

## REZENSIONEN / REVIEWS

**WILLEM M. VISSER'T HOOFT, *Japanese Contract Law and Anti-Trust Law :  
A Sociological and Comparative Study***

**RoutledgeCurzon (London 2002), 191 pages plus appendix (24 pp.)**

**£ 65,- ISBN 0-7007-1577-0**

*Japanese Contract and Anti-Trust Law* is an excellent book on contemporary Japanese contract and competition law. It was written by a Dutch legal scholar as a doctoral thesis and was based on many years of extensive research in Japan.

The book primarily focuses on the legal implications of several lawsuits between manufacturers and distributors of luxury cosmetics (*Shiseido v. Fujiki*, etc.) in the 1990s that were an issue of great controversy among legal scholars and practitioners in Japan and, in the end, even brought about important High Court and Supreme Court decisions. The main question in those cases was if and under what conditions manufacturers were allowed to terminate long-term distribution contracts. This involved not only aspects of contract law but also of competition law. Due to the economic depression since the beginning of the 1990s, distributors in Japan have been experiencing significant pressure to lower prices and restructure distribution channels and methods. Therefore, many distributors started discount sales and catalogue sales to attract new customers. However, the distribution agreement required the distributors to adhere to a face-to-face sales method and, as a matter of fact, to keep the recommended retail prices set by the manufacturers to maintain the image of high-class products among customers. The dispute often resulted in a unilateral termination by manufacturers of the distribution contract, which in most cases had been in existence for many years and on which the distributors were heavily dependent.

The lawyers asserted on behalf of the distributors that the termination of the commercial contracts should be judged unlawful because it served purposes on behalf of the manufacturers that ran contrary to the aims of the Antimonopoly Act. They claimed that a requirement to adhere to the so-called face-to-face sales method and the set prices was itself an unfair trading practice and constituted a violation of the Antimonopoly Act.<sup>1</sup> The distributors commenced not only civil litigation against the manufacturers but also lodged complaints with the Japan Fair Trade Commission (JFTC).

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<sup>1</sup> Artt. 19, 2 IX of the Antimonopoly Act in connection with No. 12 (resale price maintenance) and No. 13 (trade on restrictive terms) of the General Designation of Unfair Business Practices of the JFTC (1982).

In Chapter 4, *Visser't Hooft* analyzes in great detail the course and the outcome of these lawsuits, the proceedings of the JFTC, and the various interrelations between the two. He puts this into the wider perspective of Japanese contract law principles and competition law. Moreover, he illuminates the background by illustrating the tactics and objectives of the opponents through several interviews he conducted with the protagonists of the disputes on both sides. By doing so, *Visser't Hooft's* study integrates not only a sound doctrinal and case law analysis but also an empirical analysis that draws up the whole picture: law in the books, law in action, and the sociological background. This makes *Visser't Hooft's* book particularly fascinating.<sup>2</sup>

In order to lay the foundations for his analysis, *Visser't Hooft* illustrates in Chapter 2 the basic principles of Japanese civil law, with particular regard to requirements and consequences of the termination of continuing contracts. He points out the principle of continuity as a key norm in many commercial transactions in Japan and an important feature of Japanese contract perception. By this, he is referring to *Takashi Uchida*, a Japanese scholar, whose theory about continuing contracts has received much attention in recent years. He underlines that the unilateral termination of such contracts in Japan is in general quite difficult, particularly if the relation has already lasted for several years. From his description it becomes clear that if litigation is commenced on either side, the courts tend to apply the principle of good faith in order to protect the weaker party and to maintain the contract relation whenever possible. These explanations are essential and help very much to understand and to evaluate the considerations of the parties, the courts, and the JFTC in the cases of the distribution contracts for luxury cosmetics discussed in Chapter 4.

In Chapter 3, *Visser't Hooft* describes the structure of Japanese competition and anti-monopoly law and the existing mechanisms for administrative and private law enforcement in the event of violations of the Antimonopoly Act or additional regulations. The relation between contract law and competition law has not yet been entirely clarified. Therefore, it is important and helpful for the reader that *Visser't Hooft* also explains the basic structure of this field of law before analyzing the cases regarding the termination of the distribution contracts in the following chapter. Thus, *Visser't Hooft* leads readers of his study step by step from the general contract law principles in Japan through the basics of competition and antimonopoly law to help them more easily understand the complete picture and the many fundamental legal issues that were to be addressed by the courts and the JFTC in the distribution contract cases.

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<sup>2</sup> An extract of Chapter 4 was also published in the Journal of Japanese Law [*Zeitschrift für Japanisches Recht*]; see W. VISSER'T HOOFT, The Subtle Interplay between the FTC and the Civil Courts. Three Famous Termination Disputes within the Distribution System for Luxury Cosmetics, in: *Zeitschrift für Japanisches Recht* 13 (2002) 7-27.

In Chapter 5, *Visser't Hooft* compares the results of his analysis of the Japanese cases in Chapter 4 with the corresponding ones in the Netherlands that reflect the business practices and legal rules in this field of law in Japan. He comes to the conclusion that the rules and customs that govern the distribution contracts in the Netherlands – particularly in terms of the requirements for a unilateral termination – do not fundamentally differ from those in Japan. Finally, these perceptions lead him to a much broader conclusion: the often-stressed uniqueness of Japanese contract forms and customs should be reconsidered. In Chapter 6, *Visser't Hooft* criticizes the still prevailing view of a unique Japanese concept of contract that puts particular emphasis on the different and distinct “cultural factors.” According to him, “sweeping comparisons with ‘the West’ should be avoided” (p. 191).

Very much welcomed is *Visser't Hooft*'s comprehensive analysis of numerous Japanese references and sources of information for his study. Nonetheless, he does not simply sum up the legal discussion in Japan, but keeps a distinct focus on the matter.

To sum it up: *Japanese Contract and Anti-Trust Law* is a rewarding and very useful book.<sup>3</sup> It contains an in-depth study of legal matters with great practical relevance in Japan and elsewhere, with a significant focus on Japan. *Visser't Hooft* has exercised a thorough doctrinal and empirical analysis of important legal issues of long-term distribution contracts in Japan, illustrating the many aspects that have to be taken into account, *e.g.*, particularly the interrelations between contract law and competition law. The author compares his findings with the business practices and rules in his own country that laid the foundation for him to draw a broader conclusion about the concept of contemporary Japanese contract law. It is very well worth reading and can be highly recommended to anyone who is looking for sound and reliable information on the legal background of commercial contracts in Japan and who has a great interest in contemporary Japanese contract and business law.

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<sup>3</sup> I can only agree with *Veronica Taylor* who came to the same conclusion in her review of this book; see V. TAYLOR, in: *The Australian Journal of Asian Law* 2 (October 2002) 207-209, at 209.