Recommendation Decision No.30 of 2004

Decision

Mr. Tadaaki Hirano
President, Mr. Max Corporation
1-5-7, Matsuda, Higashi-ku, Fukuoka

The Japan Fair Trade Commission (JFTC) made the recommendation to the above party under the provisions of the Section 48(1) of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (hereinafter referred to as “Antimonopoly Act”) on October 22, 2004. As the above party has accepted it, the JFTC hereby issues the following decision under the provisions of Section 48(4) of the Antimonopoly Act in line with the said recommendation.

Main Text

1. The Mr. Max Corporation shall cease and desist from the following conducts against the suppliers of daily commodities, home electric appliances, groceries, clothing, etc. in continuous transaction by taking advantage of its dominant bargaining position over the said suppliers:
   (1) Demand the money that exceeds the amount of expenses agreed in advance with the said suppliers,
   (2) Demand the money under all sorts of pretext until achieving its gross profit target, and
   (3) Demand the money that exceeds the actual cost under the name of expenses for installing racks, etc. (excluding those regularly installed such as display stands, etc.) at its own stores, or for leasing advertising balloons on the occasion of new opening sales.

2. The Mr. Max Corporation shall cease and desist from returning a whole or a part of goods to the afore-mentioned suppliers after purchase, taking advantage of their inferior bargaining position to Mr. Max, at the phase of inventory adjustment, despite no causes attributable to the said suppliers on condition that it bought them out.

3. The Mr. Max Corporation shall cease and desist from forcing the afore-mentioned suppliers, taking advantage of their inferior bargaining position to Mr. Max, to dispatch their employees to engage in carrying in, displaying, filling, withdraw, etc. the merchandises for its own sales operations on the occasion of special sales at new opening, redecoration and shutting-down of its own stores.
4. The Mr. Max Corporation shall notify the above-mentioned suppliers and inform its employees thoroughly of the following matters whose content and the manner shall be subject to approval of the JFTC.
   (1) The measures taken in accordance with the preceding three paragraphs.
   (2) The commitment to the effect that it will refrain from the conducts similar to those described in the preceding three paragraphs in the future.

5. The Mr. Max Corporation shall refrain from the conducts similar to those described from 1 to 3 above in the future.

6. The Mr. Max Corporation shall take necessary measures for providing the training concerning the Antimonopoly Act to its purchasing staff, and having regular audits by its legal staff, in accordance with the code of conduct concerning compliance with the Antimonopoly Act, so that it will refrain from the conducts similar to those described from 1 to 3 above in the future. Those measures shall be subject to the approval of the JFTC.

7. The Mr. Max Corporation shall promptly notify the JFTC with regard to the measures it has taken in accordance with 1 to 4, and 6 above.

Findings of Fact

The findings of the JFTC are the followings:
1 (1) The Mr. Max Corporation (hereinafter referred to as “Mr. Max”) is headquartered at the address shown above, and a so-called general discount store operator engaging in the retail business of daily commodities, home electric appliances, groceries, clothing, etc. In the area of Gunma, Chiba, Hiroshima, Yamaguchi, Fukuoka, Saga, Nagasaki, Kumamoto, Oita, and Miyazaki prefectures, it operates 40 retail stores named “Mr. Max”, out of which five stores among eight stores located in the ordinance-designated cities have the selling floor spaces of 3,000 square meters or larger, while those of 31 stores among 32 stores located in the municipalities other than ordinance-designated cities have 1,500 square meters or more.
(2) Mr. Max is the biggest firm among general discount store operators in Kyushu area.
(3) Whereas there are about 300 suppliers of daily commodities, home electric appliances, groceries, clothing, etc., who have a continuous transaction with Mr. Max, most of them consider Mr. Max as an important client, and strongly desire to maintain their supply dealings with Mr. Max. Therefore, they are in the position that
they have to comply with various demands from Mr. Max, apart from the transaction terms on quality, price, etc. of supply goods, in order to maintain their supply dealings with Mr. Max, thus their bargaining position is inferior to that of Mr. Max.

2 (1) Mr. Max made agreement in advance with the suppliers every fiscal year to provide any of the followings to Mr. Max on each purchasing section of daily commodities, home electric appliances, groceries, clothing, etc. respectively;
   a. The amount of money calculated by fixed rates set according to the level of achieving the objective after setting the target of purchasing amount from respective suppliers,
   b. The amount of money calculated by multiplying purchasing amount by a fixed rate, or
   c. A fixed amount of money irrespective of purchasing amount.

   While it demanded the provision of the money based on the afore-mentioned agreements (the monetary burden that Mr. Max requires the suppliers to provide is hereinafter referred to as the “support money”) at the midterm settlement terms in September and the final settlement terms in March, its purchasing staff who can affect the supply transactions with the suppliers (hereinafter referred to as the “buyers”) required the suppliers to provide the support money which exceeded the amount agreed in advance with the suppliers.

   Most of the suppliers required so were forced to accept the request in order to maintain their business relation with Mr. Max.

   In the fiscal year 2003, for instance, about 250 suppliers in total provided with approximately 38 million JPY in total at the mid-settlement term in September and approximately 75 million JPY in total at the final settlement term in March under the name of the support money but their amount exceeded the pre-agreed amount.

(2) Mr. Max set the gross profit targets for each of the afore-mentioned purchasing section every fiscal year, and repeatedly required the support money under all sorts of names in addition to the support money described in 2(1) above unless it achieves the targets at the midterm settlement terms in September and the final settlement terms in March.

   Most of the suppliers required so were forced to accept the request in order to maintain their business relations with Mr. Max.

   In the fiscal year 2003, for instance, about 200 suppliers provided approximately 490 million JPY in total upon the requirements.

(3) Mr. Max required the suppliers to provide the support money that exceeds the actual expenses under the name of expenses for installing racks, etc. (excluding those regularly installed such as display stands, etc., hereinafter the same applies.) at its
own stores, or for leasing advertising balloons on the occasion of new opening sales.

Most of the suppliers required so were forced to accept the request in order to maintain their business relations with Mr. Max. In the fiscal year 2003, for instance, about 500 suppliers in total provided approximately 18 million JPY in total under the name of the support money but their amount exceeded the actual cost.

3 (1) Mr. Max imposed transaction conditions that it buy out in almost all the purchasing transactions with the suppliers, and determined the transaction terms such as supplying prices etc. upon negotiations with the suppliers in advance as for the goods on the ground that it bought them out.

(2) Mr. Max set every fiscal year the targets for the amount of inventory and the turnover rates of goods on each purchasing section of daily commodities, home electric appliances, groceries, clothing, etc. In order to achieve those targets, it returned to the suppliers a whole or a part of stocks of the goods with a low turnover rate or of replaced regular stock after purchasing at the phase of inventory adjustment.

Most of the suppliers who received the returns were forced to accept them in order to maintain their supply transactions with Mr. Max, despite no causes attributable to the said suppliers.

In the fiscal year 2003, for instance, Mr. Max returned the stocks of the goods equivalent to approximately 40 million JPY in total to 40 suppliers as for the merchandises with a low turnover rate, approximately 160 million JPY in total to about 110 suppliers as for the replaced regular stock at the mid-settlement term in September 2003 and approximately 59 million JPY in total to about 50 suppliers as for the merchandises with a low turnover rate, approximately 37 million JPY in total to about 80 suppliers as for the replaced regular stock at the final settlement term in March 2004.

4. Mr. Max regularly forced the suppliers to dispatch their staff to engage in carrying in, displaying, filling, withdrawing of goods, etc. (hereinafter referred to as the “display works”) for its own sales operations on the occasion of new opening sales, redecoration, and shutting down sales of its own stores, without agreements in advance with the suppliers with regard to the condition of dispatching their employees, demanded to dispatch their employees for the display works at the expenses of suppliers in the way that the buyers informed the suppliers of the name of stores and dates they needed the dispatch of employees.

Most of the suppliers required so were forced to accept the requests in order to
maintain their business relations with Mr. Max.

In the fiscal year 2003, for instance, Mr. Max required the suppliers to dispatch their employees for the display works at its 15 stores, and forced the suppliers to dispatch and used approximately 18,000 employees in total.

Application of the Law

The application of the Law to the findings described above results in as follows:

Mr. Max forced the suppliers to provide money for oneself, unjustly in light of the normal business practices, by taking advantage of its dominant bargaining position over the suppliers. This conduct falls under the provisions of the Paragraph 14(2) of the Unfair Trade Practices (The Fair Trade Commission Notification No.15 of 1982). Whereas Mr. Max falls under the “Department Store Entity” which is stipulated in the Paragraph 1 of Recital of the Designation of Specific Unfair Trade Practices in the Department Store Business (Fair Trade Commission Notification No.7 in 1954, hereinafter referred to as “Department Store Specific Designation”), according to the findings described in 1(1), 3, and 4 above, returned goods to the suppliers whose bargaining positions are inferior to oneself despite it falls under none of the items of Paragraph 1 of the Department Store Specific Designation, and forced the suppliers to dispatch and used their employees for its own sales operations despite it does not fall under the case stipulated in the proviso of Paragraph 6 of the Department Store Specific Designation. These conducts fall under the provisions of Paragraphs 1 and 6 of the Department Store Specific Designation. Any of the afore-mentioned conducts violates the provision of Section 19 of the Antimonopoly Act. Thereby, JFTC issues the decision as stated in the Main Text.

November 11, 2004

Kazuhiko Takeshima, Chairman
Makoto Kobayashi, Commissioner
Aiko Shibata, Commissioner
Hiroshi Mitani, Commissioner
Akio Yamada, Commissioner
Japan Fair Trade Commission