

Japan Antitrust

The Japan Fair Trade Commission issues cease and desist orders against foreign companies in cartel and bid-rigging cases (Marine hose)

Japan, Anticompetitive practices, Agreement, Bid rigging, Sanctions/Fines/Penalties, Cartel, Manufacturing

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Case Summary

According to the Japan FTC's cease and desist order, the Japan FTC investigated Japanese and foreign companies manufacturing and selling marine hose ; they found that the manufacturers and sellers of marine hose had jointly determined the prospective recipient of the orders, hereafter referred to as "Champion", and cooperated to ensure that Champion would receive the orders. The JFTC therefore issued cease and desist orders and a surcharge payment order on 20 February 2008, stating that such acts are in violation of Article 3 of the AMA (prohibition of unreasonable restraint of trade). Administrative fines were calculated based on the amount of turnover from Japanese customers.

More specifically, under the overarching agreement specified below, the companies subject to the cease and desist order—along with other companies—designated recipients of orders for marine hose and ensured that Champion would receive orders, beginning on or around 10 December 1999. (1) (a) In the cases where marine hose is to be used in Japan, the United Kingdom, the French Republic and/or the Republic of Italy, the company which has its head office in the country where the hose will be used shall be designated as Champion. If there is more than one such company, the relevant companies shall also be called Champion. (b) In other cases, the companies predetermine shares for each of them, and the coordinator designates Champion in consideration of certain factors including such predetermined shares. (2) The price at which Champion will receive the order shall be determined by Champion, and all other companies shall cooperate to ensure that Champion will successfully receive the order at that price. In accordance with the agreement, the companies which were the member of the overarching agreement, determined Champion for each tender and ensured that Champion would receive the orders.

Companies that received the cease and desist order were from Japan, the UK, Italy (two companies) and France ; the Japanese manufacturer was ordered to pay an administrative fine. Another

Japanese manufacturer received full immunity due to a leniency application filed before the Japan FTC's commencement of a formal investigation (i.e., dawn raid and request for report).

- Number of companies subject to the cease and desist order : 5
- Number of companies subject to the surcharge payment order : 1
- Amount of surcharge : 2,380,000 JPY (approx. 20,000 EUR)

One of the foreign companies appealed to the Japan FTC's hearing examiners, but withdrew the appeal before the first hearing session, and thus, the order became final and binding.

Comments

This is the first incidence of the Japan FTC issuing formal cease and desist orders against foreign companies in cartel and bid-rigging cases. This case is also significant in that the Japan FTC commenced dawn raids and issued requests for reports simultaneously with other competition authorities, including the United States Department of Justice and the European Commission, which were enabled by the Japan FTC's close coordination with said authorities.

In relation to extraterritorial applications of Japanese antitrust law, the order carefully avoided conflicts with penalties by foreign authorities by narrowing the basis of calculation of administrative fines to Japanese domestic turnover, which resulted in issuing the order to pay administrative fines only to one Japanese company. This is also justified by the common understanding of the Japanese antitrust law that the main purpose of the law is to promote fair competition in Japan and thereby enhance Japanese consumers' welfare. In addition to this, according to an article by case handlers of the case, the Japan FTC's service of requests for information and cease and desist orders is made to the companies' Japanese outside counsels, not to these companies' HQ located in Europe, thereby avoided sensitive issues concerning extraterritorial enforcement of Japanese antitrust law outside the territory of Japan.

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