals to the Tokyo District Court and the Tokyo High Court (Tokyo District Court, Reiwa 3 (Gyo-U) No.4 and Reiwa 3 (Gyo-U) No.124, 10 February 2022; Tokyo High Court, Reiwa 4 (Gyo-Ko) No.70, 25 January 2023), Mainami appealed to the Supreme Court. The Supreme Court dismissed that appeal on 28 September 2023 (Supreme Court, Reiwa 5 (Gyo-Tsu) No.151 and Reiwa 5 (Gyo-Hi) No.155, 28 September 2023).

In January 2015, the JFTC issued a cease-and-desist order against the JA Fukui Prefectural Economic Federation of Agricultural Co-operatives (Federation). The JFTC found that the Federation substantially restrained competition in the field of elevator works ordered by the agricultural co-operatives in Fukui prefecture by taking advantage of its position as the agent in charge of commissioning all elevator works to control the business activities of bid participants through designating successful bidders and having the designated successful bidders win the bids. This represents the most recent case of control private monopolization.

Unfair Trade Practices

There is overlap between private monopolization and unfair trade practices. For example, below-cost pricing, exclusive dealing, tying, and refusal to deal are types of conduct that are subject to both prohibitions.

However, because there is a difference in the required anti-competitive effects, it is possible that conduct which does not amount to private monopolization (because the conduct has not substantially restrained competition) could still constitute an unfair trade practice (because the conduct has the tendency to impede fair competition, which is a lower threshold).

Abuse of superior bargaining position is one category of unfair trade practice (Article 2, paragraph 9(v), AMA). This refers to a situation where a party makes use of its superior bargaining position over a business partner unjustly, contrary to normal business practices, and is analogous to the concept of abuse of economic dependence. A "superior bargaining position" means a superior position relative to the counterparty in the transaction. As the Superior Bargaining Position Guidelines state, a party "does not need to have a market-dominant position nor an absolutely dominant bargaining position equivalent thereto, but only needs to have a relatively superior bargaining position as compared to the other transacting party...it means such a case where if Party A makes a request, etc., that is substantially disadvantageous for Party B, Party B would be unable to avoid accepting such a request..."

Abuse of superior bargaining position may include:

- Forcing the disadvantaged partner to buy unrelated goods or services.
- Demanding additional payments, services, or benefits.
- Refusing to receive goods, enforcing return of goods, delaying, or reducing payment, or otherwise establishing or changing trade terms or executing transactions in a way that is disadvantageous to the counterparty.

The JFTC published the *Guidelines Concerning Abuse of a Superior Bargaining Position in Transactions between Digital Platform Operators and Consumers that Provide Personal Information, etc.*, on 17 December 2019 (last amended on 1 April 2022). These Guidelines are aimed at ensuring transparency and predictability for digital platform operators by clarifying the concepts of the regulation on abuse of a superior bargaining position in acquiring or using consumers' personal information. The guidelines consider that the services provided by digital platform operators, which contribute to the multifaceted market in which multiple user layers exist, expand through network effects, low marginal costs, economies of scale, and so on, and can therefore lead to the fostering of monopolies or oligopolies. For further information, see *Practice Note, Competition Law in Digital Markets (Japan): Abuse of Superior Bargaining Position in Relation to Consumers*.

Enforcement Priorities in Japan Regarding Dominance

In recent years, there have been relatively few cases concerning private monopolization. This may be attributable to the introduction of the non-discretionary surcharge system. The system may have made the JFTC reluctant to proceed with cases, as the offending firm would likely mount strong resistance if a surcharge were imposed.

In 2022, the JFTC published its policy *Towards the Active Promotion of Competition Policy in response to Socioeconomic Changes as represented by Digitalization – Coordination and Strengthening of Advocacy and Enforcement*. In the publication, the JFTC stated that it will strengthen enforcement by diversifying information-gathering tools by, for example, disclosing a summary of individual cases and soliciting information and opinions when reviewing individual cases concerning suspected violations of the AMA by digital platform operators.

Based on this statement, in October 2023, the JFTC solicited information and opinions in the early stages of a case investigating Google LLC on suspicion that it had excluded the business activities of its competitors or restricted the business activities of its counterparties. In April 2025, the JFTC determined that Google violated the AMA's prohibition on unfair trade practices by, among other conduct, entering into agreements with Android smartphone manufacturers (OEMs) that required OEMs to include the Google Search and Chrome apps as part of OEMs' preinstallation and to place their icons in a prominent location on the home screen before giving the OEMs permission to preinstall the Google Play app store. The JFTC issued a cease-and-desist order against Google, its first ever against a major US technology company (see *Reiwa 7 (So) No. 5, 15 April 2025* (in Japanese)).

Other Considerations

Sector-Specific Dominance Regulations

Smartphone Software

The JFTC prepared the *Act on Promotion of Competition for Specified Smartphone Software (Act No. 58 of 2024)* (Mobile Software Competition Act) to develop a competitive environment for software necessary for the use of smartphones. The Mobile Software Competition Act was adopted by the National Diet on 12 June 2024 and will come into effect by December 2025.

The Mobile Software Competition Act only covers mobile operating systems, application stores, browsers, and online search engines, as compared to the EU's *Digital Markets Act ((EU) 2022/1925)* which broadly covers the digital sector. Additionally, the Mobile Software Competition Act is applicable to JFTC-designated software business operators that meet a certain threshold set out by the Cabinet Order. The Mobile Software Competition Act considers that providers of smartphone software are limited to a certain small number of influential operators, and businesses and consumers tend to use the same software continuously for a long time.

The Mobile Software Competition Act consists of two categories of ex-ante regulations: compliance requirements (dos) and prohibited conduct (don'ts). For more information, see [Practice Note, Competition Law in Digital Markets \(Japan\): Ex Ante Competition Regulation](#).

Telecommunications

A firm operating in the telecommunications sector is subject to the [Telecommunications Business Act](#) (Act No. 86 of 25 December 1984), under the jurisdiction of the [Ministry of Internal Affairs and Communications](#) (MIC).

Although the MIC does not focus on monopoly regulation, the [Guidelines for Promotion of Competition in the Telecommunications Business Field](#) (in Japanese) (most recently updated on 27 December 2023) were jointly developed by the MIC and the JFTC, and provide guidance on monopolization issues. These guidelines are revised relatively frequently in response to changes in the regulatory system and developments in business practices.

Energy

In relation to the energy sector, the [Ministry of Economy, Trade, and Industry](#) (METI) and the JFTC have jointly developed:

- The [Guidelines for Proper Electric Power Trade](#).
- The [Guidelines for Proper Gas Trade](#).

These guidelines are revised relatively frequently in response to changes in the regulatory system and developments in business practices.

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