

出國報告（出國類別：其他公務有關活動）

「AFCCP 競爭法與市場研究訓練課程」  
技術援助活動

服務機關：公平交易委員會

姓名職稱：吳麗玲科長

派赴國家：日本東京

出國期間：107年2月27日至107年3月1日

報告日期：107年3月6日

一、緣日本公平交易委員會與該國獨立行政法人「國際協力機構」(JICA)於107年2月26日至3月1日針對蒙古公平競爭及消費者保護局(AFCCP)官員舉辦「競爭法與市場研究訓練課程」(課程表參附件1)。邀請本會於107年2月28日下午以「濫用優勢地位之個案探討-聚焦於調查過程中進行之市場研究並包含市場界定及經濟分析」為題，講授本會所掌法規及執法現況，並與學員交流競爭法執法經驗。

二、本次授課內容及交流情形摘述如次：

(一) 報告題目：濫用優勢地位相關案例之市場研究 (Market Studies on Cases of Abuse of Dominance)

(二) 報告時間：107年2月28日下午3時15分至5時15分

(三) 報告地點：日本公平會會議室

(四) 與會國家：蒙古公平競爭及消費者保護局(AFCCP)，共15名學員(名單如附件2)。

(五) 報告內容(報告資料參附件3)：

- 1、首先說明我國公平交易法關於濫用市場優勢地位之相關規範。
- 2、其次說明市場界定之觀念與方法，並說明本會訂有「相關市場界定之處理原則」，據該原則規定，分別說明產品市場及地理市場之考量因素及執法實務。而市場界定之方法，將審酌案關商品或服務及地理區域與其他商品或服務及地理區域間是否具合理可替代性，並得運用交叉彈性檢測法及假設性獨占檢測法等計量方法，但不以此二計量方法為限。實務上多倚賴調查交易相對人、競爭對手及產業公會或一般消費者對於案關產品所涉市場之認知、偏好、用途、外觀、功能、市場競爭現況及轉換可能性等質化問卷調查或實地訪查。會中之報告並佐以相關實例說明，如燁聯案。
- 3、復說明公平交易法關於獨占及濫用獨占力違法行為之規範。末以CD-R案及高通案說明產品及技術市場界定之實務，並說明該二案之差別，以及說明本會並非介入技術市場中授權金之高低，而係規範授權過程中協商及交易過程之對等與公平性，以上說明對蒙古競爭局而言屬全新經驗。

三、交流情形與心得

- (一) 因與會學員係蒙古從事與競爭及消費者保護相關業務之執法人員，多數來自蒙古公平競爭及消費者保護局 (AFCCP)，該機關成立於 2008 年，執法迄今未屆 10 年，屬執法初期，且與會人員多數無法以英文溝通，會議係以英文進行，再翻譯成蒙古語。與會者受限於無太多執法經驗，對於案件實體涉入不深，另因語言限制，因此會場上較少互動與交流。惟會後 AFCCP 協力處處長代表發言表示，對於課程內容甚感興趣，且受益良多，將進一步瀏覽本會網站相關資訊，如有疑問將向本會請益。
- (二) 本會執法已有相當時日與成效，並為國際競爭法社會所矚目，從此次交流中，深切體會本會之成長，係因國際經驗之累積，透過國際會議場合或平日案件調查之電話會議聯繫，增長執法知能而得提昇本會調查水準。本會積極透過國際合作，對於新成立之競爭法機關提供技術援助，而新興國家之執法在國際學習場域中透過經驗交流可有效成長，此可由本計畫本以東南亞國家或新興競爭法國家之訓練為目標，然過去參與此計畫之香港及新加坡，不僅不再受邀出席此訓練計畫，且已有相當競爭法執法績效。此次專以蒙古競爭局官員及相關執法人員為訓練對象，足見競爭法之執法已相當普及，需技術協助之國家日漸減少，而可以提供技術援助之國家與日俱增。本會長期參與此訓練計畫，對於競爭法新興國家之執法能力成長，可稱有所貢獻。會後日本公正取引委員會並再以電子郵件致謝，感謝本會之長期參與與協助，期盼本會爾後仍可繼續參與，以維持中日雙方之友好關係 (附件 4)。
- (三) 面對新興競爭法國家之出現與其執法上之需求，本會不應再自滿於技術輸出國家，而應更精進本會之執法能力及調查技能，始能穩固本會於國際間之評價。另可主動出擊，針對特定國家提供客製化之技術援助需求，以使國際合作資源有效分配與利用。

附件 8

## Training Course on the Competition law and Market Studies for AFCCP

Tokyo, Japan

26 February – 1 March, 2018











Consecutive interpretation (Japanese - Mongolia or English - Mongolia)

Date	Time	Activity
26 Feb. Mon.	09:00-11:30 (2.5h)	Preparatory meeting (at JICA)
	11:30-13:00 (1.5h)	Lunch Break and move to JFTC
	13:00-15:00 (2h)	<b>Agenda Item 1.</b> Outline on the regulation of Private Monopolization in Japan (Guideline, Case study contested case on market definition, etc.) - Prof. Kazuo Tosa, Konan University
	15:00-15:15	Break
	15:15-17:15 (2h)	<b>Agenda Item 2.</b> Private monopolization case in Japan (Market definition, investigation techniques for market definition, etc.) - Ms. Anna Ishizuka, Investigator, Investigation Bureau, JFTC
27 Feb. Tue.	10:00-12:00 (2h)	<b>Agenda Item 3.</b> Outline on the regulation of Mergers and Acquisitions in Japan (Market definition, the economic indicators, etc.) - Prof. Kuninobu Takeda, Osaka University
	12:00-13:00	Lunch Break
	13:00-16:00 (3h)	<b>Agenda Item 4.</b> JFTC's merger reviews (Market definition, techniques of gathering information, case study, etc.) - Mr. Junji Watanabe, Section Chief, Mergers and Acquisitions Division, JFTC

Date	Time	Activity
28 Feb. Wed.	10:00 -12:00 (2h)	<b>Agenda Item 5.</b> Survey of Concentration Ratio of Production and Shipment by JFTC (Survey and analysis, etc.) - Ms. Atsuko Izumi, Assistant Director of Economic Research Office, JFTC
	12:00-13:00	Lunch Break
	13:00-15:00 (2h)	<b>Agenda Item 6.</b> Techniques and Analysis for Market definition (Plan for survey, implementation system, tool of gathering information, analysis etc.) - Prof. Hiroaki Ishigaki, NERA Economic Consulting
	15:00-15:15	Break
	15:15-17:15 (2h)	<b>Agenda Item 7.</b> Cases on Abuse of Dominance in Taiwan Fair Trade Commission (Market definition, economic analysis, survey tool etc.) - Ms. Wu, Lieh-Ling, section chiefs, Department of Manufacturing Industry Competition, Taiwan Fair Trade Commission
1 Mar. Thu	10:00-12:00 (2h)	<b>Agenda Item 8.</b> Knowledge on market definition in UNCTAD (Case study about the Korean cases etc.) - Mr. Sung Keun Kim, Expert, Competition and Consumer Policies Branch, Division on International Trade in Goods and Services, and Commodities, UNCTAD
	12:00-12:30 (0.5h)	Evaluation —by JICA and JFTC Closing Ceremony —by JICA
	12:30-13:45	Luncheon
2 Mar. Fri		Depart from Tokyo, Japan

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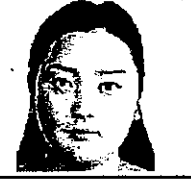


コース番号：J1722562 受入期間：2018/ 2/ 25 ～ 2018/ 3/ 2

No.	研修員番号	顔写真	研修員氏名	現職
1	D-17-13040		Mr. Natsagdorj Byambadorj ナツグドルジ・ <u>ビヤムバドルジ</u>	Commissioner AFCCP 公正競争・消費者保護庁、常任委員
2	D-17-13041		Ms. Renchin Sarantuya レンチン・ <u>サラントヤ</u>	Head of Market Research Dept., 市場調査局局長
3	D-17-13050		Ms. Shagdarsuren Tserendulam シャグダルスレン・ <u>ツェレンドラム</u>	Director of Cooperation Dept., AFCCP 公正競争・消費者保護庁、協力局長
4	D-17-13054		Mr. Batjargal Bundkhorol バトジャルガル・ <u>ボンドホロル</u>	Spokesperson for Deputy Prime Minister of Government of Mongolia 副首相報道官
5	D-17-13053		Ms. Burentugs Altantuya ブレントグス・ <u>アルタントヤ</u>	Ministry of Justice, Legal Policy Department 法務省、法政策 局専門家
6	D-17-13042		Ms. Tungalag Munguntsetseg トンガラグ・ <u>ムングンツェツェグ</u>	State Senior inspector, Market research Dept., AFCCP 公正競争・消費者保護庁市場調査 局、国家主任検査官
7	D-17-13043		Ms. Ichinkhorloo Khorolsuren イチンホルロー・ <u>ホロルスレン</u>	State Inspector, Market research Dept., AFCCP 公正競争・消費者保護庁市場調査 局、国家検査官
8	D-17-13044		Ms. Davaadulam Munkhsolongo ダワードラム・ <u>ムンフソロンゴ</u>	State Inspector, Market research Dept., AFCCP 公正競争・消費者保護庁市場調査 局、国家検査官
9	D-17-13045		Ms. Sukhbat Lkham スヘバト・ <u>ルハム</u>	State Inspector, Competition Policy Regulation Dept, 公正競争・消費者保護庁市場調査 局、国家検査官
10	D-17-13046		Ms. Purevdash Nomin-Erdene プレブダシ・ <u>ノミンエルデネ</u>	State Inspector, Competition Policy Regulation Dept, 公正競 争・消費者保護庁市場調査局、国 家検査官

2017年度 国別研修

モンゴル「競争法・市場調査研修」 研修員リスト

コース番号：J1722562 受入期間：2018/ 2/ 25 ~ 2018/ 3/ 2

No.	研修員番号	顔写真	研修員氏名	現職
11	D-17-13047		Ms. Baatar Sarangua バートル・サラングア	officer, Administration Dept., AFCCP 公正競争・消費者保護庁行政局, 専 門家
12	D-17-13048		Ms. Urtnasan Khaliunaa ウルトナサン・ハリウナー	State Senior Inspector, Consumer Protection Dept., AFCCP 公正競争・消費者保護庁 消費者保護局、国家主任検査官
13	D-17-13049		Ms. Myagmar Battuul ミヤグマル・バトツール	State Inspector, Consumer Protection Dept., AFCCP 公正競争・消費者保護庁 消費者保護局、国家検査官
14	D-17-13051		Ms. Buyan Mendsaikhan ブヤン・メンデサイハン	UB City Public Prosecutor's Office Audit Prosecutor ウランバートル市検察庁監査検察 官
15	D-17-13052		Ms. Nyambuu Oigontsetseg ニャンブー・オトゴンツェツェグ	UB City Public Prosecutor's Office Audit Prosecutor ウランバートル市検察庁監査検察 官

# Market Studies on Cases of Abuse of Dominance

Lieh-Ling (Amy) Wu  
Taiwan Fair Trade Commission  
February 28, 2018



1

# The Regulations of Abuse of Dominance under FTA

- Regulation of Monopoly: Article 9
  - One enterprise with market share >50%
  - Two enterprises with market share as a whole >2/3
  - Three enterprises with market share as a whole >3/4
- Regulation of abuse of Market power: Article 20
  - 15% < market share < 50%
  - Vertical restrictions
  - Rule of Reason



2





## Market

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- Product market
  - Product market
  - Technology market
  - Innovation market
- Geographical market



3



## Perspectives of Market Definition

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- Demand substitution: major consideration
- Supply substitution: apply mainly for competition analysis
- Potential competition: apply mainly for competition analysis



4



## Market Definition: Guidelines

- Quantitative methodology: aide tool
  - Qualitative methodology: Reasonable Substitutability Analysis
  - Trading counterparts' knowledge: functionality, features, uses, prices, and the competition of goods and services involved
  - General consumer's knowledge: functionality, features, uses, prices, and the competition
- \*Questionnaire and compilation



5



## Factors to deem a monopoly

- Market share
- The possibility of the substitution of goods or services
- The ability to influence the price
- The difficulty of market entry
- Import and export status

\*Article 3 of Enforcement Rules of Fair Trade Act



6



## Violation Conducts for abuse of dominance

- prevent any other enterprises from competing by unfair means (Article 9-1)
- improperly set, maintain or change the price for goods (Article 9-2)
- make a trading counterpart give preferential treatment without justification (Article 9-3)
- other abusive conducts by its market power (Article 9-4)



7



## Case Study: CD-R licensing case

- Market definition: CD-R Disc technology market
- Key issues: negotiation process about licensing royalty
- Competition analysis: monopolistic price maintenance ( Violation: Article 9-2)



8

## Case Study: Qualcomm case

- Market definition: CDMA、WCDMA、LTE  
Baseband processor product and technology market
- Key issue: refuse to license competitors、no license no chip、exclusive deal for royal discount
- Competition analysis: exclude competitors from competition( Violation: Article 9-1)
- Qualcomm should be deemed as a monopolist



9

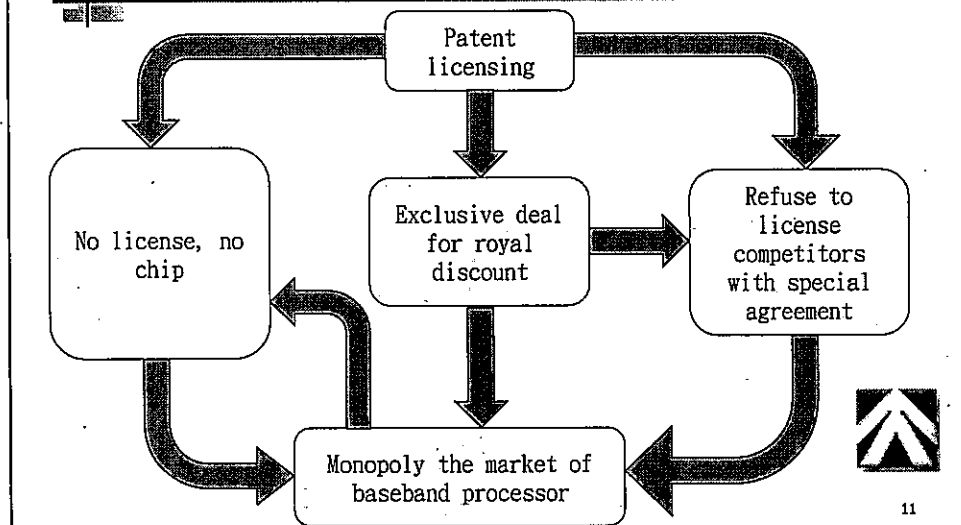
## The Development of Tel-communication Standard

	1G	2G	3G	4G
Year	1970s	1980s	2000	2010
Standard	AMPS	GSM CDMA	WCDMA CDMA2000 TD-SCDMA	LTE
function	Voice calls	<ul style="list-style-type: none"> <li>➢ Voice calls</li> <li>➢ Low- frequency data transmission</li> </ul>	<ul style="list-style-type: none"> <li>➢ Voice calls</li> <li>➢ Data &amp; multi-media transmission</li> </ul>	<ul style="list-style-type: none"> <li>➢ Fixed high-speed mobile to provide high-speed transmission</li> <li>➢ Heterogeneous network interconnection(HetNet)</li> </ul>



10

## Case study: Qualcomm case



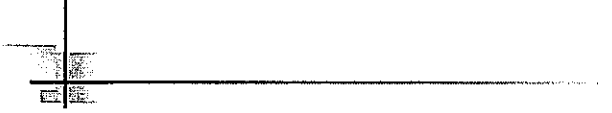
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## Conclusion


- Fact analysis and evidences collection to find the consequences of violation
- Sufficient data to support quantitative analysis: efficient for litigation but difficult to prove
- Define and competition focus on geographical market is different, especially for IT products
- Harm analysis based on market structure



12



Thank you for Listening



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吳麗玲

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寄件日期: 2018年3月5日星期一 上午 8:53  
收件者: 吳麗玲  
副本: 柳田 淳一; 村田 利紀  
主旨: RE: (JFTC) JICA Training course of market study for Mongolian competition authority in Japan

Dear Ms. Liehling,

I hope you had a good time in Tokyo.

I would like to express my deep appreciate for your lecture.  
All program of the training course for AFCCP has finished successfully.

Mongolian participants really satisfied with this training course because they could learn about market definition not only Japanese case but global case thanks to you.

I believe our cooperation relationship between TFTC and JFTC will continue in the future.  
Thank you so much.

Best Regards,

Mari Nunomura (Ms.)  
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Japan Fair Trade Commission  
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