

**Webinar on Competition law and policy approaches towards digital platforms and ecosystems in cooperation with the BRICS Competition Law and Policy Centre and the Brazilian Administrative Council for Economic Defense (CADE)**

**3 June 2024**

**Competition, Transparency and Fairness in Japan:  
Examining digital platform regulation focusing on self-preferencing and discrimination**

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# Competition, transparency and fairness in Japan: examining digital platform regulation focusing on self- preferencing and discrimination



UN Trade and Development (UNCTAD),  
**Competition law and policy approaches towards  
digital platforms and ecosystems**

3 June 2024

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# ‘Self-preferencing and differentiated treatment’\*

\* *BRICS In The Digital Economy: Competition Policy In Practice*, 2nd Report by the Competition Authorities Working Group on Digital Economy (2024) pp. 72 ff.

## 4.5. Self-preferencing and differentiated treatment

Another challenge raised by digital technologies, and digital platforms in particular, relates to the fact that the informational infrastructure can be leveraged to promote specific products or services in downstream markets. In other words, vertically integrated digital platforms may give preference to its own products or services (self-preference). The concept of self-preferencing rose to prominence in the context of the European Commission’s Decision in *Google Shopping*<sup>68</sup>, which condemned Google for abusing its dominant position due to its more favorable positioning and display of its own

<sup>66</sup> EUROPEAN UNION- E.C., Guidance on the Commission’s enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings. OJ C 45, 24.2.2009, p. 7–20, 2009.

<sup>67</sup> See, for instance, the South African case: *Telkom from Internet Solutions (“IS”), Internet Service Providers Association (“ISPA”) and Verizon South Africa*, 2013.

<sup>68</sup> Case AT 39.740—*Google Search (Shopping)*, Commission decision of 27 June 2017.

# Self-preferencing

The screenshot displays the Yahoo! Japan homepage with the following elements:

- Navigation Bar:** Includes logos for LYP (Premium),オークション (Auctions), ショッピング (Shopping), YAHOO! JAPAN, トラベル (Travel), カード (Cards), and メール (Mail).
- Search Bar:** A search input field with a "検索" (Search) button.
- News Headlines:** A list of news items with titles and click counts, such as "警察は謝らない 冤罪当事者の訴え" (Police won't apologize, plaintiff's appeal) and "韓国各地に「汚物風船」計900個に" (900 'waste balloons' across Korea).
- Weather Section:** Shows weather for 2024年6月2日 (June 2, 2024) in 京都市左京区 (Saiyō-ku, Kyoto), including temperature forecasts (24°C/17°C today, 25°C/15°C tomorrow) and a rain radar map.
- Left Sidebar:** A vertical menu with icons for various services like ショッピング, オークション, フリマ (Marketplace), ZOZOTOWN, LOHACO, トラベル, 一休.com, PayPayグルメ, 出前館, ニュース, 天気・災害, スポーツナビ, ファイナンス, 番組表, 知恵袋, LINE MUSIC, and ゲーム.
- Right Sidebar:** A "ログイン" (Login) section with options for "メール" (Mail), "毎日1回 宝箱くじ" (Daily 1-time Treasure Chest Lottery), and "PayPay残高確認" (PayPay Balance Confirmation).

# Self-preferencing

PayPay カード

お申し込み    ご利用ガイド    よくある質問    ログイン

トップ    カードをつくる    ポイント・特典    便利な機能・サービス    お支払い方法    サポート

1,100<sup>※1</sup>万  
会員突破!

## Hello, Cashless

「払う」を、自由自在に。

年会費永年無料    ポイント1%付与<sup>※2</sup>

詳しくはこちら

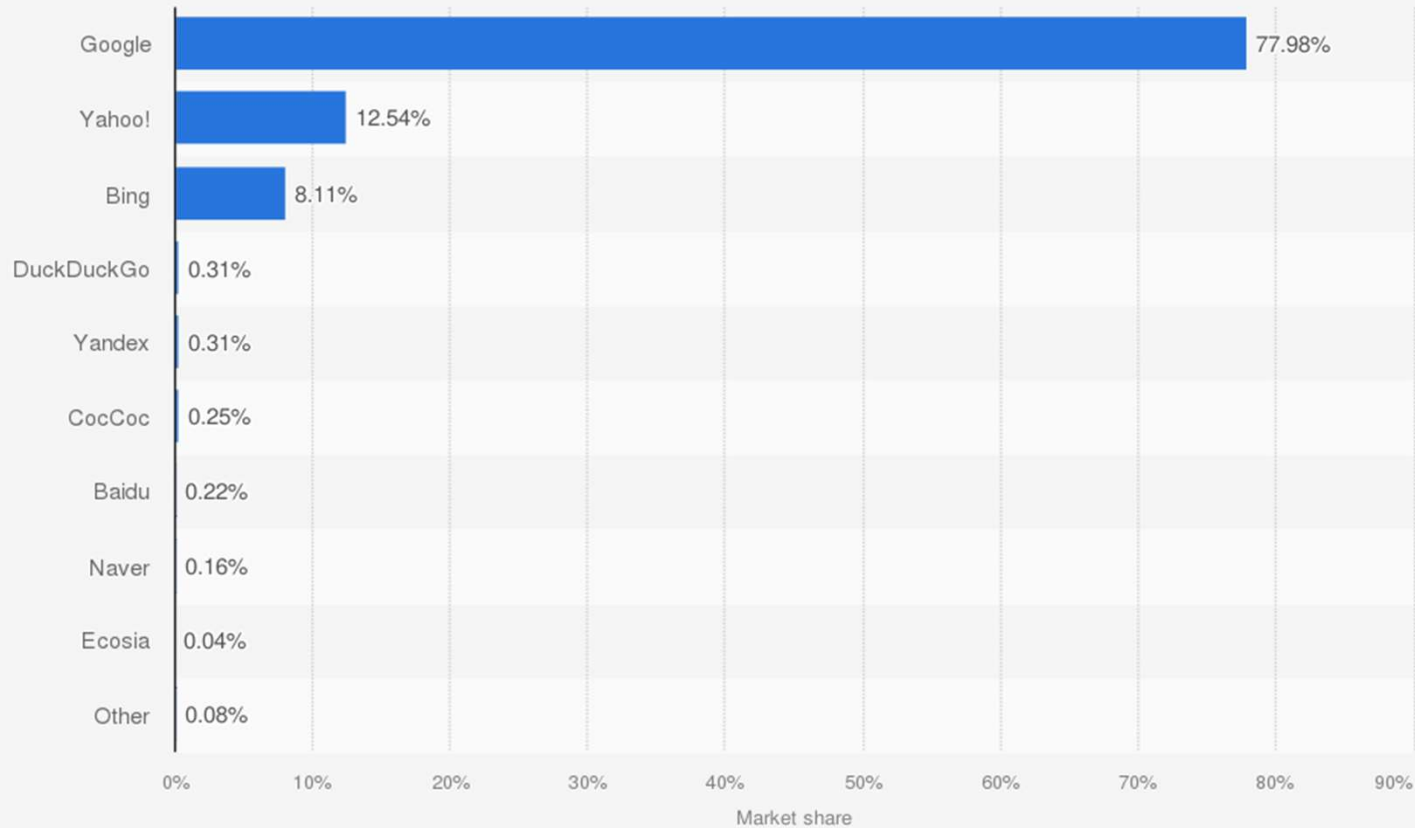
※1 2023年12月末時点の「PayPayカード」および「PayPayカード ゴールド」の有効会員数  
※2 付与には条件があります。詳細は「詳しくはこちら」にてご確認ください

カードお申し込み

ログイン

# Self-preferencing

Most used search engines in Japan as of January 2024



Source  
StatCounter  
© Statista 2024

Additional Information:  
Japan; January 2024; based on page views of websites tracked by the source

# Self-preferencing

Z HOLDINGS

English ▼

Corporate Information NEWS Growth Strategy Investor Relations Integrated Report Sustainability

solving the problems related to domestic chores and meals

STORE's R∞ )



**PayPay Asset Management Corporation**

Financial Instruments Business

**PayPay Card Corporation (Japanese Only)**

Credit card, card loan, credit guarantee business

**PayPay Bank Corporation (Japanese Only)**

Banking (Internet-only bank)  
Provision of various financial services (e.g. yen/foreign currency deposits, asset management, payment, loan, etc.) to individuals and corporations under a safe-to-use and robust security system



Leverage ...

What about  
not *self-*  
*preferencing*, but  
**differentiated**  
**treatment**

Photo by Markus Spiske on Unsplash

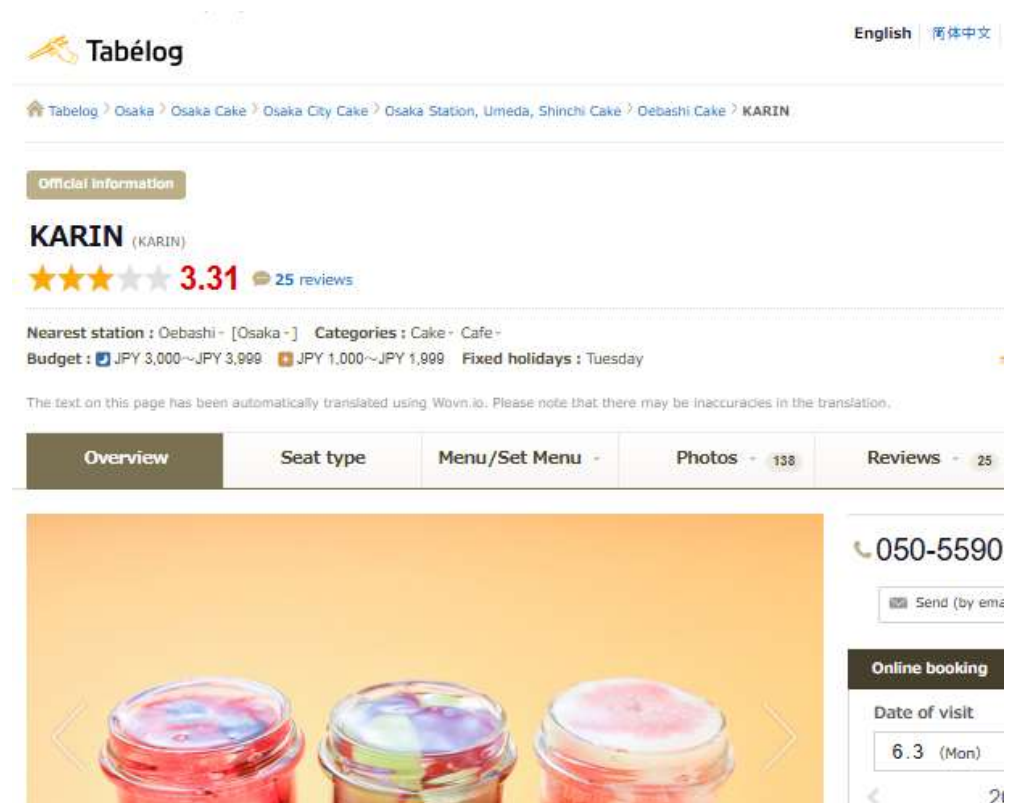




# Tabelog

Tokyo High Court, 19 January 2024

<https://tabelog.com/en/>



The screenshot shows the Tabelog website interface for the restaurant KARIN. At the top, the Tabelog logo is on the left, and language options for English and 简体中文 are on the right. A breadcrumb trail indicates the location: Osaka > Osaka Cake > Osaka City Cake > Osaka Station, Umeda, Shinchi Cake > DeBASHI Cake > KARIN. Below this, a section titled "Official information" displays the restaurant name "KARIN (KARIN)" with a 3.31 star rating from 25 reviews. Key details include the nearest station (DeBASHI - [Osaka -]), categories (Cake - Cafe -), and budget ranges (JPY 3,000~JPY 3,999 and JPY 1,000~JPY 1,999). A note states that the text is automatically translated. A navigation bar offers tabs for Overview, Seat type, Menu/Set Menu, Photos (138), and Reviews (25). The main content area features a carousel of three colorful cakes. On the right, there is a contact number (050-5590), a "Send (by email)" button, and an "Online booking" section with a date of visit set to 6.3 (Mon).

\*The images are for illustration purposes only.

Before

The screenshot shows the Tabloy app interface. On the left, there are search filters for 'Search by area' (Osaka), 'Search by genre' (Sweets), and 'Budget' (Without low, Without upper). Below these are options for 'Check availability - Online booking', 'Date of visit' (2024/6/2(Sun)), 'People' (2people), and 'Time' (19:00). There are also checkboxes for 'Search by these criteria', 'Opening hours' (Not specified), 'Open on Sunday', and 'Preference' (Private dining room, All you can drink, Credit Cards Accepted, etc.). At the bottom left, there are 'Usage scenarios' (Not specified, With family/children, etc.) and 'Non-smoking/smoking' options. The main content area shows a list of restaurants under the heading 'Sweets in Osaka'. The first restaurant is 'Waka Fe Yuso Shi Chanoma' with a rating of 3.28. Other visible restaurants include 'Tempura Shinsalbashi Ittetsu' (3.62), 'KARIN' (3.31), and 'HOSHINO DESSERT ART' (3.11). Each listing includes a photo, name, address, rating, and price range.

After

The screenshot shows a website interface for 'Sweets in Osaka'. At the top, there are tabs for 'Default: [Featured restaurants first]' and 'Ranked order'. Below the tabs, there are search filters for 'Search by area' (Osaka) and 'Search by genre' (Sweets). The main content area displays a grid of restaurant listings. Each listing includes a photo, name, address, rating, and price range. The visible restaurants are: 'PARIS-h' (3.93), 'YUN CAFE' (3.31), 'ACIDRACINES' (3.81), 'Grenier' (3.31), 'Gyokuselya' (3.81), 'KARIN' (3.31), 'Patisserie Ravi, e reller' (3.79), and 'ECHIRE MARCHE AU BEURRE' (3.77). At the bottom, there is a pagination bar with 'Previous 20', '1', '10', '20', '26', '27', '28', '29', '30', '31', '32', '33', '34', '35', '36', '40', '50', and 'Next 20'.

\*The images are for illustration purposes only.

# Theory of harm?

- To effectuate exclusivity (and/or other conditions)
- To solicit advertisements\*
- Not to distort competition amongst restaurants and cafes
- *Unfair* discrimination
- Special responsibility, fiduciary duty, etc
- To protect consumer-users' expectation

## 検索結果の並び順

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### 「標準」について

店舗向け有料集客サービスをご利用中のお店を優先的に表示してい

「標準」検索では、掲載情報の充実しているお店を広くご紹介する  
料集客サービスをご利用いただき様々な情報を積極的に発信されて  
ています。

(tr.) ... Ranking; About 'Standard'. Priority is given to shops that are using the [Tabelog's] paid customer attraction service...

<https://help.tabelog.com/>

# Theory of harm?

- To effectuate exclusivity (and/or other conditions)
- To solicit advertisements\*
- **Not to distort competition amongst restaurants and cafes**
- ***Unfair* discrimination**
- **Special responsibility, fiduciary duty, etc**
- **To protect consumer-users' expectation**

# Justification (defence)

- For consumer-users' benefit/interest
- Design freedom
- Anti-manipulation

....

# Japanese law

# Antimonopoly Act (AMA)



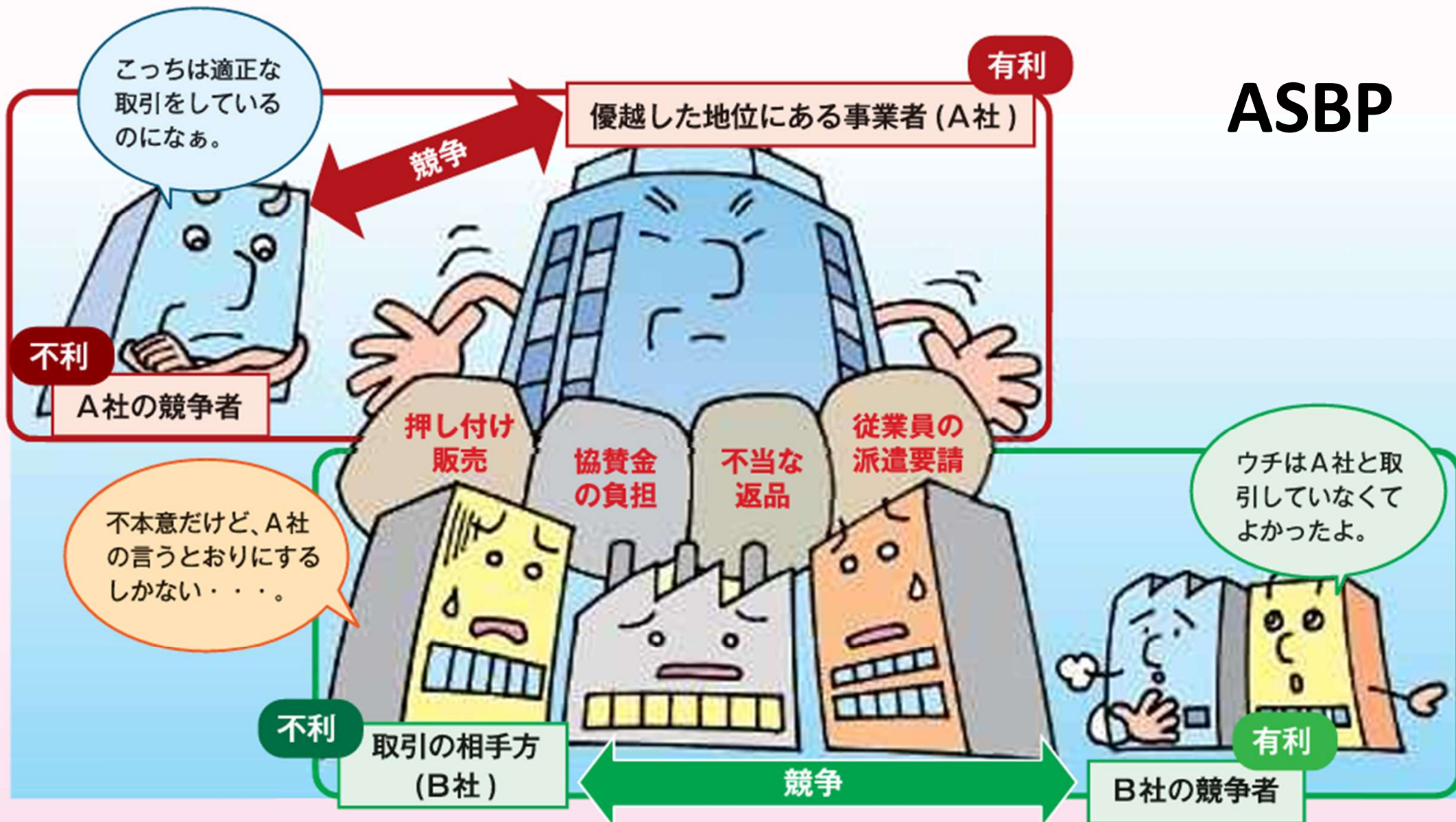
PROHIBITION OF **UNFAIR** TRADE  
PRACTICE (UTP) (ARTS. 2(9), 19)



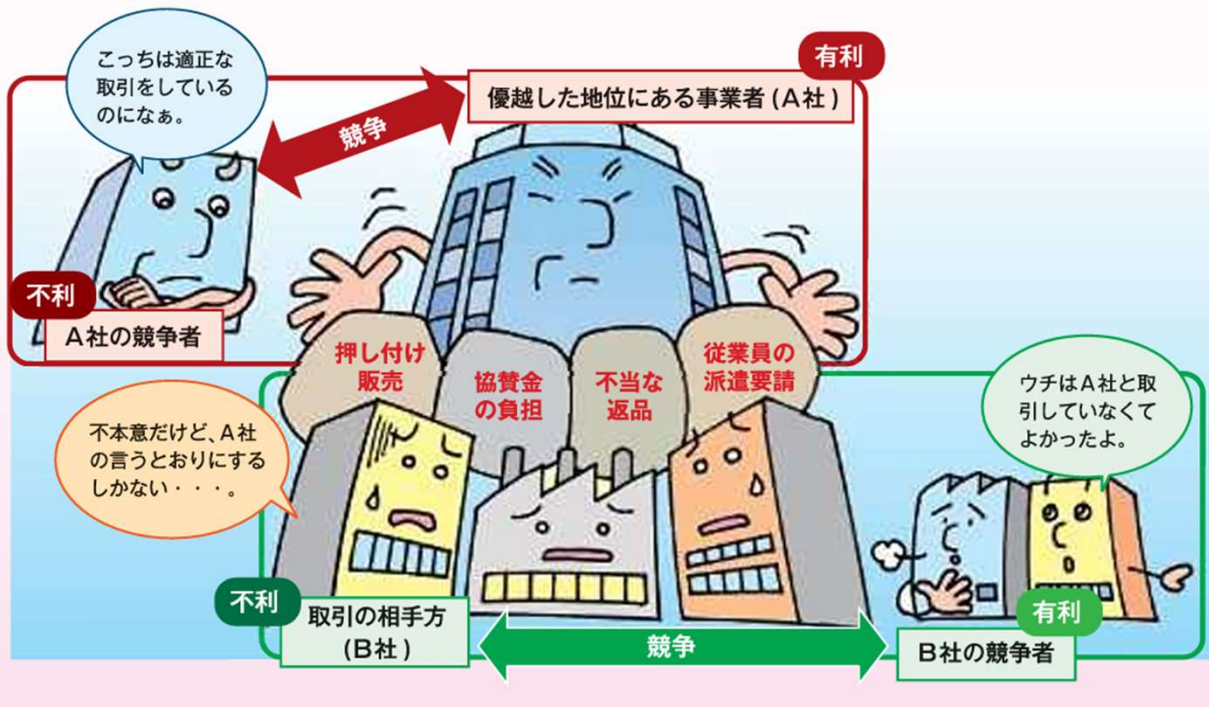
**ABUSE OF SUPERIOR BARGAINING  
POSITION (ASBP) AS AN UTP** (ART. 2(9)V )



# ASBP



# ASBP



**Coercive sales**

**Requirement to pay sponsorship fees**

**Unjustified returns**

**Requests for dispatch of employees**

AMA Art 2(9)(v) listed practices

<[https://www.jftc.go.jp/en/policy\\_enforcement/21041301.pdf](https://www.jftc.go.jp/en/policy_enforcement/21041301.pdf)>

- (a) causing the counterparty in continuous transactions (including a party with whom one newly intends to engage in continuous transactions: the same applies in (b) below) to purchase goods or services other than those to which the relevant transactions pertain
- (b) causing the counterparty in continuous transactions to provide money, services or other economic benefits
- (c) refusing to receive goods in transactions with the counterparty, causing the counterparty to take back such goods after receiving them from the counterparty, delaying payment to the counterparty or reducing the amount of payment, or otherwise establishing or changing trade terms or executing transactions in a way disadvantageous to the counterparty

# ASBP regulation in Japan

a) imposing a disadvantage on the said transacting party the cost of which the said transacting party cannot calculate in advance

b) the imposed [burden] turns out to be a burden which exceeds the scope as deemed reasonable considering the direct benefit

*a) foreseeability*

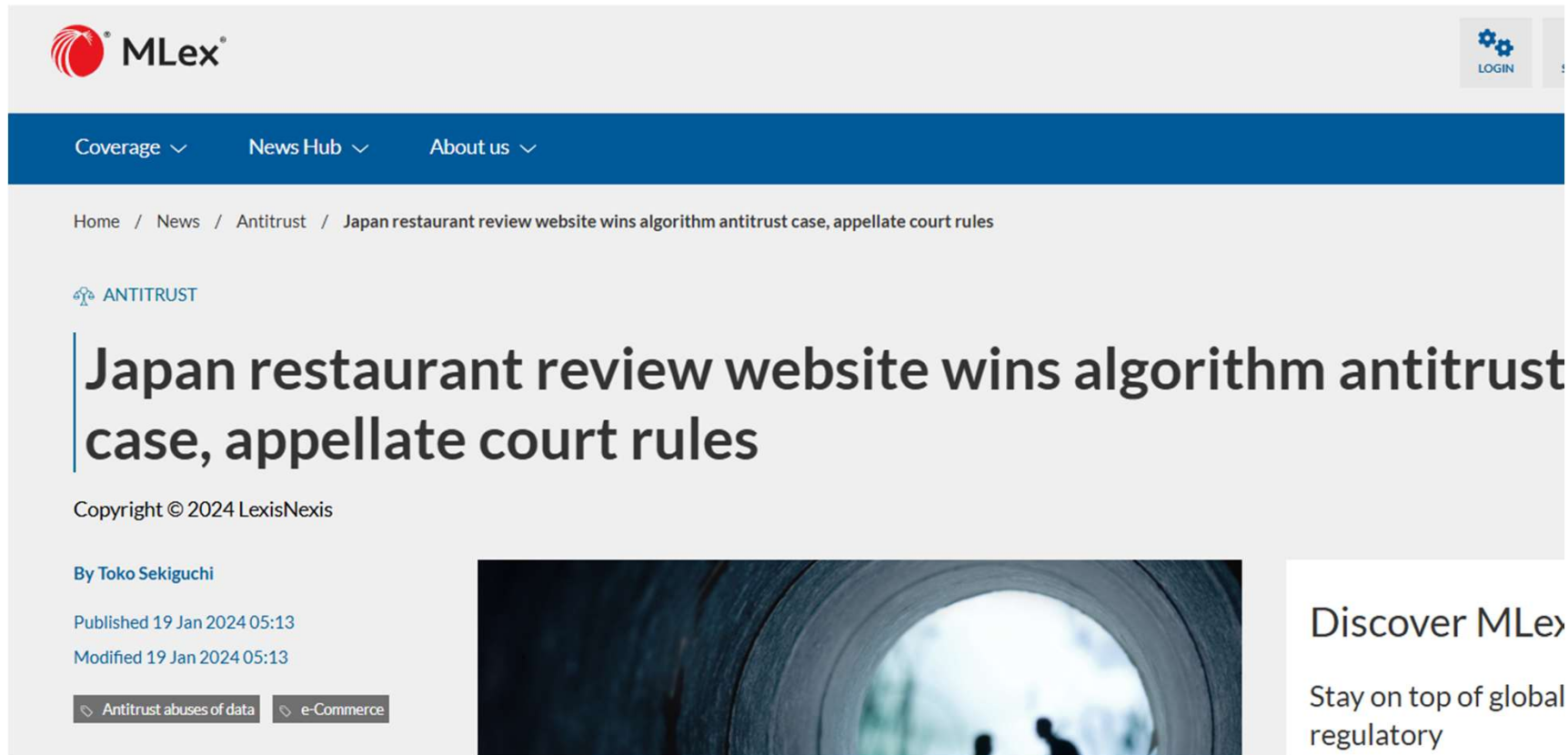
*b) significant imbalance in rights and obligations*

*In practice, furthermore ....*

# UTPs?

- Three types of UTPs:
  - A) lessening free competition;
  - B) unfair method of competition; or
  - C) undermining foundation of free competition (= ASBP).
- **Majorities of UTPs are Type A.**
- Type A necessitates anticompetitive effect.
  - Vertical restraints and exclusionary practice; and
  - Tendency to establish, maintain or enhance (minor) market power.

# Tabelog, Tokyo High Court, 19 January 2024



The screenshot shows the MLex website interface. At the top left is the MLex logo. To the right is a 'LOGIN' button with a gear icon. Below the logo is a navigation bar with 'Coverage', 'News Hub', and 'About us' dropdown menus. The breadcrumb trail reads 'Home / News / Antitrust / Japan restaurant review website wins algorithm antitrust case, appellate court rules'. A category tag 'ANTITRUST' is visible. The main headline is 'Japan restaurant review website wins algorithm antitrust case, appellate court rules'. Below the headline, it says 'Copyright © 2024 LexisNexis' and 'By Toko Sekiguchi'. Publication and modification dates are listed as 'Published 19 Jan 2024 05:13' and 'Modified 19 Jan 2024 05:13'. There are two tags: 'Antitrust abuses of data' and 'e-Commerce'. A large image of a tunnel entrance is partially visible. On the right, a sidebar contains the text 'Discover MLex' and 'Stay on top of global regulatory'.

M. Wakui (presentation materials) available at <https://researchmap.jp/mwakui/presentations/46456051>>

# Transparency Act

The Act on Improving Transparency and Fairness of Digital Platforms (TFDPA)



**BE TRANSPARENT**



**ENSURE MUTUAL  
UNDERSTANDING**

# The Act on Promotion of Competition for Specified Smartphone Software

Home > Japan Fair Trade Commission > Press Releases > Press Releases2024 > Cabinet Decision on the Bill for the Act on Promotion of Competition for Specified Smartphone Software

## Cabinet Decision on the Bill for the Act on Promotion of Competition for Specified Smartphone Software

April 26, 2024

Japan Fair Trade Commission

Smartphones have become pillars of social and economic lives since their rapid diffusion. Specific software – mobile operating systems (OS), application stores, browsers, and search engines – hereinafter referred to as “Specified Software” below, are especially important for the use of these tools. The Cabinet today approved of the bill for the Act on Promotion of Competition Related to Specified Smartphone Software, which aims to develop a competitive environment for these software, fostering innovation from various entities and offering consumers more options in services while also ensuring security.

### 1 Outline of the bill (See attachments for details)

#### (1) Designation of providers subject to regulations

The Japan Fair Trade Commission (JFTC) will designate software service providers that conduct business at a certain scale through a Cabinet Order for each type of Specified Software subject to the new regulations. Businesses that fall under Cabinet Order criteria will be referred to as “Designated Providers.”

#### (2) Prohibited actions and compliance mechanisms

The act will stipulate how Designated Providers are prohibited from engaging in certain practices (“Prohibited Actions”) and are required to take certain measures (“Compliance Measures”).

<https://www.jftc.go.jp/en/pressreleases/yearly-2024/April/240426.html>

# The Act on Promotion of Competition for Specified Smartphone Software



Google (android)



Apple (iOS)



# The Act on Promotion of Competition for Specified Smartphone Software



**Prohibitions: self-preferencing**



**Other obligations: data portability,  
disclosure (transparency) etc.**

M. Wakui, slides available at <<https://researchmap.jp/mwakui/presentations/46456045>>

**Enough?**