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INTERNATIONAL PLAYER TRADES AND JAPAN'S ANTI-MONOPOLY LAW: A LOOK AT THE CONTINUED VIABILITY OF THE UNITED STATES-JAPAN PLAYER CONTRACT AGREEMENT

By Geoffrey R. Smull¹

Currently, the United States-Japan Player Contract Agreement (hereinafter the "Posting System Agreement") regulates the trade of non-free agent players between Major League Baseball (hereinafter "MLB") and Japan's Nippon Professional Baseball (hereinafter "NPB")². At present, the Posting System Agreement is in effect on a year-to-year basis terminable at the option of either the MLB Commissioner or the NPB Commissioner, provided notice to terminate the agreement is given 180 days prior to December 15th of any given year.³ Short of playing nine full seasons for a NPB team, or securing an outright release, the Posting System Agreement is the only accepted method for a Japanese Professional Baseball Player to join a MLB team.⁴ However, recent changes in NPB's relationship with the Japan Professional Baseball Players Association, as well as recent changes to Japan's Anti-Monopoly Law, and structural weaknesses within the Posting System Agreement, have combined to create a situation ripe for legal challenges to the Posting System Agreement in Japan. This article will analyze the Posting System Agreement to determine areas of legal liability in Japan for MLB and NPB under the current arrangement.



Members of the Japanese Olympic baseball team celebrate a two run homer by Nobuhiko Matsunaka (3) in the seventh inning of their semifinal game against the USA.

The Posting System Agreement

Reasons for Formation

Before the Posting System Agreement came into existence, baseball relations between Nippon Professional Baseball and Major League Baseball were governed by a 1967 Working Agreement, which obligated NPB and MLB to respect each other's baseball contracts and conventions.⁵ NPB and MLB executed the 1967 Working Agreement to avoid a repeat of prior disputes between them,⁶ yet, the 1967 Working Agreement was flawed from its inception because NPB failed to "specify worldwide rights in regard to the ownership of its players."⁷ This omission stemmed from the fact that the Japan Uniform Players Contract was derived from a translation of a 1930's minor league contract in the United States.⁸ As a result of this omission, several disputes and misunderstandings arose between MLB and NPB.

Against this backdrop MLB and NPB entered into the Posting System Agreement in 1998, which established a bidding procedure to regulate trades of non-free agent Japanese players to the Major Leagues. It is known as the Posting System because the bidding process is initiated when a NPB team, via the NPB and MLB Commissioners, "posts" the availability of a non-free agent player.⁹ The bidding procedure allows MLB teams to obtain exclusive negotiating rights with non-free

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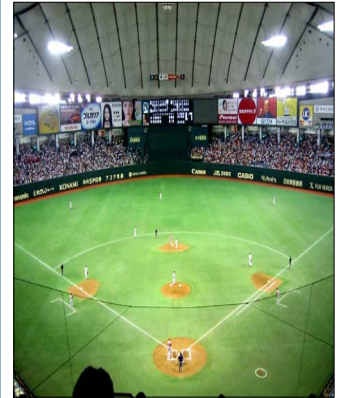


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agent players in exchange for cash bids. This bidding procedure is intended to serve multiple goals. First, it is designed to provide Major League teams with better access to Japanese Players by providing an alternative to team-to-team working agreements. If exclusive working agreements between MLB and NPB teams were the sole means for Major League teams to acquire Japanese Players, then roughly 19 to 18 Major League teams would be unable to compete for Japanese Players. This is because there are 30 Major League teams and currently 12 NPB teams.¹⁰ To avoid this problem, the Posting System Agreement restricts the scope of team-to-team working agreements, and accords the MLB and NPB Commissioners the authority to modify the terms of working agreements.¹¹ Second, the Posting System is intended to provide NPB teams with secure control over the mobility of non-free agent players and thereby prevent the Major Leagues from raiding NPB teams for their best players.¹² Third, the Posting System Agreement is intended to improve communication between MLB and NPB and avoid future disputes caused by unilateral action through stricter reporting requirements.¹³

Recent Changes in Japanese Professional Baseball

There is presently considerable frustration among Japanese players over the posting system and heavy-handed tactics by NPB team owners. The Japan Professional Baseball Players Association (hereinafter "JPBA") has stated that the Posting System treats Japanese players like racehorses at an auction, even claiming that since posted players have no control over which team they will be assigned to negotiate with, the situation is analogous to "human trafficking."¹⁴ Chief among the players' complaints is the fact that the bidding procedure fails to take into account players' salaries.¹⁵ The JPBPA argues that since the posting system forces the posted player to negotiate with the highest bidder, the Japanese player is placed in a weak bargaining position. Essentially the posted player can accept the Major League team's offer, or decline and hope to be posted in the future; he cannot negotiate with another bidder.¹⁶ Until recently, the Japan Professional Baseball Players Association has taken little action to protect the interests of its members.¹⁷ However, recent plans to merge the Pacific League's Kintetsu Buffaloes and Orix Blue Wave have forced the JPBPA to take action.¹⁸ On September 18 and 19th of 2004, the JPBPA went on strike for the first time in the 70 year history of professional baseball in Japan. Japanese players opposed the merger of the Kintetsu and Orix teams¹⁹ because they believed it would result in the loss of hundreds of jobs for players and team personnel.²⁰ It was also widely believed in Japan that the Kintetsu-Orix merger would trigger additional mergers as the team owners in Japan's less profitable Pacific league favor creation of a single league.²¹ The players went on strike after team owners balked at player demands to either freeze the merger between Kintetsu and Orix, or in the alternative, to proceed with the merger and allow a new club to enter the Pacific League for the 2005 season.²² The strike is estimated to have caused 1.9 billion yen, or approximately \$22.4 million, in economic losses.²³ A second strike was averted when the NPB team owners softened their stance and signed an agreement with the players association. As part of the agreement, the JPBA withdrew its opposition and the Kintetsu-Orix merger proceeded but the NPB agreed to screen applications of companies that want to become team owners for the 2005 season.²⁴ In addition, the owners also agreed to abolish the current system of charging billions of yen in "entry" fees to would-be



Inside the Tokyo Dome watching the Tokyo Giants at play.

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owners, and existing teams were required to provide future teams with players to make the new franchise competitive.²⁵ In the aftermath, the NPB owners allowed Rakuten, a Japanese company providing internet related services, to establish the Tohoku Rakuten Golden Eagles²⁶ and the Kintetsu-Orix merger has resulted in the new Orix Buffaloes.²⁷

Potential Legal Actions in Japan Arising From the Posting System

The JPBPA's recent strike represents a major change in the union's willingness to fight for player's rights. The strike has also changed the dynamics of the relationship between the NPB owners and the Japanese players as public opinion has shifted decidedly in favor of the players and their union. Indeed, even the Japanese legislature has expressed support for the Japanese players' opposition to the NPB owner's plans to consolidate professional baseball in Japan.²⁸ Concurrently, Japanese antitrust law has also gone through significant changes in terms of its enforceability, the remedies available and public perception. The JPBPA has stated that it opposes the Posting System Agreement and wants to change it dramatically. As professional baseball is subject to Japanese antitrust laws, the JPBPA could use the antitrust laws of Japan to mount a legal attack against the Posting System Agreement. This section will give a brief overview of Japanese antitrust law and explore different avenues for the JPBPA to attack the validity of the Posting System Agreement under the antitrust laws of Japan.

Antitrust Law in Japan

The Law on Prohibition of Private Monopoly and Ensuring Fair Trade (hereinafter the "Anti-Monopoly Law") was enacted as Japan's first antitrust legislation in 1947.²⁹ The scope of the Anti-Monopoly Law is broad in that it seeks to prohibit private monopolization, unreasonable restraint of trade and unfair practices, prevent excessive concentrations of economic power, eliminate unreasonable restraint of production, sale, etc., and all other unjust restrictions of business activities.³⁰ The purpose of prohibiting such activities is defined in broad language.³¹ The Anti-Monopoly Law applies to any "entrepreneur"³² or "trade association" that engages in prohibited conduct.³³ The Japanese Fair Trade Commission (hereinafter the "JFTC") was formed in 1947 to enforce the Anti-Monopoly Law.³⁴ Despite the broad scope of the Anti-Monopoly Law, the JFTC's enforcement efforts have been ineffectual for much of the law's existence due to numerous exemptions to the prohibition of cartels.³⁵ This situation developed from what has been described as a "Harmonization Culture" between the Japanese Government and the Japanese business community, which sought "harmonious cooperation among businesses over competition."³⁶ Recently, the Anti-Monopoly Law and the JFTC have undergone serious structural changes as part of the Japanese Government's Anti-Monopoly Act reform project.³⁷ For example, the JFTC was recently placed under the control of the Prime Minister from its prior position as a sub-agency of the Ministry of General Affairs.³⁸ This has increased the JFTC's decisional independence and enabled the JFTC to stringently enforce the Anti-Monopoly Law. As a result the JFTC has initiated several high profile investigations over the last year.³⁹

In addition to enforcement actions by the JFTC, private actions for damages



The Kintetsu-Orix merger has resulted in the new Orix Buffaloes.

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have always been allowed under the Anti-Monopoly Law⁴⁰ and the Japanese Civil Code.⁴¹ As part of the reform project, the Japanese legislature has also recently amended the Anti-Monopoly Law to also allow private actions for injunctive relief against corporations in violation of the Anti-Monopoly Law.⁴² As a result of these changes, there has been an increased use of private actions under the Anti-Monopoly Law by Japanese businesses.⁴³

Legal Options for the JPBPA under the Anti-Monopoly Law

As discussed above, the Anti-Monopoly Law allows for private actions to recover monetary damages and injunctive relief. The available remedy depends on the specific statutory section a potential claimant invokes and the nature of the alleged violation. For the JPBPA to bring an antitrust action it would first need to determine which statutory section to invoke to challenge the Posting System Agreement. As an international agreement between NPB and MLB, the Posting System Agreement arguably falls within the scope of Section 6 of the Anti-Monopoly Law. Section 6 prohibits particular international agreements or contracts and provides in relevant part: "No entrepreneur shall enter into an international agreement or an international contract which contains such matters as constitute unreasonable restraint of trade or unfair trade practices."⁴⁴ Under Section 6, the JPBPA would be able to attack the Posting System Agreement either as an unreasonable restraint of trade or as an unfair trade practice. Alternatively, the JPBPA could try to attack NPB as a trade association and invoke Section 8(1)(v) which contains a general prohibition on unfair trade practices and would also enable the JPBPA to seek injunctive relief and damages.⁴⁵

Unreasonable Restraint of Trade

An unreasonable restraint of trade includes any business activities where entrepreneurs mutually restrict or conduct themselves in a way that fixes, maintains or increases prices or limits production, technology or products and in so doing acts contrary to the public interest.⁴⁶ Attacking the Posting System Agreement as an unreasonable restraint of trade would allow the JPBPA to seek monetary damages on behalf of itself and any of its members injured by the Posting System Agreement.⁴⁷ In private actions for damages the Anti-Monopoly Law imposes "absolute liability" on violators regardless of the "non-existence of willfulness or negligence."⁴⁸ The disadvantage to seeking damages under the Anti-Monopoly Act is that Japanese courts have imposed strict causation requirements that make it difficult to recover.⁴⁹ However, the causation requirements are not impossible to overcome.⁵⁰

Unfair Trade Practices

Alternatively, the JPBPA could argue that the Posting System Agreement constitutes an unfair trade practice. This would enable the JPBPA to seek either an injunction barring the enforcement of the Posting System Agreement or monetary damages.⁵¹ The Anti-Monopoly Law sets out an enumerated list of activities that impede fair competition and constitute an unfair trade practice.⁵² In addition, the JFTC has promulgated interpretive guidelines which spell out specific activities that constitute unfair trade practices under the Anti-Monopoly Act.⁵³ Here, the JPBPA would be able to argue that the Posting System Agreement creates an unfair trade



Microsoft chairman and chief software architect Bill Gates during the Microsoft XP launch in New York October 2001. Microsoft's Japan unit is being investigated by the country's Fair Trade Commission on suspicion of violating anti-trust laws, at a time the software firm faces similar accusations in Europe. REUTERS/Shannon Stapleton

"No entrepreneur shall enter into an international agreement or an international contract which contains such matters as constitute unreasonable restraint of trade or unfair trade practices."

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practice because it enables MLB Teams to deal with posted players on restrictive terms.⁵⁴ For example, the JFTC's guidelines prohibit "dealing with the other party on conditions that unjustly restrict any transaction between the said party and his other transacting party or other business activities..."⁵⁵ The JPBPA could claim that bidding procedure forces posted players to deal on restrictive terms because the agreement assigns exclusive negotiating rights to the highest bidder and prevents posted players from considering other offers when negotiating their salaries. Alternatively, the JPBPA could argue that the Posting System Agreement allows NPB and MLB to abuse their dominant bargaining position vis a vis posted players.⁵⁶ For example, the JPBPA could argue that the bidding procedure sets the terms of future contract negotiations in a way disadvantageous to the posted players because they have no bargaining power.⁵⁷

If the JPBPA tried to establish an unfair trade practice violation it would still have to overcome the strict causation requirements discussed above for proving monetary damages. These requirements are difficult to overcome but the JPBPA may be successful. In addition, the JPBPA could try to obtain injunctive relief to enjoin alleged unfair trade practices by NPB and MLB under the Posting System Agreement. The JPBPA would have to establish that it or its members are "suffering or likely to suffer serious damages" from unfair trade practices.⁵⁸ As private suits for injunctive relief are relatively new under the Anti-Monopoly Act it is unclear how a court would rule if reviewing a potential claim by the JPBPA. It is possible that a court might be more receptive to awarding injunctive relief as opposed to monetary damages.

Conclusion

Given the declining state of NPB and the Japanese players' recent strike, a legal challenge to the Posting System Agreement under Japan's Anti-Monopoly Law seems imminent. If MLB and NPB want the Posting System Agreement to remain viable they need to revise the agreement to make Japanese players feel more involved in the posting procedure. This could be accomplished by establishing a committee to address player dissatisfaction with posting system. Alternatively, NPB and MLB could also make the two player associations parties to the Posting System Agreement and work together to draft a new agreement that addresses the concerns of everyone affected by the Posting System.



The JPBPA could argue that the bidding procedure sets the terms of future contract negotiations in a way disadvantageous to the posted players because they have no bargaining power.

1. Geoffrey Smull is currently third-year student at Seton Hall University School of Law and will receive his Juris Doctorate in May 2005.
2. See United States – Japanese Player Contract Agreement (hereinafter the “Posting System Agreement”) at http://jpbpa.net/convention/2001_e.pdf.
3. See Posting System Agreement at ¶ 17. The Posting System Agreement expired on December 15, 2002 but remains in effect on a year-to-year basis according to its terms. *Id.*
4. Prior to the enactment of the Posting System Agreement, the Japan Uniform Players Contract contained a loophole which allowed Japanese players who voluntarily retired to contract with MLB teams in the United States. Hideo Nomo was the first Japanese player to take advantage of this loophole. In 1996 NPB expanded the restrictions in the Japanese Baseball Convention to include “voluntarily retired player” in the category of players prohibited from going overseas. However, NPB failed to notify MLB of the change and a dispute ensued over the availability over Alfonso Soriano, then a Japanese player with the NPB team, the Hiroshima Carp. The Posting System Agreement has permanently closed the “voluntarily retired” loophole by requiring “voluntarily retired” Japanese players and interested MLB teams to participate in a restrictive bidding procedure if they enter into a contract with an MLB team. If a “voluntarily retired” player and a MLB team enter into a contract outside of the bidding procedure then the MLB Commissioner has the authority to declare the contract null and void. This bidding procedure further applies to all non-free agent Japanese players who cannot obtain waivers from their NPB team to play in the United States. See Posting System Agreement at §§4-5, 13; ROBERT WHITING, THE MEANING OF ICHIRO 103-107, 141-145 (Warner Books 2004).
5. See ROBERT WHITING, THE MEANING OF ICHIRO, 84, 103-104 (Warner Books 2004).
6. In 1964 the Nankai Hawks sent a rookie pitcher, Masanori Murakami, to train in the San Francisco Giants’ minor league system as part of a player exchange agreement approved by both the NPB and MLB Commissioners. The agreement contained an option clause which allowed San Francisco to purchase the contract of any Japanese player who made the parent team for \$10,000. Thereafter, Murakami signed a contract with San Francisco for the 1965 season and San Francisco wired Nankai \$10,000 as per the option cause. However, upon Murakami’s return to Japan to spend the winter with his family Nankai pressured Murakami into signing a contract for the 1965 season with Nankai. When Murakami refused to return to San Francisco for the 1965 season a major dispute developed between MLB and NPB which resulted in the suspension of baseball relations between Japan and the United States. The dispute was ultimately resolved when Nankai returned the \$10,000 and Murakami played the remaining 5 months of his contract with San Francisco. See *id.* at 73-80.
7. See ROBERT WHITING, THE MEANING OF ICHIRO, 103 (Warner Books 2004).
8. *Id.* at 87.
9. A NPB team that wants to make a Japanese player available must first request that the NPB Commissioner notify the MLB Commissioner of the NPB’ teams desire to make the Japanese player available. The MLB Commissioner is then required to “post” the Japanese player’s availability by “notifying all U.S. Major League Clubs of the intention” of the NPB team “to make the player available.” Within four days of the posting, any interested MLB team is required to submit a cash bid to the MLB Commissioner. At the end of the four day bidding period the MLB Commissioner will notify the NPB Commissioner of the highest bid and the NPB Commissioner will rely this information to the NPB team. See *Posting System Agreement* ¶¶ 8-12.
10. See William B. Gould IV, *Baseball and Globalization: The Game Played and Heard and Watched ‘Round the World (With Apologies to Soccer and Bobby Thomson)*, 8 IND. J. GLOBAL LEGAL STUD. 85, 114-115 (2000).
11. See Posting System Agreement, ¶ 14.
12. See Gould *supra* note 15 at 115.
13. See Posting System Agreement, ¶¶ 14, 16. See ROBERT WHITING, THE MEANING OF ICHIRO, 141-145 (Warner Books 2004). Discussing the dispute between the Hiroshima Carp and The New York Yankees over Alfonso Soriano and how the dispute uncovered that NPB unilaterally changed its worldwide protections under the 1967 Working Agreement without notifying MLB. *Id.*
14. See JPBPA statement on Problems with the Posting System, available in Japanese at www.jpbpa.net/topics/04.htm. English translation prepared by and on file with author.

15. *Id.*
16. Adding to the frustration of Japanese players is the fact that the Posting System Agreement restricts the posting of non-free agent Japanese players to a four month window of opportunity. Specifically, all requests by NPB teams to post Japanese players must be made between November 1st and March 1st. See Posting System Agreement ¶ 9. If a NPB team refuses to accept the highest bid for a posted Japanese player then that player's posting is withdrawn and that player cannot be posted again until November 1st of the following year. Even if a NPB team accepts the highest bid submitted for a given player, the Japanese player's posting will still be withdrawn and the player will have to wait until the following November 1st if the MLB team cannot conclude a contract with the Japanese player within 30 days. See *id.* ¶¶ 11-12.
17. Prior JPBPA player representatives opposed going on strike and in the rare instance when a player representative threatened to call a strike as a bargaining tactic, the player representative quickly recanted the statement. See ROBERT WHITING, *THE MEANING OF ICHIRO* at 88, 91-92 (Warner Books 2004).
18. The owners of the Pacific League's Kintetsu Buffaloes and Orix Blue Wave have decided to merge because of economic difficulties for their teams. The Buffaloes have reportedly lost \$36 million annually due to reduced attendance and rising player salaries. See Associated Press, Twelfth team might be added in 2005, ESPN.COM, September 23, 2004 at <http://sports.espn.go.com/espn/print?id=1887312&type=story>.
19. This was not a corporate merger but rather a merger of two baseball teams. Orix is a Japanese financial services provider and Kintetsu is railway company that is part of a group of 180 affiliated companies worldwide. See *Orix Official Website, available in English at* http://www.orix.co.jp/grp/co_e/history.htm; Kintetsu Official Website, available in English at <http://www.kintetsu.co.jp/english/index.html>. As one commentator has noted, in Japan professional baseball teams primarily exist "to advertise the products and services of their corporate owners." So when "the Kintetsu Buffaloes met the Nippon Ham Fighters it was a battle for supremacy between a private railway and a pork manufacturer." See Whiting *supra* note 17 at 89-90.
20. See Associated Press, Union unhappy about looming team merger, ESPN.COM, September 6, 2004, at <http://sports.espn.go.com/espn/print?id=1875671&type=story>
21. *Id.*
22. See Pro baseball players to strike for first time, Mainichi Shimbun, September 17, 2004, (no page) at <http://mdn.mainichi.co.jp/news/200409/17/>; Baseball players decide to strike, The Asahi Shimbun, September 18, 2004, (no page) at <http://www.asahi.com/english/sports/TKY200409180158.html> discussing the NPB's refusal to consider the application of Internet Services company, Livedoor Co., to add a new franchise in Miyagi Prefecture because of insufficient time. *Id.*
23. A group of researchers led by Katsuhiko Miyamoto, a professor of econometrics at Osaka Prefecture University, estimated that the two day strike will cause 1.9 billion yen in financial losses to baseball clubs and related businesses. See Baseball Strike Enters First Day Amid Cheers and Jeers, Mainichi Shimbun, September 18, 2004, (no page) at <http://mdn.mainichi.co.jp/news/archive/200409/18/20040918p2a00m0sp010001c.html>; See also Bruce Arthur, Japanese baseball feels hockey's pain: Players stage strike: Public opinion overwhelmingly supports players, National Post, September 21, 2004, S4, available at Westlaw, 2004 WL 94303960.
24. See Team owners relent; strike averted, Asahi Shimbun, September 24, 2004, (no page) available at Westlaw, 2004 WL 85020152.
25. *Id.*
26. The entry of the Sendai-based Tohoku Rakuten Eagles was announced on November 11, 2004 at the NPB owner's conference. See, *Congratulations on the Debut of the Tohoku Rakuten Golden Eagles!* at Sendai City Official Homepage, <http://www.city.sendai.jp/soumu/kouhou/press/04-11-10/eagle1-e.html>
27. See Jim Allen, New Buffaloes struggle for identity, The Daily Yomiuri On-Line, March 24, 2005 (no page) at <http://www.yomiuri.co.jp/index-e.htm>. Describing the new Orix Buffaloes as "one sorry sight." According to Orix the new team "serves as an effective platform for spreading the Orix name." See Orix Official Website, available in English at http://www.orix.co.jp/grp/co_e/japan/gr_c_orixbs.htm.
28. Prior to the strike, the ruling party as well as different opposition parties in the Japanese legislature formed two study groups to develop legislation to prevent the consolidation of Nippon Professional Baseball into a single league. See,

Lawmakers unite to fight baseball's one-league plan, *Mainichi Daily News*, August 4, 2004, (no page) *available at* Westlaw, 2004 WL 84588254.

29. See, HIROSHI ODA, *JAPANESE LAW*, 301 (Oxford University Press, 2d. ed., 2001) (1999).
30. See, Dokusen kinshi hou (Anti-Monopoly Act) §1 (1947) (Jp).
31. See, Dokusen kinshi hou (Anti-Monopoly Act) §1 (1947) (Jp). Stating in relevant part that the purpose of the Anti-Monopoly Law is: "to promote free and fair competition, to stimulate the creative initiative of entrepreneurs, to encourage the business activities of enterprises, to heighten the level of employment and people's real income, and thereby to promote the democratic and wholesome development of the national economy as well as to assure the interests of consumers in general. Id.
32. "Entrepreneur" is defined as "a person, who carries on a commercial, industrial, financial or any other business" and also includes "any officer, employee, agent or any other person who acts for the benefit of any entrepreneur." See Dokusen Kinshi Hou (Anti-Monopoly Law) §2(1) (1947) (Jp); An "entrepreneur" can be either a natural or juridical person. See, HIROSHI ODA, *JAPANESE LAW* at 303 (Oxford University Press, 2d ed., 2001) (1999).
33. A "Trade Association" includes "any combination or federation of combinations of two or more entrepreneurs having as its principal purpose the furtherance of their common business interest as entrepreneurs." See Dokusen kinshi hou (Anti-Monopoly Law) §2(2) (1947) (Jp).
34. See, HIROSHI ODA, *JAPANESE LAW* at 300-01 (Oxford University Press, 2d ed., 2001) (1999).
35. See *id.* at 301. In 1995 there were over 100 laws providing for exemptions to the prohibition of cartels. *Id.*
36. Akinori Uesugi, Secretary General of the Fair Trade Commission of Japan, Address at the Fordham Corporate Law Institute, The 31st Annual Conference on International Antitrust Law and Policy (Oct. 7, 2004) (transcript of Akinori Uesugi's address entitled, Where Japanese Competition Policy is going – Prospect and Reality of Japan, *available at* <http://www2.jftc.go.jp/e-page/policyupdates/speeches/041007uesugi.pdf>). *Id.* at 2.
37. See *id.* at 4.
38. See Law No. 23 of 2003 enacted on April 9, 2003 (Jp). See also, Uesugi *supra* note 36 at 1.
39. See Todd Zaun, Flexing muscles on fair trade, But Japanese business group blocks watchdog's path, *International Herald Tribune* at 16, July 1, 2004 *available at* Westlaw, 2004 WL 77531929; Matthew Yi, Japanese Regulators Raid Intel, Trade Officials look for evidence chipmaker leaned on customers to use its products, *The San Francisco Chronicle* at C1 *available at* Westlaw, 2004 WL 58594081.
40. See Dokusen kinshi hou (Anti-Monopoly Act) § 25 (1947) (Jp).
41. See Minpou (Civil Code) art. 709 (Jp).
42. The Japanese Parliament amended Section 24 of the Anti-Monopoly Act in 2000 to allow private suits to enjoin unfair trade practices. Prior to 2000 only the JFTC could initiate an action for injunctive relief. See Toshiaki Takigawa, *The Prospect of Antitrust Law and Policy in the Twenty-First Century: In Reference to the Japanese Antimonopoly Law and Japan Fair Trade Commission*, 1 WASH. U. GLOBAL STUD. L. REV. 275, 298-99 (2002).
43. See Uesugi, *supra* note 36 at 12-14.
44. See, Dokusen kinshi hou (Anti-Monopoly Law) §6 (1947) (Jp).
45. See, Dokusen kinshi hou (Anti-Monopoly Law) §8(1)(v) (1947) (Jp).
46. See *id.* §2(6).
47. *Id.* §25(1).
48. *Id.* §25(2).
49. See Takigawa, *supra* note 38 at 299.
50. See *Tsuzuki v. Toshiba Elevator*, 1479 Hanrei Jihou 21 (Osaka High Ct., July 30, 1993) (allowing recovery of damages arising from market monopolization by an elevator manufacturer). Discussed in Takigawa, *supra* note 38 at 298.

51. See Dokusen kinshi hou (Anti-Monopoly Law) §§ 24, 25 (1947) *as amended in (2000)* (Jp).
52. See Dokusen kinshi hou (Anti-Monopoly Law) §2(9)(i)-(vi) (1947).
53. See Fair Trade Commission of Japan Notification No. 15, June 18, 1982 at <http://www2.jftc.go.jp/e-page/legislation/unfair.html>.
54. See *id.* ¶ 13.
55. *Id.*
56. See *id.* ¶ 14.
57. See Fair Trade Commission of Japan Notification No. 15, June 18, 1982 at <http://www2.jftc.go.jp/e-page/legislation/unfair.html>.
58. See Dokusen kinshi hou (Anti-Monopoly Law) §24 (1947) *as amended in (2000)* (Jp).

Calendar of Events

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