



# HOKKAIDO UNIVERSITY

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## Foreword

Hiroo SONO

On July 16 & 17, 2011, consumer law experts from France, Germany, and Japan convened at Hokkaido University School of Law to participate in a two-day conference “Regulation and Enforcement of Consumer Law: Multi-Agential Perspectives”. Being organized by Hokkaido University’s Global COE Program “New Global Law and Policy for Multi-agential Governance”, the idea was to enhance international dialogue regarding consumer law from two perspectives: “*multi-agential governance*” and “*public goods nature of competition*”<sup>1</sup>.

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### Multi-agential Governance

“Multi-agential Governance” refers to the characteristic of modern society where multiple agents or actors, both public and private, are involved in regulation and its enforcement.

In the field of consumer law, regulations are set up not only by the state (courts, administration, and legislature) but also by the private sector. Self-regulation of product safety by business associations is an example of the latter. The market itself can also be a regulatory body for example when market demand for a product decline after reported inci-

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<sup>1</sup> These are two of the three perspectives which Hokkaido University’s Global COE Program has focused on in the study of consumer law. The third perspective which was not explicitly dealt with in the 2011 conference is the *behavioral science approach to consumers* which was considered imperative in designing an effective consumer law.

dents of harm caused by defective products; or to put it more straightforwardly, consumers serve as regulators through the market mechanism (“consumers as regulators”).

Enforcement of the regulations is also undertaken by multiple actors. Governmental regulations are often enforced through administrative channels (*e.g.*, cease and desist orders and administrative surcharges). Courts also enforce criminal law regulations when there is prosecution by the government. Courts also enforce private law as well as public law regulations when private parties (*e.g.*, consumers) bring suit. Consumers can also enforce regulations through the market.

The challenge to modern society therefore, is to provide an effective institutional design which takes into account the interplay among these multiple regulatory and enforcement multiple agents. One of the aims of this conference was to explore such institutional design.

### **Competition as Public Goods (General Interest)**

Another focus of the Global COE program is on “public goods” which can be paraphrased as “commons” or “general interest”. These are interest that are not apportioned to any particular person but which belongs jointly to a larger mass. “Information” (intellectual property), “environment”, and “competition” (market) are examples of such public goods. Consumer law also deals with the market (“Consumer Law as Competition Law”).

From this public goods perspective, the recent development of collective actions or group actions that are introduced into various jurisdictions today is a significant step towards effectively achieving a competitive market for the consumers. This is another topic the conference explored.

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The three papers and one comment that follow are collections of presentations from the second day of the conference, which focused mostly on the multi-agential governance perspective mentioned above<sup>2</sup>. After my overview of Japanese developments of private enforcement of consumer law (Hiroo Sono, “Private Enforcement of Consumer Law: A Sketch of the Japanese Landscape”), two interesting papers follow analyzing the roles of public law and criminal law for effective enforcement of consumer law: Professor Peter Rott (University of Copenhagen) provides a German/EU perspective in his paper “Effective Enforcement of Consumer Law: The Interplay of Private Law, Public Law and Criminal Law in Germany” while Professor Takehisa Nakagawa (Kobe University) provides a Japanese law perspective in his paper “Roles of Public Law in Consumer Redress”. Professor Nobuhisa Segawa (Waseda University) provides a comment to the three papers mentioned above. All papers are presented in this volume in English except for Professor Rott’s paper which is translated into Japanese by Ms. Akane Kido (Hokkaido University)<sup>3</sup>.

<sup>2</sup> Presentations in the first day of the conference focused mostly on the public goods perspective. Collections of those papers appeared in Volume 15 (2012) at pp. 123-257 of this journal. All papers in that volume were translated into Japanese.

<sup>3</sup> Professor Rott’s presentation drew from, among others, an earlier version of Peter Rott, *Effective Enforcement of Consumer Law: The Comeback of Public Law and Criminal Law*, in James Devenney and Mel Kenny eds., *European Consumer Protection: Theory and Practice* (2012), which is available in English.

## 特集にあたって

曾野裕夫

北海道大学グローバルCOEプログラム「多元分散型統御を目指す新世代法政策学」(以下、「本GCOE」という)では、2011年7月16日(土)と17日(日)に、国際シンポジウム「消費者法における規制とエンフォースメントの多元性 (Regulation and Enforcement in Consumer Law: Multi-Agential Perspectives)」を、北海道大学において開催した。この国際シンポジウムの企画趣旨については、2日間にわたる同シンポジウムの1日目の成果(一般利益としての消費者利益に関する総論と、日仏の団体訴訟制度に関する各論)とともに、本誌15号に掲載したとおりであるので、同号をご覧ください<sup>4</sup>。

本号に掲載するのは、上記シンポジウムの2日目の成果である。本号には、民事的・行政的・刑事的手法による消費者法の規制とエンフォースメントについて、それぞれの可能性と限界を論ずる3編の論文と1編のコメントを集めた。

まず、議論の出発点として、民事法を用いた私人によるエンフォースメントについて日本法の展開を概観する曾野裕夫(北海道大学)による、「Hiroo Sono, “Private Enforcement of Consumer Law: A Sketch of the Japanese Landscape”」を掲載する。それに引き続いて、民事法によるエンフォースメントを補完する公法的エンフォースメント及び刑事法によるエンフォースメントについてドイツ法とEU法の動向を報告するペーター・ロット教授(コペンハーゲン大学)の「消費者法の実効的な実現: ドイツにおける

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<sup>4</sup> 曾野裕夫「特集にあたって」新世代法政策学研究15号123頁(2011)。ただし、その注3(125頁)において挙げた、本GCOEにおける消費者法における多元分散型統御に関する研究に、私人間紛争解決への行政の関与の可能性及び国と地方自治体の役割分担について検討する、斎藤誠「消費者保護における行政法・地方自治法の役割——紛争解決に定位して」本誌本号所収を補充しなければならない。

私法、公法、刑事法の相互作用」、そして、公法的エンフォースメントについて日本法の動向を報告する中川丈久教授(神戸大学)の Takehisa Nakagawa, “Roles of Public Law in Consumer Redress” を配した。そして、最後に、これらに対する瀬川信久教授(早稲田大学)のコメントを掲載する。この国際シンポジウムでは、日本から海外への発信もめざしたことの1つであったので、原則として英文での掲載としたが、ロット論文のみは、ベースとなる英文論文が別途公表されていることもあり<sup>5</sup>、日本語版を掲載することとした(翻訳は、木戸茜氏〔北海道大学大学院〕にお願いした。)

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<sup>5</sup> Peter Rott, Effective Enforcement of Consumer Law: The Comeback of Public Law and Criminal Law, in James Devenney and Mel Kenny eds., European Consumer Protection: Theory and Practice (2012).