

# **JFTC's efforts for competition issues in labour markets**

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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**

## 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**

## 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**



### 3. Application of the AMA to each type of conduct in labour markets (1)

#### ◆ 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**

### 3. Application of the AMA to each type of conduct in labour markets (2)

#### ◆ 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**

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

- ✓ **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.**

