公正取引委員会
Japan Fair Trade Commission

JFTC's efforts for competition issues in labour markets

OECD Competition Committee
Roundtable on Competition Concerns in Labour Markets
June 5, 2019

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Topics:

1. Recent changes in Japanese labour market

2. Applicability of Japanese competition law (the AMA) to workers

3. Application of the AMA to each type of conduct in labour markets

4. JFTC's advocacy activities on labour markets and their results

1. Recent changes in Japanese labour market

1. Recent changes in Japanese labour market (1)

◆ **Background**

- ✓ The importance of external experts is increasing because of the development of ICT or open innovation

- ✓ The emergence of job search platforms

- ✓ Labour Shortage

  ✓ Diversification of employment contract forms

  ✓ Enhance competition in the human resource market

However,

    ✓ Workers have less access to information than contracting parties (employer) and have weaker negotiating power

    ✓ **Necessity to express view on the application of the AMA to the human resource market**

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1. Recent changes in Japanese labour market (2)

✓ The Report of "Study Group on Human Resource and Competition Policy" (February 2018)

- Clarified the assessment framework for anti-competitive practices in the labour market

- Based on survey and interviews with stakeholders (e.g. employers, freelancers…)

2. Applicability of the AMA to workers

◆ **Can the AMA apply to workers?**

- ✓ Employment contracts between entrepreneurs and their employees are out of the scope of the AMA
  - • Protected by labour legislations (e.g. labour standards law)

- ✓ What kind of contracts or trades are subject to the AMA?
  - • Agreements between entrepreneurs regarding their employees should be subject to the AMA in principle
  - • Trades between contracting parties and contracted workers, who work independently unlike "traditional" employees can be regulated under the AMA

3. Application of the AMA to each type of conduct in labour markets

◆ A. Concerted practices by multiple employers

✓ Agreements related to the wages or rewards to employees

➡️ There is no room for consideration

✓ Agreements related to transferring or switching jobs (so-called no-poach agreements)

✓ Establishing certain qualifications or standards for employees that supply certain goods and services

✓ Exchanging past information and objective information

➡️ Consideration of (1) **anti-competitive effects**/ (2) **pro-competitive effects**/ (3) **social or public purpose**/ (4) **reasonableness of means for achieving the purposes**

◆ B. Unilateral conduct by a single employer

✓ Consideration of (1) **reduction in free competition**/ (2) **unfair means of competition**/ (3) **abuse of superior bargaining position**

- Confidentiality obligation

- Non-compete obligation

- Exclusivity obligation

- Restriction on uses of output produced through service provision

- Offering inaccurate terms of trade

4. JFTC's advocacy activities on labour markets and their effects

- ✓ **32 informational meetings** targeting employers about the Report

- ✓ Raised employer awareness of competition compliance

- ✓ **Improvements by the employers**

  - Japan Rugby Football Union: abolished its "letter of permission" system

  - Japan Association of Music Enterprises: in the process of reviewing a transfer restriction clause in its model contract

  - Japan Boxing Commission/Japan Industrial Track & Field Association: revised or considering to revise their rules that can prevents athletes from transferring to another team

5. Summary

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✓ JFTC's basic approach to anti-competitive activities by employers have been clarified in response to the change in Japanese labour market

✓ JFTC's advocacy activities ("soft enforcement") resulted in voluntary compliance in various industries

Thank you for your attention.