

# What has the JFTC accomplished in digital cases using the Antimonopoly Act?

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# Outline

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- 4) Enforcement method: “consensual”
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# Summary

- The JFTC has brought a significant number of cases
- All have been resolved in a "consensual" manner (= commitments or voluntary measures by the companies)
- Although the JFTC's approach has been praised as pragmatic and swift, the impact of the JFTC's cases is nonetheless limited because:
  - The scope of each case is minor
  - The effectiveness of the commitments / voluntary measures is doubtful

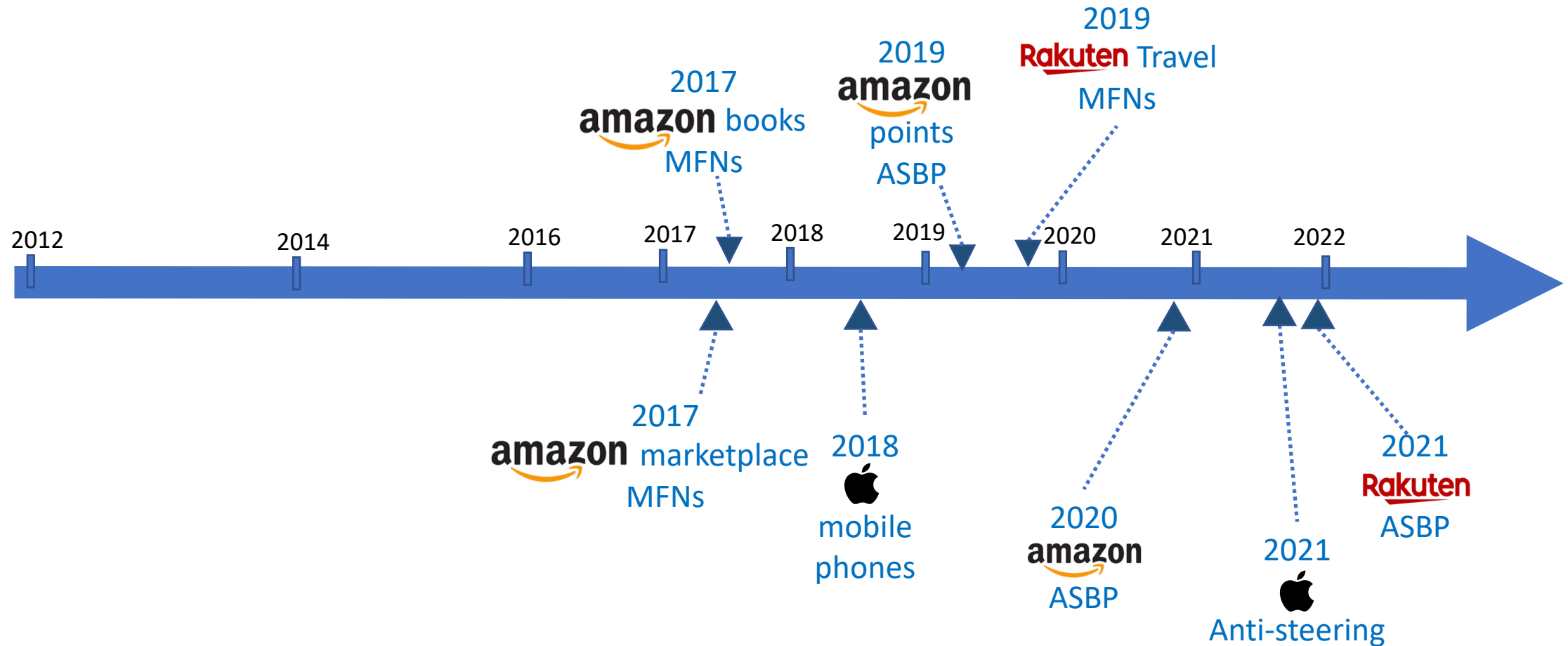
# Number of cases and timeline

# Digital cases (excluding mergers)

- 14 investigations led to results in the past 10 years (2013-2022)
  - 4 against Amazon
  - 2 against Apple
  - 2 against Rakuten
  - 6 others

# Timeline: JFTC cases against Big Tech in Japan

(excluding mergers; based on year in which they were concluded; Big Tech defined here as GAFAM + Rakuten)



# For reference: an exhaustive list of all cases relating to digital markets that led to results

(excluding mergers; during past decade (2013-2022))

Date	Case	Issue (legal provision referenced by JFTC + conduct)	How resolved	JFTC press release
30 June 2022	Scinex and Smartvalue	GD 14 <i>Interference with competitor's transactions</i> : exclusionary conduct towards open source software	Commitment: will cease conduct; duration: three years.	<a href="#">English</a>
6 December 2021	Rakuten	ASBP: forcing merchants to provide for free shipping to customers if purchase is above threshold (3980 yen)	Voluntary measures: Rakuten promises to leave merchants choice	<a href="#">English</a>
2 December 2021	Uniquist	GD 11 <i>Trading on exclusive terms</i> and GD 12 <i>Trading on restrictive terms</i> : online funeral platform pays higher commission to funeral operators if they do not use other platforms (exclusivity in return for reward)	Voluntary measures: will stop reward-for-exclusivity system	<ul style="list-style-type: none"> <li><a href="#">English</a></li> <li><a href="#">Japanese</a></li> </ul>
2 September 2021	Apple	Monopolization + GD 12 <i>Trading on restrictive terms</i> : Apple's anti-steering provisions in its App Store Review Guidelines	Voluntary measures: Apple promises that reader apps will be allowed to include in-app links to their own website (no anti-steering). JFTC concludes this will allow app developers from providing sales channels using means of payment other than Apple Pay	<a href="#">English</a>
10 September 2020	Amazon	ASBP: e-commerce platform exploits suppliers by requiring various payments not previously agreed	Commitments: Amazon will cease conduct + amounts paid back!	<ul style="list-style-type: none"> <li><a href="#">English</a></li> <li><a href="#">Japanese</a></li> </ul>
25 Oct. 2019 (Rakuten Travel), 16 March 2022 (booking.com), 2 June 2022 (Expedia)	Rakuten travel, booking.com, Expedia	GD 12 <i>Trading on restrictive terms</i> : parity clauses: booking platform imposes parity clauses on hotels	Commitments: stop using parity clauses (except for narrow parity clauses in the case of booking.com and Expedia; all parity clauses in the case of Rakuten)	<ul style="list-style-type: none"> <li>Rakuten (<a href="#">English</a>) (<a href="#">Japanese</a>)</li> <li>Booking.com (<a href="#">English</a>) (<a href="#">Japanese</a>)</li> <li>Expedia (<a href="#">English</a>) (<a href="#">Japanese</a>)</li> </ul>

GD = Designation of Unfair Trade Practices (list of unfair trade practices issued by JFTC)

ASBP = abuse of a superior bargaining position (AMA, Art. 2(9)(v))

# For reference (continued): an exhaustive list of all cases relating to digital markets that led to results (excluding mergers; during past decade (2013-2022))

Date	Case	Issue (legal provision referenced by JFTC + conduct)	How resolved	JFTC press release
11 April 2019	Amazon (points)	ASBP: e-commerce platform forces merchants to pay for Amazon's point system	Voluntary measures: Amazon promises to leave sellers choice as to whether they participate in points program	<ul style="list-style-type: none"> <li><a href="#">Japanese</a></li> </ul>
10 Oct. 2018	Airbnb	Monopolization + GD 11 <i>Trading on exclusive terms</i> , GD 12 <i>Trading on restrictive terms</i> : Exclusivity: lodging platform requires exclusivity from co-hosting service providers in return for API access	Voluntary measures: Airbnb waives its rights to enforce exclusivity clauses	<ul style="list-style-type: none"> <li><a href="#">English</a></li> <li><a href="#">Japanese</a></li> </ul>
11 July 2018	Apple (mobile phones)	GD 12 <i>Trading on restrictive terms</i> : Subsidy requirements in contracts between Apple and MNOs	Voluntary measures: Apple will remove clauses from agreements with MNOs	<ul style="list-style-type: none"> <li><a href="#">English</a></li> <li><a href="#">Japanese</a></li> </ul>
23 May 2018	Minna no pet	GD 11 <i>Trading on exclusive terms</i> : Exclusivity: platform connecting dog and cat breeders with pet owners imposes exclusivity on breeders in return for certain advantages (premium partner system)	Voluntary measures: Minna no pet stops "premium partner system" and exclusivity included therein	<ul style="list-style-type: none"> <li><a href="#">English</a></li> <li><a href="#">Japanese</a></li> </ul>
15 August 2017	Amazon books	Parity clauses: imposed on publishers and wholesalers of e-books sold on amazon.co.jp	Voluntary measures: Amazon will not enforce existing clauses and will not introduce new clauses (duration: five years)	<ul style="list-style-type: none"> <li><a href="#">English</a></li> <li><a href="#">Japanese</a></li> </ul>
1 June 2017	Amazon Marketplace	GD 12 <i>Trading on restrictive terms</i> : Parity clauses: imposed on sellers on Amazon Marketplace	Voluntary measures: remove clauses (+ reporting for three years)	<ul style="list-style-type: none"> <li><a href="#">English</a></li> <li><a href="#">Japanese</a></li> </ul>



Type of cases – which conduct was tackled?

# Types of conduct which the JFTC challenged

- MFNs (parity clauses)
  - Booking platforms: Rakuten Travel, booking.com, expedia
  - Amazon books
  - Amazon marketplace
- ASBP: e-commerce platforms exploiting business users
  - Amazon (two cases)
  - Rakuten
- Exclusivity
  - Uniquist
  - Airbnb
  - Minna no pet
- NOT:
  - Various types of leveraging conduct
    - Self-preferencing, via algorithms or other
    - Tying, pre-installation
  - Data use by platforms
  - Exploitation of consumers (JFTC issued guidelines in Dec. 2019 but never brought any case)

Enforcement method:  
“consensual”

# JFTC's approach

- All cases resolved through commitments (確約措置) or voluntary measures (改善措置)
  - Company makes promise not to engage in certain conduct
  - JFTC does *not* find violation of AMA → very limited reputational impact for company
  - JFTC monitors compliance with the promise during certain period (typically three years)
- NOT: fines
- NOT: formal cease-and-desist order

# Praise and criticism

- Positive

- Significant number of cases
- Speed
- Actual results in some cases

→ JFTC's approach is praised as “pragmatic”, “results-focused”, “substance-over-form”

# Actual results: Amazon case (ASBP, 10 Sept. 2020)

- Amazon not only committed to cease the abuse, but also returned money to the suppliers that had been exploited (around 2 billion yen = 14 million euro, paid back to around 1,400 suppliers)

Actual results: some merchants on Rakuten chose not to offer free shipping above 3980 yen

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- Impact of JFTC's cases nonetheless limited because
    - Many practices never tackled
    - Limited scope of each case
    - Doubts about the effectiveness of the commitments / voluntary measures
    - Consensual approach means there is little deterrence
- JFTC's approach criticized as "too soft"

# Example of ineffective remedies: Apple case (2 September 2021)

- Apple promises to stop “anti-steering” = it will no longer prevent reader app developers from including links to their own website, where consumers could pay without having to use Apple Pay
- Praised as “world’s first”, global solution

# Actual impact of the case

- “settlement” between Apple and JFTC in September 2021
- 31 March 2022: Apple updates its App Store Review Guidelines
  - App developers who want to include a link need to apply and get approval from Apple (need to obtain so-called “External Link Account Entitlement”)
  - Apple can carefully vet the apps that are allowed to have links
  - Various restrictions:
    - Only if app allows user to access content previously purchased outside app
    - Only if people are allowed to sign in to their account
    - Cannot advertise the prices in app, only something like “go to example.com to manage your account”
    - Only one link per page
    - If app developer chooses “External Link Account Entitlement” → cannot offer in-app purchases on either iPhone or Ipad!



Source: Apple, Distributing “reader” apps with a link to your website  
<https://developer.apple.com/support/reader-apps/>



## Update on “reader” app distribution

March 30, 2022

Last year, Apple [announced](#) an update coming to the App Store in early 2022 that would allow developers of “reader” apps to include an in-app link to their website for account creation and management purposes. Starting today, with the update of [App Store Review guideline 3.1.3\(a\)](#), developers of reader apps can now request access to the External Link Account Entitlement. This entitlement lets reader apps link to a website that is owned or maintained by the developer, so that users can create or manage their account outside of the app. Reader apps are apps that provide one or more of the following digital content types — magazines, newspapers, books, audio, music, or video — as the primary functionality of the app.

Source: <https://developer.apple.com/news/?id=grjqafst>

# Understanding app and link requirements

In addition to enabling an entitlement for your app and implementing the required External Link Account APIs, you must follow usage requirements designed to help protect privacy and security, prevent scams and fraudulent activity, and maintain the overall quality of the experience. Any link provided in a reader app must:

- Link to a website you own or have responsibility for;
- Open a new window in the default browser on the device, and may not open a web view;
- Not pass additional parameters in the URL, in order to protect the user (for example, their privacy);
- Be submitted with your reader app to the App Store, and shall be resubmitted if the URL changes;
- Not include, or be used with, language that includes the price of items available on the website (acceptable language includes "go to example.com to create or manage your account");
- Be formatted like a standard HTML link (i.e., blue underlined text) and contain the domain name of the website;
- Be displayed only once per app page, and must display the same message in each instance;
- Be statically defined in the `external-link.account` key value in your app's Info.plist before submission to the App Store; and
- Go directly to your website without any redirect or intermediate links or landing page.

Source:  
<https://developer.apple.com/support/reader-apps/>

**Can I use the entitlement in an app that offers in-app purchases to link out for account creation and management on the web?**

Apps that offer in-app purchases on iOS or iPadOS are not eligible for the entitlement.

Source:

<https://developer.apple.com/support/reader-apps/>

Some reflections

# Some reflections

- Could the JFTC do more?
  - The AMA contains some very broad, low-hurdle provisions (e.g. unfair trade practices),
  - including a provision (ASBP) that seems ideal to tackle unfairness / exploitation by platforms
  - JFTC has robust powers to investigate and sanction violations
- But:
  - Political and institutional setting that is hostile to aggressive competition law enforcement
  - Some peculiarities of the AMA hamper effective enforcement (e.g. no sanctions for violating commitments, JFTC has no discretion in imposing fines 課徴金)
  - Risk-aversion in enforcement = tendency to seek confrontation only if evidence is unassailable (*compare* in regular criminal cases: 99% conviction rate)
- Conundrum: more aggressive enforcement would lead to court losses, which would undermine the JFTC's ability to extract voluntary compliance from companies.