

# THE INNOVATION ECONOMICS CONFERENCE

FOR ANTITRUST LAWYERS

**WEBINARS** | FROM APRIL 27 TO 30

## **5th Innovation Economics Conference for Antitrust Lawyers**

#2 Geopolitics of platforms regulation

*Wednesday 28 April 2021*

*Interview with Reiko Aoki (Japan Fair Trade Commission), by  
Alison Jones (King's College London)\**



*Reiko Aoki (Commissioner, Japan Fair Trade Commission) has been interviewed by Alison Jones (Professor, King's College London) in anticipation of the fifth edition of the Innovation Economics for Antitrust Lawyers Conference to be held online with a series of 4 webinars from April 27th to 30th, 2021.*

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*Alison Jones: States across the world are considering whether their competition agencies have the tools they need to address the anticompetitive conduct of digital platform companies. What competition law tools are currently in place in Japan and what, if any, 'gaps' exist?*

**Reiko Aoki:** According to the Common Understanding of G7 Competition Authorities on “Competition and the Digital Economy” (2019), competition law is flexible. Competition law “can and should adapt to the challenges posed by the digital economy without wholesale changes to its guiding principles and goals. The challenges of digital transformation require competition authorities to ensure that their specific tools, resources and skills for competition law enforcement are up-to-date.”

Thus at the JFTC, we have adapted the existing laws such as the Antimonopoly Act (AMA) to ensure markets with digital platforms retain a competitive environment. The JFTC is able to regulate private monopolization such as exclusionary behaviour, unfair trade practices likely to impede fair competition in a market, and business combination which may restrain competition.

The JFTC has also conducted various surveys and market studies to keep up to date with the current business activities in digital markets. This allows us to identify gaps in enforcement and adjust quickly. I think speed is just as important as coverage in digital markets. In addition, we have used commitments as a solution because it is quick and victims can be compensated.

*What reforms are being considered in Japan to address gaps in the framework? In particular, are reforms to merger control laws, or rules governing anticompetitive conduct of dominant firms being contemplated? Or are more far-reaching changes on the table, such as the adoption of a new regulatory regime governing the conduct of certain, leading platforms?*

We have revised our merger guidelines and policies concerning review procedures of business combinations to address possible killer acquisitions. In the review of acquisitions of a start-up by a digital platform operator, we felt that an analysis focusing only on the state of competition at the time of the review may be insufficient because start-ups' market share is small at the time of the acquisition. It is necessary to consider other factors, such as the parties' intentions and how the start-up would have grown in the absence of the acquisition.

So in the revised merger guidelines, we clarified what will determine whether the acquisition would substantially restrain competition in any particular fields of trade. We can confirm the purpose of the acquisition and potential competitive relationships by obtaining internal documents of the parties, so-called "hot documents". In fact, the JFTC requested the parties to submit internal documents during the review of the Google/Fitbit case.

An example of a “new tool” to complement AMA in response to challenges of digital platforms, is “The Act on Improving Transparency and Fairness of Specified Digital Platforms”, enacted in 2020. The act imposes several obligations on large-scale digital platform operators, including the:

- (1) obligation to disclose the reasons why they pursue change of the terms of the transactions and the main parameters that determine the search orders;
- (2) obligation to establish procedure and mechanism for handling complaints and for dispute resolutions; and
- (3) obligation to report to the Minister of Economy, Trade and Industry about their operations regarding the obligations.

The Act states that the Minister is authorized to request the JFTC to take any appropriate measures if the Minister recognizes the conducts of the platform operators would violate the Anti-monopoly Act.

The JFTC has also provided some guidance on how some actions by digital platforms may constitute an abuse of superior bargaining position. Individuals must trade with digital platforms, consumer trading information for service with a digital platform (Guidelines Concerning Abuse of a Superior Bargaining Position in Transactions between Digital Platform Operators and Consumers that Provide Personal Information, etc.”, Dec 2019), or gig worker selling labor to digital platform (“Guidelines for securing fair business environment for freelancers,” March 2021). In such situations, digital platform may have better information and in better financial situation, i.e., superior bargaining position and their actions may constitute abuse.

The Headquarters for Digital Market Competition, established in the Cabinet Secretariat, is the organization that coordinates the activities of ministries and authorities addressing issues in the digital market, including the JFTC, Ministry of Economy, Trade and Industry and Ministry of Internal Affairs and Communications,

The JFTC was involved from the very beginning, including in the design and implementation of the headquarters. JFTC management official is now seconded to the Headquarters. The Headquarters for Digital Market Competition and related parties will discuss regulations on digital advertising based on insights provided by the JFTC’s report on digital advertising. This is another example of continued contribution and involvement by the JFTC.

***Has international cooperation and discourse shaped the debate as to how reform should occur, and to what extent changes in Japan should mirror, or differ from, reforms being contemplated in other jurisdictions?***

As you said, competition authorities have discussed, through various bilateral or multilateral frameworks, their challenges and approaches in the digital market. Though we have had several outcomes, such as the Common Understanding of G7 Competition Authorities on “Competition and the Digital Economy” (2019), I do not think competition authorities have reached any consensus on a single approach or reform. There is agreement that competition is vital but implementation can vary because each country has its own market environment, regulatory frameworks, resource constraints and other conditions. But we must continue to share experiences and approaches, and discuss desirable options in various international fora because digital platforms and the digital economy have no borders.

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