

Competition Advocacy and Sector Regulators - Japan's Experience -



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Outline

- History of Competition Advocacy towards Sector Regulators in Japan
- Current Toolbox of Competition Advocacy towards Sector Regulators
- Competition Advocacy/Enforcement Cases towards Regulated Sectors

1. History of Competition Advocacy towards Sector Regulators in Japan

Dawn of Competition Policy

- **1947: Enactment of the Antimonopoly Act (AMA) and Establishment of the Japan Fair Trade Commission (JFTC)**
- **1950s – 1960s: “WINTER SEASON” of AMA**
 - Industrial policy was prioritized to competition policy.
 - Government regulatory agencies started to establish antitrust exemptions in their own laws to avoid intervention from the JFTC.
 - The Number of Antitrust Exempted Cartels: 1,079 (in 1966) at its peak

Abolishing Antitrust Exemptions and Government Regulations

➤ OECD Recommendation

- The OECD recommended in 1979 that the member countries should reform government regulations and antitrust exemptions.

➤ Efforts of the JFTC

- The JFTC studied regulated sectors and published a series of reports proposing that regulators should abolish antitrust exemptions as well as government regulations in regulated sectors .

Abolishing Antitrust Exemptions and Government Regulations –Further Developments

➤ The whole of government efforts

- Japanese government developed the “Program for Promoting Regulatory Reform” in 1995.

➤ Legislation to repeal antitrust exemptions

- Three package bills to repeal antitrust exemptions passed the Parliament in 1997, 1999 and 2000.
- In laws where exemptions remained, prior-consultation systems with the JFTC were introduced.

Outcome of the JFTC's Competition Advocacy efforts

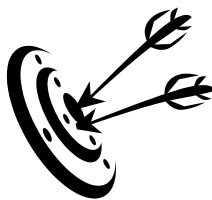
- Efforts by the JFTC continued using various channels : sector studies, experts councils, etc.
- Results:
 - The Number of Antitrust-Exempted Cartels in 1966:
1,079
 - The Number of Exemptions in 2014: 24

Some Comments

- Once antitrust exemptions and government regulations have been established, it takes a long time to abolish them.
- Constant study and advocacy are essential for reforms in a timely manner.
- In some sectors where antitrust exemptions cannot be repealed, introduction of prior consultation with competition authority is better than no reform.

2. Toolbox of Competition Advocacy towards Sector Regulators

Targets of Competition Advocacy related to the Regulatory and Legal Framework

- Target Area 
 - Antitrust Exempted Sectors
 - Repealing Statutory Antitrust Exemptions
 - Regulated Sectors
 - Promoting Pro-competitive Regulatory Reforms

Framework of Competition Advocacy towards Sector Regulators

- Policy Recommendation
 - Sector Study
 - Expert Council
- Coordination
 - Legislative Coordination
 - Administrative Coordination
- Cooperation
 - Sending Lecturers
 - Creating Joint Guidelines
 - Supports for Competition Assessments, etc

Policy Recommendations on Government Regulations

➤ Sector Study

- Sector study on Regulated/Antitrust-Exempted Industries

➤ Expert Council

- “Study Group on Regulation and Competition Policy”
 - Traditionally regulated/Antitrust-Exempted Industries (e.g. freight and shipping, aviation, electricity, gas and telecom, postal service)
 - Important areas for growth (e.g. energy and environment, childcare)

Coordination with Other Agencies

□ Legislative Coordination

- Conducted at the stage of planning and designing laws between the JFTC and other agencies.
- Usually based upon consultation from other agencies to the JFTC

□ Administrative Coordination

- Coordination between the JFTC and other agencies (both local and national level) to prevent introduction of administrative measures from bringing competitive problems on the AMA and the competition policy

Coordination with Other Agencies

-The Viewpoints of Coordination-

Viewpoints of Consideration

- Limitation on price or quantity
- Limitation on the number of entrepreneurs or entry
- Impediment of competitive conducts
- Least competition restrictive measures in light of its purpose
- Level playing field, etc.

Cooperation with Other Agencies

❑ Creating Joint Guidelines

- Guidelines for proper Electric Power Trade (in 1999, with METI)
- Guidelines for Proper Gas Trade (in 2000, with METI)
- Guidelines for Promotion of Competition in the Telecommunication Business Field (in 2001, with MIC)

❑ Sending Lecturers to Seminars for Antimonopoly Compliance

❑ Support for Implementation of Competition Assessment in the Regulatory Impact Assessment

- The JFTC prepared a Competition Assessment Checklist in cooperation with MIC, distributed it among government offices, and promoted and assisted the use of them.

Some Comments

- Advocacy at an Early Stage of Policy-making Process
 - More Substantial Influence on Policy-making
- How to Frame the Issue
 - “Competition Works for the Initial Aim of the Regulation.”
- Constant Follow-ups
 - In liberalized sectors, the dynamic nature of business environment entails constant follow-ups.

3. Competition Advocacy / Enforcement Cases on Regulated Sectors

Recent Policy Recommendation(1): Electricity

- The JFTC had made several policy recommendations on the electricity sector in 1997, 1999, 2001, 2002, 2006.
- Barriers to entry were abolished for high-voltage electricity users. The JFTC and the Ministry of Economy, Trade and Industry (METI) jointly published guidelines
 - The Guidelines illustrate possible unlawful conduct by incumbents, such as exclusive contract, contractual tying, etc.
- The Cabinet Decision (“Policy on Regulatory and Institutional Reform in the Energy Sector”) on April 3, 2012 instructed the JFTC to analyze issues of current state of competition in the electricity market.

Recent Policy Recommendation(1) : Electricity

- The JFTC published the report on September 21, 2012
- The JFTC's suggestions include:
 - Unbundling of the power generation and wholesale unit from the retail unit of the General Electricity Utilities.
 - Securing openness and neutrality of the transmission and distribution unit of the General Electricity Utilities.
 - Maintaining appropriate regulation on the transmission rate.
 - Securing the proper conditions of use of the facilities and services provided exclusively.
- The JFTC continues to enforce the Antimonopoly Act strictly against violations.
 - e.g. the discriminatory treatment by the power generation and wholesale unit to the competitors of its retail unit.
- Other suggestions

Recent Policy Recommendation (2): Childcare

□ Childcare sector

- ✓ One of “sectors which could become the driving force of growth (“Japan Revitalization Strategy” adopted by the Cabinet in June 2013)
- ✓ Short supply of childcare facilities lead to a huge issue that a large number of children are on a wait-list.

⇒ April 2013: Announcement of “Acceleration Plan for Reducing Wait-listed Children”

⇒ New Childcare system is planned to be effective in April 2015 (based on “Three Acts related to Children and Childrearing Support” enacted in August 2012)

Recent Policy Recommendation (2): Childcare

- ❑ The JFTC published the report on June 25, 2014
- ❑ Basic Viewpoints of the report :
 - The childcare sector, in its nature, has relatively higher affinity for competition policy than other social welfare services.
 - ✓ Provided, to ensure protection of children's health/safety, certain rules are required and competition among operators should be allowed to the extent that compliance with these rules can be maintained.
 - The JFTC's examined on whether or not the sector has an environment allowing:
 - (1) New entries by various operators
 - (2) Competition among operators on fair conditions
 - (3) Appropriate exercise of choice by users
 - (4) Efforts of innovation by operators

Recent Policy Recommendation (2): Childcare

□ Key points of the recommendation by the JFTC

(1) Encourage new entries by various operators

- ✓ Municipalities should adopt practices allowing entries
- ✓ Should not involve unfair practices unfavorable to operators of certain legal status.

(2) Ensure equal footing in subsidy and tax systems

- ✓ Subsidy systems should be fair regardless of legal status of the operator so that operators can provide services on fair competition
- ✓ Tax measures should be fully reviewed

(3) Enhance information disclosure and third-party evaluation

- ✓ Operators should make further efforts for disclosures of information to parents
- ✓ Third-party evaluation should be encouraged and its results should be made publicly available in a manner practical and easily understood

(4) Expand additional services

- ✓ Municipalities should ensure diversity of childcare services by allowing additional services and encouraging efforts for innovation.

Competition Advocacy and Enforcement

- Advocacy and Enforcement : may be two wheels of a car. Vigorous enforcement may also become a good advocacy.
- Recent Enforcement Cases in Regulated Sectors:
 - Cease and Desist Order against Yoshikawa Matsubushi Medical Association (February 27, 2014)
 - Cease and Desist Orders and Surcharge Payment Orders against International Ocean Shipping Companies (March 18, 2014)
 - ✓ The JFTC also made a request to the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) to take necessary measures on cartels exempted from AMA application (exempted cartels) related to international ocean shipping services, including abolition of the exempted cartels.

- Relationship between the competition authority and regulatory authority: What advocacy power does the competition authority has?
- What are the tools for advocacy? How effective are they?
- What are the target sector(s) for advocacy? How do you decide the focus and how to choose the tool(s) for advocacy?
- What are the challenges for advocacy to regulators? (in particular, for younger agencies)
- What are the relationship between advocacy and enforcement? Should they be linked?
- How to assess the effectiveness of advocacy in the regulated sectors?

Thank you very much for your attention !



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JFTC official character

<http://www.jftc.go.jp/en/index.html>

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