Apple Asia, Llc. Taiwan Branch (U.S.A.)

1440th Commissioners' Meeting (2019)

Case: Apple Taiwan violated the Fair Trade Law by impeding competition in the domestic mobile payment services market
Keyword(s): Mobile payment, smartphone, mobile app
Reference: Fair Trade Commission Decision of June 12, 2019 (the 1440th Commissioners' Meeting)
Industry: Other Activities Auxiliary to Financial Service Activities Not Elsewhere Classified (6699)
Relevant Law(s): Articles 9 and 20 of the Fair Trade Law

Summary:

1. Apple Pay entered the domestic mobile payment services market in 2017 and Apple Asia, Llc. Taiwan Branch (U.S.A.) (hereinafter referred to as Apple Taiwan), the managing company, also engaged in the production of mobile devices which were equipped with built-in communications functions that played a crucial role in mobile payment transactions. Therefore, the FTC launched an investigation to find out whether Apple Taiwan was taking advantage of its control of specifications of mobile devices to refuse other payment systems to access certain functions [such as the near field communications (NFC) technology] in order to eliminate competition from other mobile payment service operators as well as demand card issuers to make marketing budget promises and define KPI settings to impede other domestic mobile payment service operators from competing with it on the market.
2. Findings of the FTC after investigation:
  (1) The top three domestic mobile payment brands in 2018 were LINE Pay, Apple Pay and Jko Pay, in descending order. Although Apple's iPhones accounted for the largest domestic smartphone market share, it was only slightly bigger than that of Samsung and ASUS. In other words, iPhones and Apple Pay still faced competition on the market. They did not have unparalleled market status or the power to eliminate market competition. Therefore, the condition did not meet the definition of monopoly in the Fair Trade Law.
  (2) The technology adopted for the deployment of Apple Pay is the contactless payment through the sensing function of iPhone NFC. However, other mobile payment service operators could also apply barcode scan payment and mobile network payment technologies to provide mobile payment services to iPhone users. In other words, the NFC sensing function is not the exclusive technology required for the provision of mobile payment services. In addition, the only thing that stores authorized to accept code scan payments has to do is to put up a QR Code and the practice had the advantages of simple operation, mobility and low cost. The actual market condition shows that mobile payment service operator using the code scan payment approach still enjoys the leading status on the market and scan to pay is indeed economically and commercially feasible. Although Apple has not allowed competitors to access iPhone's NFC functions, it could not weaken competition in the mobile payment services market. Hence, the FTC could not conclude any abuses of key functions existed on the market.

(3) As a matter of fact, every domestic card issuer currently accepting Apple Pay after giving their consent to making marketing commitment and defining KPI settings requested by Apple also cooperates with other mobile payment service operators. The result of mobile payment promotion in the first year indicated that the percentage of holders of cards from more than half of the issuers having activated the mobile payment function exceeded the KPI set by Apple, and the card-linking rate of half of the card issuers achieved the KPI, an indication that the marketing commitment and KPI setting from Apple Pay did not make card issuers to promote Apply Pay exclusively or there was a lack of incentive for them to do promotions for other mobile payment platforms that led to quasi-exclusive dealings. In addition, while the marketing cost of card issuers to promote Apple Pay accounted for about 50% of their overall mobile payment promotion cost, some card issuers even spent more to push other mobile payment brands. Apparently, the allocation of resources to promote each mobile payment brand depended on the business strategy of each card issuer, not the marketing commitment or KPI setting from Apple. Therefore, it's not easy to conclude that there was any foreclosure or elimination of market competition.

(4) Based on the existing evidences gathered and analyzed above, the FTC found it difficult to consider Apple had violated the Fair Trade Law by abusing its market status to impede or eliminate competition in the domestic mobile payment services market.

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