

# Cloud Utilization and Challenges - Based on the Latest Trends in Competition Policy in Japan and Europe

Competition Law / International Trade Newsletter

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The Nishimura Institute for Advanced Legal Studies invites Professor Emeritus Frédéric Jenny of ESSEC Paris University and Mr. Mingorance, Secretary General of Cloud Infrastructure Service Providers in Europe (CISPE), an EU cloud organization. In addition to the interview and lecture sessions, there will be a panel discussion among a competition authority, researcher, and practitioner to delve into the use of cloud computing and software by Japanese companies and its challenges in light of the latest developments in competition policy in Japan and Europe.

The event is scheduled to be held on Thursday, July 13, 2023, from 1:00 p.m. (to 3:10 p.m.) and will be archived until Thursday, August 31, 2023 (Japan Time). For tickets (free of charge), please [click here](#) to apply for one (free of charge). Below are the speakers and topics for each session.

## 1. Interview: “Cloud Infrastructure Services: An analysis of potentially anti-competitive practices”

On June 28, 2022, Professor Emeritus Frédéric Jenny published a paper entitled: "[Cloud Infrastructure Services: An analysis of potentially anti-competitive practices](#)", which provides a theoretical analysis of the state of competition over cloud services in the EU and of practices that may have anti-competitive effects under EU competition law. The paper provides a theoretical analysis of the state of competition over cloud services in the EU and practices that may have anti-competitive effects in light of EU competition law.

In the interview, Professor Jenny will provide an explanation of the key points of the paper, including important perspectives on the theoretical analysis of the conduct of cloud service providers, as well as comment on the implications for Japanese competition policy. Professor Jenny will also refer to his new paper titled "[The Billion Euro Unfair Software Licence Tax on EU Customers](#)" that was published on June 22, 2023.

## 2. Presentation: CISPE's activities on fair software licensing practices

CISPE is a non-profit association of cloud service providers in the EU, including Germany, France, and the Netherlands, and is responsible for a number of important measures to ensure a fair environment for the use and provision of cloud services, such as the GDPR-based Data Protection Code of Conduct, the development of 10 principles for fair software licensing terms, and the publication of the Framework Agreement Handbook for efficient procurement of cloud services in the public sector. CISPE is also responsible for numerous measures that are important to ensure a fair environment for the widespread use and provision of cloud services. In addition, CISPE participates in initiatives to promote data distribution within the EU, such as GAIA-X and Catena-X.

Mr. Mingorance, Secretary General of CISPE, will provide an overview of CISPE and its recent efforts to improve fair competition for cloud services in the EU, which may have implications for the development of the

cloud service usage environment in Japan.

### **3. Panel Discussion: Competition and Challenges in the Japanese Cloud Sector**

In 2022, the Japan Fair Trade Commission (JFTC) announced the results of a series of three surveys on cloud computing service and software utilization, and the fair competition environment surrounding cloud computing in Japan has been further improved. In response to these developments, the Nishimura Institute for Advanced Legal Studies held a webinar entitled: "The Frontiers of Competition Policy Surrounding Cloud Computing - For the Promotion of Innovation in the Public and Private Sectors" in October 2022, which was attended by over 350 people.

Since then, there have been continuous developments around cloud computing services, particularly in the EU, and new issues have emerged, such as the emergence of generative AI that leverages the computing power of cloud computing services. Follow-up and monitoring by competition authorities, including these new developments, will continue to be important in order to promote competition in the cloud segment in Japan and to address related issues. At the same time, given the differences between the EU and Japanese legal systems, the theoretical implications of EU's policy developments for Japan, as well as the identification of issues by Japanese cloud computing companies and checks and balances on cloud service providers, will also be essential for promoting competition in the cloud computing sector in Japan. Therefore, we would like to discuss the practical and theoretical issues to be considered in further promoting the use of cloud computing in Japan from the perspective of competition policy, from the standpoints of the competition authority, researcher, and practitioner, respectively.

Mr. Tomohiko Kimura, Partner at Morrison & Foerster, who is an expert on antitrust issues related to cloud computing and software, will start the presentation by explaining the aims of Japanese companies to use cloud computing services and the competition issues that Japanese companies face when using cloud computing services and software.

Next, Mr. Ryota Inaba, Director of the Digital Market Planning and Research Office of the Japan Fair Trade Commission (JFTC), will explain the main points of the fact-finding survey report on cloud computing services in the private sector that was released by the JFTC; furthermore, he will discuss the differences and similarities with the EU trends provided in the interview and lecture sessions.

Thereafter, Professor Sayako Takizawa of the Institute of Business Law and Comparative Law and Politics, Graduate Schools for Law and Politics, The University of Tokyo, who specializes in antitrust/competition law, will explain and discuss the analytical framework surrounding the use of cloud computing services and software, based on the differences between Japanese antitrust law and EU competition law.

At the end of the panel discussion, some comments will be made on issues such as possible antitrust challenges to the provision of cloud services and generative AI, and issues concerning the abuse of a superior bargaining position in the cloud computing service segment.

### **4. Event Summary and Program Details**

The Nishimura Institute of Advanced Legal Studies was established in April 2007 by Nishimura & Asahi, one of the leading law firms in Japan.

The institute is a research organization that provides developmental and cutting-edge recommendations for legal practice based on theoretical and practical research from a strategic perspective on legal affairs, and plans and conducts training and lectures to raise the level of legal practice. Moreover, the institute aims to contribute to the development of legal practice by conducting innovative research on basic and applied issues that are difficult to tackle within the framework of conventional legal practice, and by returning the results of

such research to practice. Accordingly, the Nishimura Institute of Advanced Legal Studies aims to contribute to the development of legal practice.

The outline and program details of this online event are as follows, and tickets (free of charge) can be ordered. Please [click here](#) to apply for tickets (free of charge).

### <Outline>

Date & Time: July 13, 2023 (Thurs.), 13:00-15:10 (to be archived until August 31, 2023 (Thurs.)) (Japan Time)

Host: Nishimura Institute for Advanced Legal Studies (a research division established within Nishimura & Asahi)

Participation: Free of charge, anyone can watch

### <Program>

#### 1. Interviews 13:00-

Cloud Infrastructure Services: An analysis of potentially anti-competitive practices (35 minutes)

- Frédéric Jenny, Professor Emeritus, ESSEC Paris
- Kojiro Fujii, Partner, Nishimura & Asahi
- Tatsuya Tsunoda, Attorney-at-law, Nishimura & Asahi

#### 2. Lecture 13:35-

CISPE's activities on fair software licensing practices (20 minutes)

Francisco Mingorance, Secretary General, CISPE

#### 3. Panel Discussion 13:55-

Competition and Challenges in the Japanese Cloud Sector (75 minutes)

- Ryota Inaba, Director, Digital Market Planning and Research Office, Japan Fair Trade Commission
- Tomohiko Kimura, Partner, Morrison & Foerster LLP
- Sayako Takizawa, Professor, Institute of Business Law and Comparative Law and Politics, Graduate Schools for Law and Politics, The University of Tokyo
- Tatsuya Tsunoda, Attorney-at-law, Nishimura & Asahi <Moderator>

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