

Factors considered in regulating Unilateral Conduct - A Japan's Experience -

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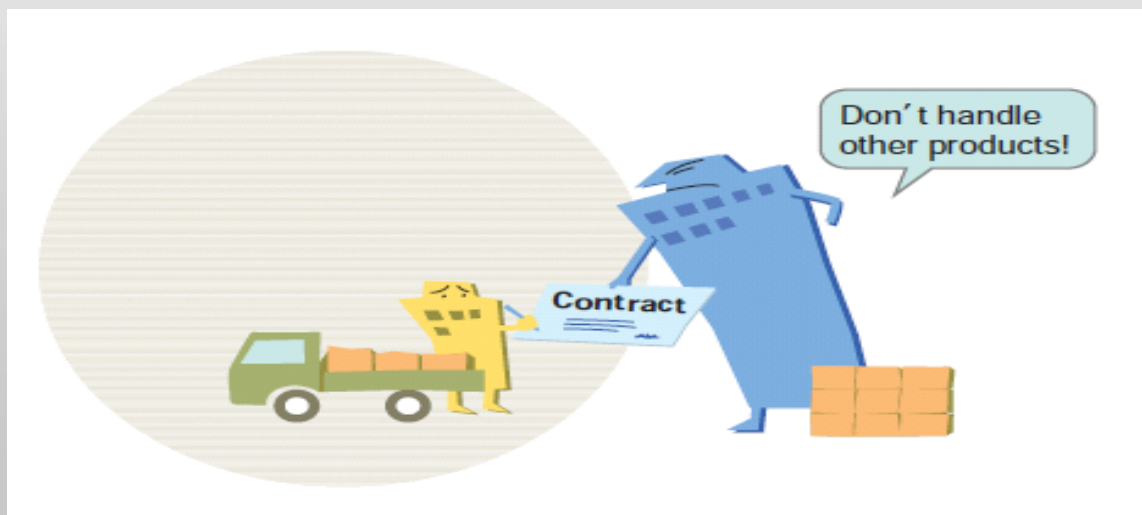
Investigation Bureau

Japan Fair Trade Commission

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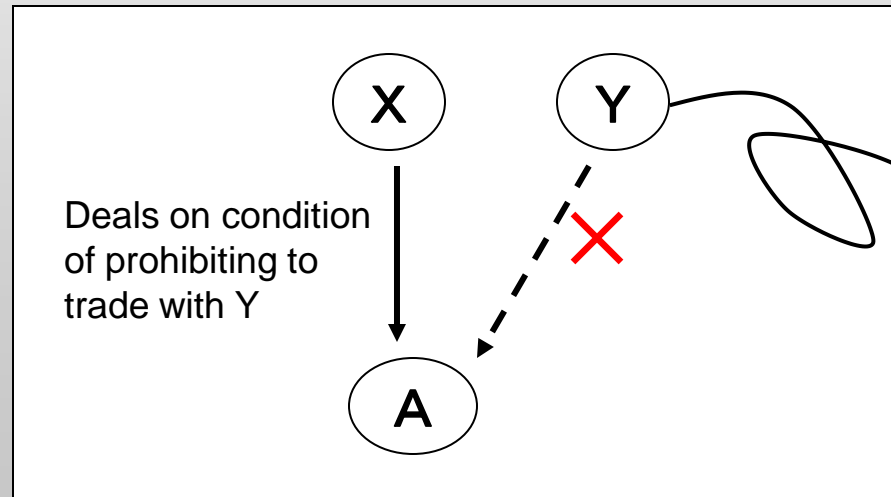
Private Monopolisation

- The Definition of Private Monopolisation
 - “Such business activities, by which any enterprise, individually or by combination or conspiracy with other enterprises, or by any other manner, excludes or controls the business activities of other enterprises, thereby causing a substantial restraint of competition in any particular field of trade, contrary to the public interest”



Private Monopolisation

- Exclusionary dealings
 - Conduct
 - Dealing with trade partners on condition that they terminate or reduce the trade with its competitors.
 - Effects on a market
 - Where competition in a market is substantially restrained, such conduct falls under the regulation.
 - Several factors are comprehensively considered.



Main Factors Considered

- Conditions of products
- Market positions of the firm concerned
- Market positions of competitors
- Market positions of trade partners
- Scale of exclusionary dealings
- Efficiency

Main Factors Considered

- Conditions of products
 - Difficulties of market entry
 - Scale economies
 - Sunk investments
 - Distribution channel etc.
- Market positions of the firm concerned
 - Market share of the firm's product
 - Brand value of the product etc.

Main Factors Considered

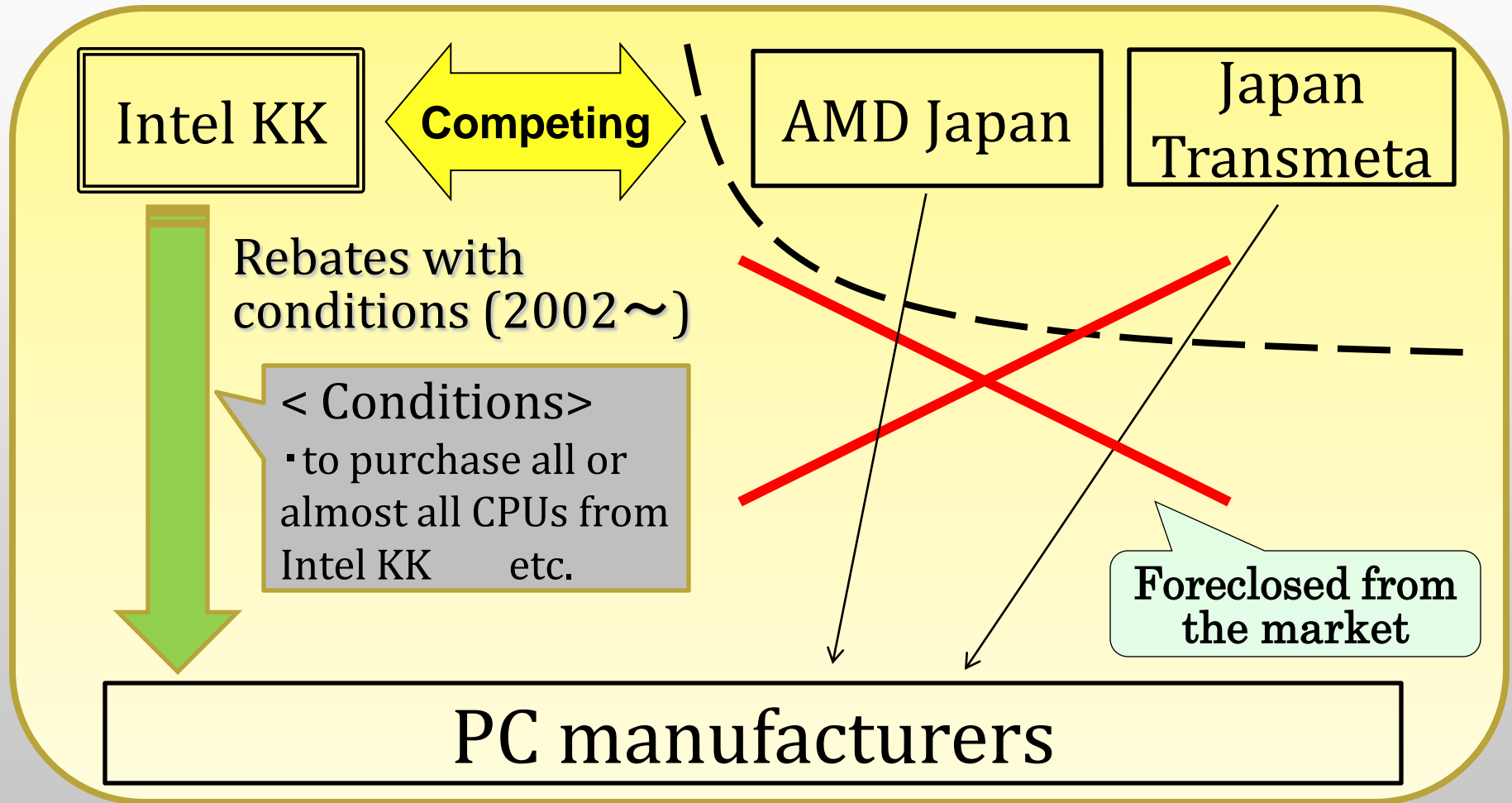
- Market positions of competitors
 - Market share of competitors
 - Brand value of competitors' products etc.
- Market positions of trade partners
 - Number of trade partners
 - Market shares of trade partners etc.

Main Factors Considered

- Scale of exclusionary dealings
 - Length of the conduct
 - Number of trade partners subject to the conduct etc.
- Efficiency improvements will be taken into account when:
 - Efficiency improves as effects brought by the conduct
 - Outcomes of efficiency improvements such as price declines, quality improvements, etc. are passed to users
- However, where competition substantially restrained
 - ⇒ The exclusionary dealings fall under the regulation against private monopolisation.

Case Study : the Intel Case (2005)

< Overview of the Intel Case >



Case Study : the Intel Case (2005)

- Conditions of products

- Products concerned: CPUs incorporated into PCs

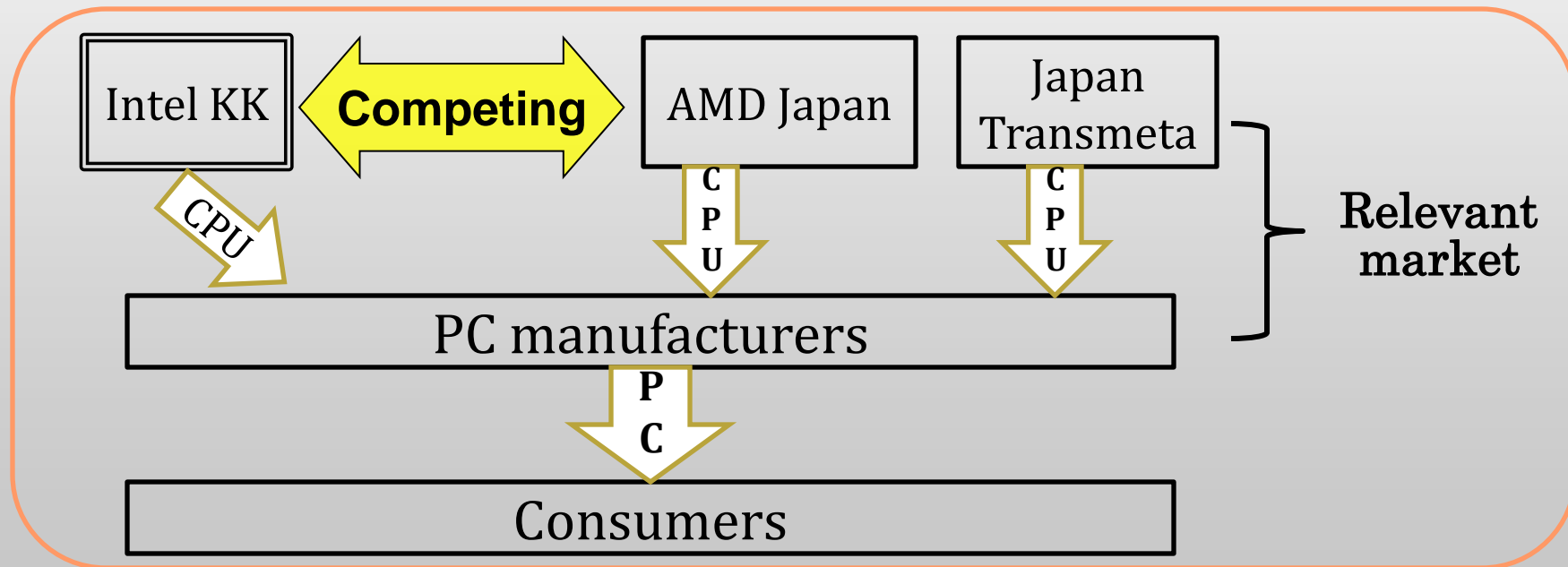
- ✓ Scale economies

- ✓ Sunk investments

- (R&D, Production Facilities, etc.)

Difficult to enter into
the market

- Distribution Channel



Case Study : the Intel Case (2005)

- Market positions of the firm and its competitors

<u>Market share</u>	1999	2002	2003	2004
Intel KK	89%	76%	89%	Over 90%
Competitors	11%	24%	11%	Less than 10%

	<u>Brand value</u>	<u>Product line-up</u>
Intel KK	Strong	CPUs for high-end to low-end PCs
Competitors (AMD)	Fair	CPUs for high-end to low-end PCs

Case Study : the Intel Case (2005)

- Market positions of trade partners
 - Trade partners: PC manufacturers in Japan
 - 5 biggest PC manufacturers were purchasing total around 80% of CPUs sold in Japan.
 - Choices of CPUs depend on consumers' preference.
- Consumers' preference
 - ⇒ In general, PCs with Intel's CPUs preferred due to Intel's strong brand value.
 - ⇒ As for mid-end to low-end PCs, sensitive to price levels.

Case Study : the Intel Case (2005)

- Scale of exclusionary dealings
 - The conduct
 - : Provision of rebates to PC manufacturers on the condition of purchasing all or almost all of CPUs from Intel KK
 - Periods of the conduct
 - : 2002 to 2005 (JFTC decision)
 - Number of trade partners subject to the conduct
 - : 5 biggest PC manufacturers
- Efficiency

Case Study : the Intel Case (2005)

- All the above factors were comprehensively considered.
- The JFTC concluded that the Intel KK's conduct substantially restrained competition in the relevant market.



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**Thank you very much
for your kind attention !**