Free market versus state or something else?: civic sector and competition law’s roles during the COVID-19 pandemic in Japan

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ABSTRACT

COVID-19 is a highly transmittable disease. Until a vaccine is found, social distancing is the only way to prevent the virus from killing millions. Lockdown may also be necessary. Such measures inevitably cause an economic recession, so supplementing individuals’ incomes prove vital. Without income support, employees must go to work and risk contracting and spreading the virus. Instituting protective measures is the role of the government; however, a dysfunctional government causes citizens to seek alternative solutions from either the civic sector or charitable organizations.

I. THE JAPANESE GOVERNMENT RESPONSE AND ITS CITIZEN’S DISMAY

The Japanese government’s response to COVID-19 has been disastrous; the small number of people tested for the virus inaccurately indicates the extent of its spread. At the time of writing, 17 April 2020, the government has refused to test infected patients’ family members, including a 90-year-old woman receiving a lung operation in 2019. Available intensive care units per 100 thousand remain lower than in Italy and Spain, countries reporting numerous COVID-19 deaths. Frontline doctors in metropolitan areas and associations active in acute medicine argue that the acute-care system has collapsed. A member of the Japanese government’s expert body asserts that Japan’s death toll could reach 400,000. However, the government neither has ordered lockdown nor social distancing; instead, it has spent approximately JPY 46 billion (USD 427 million) to distribute two cloth masks per household.

The government has responded sluggishly to supplementing income. By the end of January 2020, COVID-19’s effect on businesses grew clear. In mid-February, sudden job losses posed serious problems. The people’s needs were evident: without government support, they would leave home to work or seek employment, turning the Japanese islands into COVID-19 Petri dishes. Consequently, financial hardship

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jeopardizes lives. The government has slightly increased measures to support businesses by distributing a one-off JPY 100,000 (USD 900) to citizens, which proves trivial considering economic restoration could take at least a year.

Inconsistent government responses have lacked transparency and perspective since the pandemic’s arrival. However, the government has always clarified one expectation of its citizens: voluntary preventive measures.

II. THE JAPANESE GOVERNMENT’S EXPECTATION FOR CITIZENS TO SELF-RESTRICT (JISHUKU)

Virtually every government measure has requested jishuku, or citizens to voluntarily self-restrict activity, by suspending business, adopting social distancing, and staying home. Early in the pandemic, avoiding visits to mainland China, apart from Wuhan and its surrounding area, was also voluntary. The government declaring voluntary restriction absolved it from helping its citizens with income supplementation.

Requesting voluntary self-restriction in the middle of a pandemic is irresponsible. Although Japanese people may be considerate and well educated, the degree of preventive actions needed to exceed individual voluntary efforts. If not the government, who should employ aggressive testing regiments, quarantines, and intensive care units? Nor does social distancing occur naturally. Most people continuing to work are not behaving irresponsibly; instead, their employers leave them no option. The Japanese government should use its money and power to protect citizens’ lives and ensure safety. Prioritizing COVID-19 prevention proves vital with a faltering economy and a national medical system verging on collapse.

III. THE CHARITABLE SECTOR’S ROLE

Despite this dismaying situation, two types of institutions offer hope: the prefectural government and the charitable sector. Facing the crisis, several governors and mayors have implemented their own initiatives, which included rewarding funds to businesses abiding their request to suspend operations. When financial resources become limited, the charitable initiative, crowdfunding, can supplement. Citizens have established a substantial number of funding schemes raising money to help these businesses. Crowdfunding also supports cultural institutions, such as theatres. Charitable organizations provide distinct services to aid individuals, too, by collecting and distributing money, food, and providing shelter to those in need. Private initiatives gather nationwide data to inform citizens regarding COVID-19’s scope of infection. Although the national government has recently agreed to support local governments financially, the aid is conditional. Furthermore, not all governors are active with these initiatives, so charitable organizations and non-profit crowdfunding schemes remain vital.

This is not the first time the civic sector fills the gap. Non-governmental organizations and other civic support networks emerged after the Kobe and Tohoku earthquakes in 1995 and 2011, respectively. The scale and effectiveness of this activism surprised Japan; citizens flocked to aid the locals, stricken by natural disaster. Although civic responses to COVID-19 show differing characteristics, they remain non-profit voluntary initiatives.
The civic sector, belonging neither to the government nor the free market system, can uniquely respond to COVID-19. Highly infectious disease entails negative externalities. Patients exhibiting mild symptoms should stay home: their compliance affects both more vulnerable individuals and the national health care system. Support mechanisms must ensure human dignity and prevent further spread of the virus too, which the free-market mechanism fails to provide. However, the government can also fail because of near-sightedness, red tape, and lack of expertise. Conversely, duty and empathy motivate citizens to form charitable organizations mobilizing expertise to pair volunteers with those in need efficiently.

IV. THE ROLE OF COMPETITION LAW IN CONSTRUCTING A RESILIENT SOCIETY
Charitable activities are largely exempt from government regulations to retain flexibility. However, the rules to maintain a free and fair marketplace should apply to these where such activities are associated with, or somehow entail, business to business or business to consumer transactions. Application of these rules would ensure their activities legitimacy without jeopardizing their effectiveness and flexibility. In particular, when for-profit companies conduct philanthropic activities, neither suppliers nor customers should feel pressured for contributions. Misleading activities also require strict regulations. Additionally, they should be subject to competition law regulations when they act as platforms as in the case of matching volunteers with those in need as well as collecting contributions to extend aid. Public aid on one side of the platform does not justify anticompetitive or exploitative practices on the other.

Competition law also applies to facilitate civic activities. Companies that suspend business might prohibit their furloughed employees and freelancers from working for charitable organizations, causing inefficiency. The competition authority should prevent undue restraint on subcontractors and freelancers between businesses as well.

The competition authority also plays a vital role in market study. The national medical and social security systems are not designed in the way that charitable organizations are involved in their day-to-day operation. The competition authority can study and recommend ways to eliminate cumbersome regulatory barriers that inhibit the private civic sectors from freely and efficiently serving the public. By taking such proactive measures, the competition authority can not only maintain free and fair competition but also help save Japanese lives, preserve human dignity, and preserve the economy during the COVID-19 pandemic.