



The Role of Competition Laws for Collective Use of Intellectual Property

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IP & Antitrust



Article 21 of Anti-Monopoly Act

The provisions of this Act do not apply to acts found to constitute an exercise of rights under the Copyright Act, Patent Act, Utility Model Act, Design Act or Trademark Act.



- **Collective use of IP**
→ is not an ordinary use of IP

Competition Law Perspective

Tension with standardization and patent pools

- Pachinko patent pool case (1997)
- Guidelines on standardization and patent pool (2005)

Tackle with unilateral conduct (hold-ups)

- Qualcomm case (2009~)
- Amendment to IP guidelines (2016)

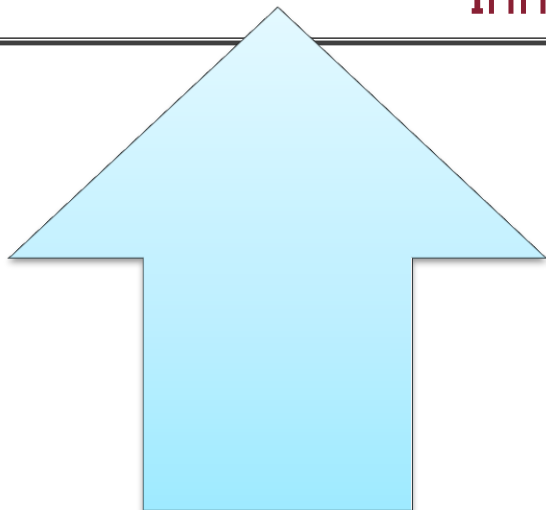
Justification of antitrust application

Essentiality

FRAND
declaration

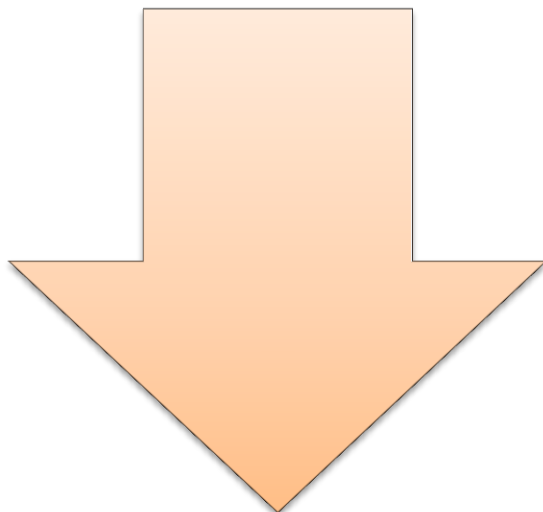
Collective
use

Innovation and Antitrust



Do not chill innovation by applying competition laws

- Quick innovation would revive a competitive market
 - MySpace/Facebook
- Slow move of competition authority
 - Qualcomm case in Japan

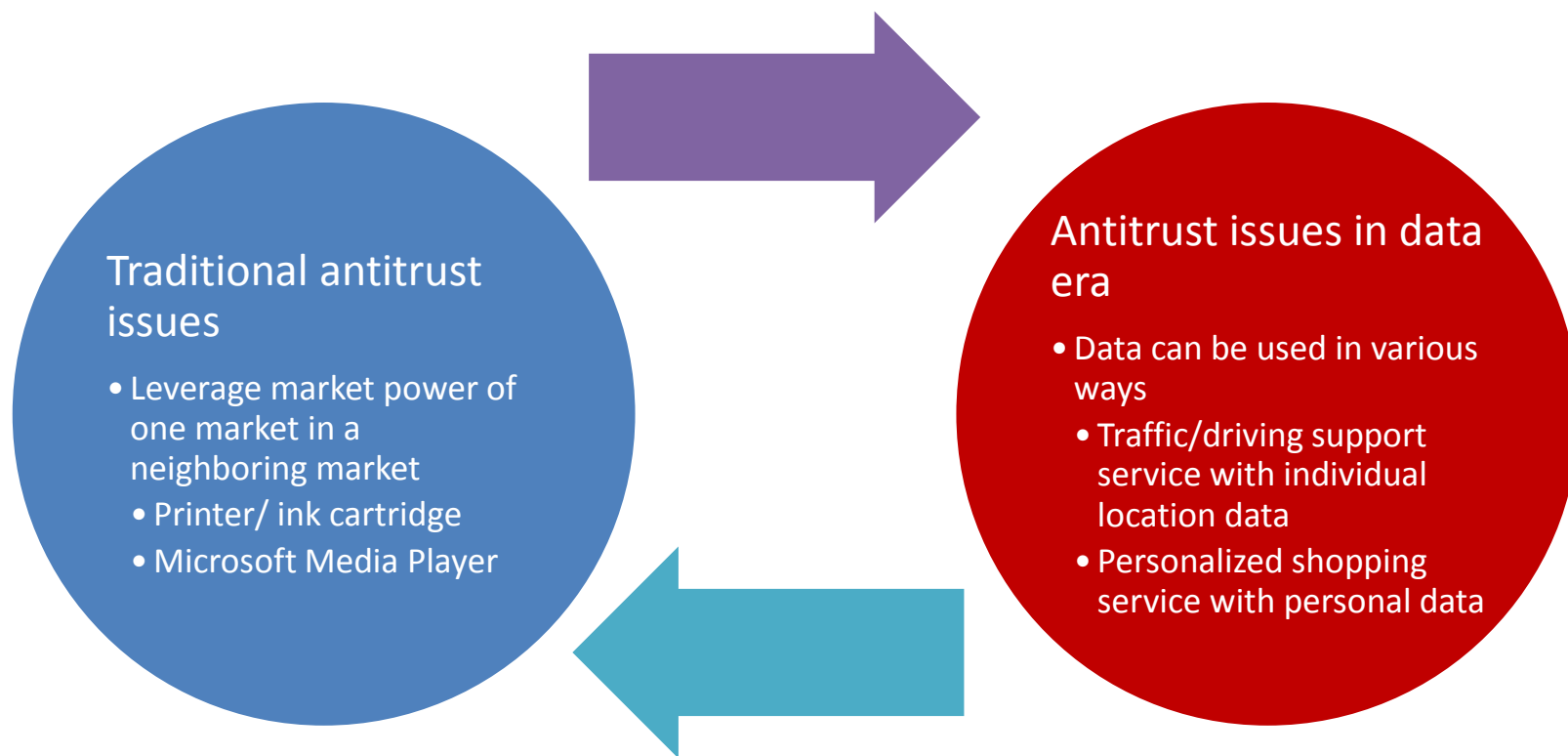


Competition law application is necessary for innovation

- Innovations from competitors are as important as those of tech giants
- Strong players will get even stronger due to indirect network effect
 - Can data be duplicated unlike patents ?
- Danger of opportunistic conducts
 - Should we tolerate one-year dominance ?
- Utilize competition law enforcement system
 - Commitments
 - Your Pet Online case
 - Private litigations

Challenges associated with competition law application

Both IP and data are just input for business in the downstream market



Should we take a cautious measures in advance ? ?

Digital Cartel

- Does shared use of algorithm amount to illegal cartel?

人工知能(AI)などの活用で企業活動が効率化した結果、価格が高止まりして消費者に不利益を与えるケースが現れ始めた。価格決定アルゴリズムを使い事業者が利益の最大化を図るデジタルカルテル元。機械が勝手に物やサービスの価格を高止まりさせた場合、法的責任は誰にあるのか。競争法分野のルールに難題を突きつけている。

ウーバーを提訴
競争法の専門家らが注目する訴訟が米国で起きている。ライドシェア(乗り)大手、米ウーバーテクノロジーズの価格アルゴリズムをめぐる集団訴訟だ。

訴状によるとウーバーの運転手は同社の社員ではなく、独立した運転手として登録している。本来はお互いに競争関係にあるが、乗車料金についてはウーバーが提示する価格にのって顧客に請求している。より多くの顧客を取るために、あえて安い料金を顧客に提示することを運転手が選択できる仕組みにはなっていない。

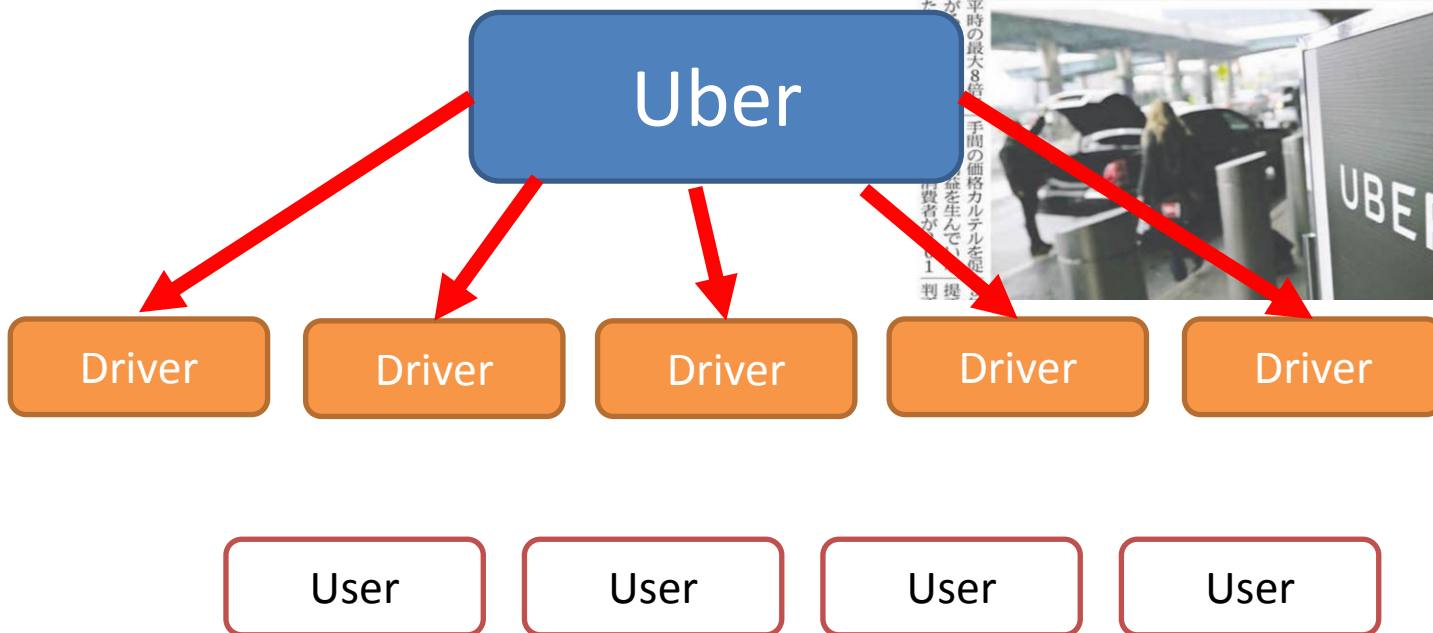
ウーバーの価格は混雑

デジタルカルテルの挑戦状

AIが価格調整 法的責任は



時には平時の最大8倍、手間の価格カルテルを提示し、利益を生んで、消費者が1判



Thank you for your attention!



Tsuyoshi (Yoshi) Ikeda

Of Counsel

Admitted in Japan, 2003

Osaka Bar Association

Admitted in Japan, 2009

Daiichi Tokyo Bar Association

Admitted in New York and
California, 2009

Languages: Japanese, English

Tsuyoshi (Yoshi) Ikeda

Tsuyoshi Ikeda handles a broad range of issues across the areas of competition law/antimonopoly law, mislabeling law, and subcontractor law both domestically and internationally. He deals with matters related to antimonopoly law, making use of his experiences working on the implementation of the leniency system at the Japan Fair Trade Commission and being involved in onsite inspections and review cases. Further, he has a wealth of experience in IP- and tech-related antimonopoly law cases, including licenses and standardization, from his experience working in the IP/IT taskforce at the Japan Fair Trade Commission and working in a leading US law firm with a track record in IP litigation. Additionally, he is admitted as an attorney in multiple states in the US and has served as a speaker at a number of international conferences.

More recently, he advises many clients on a daily basis on various mislabeling issues, including matters under subcontractor law and food labeling; also, he has a wealth of experience in neighboring fields of competition law, including bribery regulatory law and international trade law.

He has been selected as one of Japan's leading lawyers in the fields of competition law/antimonopoly law by Chambers Asia, Who's Who Legal and so on.

Background

Ikeda Senior High School Attached to Osaka University of Education (1997)

Kyoto University (LLB, 2002)

Worked at OH-EBASHI LPC & Partners (2003-2005)

Worked for the Investigation Bureau, the Japan Fair Trade Commission (JFTC) (2005-2007)

University of California, Berkeley, School of Law (LL.M, 2008)

Worked at Kirkland and Ellis LLP Chicago (2008-2009)

Director, Transparency International Japan (TI-J) (2015; Executive Director from 2016)

Officer, Antitrust Committee, International Bar Association (IBA) (2017-present)

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Thank you for your attention. Please do not hesitate to contact me if you have any questions or queries.