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PRIVATE LITIGATION GUIDE

SECOND EDITION

Editors
Nicholas Heaton and Benjamin Holt

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Account managers
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Editorial coordinator
Georgia Goldberg

Production editor
Simon Tyrie

Subeditor
Martin Roach

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Japan Overview

Madoka Shimada, Kazumaro Kobayashi and Atsushi Kono[1]

Introduction

Recent private antitrust litigation activity

In the past, private antitrust litigation activity was not prevalent in Japan; however, in recent years, the number of cases has increased, along with the number of cases in which claimants have successfully sought injunctive relief and damages.

Traditionally, bid-rigging cases were the most prevalent in Japanese private antitrust litigation and such cases still outnumber those based on other types of infringement of the Antimonopoly Act (the AMA) owing to several cases brought by the entities succeeding the Japan Highway Public Corporation, concerning bid rigging in the construction of iron bridges,

1 Madoka Shimada and Kazumaro Kobayashi are partners, and Atsushi Kono is an associate at Nishimura & Asahi. The chapter is based in part on the Japan chapter of The Private Competition Law Review, Fifth Edition (Law Business Research 2012), written by Kozo Kawai, Madoka Shimada and Masahiro Heike.

in which some of the claimants were awarded ¥88 million at the highest.[2, 3] On the other hand, there has been an increasing number of private monopolisation cases[4] (under Article 3 of the AMA)[5] as well as unfair trade practices cases[6] (Article 19 of the AMA).

With regard to the remedies that can granted by the court, injunctions for antitrust litigation were statutorily introduced after the revised AMA of 2000 came into force in 2001.[7] They are supposed to be granted when the interests of a claimant are infringed or likely to be infringed by an unfair trade practice committed by a defendant, and a claimant suffers or is likely to suffer extreme damage. However, injunctions have been given only in recent cases[8] and there have been more attempts to obtain injunctions in antitrust litigation compared to the past, as further discussed below.

Recent legislative changes

Although it is not directly related to private litigation, the 2013 amendment to the AMA abolished the Japan Fair Trade Commission (JFTC) tribunal system together with the 'substantial evidence rule' in which the court was bound by the findings of the preceding JFTC tribunal provided that the findings were supported by evidence that the ordinary person might think gave a reasonable ground for the findings. After the amendment came into effect in 2015, the orders of the JFTC may be challenged directly (without going through the JFTC tribunal procedure) in the Tokyo District Court.[9] This reform was introduced because of criticisms that the JFTC's deci-

2 *Iron bridge* case, Tokyo High Court, 20 January 2012.

3 Aside from the cases related to bid rigging in the construction of iron bridges, recent cases include the *Stoker fired furnace* cases in which a number of parties carrying out bid rigging in the construction works of waste incineration plants throughout Japan were subject to a payment order of the Japan Fair Trade Commission (the JFTC) tribunal in 2006; and a case in which the Gunma prefecture was awarded damages of ¥8 million by the Tokyo High Court on 25 February 2014, in respect of bid rigging in the supply of an atmospheric monitoring instrument.

4 The recent notable case is *Naigai v. Nipro*, a pharmaceutical company, on Nipro's private monopolisation, in which the Tokyo High Court awarded Naigai ¥1.3 billion on 21 December 2012.

5 Act No. 54 of 14 April 1947. The latest amendments to the Act came into effect in 2010.

6 The recent notable cases include some of the franchisees of a well-known convenience store franchisor, which filed an Article 24-based lawsuit against the franchisor at the Tokyo High Court for its abuse of its superior bargaining position, for which the JFTC issued a cease-and-desist order in June 2009; the *Shintetsu taxi* case in which the Osaka High Court granted an injunction on 31 October 2014 that prohibited the defendant from physically preventing the claimants from using the taxi stand at a certain train station; and *Returned Rice* case in which a rice wholesaler sought damages from its clients alleging that the return clause in the contract between them was invalid because of its non-compliance with the AMA and was awarded ¥690 million by the Sapporo High Court on 7 March 2019.

7 Article 24 of the AMA.

8 One of those cases in which injunctive remedies were granted is the first instance judgment of the *Yasaka complimentary bus* case in which the Utsunomiya District Court ordered on 8 November 2011 an injunctive remedy that prohibited the defendant from conducting a bus business for free; however, the judgment was reversed on appeal. Another case was the *Shintetsu taxi* case in which the Osaka High Court ordered on 31 October 2014 an injunctive remedy that prohibited the defendant from physically preventing the claimants from using the taxi stand at a certain train station. With regard to a provisional injunctive remedy, the Tokyo District Court granted such a remedy in the *Dry ice* case on 30 March 2011 that prohibited the defendant from telling the customers of the claimant, among others, that the claimant was in breach of contractual obligations or that the claimant would cease to provide its merchandise.

9 Article 85-2 of the AMA.

sions were rarely overturned by its internal tribunal system and it was expected that the Tokyo District Court would be more independent. It will take more time to know whether this purpose has been achieved because, since the introduction of the new system in 2015, there have only been a few cases in which the Tokyo District Court has actually given judgments.

Separately, the 2016 amendment to the AMA, which entered into force on 30 December 2018 and implemented rules stipulated by the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, introduced the commitment procedure under which the JFTC and the enterprise under investigation can voluntarily resolve the investigation through mutual consent. This legislative change is relevant to private antitrust litigation in two respects. First, Article 25 of the AMA, which exempts the claimant of antitrust litigation from proving the defendant's intent or negligence as to harmful acts that the JFTC has found to be in violation of the AMA, does not apply to those cases settled through the commitment procedure. Second, it might be very difficult for third parties to obtain documents and materials that the JFTC has collected in the course of investigations settled through the commitment procedure. Claimants may have access to the documents and materials that were collected in the JFTC's investigation during the court procedure if the JFTC issues a cease-and-desist order or a surcharge payment order, but this approach cannot be taken in cases settled in the commitment procedure.

In addition, the JFTC will introduce a new practice in its administrative investigation procedures in cartel cases. Investigators will not access documents that contain confidential communications between the suspect enterprise and its independent attorneys regarding legal advice in relation to the conduct concerned. The scope of the communication that will be kept confidential through this process is very limited compared to that in other jurisdictions, such as the US, that adopt attorney–client privileges. Under the JFTC's new practice, attorney–client communication will not be privileged under criminal investigations. In addition, communication concerning conduct other than cartels (i.e., vertical conduct such as abuse of superior bargaining position) will not be subject to this new practice. The practice will be introduced when the 2019 amendment to the AMA takes effect. Although it has been decided that the amendment will take effect by the end of 2020, the specific date of enforcement has yet to be announced at the time of writing. Although such documents are temporarily kept by the JFTC so that the determination officer can decide on their nature, third parties might not be able to have access to them during the court procedure because those documents cannot be used as evidence by the JFTC to prove the suspect enterprise's violation of the AMA and will soon be returned to the suspect enterprise in secrecy.

Legislative framework

Damages claims pursuant to Article 25 of the AMA

Under Article 25 of the AMA, parties (companies and business associations) that were found to be engaged in, or a party to, private monopolisation, unreasonable restraint of trade[10] (cartels and bid rigging), or other unfair trade practices are liable to indemnify those injured by such practices (Article 25 action). Before a claimant commences an Article 25 action, either a cease-and-desist order or a surcharge payment order by the JFTC must be finalised.

10 As defined in Article 3 of the AMA.

In an Article 25 action, the claimant need not prove the defendant's intent or negligence as to the harmful acts, and the claimant is able to use the JFTC's findings from the relevant order as evidence of the alleged infringement. On the other hand, the claimant needs to prove the scope of its damages, and the court may request the JFTC's opinion on the scope of damages in the course of an Article 25 action.[11]

An Article 25 action may only be brought before the Tokyo District Court, whose judgment can be appealed to the Tokyo High Court, and finally to the Supreme Court. The action must be brought within three years of the date on which the relevant JFTC order becomes final.[12] Since an Article 25 action is deemed a special type of general tort claim under Article 709 of the Civil Code, injured parties can choose to file either an Article 25 action or a general tort claim; however, unlike the Article 25 action, in a general tort claim the claimant needs to also prove the defendant's intent or negligence as to the harmful acts.

Parties injured by any violation of the AMA, where 'reasonable causation' is established between an injury and a violation, can claim damages. Direct purchasers, indirect purchasers and consumers, in general, may be claimants. Even if an injured party has 'passed on' the relevant costs to its own customers, it nonetheless maintains its standing. In practice, however, it is likely that such passing-on of costs would be taken into account in calculating the actual amount recoverable.

General tort claims under the Civil Code

Under Article 709 of the Civil Code, persons who violate the rights of another person must pay the damages resulting from their actions (Article 709 action); this is recognised as including anticompetitive acts.

A claimant in an Article 709 action faces a higher burden of proof than a claimant in an Article 25 action in that the claimant must prove the intent or negligence of the defendant. On the other hand, the other facts necessary to be established in the Article 709 action are the same as in the Article 25 action. Just as in the Article 25 action, the claimant in an Article 709 action is able to use the JFTC's findings from the relevant order as evidence of the alleged infringement.

In practice, however, the burden of proof with regard to the intent or negligence of the defendant is not important because violations of the AMA are normally associated with at least negligence of the violators. In this regard, the only difference between an Article 709 action and an Article 25 action is that Article 25 actions can be filed only when there are preceding JFTC orders on the violators' conducts, which should be final and binding.

Filing Article 709 actions is more convenient for parties located outside Tokyo because they can be brought in their local district courts, while an Article 25 action can only be filed with the Tokyo District Court. The judgment of the local district court can be appealed to the local high court and finally to the Supreme Court. An Article 709 action must be brought within three years of the possible victim or claimant becoming aware of the conduct that caused the damage, and within 20 years of the execution of such conduct.

11 In practice, the court generally requests the JFTC submit its opinions on the scope of damages. However, it is questionable whether the JFTC's opinions are actually effective because such opinions are generally templates based on a 'before-and-after analysis', which is explained *infra*.

12 Article 26 (2) of the AMA.

Parties injured by any violation of the AMA, where 'reasonable causation' is established between an injury and an intentional or negligent violation, have standing to bring such actions. It is not necessary that the JFTC findings regarding the violating conduct are final and binding.

Injunctions pursuant to Article 24 of the AMA

Under Article 24 of the AMA, a private claimant may, in addition to seeking damages, seek an injunction (provisional as well as permanent) against certain conduct that falls in the category of unfair trade practices[13] (such as price discrimination, restrictions on re-sale pricing, restrictive trading, below-cost sales, abuse of a superior bargaining position and interference with a competitor's transaction) to restore the injured party to the position held prior to the commencement of the violation (Article 24 action). The defendant must be engaged in the relevant unfair trade practice at the time a judgment for an Article 24 action is given. On the other hand, an Article 24 action cannot be brought based on unreasonable restraint of trade,[14] which includes cartel, bid rigging and private monopolisation, although some of the unfair trade practices may overlap with unreasonable restraint of trade and private monopolisation.[15]

An Article 24 action may initially be brought to a local district court, the Tokyo District Court or a district court in the place where the high court whose territorial jurisdiction covers the local district court is located.[16] A district court's decision may be appealed to a high court, and a high court decision may be appealed to the Supreme Court.

For the first 10 years after the introduction of the Article 24 action, private claimants did not prevail in any injunction cases. This is because the claimant had difficulties in establishing, among other requirements of Article 24, that it is suffering or is likely to suffer extreme damages by the conduct. In March 2011, however, the Tokyo District Court issued the first decision in which a private claimant prevailed in an Article 24 injunction case.[17] The case involved a claimant seeking an injunction against a competitor that actively sought to obstruct the business of the claimant.

Unlike the Article 25 action, it is not necessary that the relevant JFTC order be issued or finalised. Indirect purchasers can also be claimants in such injunction actions. This creates more opportunities for claimants to rely on antitrust claims in private litigation, particularly with regard to specific types of unfair trade practices, such as abuse of superior bargaining position, although, in reality, it is not easy for claimants to win.

13 Article 19 of the AMA (for conduct of trade associations, Article 8 (5) of the AMA).

14 Article 3 of the AMA.

15 In cases where an Article 24 action is not available (e.g., unreasonable restraint of trade or private monopolisation, which cannot be deemed as unfair trade practices), injunctions based on general tort may theoretically be possible, although such cases should be very limited.

16 Article 84-2 of the AMA

17 *Dry ice* case, Tokyo District Court, 30 March 2011.

With regard to possible remedies won by Article 24 actions, the Tokyo District Court recently changed its previous position[18] and confirmed in *Softbank v. NTT*[19] that, in addition to prohibition orders, the court may order a defendant to do a certain action that is sought by the claimant, as an injunctive remedy for an Article 24 action.

Litigation on behalf of local governments by their citizens

In past bid-rigging cases, there were many cases in which citizens of certain localities brought actions against parties allegedly involved in bid rigging on behalf of their local governments pursuant to the Local Autonomy Act. Prior to the growth in popularity of private antitrust litigation, such litigation was the main source of bid rigging case law at the time.

After the amendment of the Local Autonomy Act in 2002, citizens can only oblige their local government to bring an action against parties allegedly involved in bid rigging instead of filing such action themselves, and so the number of Article 25 and Article 709 actions filed by the local governments has relatively increased.

Derivative shareholder actions under the Companies Act

Although this is not strictly private antitrust litigation, derivative shareholder actions under the Companies Act may have an impact on companies violating the AMA.[20] Under Articles 423 and 847 of the Companies Act, if a company has been found liable under the AMA, the Civil Code or other laws, its shareholders[21] may sue the directors of the companies for their intentional or negligent acts if the company does not implement its own lawsuit against its directors within 60 days of receipt of the shareholders' request. Thus, if the company is given a surcharge payment order by the JFTC, or is liable for damages under an Article 25 or Article 709 action, the shareholders of the company may file a derivative shareholder action against the directors of the company. In December 2010, it was reported that a derivative shareholder action was filed against the directors of *Sumitomo Denko* for negligence in 'not filing a leniency application' in the cartel on optical fibre cable, for which Sumitomo Denko received a surcharge payment order in May 2010.[22] As such, derivative shareholder actions have been recognised in Japanese law as one of the measures to question the responsibility of companies in the field of antitrust.

Derivative shareholder actions are filed in the local district courts. Under Article 166(1) of the Civil Code, derivative shareholder actions must be brought within 10 years of the date of the harmful act.

18 The judgment in the *Sankomaru* case given by the Tokyo District Court on 15 April 2004 clearly stated that the Court may not order a defendant to do a certain action as an injunctive remedy for an Article 24 action.

19 *Softbank v. NTT*, Tokyo District Court, 19 June 2014.

20 A notable example of such derivative shareholder actions is the *Nomura Securities* case, Supreme Court, 7 July 2000.

21 To file a derivative shareholder action against a public company, whose shares are transferred without the company's approval, a shareholder must, in principle, continuously hold shares in the public company for a period of six months.

22 The case was reported to be settled in 2014 on the condition that the directors as the defendants pay ¥520 million to Sumitomo Denko. Another example of the derivative shareholder action is a case against NTN in the cartel on bearings that was filed in 2013.

Civil litigations alleging invalidity of contracts violating the AMA

Although this is also not strictly private antitrust litigation, if contracts are deemed to be in violation of the AMA, such contracts may be considered to be invalid pursuant to Article 90 of the Civil Code, which is a general provision invalidating any legal conduct violating public order and morality.

Class actions

Class actions are generally not available in Japan. Although systems similar to class actions have been introduced in Japan, under which certified consumer groups may seek injunctions for certain types of lawsuits; for example, cases under the Consumer Contract Law and the Act against Unjustifiable Premiums and Misleading Representations, and may also file a lawsuit seeking confirmation of certain types of damages claims by the court under the Act on Special Measures Concerning Civil Court Proceedings for the Collective Redress for Property Damage Incurred by Consumers, these systems does not cover damages claims under Article 25 of the AMA.

Territorial considerations

The number of private antitrust litigations between Japanese companies and foreign companies has recently been increasing. In such litigation, jurisdictional issue can often be one of the issues to be litigated. The AMA can apply to conduct that occurs in a foreign country or is conducted by a foreign party, if the conduct has a substantial effect on the Japanese market, namely on consumers or users located in Japan (the effects doctrine).

The first case in which the JFTC imposed surcharges upon foreign parties was the *CRT* cartel case of October 2009,[23] in which the JFTC issued surcharge payment orders against Malaysian, Thai and Korean corporations for cartels conducted outside Japan. The JFTC orders in this case were appealed to the JFTC tribunal, the Tokyo High Court and the Supreme Court. In 2018, the Supreme Court supported the JFTC's power to impose orders against foreign corporations.[24]

There is no specific statutory provision on the extraterritorial jurisdiction of the AMA in private lawsuits. It is likely that the effects doctrine, which is the basis of extraterritoriality for administrative law purposes, can apply to the substantive aspects of private litigation cases. With respect to procedural aspects such as jurisdiction, it is not expected that private claimants would respect international comity in the same manner as the Japanese government does. As such, it may be possible for a Japanese court to have jurisdiction in a private antitrust lawsuit brought by a foreign claimant if the location of the respondent or the location of the illegal conduct is in Japan.

Discovery

There is no US-style mandatory document production or extensive discovery system in Japan, except for when a court order for production under the Code of Civil Procedure or the AMA is issued. The statutory scope of the court order has been expanded in recent years. There has

23 JFTC cease-and-desist order and surcharge payment order, 7 October 2009.

24 *CRT* cartel case, Supreme Court, 12 December 2017.

been a growth in the number of private antitrust litigation cases in which a court order has been issued under the Code of Civil Procedure requesting documents retained by the JFTC, most typically (but not limited to) interview records prepared by the JFTC.[25]

If the court so orders, the relevant party must comply and submit requested materials under the Code of Civil Procedure.[26] If the ordered party does not submit the relevant evidence, then the other party, as well as the court, is generally entitled to deem the other party's allegations related to the content of those materials as true.[27] There are several exceptions, such as (1) documents subject to the confidentiality obligations of public servants or professionals, (2) documents created exclusively for self-use, and (3) documents relating to the right to remain silent under criminal procedure.[28]

The documents and materials submitted to the JFTC in the course of leniency procedures or commitment procedures or subject to the new JFTC practice on attorney–client communications may be likely to fall under those exceptions although there is no court case clarifying this issue. However, internal reports compiled by third-party committees established for internal investigations of corporate scandals may not be considered to fall under those exceptions.[29]

In addition, the court orders can be appealed and then it takes certain time for the court orders to be finalised. Accordingly, in practice, rather than seeking court orders under Article 223 of the Code of Civil Procedures, claimants generally try to obtain the court commission to send documents. Under Article 226 of the Code of Civil Procedures, a party may request that the court commission the holder of the document, which the party intends to submit the court as evidence, to voluntarily send the document.

The 2009 Amendments introduced a special rule for a court order in an Article 24 action,[30] similar to the rule in intellectual property litigation. This rule enables the relevant party to request that the other party submit materials as ordered by the court, except for cases in which there is a justifiable reason to reject the submission of the requested materials, expanding the scope of documents to be disclosed, although there seems to be no cases utilising this rule. This special rule does not apply to materials held by a third party and applies only to an Article 24 action, and not to an Article 25 action.

The JFTC announces its policy on how it reacts to requests for materials, including the court commission to send documents under the Code of Civil Procedure, on its website.[31]

Calculating damages

Both in Article 25 and Article 709 actions, damages are limited to those cases where reasonable causation has been established to the conduct violating the AMA. Under Japanese law, no punitive damages are available.

25 A recent example of such an order is the *Sumitomo Denko* case, Osaka District Court, 15 June 2012.

26 Article 223 of the Code of Civil Procedure.

27 Article 224 of the Code of Civil Procedure.

28 Article 220 of the Code of Civil Procedure.

29 *Sekisui House case*, Osaka High Court, 3 July 2019.

30 Article 80 (1) of the AMA.

31 'Regarding provision of materials related to damages litigation concerning infringements of the AMA' dated 15 March 1992 (last updated: 31 March 2015).

How damage awards are determined

With respect to how damages awards are determined, inter alia, the 'before-and-after analysis' may often be used as a method of calculating damages in private antitrust litigation. Under this approach, actual financial results from the pre-cartel period (or post-cartel period) are compared with those from the cartel period, and the difference forms the amount of relevant damages. This method of damage calculation is often used in bid-rigging cases as well as cartel cases.

If the amount of damages is uncertain and the before-and-after analysis is not available or inappropriate, then the court may assess damages at its discretion under Article 248 of the Code of Civil Procedure. For example, in previous bid-rigging cases, courts found that relevant damages should be 5 to 13 per cent of the turnover of the period, to which the violating conduct was relevant, pursuant to Article 248 of the Code of Civil Procedure.

In bid-rigging cases, local governments and public corporations have had a tendency to insert clauses for liquidated damages into contracts with their service providers, which specify an agreed amount of damages to be paid if violations of the AMA are subsequently discovered. Typically, the amount specified in such provision is 10 per cent of the contract value.[32]

Interest and attorneys' fees

When calculating the amount of damages payable on the judgment date, the court will include interest from the date on which the relevant illegal conduct occurred until the date on which the defendant actually pays the damages. The interest rate for damages for conduct on 31 March 2020 and before is an annual rate of 5 per cent, and the rate for damages for conduct from 1 April 2020 to 31 March 2023 will be an annual rate of 3 per cent. The rate will change every three years after 1 April 2020 according to Article 404 of the amended Civil Code, which will enter into force on 1 April 2020.

As for attorneys' fees, each party must generally pay its own lawyers' fees. Although there has been discussion about requiring the losing party to pay the winner's legal fees, such a system was never implemented. However, in Article 25 and Article 709 actions, some lawyers' fees may be recoverable as part of the damage incurred by the claimant if the court finds it appropriate.

Indemnification and contribution

Under Japanese law, parties who have jointly conducted torts are deemed joint tortfeasors, and are generally liable for damages on a joint and several basis.[33] In such cases, the defendants may seek indemnification from their co-defendants and demand contributions equivalent to their respective proportion of the damages. There is no limitation on seeking indemnification or contribution; however, in practice, it is difficult to distinguish the degree of fault among the respective parties to properly determine the amounts of their contributions for the tort.

32 Recent cases in which the court confirmed the effect of clauses for damages payable for infringements of the AMA include *Hokuriku-Shinkansen*, in which the court admitted the defendant's set-off based on that clause.

33 Article 719 of the Civil Code.

In Japanese bid-rigging cases, participants to the bid rigging and the party who encouraged the bid rigging may be joint tortfeasors and subject to possible indemnification if one of their co-defendants pays the damages.

Settlement procedures

Settlement in civil litigation is available either in the course of court procedures or outside the courts. In cases of settlement in court, judges may often recommend a settlement to the parties and if a settlement is reached a record of settlement is created by the court. However, there are no specific procedures for out-of-court settlements, while it is possible to make a settlement record at a notary's office.

The Japanese court system has no formal procedure to facilitate or encourage settlement in private antitrust litigation as the volume of those claims is still rather low. Nevertheless, in practice, many cases are closed by way of settlement.

JFTC investigations and private litigation

While private enforcement litigation and JFTC investigations into wrongful conduct are separate issues, it is often the case that claimants in private antitrust litigation consult with the JFTC to start investigations against defendants for alleged anticompetitive conduct, in addition to their private litigation. The JFTC has its own discretion and power to start (or not start) investigation in such cases. The court is also independent from the JFTC in reviewing and making its own judgments.

Outlook

In Japan, the number of private antitrust cases is still limited; as such, there are discussions aimed at encouraging private antitrust litigation. The government, however, is still very cautious in its approach towards introducing a collective action system in Japan, in particular with regard to litigation seeking damages.

However, more companies have made requests that violators of the AMA pay damages outside of court, as otherwise they may face criticism from shareholders. In other words, private antitrust claims have become more common in Japanese society. As such, although the current number of private antitrust litigation cases is still not particularly large, the basis of private antitrust litigation has expanded.

Appendix 1

About the Authors

Madoka Shimada
Nishimura & Asahi

Madoka Shimada advises clients on various competition law matters, including domestic and international cartels, bid rigging, M&A transactions, investigations by the Japan Fair Trade Commission, leniency applications and general antitrust law compliance. She is especially active in cross-border transactions, such as international cartels. She has represented clients in connection with the investigation into an alleged cartel among forwarders regarding surcharges on air cargo, an international cartel in connection with marine hoses, an international cartel in connection with TFT- LCDs, an international cartel among airlines regarding rates and surcharges on cargo, and an alleged international cartel in connection with bearings. Also, she has represented major domestic and international clients in various merger control cases.

Ms Shimada is also active in advising in international trade, government procurement, and export control. In addition, she advises on Unfair Competition Prevention Law, including trade secret related litigations. She has been a member of the Subcommittee on Unfair Trade Policies and Measures of the Industrial Structure Council at the Ministry of Economy, Trade and Industry since 2013.

Kazumaro Kobayashi
Nishimura & Asahi

Mr Kobayashi is a partner at the firm whose practice has focused on antitrust and competition matters, and international trade affairs. He counsels clients with regard to alleged international cartels in connection with automotive parts as well as domestic cartel cases. He handles merger notifications with the Japan Fair Trade Commission and international competition authorities for domestic and international clients especially in the automotive industry, energy industry, and pharmaceutical industry. Mr Kobayashi earned an LLM degree from Columbia Law School in 2014 and worked at Cleary, Gottlieb, Steen & Hamilton in Washington, DC from 2014 to 2015. He has been admitted as an attorney in Japan since 2007 and in New York since 2015.

Atsushi Kono
Nishimura & Asahi

Mr Kono is an associate at the firm with wide-ranging experience in advising Japanese and foreign companies on competition law issues, including merger filing and unfair trade practices. He has also been involved in cases regarding the Unfair Competition Prevention Act, including leakage of trade secrets, and other Japanese regulatory rules such as telecommunications regulations, automobile regulations, and privacy regulations. Mr Kono has been admitted as an attorney in Japan since 2016 and is a member of the Daiichi Tokyo Bar Association.

Nishimura & Asahi
Otemon Tower
1-1-2 Otemachi
Chiyoda-ku
Tokyo 100-8124
Japan
Tel: +81 3 6250 6200
Fax: +81 3 6250 7200
m_shimada@jurists.co.jp
k_kobayashi@jurists.co.jp
at_kono@jurists.co.jp
www.jurists.co.jp/en

Private competition litigation has spread across the globe, raising specific, complex questions in each jurisdiction. The implementation of the EU Damages Directive in the Member States has furthered the ability of victims of anticompetitive conduct to seek compensation, even as US courts tighten the standards for forming a class action.

The *Private Litigation Guide* – published by Global Competition Review – explores in depth key themes such as territoriality, causation and proof of damages that are common to competition litigation around the world with jurisdictional overviews and Q&As. Beyond the established sites such as the US, Canada, Germany, the Netherlands and the UK, experts lay out the scene for competition litigation in countries such as Brazil, Japan and Mexico.

As the editors of this publication note, 'litigating antitrust or competition claims has become a global matter, requiring coordination among jurisdictions, and requiring counsel and clients to understand the rules and procedures in many different countries and how the approaches of courts differ as to key issues.'

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