

**ANTITRUST AND COMPETITION LAW LIMITS ON
LICENSING IN JAPAN UNDER THE JFTC 2007 GUIDELINES**

JOHN W. SCHLICHER

December 19, 2007

Law Office of John W. Schlicher
304 Lowell Lane W.
Lafayette, CA 94549

Tel: 925-284-7675

Cell: 510-220-2778

Fax: 925-284-7675

E-mail: johnschlicher@comcast.net

Copyright, John W. Schlicher, 2007

TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| I. Introduction..... | 1 |
| II. Japan Antitrust Statutes..... | 1 |
| III. Japan Fair Trade Commission Licensing Regulation | 2 |
| A. The 1968 and 1989 Guidelines | 2 |
| B. The 1999 Guidelines..... | 4 |
| C. The 2007 Guidelines | 4 |
| D. The Structure of the 2007 Guidelines | 5 |
| IV. Competition Policy and Intellectual Property Law (Part 1)..... | 5 |
| V. Practices Subject to the Guidelines (Part 1)..... | 7 |
| VI. The Basic Principles for Applying the Antimonopoly Act (Part 2)..... | 7 |
| A. Section 21 of the Act..... | 7 |
| B. The Markets Potentially Affected..... | 9 |
| C. Analyzing Effects on Competition..... | 10 |
| D. The Several Ways Conduct May Violate the Antimonopoly Act..... | 12 |
| VII. Monopolization (Part 3)..... | 13 |
| A. Inhibiting Use of Technology | 13 |
| B. Limiting the Scope of Use | 14 |
| C. Imposing Conditions on the Use of Technology | 15 |
| VIII. Unreasonable Restraints of Trade (Part 3)..... | 16 |
| A. Patent Pools..... | 16 |
| B. Multiple Licensing | 17 |
| C. Cross Licensing..... | 17 |
| IX. Unfair Trade Practices (Part 4) | 18 |
| A. Inhibiting the Use of Technology | 18 |
| B. Limiting the Scope of Use of Technology | 19 |
| 1. Licensing rights in part | 19 |
| 2. Restrictions in relation to manufacturing..... | 20 |
| 3. Restrictions in relation to export..... | 21 |
| 4. Sub-licensing..... | 21 |
| C. Imposing Restrictions in relation to the Use of Technology | 21 |
| 1. Restrictions on raw materials and parts | 21 |
| 2. Restrictions on sales..... | 22 |
| 3. Restrictions on sale and resale prices..... | 23 |
| 4. Restrictions on manufacturing and sale of competing products or on transactions with competitors | 24 |
| 5. Best effort obligations..... | 25 |
| 6. Obligations to protect confidentiality of know-how | 25 |

| | | | |
|----|-----|--|----|
| | 7. | No-contest obligation..... | 25 |
| D. | | Imposing Other Restrictions | 26 |
| | 1. | Unilateral termination provisions..... | 26 |
| | 2. | Setting of royalties without relation to the use of technology | 26 |
| | 3. | Restrictions after extinction of rights..... | 27 |
| | 4. | Bundle licensing..... | 27 |
| | 5. | Addition of functions to technology | 27 |
| | 6. | Obligations of non-assertion of rights..... | 28 |
| | 7. | Restrictions on research and development activities | 28 |
| | 8. | Obligations to hand over improved technology or to grant exclusive licenses for improved technology | 28 |
| | 9. | Obligations to grant non-exclusive licenses for improved technology | 29 |
| | 10. | Obligations to report obtained knowledge and experience..... | 29 |