

Press Releases**Decision against Five Companies including MT Picture Display Co., Ltd. (Price Cartel Case Involving Manufacturers/Distributors of Television Cathode-ray Tubes)**May 29, 2015
Japan Fair Trade Commission

The Japan Fair Trade Commission (JFTC) commenced hearing procedures against the five companies including MTPD (Note 1) (hereinafter referred to as the "Respondents") on the dates as specified in "Dates of Commencement of Hearing Proceedings" attached hereto as Appendix 1, and instructed the hearing examiners to go through the hearing procedures. On May 22, 2015, the JFTC issued a decision to rescind the cease and desist order and to determine that there was an act which violates the provisions of Article 3 of the Anti-Monopoly Act before the time when the Cease and Desist Order was issued and that said violation ceased to exist at the time when the Cease and Desist Order was issued, against MTPD and Samsung SDI, among the Respondents, based on Article 66, paragraphs (3) and (4) of the Anti-Monopoly Act (hereinafter referred to as the "Anti-Monopoly Act") prior to the revision by the Act for the Partial Revision of the Anti-Monopoly Act (Act No. 100 of 2013). Further, in the decision, the JFTC dismissed the hearing requests by MTPD Indonesia, MTPD Malaysia, MTPD Thailand and Samsung SDI Malaysia, based on Article 66, paragraph (2) of the Anti-Monopoly Act (See "Press Releases" and "Decisions Database" of the JFTC website for a copy of each written decision).

(Note 1) See Appendix 1. As used below, the Respondents' names are indicated in abbreviations as set out in the column of "Abbreviations" in Appendix 1.

1. Outline of Respondents

As described in the columns of "Enterprises," "Locations of Principal Offices" and "Representatives" in Appendix 1.

2. Substance of Hearing Requests

As described in Appendix 2.

3. Content of Main Text**(1) MTPD Group (Hearing Cases 2010 (Han) Nos. 2 through 5)****A. Respondent MTPD**

(A) The cease and desist order dated October 7, 2009 issued against Respondent MTPD (2009 (So) No. 23), shall be rescinded.

(B) The JFTC determines as follows: with respect to television cathode-ray tubes (Television CRTs) for which the enterprises listed in Appendix 3 (hereinafter referred to as the "Japanese Manufacturing and Sales Companies of CRT televisions") instructed purchases by their manufacturing subsidiaries, affiliated companies or contracted manufacturing companies located in countries indicated in the column of "Countries of locations of manufacturing subsidiaries, affiliated companies, or contracted manufacturing companies in the Southeast Asia region" in Appendix 3 (hereinafter referred to as the "Overseas Manufacturing Subsidiaries and the Like"), the Respondent MTPD agreed, for almost every quarter, to set the minimum target price, etc. for the next quarter to be complied with by each enterprise as the sales price for the Overseas Manufacturing Subsidiaries and the Like, with ten companies including the Respondent MTPD Indonesia and other two companies (Note 2), reached an agreement by around May 22, 2003, at the latest (however, the Respondent MTPD Malaysia joined the agreement as described below by February 16, 2004, at the latest, and the Respondent MTPD Thailand on or around April 23, 2004, at the latest; the same shall apply in (2)b. below); such agreement constitutes unreasonable restraint of trade as specified in Article 2, paragraph (6) of the Anti-Monopoly Act and violates Article 3 of said Act; and that the aforementioned agreement no longer existed on March 30, 2007.

B. MTPD Indonesia and other Two Companies

All the hearing requests filed by the Respondent MTPD Indonesia and the other two companies are dismissed.

(Note 2) Hereinafter referred to as the Respondent MTPD Indonesia, the Respondent MTPD Malaysia and the Respondent MTPD Thailand; the same shall apply hereinafter.

(Note 3) Refers to the following television CRTs (excluding those purchased by Local Manufacturing Subsidiaries, etc. of Victor Company of Japan, Limited on or after May 1, 2005, and those purchased by Local Manufacturing Subsidiaries, etc. of SANYO Electric Co., Ltd. on or after October 1, 2006).

- (i) 14-inch circular tube;
- (ii) 20-inch circular tube;
- (iii) 21-inch circular tube;
- (iv) 21-inch flat tube called "invar"; and
- (v) 21-inch flat tube called "AK."

(2) Samsung SDI (Hearing Case 2010 (Han) No. 6)

A. The cease and desist order dated October 7 2009 Respondent Samsung SDI (2009 (So) No. 23), shall be rescinded.

B. The JFTC determines as follows: With the Specified CRTs, the Respondent Samsung SDI agreed, for almost every quarter, to set the minimum target price, etc. for the next quarter to be complied with by each enterprise as the sales price for the Overseas Manufacturing Subsidiaries and the Like, with ten companies including the Respondent Samsung SDI Malaysia, reached an agreement, by around May 22, 2003, at the latest; such agreement constitutes unreasonable restraint of trade as specified in Article 2, paragraph (6) of the Anti-Monopoly Act and violates Article 3 of said Act; and that the aforementioned agreement no longer existed on March 30, 2007.

(3) Respondent Samsung SDI Malaysia (Hearing Case 2010 (Han) No. 7)

The hearing request filed by the Respondent Samsung SDI Malaysia is dismissed.

4. Progress**(1) Hearing Cases 2010 (Han) Nos. 2 through 5**

October 7, 2009: Cease and desist order and surcharge payment order

November 6, 2009: Respondents filed the requests for hearing related to the cease and desist order or surcharge payment order

January 27, 2010: Hearing proceedings commenced

March 9, 2010: First hearing

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July 11, 2013: Eighteenth hearing (closing of final opinion statement)

By April 1, 2014: Service of the draft decision

By April 15, 2014: Submission of a written objection and a request for direct statement to the commission

July 18, 2014: Hearing of direct statement

May 22, 2015: The JFTC issued a decision to rescind the cease and desist order to the Respondent MTPD, finding that it had committed acts in violation of Article 3 of the Anti-Monopoly Act before the time of such cease and desist order but such act no longer existed at the time when such order was issued. The JFTC issued the decision to dismiss the hearing requests by MTPD Indonesia and the other two companies.

(2) Hearing Cases 2010 (Han) Nos. 6 and 7

October 7, 2009: Cease and desist order(Note 4) (Respondent Samsung SDI)

Surcharge payment order(Note 4,5)(Respondent Samsung SDI Malaysia)

December 24, 2009: Procedures for service by publication of the transcript of the written cease and desist order to the Respondent Samsung SDI

February 5, 2010: Service by publication to the Respondent Samsung SDI took effect (i.e. the cease and desist order took effect).

February 12, 2010: Surcharge payment order(Note 6)

Procedures for service by publication of the transcript of the written surcharge payment order to the Respondent Samsung SDI Malaysia

March 27, 2010: Service by publication to the Respondent Samsung SDI Malaysia took effect (i.e. the surcharge payment order took effect).

April 2, 2010: Respondent Samsung SDI filed a request for hearing.

May 12, 2010: Hearing proceedings for the Respondent Samsung SDI commenced.

May 24, 2010: Respondent Samsung SDI Malaysia filed a request for hearing.

June 23, 2010: First hearing for the Respondent Samsung SDI.

July 26, 2010: Hearing proceedings for the Respondent Samsung SDI Malaysia commenced.

September 28, 2010: First hearing for the Respondent Samsung SDI Malaysia.

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July 11, 2013: Nineteenth hearing (the Respondent Samsung SDI [closing of final opinion statement])

Fourteenth hearing (the Respondent Samsung SDI Malaysia [closing of final opinion statement])

March 31, 2014: Service of the draft decision

April 14, 2014: Submission of a written objection and a request for direct statement to the commission

July 18, 2014: Hearing of direct statement

May 22, 2015: The JFTC issued a decision to rescind the cease and desist order against the Respondent Samsung SDI, finding that it committed acts in violation of Article 3 of the Anti-Monopoly Act before the time of such cease and desist order, but such act no longer existed at the time when such order was issued. The JFTC issued a decision to dismiss the hearing request by the Respondent Samsung SDI Malaysia.

(Note 4) On this day, the JFTC could not serve the order to the representatives in Japan of Samsung SDI and Samsung SDI Malaysia, as these companies had submitted a document dismissing all representatives in Japan dated October 5, 2009.

(Note 5) In Section 5(3)E below, this order will be referred to as "Surcharge Payment Order dated October 7, 2009," and the order in written form as "Written Surcharge Payment Order dated October 7, 2009."

(No. 6) In section 5(3)E below, this order will be referred to as "Surcharge Payment Order" and the order in written form as "Written Surcharge Payment Order."

5. Summary of Decision

(1) Facts on which the original order was premised

Eleven Enterprises including the Respondents (hereinafter referred to as the "Eleven Enterprises") reached an agreement, for approximately every quarter period, to set the minimum target price, etc. for the next quarter to be complied with by the Japanese Manufacturing and Sales Companies of CRT televisions as the sales price for Television CRTs, for which they had instructed purchasing by their Overseas Manufacturing Subsidiaries and the Like (hereinafter referred to as the "Specified CRTs"), substantially restrained the competition in the sales field of the Specified CRTs against to public interest (hereinafter referred to as the "Violation").

The periods of the continuance of the Violation by the Respondent MTPD Indonesia and the other two companies, as well as the Respondent Samsung SDI Malaysia, are as set out in the column of "Period of Continuance of Violation" for the respective Respondent in Appendix 4, which are determined based on Article 7-2, paragraph (1) of the Anti-Monopoly Act. The amounts of surcharge calculated based on Article 7-2 of the Anti-Monopoly Act are as set out in the column of the "Amounts of Surcharge" in Appendix 4 determined for the respective Respondent.

(2) Issues in Dispute

A. Whether the second sentence of Article 3 of the Anti-Monopoly Act can apply to this case (Issue 1, the common issue to all cases);

B. (A) Whether the cease and desist order issued to the Respondent MTPD satisfies the requirement: "if the JFTC finds it to be particularly necessary" (Issue 2①, Hearing Case 2010 (Han) No. 2);

(B) Whether the cease and desist order issued to the Respondent Samsung SDI satisfies the requirement: "if the JFTC finds it to be particularly necessary" (Issue 2②, Hearing Case 2010 (Han) No. 6);

C. Whether it violates the principle of equity to issue the cease and desist order to the Respondent MTPD, although the cease and desist order was not rendered against other violators in this case (Issue 3, Hearing Case 2010 (Han) No. 2);

D. Whether it is possible to seek rescission of the cease and desist order based on Article 70-12, paragraph (2) of the Anti-Monopoly Act in the hearing procedures (Issue 4, Hearing Case 2010 (Han) No. 2);

E. Whether the sales amount of the CRTs(Note 7) is the "the amount of sales from the relevant products or services" set forth in Article 7-2, paragraph (1) of the Anti-Monopoly Act, and provides the basis for calculation of the surcharges (Issue 5, Hearing Cases 2010 (Han) Nos. 3 through 5, and Hearing Case 2010 (Han) No. 7);

F. Whether the service by publication were made in conformity with the laws (Issue 6, Hearing Cases 2010 (Han) Nos. 6 and 7); and

G. Whether the procedures relating to the surcharge payment order issued to the Respondent Samsung SDI Malaysia were in conformity with the laws (Issue 7, Hearing Case 2010 (Han) No. 7).

(No. 7) The Japanese Manufacturing and Sales Companies of CRT televisions selected one or multiple television CRTs manufacturers/distributors and negotiated with such enterprises about the specifications and scheduled purchase quantity of television CRTs to be supplied to their Local Manufacturing Subsidiaries and the like. The television CRTs to be supplied to the Local Manufacturing Subsidiaries and the Like based on the selection and negotiation by these Japanese Manufacturing and Sales Companies of CRT televisions shall be hereinafter referred to as the "CRTs." The CRTs are identical with the Specified CRTs in terms of the scope of product.

(3) Outline of determinations as to each issue

A. Issue 1

(A) Basic approach on application of Anti-Monopoly Act to this case

It is reasonable to construe that the second sentence of Article 3 of the Anti-Monopoly Act applies even if an enterprise commits a conduct that falls under Article 2, paragraph (6) of said Act outside Japan, at least where the competition in a particular field of trade is the competition over customers in Japan and the competition in a particular field of trade is substantially restricted by the conduct in issue

(B) Particular Field of Trade in this case

The agreement sets the minimum target prices and the like to be complied with by manufacturers as the selling prices of the alleged CRTs for the Overseas Manufacturing Subsidiaries and the Like. The transaction which was the subject to the concerted actions among the Eleven Enterprises relates to the sale of alleged CRTs, and the scope of the trade that may be affected by said actions is also the trade of the alleged CRTs. Thus, the field of sales of the alleged CRTs is considered as the particular field of trade in this case.

(C) Whether the competition in a particular field of trade in this case was conducted in relation to customers in Japan

Based on the findings, it is found that the Japanese Manufacturing and Sales Companies of CRT televisions sold CRT televisions manufactured by the Overseas Manufacturing Subsidiaries and the Like by themselves or via their sales subsidiaries; controlled production, sales, and inventory, etc. of CRT televisions manufactured by the Overseas Manufacturing Subsidiaries and the Like; procured Television CRTs that are the core part of CRT televisions; and controlled the business related to CRT televisions carried out by their Group companies.

In addition to the above, it is found that Japanese Manufacturing and Sales Companies of CRT Television negotiated with the selected enterprises determined the suppliers of the alleged CRTs and important trade conditions of the alleged CRTs, such as the purchase price, purchase quantity, etc.; and instructed the Overseas Manufacturing Subsidiaries and the Like to purchase the alleged CRTs based on the decision and made them purchase the alleged CRTs. Therefore, it can be said that the Overseas Manufacturing Subsidiaries and the Like could not purchase and receive the alleged CRTs without negotiation and decision by the Japanese Manufacturing and Sales Companies of CRT televisions and the directions based on them.

In this case, even granting that it was the Overseas Manufacturing Subsidiaries and the Like that directly purchased the alleged CRTs and accepted the supply of products, considering the aforementioned roles played by the Japanese Manufacturing and Sales Companies of CRT televisions, the Japanese Manufacturing and Sales Companies of CRT televisions and the Overseas Manufacturing Subsidiaries and the Like can be integrally regarded as the purchaser of alleged CRTs.

Moreover, in consideration of the Agreement, it can be said that, in relation to the Japanese Manufacturing and Sales Companies of CRT televisions, the Eleven Enterprises were in a competitive relationship by group, namely, a competition over the Japanese Manufacturing and Sales Companies in a bid to be selected as a supplier and a competition for important trade conditions. Thus, the Japanese Manufacturing and Sales Companies of CRT televisions, who had discretion to decide the supplier and important trade terms, can be regarded to have been in a position to be able to expect said competition from the Eleven Companies.

In consideration of the above mentioned facts, the Japanese Manufacturing and Sales Companies of CRT televisions can be regarded as customers of the alleged CRTs, and it can be said that the competition in the sales field of the alleged CRTs took place primarily over customers in Japan.

(D) Determination as to Respondents' Allegations

a. The Respondents' allegation that, as is the case of business combination regulations, the particular field of trade should be defined primarily based on the consideration of substitutability of the product/service from the standpoint of customers

The "particular field of trade" as indicated in Article 2, paragraph (6) of the Anti-Monopoly Act is to be defined in order to assess whether the competition in that field is substantially restricted by the concerted actions. The purpose and details of the concerted actions pertaining to the unreasonable restraint of trade is to substantially restrict the competition in a specific field of trade. Therefore, in general cases, it is construed that it is only necessary for defining the particular field of trade to consider the trade for which the concerted actions are implemented and the scope that may be affected by said actions.

There are differences in characteristics between the business combination regulations and the unreasonable restraint of trade, namely, in the context of the unreasonable restraint of trade, substantial restriction of competition that has occurred by specific actions becomes an issue. Therefore, it is considered sufficient to define a particular field of trade under business combination regulations or unreasonable restraint of trade, applying the method suitable to each case respectively.

b. The Respondents' allegation that, whereas customers should be construed as persons who actually receive a supply of products, the Japanese Manufacturing and Sales Companies of CRT televisions are not regarded as customers of the alleged CRTs because it did not receive supply of the alleged CRTs.

In this case, since there is an actor other than the party that actually receives the supply of products, who determined the suppliers of products and negotiated and determined important trade conditions of products, such as the price amount, etc., it is necessary to determine customers in light of the actual state of trade which the competition for said supply of products relates. Based on the actual state, the Japanese Manufacturing and Sales Companies of CRT televisions should be regarded as customers of the alleged CRTs, as indicated in (C) above.

c. The Respondents' allegation that since they did not recognize that the Japanese Manufacturing and Sales Companies of CRT televisions determined trade conditions of the alleged CRTs and directed their Overseas Manufacturing Subsidiaries and the Like to purchase them, it cannot be said that the subject matter of the Agreement was the trade pertaining to the Specified CRTs.

In this case, the issue in question is whether the Agreement substantially restrained the competition in the particular field of trade, after determination of the particular field of trade by taking into account the trade for which the Agreement was made and the scope that may be affected thereby. Therefore, it is only necessary that the Agreement in question was made for the trade of the alleged CRTs and that the Respondents were aware of such fact (according to the findings, it is obvious that the Agreement in question was made for the trade of the alleged CRTs and the Respondents were aware of that fact). It is not necessary that the Respondents recognized the fact that the Japanese Manufacturing and Sales Companies of CRT televisions determined trade conditions and instructed the Overseas Manufacturing Subsidiaries and the Like to purchase products, as referred to in the

definition of the Specified CRTs.

d. Allegations of the Respondent Samsung SDI and the Respondent Samsung SDI Indonesia that, even if the Japanese Manufacturing and Sales Companies of CRT televisions are considered as customers of the alleged CRTs, Japan is not included in the "particular field of trade" in this case, these Japanese Manufacturing and Sales Companies of CRT televisions who are the customers should be regarded to have their addresses in the Southeast Asia where the supply of the alleged CRTs takes place.

The approach to determine the customers' locations depending on the place where the supply of a product takes place is virtually the same as the approach to consider the customers as the persons who directly receive the supply of products, as explained in b. above.

(E) Substantial restraint of competition

It can be said that the Agreement created conditions where the Eleven Enterprises could freely influence the price of the alleged CRTs to some extent. Therefore, it is found that the Eleven Enterprises substantially restrained the competition by the Agreement in the sales field of the alleged CRTs, which is a particular field of trade in this case.

(F) Summary

The JFTC finds that the competition in the field of sales of the alleged CRTs took place mainly over customers in Japan, and that the Agreement substantially restrained the competition in said particular field of trade. Consequently, the second sentence of Article 3 of the Anti-Monopoly Act can apply to this case.

B. Issue 2

(A) Issue 2①

According to the findings, it cannot be found that the Respondent MTPD was likely to commit a violation equivalent to the Violation in question again by themselves or by directing and controlling subsidiaries or affiliated companies, excluding BMCC (Note 8), at the time when the Cease and Desist Order was issued. According to the conditions of global demand for television CRTs, the conditions of withdrawal of the Respondent MTPD from the business of manufacturing and selling of television CRTs, staffing and operating conditions of BMCC, which was the only company out of the group of the Respondent MTPD and its subsidiaries and affiliated companies that did not officially discontinue the business of manufacturing and selling of television CRTs, and progress of procedures related to the transfer of the investment equity and other conditions at the time when the Cease and Desist Order was issued, it is difficult to consider that the Respondent would cancel the transfer of investment equity in BMCC. Even if the transfer of investment equity in BMCC is not implemented due to some reasons, BMCC is not regarded as a subsidiary of the Respondent MTPD, unlike the Respondent MTPD Indonesia and Two Other Companies; BMCC was not involved in the Violation in question; BMCC was not in the condition to re-start production of television CRTs, viewing from the objective standpoint; and the inventory of television CRTs for export sales of BMCC was small. Based on these conditions, it cannot be found that the Respondent MTPD was likely to commit a violation equivalent to the Violation in question again by instructing and controlling BMCC in the future.

Moreover, even based on the entirety of evidence in this case, it cannot be found that the consequence of the Violation in question still existed and that recovery of the order of competition was insufficient.

Therefore, it is not found "particularly necessary" to issue the Cease and Desist Order against the Respondent MTPD.

Meanwhile, it is doubtful to consider that the Japanese Manufacturing and Sales Companies of CRT televisions were still customers of the alleged CRTs at the time when the Cease and Desist Order was issued. From this perspective as well, it cannot be found that it is "particularly necessary" to issue the Cease and Desist Order. (Note 9)

(Note 8) BMCC refers to Beijing Matsushita Color CRT Co., Ltd. that is located in the People's Republic of China. The Respondent MTPD held 50% of the investment equity, and half of the directors, including the representative director, were persons related to the Respondent MTPD.

(Note 9) Based on the abovementioned finding, as the JFTC decided to rescind the cease and desist order for Case No. 2, it was no longer necessary to decide on Issues 3 and 4 which are premised on the existence of the cease and desist order.

(B) Issue 2②

It is doubtful to consider that the Japanese Manufacturing and Sales Companies of CRT televisions were still customers of the alleged CRTs at the time when the cease and desist order was issued. Further, it cannot be found that any Manufacturing and Sales Companies of CRT televisions with whom the Respondent Samsung SDI and the Respondent Samsung SDI Malaysia, its subsidiary, could conduct an act equivalent to the Violation. Based on the consideration of these circumstances, it cannot be found that the Respondent Samsung SDI was likely to repeat a violation equivalent to the Violation in relation to the Japanese Manufacturing and Sales Companies of CRT televisions.

In addition, considering the fact that about two years and six months have passed from the extinction of the agreement and issuance of the cease and desist order, the situation of demand for television CRTs at the time of the cease and desist order, and the situation of the Respondent Samsung SDI (Malaysia) and other seven companies (meaning eight companies which manufactured the CRT, out of the Eleven Companies), it is not clear whether the consequence of the Violation still existed, or whether there still existed competition which requires recovery of order. Therefore, it is also difficult to consider that the situation falls under the case where "the consequence of the violation still exists and that recovery of the order of competition is insufficient."

Therefore, it is not found "particularly necessary" to issue the Cease and Desist Order against the Respondent Samsung SDI.

C. Issue 5

It is obvious that the alleged CRTs are products belonging to the category of products subject to the Violation in question and were under mutual restriction that is a violation. Therefore, the alleged CRTs can be considered as "relevant products" under Article 7-2, paragraph (1) of the Anti-Monopoly Act, and the sales amount of the alleged CRTs calculated based on the Anti-monopoly Act and Article 5 of the Order for Enforcement of the Anti-Monopoly Act (Cabinet Order No. 317 of 1977) is used as the basis of calculation of the surcharges.

D. Issue 6

The hearing procedures based on the hearing request under Article 49, paragraph (6) and Article 50, paragraph (4) of the Anti-Monopoly Act are the procedures to review whether the original order was legal and appropriate.

Whether the service of the transcript of the original order was made accordance with the laws is an issue of whether the original order came into force, and not related to the issue of whether the original order itself is legal or appropriate. Therefore, the allegation of illegality of the service by publication of the Cease and Desist Order for the hearing procedures of Case Nos. 6 and 7 is irrelevant.

The JFTC determines that the service by publication in this case was made in conformity with the laws.

E. Issue 7

(A) Whether the preliminary procedures were implemented in a legal manner upon the issuance of the Surcharge Payment Order
The draft surcharge payment order notified by the JFTC to the Respondents on April 7, 2009 did not contain the reference number of surcharge payment order, the payment due date, and the date of preparation thereof. It also contained a description different

from the Written Surcharge Payment Order in relation to the provision of the Anti-Monopoly Act which provides that the amount of surcharge which includes numbers to the right of the ten thousands place shall be rounded down to the nearest ten thousand yen (hereinafter the "Provision on Rounding-down"). However, the draft surcharge payment order was identical with the Written Surcharge Payment Order in terms of the addressees' names, locations and names of representatives, the amount of surcharge, the violation pertaining to the surcharge, and the basis of calculation of the surcharge (excluding the Provision on Rounding-down). The JFTC afforded the Respondents with an opportunity to state their opinions and produce evidence on the basis of this draft surcharge payment order, and issued the Surcharge Payment Order after giving prior explanation at the request of the Respondents. Thus, in light of the purpose of the preliminary procedures, the JFTC is considered to have implemented the prescribed preliminary procedures for the Surcharge Payment Order.

(B) Whether the Surcharge Payment Order was determined in the meeting of the JFTC Chairman and Commissioners

a. The JFTC Chairman and four Commissioners, before September 28, 2009, determined in the meeting issue an order requiring the Respondent Samsung SDI Malaysia to pay 1,373,620,000yen on the ground of the Violation, until the day when three months elapses from the date of issuance of the transcript of the Written Surcharge Payment Order. Thus, the Surcharge Payment Order which is identical with the Surcharge Payment Order dated October 7, 2009, in terms of the account of violation and the amount of surcharge, but different only in respect of the payment date, can be considered to have been rendered based on the decision of the meeting.

Although the Written Surcharge Payment Order dated October 7, 2009 is different from the Written Surcharge Payment Order in respect of the Provision on Rounding-down, such difference was due to the change in the number of paragraphs in Article 7-2 of the Anti-Monopoly Act as amended by Act No. 51 of 2009. As the provision applied was substantially the same, this difference does not provide the ground for requiring further meeting of the JFTC Chairman and Commissioners in relation to the Surcharge Payment Order.

b. The Written Surcharge Payment Order does not contain the name and seal of one of the Commissioners who participated in the meeting which was held before September 28, 2009. However, considering that the Anti-Monopoly Act does not contain any provision like Article 74, paragraph (3) of the Rules on Hearing (Note 10) which provides that "If the hearing examiner is unable to affix his/her signature and seal to the draft hearing decision, another hearing examiner shall attach his/her signature and seal thereto, while noting the grounds therefor in the preliminary decision," it is inevitable that a JFTC Commissioner who participated in the meeting cannot affix his/her name and seal if he/she retires from the office before the preparation of a surcharge payment order. Further, the explanation to that effect is not required. Thus, these facts are not considered to give rise to defects which would have impact on the effect of a surcharge payment order.

(Note 10) "The Rules on Hearing" refers to the Rules on Hearings by the Fair Trade Commission (Fair Trade Commission Rules No. 8 of 2005) before the abolition by the "Rule on the Development of the Rules related to the JFTC along with the Enforcement of the Act for the Partial Revision of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade" (Japan Fair Trade Commission Rules No. 2 of 2015)

(C) Whether the Surcharge Payment Order is illegal as being redundant to the Surcharge Payment Order dated October 7, 2009

The Written Surcharge Payment Order dated October 7, 2009, which the Respondents allege to be illegal as being redundant to the Surcharge Payment Order, has not been served to the Respondent and therefore has not taken any effect. Thus, as the Respondents have suffered no specific disadvantage, this does not support the ground for alleging that the Surcharge Payment Order is illegal.

6. Dissenting opinion

The decisions of the Hearing Cases 2010 (Han) Nos. 2 through 5 and No. 7, contain a dissenting opinion (supplementary opinion) of the Commissioner Hiroyuki Odagiri, respectively.

(Appendix 1)

Enterprise	Abbreviation	Location of Principal Office	Representative	Date of Commencement of Hearing Procedures
MT Picture Display Co., Ltd.	MTPD	1-15, Matsuo-cho, Kadoma City, Osaka	Motoo Kume, Representative Director	January 27, 2010
PT. MT Picture Display Indonesia	MTPD Indonesia	Kawasan EJIP Industrial Park Plot 3-G, Desa. Sukaresmi, Kecamatan Cikarang Selatan, Kabupaten. Bekasi, Republic of Indonesia	Yoshitaka Yagaki, Liquidator	
MT Picture Display (Malaysia) Sdn. Bhd.	MTPD Malaysia	Wisma Goshen, 2nd Floor 60, 62 & 64 Jalan SS 22/21 Damansara Jaya 47400 Petaling Jaya Selangor, Malaysia	Yue Sau Yin, Liquidator	
MT Picture Display (Thailand) Co., Ltd.	MTPD Thailand	No. 81/3, Tambol Taranan Moo 6, Amphur Muang, Nonthaburi Province, Kingdom of Thailand	Chommany Kankam, Liquidator	
Samsung SDI Co., Ltd.	Samsung SDI	150-20, Gongse-ro, Giheung-gu, Yongin-si, Gyeonggi-do, Korea	Park San Jin, CEO	May 12, 2010
Samsung SDI (Malaysia) Sdn. Bhd	Samsung SDI Malaysia	Lot 635 & 660, Kawasan Perindustrian, TuanKu Jaafar, 71450 Sungai Gadut, Negeri Sembilan Darul Khusus, Malaysia	Jang Tae Eun	July 26, 2010

(Appendix 2)

Enterprise	Hearing Case No.	Substance of hearing request
MTPD	Hearing Case 2010 (Han) No. 2	The cease and desist order (2009 (So) No. 23) shall be rescinded.

MTPD Indonesia	Hearing Case 2010 (Han) No. 3	The surcharge payment order (2009 (Noh) No. 62) shall be rescinded.
MTPD Malaysia	Hearing Case 2010 (Han) No. 4	The surcharge payment order (2009 (Noh) No. 63) shall be rescinded.
MTPD Thailand	Hearing Case 2010 (Han) No. 5	The surcharge payment order (2009 (Noh) No. 64) shall be rescinded.
Samsung SDI	Hearing Case 2010 (Han) No. 6	The cease and desist order (2009 (So) No. 23) shall be rescinded.
Samsung SDI Malaysia	Hearing Case 2010 (Han) No. 7	The surcharge payment order (2010 (Noh) No. 23) shall be rescinded.

(Note) The names of the Respondents are shown by the abbreviations set out in the column of "Abbreviations" in Appendix 1.

Appendix 3

Enterprise	Countries of locations of manufacturing subsidiaries, affiliated companies, or contracted manufacturing companies in the Southeast Asia region
Orion Electric Co., Ltd.	Kingdom of Thailand (contracted manufacturing company)
Sanyo Electric Co., Ltd.	Republic of Indonesia (manufacturing subsidiary)
Sharp Corporation	Republic of Indonesia, Kingdom of Thailand, Republic of the Philippines, and Malaysia (manufacturing subsidiary or affiliated company)
Victor Company of Japan, Limited	Republic of Singapore, Kingdom of Thailand, Socialist Republic of Vietnam (manufacturing subsidiary or affiliated company)
Funai Electric Co., Ltd.	Kingdom of Thailand, Malaysia (manufacturing subsidiaries)

Appendix 4

Enterprise	Cease and desist order	Surcharge Payment Order	
		Period of Continuance	Surcharge Amount
MTPD	2009 (So) No. 23	-	
MTPD Indonesia	-	2009 (Noh) No. 62	
		March 30, 2004-March 29, 2007	JPY 580.27 Mil.
MTPD Malaysia	-	2009 (Noh) No. 63	
		April 1, 2004-March 29, 2007	JPY 650.83 Mil.
MTPD Thailand	-	2009 (Noh) No. 64	
		July 1, 2004-March 29, 2007	JPY 566.14 Mil.
Samsung SDI	2009 (So) No. 23	-	
Samsung SDI Malaysia	-	2010 (Noh) No.23	
		March 30, 2004-March 29, 2007	JPY 1373.62 Mil.

(Note 1) The names of the Respondents are shown by the abbreviations set out in the column of "Abbreviations" in Appendix 1.

(Note 2) The mark "-" in the columns of the "Cease and Desist Order" and "Surcharge Payment Order" means that the enterprise has not received the order.

Full Text(PDF : 433KB)

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