



## Japan's competition bar

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*After several years of treading water, Japan's Fair-Trade Commission has a new focus on platforms and improvements to its leniency regime, which bode well for the future of the country's competition community. Matt Richards ranks the high performers.*

In early 2016, when GCR last looked at Japan's competition scene, the country was in a lengthy lull for local behavioural matters following the hectic years of the auto parts cartel. The competition community had to fall back on the bread and butter work of merger filings. At the time, Toshiaki Tada of antitrust boutique Hibiya Sogo Law Offices described the legal market as being oversupplied with competition specialists.

However, the enforcement lull may have come to an end. In June 2019, Japan's parliament approved sweeping changes to the country's leniency regime, including new rules that base leniency reductions on cooperation levels and remove the limit on the number of companies eligible to apply. The changes also increase the length of infringement periods on which fines are calculated, substantially increase fines for obstruction and, for the first time, introduce attorney-client privilege.

Japan's Fair Trade Commission is focusing on the digital economy, with cases against the likes of Airbnb and Apple. In July 2019, the competition authority also reportedly began preparing guidance that said use of consumer data without consent constituted an abuse of dominance.

But the enforcer is also grappling with issues specific to Japan, particularly whether a public interest test should be introduced in certain sectors, such as in banking. Many small regional banks are struggling to stay afloat but the JFTC has blocked their proposed mergers because they would create geographical monopolies.

While large practices continue to dominate the Elite category, the near-universal praise of Hibiya Sogo Law Office by colleagues at other firms boosted it from Highly Recommended to Elite in this year's ranking.

One notable change has been the establishment of several antitrust boutiques by lawyers leaving existing firms to go it alone – a product, one attorney suggests, of the static landscape frustrating career opportunities. Two boutiques make it into this ranking for the first time, resulting in a new recommended band.

### Elite

The competition team at leading full-service law firm **Anderson Mori-Tomotsune** is co-headed by partners Hideto Ishida, Shigeyoshi Ezaki, Yusuke Nakano and Atsushi Yamada. They are joined by five additional partners, one senior foreign counsel, one special counsel and a senior associate. They provide general competition advice to Google.

In merger control, the firm successfully guided Oji Holdings through its partial share acquisition of Mitsubishi Paper Mills. Japan's Fair Trade Commission took the deal to Phase II and analysed its

impact on about 40 markets, before ultimately approving it unconditionally. The team represented Microchip Technology in the Japanese aspect of its proposed €7.5 billion acquisition of Microsemi, which supplies military and aerospace semiconductor equipment.

Anderson Mori successfully represented Qualcomm in a proceeding before the JFTC, which revoked a previously imposed order related to the company's licensing practices with Japanese mobile device manufacturers in the 3G market. It worked with Yabuki Law Offices and US firm Morgan Lewis & Bockius on the matter. The firm advised new client Hawaiian Airlines on its cooperation agreement with Japan Airlines.

Competition boutique **Hibiya Sogo Law Office**'s rise from Highly Recommended to Elite in this survey is due in large part to almost universal praise from its peers. Led by managing partner Tsutomu Nakato – described by one rival as “the top antitrust lawyer in Japan” – the team is comprised of 12 partners, four of whom are semi-retired, and four associates.

The firm spends nearly half its time on providing daily advice and guidance to clients, with the remaining time dedicated mostly to behavioral matters. About 20% of the firm's work focuses on merger control, including acting for Japan Airline subsidiary Axess, a global distribution system provider, in the establishment of a joint venture with Travelport Worldwide.

Hibiya Sogo has represented companies involved in Japan's drinking can cartel and alleged bid rigging for the construction of the high-speed Maglev train. In the former probe, the JFTC reportedly sent draft orders to the companies in July 2019, while the construction case involves two companies that have admitted their role and two that claim they did not break the law. The firm is also involved in cartel cases in the asphalt mixture materials market – where a cease-and-desist order and a fine were issued in July 2019 – and the cardboard market, in which companies are appealing against a decision from 2014.

Kenji Ito heads the competition practice at **Mori Hamada & Matsumoto**. Joining him are six other partners, one of counsel, one special counsel, and 15 associates. Ito says the firm's time is split evenly between international and domestic work, with slightly more merger work than behavioural matters.

The team handled two Phase II investigations of deals between regional banks that had significant combined shares in their geographic markets. One was cleared unconditionally, while the other was cleared with conditions following an investigation that took more than two years. During that time, the firm engaged in discussions with the JFTC and supported the companies to structure the accepted remedies. The deals brought to the fore the issue of how the competition authority should assess mergers being made by the country's struggling local banks as a means of survival, when these institutions are an important part of local infrastructure.

In behavioural work, the firm represented or advised companies in several cartel cases. While the names of the clients are confidential, the firm says the fines or damages involved are “huge”. It also notes that it has been building its expertise and knowledge of competition issues related to digital platforms – a key topic in the country's competition community.

Eriko Watanabe heads the competition practice at **Nagashima Ohno & Tsunematsu**, supported by five other partners and 25 associates. The team also includes three advisors, one of whom is Hideo Makuta, a former JFTC commissioner who joined the firm in September 2017.

The team was Shire's Japanese counsel in the drugmaker's global acquisition of Takeda, securing Phase I clearance in cooperation with Shire's global counsel Slaughter and May. Nagashima Ohno also advised Mitsubishi in its acquisition of Toyo Rubber, which required notifications in both Japan and China, as well as Toyota in the merger of its housing subsidiary with Panasonic's own housing companies.

The firm advised digital entertainment company Pioneer in the sale of shares to Baring Private Equity Asia, resulting in Pioneer becoming a wholly owned subsidiary. The team's involvement in non-merger matters is confidential.

The competition group at **Nishimura & Asahi** is led by Kozo Kawai. He, Madoka Shimada and the newly promoted Kazumaro Kobayashi dedicate almost all their time to antitrust cases, while a further seven partners spend more than 50% of their time on competition matters. The practice also has two counsels dedicated to antitrust work and 28 associates who spend most of their time working on competition.

The team has particular strength in merger control in the energy sector and steel-related industries. For example, it acted for Japanese petrol company Idemitsu Kosan in its purchase from Shell of voting rights in Shell's Japanese subsidiary Showa Shell Sekiyu. The firm also advised Nippon Steel on its acquisition of Sanyo Special Steel, designing remedies to secure the deal's clearance despite a high combined market share between the two companies. The firm handles the Japanese side of high-profile global mergers, such as acting for The Walt Disney Company in its acquisition of 21st Century Fox, and for Takeda Pharmaceuticals in its acquisition of Shire.

In behavioural work, the firm is advising a confidential client involved in the Maglev train construction bid-rigging probe. Nishimura & Asahi also provides legal advice and advocacy before the competition authority and other agencies for a range of technology companies. The firm acted for AirBnB in the first investigation by the JFTC into the so-called sharing economy in Japan; the enforcer closed the case without administrative sanctions.

### **Highly Recommended**

Senior partner Setsuko Yufu leads the competition practice at **Atsumi & Sakai**, working with seven other partners and five associates. The firm acted for a shipping company in a joint venture notification to the JFTC, and for an automobile manufacturer on the company's sale of €90.6 million worth of shares in a joint venture. The team is also advising a trading house on merger notifications in the acquisition of a food ingredient supplement manufacturer, in a deal that required filing in more than a dozen jurisdictions.

The team also demonstrates its strong cross-border experience in conduct matters. For example, it advised a subsidiary of a global healthcare equipment maker on antitrust compliance and reseller behaviour, including resale price maintenance. It also advised a subsidiary of an electrical appliance manufacturer on distribution and pricing questions, again including resale price maintenance, and a cosmetics manufacturer on vertical restraints.

Tetsuya Nagasawa heads the antitrust practice at **Oh-Ebashi LPC & Partners**, working with five partners, two counsel, 12 associates and one advisor. The firm says it spends about 30% of the time on merger control, working mostly with domestic clients in industries such as chemicals and electronics.

The rest is focused on investigations and litigations, as well as counselling work. The firm advised Sanyo Marunaka in proceedings following the authority's decision to fine the company for allegedly abusing its superior bargaining position. A decision in February 2019 reduced the fine. In a similar case, the team is advising DIREX in a pending hearing regarding the discount store's alleged abuse of a superior bargaining position.

The eight-person team at the antitrust boutique **Yabuki Law Offices** is led by the eponymous Kimitoshi Yabuki, secretary general of the Japan Competition Law Forum. The practice also includes two former competition authority officials, and focuses primarily on investigations, with just 20% of the team's time taken up by merger filings.

Most notably, it acted for Qualcomm before the JFTC regarding the chipmaker's use of non-assertion patent agreements, which the enforcer had previously considered to be an unfair trade practice that likely restricted fair competition. In March 2019, the agency overturned its original decade-old ruling – only the third time this has happened – finding that the company had not violated the country's unfair

competition rules. The team also advised the Japanese Society for Rights of Authors, Composers and Publishers on its long-term dispute with the JFTC regarding the performing rights organisation's collection of music copyright fees. It also represented Mitsuba in the ongoing fall-out from the auto parts cartel, and Tokin in relation to the capacitor cartel.

### **Recommended**

**Hirayama Law** may be a new competition practice, but Kentaro Hirayama is an experienced practitioner. Initially at Anderson Mori-Tomotsune, he worked at Japan's competition authority from 2007 to 2010 and then spent five years at Morrison Foerster, before establishing his own boutique firm. It focuses primarily on domestic companies, or local subsidiaries of international companies, tackling both behavioural work and merger control. The firm's clients are confidential, but recent successes include persuading the JFTC to open two formal investigations against dominant companies and to drop a probe without a formal prohibition decision or fine.

The second new boutique to feature for the first time in this survey is competition and consumer law practice **Ikeda & Someya**. Tsuyoshi Ikeda left Mori Hamada & Matsumoto to co-found the firm in 2018 with consumer law specialist Taka Someya. Ikeda previously also worked in the JFTC's investigations team. He and Someya are supported by three associates. The firm has already represented clients across a broad range of sectors, including information technology, telecommunications, brewing, pharmaceuticals, retail, manufacturing, infrastructure and energy. Those clients are confidential, but Ikeda says the firm is advising on both investigations and joint ventures.

International

Partners Junya Ae and Akira Inoue co-lead the Japanese antitrust practice at **Baker McKenzie**. They are joined by two other partners, one counsel, and 14 associates. The practice features an even split between merger work and behavioural matters. In the latter, the team continued to advise Okaya Electric on issues related to the global capacitor cartel, with settlements with class action plaintiffs in Canada achieving final court approval. The firm advised Japanese electronics manufacturer Pioneer in a European Commission investigation into fixing online resale prices, with the authority issuing a €10.2 million fine in July 2018.

In merger control, Baker McKenzie advised Hitachi on its €5.8 billion acquisition of a majority stake in ABB's worldwide power grid business, which saw Ae working closely with European colleagues on merger filings in multiple jurisdictions. The deal was agreed in December 2018. The firm assisted Mitsubishi UFJ Trust and Banking in its €3.6 billion acquisition of the nine asset management businesses of Colonial First State Group, a subsidiary of the Commonwealth Bank of Australia. The team led submissions in several jurisdictions, which was made more challenging by the large number of portfolio companies. The deal closed in August 2019.

Partner Kaori Yamada leads the Japanese competition practice at **Freshfields Bruckhaus Deringer**, and also co-heads the firm's overall Asian competition practice. She is joined by two additional partners and six associates, as well as a senior advisor who is a former secretary general of Japan's Fair Trade Commission. The team advised Lenovo on its joint venture with Fujitsu, and is also involved in multi-jurisdictional filings for other Japanese companies.

In behavioural matters, the firm has acted in confidential matters before the JFTC and other competition authorities. These cover a range of antitrust issues, including abuse of superior bargaining position, vertical issues and information exchange – the latter of which includes making leniency applications.

The Tokyo competition practice of international firm **Jones Day** is headed by partner Hiromitsu Miyakawa. He oversees an of counsel, a couple of associates, and a senior advisor who is a former JFTC commissioner. The team makes use of the firm's global network to collaborate on mergers, cartel work and compliance training for global companies. It also collaborates with other practice groups including intellectual property, pharmaceuticals and white-collar crime.

Many of the firm's clients are confidential, but the team was counsel for Hitachi in its acquisition of Mitsubishi's particle beams and radiotherapy business. The deal was announced at the end of 2017 and closed in June 2018.

The Tokyo antitrust practice of **Morrison & Foerster / Ito & Mitomi** stands out among foreign firms. It is headed by partner Kei Amemiya, who is supported by fellow partner Rony Gerrits – based in Tokyo and Brussels – and of counsels Tomohiko Kimura and Kazuyasu Yoneyama. While they are dedicated to competition matters, a further three partners and one senior of counsel also have a significant antitrust focus. The team is involved in investigations into alleged cartels and unfair trade practices, though those cases and clients are confidential.

In merger control, the team represented Gilead Sciences KK in its acquisition of the HIV drug business of Japan Tobacco and Torii Pharmaceutical, navigating a complex competitive landscape and market definition. It also advised Sumitomo in the company's joint venture with Japan Steel Works and Brazilian steelmaker Gerdau for the manufacture and sale of parts for wind power generation. It required competition authorities' approvals in several jurisdictions, including the EU, India, Brazil and Argentina.

Partner Toshio Dokei leads the competition team at the Tokyo office of **White & Case**, supported by a senior counselor, one counsel and two special advisors. They usually work with the firm's broader network to advise international companies on merger control. The Japanese team also advises the Pharmaceutical Research and Manufacturers of America – a trade association advocating for drugmakers that bring new products to market – on all areas of antitrust compliance.

The team has been acting for Maruyasu Industries in the long-running auto parts cartel investigation and subsequent litigation. The company settled with the US Department of Justice in May 2018, in a plea that was limited to specific conduct that was much narrower than what was originally indicted. White & Case is now advising the company on follow-on litigation in the US and Canada. The firm acted for starch manufacturer Kato Kagaku in a cartel case that saw the competition authority's administrative panel overturn the enforcer's previous cease-and-desist order and accompanying fine.