

PANORAMIC **VERTICAL AGREEMENTS**

Japan



LEXOLOGY

Vertical Agreements

Contributing Editors

Duncan Liddell and Fiona Garside

Ashurst

Generated on: April 8, 2025

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. Copyright 2006 - 2025 Law Business Research

Contents

Vertical Agreements

LEGAL FRAMEWORK

- Antitrust law
- Types of vertical restraint
- Legal objective
- Responsible authorities
- Jurisdiction
- Agreements concluded by public entities
- Sector-specific rules
- General exceptions

TYPES OF AGREEMENT

- Agreements
- Parent and related-company agreements
- Agent–principal agreements
- Intellectual property rights

ANALYTICAL FRAMEWORK FOR ASSESSMENT

- Framework
- Market shares

BLOCK EXEMPTION AND SAFE HARBOUR

- Function

TYPES OF RESTRAINT

- Assessment of restrictions
- Relevant decisions
- Suppliers
- Restrictions on territory
- Restrictions on customers
- Restrictions on use
- Restrictions on online sales
- Selective distribution systems
- Other restrictions

NOTIFICATION

- Notifying agreements
- Authority guidance

ENFORCEMENT

Complaints procedure for private parties
Regulatory enforcement
Investigative powers of the authority
Private enforcement

OTHER ISSUES

Other issues

UPDATE AND TRENDS

Recent developments
Anticipated developments

Contributors

Japan

Momo-o, Matsuo & Namba



Nobuaki Mukai

mukai@mmn-law.gr.jp

Takashi Kobayashi

kobayashi@mmn-law.gr.jp

Sho Tanaka

sho.tanaka@mmn-law.gr.jp

LEGAL FRAMEWORK

Antitrust law

What are the legal sources that set out the antitrust law applicable to vertical restraints?

The [Japanese Antimonopoly Act \(Act No. 54 of 14 April 1947\) \(AMA\)](#), as amended, prohibits various 'unfair trade practices', including some vertical restraint conducts, under its article 19.

Before the 2009 amendments, the AMA defined 'unfair trade practice' as any act falling under the six basic categories statutorily provided that tends to impede fair competition and that is 'designated by the Japan Fair Trade Commission' (JFTC) under paragraph 9, article 2 of the AMA. Although the 2009 amendments did not expand the scope of such acts from a theoretical perspective, from an enforcement perspective, the amendments divided such acts into two categories – namely:

- acts that are subject to a monetary sanction (surcharge order) under items 1 to 5, paragraph 9, article 2 of the AMA on certain conditions as defined respectively; and
- the remainder under item 6 of the AMA.

'Private monopolisation' is prohibited under the first half of article 3 of the AMA, as defined under paragraph 5, article 2 of the AMA, which is said to have some practical coverage sharing with the unfair trade practices. There are two types of private monopolisation under the AMA: one that restrains competition by means of exclusionary conduct and one that restrains competition by controlling (restraining) the business activities of other enterprises.

The latter half of article 3 prohibits 'unreasonable restraint of trade', which has been narrowly interpreted as horizontal restraint, including cartel or bid-rigging, based on the historical development of the law.

In addition to the above-mentioned statutory provisions, the precedents set out below constitute the legal sources for vertical restraints.

Court precedents

- *Wakodo v JFTC*, 22 Shinketsushu 173 (Sup Ct, 10 July 1975)
- *Meiji Shoji v JFTC*, 22 Shinketsushu 198 (Sup Ct, 11 July 1975)
- *Toyo Seimaiki v JFTC*, 30 Shinketsushu 136 (Tokyo High Ct, 17 February 1984)
- *Shiseido v Fujiki*, 45 Shinketsushu 455 (Sup Ct, 18 December 1998)
- *Kao v Egawa Kikaku*, 45 Shinketsushu 461 (Sup Ct, 18 December 1998)
- *Hamanaka v JFTC*, 58-2, Shinketsushu 1 (Tokyo High Ct, 22 April 2011)

JFTC precedents

- JFTC recommendation decision against Nordion, 45 Shinketsushu 148 (3 September 1998)

- JFTC recommendation decision against Tottori Chuo Agricultural Association, 45 Shinketsushu 197 (9 March 1999)
- JFTC recommendation decision against Himeji-shi Plumbing Business Cooperative Association, 47 Shinketsushu 263 (10 May 2000)
- JFTC recommendation decision against Sagisaka, 47 Shinketsushu 267 (16 May 2000)
- JFTC recommendation decision against Matsushita Electric Industrial, 48 Shinketsushu 187 (27 July 2001)
- JFTC hearing decision against Sony Computer Entertainment, 48 Shinketsushu 3 (1 August 2001)
- JFTC *keikoku* (warning) against Johnson & Johnson (12 December 2002)
- JFTC recommendation decision against Intel, 52 Shinketsushu 341 (13 April 2005)
- JFTC order against Oita Oyama-machi Agricultural Association, 56-2 Shinketsushu 79 (10 December 2009)
- JFTC order against Johnson & Johnson, 57-2 Shinketsushu 50 (1 December 2010)
- JFTC order against DeNA, 58-1 Shinketsushu 189 (9 June 2011)
- JFTC order against Coleman Japan, 63 Shinketsushu 133 (15 June 2016)
- JFTC order against Qualcomm, 65-1 Shinketsushu 263 (13 March 2019)
- JFTC approval of the commitment plan submitted by Rakuten (25 October 2019)
- JFTC approval of the commitment plan submitted by Amazon Japan (10 September 2020)
- JFTC order against Mainami Aviation Services, 67 Shinketsushu 373 (7 July 2021)
- JFTC approval of the commitment plan submitted by Booking.com (16 March 2022)

Further, the JFTC guidelines below are often referred to, though they are not binding on the courts

JFTC guidelines

- [Guidelines for Exclusionary Private Monopolization under the Antimonopoly Act \(revised 25 December 2020\)](#)
- [Guidelines Concerning Distribution Systems and Business Practices Under the Antimonopoly Act \(revised 16 June 2017\)](#) (DSBP Guidelines)
- [Guidelines for the Use of Intellectual Property under the Antimonopoly Act \(revised 21 January 2016\)](#)
- [Guidelines Concerning Abuse of Superior Bargaining Position under the Antimonopoly Act \(30 November 2010\)](#)
- [Guidelines Concerning Abuse of a Superior Bargaining Position in Transactions between Digital Platform Operators and Consumers that Provide Personal Information, etc. \(17 December 2019\)](#)

Law stated - 7 2025

Types of vertical restraint

List and describe the types of vertical restraints that are subject to antitrust law. Is the concept of vertical restraint defined in the antitrust law?

Unfair trade practices

The Designation of Unfair Trade Practices (JFTC Public Notice No. 15 of 18 June 1982) (UTP Designation), which were amended in 2009, may still apply. Under the authorisation stemming from paragraph 9, article 2 of the AMA, the UTP Designation detailed and reorganised the six categories of unfair trade practices defined in the AMA and reclassified them into 16 categories.

The main categories among them are as follows:

- Tie-in sales, etc – unjustly causing another party to purchase goods or services from oneself or from another designated by oneself by tying the purchase to the supply of other goods or services, or otherwise coercing that party into trading with oneself or with another designated by oneself.
- Trading on exclusive terms – unjustly trading with another party on condition that the said party shall not trade with a competitor, thereby tending to reduce trading opportunities for that competitor.
- Resale price restriction – supplying goods to another party while imposing, without justifiable grounds, restrictive terms that cause that party or a subsequent repurchaser to maintain the selling price of the goods that was determined by the supplier, or otherwise restricting that party's free decision on the selling price of the goods. (Under the AMA, the term 'resale price restriction' is used instead of the term 'resale price maintenance'.)
- Trading on restrictive terms – other than any act falling under the trading on exclusive terms or the resale price restriction above, trading with another party on conditions that unjustly restrict any trade between that party and its other transacting party or other business activities of that party.
- Interference with a competitor's transaction – unjustly interfering with a transaction between a domestic competitor (either competing with (1) the interfering party, (2) a company owned by the interfering party or (3) a company at which the interfering party is an officer) and its transacting party, by preventing the execution of a contract, by inducing the breach of a contract or by another means.
- Abuse of superior bargaining position – in light of normal business practices, unjustly making use of one's superior bargaining position over the other party, by engaging in acts such as:
 - causing that party in continuous transactions to purchase goods or services other than the one pertaining to that transaction;
 -

causing that party in continuous transactions to provide money, services or other economic benefits; or

- imposing a disadvantage on that party regarding terms or execution of the transaction, etc.

Private monopolisation

For exclusionary private monopolisation, while a wide variety of conduct is deemed exclusionary, the Guidelines for Exclusionary Private Monopolisation under the AMA list four typical acts:

- below-cost pricing;
- exclusive dealing;
- tying (tie-in sales); and
- refusal to supply and discriminatory treatment.

Law stated - 7 2025

Legal objective

Is the only objective pursued by the law on vertical restraints economic, or does it also seek to promote or protect other interests?

The basic objective of the law is to protect and promote competition.

In this regard, the case law states that the direct purpose of the law is to protect and promote competition, while its ultimate purpose is 'to promote the democratic and wholesome development of the national economy as well as to assure the interests of general consumers' (*Idemitsu Kosan et al v Japan*, 30 Shinketsushu 237 (Sup Ct, 24 February 1984)). While the Supreme Court issued this ruling in the context of horizontal restraints, it also applies to vertical restraints.

Law stated - 7 2025

Responsible authorities

Which authority is responsible for enforcing prohibitions on anticompetitive vertical restraints? Where there are multiple responsible authorities, how are cases allocated? Do governments or ministers have a role?

The JFTC is responsible for enforcing the AMA. Article 28 of the AMA provides that the chair and commissioners of the JFTC exercise their authority independently and, among others, in connection with the JFTC's enforcement of the law, this independence must be protected and respected from third parties, including the legislative body.

Law stated - 7 2025

Jurisdiction

What is the test for determining whether a vertical restraint will be subject to antitrust law in your jurisdiction? Has the law in your jurisdiction regarding vertical restraints been applied extraterritorially? Has it been applied in a pure internet context and if so, what factors were deemed relevant when considering jurisdiction?

Although article 6 of the AMA deals especially with international matters separately from regular prohibitions, owing to recent developments regarding international service of process, there is a tendency towards dealing with international cases under the same provisions as domestic cases. Since the introduction of international service of process procedures in the AMA in 2002, article 6 has not been applied in published cases.

According to the broadly accepted interpretation, to find that the AMA applies to a particular case, that case must have a certain effect on the Japanese market. On 22 May 2015 the JFTC considered the extraterritorial application of the law, especially for horizontal restraints, in a hearing decision against five companies, including MT Picture Display Co Ltd, in a price cartel case between manufacturers and distributors of television cathode-ray tubes. The JFTC found that the application of the law would be justified if, at least, the competition in a particular field of trade is competition over customers in Japan and is substantially restricted by the conduct at issue. The decision was subject to judicial review and on 12 December 2017, the Supreme Court found that if the particular field of trade in which the competition is substantially restricted by the conduct at issue includes Japan, then the JFTC should be entitled to issue its order (*Samsung SDI Malaysia v JFTC*, 64 Shinketsushu 401 (Sup Ct, 12 December 2017)). However, it is unclear whether the same finding also applies to vertical restraints. For extraterritorial application, there is also the issue of how to reach the prospective respondent for service and other procedural purposes. While the JFTC may attempt to reach a foreign entity via informal measures to request voluntary cooperation – for example, to ask it to retain Japanese legal counsel on its behalf – extraterritorial service of process via the Japanese consulate may apply to a vertical restraint case.

At this stage, there is no authoritative precedent that establishes a rule or criterion regarding the jurisdictional issue in a pure internet context.

Law stated - 7 Feb 2025

Agreements concluded by public entities

To what extent does antitrust law apply to vertical restraints in agreements concluded by public entities?

The AMA regulates 'business activities' by 'enterprises'. The concept of 'enterprise' is defined as 'a person who operates a commercial, industrial, financial or any other business' under paragraph 1, article 2 of the AMA. The case law shows that even a public entity may be found to fall under the definition of 'enterprise' if, and as far as it deals with, business activities – whether or not it generates a profit (see *Nippon Shokuhin v Tokyo Metropolitan Government*, 36 Shinketsushu 570 (Sup Ct, 14 December 1989) (commonly known as the *Tokyo Slaughterhouse* case); see also *Earth Meishiet al v Japan*, 45 Shinketsushu 467 (Sup Ct, 18 December 1998)).

Law stated - 7 2025

Sector-specific rules

Do particular laws or regulations apply to the assessment of vertical restraints in specific sectors of industry (motor cars, insurance, etc)? Please identify the rules and the sectors they cover.

There are three particular regulations issued by the JFTC that apply to three specific sectors of industry: the newspaper industry, specific shipping or transport businesses, and large-scale retailers. Such regulations mainly cover abuse of a superior bargaining position only.

Also, there are regulated industries, such as public transport and communications. Even if a certain matter in the industry is regulated by a certain competent regulatory agency, it would not necessarily exempt it from the application of the AMA. However, depending on the nature or purpose of this regulation, it may, in effect, be found to supersede the application of the AMA (*Softbank Telecom v Nippon Telegraph and Telephone East*, 61 Shinketsushu 243 (Tokyo District Ct, 19 June 2014)).

Law stated - 7 2025

General exceptions

Are there any general exceptions from antitrust law for certain types of agreement containing vertical restraints? If so, please describe.

There are some provisions regarding exemptions from the AMA. Among others, article 21 of the AMA provides for matters regarding intellectual property. Article 23 of the AMA provides for the general exemption from the resale price restriction regarding, for instance, copyrighted products. It is narrowly construed to include newspapers, books, magazines, phonograph records, audio tapes and audio compact discs only, and does not include other (relatively newly invented) items such as videotapes, digital video discs and e-books.

Law stated - 7 2025

TYPES OF AGREEMENT

Agreements

Is there a definition of 'agreement' – or its equivalent – in the antitrust law of your jurisdiction?

There is no definition of 'agreement' for vertical restraints. Rather, under Japanese law, the subject matter of the prohibition of the vertical restraints is 'restriction' itself and an 'agreement' may be found to be a measure by which a party binds the other party to a certain obligation. Put differently, an 'agreement' is not an indispensable factor and – for example, in the case of resale price restriction – it would suffice if it is found that a party successfully

compelled the other party to comply with its instruction regarding pricing by using the 'carrot and stick' approach.

Law stated - 7 2 2025

Agreements

In order to engage the antitrust law in relation to vertical restraints, is it necessary for there to be a formal written agreement or can the relevant rules be engaged by an informal or unwritten understanding?

Under Japanese law, to engage the Japanese Antimonopoly Act (Act No. 54 of 14 April 1947) (AMA) concerning vertical restraints, a formal written agreement is unnecessary. A mere informal or unwritten understanding, or a certain mechanism for a party to motivate the other party to comply with its instruction, may suffice, depending on the situation.

Law stated - 7 2 2025

Parent and related-company agreements

In what circumstances do the vertical restraints rules apply to agreements between a parent company and a related company (or between related companies of the same parent company)?

In theory, the vertical restraint rules would apply unless the agreement is between a parent and its wholly owned subsidiary (Guidelines Concerning Distribution Systems and Business Practices (DSBP Guidelines)). The DSBP Guidelines also state that, even if a parent owns less than 100 per cent of the shares of its subsidiary, if it is recognised that transactions between them are equivalent to intra-company transactions (in substance), the agreement would not be subject to the regulation of unfair trade practices. Whether transactions between a parent and its subsidiary are equivalent to intra-company transactions is to be determined case by case through a comprehensive examination of various factors – for example, the ratio of shares of the subsidiary held by the parent, the business relationship between the parent and subsidiary, and so on.

Law stated - 7 2 2025

Agent–principal agreements

In what circumstances does antitrust law on vertical restraints apply to agent–principal agreements in which an undertaking agrees to perform certain services on a supplier's behalf for a sales-based commission payment?

Article 19 of the AMA that deals with vertical restraints does not apply to these agreements. In this regard, the DSBP Guidelines state that if an enterprise's direct trading partner functions as a commission agent only and it is deemed that in substance the sale is done by the enterprise, then even if the enterprise instructs the resale price to the direct trading partner, it is usually not illegal.

Law stated - 7 2025

Agent–principal agreements

Where antitrust rules do not apply (or apply differently) to agent–principal relationships, is there guidance (or are there recent authority decisions) on what constitutes an agent–principal relationship for these purposes?

There are no specific rules or recent authority decisions on what constitutes an agent–principal relationship, and it is determined case by case through a comprehensive examination of various factors. For example, for resale price restriction, the DSBP Guidelines state that in the case of consignment sales, if the transaction is made by the consignor at its own risks and account so that the consignee bears no risk beyond that associated with its obligation to exercise the care of a good manager in storage of products, collection of payments and so on (ie, the consignee is not liable for loss of products, damage to them or for unsold products), even if the consignor dictates the resale price to the consignee, it is usually not illegal.

Law stated - 7 2025

Intellectual property rights

Is antitrust law applied differently when the agreement containing the vertical restraint also contains provisions granting intellectual property rights (IPRs)?

Article 21 of the AMA provides, as an exemption, that the Act's provisions shall not apply to acts recognisable as the exercise of IPRs. The Guidelines for the Use of Intellectual Property under the Antimonopoly Act state that the AMA applies to restrictions on the use of technology that is essentially not considered to be the exercise of rights. Also, while an act by the rights-holder to block other parties from using its technology or to limit the scope of use may seem, on the face of it, to be an exercise of rights, if it is found to deviate from, or run counter to, the intent and objectives of the intellectual property systems (ie, to promote creative efforts and use of technology) in view of the intent and the manner of the act and its degree of impact on competition, it cannot be substantially recognised as an exercise of a right, and may be subject to AMA enforcement.

Law stated - 7 2025

ANALYTICAL FRAMEWORK FOR ASSESSMENT

Framework

Explain the analytical framework that applies when assessing vertical restraints under antitrust law.

'Substantial restraint of competition' is required for private monopolisation and 'impediment of fair competition' is required for unfair trade practices. According to court precedent, the

criteria for the former could be found to be more stringent than for the latter. Regarding the latter, while a simple theoretical possibility of this impediment would not suffice, if it is found that certain conduct may impede fair competition, then it would suffice. However, some recent academic analysis suggested that these two should be consolidated into one single standard as an appropriate and sufficient anticompetitive effect. In practice, vertical restraint cases have been dealt with mainly by unfair trade practices enforcement.

The analytical framework for 'impediment of fair competition' depends on the type of vertical restraint at issue. In this regard, the Guidelines Concerning Distribution Systems and Business Practices Under the Antimonopoly Act (the DSBP Guidelines) state that any restriction on distributors' handling of competing products should be assessed based on whether such restriction may cause a foreclosure effect. A foreclosure effect is found when that vertical restraint would result in making it difficult for new entrants or competitors to easily secure an alternative transactional counterparty and excluding, or reducing, the transactional opportunities of these new entrants or competitors by raising costs for business activities or disincentivising new entry or developments of new products by them. By contrast, restrictions on distributors' sales territory or restrictions on distributors' customers should be assessed based on whether the price level of the product covered by the restriction is likely to be maintained. Such effect is found when that vertical restraint would impede competition between the contractual counterparties and their competitors, thereby enabling the contractual counterparties to reasonably freely control their price by their own volition, thus maintaining or raising their price of the product. Further to the latter, it is exceptional that the resale price restriction can be justified.

Regarding a vertical restraint found in licence agreements, the Guidelines for the Use of Intellectual Property Under the Antimonopoly Act state that such conduct may be assessed from the perspective of whether it would impede the licensee's incentive to engage in R&D, or whether it would strengthen the licensor's position in the technology or product market (see Japan Fair Trade Commission (JFTC) order, 13 March 2019, which concerned a 'non-assertion of rights' clause, where a licensor obligates the licensee not to assert rights owned or to be owned by the licensee).

Also, analysis of whether the conduct at issue impairs transactions based on free and independent judgement by firms is required regarding abuse of a superior bargaining position.

Law stated - 7 2025

Market shares

To what extent are supplier market shares relevant when assessing the legality of individual restraints? Are the market positions and conduct of other suppliers relevant? Is it relevant whether certain types of restriction are widely used by suppliers in the market?

In assessing either the 'substantial restraint of competition' or the 'impediment of fair competition', the JFTC considers whether the infringement is done by a firm that is influential in a market, which requires a consideration of market shares, market structures and other economic factors. For the 'impediment of fair competition', the DSBP Guidelines state that for certain types of vertical restraints, the JFTC would consider whether a firm is 'influential

in a market', which is first assessed by ascertaining the market share of the firm – that is, whether it has more than 20 per cent of the market share. However, even if a firm matches this criterion, the firm's conduct is not always illegal.

Concerning the consideration of the restriction widely used in the market, it is relevant from the perspective of the possible cumulative effects of such a restriction. The DSBP Guidelines state that if two or more firms, individually and in parallel, adopt certain vertically restrictive measures, it is more likely that it will become difficult for new entrants or competitors to easily secure alternative distribution channels or that the price level of the product subject to the restriction will be maintained, compared to the case where only one firm adopts the restriction. Consequently, vertical restrictive measures from two or more companies are more likely to be found illegal.

Law stated - 7 2025

Market shares

To what extent are buyer market shares relevant when assessing the legality of individual restraints? Are the market positions and conduct of other buyers relevant? Is it relevant whether certain types of restriction are widely used by buyers in the market?

In assessing a buyer's conduct, the JFTC considers whether the infringement is done by a firm that is influential in a market, which requires a consideration of market shares, market structures and other economic factors, and whether a firm is 'influential in a market' is first assessed by ascertaining the market share of the firm.

Notwithstanding this, as far as the abuse of superior bargaining position is concerned, it is rather typical that such a 'power buyer' (allegedly) abuses its superior bargaining position against its suppliers (although from the theoretical perspective, such a violation may not necessarily be classified as a typical vertical restraint).

By contrast, in assessing a seller's conduct, the anticompetitiveness of the conduct is usually evaluated by considering market shares of the seller (ie, whether the seller has more than 20 per cent in the market), market structures and other economic factors, regardless of how the buyer may be found to be influential in a market. Sometimes, certain factors – for example, the fact that a power buyer, or many buyers, widely agreed to certain types of restriction – may lead a fact-finder to find that the restriction at issue should be permissible. Alternatively, depending on the situation, similar facts may lead a fact-finder to find that the restriction at issue effectively works to an anticompetitive effect.

Law stated - 7 2025

BLOCK EXEMPTION AND SAFE HARBOUR

Function

Is there a block exemption or safe harbour that provides certainty to companies as to the legality of vertical restraints under certain

conditions? If so, please explain how this block exemption or safe harbour functions.

Among various types of vertical restraints, the Guidelines Concerning Distribution Systems and Business Practices Under the Antimonopoly Act list three substantial types of conduct for which the issue of whether it is made by a firm that is influential in a market should be one of the key elements. They are:

- exclusive dealing (ie, the restriction on its transaction counterpart not to deal with its competitor) or the restriction on distributors' handling of competing products;
- certain types of restriction on the territory into which a buyer may resell contract products passively only; and
- tie-in sales.

Whether a firm is 'influential in a market' is in the first instance judged by the market share of the firm – that is, whether it has more than 20 percent of the market share. The reverse aspect of this criterion in practice works as a safe harbour for these vertical restraints.

Law stated - 7 2 2025

TYPES OF RESTRAINT

Assessment of restrictions

How is restricting the buyer's ability to determine its resale price assessed under antitrust law?

The Japanese Antimonopoly Act (Act No. 54 of 14 April 1947) (AMA) prohibits resale price restriction. There have been several cease-and-desist orders issued by the Japan Fair Trade Commission (JFTC) in the past 10 years, including the most recent cases, *Seki Furniture* (19 December 2024), *Aprica Children's Products*, 66 Shinketsushu 291 (1 July 2019), and *Combi*, 66 Shinketsushu 300 (24 July 2019). The JFTC also approved the commitment plan submitted by ICHIRAN INC in 2022. The AMA prohibits not only fixing the resale price and setting the minimum resale price, but also any measures with equivalent effects, such as limiting the buyer's ability to give rebates or discounts.

Concerning the maximum resale price, although it may arguably be beneficial for consumers or end-users, the statutory provision for this prohibition does not prima facie differentiate the restriction on maximum price from that on minimum price. Further, in practice, restriction on the maximum resale price may (intentionally or inadvertently) function similarly to the minimum resale price by making it easier than otherwise for competitors to raise the price of their products or services close to the maximum price. Also, even restrictions on the maximum resale price would restrict the purchaser or reseller's free decision on its pricing. At the time of writing, there is no precedent where a maximum resale price restriction is differentiated from a minimum resale price restriction and found to be legal, except in a certain emergency such as the covid-19 pandemic.

Concerning the suggested resale price, the Guidelines Concerning Distribution Systems and Business Practices Under the Antimonopoly Act (the DSBP Guidelines) state that if a manufacturer's suggested retail price or quotation is indicated to distributors solely as a reference price, the conduct itself is not a problem. Regardless of whether it is referred to

as a 'suggested price', if the manufacturer tries to have its distributors follow the reference price, that conduct could constitute resale price restriction.

Law stated - 7 2 2025

Assessment of restrictions

Have the authorities considered in their decisions or guidelines resale price maintenance restrictions that apply for a limited period to the launch of a new product or brand, or to a specific promotion or sales campaign; or specifically to prevent a retailer using a brand as a 'loss leader'?

It has been commonly understood that the assessment regarding the resale price restriction violation would not require the calculation and analysis of the infringer's market share. In *Wakodo v JFTC*, the court rejected Wakodo's argument that it had only a minor presence in the market (approximately 10 per cent of the market share) and its adoption of the resale price restriction would promote competition with competitor products. From such a viewpoint, it is unlikely that the former factor listed in this question could justify the resale price restriction. However, some recent academic analysis suggested that court precedent can be found to be fact-specific and can be differentiated. If so, it may still be possible to argue that there is no 'impediment of fair competition' based on the facts specific to the case at issue.

Moreover, the Supreme Court of Japan has stated that the resale price restriction cannot be justified if its purpose is to prevent a retailer using a brand as a loss leader (*Meiji Shoji v JFTC*). However, in this regard, recent academic analysis suggested that court precedent can be found to be silent or neutral regarding whether the resale price restriction can be justified if it is specifically introduced only for the retailers that use the brand as a loss leader.

Law stated - 7 2 2025

Relevant decisions

Have decisions or guidelines relating to resale price maintenance addressed the possible links between such conduct and other forms of restraint?

Resale price restriction can be established not solely on the basis of the existence of an 'agreement', but possibly also on the basis of the existence of a measure by which one party binds the other party to a certain obligation. Therefore, if the other forms of restraint work as an incentive to compel the second party to comply with the resale price restriction, these forms of restraint may be found to be linked with the resale price restriction.

Law stated - 7 2 2025

Relevant decisions

Have decisions or guidelines relating to resale price maintenance addressed the efficiencies that can arguably arise out of such restrictions?

Concerning the possible benefits that may stem from resale price restrictions, such as the prevention of free-riding or the promotion of new entry, the DSBP Guidelines state that resale price restriction is not illegal if it has 'justifiable grounds', which might be granted within a reasonable scope and reasonable period where:

- the resale price restriction by an enterprise will result in actual pro-competitive effects and promote inter-brand competition;
- the resale price restriction will increase demand for the product, thus benefiting consumers; and
- pro-competitive effects will not result from less restrictive alternatives other than the resale price restriction at issue.

It has also been commonly understood that resale price restriction cannot be justified solely because it is necessary and reasonable from a business management perspective – for example, that it is necessary to conserve a traditional industry (*Hamanaka v JFTC*). However, some recent academic analysis suggested that certain justification should still be available for the resale price restriction (eg, from the perspective of the necessity to ensure product safety).

Law stated - 7 2 2025

Relevant decisions

Explain how a buyer agreeing to set its retail price for supplier A's products by reference to its retail price for supplier B's equivalent products is assessed.

Depending on the situation, some possible links with resale price restriction may be found. Otherwise, while there is no precedent regarding this issue at this stage, if a buyer has a substantial market share, this could be tantamount to substantially fixing retail market prices of the equivalent (or competing) products. Therefore, this could rather be found problematic from the perspective of these horizontal restraints.

Law stated - 7 2 2025

Suppliers

Explain how a supplier warranting to the buyer that it will supply the contract products on the terms applied to the supplier's most-favoured customer, or that it will not supply the contract products on more favourable terms to other buyers, is assessed.

Although there is no precedent regarding this issue at this stage, it would probably be assessed as a possible violation of the prohibition of trading on restrictive terms (ie, the buyer's restriction of the supplier's activities), unless the promise practically works as a cartel

or other horizontal restraint (eg, multiple suppliers' widely warranting in the market, or a supplier's warranting widely for its multiple dealers in the market). That is, if it is found to have the aspects of avoiding competition, or that the price level of the product covered by the restriction is likely to be maintained, it may constitute the violation. Also, if it incentivises such a supplier not to deal with a new entrant buyer or if it makes it difficult for other buyers to obtain the product from the supplier under better terms, one would need to examine exclusionary effects.

It may also amount to abuse of superior bargaining position.

Law stated - 7 2025

Suppliers

Explain how a supplier agreeing to sell a product via internet platform A at the same price as it sells the product via internet platform B is assessed.

As far as this works as a supplier's warranting the most-favoured price to a specific platform (eg, platform A in this question), the same rule applies as that concerning suppliers providing products on favourable terms to most-favoured customers.

On 1 June 2017, the JFTC issued a press release on the closing of the investigation into the suspected violation of the AMA by Amazon Japan GK. The alleged violating conduct consisted of price parity clauses and selection parity clauses in the seller contracts on Amazon Marketplace. The JFTC listed its concerns over the influence of this conduct as follows:

When an online shopping mall operator imposes price parity clauses and selection parity clauses . . . on sellers, these clauses may exert influence as shown below to negatively affect competition:

- restrict sellers' business activities by limiting the reduction of prices and expansions of lineups of goods that the sellers sell via other sales channels;
- distort competition among online shopping mall operators by allowing an online shopping mall operator imposing those parity clauses to achieve the lowest price and the richest lineup of goods sold in its online shopping mall without making any competitive effort; or
- reduce online shopping mall operators' incentive for innovation and hinder new entrants as the reduction of fees charged by an online shopping mall operator for sellers does not result in these sellers' reduction of prices and expansion of lineups.

The JFTC publicised that it recognised that the measures proposed by Amazon Japan, including the proposal that it will not exercise its rights concerning these parity clauses, would eliminate the suspected violation of the AMA, and decided to close the investigation on this case after confirming that the measures mentioned above had been taken.

Also, on 15 August 2017, the JFTC issued another press release regarding the e-Books Agreements from Amazon Services International Inc (ASII). This was also about parity clauses, whereby, concerning e-books of publishers that are delivered through the amazon.co.jp website, including retail prices to general consumers, the parity clauses oblige those publishers to ensure the parity between their transactions with ASII or with general consumers on the amazon.co.jp website, and their transactions with other e-books delivery platform operators or with general consumers on e-books delivery platforms operated by those other operators. Similarly to the above, ASII proposed, among other things, not to enforce the contractual obligations of publishers regarding the parity clauses, and to take these proposed measures for at least five years, and these were found to be satisfactory to eliminate potential anticompetitive concerns by the JFTC.

Some academic analyses find that the above may be understood to be authoritative in that it illustrates a rule or criterion regarding this issue. However, others do not necessarily agree that it establishes such a rule or criterion.

In **Rakuten** (JFTC approval of the commitment plan, 25 October 2019), it was alleged that, in contracts between Rakuten and accommodation operators that shared information about accommodations on the website Rakuten Travel (operated by Rakuten), Rakuten had set conditions to require the operators to make the prices and the numbers of rooms that they place on the website equal to, or better than, those through other distribution channels with a requirement for a minimum number of rooms. In this case, the JFTC suspected that activities by Rakuten mentioned above violated the law on trading on restrictive terms. As a matter of legal procedure, this approval of the commitment plan does not represent a determination that the activities of Rakuten constituted a violation of the AMA.

In **Booking.com** (JFTC approval of the commitment plan, 16 March 2022), it was alleged that Booking.com engaged in conduct similar to that of Rakuten against accommodation operators. This case is different from the Rakuten case in that the narrow 'most-favoured nation' (MFN) conditions on prices (ie, to require accommodation operators to ensure that the prices that they place on the Booking.com website are equal to, or better than, those placed on their own websites) were excluded from the subject of the commitment plan. The JFTC's reasoning was that such narrow MFN conditions were not necessarily abided by the accommodation operators. The JFTC reserved its opinion, however, that such narrow MFN conditions may be problematic under the AMA, depending on how they are operated. In June 2022, the JFTC approved the commitment plan submitted by Expedia Lodging Partner Services Sàrl based on a similar allegation.

Law stated - 7 2 2025

Suppliers

Explain how a supplier preventing a buyer from advertising its products for sale below a certain price (but allowing that buyer subsequently to offer discounts to its customers) is assessed.

The DSBP Guidelines state that the following types of conduct on the method of advertisements interfere with 'the most basic matters in an enterprise's business activities that it independently determines its own sales price', and that such conduct should thus be viewed in the same light as resale price restriction, and is in principle illegal:

- an enterprise's restriction on prices shown by retailers at their stores, in their handbills or otherwise, or an enterprise's prohibition of retailers' advertisements that expressly indicate specific prices of the enterprise's products; or
- an enterprise's causing its trading partners that operate magazines, newspapers or other advertising media to reject retailers' advertisements that indicate the enterprise's cut-price products or that expressly indicate specific prices of the enterprise's products.

In *Johnson & Johnson* (JFTC order, 1 December 2010), the JFTC found that, regardless of the price range, Johnson & Johnson's forcing its retailers not to refer to their products' retail prices in their advertisements constituted a violation. It can be construed that, although Johnson & Johnson's policy was a sales method rather than restraint on pricing, the pricing aspects of the restraint at issue made it subject to higher scrutiny.

Law stated - 7 2025

Suppliers

Explain how a buyer's warranting to the supplier that it will purchase the contract products on terms applied to the buyer's most-favoured supplier, or that it will not purchase the contract products on more favourable terms from other suppliers, is assessed.

This is likely to be assessed as a possible violation of the prohibition of trading on restrictive terms (ie, the supplier's restriction of the buyer's activities), unless it practically works as a cartel or other horizontal restraint (eg, among multiple suppliers to which that buyer warrants similarly in parallel, or among multiple buyers that warrant similarly to that supplier in parallel). That is, from the perspective of vertical restraints, it may constitute a violation if it is found to amount to avoiding competition, or if the price level of the product covered by the restriction is likely to be maintained. Also, if it incentivises such a supplier not to deal with a new entrant buyer, one would need to examine whether aspects of excluding competitors exist.

It may also constitute an abuse of a superior bargaining position by the supplier.

Law stated - 7 2025

Restrictions on territory

How is restricting the territory into which a buyer may resell contract products assessed? In what circumstances may a supplier require a buyer of its products not to resell the products in certain territories?

Although there has been no precedent specifically analysing this matter in the past 10 years, the DSBP Guidelines state that a restriction of this type is assessed from the perspective of whether the price level of the product covered by the restriction is likely to be maintained in connection with the prohibition of unfair trade practices. Whether the price level of the product covered by the restriction is likely to be maintained is to be determined comprehensively, taking into account the following factors:

- actual conditions of inter-brand competition; and
- actual conditions of intra-brand competition for the product (among other things).

The DSBP Guidelines also state that, if the agreement assigns a specific area to each distributor but does not restrict the distributor from selling to customers outside each area upon request (ie, if it does not restrict 'passive' sales but 'active' sales only), whether the restriction is imposed by an influential supplier in the market may also be taken into account. That is, if the supplier's market share is 20 per cent or less, the conduct usually does not tend to impede fair competition and therefore is not illegal.

Law stated - 7 2 2025

Restrictions on territory

Have decisions or guidance on vertical restraints dealt in any way with restrictions on the territory into which a buyer selling via the internet may resell contract products?

Although there is no precedent regarding this issue at this stage, the DSBP Guidelines, as amended in 2017, state that the restrictions on the territory into which a buyer selling via the internet resells those contract products would constitute a restriction on passive sales. Hence, a violation could be found depending on whether the price level of the product covered by the restriction is likely to be maintained.

Law stated - 7 2 2025

Restrictions on customers

Explain how restricting the customers to whom a buyer may resell contract products is assessed. In what circumstances may a supplier require a buyer not to resell products to certain resellers or end consumers?

This restriction is to be assessed from the perspective of whether the price level of the product covered by the restriction is likely to be maintained in connection with the prohibition of unfair trade practices as adopted by the DSBP Guidelines.

In *Matsushita Electric Industrial*, a violation was found after a supplier had its contract dealers refuse to deal with non-contract price-cutting dealers (although the applicable type of conduct was indirect refusal to deal – another type of unfair trade practice, as opposed to trading on restrictive terms). If it could be found that the supplier traded on these restrictive terms, *Matsushita Electric Industrial* could be regarded as a case where said assessment criterion applied.

By contrast, even though vertical restraints may have a price maintenance effect to some extent, if it is to achieve something plausibly rational (eg, to improve brand image) and the restriction on customers is found to be necessary for that purpose, then it could be allowed, to that extent. In *Kao v Egawa Kikaku*, it was found that as far as it is tailored to achieve a plausibly rational business purpose, in that buyers were prohibited from selling the suppliers'

products only to unauthorised or non-contract dealers, and it is applied non-discriminatorily, restricting the customers to whom a buyer may resell contract products could usually be found permissible.

In *Sony Computer Entertainment*, however, the JFTC differentiated the case from what was found in *Kao*, and found that the price level of the product covered by the restriction is likely to be maintained, and also it is not reasonably tailored to achieve its purpose, and therefore the supplier's requiring a buyer not to resell products to the other wholesalers or retailers violated the law.

Concerning the prevention of the buyer's ability to resell products to end-consumers, the same rule applies as regards restrictions on territory.

Law stated - 7 2025

Restrictions on use

How is restricting the uses to which a buyer puts the contract products assessed?

Restraints other than trading on exclusive terms and resale price restriction are classified as trading on restrictive terms. Although there is no authoritative precedent showing what kind of scrutiny applies to this issue, considering the analogy with the restriction on the buyer or distributor's sales methods, if it is plausibly rational and is equally applied to the other buyers and distributors, it would usually be found to be permissible. This issue may also require analysis from the IP-protection perspective.

Law stated - 7 2025

Restrictions on online sales

How is restricting the buyer's ability to generate or effect sales via the internet assessed?

This restriction is to be assessed as a possible violation of trading on restrictive terms. That is, the basic analytical framework is similar to the restriction on the territory or customer (ie, whether the price level of the product covered by the restriction is likely to be maintained).

In the [Survey Report Regarding Transactions in B2C E-Commerce issued on 29 January 2019](#), the JFTC stated that a complete prohibition of online sales is considered to have a greater adverse effect on competition than a mere restriction on the sales method of retailers. The JFTC further stated that, if such complete prohibition is based on plausibly rational reasons from the viewpoint not of the enterprise but the consumer, and is equally applied to other distributors, then it would usually not constitute a problem under the AMA.

At this stage, there are no court decision on this issue. The only available precedent is *Johnson & Johnson* (JFTC warning, 12 December 2002), which concerned restricting the buyer's ability to sell its contact lenses via the internet. In that case, it was found that it was not yet sufficiently established but still likely that the restriction at issue hindered low pricing in practice. It was also found that Johnson & Johnson voluntarily ceased that practice more

than one year before the issuance of the said warning and, consequently, the JFTC did not issue a formal cease-and-desist order.

Law stated - 7 2 2025

Restrictions on online sales

Have decisions or guidelines on vertical restraints dealt in any way with the differential treatment of different types of internet sales channel? In particular, have there been any developments in relation to 'platform bans'?

At this stage, there is no court decision or guideline from the JFTC on this issue. Although this is not restricting the customers to whom a buyer may resell contract products, but just restricting the type of sales channel, it is still likely that the same rule applies as with restrictions on customers. Concerning restrictions on internet sales (including the ban whereby these approved distributors are not allowed to sell the products on certain types of internet platforms, typically those owned or managed by a third party), the assessment for restrictions on online sales is also applicable here.

Law stated - 7 2 2025

Selective distribution systems

Briefly explain how agreements establishing 'selective' distribution systems are assessed. Must the criteria for selection be published?

The DSBP Guidelines, as amended in 2015, state that a manufacturer may set up certain criteria to limit the distributors that handle its product to those that meet the criteria and, in such a case, the manufacturer may prohibit distributors from reselling its product to other distributors that do not meet the criteria. This is called 'selective distribution', defined thereunder, which the DSBP Guidelines state may have pro-competitive effects and is generally not illegal in itself (even if the criteria of the selective distribution were to result in preventing certain incompetent price-cutters, etc, from handling the product), provided that the criteria are recognised to have plausibly rational reasons from the viewpoint of the consumers' interests, such as related to the preservation of its qualities and ensuring appropriate use, and that these criteria are equally applied to other distributors who want to deal in the product.

However, in this regard, recent academic analysis has pointed out that the above is the case only 'generally', and depending on the nature of the applicable restrictions, it could also be assessed in light of the restrictions on trading on restrictive terms. The DSBP Guidelines, as amended in 2017, did not change the analytical framework above. Hence, it is unclear whether there must be any control over the application (eg, a right to challenge refusals to admit). However, considering that, as above, these criteria must be applied equally, refusals to admit should be able to be challenged from that perspective, and it would be difficult to limit the total number of distributors to be admitted to the system in advance.

Law stated - 7 2 2025

Selective distribution systems

Are selective distribution systems more likely to be lawful where they relate to certain types of product? If so, which types of product and why?

At this stage, there is no authoritative precedent showing that selective distribution systems may be more likely to be lawful where they relate to certain types of product. However, generally speaking, from a practical perspective, it is possible that the plausibly rational reasons from the viewpoint of consumers' interests (eg, related to the preservation of its qualities, ensuring appropriate use) may be found for a certain product more than for other products by paying attention to whether or how this preservation of quality or ensuring appropriate use could actually be an issue.

Law stated - 7 2025

Selective distribution systems

In selective distribution systems, what kinds of restrictions on internet sales by approved distributors are permitted and in what circumstances? To what extent must internet sales criteria mirror offline sales criteria?

At this stage, there is no recent decision that deals with internet sales restrictions imposed on approved buyers in connection with selective distribution systems. Generally, the same rule could likely apply as that for assessing selective distribution systems. This aspect of selective distribution systems could be analysed in light of the restrictions on trading on restrictive terms and, therefore, concerning the restrictions on internet sales (including the ban whereby these approved distributors are not allowed to sell the products on certain types of internet platforms, typically those owned or managed by a third party), the assessment for restrictions on online sales is also applicable here.

Law stated - 7 2025

Selective distribution systems

Has the authority taken any decisions in relation to actions by suppliers to enforce the terms of selective distribution agreements where such actions are aimed at preventing sales by unauthorised buyers or sales by authorised buyers in an unauthorised manner?

There is no decision specifically dealing with this issue.

Before the amendment of the DSBP Guidelines to introduce the concept of selective distribution systems therein in 2015, as far as this aspect of the restrictions on retailers' sales methods is concerned, in *Shiseido v Fujiki* (one of the most famous cases regarding this matter in Japan), the Supreme Court of Japan ruled that cosmetics manufacturer Shiseido could enforce its contractual terms regarding the distributorship if the terms themselves were plausibly rational and non-discriminatory towards the other distributors. The restriction at issue was to have the sales staff of its retailers provide appropriate support and explanation to end-user customers so that they could use the products appropriately;

this conduct could be helpful to improve the supplier's (products') brand image and was found plausibly rational and non-discriminatory.

Law stated - 7 2 2025

Selective distribution systems

Does the relevant authority take into account the possible cumulative restrictive effects of multiple selective distribution systems operating in the same market?

As far as these cumulative restrictive effects of selective distribution systems are concerned, although no decision or guideline is dealing with this issue, the DSBP Guidelines state that, in connection with the restriction on trading on restrictive terms, if two or more manufacturers, individually and in tandem, adopt these systems, the price level of the product is likely to be maintained more than otherwise and these cumulative effects may lead the authority to find that the price level is likely to be maintained.

Law stated - 7 2 2025

Selective distribution systems

Has the authority taken decisions (or is there guidance) concerning distribution arrangements that combine selective distribution with restrictions on the territory into which approved buyers may resell the contract products?

Although there is no precedent from the past 10 years specifically analysing the matter of restriction on the territory, under the DSBP Guidelines, the aspect of restricting territory is subject to the analysis of the analytical framework for the 'impediment of fair competition' (whether or not the price level of the product covered by the restriction is likely to be maintained). Also, a selective distribution system would be subject to this analytical framework. Hence, this would be analysed on a combined basis by considering the relevant factors altogether.

Law stated - 7 2 2025

Other restrictions

How is restricting the buyer's ability to obtain the supplier's products from alternative sources assessed?

Concerning the prevention of distributors buying or selling the supplier's products among themselves, the DSBP Guidelines apply the same analytical framework that is used for the restriction of selling to certain customers. Therefore, this is to be assessed from the perspective of whether the price level of the product covered by the restriction is likely to be maintained in connection with the prohibition of the unfair trade practices. In *Sony Computer Entertainment*, the JFTC differentiated the case from what was found in *Kao v Egawa Kikaku*, and applied the same rule to the restriction at issue, and the restriction to buy

and sell even between the qualified dealers was found to be anticompetitive. In this regard, the DSBP Guidelines, as amended in 2017, clarified that where the buyer's ability to 'provide' the products to a price cutter is restricted, it should be assessed under the same criteria as for resale price restriction.

Law stated - 7 2025

Other restrictions

How is restricting the buyer's ability to sell non-competing products that the supplier deems 'inappropriate' assessed?

Restraints other than trading on exclusive terms and resale price restriction are classified as trading on restrictive terms. So, although there is no authoritative precedent showing what kind of scrutiny applies to this issue, considering the analogy with the restriction on buyers' or distributors' sales methods, if it is plausibly rational and applied non-discriminatorily to the other distributors, it would usually be found to be permissible.

Law stated - 7 2025

Other restrictions

Explain how restricting the buyer's ability to stock products competing with those supplied by the supplier under the agreement is assessed.

Concerning the restrictions on distributors' handling of competing products, in *Toyo Seimaiki v JFTC*, the High Court stated that this is to be assessed from the perspective of how the restriction would make the distribution channel foreclosed or exclusive. Subsequently, the same rule was adopted by the DSBP Guidelines, stating that this type of restriction is to be assessed from the perspective of whether the restriction may result in making it difficult for new entrants or competitors to easily secure alternative distribution channels. The DSBP Guidelines also point out that, if the restriction is carried out by an influential supplier in the market, which is in the first instance judged by whether the supplier has a market share exceeding 20 per cent, it may lead to a finding that the restriction causes the 'impediment of fair competition'.

In some cases, restricting buyers to handle competing products or interfering with competitors' transactions by such restriction against buyers may also constitute exclusionary private monopolisation. In *Mainami Aviation Services* (JFTC Order, 7 July 2020), the JFTC found that Mainami forced its customers not to buy a specific aviation fuel from its competitor and this restriction constituted exclusionary private monopolisation. This is the first case where the JFTC imposed a monetary sanction against the conduct of exclusionary private monopolisation. The JFTC order became final and binding after Mainami's petition to revoke it was rejected by the Supreme Court in September 2023.

Law stated - 7 2025

Other restrictions

How is requiring the buyer to purchase from the supplier a certain amount or minimum percentage of the contract products or a full range of the supplier's products assessed?

This will be assessed from the perspective of how the restriction would make the distribution channel foreclosed or exclusive, especially if, in practice, the requirement restricts the buyer from dealing with competing products. The DSBP Guidelines address the situation where a manufacturer requires distributors to handle a large volume of its products (which is close to their capacity) in the same manner as the restriction on the distributors' handling of competing products.

In *Nordion*, the imposition of an obligation to purchase from Nordion the entire quantity of a particular product that the buyer would consume over the next 10 years was found to be anticompetitive. Although the anticompetitive finding was made in the context of exclusionary private monopolisation, it is broadly understood that the foreclosure therein should also apply to the trading on exclusive terms as an unfair trade practice.

Also, in *Intel*, the JFTC found that Intel's licensing terms and conditions, especially in connection with the applicable rebate settings, incentivised licensees and original personal computer equipment manufacturers to purchase all, or almost all, the central processing units to be installed in their personal computers from Intel, which constituted exclusionary private monopolisation, even though the requirement was not expressly made. In connection with the foreclosure effect of the conduct at issue, among other factors to be considered, the JFTC found that Intel's market share was approximately 89 per cent of the Japanese market.

Further, a requirement for the buyer to purchase a full range of the supplier's products may constitute tie-in sales, for instance, depending on the situation.

Law stated - 7 2 2025

Other restrictions

Explain how restricting the supplier's ability to supply to other buyers is assessed.

The DSBP Guidelines apply the analytical framework for the 'impediment of fair competition' – that is, whether the restriction may result in making it difficult for new entrants or competitors to easily secure alternative distribution channels. It also points out that if the restriction is carried out by an influential reseller or customer in the market, it may lead to a finding that the restriction causes the 'impediment of fair competition'. The restriction may still be found to be legal if:

- a finished product manufacturer supplies materials to the manufacturer of a part, commissions it to make parts using the materials and requires it to sell all parts exclusively to itself; or
- a finished product manufacturer provides the know-how to parts manufacturers, commissions them to make parts using the know-how and requires them to sell all parts exclusively to itself, and if that restriction is deemed necessary for keeping the know-how confidential or preventing the unauthorised diversion of it.

In *Oita Oyamacho Agriculture Association*, the JFTC concluded that the restraint at issue made it difficult for a certain specific competitor to secure an alternative supply source, and was found anticompetitive. In this regard, in *DeNA*, although it was similarly intended to restrain the suppliers' abilities to supply to a certain specific competitor, the category of the applied violation was not the trading on restrictive terms, but the interference with a competitor's transactions. Although the reason why those two cases were differentiated has not been made clear, considering that interference with a competitor's transaction does not necessarily require the level of anticompetitiveness for trading on restrictive terms in this context (ie, whether the restriction may result in making it difficult for new entrants or competitors to easily secure alternative sources of supply), close attention needs to be paid to whether, practically, making restraint of this kind illegal by less strict scrutiny may be the case in the future.

Law stated - 7 2025

Other restrictions

Explain how restricting the supplier's ability to sell directly to end-consumers is assessed.

In *Tottori Chuo Agricultural Association*, while the same restriction was found anticompetitive, the reasoning was not necessarily clear. See also *Himeji-shi Plumbing Business Cooperative Association* and *Sagisaka*.

Although there is no guidance or authoritative precedent regarding this issue at this stage, the potential anticompetitive effect caused hereby could be found equivalent to the restriction on the distribution channel, although it is made by the distributor, as opposed to the supplier. Therefore, it should be assessed, in the context of trading on restrictive terms from the perspective of whether or not a restriction may result in making it difficult for new entrants or competitors to easily secure alternative distribution channels.

Law stated - 7 2025

Other restrictions

Have guidelines or agency decisions in your jurisdiction dealt with the antitrust assessment of restrictions on suppliers? If so, what were the restrictions in question and how were they assessed?

The DSBP Guidelines deal – as for the restrictions on suppliers other than those covered above – with the issue of how the request by a certain distributor A (appointed for a certain territory X) to the effect that the supplier should prevent another distributor B (appointed for another certain territory Y) from selling products into territory X, especially in connection with exclusive distributorship agreement. It is stated that it is permissible. By contrast, assuming that territory X is Japan while territory Y is a foreign country, and a certain third-party customer of distributor B purchases products in territory Y and then tries to sell (export) them into territory X (Japan), if the distributor A (in Japan) requires the supplier (or its distributor B) to prevent the third party from exporting to Japan to maintain product prices, it would be

found to be anticompetitive, either as trading on restrictive terms or as interference with a competitor's transaction, as the case may be.

Law stated - 7 2 2025

NOTIFICATION

Notifying agreements

Outline any formal procedure for notifying agreements containing vertical restraints to the authority responsible for antitrust enforcement.

There is no formal procedure for notification.

Law stated - 7 2 2025

Authority guidance

If there is no formal procedure for notification, is it possible to obtain guidance from the authority responsible for antitrust enforcement or a declaratory judgment from a court as to the assessment of a particular agreement in certain circumstances?

It is possible to obtain guidance from the Japan Fair Trade Commission through the consultation procedure.

Law stated - 7 2 2025

ENFORCEMENT

Complaints procedure for private parties

Is there a procedure whereby private parties can complain to the authority responsible for antitrust enforcement about alleged unlawful vertical restraints?

Paragraph 1, article 45 of the Japanese Antimonopoly Act (Act No. 54 of 14 April 1947) (AMA) provides that any person may report a fact that he or she considers violates the AMA to the Japan Fair Trade Commission (JFTC) and ask for appropriate measures to be taken. Paragraph 2, article 45 of the AMA provides that the JFTC, upon receipt of the report as prescribed in the preceding sentence, shall make necessary investigations concerning the case.

Law stated - 7 2 2025

Regulatory enforcement

How frequently is antitrust law applied to vertical restraints by the authority responsible for antitrust enforcement? What are the main enforcement priorities regarding vertical restraints?

According to the [JFTC's annual report for FY 2023 \(April 2023 to March 2024\)](#) issued in June 2024, the JFTC has taken 19 formal actions against unfair trade practices in the past five years. Of these 19 cases, five concern abuse of a superior bargaining position, two concern interference with a competitor's transaction, nine concern trading on restrictive and exclusive terms, and three deal with resale price restriction. The JFTC took five formal actions against unfair trade practices in FY2023, and the commitment procedure was used for all of these cases.

According to the same report, the JFTC has taken two formal actions against private monopolisation in the past five years.

Law stated - 7 2 2025

Regulatory enforcement

What are the consequences of an infringement of antitrust law for the validity or enforceability of a contract containing prohibited vertical restraints?

It is commonly understood that if a certain contract provision is found to violate the antitrust law, such provision would be found void or unenforceable, although this is not necessarily an automatic decision. Also, while the contractual provision may be held to be unenforceable, the other contractual provisions contained in the same agreement may still be found to be enforceable, even without an explicit severability clause.

Law stated - 7 2 2025

Regulatory enforcement

May the authority responsible for antitrust enforcement directly impose penalties or must it petition another entity? What sanctions and remedies can the authorities impose? What notable sanctions or remedies have been imposed? Can any trends be identified in this regard?

The JFTC has the power to directly impose a monetary sanction (surcharge order) in addition to a cease-and-desist order in connection with certain categories of vertical restraints under the AMA amendment in effect since January 2010. Besides horizontal restraints, while those constituting private monopolisation or abuse of a superior bargaining position would be subject to a monetary sanction for the violation in question, for the four other categories subject thereto (ie, joint refusal to deal, discriminatory pricing, below-cost pricing and resale price restriction), monetary sanction is applicable only when the same violation is repeated within 10 years.

Since the said amendment, there have been five cases where a monetary sanction was levied on target companies in connection with abuse of a superior bargaining position. In these five cases, it was alleged that the target companies forced their suppliers and others to unduly

bear additional costs for the benefit of those target companies, for instance, by forcing these suppliers to accept the return of unsold goods, etc (JFTC orders *re Sanyo Marunaka*, 58-1 Shinketsushu 312 (22 June 2011); *Toys 'R' Us Japan*, 58-1 Shinketsushu 352 (13 December 2011); *Edion*, 58-1 Shinketsushu 384 (16 February 2012); *Ralse*, 60-1 Shinketsushu 435 (3 July 2013); and *Direx*, 61 Shinketsushu 103 (5 June 2014)).

There is one case where a monetary sanction was levied on exclusionary private monopolisation. In *Mainami Aviation Services* (JFTC order, 7 July 2021), the JFTC found that the company eliminated its competitor's business activity by forcing its customers not to buy a specific aviation fuel from the competitor and this restriction constituted exclusionary private monopolisation. This is the first case where the JFTC imposed a monetary sanction in connection with exclusionary private monopolisation.

The JFTC also has the power to resolve cases through the 'commitment procedure' (*kakuyaku-tetsuduki*) introduced in 2018, which is a voluntary resolution procedure in cases of suspected violation of the AMA through consent between the JFTC and the enterprise concerned. If the JFTC determines that the commitment plan submitted by the enterprise concerned is sufficient to eliminate the suspected violation and is expected to be reliably implemented, the JFTC approves it and the enterprise concerned will not be subject to a cease-and-desist order or a surcharge payment order, unless the approval of the commitment plan is rescinded. As a matter of legal procedure, this approval of the commitment plan does not represent a determination that the suspected conduct constitutes a violation of the AMA.

There are some cases where a commitment plan submitted by an enterprise included monetary measures to compensate for financial damages, losses or burdens suffered by a third party as a result of the suspected violation. Unlike the order issued by the JFTC to pay a surcharge to the national treasury, such monetary measures are voluntarily included in the commitment plan by the enterprise concerned, and the monetary compensation is paid to the injured third party, not to the national treasury. However, such monetary measures are considered to be useful to obtain approval of the commitment plan from the JFTC, particularly when the suspected violation constitutes an abuse of a superior bargaining position. For example, in the case where Amazon Japan was suspected by the JFTC to have forced its manufacturers or their suppliers to unduly bear additional costs for its benefit by forcing them to accept the return of unsold goods, etc, the commitment plan submitted by Amazon Japan and approved by the JFTC (10 September 2020) included monetary measures to compensate for such additional costs incurred by the manufacturers and their suppliers, the total amount of which was predicted to be approximately ¥2 billion at the time of the JFTC's approval of the commitment plan.

Law stated - 7 Feb 2025

Investigative powers of the authority

What investigative powers does the authority responsible for antitrust enforcement have when enforcing the prohibition of vertical restraints?

Under article 47 of the AMA, the JFTC may:

- order persons concerned with a case or witnesses to appear to be interrogated, or collect their opinions or reports;

- order expert witnesses to appear to give expert opinions;
- order persons holding books and documents and other materials to submit these materials, or keep these submitted materials in its custody; and
- enter any business office of the persons concerned with a case, or other necessary sites, and inspect conditions of business operation and property, books and documents, and other materials.

Although these powers are available only within its jurisdiction in Japan, the JFTC has demanded information from a supplier domiciled outside Japan (through its representative in Japan), based on the power in the first bullet point.

Law stated - 7 2 2025

Private enforcement

To what extent is private enforcement possible? Can non-parties to agreements containing vertical restraints obtain declaratory judgments or injunctions and bring damages claims? Can the parties to agreements themselves bring damages claims? What remedies are available? How long should a company expect a private enforcement action to take?

Non-parties do not have standing in private enforcement unless it is found that the agreement at issue causes an anticompetitive effect on the non-party. Parties to agreements can bring damage claims as well as injunction claims at the competent district court. The length of time that a company should expect for a private enforcement action would depend on the facts and situation. Japanese courts do not usually conduct consecutive-day concentrated hearings or trials, so if witness examination is required, it would likely take at least one year.

Law stated - 7 2 2025

OTHER ISSUES

Other issues

Is there any unique point relating to the assessment of vertical restraints in your jurisdiction?

Unfair trade practices include the abuse of a superior bargaining position. It has been commonly understood that the requirement of 'impediment of fair competition' for ascertaining the abuse of superior bargaining position is different from other types of restraint. For example, in the Guidelines Concerning Abuse of Superior Bargaining Position under the Antimonopoly Act (the ASBP Guidelines), the JFTC stated that the prohibition of the abuse of superior bargaining position aims at eliminating these types of conduct if they are likely to impede fair competition among retailers or suppliers, and also state that the conduct impairs transactions based on free and independent judgement by firms (ie, the party subject to the abuse), as opposed to whether a restriction may result in making it difficult for new entrants or competitors to easily secure alternative distribution channels or whether the price level of the product covered by the restriction is likely to be maintained.

According to the ASBP Guidelines, a party shall be found to be 'in a superior bargaining position' over the other party to the transaction, based on comprehensive consideration that is to be given to those factors as the degree of dependence on the party, the position of the party in the market, changeability of the transactional partner from the other party's perspective, and so on.

Also, in December 2019, 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' to ensure transparency and predictability for digital platform operators by clarifying the concepts of the regulation on abuse of a superior bargaining position about acquiring or using personal information, etc, between digital platform operators and consumers that provide them. In practice, a digital platform operator that is found to be in a market-dominant position could also be found to be in such a superior bargaining position toward its users and consumers, so that its exploitative conduct would be impermissible.

Law stated - 7 2025

UPDATE AND TRENDS

Recent developments

What were the most significant two or three decisions or developments in this area in the past 12 months?

While the Japan Fair Trade Commission (JFTC) has shown a tendency to utilise the commitment procedure in many cases of vertical restraints in recent years, it has also issued cease-and-desist orders against vertical restraints in the past 12 months.

Commitment plan by Google LLC

In April 2024, the JFTC approved the commitment plan submitted by Google LLC. The JFTC alleged that Google restricted the provision of technologies for search engines and search advertising to Yahoo, and made it difficult for Yahoo to engage in certain search advertising transactions (mobile syndication transactions), which may constitute a violation of private monopolisation, refusal to deal or interference with a competitor's transactions. This is the first case where the JFTC took an official action against Google.

Cease-and-desist order against ASP Japan

In July 2024, the JFTC issued a cease-and-desist order against ASP Japan GK for violation of tie-in sales. According to the order, Johnson & Johnson (J&J, later succeeded by ASP) manufactures and sells phtharal, a disinfectant used for chemical sterilisation and disinfection of medical instruments, including gastrointestinal endoscopes. In April 2013, the patent right that J&J had on phtharal expired. In September 2015, J&J installed a bar code reader to its automated endoscope reprocessor product so that only the J&J phtharal product with a certain bar code could be used for its endoscope reprocessor products. This case is noteworthy because the JFTC has not enforced a tie-in sales violation in over 20 years.

Cease-and-desist order against MC Data Plus

In December 2024, the JFTC issued a cease-and-desist order against MC Data Plus Inc for violation of interference with a competitor's transactions. MC Data Plus offers a cloud service for the construction industry. According to the order, among other acts, MC Data Plus refused to export registered employee information of its users who wanted to switch to a competitor's cloud service, citing reasons such as personal information protection.

Law stated - 7 2025

Anticipated developments

Are important decisions, changes to the legislation or other measures that will have an impact on this area expected in the near future? If so, what are they?

Investigation against Google

On 23 October 2023, the JFTC announced that it has opened an investigation against Google LLC and others (Google). The JFTC suspects that Google excluded the business activities of its competitors or restricted the business activities of its counterparties by (1) entering into licensing agreements with Android mobile device manufacturers (OEMs) that require them to install Google's applications, such as Google Search and Google Chrome, together with its application store, Google Play, and designate where icons, etc of such applications should be placed on device screens; and (2) entering into agreements with OEMs and others under which Google shares its revenue from its search advertising service, subject to conditions including that they do not pre-install competing search applications. In December 2024, it was reported in the news that the JFTC had made a decision to issue a cease-and-desist order against Google's alleged conduct.

Smartphone Act

In June 2024, the Act on Promotion of Competition for Specified Smartphone Software (Smartphone Act) was enacted and promulgated. The Act will take full effect by the end of 2025. Under the Act, the JFTC will designate smartphone software service providers (designated providers) whose business exceeds a certain scale as defined in a Cabinet Order for each type of certain defined software: mobile operating system, application store, web browser and search engine. The Act prohibits designated providers from engaging in certain conduct (prohibited conduct), such as preventing the provision of third-party application stores and restricting the use of third-party billing systems. The Act also obligates designated providers to take certain measures such as ensuring data portability.

With respect to enforcement of the Smartphone Act, the JFTC aims to adopt a more discussion-oriented approach than in the enforcement of the Antimonopoly Act. That is, in the case of an alleged violation, before taking coercive measures such as a dawn raid, the JFTC will first engage in discussions with designated providers and other stakeholders such as application providers to find a workable solution. To provide a basis for this discussion,

the Act requires designated providers to submit an annual report to the JFTC containing information necessary for the JFTC to monitor the designated provider's compliance with the Act. This report will be made public, excluding confidential information of the designated provider. Such a discussion-oriented approach is considered to be effective in finding a flexible solution in a business environment where technologies are developing rapidly, while maintaining the competitiveness and innovation of designated providers.

If the alleged violation cannot be resolved by such discussion, the JFTC may issue a cease-and-desist order against violations of prohibited conducts. Further, for violations of certain prohibited conducts, the JFTC may issue a surcharge payment order, which is 20 per cent (30 per cent in the case of repeated violations) of the sales revenue of the services relevant to the violation. The multiplier for the surcharge is high as compared to that for the surcharge against exclusive private monopolisation, which is six per cent. According to the those involved in the legislation, this high per centage was adopted based on the high profit margin of digital platform operators.

Law stated - 7 2025