Recommendation Decision No.7 of 2002

Decision

Mr. Narihiro Terazono
President, the Mitsubishi Electric Building Techno-Service Corporation
2-6-2, Otemachi, Chiyoda-ku, Tokyo

The Japan Fair Trade Commission (JFTC) made the recommendation to the above party under the provision of Section 48(1) of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (hereinafter referred to as “Antimonopoly Act”) on June 11, 2002. 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 Mitsubishi Electric Building Techno-Service Corp. shall cease and desist from the conduct that unjustly interferes the maintenance service transactions between the independent maintenance service providers (referring to the elevator maintenance service providers except for the elevator manufacturers and its subsidiaries) who are entrusted maintenance services of the Mitsubishi Electric Corp.’s elevator facilities (including elevators, escalators and lifts for small parcels) by the owners, managers, etc. of the said elevator facilities through the following conducts in supplying maintenance parts to the independent maintenance service providers:

   (1) To deliver, in principle, the parts after delay equivalent to the time needed for delivery from parts manufacturers, despite having the parts on order in stock and being able to supply them without delay, and

   (2) To sell, without justifiable reason, the parts at the price extremely higher than that charged to its own customers with their maintenance service agreements.

2. The Mitsubishi Electric Building Techno-Service Corp. shall eliminate the relevant clauses as followings from the internal documents titled “Handling concerning parts sales, etc. for elevator facilities without agreement.”, in order to refrain from the conducts similar to 1 above in the future:

   (1) The delivery time, in principle, shall be set to the time equivalent to that if parts would have been ordered to the parts manufacturers after receiving orders.

   (2) The selling price of parts shall be three times more than the purchasing price from the parts manufacturers.
3. The Mitsubishi Electric Building Techno-Service Corp. shall notify the afore-mentioned independent maintenance service providers who are entrusted the maintenance services of the said elevator facilities from the owners, managers, etc. of the said elevator facilities and inform its employees thoroughly of the following matters. Those measures shall be subject to the approval of the JFTC:

(1) The measures taken in accordance with the preceding two paragraphs, and

(2) The commitment that it will refrain from the conducts similar to those described in 1 above in the future.

4. The Mitsubishi Electric Building Techno-Service Corp. shall not unjustly interfere the maintenance service transactions between the owners, managers, etc. of the said elevator facilities and the afore-mentioned independent maintenance providers who are entrusted the maintenance services of the said elevator facilities by the owners, managers, etc. through the conducts similar to 1 above in the future.

5. The Mitsubishi Electric Building Techno-Service Corp. shall promptly notify the JFTC with regard to the measures it has taken in accordance with preceding paragraphs.

Findings of Fact

The findings of the JFTC are the followings:

1 (1) The Mitsubishi Electric Building Techno-Service Corp. (hereinafter referred to as “Mitsubishi Building Techno”) is headquartered at the address shown above, provides maintenance services for the elevator facilities (including elevators, escalators, lifts for small parcels, hereinafter referred to as same) and sells maintenance parts exclusively used for the elevator facilities.

(2) a. The elevator facilities last for many years, and are required to provide proper maintenance for ensuring function, performance, and safety of the said elevator facilities at all times in order to avoid deterioration of structural functions due to the aging. And the owners, managers, etc. of the elevator facilities (hereinafter referred to as “the owners”) are encouraged to maintain the elevator facilities which they own or mange in appropriate condition in accordance with the relevant laws and regulations such as Building Standard Law.

b. The owners of elevator facilities generally conclude the maintenance service agreements with maintenance service providers for elevator facilities (hereinafter referred to as “maintenance service providers”), and entrust the maintenance service for their elevator facilities.

c. There are two kinds of maintenance agreements mentioned in b above, one is a Full Maintenance Contract (hereinafter referred to as “FM Contract”), and the other is a Parts Oil Grease Contract (so-called checkup contract, hereinafter referred to as “POG Contract”). Whereas a FM Contract is to provide a series of maintenance services such as regular checkups including lubrication, adjustment, cleaning, and parts replacement, and repair works for maintaining the function, a
POG Contract is to conduct checkup, lubrication, adjustment, cleaning, exchange of some expendables, and refill of oils. (Parts replacement, oil exchange, etc. require additional charges.) As for parts replacement or repairing work for maintaining function of the elevator facilities, the necessary expenses are to be borne by the maintenance service providers in case of FM Contracts and by the owners in case of POG Contracts respectively.

d. As component parts of elevator facilities are often different by their manufacturers or types of the elevator facilities, special replacement parts exclusively provided by the elevator facility makers (hereinafter referred to as the “maintenance parts”) are often required for proper maintenance. Especially in case of a trouble in key parts such as IC boards for control system of the elevator facilities, replacing with the maintenance parts provided by the elevator facility makers are considered as indispensable.

e. Since the elevator facilities are essential means for moving up and down in middle and high-rise buildings, in case of malfunctions, the maintenance service providers are required to make prompt repair by the owners or managers of buildings.

(3) a. As for most of maintenance service transactions of the elevator facilities, the elevator facility makers themselves or the maintenance service providers established as the subsidiaries of the elevator facility makers (hereinafter referred to as the “manufacturer-affiliated maintenance service providers”) conclude maintenance service agreements with elevator facility owners. For some cases, however, maintenance service providers other than the manufacturer-affiliated maintenance service providers (hereinafter referred to as the “independent maintenance service providers”) conclude maintenance service agreements with the owners or managers.

b. The elevator facility makers and manufacturer-affiliated maintenance service providers offer maintenance services exclusively for their elevator facilities and do not actively engage in maintenance services for elevator facilities manufactured by the other makers.

c. Most of the independent maintenance service providers offer maintenance services for elevator facilities of several elevator facility makers, and are small and medium sized firms engaging in maintenance services in a limited area. They conclude maintenance service agreements with the elevator facility owners at lower prices than those of the manufacturer-affiliated maintenance service providers, and the major type of the said agreements are POG Contracts of which maintenance charges are relatively low.

(4) a. Mitsubishi Building Techno is the manufacturer-affiliated maintenance service providers wholly owned by the Mitsubishi Electric Corporation (hereinafter referred to as “Mitsubishi Electric”) who manufactures and sells elevator facilities, and provide most of the maintenance services for the elevator facilities manufactured by Mitsubishi Electric (hereinafter referred to as “Mitsubishi Electric elevator facilities”) holding the No.1 share in the market of elevator facility maintenance service in Japan. It also sells maintenance parts for the
Mitsubishi Electric elevator facilities, and exclusively supplies special maintenance parts for the Mitsubishi Electric elevator facilities in the domestic market, so no other firms but Mitsubishi Building Techno can provide the said special maintenance parts.

b. Mitsubishi Building Techno decides the standard delivery days for the maintenance parts after ordering to the parts manufacturers (hereinafter referred to as the “standard delivery date”).

c. Mitsubishi Building Techno sets the standard selling prices of the maintenance parts for the customers who have concluded maintenance service agreements as approximately twice as much as the purchasing prices from the parts manufacturers.

d. Mitsubishi Building Techno deliberately keeps the parts stocks that are likely in constant need and of highly urgent need among others in its distribution centers and logistics centers, and provides them to the customers with the maintenance service contracts.

e. Mitsubishi Building Techno, on March 14, 1997, prepared the internal documents titled “Sales, Production, and Technology Management Note” which have laid down the basic ideas for its business activities and handling of business operations such as standard procedures and methods, notified them to their branch offices, branch stores, and local offices. (hereinafter referred to as the “branch offices”), and they conduct their business operations based on the said internal documents.

2 (1) Mitsubishi Building Techno had its business policy based on the idea that the maintenance service of the Mitsubishi Electric elevator facilities should be provided by itself. Since around 1995, with the advent of the independent maintenance service providers, there appeared a indication of decline in the ratio of maintenance service contracts with the owners of the elevator facilities (the ratio of the number of maintenance service contracts with Mitsubishi Building Techno over the total number of domestically installed Mitsubishi Electric elevator facilities) as well as in the maintenance service charges based on the contracts. In light of such tendency, Mitsubishi Building Techno established its basic business principle associated with the business campaign called “Market Share Keep activity” (hereinafter referred to as “MSK”) aiming at maintaining and expanding the rate of maintenance service contracts as well as preventing the price down of maintenance service by contracts, and started all-out activities. It positioned MSK activity promoters at its each branch office and had them develop and sell low-priced maintenance product lines called “MSK goods”, and distribute various brochures claiming their superiority in the maintenance service business such as securing parts promptly in order to prevent further cancel of maintenance service contracts and win back the contracts from the independent maintenance service providers.

(2) a. While Mitsubishi Building Techno had previously imposed different dealing conditions between customers having maintenance service contracts and the independent maintenance service providers with regard to the maintenance parts supply under the circumstances described in 2 (1) above, they revised, on April 28, 1998, the internal documents titled “Handling concerning parts sales, etc. for
elevator facilities without agreement” which is a part of the afore-mentioned “Sales, Production, and Technology Management Note”, and set up the guideline for selling maintenance parts to the customers without maintenance service agreements with Mitsubishi Building Techno (including the independent maintenance service providers) as follows;

(i) The delivery time, in principle, shall be made on condition that parts are ordered to parts manufacturers after receiving the orders, and
(ii) The selling price shall be three times of its own purchasing price from the parts manufacturers.

And it decided that the MSK promoters would engage in thorough implementation of the said guideline at respective branch offices, and informed the said contents of its each branch offices.

b. Mitsubishi Building Techno, based on the guideline mentioned in 2(2)(i) above, sells maintenance parts to the independent maintenance service providers at its respective branch offices in the manner as follows;

(i) Even if it can supply the maintenance parts ordered by the independent maintenance service providers in shorter time than the standard delivery time, for example, when it has in stock and thus is able to supply them to the independent maintenance service providers from the stock, it actually supplies, in principle, by the standard delivery time of 60 days, 120 days, etc.
(ii) It sells the maintenance parts to the independent maintenance service providers, irrespective of its own purchasing price of the said parts, uniformly at the price three times as much as its own purchasing price which is equivalent to approximately one-and-a-half times as much as the selling price for the customers with contracts.

(3) The conducts by Mitsubishi Building Techno described in 2(2)b above are illustrated as follows;

a. An independent maintenance service provider headquartered in Niigata prefecture, around February 1999, ordered an IC board as a maintenance part to the Hokuriku branch office of Mitsubishi Building Techno, due to a malfunction that its Mitsubishi Electric escalator at a commercial building in the same prefecture temporarily halted. The said branch answered after about 20 days upon the order that the price of the said part was approximately 200,000 JPY that was three times as much as its own purchasing price and the delivery time would be 80 days that was determined to the standard delivery date. Afterwards, the said branch arranged the said part internally and received it at the logistics center under the said branch office in about two weeks, but did not deliver it immediately. In spite of the fact that it was urged to deliver many times by the independent maintenance service provider, it delivered to the independent maintenance service provider about three weeks after from its receipt, so it took about 70 days in total from the date of order receipt to the delivery.

The afore-mentioned independent maintenance service provider was notified by the manager of the said escalator facility of annulment of the maintenance service contract around two weeks before the part delivery on the ground that the independent maintenance service provider was not able to procure the part in question. Subsequently, the Niigata sales office of Mitsubishi Building Techno concluded maintenance service agreement for the said escalator with the manager.
b. An independent maintenance service provider headquartered in Nagasaki prefecture, around in May 2000, ordered an IC board and others as maintenance parts to the Nagasaki branch store of Mitsubishi Building Techno, as the Mitsubishi Electric elevator at a hotel in the same prefecture broke down and halted. The said branch answered to the provider that the delivery time of the said parts would be 120 days later that was determined to the standard delivery date. In the following day, the same branch was urgently requested from the said elevator owner, so it proposed to change the current maintenance service contract to that with Mitsubishi Building Techno as a condition of responding to the request. As it received a positive answer from the said owner, it delivered the said parts from the stocks, made a repair work for the said elevator two days later and restored it. On this occasion, the afore-mentioned independent maintenance service provider shouldered approximately 1.22 million JPY for the expense of the said repair work including the cost of the said parts (about 860,000 JPY that is three times as much as the purchasing price by Mitsubishi Building Techno).

The afore-mentioned independent maintenance service provider was canceled the maintenance service contract of the said elevator by the owner in the end of May 2000. Subsequently, the Nagasaki branch store of Mitsubishi Building Techno concluded a maintenance service agreement for the said elevator with the owner.

c. An independent maintenance service provider headquartered in Hokkaido prefecture, around in September 1999, requested an urgent repair to the Hokkaido branch office of Mitsubishi Building Techno, as the Mitsubishi Electric elevator at a hotel in the same prefecture to whom it was contracting maintenance services stopped due to a breakdown of the IC board. While the said branch office refused such request on the ground that the request was not made by the owner of elevator facility, it proposed to change the maintenance service contract to that with Mitsubishi Building Techno as a condition of responding to the urgent request from the manager of the elevator. But the manager rejected the said proposal. Two days later, the branch office was asked an estimate of IC board as a maintenance part by the afore-mentioned independent maintenance service provider, and answered that the price of the said part was approximately 700,000 JPY that is three times as much as its own purchasing price and the delivery time would be 90 days that was determined to the standard delivery date. At that time the independent maintenance service provider requested to supply the said part urgently, so the branch office shortened the delivery time to 30 days. In the following day, however, the independent maintenance service provider strongly protested seeking for immediate supply, so the branch office delivered it several days later.

d. An independent maintenance service provider headquartered in Tokyo, around in April 2000, ordered a push-button switch as a maintenance part to the Tokyo East branch office of Mitsubishi Building Techno, as the Mitsubishi Electric elevator’s push-button switch was broken at a special vocational school in Tokyo. The said branch office scheduled the delivery time of the part to be about two months because the standard delivery time of the part was 60 days, and made an in-house arrangement of the part. In spite of the fact that this branch office was able to deliver the said part within one month after receiving the order since it had it in the stock, it did not deliver it immediately to the said independent
maintenance service provider until the scheduled delivery date.

(4) Due to the conducts by Mitsubishi Building Techno described in 2(2) and (3) above, it is difficult for those independent maintenance service providers to provide maintenance services for Mitsubishi Electric elevator facilities promptly and at a low price, therefore, their maintenance service contracts for the elevator facilities have been cancelled, or they have lost their credit on the capacities to procure the maintenance parts. Thereby, the conclusion and extension of their maintenance service contracts with owners etc. of the elevator facilities as well as the smooth operation of maintenance services are interfered.

**Application of the Law**

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

Mitsubishi Building Techno has unjustly interfered with transactions between the owners, managers, etc. of the Mitsubishi Electric elevator facilities and the independent maintenance service providers who are in a competitive relationship with oneself in the business field related to the maintenance services for the elevator facilities. This conduct falls under the provision of Paragraph 15 of the Designation of Unfair Trade Practices (Fair Trade Commission Notification No.15 of 1982) and violates the provision of Section 19 of the Antimonopoly Act. Thereby, JFTC issues the decision as stated in the Main Text.

July 26, 2002

Yasuchika Negoro, Chairman
Tadayoshi Honma, Commissioner
Makoto Kobayashi, Commissioner
Aiko Shibata, Commissioner
Hiroshi Mitani, Commissioner
Japan Fair Trade Commission