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Intellectual Property and Competition Policy  
**The JFTC Decision in *Qualcomm***  
(Summary)

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The Japan Fair Trade Commission (JFTC) delivered its Decision on the *Qualcomm* case on March 13, 2019. The Decision revoked the JFTC's order in 2009 which concluded that certain conduct by Qualcomm violated the Japanese competition law, the Antimonopoly Act.

The JFTC was concerned that Qualcomm's No-assertion-of-patents (NAP) clauses might have stifled incentive to innovate by its Japanese licensees. In general, an NAP clause refers to a contractual restraint in which the licensor prohibits the licensee from enforcing licensee's patents against the licensor and other licensees.

The differences between the *Microsoft* Decision and the *Qualcomm* Decision will be examined. The JFTC successfully accused Microsoft in 2008 based on similar clauses.

According to the JFTC, the NAP clauses in the *Qualcomm* case were so limited that they did not cause a sufficient decrease in incentive to innovate by the Japanese licensees.

Microsoft proposed similar arguments in its proceedings more than ten years ago. The primary coverage of the patents in the *Microsoft* case was audio-visual technologies. The licensees were prohibited from enforcing their patents in relation to Windows products, but they were allowed to enforce them in relation to audio-visual home appliances without Windows, such as Blu-ray devices. The JFTC rejected Microsoft's arguments. The more rewards to patent holders, the more innovations potential patentees would generate: this was the theory supported by the JFTC in 2008.

In the *Qualcomm* Decision, even though licensees were prohibited from patent enforcement to some extent, the JFTC admitted that the licensees had enough incentive to innovate by earning money from other sources.

The *Qualcomm* Decision is not friendly to monopolists. By correcting its theory, which had been distorted since the *Microsoft* case, the JFTC acquired a theoretical basis to handle digital giants by outlawing too much reward to monopolists.