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A Reexamination of the "Regulation of Monopolistic Situations" in the Music Copyright Management Business (3): Legal Interpretations and Applications of the Article 2 (7) and Article 8-4 of the Anti-Monopoly Act

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This thesis focuses on the ongoing dominance by JASRAC of music copyright management business even after the introduction of competitive copyright management policy in the industry more than a decade ago. The possibility of effectuating a competitive environment through the Anti-Monopoly Act is examined.

This paper begins by pointing out the limitation of regulations through the active involvement of supervisory authorities and "the Act on Management Business of Copyright and Neighboring Rights" and suggests the importance of the regulatory function of the Anti-Monopoly Act.

Chapter 3 examines several regulatory approaches feasible under the Competition policy and arrives at the conclusion that the purely structural regulations against the "monopolistic situation" is the most suitable way to effectively create a competitive environment, when taking into account the characteristics of music copyright management business.

It proceeds to the examination of whether the dominance of JASRAC actually falls under the "monopolistic situation" defined in Article 2 (7) of the Anti-Monopoly Act and, if so, then to the question of what effective and feasible measures can be taken to restore competition (Article 8-4).

First, with regard to the relevance of JASRAC's situation with Article 2 (7), the thesis clarifies that the situation enjoyed by JASRAC can be construed as a substantial restraint of competition, which is even more aggressive than ordinary restraints (For example, "private monopoly").

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This interpretation leads to the conclusion that the current status of JASRAC can be evaluated as the "monopolistic situation" under the law. Based on this understanding, Chapter 5 further discusses possible competition restoration measures under Article 8-4.

The major advantage of competition restoration measures proposed in this paper is that the measures can be exercised through clerical procedures, such as the amendment of copyright trust agreement clauses or the revision of the management scope under the trust agreements, without requiring any drastic transfer of factories or facilities that normally entail corporate divestiture. While being a purely Businesslike process, its virtual effect in terms of market structure transformation is comparable to an actual corporate divestiture.

When the monopolistic situation is replaced even partially with the competitive management framework through the implementation of competition restoration measures, then both copyright holders and users may enjoy wider options, and healthy management competitions may be expanded, which as a whole would boost the development of music industry.