

Unclassified

English - Or. English

13 November 2023

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Working Party No. 2 on Competition and Regulation**

**Competition and Professional Sports – Note by Japan**

4 December 2023

This document reproduces a written contribution from Japan submitted for Item 4 of the 76th meeting of Working Party 2 on 4 December 2023.

More documents related to this discussion can be found at  
[www.oecd.org/daf/competition/competition-and-professional-sports.htm](http://www.oecd.org/daf/competition/competition-and-professional-sports.htm).

Federica MAIORANO  
Federica.Maiorano@oecd.org

**JT03531583**

## *Japan*

### 1. Introduction

1. In June 2019, the Japan Fair Trade Commission (JFTC) announced its view under the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947; hereinafter referred to as the “Antimonopoly Act”) with respect to the transfer restriction rules in sports business fields (the "Guidelines concerning Transfer Restriction Rules in the Sports Business Fields under the Antimonopoly Act," hereinafter referred to as the "Guidelines"). The Guidelines were built on the report ("Report of the Study Group on Human Resource and Competition Policy") published in February of the previous year (2018) by the Competition Policy Research Center (CPRC<sup>1</sup>) of the JFTC. When publishing the Guidelines, the JFTC also called on relevant entities including sports governing bodies to voluntarily review their transfer restriction rules.

2. After the publication of the Guidelines, the JFTC conducted investigation on a suspected violation of the Antimonopoly Act with respect to a transfer restriction rule of the professional baseball governing body. Also, among the consultation cases<sup>2</sup>, there is a case on a sports field.

3. This note describes the recent developments in Japan regarding competition and sports as described above.

### 2. Report of the Study Group on Human Resource and Competition Policy<sup>3</sup>

4. The report was published in 2018 as the result of a study conducted by a study group, which was established by the CPRC and consisted of experts including academics, with a background of diversification of individual working styles and the threat of a serious labor shortage due to the decline in the working population in Japan.

5. In recent years, competition for human resources is expected to become more active due to the diversification of individual working styles and the threat of a serious shortage of labor due to the decline in the working population in Japan, but at the same time, conducts may be taken to restrict such active competition. Under these circumstances, the application of the Antimonopoly Act to competition for human resources is highly significant, and it is necessary to fully organize views under the Antimonopoly Act regarding competition for human resources. In addition, issues on competition for human resources in recent years are not limited to conducts by multiple firms jointly restricting competition, as was the case in the past. The study in the study group was based on this recognition.

6. The report described the results of the study on application of the Antimonopoly Act to competition for human resources, and presents views based on the Antimonopoly

---

<sup>1</sup> It was established in 2003 within the JFTC for the purpose, among others, of building a functional and sustainable cooperative platform between intellectual resources of outside researchers and practitioners and staff members of the JFTC in order to reinforce theoretical foundation on which we operate Antitrust Act, plan and propose.

<sup>2</sup> The JFTC gives consultations to individual enterprises and trade associations.

<sup>3</sup> [https://www.jftc.go.jp/en/cprc/reports/studygroups/index\\_files/180215.pdf](https://www.jftc.go.jp/en/cprc/reports/studygroups/index_files/180215.pdf)

Act on the conducts of enterprises that receive services from individuals, including athletes<sup>4</sup>.

7. The report presents the views with regard to sports mainly as follows.

## 2.1. Concerted Actions

8. Terms of trade with service providers who are individuals ought to be determined in the market for human resources. It is illegal in principle for multiple enterprises to decide jointly and artificially the terms of trade because it is intended to restrict competition and has a very severe negative impact on competition.

9. However, depending on the type of conduct, a concerted action may have effects other than restricting competition, and its illegality is judged through a consideration of multiple factors including whether the concerted action has pro-competitive effects as well as social/public purposes, and whether the substance and implementation method of the concerted action are reasonable and proportionate for achieving its purposes. Such conducts are not immediately considered legal when pro-competitive effects are achieved by the action. The legality/illegality is determined based on a comprehensive consideration of factors including the degree of pro-competitive effects and whether the effects outweigh the anti-competitive effects in each market for human resources and of goods or services.

10. The report presented specific views including the followings regarding concerted actions.

- In principle, jointly fixing the price paid to such an individual violates the Antimonopoly Act.
- Jointly agreeing to restrict such an individual from transferring or switching jobs may violate the Antimonopoly Act.
- Even if agreements to put a restriction on transferring or switching jobs are aimed at recovering the necessary costs of training the individual, the illegality is not denied because there are usually alternative means other than restricting transferring or switching jobs.
- If agreements to put a restriction on transfer of players are aimed at maintaining and improving the quality of services provided to consumers, e.g. through making the professional league more appealing, their illegality is determined, taking into account the pro-competitive effects of such agreements.

## 2.2. Unilateral Conducts

11. Unilateral conducts by enterprises that receive services from individuals could have effects on competition in markets for human resources and in markets of goods or services.

12. The report presented specific views including the followings regarding unilateral conducts.

- Imposing obligations to deal with the enterprise itself only (“exclusive obligation”) on an individual may have pro-competitive effects, if it is performed for the purpose of having the individual devote him- or herself to the deal exclusively, or of

---

<sup>4</sup> The report was compiled by the "Study Group on Human Resources and Competition Policy" established within the CPRC, consisting of academics and other experts, and does not represent the views of the JFTC.

recovering the costs of training the individual. Such conducts would not directly pose any problems under the Antimonopoly Act when they are done to the extent reasonably necessary to achieve the purposes above. However, the exclusive obligation could cause a problem under the Antimonopoly Act, in cases, for example, where the exclusive obligation exceeds the scope necessary for the purpose and may make it difficult for other enterprises to supply goods or services by being prevented from dealing with individual providers necessary for supplying goods or services in the markets.

- It could cause a problem under the Antimonopoly Act that enterprises have individuals exclusively license to use their portrait without reasonable grounds, when such a conduct is likely to make it difficult for other enterprises to provide goods and services.
- It could cause a problem under the Antimonopoly Act if individuals assume obligations or restrictions after enterprises give the individuals a false explanation or insufficient information on the contents of the obligations or restrictions.
- It could constitute a violation of the Antimonopoly Act as an abuse of a superior bargaining position that an enterprise in a superior bargaining position to individuals imposes obligations or restrictions on the individuals if such a conduct disadvantages the individuals unjustly.

### 3. Guidelines<sup>5</sup>

13. After the publication of the report, the JFTC conducted advocacy activities regarding the possible application of the Antimonopoly Act to competition for human resources, and ascertained the actual state including the trade practices. In the course of these efforts, the JFTC found that sports governing bodies had established rules restricting transfer of players in the sports business fields. Based on this finding, the JFTC conducted interviews with sports governing bodies to ascertain the actual state of the transfer restriction rules, and formulated and published the Guidelines in June 2018.

14. Firstly, the Guidelines state that the Antimonopoly Act seeks to secure consumer interests and revitalize the economy by maintaining and promoting fair and free competition, and that this is also true regarding the sports business fields, and declared that properly ensuring free activities of sports teams for acquiring players contribute to interests of not only sports fans but also consumers in general.

15. In addition, the Guidelines indicate:

- if transfer restriction rules are established, competition among teams for acquiring players may be halted or suppressed,
- as a result, competition in business fields of sports activities using players also be halted or suppressed, and possible new entrants in the field could not acquire the necessary players and be prevented from entering the market.

16. On the other hand, the Guidelines also indicate that transfer restriction rules may have pro-competitive effects in the following aspects.

---

<sup>5</sup> [https://www.jftc.go.jp/houdou/pressrelease/2019/jun/190617\\_files/190617.pdf](https://www.jftc.go.jp/houdou/pressrelease/2019/jun/190617_files/190617.pdf) (Japanese)

- increasing incentives to train players by securing the possibility of recovering the necessary costs of training
- maintaining and improving the appeal of the sports by balancing team's strength or capability

17. Considering the above, the Guidelines state that the necessity and reasonableness of transfer restriction rules are decided based on whether the purpose to be achieved by the rules is reasonable from the viewpoint of promoting competition, and on whether the rules are proportionate as a means to achieve the purpose. There are a wide variety of transfer restriction rules in sports business fields, and whether or not they cause a problem under the Antimonopoly Act is determined on a case-by-case basis in line with the content and actual state of a specific rule.

18. However, the Guidelines also state that it is hard to say that, at least, rules indefinitely limiting or restricting transfers (e.g., those that prohibit transfers without exception, those that do not permit a transfer unless the current team having the player allows it, and those that allow transfers themselves but do not permit participation at all in sports leagues or competitions held by sports governing bodies) are considered enough to be reasonable and necessary.

19. In conjunction with the publication of the Guidelines, the JFTC recommended each sports governing body to voluntarily review its transfer restriction rule. According to news reports, a number of sports governing bodies eliminated or eased their transfer restrictions afterwards<sup>6</sup>.

## 4. Individual Cases concerning the Antimonopoly Act and Sports

### 4.1. Transfer Restrictions

20. The JFTC, which has been committed to ascertaining the actual state of trade since the publication of the report mentioned in 2. above, investigated a suspected conduct that the Nippon Professional Baseball organization (NPB) have its member teams refuse to contract with a certain baseball player, and announced the results of its investigation in November 2020<sup>7</sup>.

21. There are twelve professional baseball teams in Japan. The NPB is a trade association whose members include the twelve teams, and it deliberates on matters related to the operation of official professional baseball games.

22. The twelve teams annually hold a meeting called the "Draft Conference" where each team nominates players it wishes to contract with and obtains the rights of contract negotiations with the players. However, in 2008, a player who was prominent at the time requested the twelve teams not to nominate him in the Draft Conference because he wanted to contract directly with a team in the United States. The NPB recognized that such incidents, if occurred continuously in the future, may lower the appeal of Japanese professional baseball, and the NPB made an arrangement in 2008. The arrangement was that, if a player refuses to be nominated by the twelve teams before the Draft Conference,

---

<sup>6</sup> For example, see <https://www.tokyo-np.co.jp/article/2804> (Japanese) for rugby, volleyball, badminton and handball, and <https://www.nikkei.com/article/DGXMZO51886060X01C19A1US0000/> (Japanese) for boxing.

<sup>7</sup> <https://www.jftc.go.jp/houdou/pressrelease/2020/nov/201105.html> (Japanese)

or refuses to join a team which had the right of negotiation at the Draft Conference, and contract with a foreign team, the twelve teams will not nominate the player in the Draft Conference for three years when the player is a high school graduate, and for two years when the player is a college graduate or belongs to a company team, after the contract with the foreign team ends. Since then, this arrangement had been maintained by the NPB as a valid one. On the other hand, there had been no cases in which the arrangement was actually applied and the twelve teams refused to contract with a player.

23. The Antimonopoly Act prohibits concerted refusal to deal as one of the unfair trade practices, and also prohibits trade associations from having enterprises engage in an unfair trade practice. In general, when a trade association has its members jointly refuse to receive services from a service provider, making it difficult for the service provider to find an equivalent business partner to the members, such a conduct may have an effect of excluding the service provider from the market of the provision of such services, thereby tending to impede fair competition in the market.

24. From the viewpoint above, the JFTC had been investigating the case, and the NPB voluntarily abolished the arrangement, publicized the abolishment and informing related organizations of the abolishment. The NPB reported to the JFTC the measures they took. At the end, the JFTC decided that these measures dispelled the suspicion of violation of the Antimonopoly Act, and closed the investigation.

## 4.2. Interference with a Competitor's Transaction

25. The JFTC has long given consultations to enterprises and trade associations on whether a specific conduct they plan to take is problematic in light of the provisions of the Antimonopoly Act and the relevant rules. These individual consultation cases included a case related to the sports business fields in 2011. In this case, the JFTC responded that a restriction against professional players by an enterprise that organizes athletic events could cause a problem under the Antimonopoly Act<sup>8</sup>. The case summary is as follows.

### 4.2.1. Consultation

26. Company X was an enterprise that organizes competitions, such as tournaments, in which professional players of Sports A participated in. At the time of the consultation, there were only three companies, including Company X, that held competitions for professional players of sports A. The three companies held competitions for participants who have passed their professional test and registered as professional players of Sports A (hereinafter referred to as "registered professional players"). Compared to the other two companies, Company X had a larger number of registered professional players, many of whom were popular and competent. Company X did not train its own registered professional players and had no employment relationship with them.

27. Company X was considering imposing restrictions of participating in any competition held by competitors on its registered professional players, because it had obtained information that new entrants other than the three companies would hold new competitions involving professional players of Sports A.

---

<sup>8</sup> <https://www.jftc.go.jp/dk/soudanjirei/h24/h23nendomokuji/h23nendo03.html> (Japanese). The JFTC also provides individual prior consultation for specific conducts that enterprises and trade associations plan to take, and compiles a summary of major consultation cases that may be considered helpful to non-consultants and published them annually as the "Consultation Casebook. In principle, the names of consultants are not disclosed in the Consultation Casebook.

28. Company X stated that the purpose of the above restrictions was to avoid a situation in which the company's registered professional players participated in competitions held by competitors, and spectators would be disappointed because, at Company X's competitions, they became unable to watch a professional player they are interested in.

#### **4.2.2. JFTC's Response**

29. The JFTC responded as follows.

*Company X's restrictions forbidding its registered professional players to participate in all competitions held by competitors may violate the Antimonopoly Act as an interference with a competitor's transaction, which is one of the Unfair Trade Practices stipulated in the "Designation of Unfair Trade Practices"<sup>9</sup>, for the following reasons.*

*a) The reasons for the restrictions claimed by Company X are not reasonable, and the suspicion that the restrictions have an unfair purpose such as the exclusion of new entrants cannot be dispelled.*

*b) Unlike the case where a company restrict entry of professional players trained by the company itself into competitions held by competitors, it is difficult to find the restriction in this case reasonable.*

*c) In order for new entrants to have successful competitions, it is considered essential to have popular and competent professional players as participants, and imposing the restrictions by Company X in this consultation case may make it difficult for new entrants to conduct business activities.*

---

<sup>9</sup> [https://www.jftc.go.jp/en/legislation\\_gls/unfairtradepractices.html](https://www.jftc.go.jp/en/legislation_gls/unfairtradepractices.html)