

Amazon Japan Raided By Antitrust Watchdog Over Pricing

By **Y. Peter Kang**

Law360, Los Angeles (August 8, 2016, 9:56 PM EDT) -- The Japanese affiliate of Amazon.com Inc. had its offices raided Monday by Japan's antitrust watchdog, which is investigating claims the online retailer forced companies to lower prices in order to undercut online rivals, according to news reports.

The Japan Fair Trade Commission is reportedly examining claims that Amazon Japan required third-party companies to set prices on its site lower than the prices listed on rival online retail companies' sites, according to a report by the Nikkei business publication, which cited unnamed sources close to the matter.

Representatives for both Amazon and the Japan Fair Trade Commission did not immediately respond to requests for comment late Monday.

Last year, European Union authorities opened a formal investigation into whether Amazon abused its dominant market position in the e-book business. Competition Commissioner Margrethe Vestager said at the time that the European Commission's investigation focuses on whether certain clauses included in the retailer's contracts with publishers violate the bloc's antitrust rules.

The Japanese agency's probe of Amazon Japan comes amid a recent report by an antitrust group recommending to Japanese antitrust regulators that their administrative surcharge system should base fines on an economic analysis of anti-competitive practices rather than sales volume.

The Global Antitrust Institute expressed concern on Saturday that Japan's proposed guidelines on the imposition of fines for anti-competitive behavior would undermine economic efficiency, and recommended that the punishments be reserved for cases in which there is a clear antitrust violation.

The guidelines proposed by the Japan Fair Trade Commission may create a framework that would deter pro-competitive behavior, the group — a part of the George Mason University School of Law — said in its comments. Disgorgement or fines should be based on economic analyses and should only be imposed when the harm caused by the alleged economic conduct can be measured and there are no alternative remedies, the GAI said.

"This method would require case-by-case analysis of the effect of the harm in question, and have the virtue of ensuring proportionality to the harm inflicted," the GAI said in the 15-page report. "The JFTC should maintain the requirement that these fines be based on identified restraining effects and the specific results restraining competition for each good or service."

The antitrust group also urged the Japan Fair Trade Commission to base its fines on economic harm caused in Japan, rather than on a global basis.

"In the absence of coordination between jurisdictions, administering surcharges based upon sales outside Japan invites conflict with other national competition agencies and may impose duplicative penalties, which increase the likelihood of overdeterrence," it said. "We recommend the JFTC develop clear guidelines for the exceptional circumstances in which it would seek surcharge penalties for sales outside of Japan."

The group issued a **similar recommendation** to China's antitrust agency in July.

--Additional reporting by Eric Kroh and Matthew Bultman. Editing by Catherine Sum.