

Structuralist and Deconstructive Understanding of Japanese Competition Policy toward Digitalization and Innovation

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Today's Outline

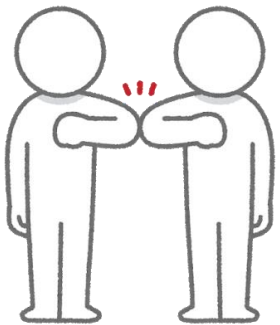
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- Koki Arai is Professor of Economics, Faculty of Business, the Kyoritsu Women's University

- My research interests are in the field of industrial organization and competition policy
- Before current position, I was Special Researcher for Economics, Japan Fair Trade Commission and Deputy Director, Competition Policy Research Center
- Before working for economic study, I was in charge of economic research office as a director, merger and acquisition (M&A) issues in the M&A division of JFTC as senior examiner, and international affairs office in International Competition Network issues as senior policy planner
- I received my Ph.D. from Osaka University, and B.A. from Waseda University



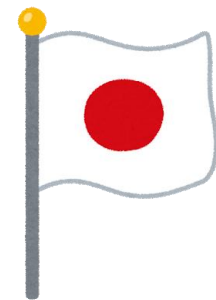
Structuralist and Deconstructive Understanding of Japanese Competition Policy toward Digitalization and Innovation (Koki Arai)

- This study systematically critiques the enforcement of Japanese competition law (Antimonopoly Act) to promote digital markets competition and innovation
- The research focuses on the enforcement of Japanese competition law from four perspectives:
 - (i) multifaceted markets, (ii) digital ecosystems, (iii) e-commerce, and (iv) data markets
- The research discusses four perspectives on recent competition policy toward innovation:
 - (i) the Qualcomm case in Japan, (ii) the basic principles of rule development in response to the rise of platform businesses, (iii) the two guidelines of the JFTC, and (iv) the three JFTC research reports
- This study adopts structuralist and deconstruction approaches



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- The study categorizes and systematically organizes the competition authorities' enforcement in digital markets in a specific and inductive manner
- Taking a multifaceted view of the competition authorities' efforts on innovation and deconstructing it, innovation is a process itself, and the differentials, which cannot be recovered by dichotomies could be examined
- The Japanese competition policy efforts toward digital technology highlight its complementary characteristics
- This feature applies to the discussion and reveals the content of the competition law application
- Japanese competition policy has excellent enforcement to ensure balance, insofar as it is not aggressively targeted and decisive enforcement





I. Introduction

- The digital economy poses challenges to competition and innovation
- These are also reflected in the application of competition law in digital markets
- Considering this situation, this study systematically critiques the application of Japanese competition law, the Antimonopoly law, in digital markets in a way that promotes competition and innovation
 - Competition law in Japan is a legal system centered on the "Act on Prohibition of Private Monopolization and Maintenance of Fair Trade" (April 1947)
- Although this study targets the enforcement of Japanese law, it should promote a general discussion of such issues, not only in the sense that it is limited to a specific jurisdiction
- From this perspective, this study promotes the discussion of (relatively) similar issues encountered globally

II. Methodology

- This study takes a structuralism approach ("structuralisme")
- Here, structuralism not only categorizes the enforcement of competition authorities in the digital market historically and inductively, but also examines how the situations are connected, and systematically organizing and presenting them while clarifying the interconnections, development forms, and dependencies of the categorization from a functional perspective
- The term "structuralism" is used in the sense that it refers to a methodology for extracting the latent structure of a phenomenon and using that structure to understand and possibly control the phenomenon



II. Methodology

- With regard to this structuralism approach, three types of considerations have been made in the competition policy literature thus far
 - First, it should be noted that in the US, the term structuralism has also been used in market structuralism, which views markets in terms of structural behavioral outcomes, primarily by the Harvard School
 - Second, in the debate on information law, some grasp personal data protection and other issues as panopticonically positioned and structuralist manifestations, and position competition law as one such regulation
 - Third, there are not many approaches to competition law enforcement that take a structural view of competition policy, e.g., analyses of the evolution of European competition policy, suggesting that the embedded liberal order structures industrial and social policy



II. Methodology

- When these previous studies are critically examined, the first typology has a slightly different structuralist connotation
- As for the second typology, besides the fact that it is not a direct analysis of competition law, it lacks development and deepening beyond conceptual borrowing
- As for the third typology, it does not recognize and make use of structuring, but only conceptualizes, typifies, and systematizes it, and we believe that it is necessary to promote its structuralist approach in earnest



II. Methodology

- As for the methodology to be dealt with here, specifically regarding digitalization, we inductively clarify the enforcement status of competition authorities toward the formation of digital markets by looking at four historical developments in turn
- For innovation, we then take a deconstructive approach ("déconstruction") rather than a structuralist approach
 - It is an attempt to deconstruct the competition authority's approach to innovation by taking a multidimensional view of it
 - After structurally positioning the competition authority's enforcement, it is then reorganized without historical events, but from a new perspective as static environmental improvement and dynamic proactive support measures



III. Digitalization

- In digitalization, we look at the four historical developments in sequence, we inductively examine how competition authorities enforce the formation of digital markets
 - The first is antitrust enforcement of competition issues in business activities that take advantage of the multifaceted market definition in the formation of digital markets
 - The second is the enforcement of antitrust laws in maintaining the digital ecosystem at the time of the autonomous establishment of digital markets
 - The third is the enforcement of antitrust laws against obstacles in e-commerce, which is the actual market operation of the digital market
 - The fourth, competition law enforcement in data trading and data markets further digitizes the actual digital market content



III. Digitalization

- Multifaceted market definition in the formation of digital markets
 - The JFTC has been promoting competition policy based on the development of digitalization in the social economy and has been actively enforcing competition law (the Antimonopoly Act) in multi-sided markets
 - We explain the characteristics of the application of competition law in multifaceted markets based on three cases and touch on the notable points in the definition of relevant markets
 - *1. Case against Amazon Japan LLC. (June 1, 2017)*
 - *2. Case against Minna-no-Pet Online, Inc. (May 23, 2018)*
 - *3. Case against Airbnb Ireland U.C. and Airbnb Japan K.K. (October 10, 2018)*

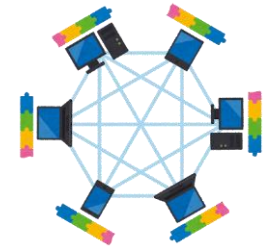


III. Digitalization



- Multifaceted market definition in the formation of digital markets
 - *4. Findings*
 - With regard to these multi-sided markets under digitalization, the three JFTC cases are based on the concept of bidirectional markets and multi-sided markets, such as sellers and buyers in the Amazon case, suppliers and consumers of pet information of breeders in the Minna-no-Pet case, and hosts and guests in the Airbnb case
 - The application of competition law is based on the reality of digital competition in interactive and multifaceted markets
 - Appropriate clauses were chosen for the application, such as restrictions on joint action and restrictions on monopolization, per the actual situation of the act
 - In all cases, the law was applied by fully grasping the actual situation of competition in multifaceted markets based on indirect network effects in market definition
 - In addition to this, a characteristic feature of the law is that it expresses concern about the violations of hub-and-spoke businesses, especially those that are hubs, and attempts are being made to resolve them
 - The qualification of competition law enforcement as an administrative agency can be seen in the most appropriate and effective response to the actual efforts to restore competition
 - This is a method that fully realizes the need for competition resolution based on the purpose of competition law, which is not seen in case resolution through litigation

III. Digitalization



- Digital Ecosystem
 - *1. Yahoo Japan's acquisition of e-Book Initiative Japan Co. (FY 2016)*
 - *2. The acquisition of the shares of Publishing Digital Organization, Inc. by Media-Do Co. (FY 2016)*
- E-Commerce
 - *1. Response to the amendment to the terms of service for Point service by Amazon Japan LLC (April 11, 2019)*
 - *2. Petition for an Emergency Suspension Order against Rakuten, Inc. (March 10, 2020)*
 - *3. Approval of the confirmation plan filed by Amazon Japan LLC (September 10, 2020)*
- Data Markets
 - *1. Yahoo Japan Corporation's acquisition of shares of Ikkyu Corporation (FY2015)*
 - *2. M3 Corporation's acquisition of shares of Nihon Ultmarc (FY 2019)*
 - *3. Integration of Z holdings corporation and LINE corporation (August 4, 2020)*



IV. Innovation

- Up to this point, we have mainly examined competition policy approaches to the formation of digitalization from an analytical and inductive perspective
- However, besides this structuralist approach, we would like to discuss innovation in the following section by deconstructing it, grasping the situation rather than the historical order, and organizing it as process-oriented management of competition policy in addition to static development and dynamic subject support
- Relating to innovation, we take a deconstructive approach rather than a structural approach, as in the past
- Deconstruction here means not historically or hierarchically viewing competition policy, but reorganizing it from the perspective of static environment development (accumulation of knowledge such as patents) and dynamic subject support (stimulation of incentives such as competition) as necessary and sufficient conditions for realizing innovation



V. Conclusion

- This study adopted a structuralist approach and a deconstruction approach
 - We categorized and systematically organized the competition authorities' enforcement in digital markets in a specific and inductive manner
 - We then took a multifaceted view of the competition authorities' efforts on innovation and deconstructed it
 - Innovation is a process itself, and it is necessary to look at the differentials, which cannot be recovered by dichotomies
- The implication of this study for the study of competition law and policy is that it provides a concrete example of the structuralist and deconstructionist approaches to competition policy approaches to digital markets
- The methodology has not been explored in-depth in competition law and policy research in the past, but this study makes a significant contribution to an important area
- Moreover, the content implications of this study can be considered an important contribution in that it clarifies the importance of complementary approaches to competition law in digital markets, and identifies specific enforcement methods that aim for fair and free competition through balance