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# THE EVOLUTION OF ANTIMONOPOLY PROCEEDINGS IN JAPAN: OBSERVATIONS OF THIRD PARTY STANDING TO SUE IN THE CASE INVOLVING JASRAC

Yutaka Ishida<sup>1</sup>

*Abstract:* Japan's Antimonopoly Proceeding has repeatedly changed throughout the 21st century. Originally enacted as the Preliminary Review Procedure, the administrative process evolved into the Complaint Review Procedure from 2005 to 2013, before becoming the Direct Appeal to District Court Procedure in effect now. The proceedings allow the Japan Fair Trade Commission ("JFTC") to regulate the market and shield it from monopolistic behavior. The Japanese Society for Rights of Authors, Composers, and Publishers ("JASRAC") dominates the music copyright management service provider industry in Japan. The company's fee collection methods led the JFTC to issue it a cease and desist order under the Antimonopoly Act. JASRAC subsequently initiated the administrative review process, which was the Complaint Review Procedure at the time, and the case was eventually appealed to the Supreme Court of Japan. During the litigation process, e-License, JASRAC's sole competitor, became involved as well, raising unique third party standing issues in conjunction with the Antimonopoly Act. Accompanied by a partial translation of the Tokyo High Court opinion in the JASRAC case, this comment analyzes the Japanese Antimonopoly Act and its administrative review process, while focusing on the procedural posture presented. As the Japanese government continues its efforts to halt monopolistic activities and enforce the statute, the issue of whether third parties have standing to sue will remain relevant moving forward.

## I. INTRODUCTION

The Japanese Diet passed the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (the "Antimonopoly Act" or "AMA") in order to "promote fair trade and competition" of the market by "prohibiting private monopolization" and "other unjust restrictions on business activities."<sup>2</sup> The AMA establishes the Japan Fair Trade Commission ("JFTC") as the administrative body to regulate the market for this purpose.<sup>3</sup> One of the tools that the JFTC employs is the issuance of a cease and desist order against a private party's exclusionary act.<sup>4</sup> If a party disagrees with such an order, the AMA provides an appeals process (the "Antimonopoly Proceeding"). However, the exact structure of the Antimonopoly Proceeding has not been uniform in Japan during the 21st Century. Major amendments to the AMA have significantly transformed it,

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<sup>2</sup> Shiteki-dokusen no kinshi oyobi kōseitorihiki no kakuho ni kansuru hōritsu [Act on Prohibition of Private Monopolization and Maintenance of Fair Trade], Law No. 54 of 1949, art. 1. [http://www.jftc.go.jp/en/legislation\\_gls/amended\\_ama09/index.files/The\\_Antimonopoly\\_Act.pdf](http://www.jftc.go.jp/en/legislation_gls/amended_ama09/index.files/The_Antimonopoly_Act.pdf) (Japan).

<sup>3</sup> *Id.* at art. 27.

<sup>4</sup> *Id.* at art. 7.

with each iteration bearing a new name: from the Preliminary Review Procedure, to the Complaint Review Procedure from 2005 to 2013, and to the Direct Appeal to the District Court Procedure from 2013 onward.<sup>5</sup>

The transition between each amendment produced some uncertainties in the specific application of the Antimonopoly Proceeding. One of the issues that arose during the era of the Complaint Review Procedure—and is still unclear under the current Direct Appeal to the District Court Procedure—is a third party's standing to sue.<sup>6</sup> The issue arose in 2009 during a case involving the Japanese Society for Rights of Authors, Composers, and Publishers (“JASRAC”), the dominant music copyright management service provider in the market.<sup>7</sup> The JFTC originally issued a cease and desist order against JASRAC, alleging monopolistic activity in the music copyright industry. The JFTC conducted administrative hearings, and ultimately decided to withdraw the order. e-License, JASRAC's sole competitor, appealed the JFTC's decision and requested that the organization reinstate the order, despite being a mere third party to the proceeding.<sup>8</sup> Because of this third-party involvement, the Tokyo High Court extensively discussed e-License's standing to sue in its opinion, particularly because the company was a competitor who neither received the cease and desist order nor participated in the JFTC's hearings.<sup>9</sup> The Tokyo High Court acknowledged e-License's claim to be a proper plaintiff, and e-License consequently won the case at the Tokyo High Court and at the Supreme Court on the ground that JASRAC's fee collection method violated the AMA. This case marked the first instance, under the AMA in Japan, where a third party brought a case to an appellate court as a proper plaintiff to continue a legal proceeding initiated at the administrative level.<sup>10</sup>

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<sup>5</sup> Hirozumi Uchida and Kaori Sasai, *Koseitorihiki Iinkai Ni Okeru Shinpanseido No Haishi* [Abolishment of the Hearing Process], *Keizai Sangyo Iinkai* 44, 46 (2010).

<sup>6</sup> Nobuo Shimazaki, *Daisanshani Yoru Hatarakikake Heno Taiou* [Response to Actions Called by Third Parties], 1467 *JURIST* 32, 35 (2014).

<sup>7</sup> Saikō Saibansho [Sup. Ct.] Apr. 28, 2015, Hei 27 (gyō-hi) no. 75, 69 *SAIKŌ SAIBANSHO MINJI HANREISHŪ* [MINSHŪ] 2(1) (Japan).

<sup>8</sup> *Id.*

<sup>9</sup> Hidekatsu Hirabayashi, *Shiteki Dokusen No Hajijo No Kouka Ga Arutoshi, Haijosocho Meirei Wo Torikesu Shinketsu Wo Torikeshita Hanketsu: JASRAC Case* [Judgment to Revoke the Withdrawal of the Order Based on the Finding that There was an Effect of Private Monopoly], 1466 *JURIST* 252, 252 (2014).

<sup>10</sup> Minoru Fujita, *Nihon Ongaku Chosaku Kyoukai (JASRAC) Jiken Shinketsu Torikeshi Shōso Tokyo Kousai Hanketsu: Genkoku Tekikaku To Jisshitsu Shouko Housoku* [Tokyo High Court's Judgment of the Revocation of the Order on JASRAC Incident], 45 *BULL. OF YAMAGATA U.* 128, 134 (2014), <http://www2.lib.yamagata-u.ac.jp/kiyou/kiyous/kiyous-45-1/image/kiyous-45-1-129to151.pdf>.

As a result of this dispute, many scholars have published articles interpreting the Tokyo High Court's opinion and discussing whether the third party standing to sue should have been recognized under the AMA in Japan. Although the structure of the Antimonopoly Proceeding was amended in 2013, the new AMA does not answer the third party standing to sue question explicitly, nor has the Japanese judiciary addressed it.<sup>11</sup> Thus, this comment will review and analyze the Tokyo High Court's opinion about a third party's standing to sue in an effort to understand the reasoning behind the court's decision. This comment is also supplemented by a segment of the Tokyo High Court's opinion, which was originally issued only in Japanese, translated by the *Washington International Law Journal*.<sup>12</sup>

This comment will proceed by introducing the evolution of the Antimonopoly Proceeding in Japan as a result of two major reforms to the AMA. Then, Part III examines the Antimonopoly Proceeding that JASRAC completed under the Complaint Review Procedure, followed by a discussion of the third party's standing to sue issue at Tokyo High Court. Part IV reviews scholars' analysis on the standing to sue issue and potential influence to the Direct Appeal to the District Court Procedure. Finally, Part V concludes by analyzing the effect of the abolishment of the JFTC hearing and judgment process under the Antimonopoly Act and the potential policy ramifications moving forward.

## II. REFORMS OF THE ANTIMONOPOLY PROCEEDING

There have been two rounds of significant reforms to the Antimonopoly Proceeding in Japan during the 21st Century as a result of major amendments to the AMA in 2005 and 2013.<sup>13</sup> In this section, key features of each procedure will be introduced.

### A. *Pre-2005 Antimonopoly Proceeding: Preliminary Review Procedure*

Under the Preliminary Review Procedure, the JFTC's Antimonopoly Proceeding started with an adversarial hearing hosted by the JFTC's administrative committee as the court of first instance.<sup>14</sup> If the JFTC

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<sup>11</sup> See Nobuo Shimazaki, *supra* note 6.

<sup>12</sup> Chengyu Shi, *Tokyo High Court, Judgment for JASRAC Case (2013) (Japan)*, 26 WASH. INT'L J. 573 (June 2017).

<sup>13</sup> See *supra* note 5.

<sup>14</sup> Sadaaki Suwazono, *Kaiseidokusenkinshihou No Gaiyou* [Summary of the Amendment of the Antimonopoly Act] 1294 JURIST 2, 6 (2005).

committee found that it is valid to impose a cease and desist order, the JFTC issued the order against addressee; this administrative judgment of the JFTC was recognized as a semi-legal function to review the legitimacy of the order.<sup>15</sup> If an addressee objected the cease and desist order, it had an option to bring an appeal to the Tokyo High Court and, subsequently, to the Supreme Court.

On the one hand, this procedure provided a certain level of fairness of the judgment against the addressee because before the imposition of the cease and desist order, the addressee had an opportunity to communicate with the JFTC committee. On the other hand, by requiring the hearing process before imposing the cease and desist order, there were concerns that it could delay the resolution of the market distraction.<sup>16</sup>

*B. 2005–2013 Antimonopoly Proceeding: Complaint Review Procedure*

As a result, in April 2005, the AMA was amended (the “2005 Amendment”) and was put into force on January 4, 2006.<sup>17</sup> Along with the Amendment, the JFTC published the Rules on Administrative Investigations by the Fair Trade Commission (the “2005 Investigation Rules”) and the Rules on Hearing by Fair Trade Commission (the “2005 Hearing Rules”) to illustrate the exact application of the process.<sup>18</sup> A major change brought by this amendment was that the JFTC gained the capacity to issue a cease and desist order after conducting a summary investigation but before full hearings.<sup>19</sup> If the addressee was unsatisfied with the order, it was able to bring an appeal to the JFTC committee for hearings, which acted as a semi-legal measure.<sup>20</sup> If a party was still dissatisfied with the judgment after the hearings, the case could be brought to Tokyo High Court as a further appeal

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<sup>15</sup> *Id.*

<sup>16</sup> *See supra* note 5.

<sup>17</sup> Kimitoshi Yabuki, *Dokuseihou No Kaisei To Shinpan Seido* [Reform of the Antimonopoly Act and Shinpan Seido], TOKYO U. L. REV. 267, 267 (2008), <http://www.sllr.j.u-tokyo.ac.jp/03/papers/v03part18.pdf>.

<sup>18</sup> Publication of the Cabinet Ordinances and the Fair Trade Commission Rules Related to the Implementation of the Amended Antimonopoly Act, JFTC (Oct. 6, 2005) [http://www.jftc.go.jp/en/pressreleases/yearly\\_2005/oct/individual\\_000235.html](http://www.jftc.go.jp/en/pressreleases/yearly_2005/oct/individual_000235.html).

<sup>19</sup> Jouji Atsuya, *Dokuseinshihou No Henyou* [Change in the Antimonopoly Act], 1382 JURIST 115, 116 (2009).

<sup>20</sup> *See supra* note 5, at 44.

and subsequently brought before the Supreme Court.<sup>21</sup> Upon these appellate reviews, the evidence gathered during the hearings were used.<sup>22</sup>

This process was aimed to eliminate monopolistic behavior in a timely manner in order to maintain healthy competition in the market.<sup>23</sup> However, at the same time, there were some concerns about the misjudgment and overexpansion of the JFTC's sovereignty. Furthermore, there appeared to be a conflict of the JFTC's committee to overturn the cease and desist order made by JFTC officers. Indeed, the JASRAC case, which will be covered below, was the only case where the JFTC withdrew the order during this scheme.<sup>24</sup>

C. *Post-2013 (Current) Antimonopoly Proceeding—Direct Appeal to District Court Procedure*

Another bill to amend the Antimonopoly Act was submitted to the National Diet on May 24th, 2013, and was approved and enacted by both houses during the 185th Diet Session on December 7th, 2013.<sup>25</sup> After the advisory panel sought the exact application of the new Antimonopoly Proceedings, the JFTC subsequently published the Guidelines on Administrative Investigation Procedure under the Antimonopoly Act (the “2013 Investigation Rules”) on December 25, 2015.<sup>26</sup>

Unlike the Complaint Review Procedure, when an addressee receives a cease and desist order under the 2013 Investigation Rules, a party demanding to revoke a cease and desist order made by the JFTC will bring the claim against the JFTC directly to the Tokyo District Court Civil Department No. 8.<sup>27</sup> Also, because it abolished the hearing process, evidentiary findings will be conducted at the District Court, as opposed to

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *See supra* note 5.

<sup>24</sup> Between 2008 to 2016, there were 56 incidents the JFTC committee heard to determine the validity of the cease and desist order under the Complaint Review Procedure: 3 in 2008, 11 in 2009, 3 in 2010, 4 in 2011, 4 in 2012, 3 in 2013, 15 in 2014, 7 in 2015, and 6 in 2016. *See List of Judgments*, JFTC, <http://www.jftc.go.jp/shinketsu/itiran/index.html> (last visited May 13, 2017).

<sup>25</sup> Enactment of the Bill to Amend the Antimonopoly Act, Japan Fair Trade Commission, (Dec. 9, 2013), <http://www.jftc.go.jp/en/pressreleases/yearly-2013/Dec/individual131209.files/131209FT.pdf>.

<sup>26</sup> Guidelines on Administrative Investigation Procedures under the Antimonopoly Act (Tentative Translation), Japan Fair Trade Commission, (Dec. 25, 2015), [http://www.jftc.go.jp/en/pressreleases/yearly-2015/December/151225.files/151225\\_3.pdf](http://www.jftc.go.jp/en/pressreleases/yearly-2015/December/151225.files/151225_3.pdf).

<sup>27</sup> Nobuo Shimazaki, *Shinpan Seido Haishigo No Dokusenkinshihō Koukoku Soshouni Kansuru Kousatsu* [Analysis on the Revocation Lawsuit After the Abandonment of the Judgment Procedure], 1085 NBL 23, 23 (2016).

the previous structure of using the evidence found through the JFTC hearing.<sup>28</sup>

### III. ANTIMONOPOLY LEGAL PROCEEDING AGAINST JASRAC AND STANDING TO SUE ISSUE

Provided that such an evolution of the Antimonopoly Proceeding existed in Japan, we will now look at a landmark case that illustrated a potential issue of the Antimonopoly Proceeding in Japan— a case involving JASRAC. JASRAC is in the business of music copyright management service providers and copyright societies, which collect copyrights from music labels or directly from artists and songwriters, and provides an entrusted license to interested parties (“licensees”). Once licensees use the copyrights, music copyright management service companies collect the fees from the licensees and distribute the royalties back to the labeling companies and artists after deducting management fees for their services.<sup>29</sup> In Japan, JASRAC has dominated the music copyright management service industry, and as of 2015 it was entrusted with approximately 98% of the music rights in Japan.<sup>30</sup>

Finding that JASRAC appeared to be violating the AMA, the JFTC imposed a cease and desist order in 2009.<sup>31</sup> From the placement of the cease and desist order to the Supreme Court decision finding that JASRAC’s blanket fee license method indeed violated the AMA, there was a unique twist in the legal proceeding: the third party standing to sue. In order to fully explain the context behind how the issue arose, this section reviews the entire legal proceeding that JASRAC took at each stage of judiciary. Once the Antimonopoly Proceeding is laid out, we will further cover the third party’s right to standing to sue, which was extensively discussed at the Tokyo High Court, in this section.

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<sup>28</sup> *Id.* at 28.

<sup>29</sup> The fee deducted between collection and distribution was 0.07% in 2015. [¥111,670,041,471 (total collected)- ¥111,591,389,624 (total distributed)] / ¥111,670,041,471(total collected) = 0.07%. *JASRAC Statistics*, (May 13, 2017), <http://www.jasrac.or.jp/ejhp/about/statistics.html>.

<sup>30</sup> AVEX GROUP HOLDINGS INC., ANNOUNCEMENT REGARDING MERGER OF EQUITY METHOD AFFILIATES AND NAME CHANGE OF SURVIVING COMPANY (2015) [hereinafter AVEX ANNOUNCEMENT].

<sup>31</sup> Cease and Desist Order against Japanese Society for Rights of Authors, Composers and Publishers. JFTC. (Feb. 27, 2009), <http://www.jftc.go.jp/en/pressreleases/yearly-2009/feb/individual-000063.html>.

### A. *JASRAC Legal Proceeding*

Under the Complaint Review Procedure, there are potentially four layers of legal proceedings of the Antimonopoly Proceeding: (a) issuance of the cease and desist order by the JFTC, (b) the JFTC's administrative hearings followed by a judgment, (c) appellate review by the Tokyo High Court, and (d) appellate review by the Supreme Court of Japan.<sup>32</sup> This subsection reviews the entire legal proceeding that JASRAC took at each stage.

#### 1. Cease and Desist Order

In 2009, the JFTC issued a cease and desist order against JASRAC under the AMA on the ground that its fee method prevented other organizations from entering the music copyright management service business and expanding business operations in Japan.<sup>33</sup>

Established under the Act of Brokerage Services for Copyrights in 1939,<sup>34</sup> JASRAC was originally the sole organization administration body to control music copyright in Japan.<sup>35</sup> This dynamic changed in 2001 when the Japanese Diet replaced the Act of Brokerage Services for Copyrights with the Act on Copyright, etc. Management Service in October 2001.<sup>36</sup> According to the Agency for Cultural Affairs of Japan, this reform was partially intended for new entrants in the music copyright management service industry to come in with a simple registration process, as opposed to

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<sup>32</sup> Timeline of the entire legal proceeding is summarized by JASRAC. JASRAC, *Chronology of the Case*, [http://www.jasrac.or.jp/ejhp/release/2015/pdf/release\\_150428.pdf](http://www.jasrac.or.jp/ejhp/release/2015/pdf/release_150428.pdf).

<sup>33</sup> Cease and Desist Order against Japanese Society for Rights of Authors, Composers and Publishers, JFTC (Feb. 27, 2009), <http://www.jftc.go.jp/en/pressreleases/yearly-2009/feb/individual-000063.html>. After the Amendment to the AMA in 2009, the exclusionary monopolization requires fine under article 7, section 2, para. 4 of the AMA, but the cease and desist order was issued before the exercise date of the amendment, Jan. 1, 2010. Tadashi Shiraiishi, *JASRAC Shinketsu Torikeshi Soshou: Toukyou Kousai Hanketsu No Kentou* [*JASRAC Lawsuit Regarding Revocation of Judgement: Analysis of Tokyo High Court's Ruling*], 1015 NBL 15, 16 (2013).

<sup>34</sup> Chūkai Gyōmuhō [Act of Brokerage Services for Copyright], Law No. 67 of 1939 (Japan).

<sup>35</sup> *Chosakukentou Kanrijigyō No Genjouni Tsuite* [*The Current Status of the Act on Copyright, etc. Management Service*] MINISTRY OF EDUCATION, CULTURE, SPORTS, SCIENCE, AND TECHNOLOGY – JAPAN. [http://www.mext.go.jp/b\\_menu/shingi/bunka/toushin/05090803/002.htm](http://www.mext.go.jp/b_menu/shingi/bunka/toushin/05090803/002.htm).

<sup>36</sup> Chosakuken kanri jigyōhō [Act on Copyright, etc. Management Service], Law No. 131 of 2000, (Japan). The official government translation of the law is the Act on Copyright, etc. Management Service. However, the government website translates only the title: <http://www.japaneselawtranslation.go.jp/law/detail/?id=1467&vm=&re=02>. The World Intellectual Property Organization translates the entire act into English and titles it as Law on Management Business of Copyright and Neighboring Rights: [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=228673](http://www.wipo.int/wipolex/en/text.jsp?file_id=228673). JASRAC also uses the term Law on Management Business of Copyright and Neighboring Rights. [http://www.jasrac.or.jp/ejhp/about/admini\\_env.html](http://www.jasrac.or.jp/ejhp/about/admini_env.html).



an approval requirement of the former system.<sup>37</sup> As a result of the enactment of the new law, e-License entered the music copyright management service industry. However, e-License was unable to expand and gain substantial market share to compete with JASRAC due to JASRAC's dominance in the market.

Specifically, the JFTC reasoned that JASRAC's most used fee collection method, the blanket fee collection method, induced this result.<sup>38</sup> JASRAC's blanket fee collection method charged licensees a predetermined percentage (such as 1.5%) of the licensees' revenue derived from using copyrighted music.<sup>39</sup> By paying this fee, licensees had the right to play any and all of the compositions owned by the members of JASRAC's affiliates as often as the licensees desire for a stated term.<sup>40</sup> Since JASRAC historically possessed most of the music copyrights that existed in Japan, this fee method allowed licensees to use virtually all songs in Japan if they entered into the blanket licensing agreement with JASRAC. As an alternative fee-collecting mechanism, JASRAC also offered companies to enter the song-by-song licensing agreement, but this was rarely used by licensees due to the high pricing of using each song.<sup>41</sup> Since JASRAC owned virtually all music copyrights in Japan, licensees had no incentive to contract with other music copyright management service companies as long as they bound the blanket license agreement with JASRAC. The JFTC indicated that management business operators other than JASRAC face difficulties in the market because their managed music works "are hardly used in the broadcast programs, and also because they can hardly secure the musical works expected to be used for broadcasting."<sup>42</sup>

With this reasoning, the JFTC issued a cease and desist order against JASRAC on the ground of violation of the AMA.

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<sup>37</sup> *Kanrijigyohō to chūkaigyomuhū no hikaku* [Comparison of Copyright Agency Business Law and Copyright Management Business Law], AGENCY FOR CENTRAL AFFAIRS, <http://www.bunka.go.jp/seisaku/chosakuken/seidokaisetsu/kanrijigyoho/seitei/hikaku.html>.

<sup>38</sup> Cease and Desist Order against Japanese Society for Rights of Authors, Composers and Publishers, JFTC, (Feb. 27, 2009), 2(1). <http://www.jftc.go.jp/en/pressreleases/yearly-2009/feb/individual-000063.html>.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 2(2).

## 2. JFTC Hearings and Judgment

Following the 2005 Hearing Rules, JASRAC filed a request for hearings by the JFTC's special committee after receiving the cease and desist order.<sup>43</sup> The JFTC accepted this request and held thirteen hearings with JASRAC to determine whether JASRAC's blanket fee collection method violated the AMA.<sup>44</sup>

Although the JFTC committee recognized that other business operators, including e-License, might have suffered from the blanket fee licensing JASRAC was employing, the committee also found that the lack of success by e-License partially stemmed from its own operation.<sup>45</sup> After the special committee completed all hearings, it found in favor of JASRAC and decided to withdraw the cease and desist order under Article 66, paragraph 3 of the former AMA in June 2012.<sup>46</sup> As previously mentioned, this was the first time that the JFTC withdrew its order after holding hearings under the Complaint Review Procedure.

## 3. Tokyo High Court Ruling

Unsatisfied with the JFTC's judgment to withdraw the cease and desist order against JASRAC, e-License, a sole competitor of JASRAC, filed an appeal to the Third Special Unit of Tokyo High Court against the JFTC on November 1, 2013.<sup>47</sup> As a competitor, e-License demanded protection under the AMA and attempted to reverse the ruling.<sup>48</sup> Once the Tokyo High Court decided to hear the case, JASRAC intervened in the lawsuit on behalf

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<sup>43</sup> Kōsei Torihiki Iinakai [Decision of Fair Trade Commission] Jun. 24, 2012, Hei 21 (han) no. 17, KŌSEI TORIHIKI IINKAI SHIKETSU TO DETABESU SHISUTEMU [KOTORII DS], 1, 3 <http://www.jftc.go.jp/houdou/pressrelease/h24/jun/120614.files/12061401shinketsu.pdf> (Japan).

<sup>44</sup> (Heisei 24 nen 6 gatsu 14 ka) Ippan shadan houjin nihon ongaku chosakuken kyokai ni taisuru shinketsu ni tsuite (ongaku chosakubutsu no chosakuken ni kakawaru chosakukentou kanri jigyousha ni yoru shiteki dokusen) [(June 14, 2012) Regarding the JASRAC Judgment (private monopoly by a music copyright management service provider concerning copyrights of music works)] Jun. 14, 2012, <http://www.jftc.go.jp/houdou/pressrelease/h24/jun/120614.html>.

<sup>45</sup> Kōsei Torihiki Iinakai [Decision of Fair Trade Commission] Jun. 24, 2012, Hei 21 (han) no. 17, KŌSEI TORIHIKI IINKAI SHIKETSU TO DETABESU SHISUTEMU [KOTORII DS], 1, 79 <http://www.jftc.go.jp/houdou/pressrelease/h24/jun/120614.files/12061401shinketsu.pdf> (Japan).

<sup>46</sup> *Id.* at 81.

<sup>47</sup> Tōkyō Kōtō Saibansho [Tōkyō High. Ct.] Nov. 01. 2013, Hei 25 (ke) no. 8, Kōtō saibansho hanreishū [Saibansho web] 1, 3 (Japan).

<sup>48</sup> *Id.*

of the JFTC under Article 22, Section 1 of the Administrative Case Litigation Act.<sup>49</sup>

This case represented the first instance where a third party who was not a respondent or addressee of the JFTC's judgment continued a legal proceeding to the appellate level.<sup>50</sup> The AMA specified the JFTC be the defendant of the appellate court, but it did not state explicitly whether a third party had the right to bring a case to the Tokyo High Court in continuation of the JFTC hearings.<sup>51</sup> Thus, the first issue discussed at the Tokyo High Court was whether a third party had standing to sue, which is the focus of this comment as well as the translation piece.<sup>52</sup>

After determining three other issues to determine whether JASRAC's conduct constituted exclusionary private monopolization under Article 2, Section 5 of the AMA, the Tokyo High Court ruled in favor of e-License and decided to overturn the JFTC's judgment.<sup>53</sup>

#### 4. Supreme Court Ruling

The Supreme Court essentially concurred with the Tokyo High Court's opinion and ruled in favor of e-License on April 28th, 2015.<sup>54</sup> Despite the fact that the petition for appeal filed by the JFTC contested the issue of standing, the Supreme Court rejected this claim and did not touch on it in the published opinion.<sup>55</sup> Instead, the Supreme Court found that JASRAC caused "a substantial restraint of competition in any particular field of trade."<sup>56</sup> After this ruling, the JFTC revoked the withdrawal of the cease and desist order, issued, and requested JASRAC to hold further hearings.

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<sup>49</sup> *Id.*; Gyōsei jiken soshou hō [Administrative Case Litigation Act], Law No. 139 of 1962, art. 22 sec. 1 (Japan).

<sup>50</sup> See Fujita, *supra* note 10.

<sup>51</sup> Shunji Annen. *Koutorii, Hanketsu Torikeshi Soshou No Genkoku Tekikakuni Tsuite* [Regarding the Standing to Sue in the JFTC's Revocation of the Order Lawsuit]. 10 CHUŌ L.J. 33, 34. (2013).

<sup>52</sup> Tōkyō Kōtō Saibansho [Tōkyō High. Ct.] Nov. 01. 2013, Hei 25 (ke) no. 8, Kōtō saibansho hanreishū [Saibansho web] 1, 3 (Japan).

<sup>53</sup> Three other issues are the following: Errors in Findings, Errors in the Judgment that falls under the Exclusionary Private Monopolization, and Defect in Proceeding; Tōkyō Kōtō Saibansho [Tokyo High Court], Nov. 1, 2013, Hei 25 (gyō-ke) no.8, 1(4) (Japan).

<sup>54</sup> Saikō Saibansho [Sup. Ct.] Apr. 28, 2015, Hei 27 (gyō-hi) no. 75, 69 SAIKŌ SAIBANSHO MINJI HANREISHŪ [MINSHŪ] 4 (Japan).

<sup>55</sup> Saikō Saibansho saibanshū minji [Saishū minji] [The Japanese Supreme Court Civil Law Report]. No. 249 of 2015, 518, 531 (Japan).

<sup>56</sup> Saikō Saibansho [Sup. Ct.] Apr. 28, 2015, Hei 27 (gyō-hi) no. 75, 69 SAIKŌ SAIBANSHO MINJI HANREISHŪ [MINSHŪ] 4 (Japan).

## B. *Standing to Sue Issue of the Third Party Competitor*

As mentioned, one of the critical issues discussed at the Tokyo High Court was whether e-License, JASRAC's only competitor, had standing to sue at the appellate court under the AMA, despite the fact that it was a third party to JASRAC's original proceeding with the JFTC.<sup>57</sup> Interestingly, this issue was never questioned because out of 56 cases heard by the JFTC's committee under the Complaint Review Procedure, there was only one case where the JFTC committee ruled to withdraw the original cease and desist order—this JASRAC case.<sup>58</sup> Since the Supreme Court excluded the standing to sue issue from its consideration, the only judicial opinion available to us is the Tokyo High Court's opinion.<sup>59</sup> The structure of the Tokyo High Court's opinion tracks the claims asserted by each party—e-License, JFTC, and JASRA. Ultimately, the Tokyo High Court found e-License's argument to be more persuasive.<sup>60</sup>

### 1. Claim made by e-License

e-License first laid the ground by stating that “[f]ollowing the interpretation of the [Antimonopoly Act], the right for fair competition is understood as a legal right that is directly protected.”<sup>61</sup> The company claimed that the right for fair competition is a legal right, and being the sole competitor in the industry, the exclusionary conduct of JASRAC materially infringes e-License's ability to operate properly in the market, taking out a right that e-License possesses. It also claimed that the Act on Copyright etc. Management Service similarly advocates for the public interest in the fair market. e-License argued that because it was a sole competitor, it owns the “legal interest” to bring a case to the Tokyo High Court to “realize the public's interest in maintaining a fair market.”<sup>62</sup>

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<sup>57</sup> Chengyu Shi, *supra* note 12.

<sup>58</sup> Between 2008 and 2016, there were 56 incidents where the JFTC committee held hearings to determine the validity of the cease and desist order under the Appeal Examination Judgment Method. (3 in 2008, 11 in 2009, 3 in 2010, 4 in 2011, 4 in 2012, 3 in 2013, 15 in 2014, 7 in 2015, and 6 in 2016). See <http://www.jftc.go.jp/shinketsu/itiran/index.html>.

<sup>59</sup> Saikō Saibansho [Sup. Ct.] Apr. 28, 2015, Hei 27 (gyō-hi) no. 75, 69 SAIKŌ SAIBANSHO MINJI HANREISHŪ [MINSHŪ] 2(1) (Japan).

<sup>60</sup> Chengyu Shi, *supra* note 12.

<sup>61</sup> *Id.* at V(1) Plaintiff's Claims, A.

<sup>62</sup> *Id.* at V(1) Plaintiff's Claims, C.

## 2. Claim made by the JFTC

The JFTC provided a counterargument to this claim based on an interpretation of the definition of “a person with legal interest” under Article 9, Section 1 of the Administrative Case Litigation Act.<sup>63</sup> To determine the application of this term, the JFTC suggested the court look at the content and the context of the interests under the intent and purpose of the law.<sup>64</sup> It claims that per prior precedents, standing to sue would be limited in an unlawful administration judgment to a specific group of parties whose safety is threatened, or whose health or living environment is degraded by appropriately interpreting the intent and goals of the law that is referenced.<sup>65</sup> The interests that e-License attempts to regain is in the category of economic welfare, which does not meet the threshold of the level of interest protected by the Administrative Case Litigation Act.<sup>66</sup> Because JASRAC was the addressee of the order, as well as the respondent in the case, JASRAC was the sole party with the “legal interest” to bring the case to the Tokyo High Court under the 2005 Hearing Rules.<sup>67</sup>

## 3. Claim made by JASRAC

JASRAC, as the intervenor, also supported the JFTC’s position by stating that the Antimonopoly Act does not protect private interests, only public interests. The direct purpose of the Antimonopoly Act is to promote fair and free competition for “the public interest.”<sup>68</sup> To achieve this goal, the appeals process is reserved in such a way as to rectify infractions of the market, not to provide private protection for general consumers or competitors. Within the facts of the case, e-License lied outside of such a specific group.

## 4. Tokyo High Court’s Opinion

After hearing claims made by each party, the Tokyo High Court concluded that e-License, JASRAC’s sole competitor in the industry, had standing to sue because it was not able to perform its operative activities within a fair market. The court ruled that a party who is not a direct addressee still has standing to sue if there is likely and unavoidably a direct

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<sup>63</sup> *Id.* at V(1) Objections from the defendant, A.

<sup>64</sup> *Id.* at V(1) Objections from the defendant, B.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at V(1) Objections from the defendant, D.

<sup>68</sup> *Id.* at V(1) Intervener’s objections, C.

and substantial damage due to the infringement of fair and free competition in the market.<sup>69</sup> The court emphasized that the damage must be “direct” and “substantial.”<sup>70</sup> After the revision of the Act on the Copyright etc. Management Services, e-License was “the only competitor in the market of the management of copyrights for musical works.”<sup>71</sup> Thus, the court found that the damage sustained by e-License due to the exclusionary conduct of JASRAC was likely and unavoidably “direct” and “substantial.”<sup>72</sup> Therefore, under the Articles 7, 49, and 66 of the Antimonopoly Act, the Tokyo High Court decided to grant standing to sue for e-License, a third party and the sole competitor of JASRAC.<sup>73</sup>

#### IV. SCHOLARLY ANALYSIS ON THE STANDING TO SUE ISSUE AND APPLICATION TO THE DIRECT APPEAL TO THE DISTRICT COURT PROCEDURE

Many scholars in Japan have analyzed the Tokyo High Court’s opinion regarding third-party rights of standing to sue under the AMA to assess the validity of the court’s decision. In general, their opinions can be characterized as (1) statutory interpretation of the AMA and the overarching Administrative Case Litigation Act and (2) comparisons to precedents that touch on third party standing to sue. This section lays out arguments both for and against the Tokyo High Court’s ruling regarding the issue of third party standing in these regards. After reviewing arguments from both sides, this comment will consider how the ruling could affect the current the Direct Appeal to the District Court Procedure.

##### A. *Reasons to Oppose the Tokyo High Court’s Ruling on a Third Party’s Right of Standing to Sue*

Several scholars have questioned or opposed the Tokyo High Court’s reasoning and logic to allow a third party to enter an Antimonopoly Proceeding from the appellate court level. As noted, their opinion can be categorized into the claims related to statutory interpretation and claims based on precedent.

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<sup>69</sup> *Id.* at Judgment of the Court 1.C.

<sup>70</sup> Kazuhiro Tsuchida, *Shinketsu Torikeshi Soshou No Genkoku Tekikaku To Jisshitsuteki Shouko Housouku* [Standing to Sue of a Lawsuit to Revoke Judgment and the Substantial Evidence Law], 1470 JURIST 79, 81 (2014).

<sup>71</sup> Chengyu Shi, *supra* note 12 at 1. D.

<sup>72</sup> *Id.* at 1.C.

<sup>73</sup> *Id.* at 1. D.

## 1. Statutory Interpretation

First of all, some scholars argue that the structure of the Complaint Review Procedure, specifically the relationship between administrative hearings held by the JFTC's committee and the revocation suit at the Tokyo High Court, would not allow a third party to continue the Antimonopoly Proceeding as a sole plaintiff.<sup>74</sup> The AMA explicitly states that the Tokyo High Court, an appellate court, is the venue in which to bring a request to revoke an administrative judgment made by the JFTC committee.<sup>75</sup> This provision stems from the conceptual idea that the JFTC committee hearings act as a semi-legal organization of the judiciary system, which is implicitly permitted under Article 76, Section 2 of the Japanese Constitution.<sup>76</sup> This logic also aligns with other provisions of the AMA. For example, at the Tokyo High Court and with any legal disputes that follow, the parties may use only evidence gathered during the JFTC hearings.<sup>77</sup> Also, if it requires new evidentiary findings, the case is brought back to the JFTC committee for further review.<sup>78</sup> Recognizing this relationship—that the Tokyo High Court's proceeding as a semi-legal proceeding directly follows the JFTC committee's hearing—these scholars claim that only the addressee of the order and the respondent of the JFTC's judgment, which are both JASRAC, should have standing to sue at the Tokyo High Court.<sup>79</sup>

Second, the AMA provides the JFTC with discretion to invite a third party to join the evidentiary findings during the hearing process.<sup>80</sup> e-License, however, was not invited to join the hearing process in this JASRAC case.<sup>81</sup> If e-License intervened in the JFTC's hearing process, there might have been a possibility of continuing the proceeding. However, without it, these scholars believe that e-License did not have standing to sue in this case.

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<sup>74</sup> Akimori Uesugi, *JASRAC Jiken Shinketsu Torikeshi Soshou* [*JASRAC Case Regarding the Revocation of the Judgment*], 1017 NBL 36, 38-39 (2014).

<sup>75</sup> Shiteki-dokusen no kinshi oyobi kōseitōrihiki no kakuho ni kansuru hōritsu [Act on Prohibition of Private Monopolization and Maintenance of Fair Trade], Law No. 54 of 1949, art. 87, as amended on April 27, 2005 (Japan).

<sup>76</sup> NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 76, para. 2 (Japan).

<sup>77</sup> See Shiteki-dokusen no kinshi oyobi kōseitōrihiki no kakuho ni kansuru hōritsu [Act on Prohibition of Private Monopolization and Maintenance of Fair Trade], Law No. 54 of 1949, art. 68, as amended on April 27, 2005.

<sup>78</sup> See Akimori Uesugi, *supra* note 74 at 40.

<sup>79</sup> *Id.* at 39.

<sup>80</sup> See Shiteki-dokusen no kinshi oyobi kōseitōrihiki no kakuho ni kansuru hōritsu [Act on Prohibition of Private Monopolization and Maintenance of Fair Trade], Law No. 54 of 1949, art. 70, para. 3, as amended on April 27, 2005.

<sup>81</sup> Chengyu Shi, *supra* note 12.

Furthermore, Article 709 of Civil Act provides an opportunity for e-License to directly bring a claim against the injuring party (JASRAC) if the injured party (e-License) has sufficient evidence to prove the JASRAC's violation of the AMA.<sup>82</sup>

With these arguments, some scholars argue that the Antimonopoly Proceeding should be reserved for the discussion between the JFTC and JASRAC, the addressee of the cease and desist order.

## 2. Comparison with Precedents

Another approach to questioning the Tokyo High Court's decision to permit e-License to enter the Antimonopoly Proceeding is based on the view that courts have been historically and consistently hesitant to provide a mere third party standing to sue in administrative cases. In *Shufuren Juice Lawsuit*, the Supreme Court of Japan did not permit the third party comprising consumers to be a plaintiff under the Act Against Unjustifiable Premiums and Misleading Representations,<sup>83</sup> a forerunner of the AMA.<sup>84</sup> The court found that the interests that regular consumers have are "arbitral, average, and common," and do not meet the degree of the "private and special interest" protected by the Act Against Unjustifiable Premiums and Misleading Representations.<sup>85</sup> Similarly, in the *Ebisu Syokuhin Lawsuit*, the Supreme Court rejected a claim made by a competitor requesting the JFTC to further investigate on Ebisu Syokuhin.<sup>86</sup> However, the court rejected the competitor's claim by stating that the JFTC's hearing process is reserved to be a venue to protect public, not private interest.<sup>87</sup> Furthermore, when archaeologists tried to protect Ibai Remains in Shizuoka prefecture, the Supreme Court rejected their standing to sue reasoning that "legal right" does not include "cultural right."<sup>88</sup> It is apparent from these cases that historically, the AMA aims to protect the public interest, but not the private interest of a third party.

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<sup>82</sup> See Akimori Uesugi, *supra* note 74 at 37.

<sup>83</sup> Keihin Hyouji Hou [Act Against Unjustifiable Premiums and Misleading Representations].

<sup>84</sup> Saikō Saibansho [Sup. Ct.] (*Shufuren Juice Lawsuit*) Mar. 14, 1974, Shō 49 (tsu) no. 99, 32 Saikō Saibansho minji hanreishū [Minshū] 2, 211 (Japan).

<sup>85</sup> *Id.*

<sup>86</sup> Makoto Kojou, *JASRAC Haijo Gata Shiteki Dokusen Jiken: Dai 1 Shin Hanketsu [JASRAC Exclusionary Private Monopolization Case]* 9 RONKYU JURIST 88, 91 (2014).

<sup>87</sup> *Id.*; Saikō Saibansho [Sup. Ct.] Nov. 16, 1972, Shō 45 (wo) no. 1055, 16 Saikō Saibansho minji hanreishū [Minshū] 9, 1573 (Japan).

<sup>88</sup> Makoto Kojou, *JASRAC Haijo Gata Shiteki Dokusen Jiken: Dai 1 Shin Hanketsu [JASRAC Exclusionary Private Monopolization Case]* 9 RONKYU JURIST 88, 91 (2014); Saikō Saibansho [Sup. Ct.] Jun. 20, 1989, Shō 58 (tsu) no. 98, 59 Saikō Saibansho minji hanreishū [Minshū] 157, 163 (Japan).



These scholars further noted that there are cases in which courts recognized the third party standing to sue in administrative cases, but in all of these cases, third parties joined the case on behalf of the addressees, not against these addressees. e-License was expressly permitted to sue the JFTC intervened by the addressee, JASRAC.

Comparing the JASRAC fact pattern with these lawsuits, scholars found that the JASRAC case stands as an anomaly.

### *B. Reasoning to Support the Tokyo High Court's Ruling on the Standing to Sue Issue*

In contrast, other scholars concur with the Tokyo High Court in its ruling regarding a third party's standing to sue. One of the main supporting arguments stems from the fact that Article 9, Section 2 of the Administrative Case Litigation Act was newly enacted through the Amendment to the Administrative Case Litigation Act in 2004.<sup>89</sup> These scholars believe that the 2004 Amendment fundamentally changed the third party's rights of standing to sue.<sup>90</sup> The claim that many of the lawsuits referred by the oppositions, including *Shufuren Juice Lawsuit*, *Ebisu Shokuhin Lawsuit*, *Nobo Amano Lawsuit*, and *Mitsubishi Bank Lawsuit*, are found under the pre-2004 Administrative Case Litigation Act, and thus, lack a precedential value.<sup>91</sup> After 2005, the issue of the administrative case has become who has a "legal interest" to sue.

#### 1. Statutory Interpretation

There are numerous provisions under the Antimonopoly Act that offer a variety of rights to third parties who are damaged by exclusionary activities. For example, Article 25 of the Antimonopoly Act states that an enterprise in violation of the Antimonopoly Act is liable for "damages suffered by another party."<sup>92</sup> It is important to note that the Act does not

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<sup>89</sup> Gyōsei jiken soshou hō [Administrative Case Litigation Act], Law No. 139 of 1962, art.1 (Japan).

<sup>90</sup> See Kazuhiro Tsuchida, *supra* note 70.

<sup>91</sup> See Kazuhiro Tsuchida, *supra* note 70 at 80; See Minoru Fujita, *supra* note 10, at 135.; See Annen, *supra* note 51 at 49; Saikō Saibansho [Sup. Ct.] (Shufuren Juice Lawsuit) Mar. 14, 1974, Shō 49 (tsu) no. 99, 32 Saikō Saibansho minji hanreishū [Minshū] 2, 211 (Japan); Saikō Saibansho [Sup. Ct.] (Ebisu Lawsuit) Nov. 16, 1972, Shō 45 (wo) no. 1055, 16 Saikō Saibansho minji hanreishū [Minshū] 9, 1573 (Japan); Saikō Saibansho [Sup. Ct.] (Nobo Amano Lawsuit) Nov. 28, 1975, Shō 48 (wo) no. 499, 29 Saikō Saibansho minji hanreishū [Minshū] 10, 1592 (Japan); Saikō Saibansho [Sup. Ct.] (Mitsubishi Bank Lawsuit) Jun. 08, 1960, Shō 35, 10 Saiketsu jireishū [Saiketsu jirei] 91 (Japan)

<sup>92</sup> Daitaro Kishii, *JASRAC Shiteki Dokusen Jiken Toukyou Kousai Hanketsu [JASRAC Private Monopolization Case at Tokyo High Court]*, 1031 NBL 71, 73 (2014).

explicitly provide a third party legal right of standing to sue, but also does not deny it. While the JFTC is predetermined to be the defendant for revocation of the judgment by lawsuit under Article 78, the Antimonopoly Act does not explicitly identify who the plaintiff must be. Instead, Article 77 merely states that the party may submit an objection to the JFTC committee's judgment to the Tokyo High Court within 30 days from the date that the judgment is made.<sup>93</sup>

In an instance where the AMA does not provide a specific legal procedure, the Administrative Case Litigation Act comes into play.<sup>94</sup> Under Article 9, Section 1 of the Act, the standing is provided for “*a person who has legal interest to seek the revocation of the original administration disposition or of the administration disposition on appeal.*”<sup>95</sup> These scholars believe that recent cases illustrate the definition of “a person with legal interest.”

## 2. Comparison with Precedent

In *Odakyu Tetsudou* Lawsuit, decided in 2005, the Supreme Court of Japan granted third party residents who were affected by “health and living environment with substantial damage directly” the standing to sue under Article 9, Section 2 of the 2004 Administrative Case Litigation Act.<sup>96</sup> Indeed, phrases such as “substantial damage” and “directly,” used in the JASRAC case, are referenced from this case. Furthermore, scholars think that the word “directly” is not limited in the sense of “physically direct,” such as rocks falling, but rather implies a logical chain of events, including a neighboring resident suffering from noise and vibration of construction work.<sup>97</sup> In the more recent *Satellite Osaka* Lawsuit, the Supreme Court decision also contained a similar phrasing about a “substantial” factor of suffering: “the person opens medical institution in the area that could potentially and substantially interrupt the operation of other entities.”<sup>98</sup> By comparing with these recent cases, it is reasonable to interpret that the JASRAC case expanded third party's standing to sue with the “legal right” under the amended Administrative Case Litigation Act while it still limited

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<sup>93</sup> See Annen, *supra* note 51.

<sup>94</sup> Gyōsei jiken soshou hō [Administrative Case Litigation Act], Law No. 139 of 1962, art.1 (Japan).

<sup>95</sup> *Id.* at art. 9 (emphasis added).

<sup>96</sup> See Chūkai Gyōmuhō [Act of Brokerage Services for Copyright], Law No. 67 of 1939, 138 (Japan); see Kazuhiro Tsuchida, *supra* note 70 at 80.

<sup>97</sup> *Id.* at 81.

<sup>98</sup> See Minoru Fujita, *supra* note 10 at 138; Saikō Saibansho [Sup. Ct.] (Osaka Satellite Lawsuit) Oct. 15, 2009, Hei 20 (hi) no. 247, 63 Saikō Saibansho minji hanreishū [Minshū] 8, 1711 (Japan).

the scope to certain class of party with a person who received “substantial” and “direct” damages.<sup>99</sup>

*C. Third Party’s Standing to Sue Under the Current Direct Appeal to District Court Procedure*

The JASRAC case attracted the attention of various scholars. As repeatedly mentioned, this is the first case in which the JFTC withdrew its cease and desist order, as well as the first instance when the judiciary conferred a third party with standing to sue in an Antimonopoly Proceeding in pursuit of a judgment against the addressee. Incidentally, before the conclusion of the JASRAC case on April 28th, 2015, the Legislature amended the AMA in 2013 and introduced a new Antimonopoly Proceeding: the Direct Appeal to the District Court Procedure.

Under the new procedure, instead of the JFTC conducting an administrative hearing, the appeals from the JFTC are directly transferred to the Tokyo District Court.<sup>100</sup> This change implicitly eliminates the possibility for a third party to continue an existing legal dispute from the appellate court level. However, a third party may still be involved in the Antimonopoly Proceeding as an intervener of the case on behalf of the defendant, the JFTC.<sup>101</sup> If a third party proactively demands this action, the court may analyze whether the potential intervenor constitutes a “person with legal interest,” similar to the analysis completed in the JASRAC case. Furthermore, whether such an intervener has standing to sue when it hopes to appeal a lower court’s judgment without the consent of the JFTC will continue to be a question.<sup>102</sup> In this regard, a third party’s standing to sue will remain an important question under the Antimonopoly Proceeding in Japan.

V. CONCLUSION

After the Supreme Court remanded the JASRAC case to the JFTC with directions to withdraw the cease and desist order, the JFTC sent a notice to JASRAC and resumed the hearing process.<sup>103</sup> However, JASRAC

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<sup>99</sup> See Kazuhiro Tsuchida, *supra* note 70.

<sup>100</sup> Enactment of the Bill to Amend the Antimonopoly Act, JFTC, (Dec. 9, 2013), <http://www.jftc.go.jp/en/pressreleases/yearly-2013/Dec/individual131209.html>.

<sup>101</sup> See Nobuo Shimazaki, *supra* note 6, at 35.

<sup>102</sup> *Id.*

<sup>103</sup> JAPANESE SOCIETY FOR RIGHTS OF AUTHORS, COMPOSERS, AND PUBLISHERS, DECISION ON RESUMPTION OF HEARING PROCEDURES (2015), <http://www.jasrac.or.jp/ejhp/release/2015/0626.html>.

later withdrew from the proceedings.<sup>104</sup> In its press release, JASRAC offered several reasons for its decision, including a change in circumstances and a desire to focus on its business operations.<sup>105</sup> JASRAC also restructured its management and introduced a new president, which may have contributed to this decision.<sup>106</sup>

On the other hand, Avex Music Publishing (“AMP”) acquired significant shares of Japan Rights Clearance.<sup>107</sup> Japan Rights Clearance subsequently merged with e-License to establish NexTone on February 1, 2016.<sup>108</sup> At that time, these two organizations were the second and third-largest music copyright management service companies in Japan.<sup>109</sup> The two companies fully merged on April 3, 2017.<sup>110</sup> NexTone plans to provide services that focus on new digital platforms and promises that the new company will provide healthy competition to JASRAC.<sup>111</sup>

The JASRAC case shed light on unique questions when engaging the Antimonopoly Proceeding in Japan. It pointed out a rare issue under the JFTC’s hearing system and the Complaint Review Procedure, especially since the JFTC’s special committee had never withdrawn a cease and desist order except in this JASRAC case. It further touched on a third party’s standing to sue another party—specifically, a sole competitor—under the AMA and in relation to the Administrative Case Litigation Act.

The Antimonopoly Act protects the public interest by promoting a fair market, while not unduly interfering with the activities of private parties. Furthermore, the interaction between a potential monopoly and the JFTC could impact the operation of competitors and other third parties in significant ways. Within this complex area of law, if the third party standing

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<sup>104</sup> JAPAN FAIR TRADE COMMISSION, WITHDRAWAL OF JFTC HEARING REQUEST (2016), <http://www.jasrac.or.jp/ejhp/release/2016/0914.html>.

<sup>105</sup> *Id.*

<sup>106</sup> JAPAN FAIR TRADE COMMISSION, ANNOUNCEMENT OF NEW OFFICERS (2016), <http://www.jasrac.or.jp/ejhp/release/2016/0630.html>.

<sup>107</sup> See AVEX ANNOUNCEMENT, *supra* note 30.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*; “Ongaku Chosakukennenno Riyouga Hirogaru Kyousouwo,” *e-License to JRC Ga Gappei, Shingasha “NexTone” Shidouhe*, [“Expansion of music copyrights,” e-License and JRC merged. New Company “NexTone” emerged], ITMEDIA NEWS (Dec. 17, 2015), <http://www.itmedia.co.jp/news/articles/1512/17/news144.html>.

<sup>110</sup> Chosakuken Kanrijigyou Kanzentougou No Oshirase [Announcement on the Full Merger of Copyright Management Operations], NEXSTONE (Apr. 3, 2017), <http://www.nexstone.co.jp/information/?p=126>.

<sup>111</sup> Daisuke Kikuchi, *Stranglehold on music copyrights is loosening in Japan*, JAPAN TIMES (Dec. 27, 2015), <http://www.japantimes.co.jp/culture/2015/12/27/music/stranglehold-music-copyrights-loosening-japan>.

to sue issue arises again under the current Direct Appeal to the District Court Procedure or another form of Antimonopoly Proceeding in the future, the analysis conducted by the court—as well as other articles published by various scholars for this JASRAC case—will be very insightful in deciding whether to permit a third party to intervene in an Antimonopoly Proceeding, and if so, what consideration the court should give to effectively limit the class of third parties with such a right to intervene.