

# ***JAPAN'S EXPERIENCE on VERTICAL RESTRAINTS for E-COMMERCE***

Masaya SAKUMA (Mr.)  
Japan Fair Trade Commission

Symposium on E-commerce, ASEAN Economic Integration and  
Competition Policy and Law  
16 March 2017, Singapore

# Outline

---

- 1. Developed and Enhanced E-commerce in Japan***
- 2. Antimonopoly Act and Vertical Restraints***
- 3. Vertical Restraints in E-Commerce in Japan***
- 4. Revision of DSBP Guidelines***

# *1. Developed and Enhanced E-commerce in Japan*

# Developed and Enhanced E-Commerce in Japan

\*source: 2015 e-Commerce Market Survey  
conducted by METI

## ➤ **Almost doubled in 5 years\***

from ¥ 7.8T (2010) to ¥ 13.8T (2015) (B2C E-commerce)

### ● Sectoral breakdown(2015):

- Goods(incl. Foods, Clothes, home appliances/PCs/  
audiovisuals, etc.) (¥ 7.2T)
- Services (incl. Travel services, ticket sales, etc.) (¥ 4.9T)
- Digital contents (incl. online game/music/video distribution,  
e-book, etc.) (¥ 1.6T)

## ➤ **Rising online platformer in B2C market**

## ➤ **Emerging online retailer without brick and mortar store**

**➔ Large Impact on business practices!**

## ***2. Vertical Restraints in E-Commerce in Japan***

# *Antimonopoly Act (AMA)*

## ➤ *Antimonopoly Act (1947) – four pillars:*

- ✓ Private Monopolizations (Article 3)  
(≈ abuse of dominance)
- ✓ Unreasonable Restraints of Trade (cartels, bid-riggings) (Article 3)
- ✓ **Unfair Trade Practices**  
**(resale price maintenance, non-price vertical restrictions, etc.) (Article 19)**
  - Article 19 often enforced as preventive measures of Article 3
- ✓ Regulation on Mergers and Acquisitions  
(Chapter 4)

# *AMA on Vertical Restraints*

## ➤ *Vertical Restraints in Japan*

- ✓ Vertical restraints mainly regulated:
  - as unilateral conduct ( $\neq$  agreements), and
  - by Article 19 of AMA (unfair trade practices)
- ✓ RPMs and non-price vertical restrictions differently regulated by statute
- ✓ Analyzed under rule of reason approach provided in Guidelines (currently revised)

### ***3. Vertical Restraints in E-Commerce in Japan***

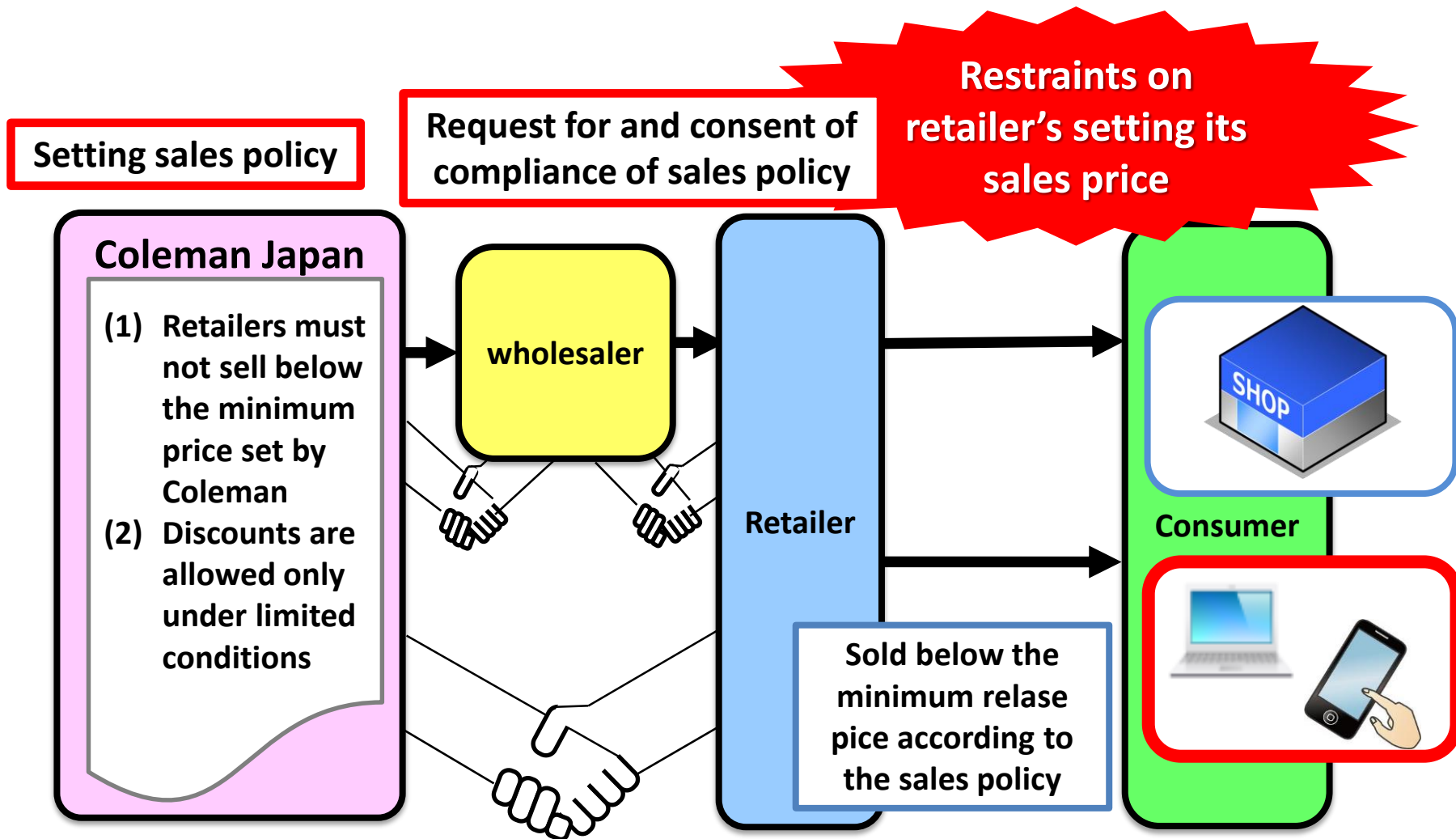


# Resale Price Maintenance/ Restriction to Display Sale Price

## ➤ Classic and Online

- ✓ Hamanaka Case (Resale Price Maintenance)
  - Yarn for Hand-Knitting or Handicraft  
(Cease and desist order in 2008; upheld by Tokyo High Court in 2011)
- ✓ Johnson & Johnson K.K. Case  
(Restriction to Display Selling Price)
  - Vision Corrective Contact lenses  
(Cease and desist order in June 2010)
- ✓ Adidas Japan Case (Resale Price Maintenance)
  - Toning Shoes  
(Cease and desist order in June 2012)
- ✓ Coleman Case (Resale Price Maintenance)
  - Camping Equipment (tent, tarp, sleeping bag, lighting equipment, cooking equipment, fuel, table, chair, cold box, jug, etc.)  
(Cease and desist order in June 2016)

# Coleman Case (Cease and Desist Order of June 15, 2016)



When Coleman found that a retailer had not complied with the sales policy by other retailers' complaints, Coleman repeatedly asked the retailer to follow the policy thereby making the retailer sell following the policy.

# *Exclusive Dealing*

## ➤ *By Online Platformer*

### ✓ *DeNA Case*

- DeNA's Business
  - Operation of mobile social networking service (SNS)
  - Development and provision of social games
  - Business to have other companies provide social game
- Outline of the violation
  - DeNA forced “*Specified Social Game Developers*” not to provide the games through “GREE”, the social networking service operated by one of its competitors.

\* The term “*Specified Social Game Developers*” refers to the dozens of social game developers which DeNA deemed potent and selected.

# DeNA Case (Cease and Desist Order of June 9, 2011)

## Specified Social Game Providers

Providing social games through Mobage-town

Interfering competitor's transactions

Providing social games through GREE

DeNA

Mobage-Town  
(No.1 provider)

GREE, Inc

GREE  
(No.2 provider)

SNS provider for mobile phone

Difficult to have the social game providers to supply games through GREE

Registered Users of Mobage-town

Registered Users of GREE

## ***4. Revision of DSBP Guidelines***

# ***DSBP Guidelines***

## ***➤ Guidelines concerning Distribution Systems and Business Practices under the Antimonopoly Act (1991, revised in 2015 and 2016)***

- ✓ Mainly focus on supplier-led vertical restraints
- ✓ Specific guidance for what is legal or illegal with regard to typical trade practices
  - RPM, and non-price vertical restriction (such as single branding, exclusive territory or customer, selective distribution)
- ✓ Clarification on vertical restraints (2015)
  - analytical framework of vertical restraints, typical examples of possible procompetitive effects (e.g. solving “free-rider problems”), etc.
- ✓ Update of Safe harbor (2016)
  - for certain non-price vertical restrictions: below 20% of a supplier’s share)

# *Further Revision of DSBP Guidelines*

- ***In 2016, JFTC held the study group consisting of academics and business experts.***
  - Main Agenda:
    - Assessing changes in distributions and trade practices incl. ***development of e-commerce***
    - Considering direction of the review of DSBP Guidelines
- ***The study group made public its report in December 2016.***
  - Report's views on vertical restraints in e-commerce:
    - Analytical Framework assuming off-line sales can also apply to online sales in general.
    - Additional factors for assessment should be considered. (e.g. indirect network effects, and so on)
- ***JFTC is now in the process of drawing the draft revision of DSBP Guidelines in light of these views.***