

*The  
Antimonopoly  
Laws of  
Japan*

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by **HIROSHI IYORI**  
and **AKINORI UESUGI**

*with a Foreword by*

**MICHIKO ARIGA**  
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## *Editor's Note*

IT IS COURAGEOUS for two authors whose native language is Japanese to undertake an enterprise as difficult as writing a book in English on their nation's antitrust laws.

It is also a challenge for an American lawyer in editing the book to attempt to accurately capture the essence of the legal and economic analysis from the authors' English translation of their work, without losing the subtle nuances of spirit, thought and expression that are so much a part of Japan's customs, mores and law.

This book is intended to provide some insight into the history, development and structure of Japan's antimonopoly jurisprudence as it is reflected today. I join the authors in the hope that we have at least partially succeeded in conveying both the substance and the shadow.

JAMES M. CLABAULT

Milwaukee, Wisconsin  
September, 1983

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## *Foreword*

IT IS INTERESTING to note that most of the countries believing in free competition have public control of restrictive business practices. However, when one looks into the different legislations, they differ from each other with respect to: (a) the type of restrictive business practices which are subject to control, (b) the conceptual basis of control of restrictive business practices, and (c) the procedure of control. A mere superficial knowledge of the laws of an individual country in this field will not help those who wish to comprehend and appreciate the actual antitrust policy of any other country. This is because, as Professor Corwin D. Edwards had incisely noted after his broad survey of the antitrust policies and laws of various countries, the antitrust policy development of one country has its own particular social, economic, political and cultural background. Therefore, one must realize that without a deep appreciation of the people and the country itself, it is difficult to understand the policy and law of restrictive business practices of that country. One cannot simply apply his own standard of evaluation derived from the background and philosophy of his own country.

With regard to Japan, whose remarkable economic growth after World War II is like a miracle, a description of its background, tracing it back more than one hundred years to when Japan opened its eyes and then its doors to the world, is especially necessary. Although the vital aim at that time to modernize and industrialize the country changed the long-lived custom, tradition and people's way of thinking a great deal under the influence of the western world, many traits have survived that characterize the present Japanese nation.

The Meiji Government was established more than one hundred and ten years ago, after three hundred years of the Tokugawa Shogunate rule. The transition from the feudal Tokugawa era to the Meiji era was a revolutionary phenomenon. However, the sublime ideas declared by Emperor Meiji in the Five Point Imperial Covenant which seemed to perfectly guarantee individual freedom in business pursuit could not be realized overnight. The government took the sole responsibility to buildup the country so that it would become an international member and thus led and guided the people by giving various kinds of assistance and encouragement. Compulsory primary education, undertaken as one of the major policies of the Meiji Government, gave strong impetus to the industrialization of the country; but it must be borne in mind that it was against the backdrop of the family system strongly tainted with feudalistic concepts. Therefore, although the people had vitality and worked diligently, there was a long period before they fully awoke to the responsibilities of freedom of enterprise, and the development of democracy made slow progress in the Meiji era.

Competition policy, however, was neither appreciated by the government nor by the people at large. Once a cartel was formed in a certain business sector as a device to cope with a difficult economic situation, under the above-mentioned background it was positively backed by the government. Several merchants or money-lenders who survived from the Tokugawa era became stronger and bigger in the Meiji period and were extolled as business champions. They developed and expanded into various sectors of industries, enjoying heavy government protection and aid, firmly keeping at the same time the feudalistic family system in which the head of the family controlled the whole business. Thus, the enterprise structure of so-called Zaibatsu combines was built up. Several Zaibatsu combines in the shape of a pyramid, controlling almost every sector of industry, had, naturally, a close connection with the government. In the industrialization of Japan from the Meiji era to the end of World War II, it cannot be denied that the dynamic activities of Zaibatsu combines played an important role. However, the concept of freedom of competition had almost no chance to emerge in such an atmosphere.

The legal concept of freedom of contract did not include freedom of competition in business. Restrictive business practices were not conceived as unfair. Monopolization and cartelization were

not considered as being against the public interest, because they were created by contract or agreement accepted by all parties. Unfairness from the view-point of equality or disparity did not bother the policy maker at the Government or the Diet.

Japan's concept of jurisprudence had been strongly influenced before World War II by that of the European continent, particularly Germany. However, the Antimonopoly Act of Japan was modeled after the U.S. antitrust laws, which belongs to Anglo-American jurisprudence developed from common law. Therefore, because of the mixture of the above two jurisprudences, it was difficult for the Japanese to reconcile the common law background with the civil law concept of Japan. The terms in the Act such as "public interest," "substantial," "competition," for example, were brand new legal terms which cannot be found in any Japanese legislation before World War II.

Thus, the antitrust policy based on freedom of competition introduced into Japan after World War II was unique to the Japanese. Although Japan drastically threw away every taint of feudalism including the family system, it was still something quite foreign to the Japanese that free and fair competition was a requisite to economic reform as part of the political democracy toward which Japan decided to turn. The very stringent Antimonopoly Act first enacted in Japan further antagonized many leading businessmen who took this Act, which was foreign, as a strong measure to suppress the economy of Japan so that it could not recover and grow. There was a wide gap between what the Act aimed to do and the war-devastated, miserable economic situation existing after the War. It is worthy of note, however, that certain enlightened people including many scholars did support the antitrust policy and philosophy, and characterized this Act as "the democratic economic charter of Japan."

Uniqueness is sometimes the same as unfamiliarity. In this sense, it was thoughtful of the legislature that for the enforcement of the Act, it included in the Act provisions for the establishment of a commission consisting of five members completely independent from any government agency. A commission which is vested with government administrative enforcement power is unique to the Japanese government system.

The antimonopoly laws of Japan may appear strange to foreigners, especially to American lawyers, as they include many complex exemption laws, particularly those concerning cartels. Inclusion of many exemption laws was partly due to the prohibition type of legislation of the Act.

Another characteristic of the Act is the system of pre-notification in which Japan preceded the United States. Such a system was recommended in the United States around 1940 for its own antitrust legislation, but was not adopted until the Hart-Scott-Rodino Antitrust Improvements Act of 1976. Pre-notification or post-notification of various matters including mergers, international contracts, trade associations, etc., was significantly pertinent for the Japanese, who were not yet fully acquainted with or oriented to the antimonopoly policy.

Major amendments were made to the Act twice during the first ten years after its enactment, in order to make the law more adaptable to the Japanese economic condition, but retaining the fundamental concept of competition. Just as it took a long time for the Sherman Act to be actively enforced in the United States, so it was in Japan with the development of our enforcement program.

The Fair Trade Commission celebrated its twentieth anniversary in July 1967 and reached its maturity. The Act's policy has finally taken root and is growing forcefully. During the ten years following the 1953 amendments to the Act, the Japanese economy achieved a remarkable growth, experiencing several booms despite a few setbacks. It has opened its market to international competition for commodities and has liberalized capital investments. Today the people are attributing this success to the system of free competition which was nurtured by the antimonopoly policy. This evaluation is significant, all the more for Japanese enterprises which do business internationally in free and fair competition with enterprises of countries throughout the world. Invisible barriers to trade likely to be built or already built up internationally by various restrictive business practices have to be prevented or broken down, so that enterprises of any country may have access to any market or resources for the total economic welfare of the world—thus leading eventually to world peace.

As business has come to be conducted internationally, it is very important to understand the antitrust legislation of other countries. In this connection, I am sure this book in its revised edition will help

foreigners to understand what kind of antitrust laws Japan has developed.

Mr. Hiroshi Iyori, the co-author of this book, is Director General of the Investigation Bureau of the Japanese Fair Trade Commission. His co-author, Akinori Uesugi, is one of the dedicated men working for the antimonopoly policy and its enforcement in Japan. I consider it an honor to have this opportunity to contribute this foreword to this second edition and hope that this book, dealing with important points of the Act, will give the American readers a helpful guide to understanding our antitrust policy and anti-monopoly laws.

MICHIKO ARIGA  
*Former Commissioner of the  
Fair Trade Commission*

Tokyo, Japan



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## *Preface*

SINCE THE END of World War II, the Japanese economy has attained incomparable economic development as has been recognized throughout the world. Various reasons for such a remarkable achievement have been pointed out, but doubtless, the vigorous and incessant competition among Japanese firms themselves was one of the major factors for such performance. In each of the key industries such as iron and steel, shipbuilding, petro-chemicals, machinery, automobiles and electronics, a large number of firms has been competing intensively with each other. This has resulted in lower prices, greater technological innovation and maximum rationalization of their production facilities and capabilities.

Such competition is, in a sense, due to the competitive nature of Japan's people and its entrepreneurs. Although this competitive nature could be found in Japan in the pre-war period, the cartels formed by the effective control of the Zaibatsu families had suppressed the emergence of Japan's competitive characteristics, and the restrictive policies of the government had also contributed to limitations on competition.

Economic democratization measures after the War eliminated anti-competitive schemes in the economy, and pro-competition measures were adopted. Reformation of the landowner-tenant relationship through land reform measures, emergence of the labor union movement, dissolution of the Zaibatsu and elimination of economic concentration, all brought about fairer distribution of income and properties. This economic democratization policy, which abolished wartime economic control as early and as ideally as possi-

ble, created for the first time a truly competitive environment in the post-war Japanese economy.

Such characteristics as diligence, adaptability and skillfulness based on good education and training could only be fully developed in the free-competition atmosphere, and this could be observed not only in its application to management, but also to labor. Equality or smaller differences in terms of education and income were an important factor in achieving mutual cooperation within various organizations as well as the nation as a whole, and became an important factor in promoting competition among firms.

Before World War II, Japan had no policy to promote competition and indeed had maintained a rather restrictive policy. After the War, antimonopoly policy was introduced as a part of the economic democratization measures and the Antimonopoly Act was enacted for this purpose. Although it has encountered several hardships since its enactment, the Antimonopoly Act has played an essential role in maintaining and encouraging the competitive environment in Japan, and has made it possible for the Japan's people and its entrepreneurs to reveal the competitive nature which is the leading factor of Japanese economic success.

Many economists agree that antimonopoly policy made great contributions toward the post-war development of the Japanese economy. Moreover, antimonopoly policy now enjoys wide public support, which was exemplified by the 1977 amendment to strengthen the Antimonopoly Act, which was passed unanimously by the Commerce and Industry Committee of both Houses of the Diet. Today, consumers, industrialists and government all accept the necessity of antimonopoly policy for maintaining the free market system in Japan.

This book tries to give the reader an outline of Japanese policy development relating to competition and to explain the development of the antimonopoly laws as they have been amended and enforced in Japan.

Antimonopoly policy in Japan is not as well-known abroad as "industrial policy," which is administered by the Ministry of International Trade and Industry. I am sorry to say, it seems true that Japan is looked upon as a country with little appreciation for a competition policy. However, for example, market opening measures ("Additional measures to open up the Japanese Market" adapted by the Ministerial Conference for Economic Measures,

dated May 28, 1982) clearly recognize an important role of the competition policy in providing foreign products a fair and equitable opportunity in the Japanese market. Antimonopoly Act, enforced forcefully, will provide a better chance for success in Japan for foreign products and services, and therefore, should be fully understood and watched carefully by those who are interested in the Japanese Market.

The first edition, published in 1969, was written by H. Iyori alone, but the second edition is published under the co-authorship of H. Iyori and A. Uesugi.

The authors wish to express their deepest gratitude to Mrs. Michiko Ariga, former Commissioner of the Fair Trade Commission, and to the late Mr. Yoshinobu Kagawa, an American attorney-at-law. Both kindly and patiently read through the manuscript and provided valuable suggestions on the contents as well as English expressions in the first edition.

Mrs. Ariga's splendid foreword printed in the first edition has been revised for this edition because the authors cannot imagine any better introduction to this book.

The authors also wish to reiterate their thanks to the late Professor Corwin D. Edwards for his help in the publication of the first edition, and to Mr. James M. Clabault, Editor-in-Chief of the Antitrust Bulletin, who edited this second edition for American publication.

The authors are very much indebted to Mr. Kazuyuki Funahashi of the FTC Staff Office for his marvelous work preparing various tables for the second edition.

It would be delightful for the authors if this book offers some help for a better understanding of the antimonopoly policy in Japan, which has recently started to attract much attention in the United States.

Tokyo, Japan  
September, 1983

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FOREWORD by *Mrs. Michiko Ariga*

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