

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Competition Issues in Aftermarkets - Note from Japan

21-23 June 2017

This document reproduces a written contribution from Japan submitted for Item 4 of the 127th OECD Competition committee on 21-23 June 2017.

More documents related to this discussion can be found at

www.oecd.org/daf/competition/aftermarkets-competition-issues.htm

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JT03414725

Japan

1. Introduction

1. In Japan, there are no guidelines specialized for violations of the Antimonopoly Act (hereinafter “AMA”) in the aftermarket. Meanwhile, there are some cases where violations were found by the Japan Fair Trade Commission (hereinafter “JFTC”) taking into account the relationships between the so-called primary market and the aftermarket, such as relationships between machine and its maintenance, printer and ink. Also there are cases of business combinations where the JFTC defined markets in consideration of the aftermarket. Since the JFTC dealt with a relatively large number of these cases (violations and business combinations) regarding a maintenance service as an aftermarket, this contribution paper focuses on cases related to maintenance services.

2. Violation Cases

2.1. Case against Tokyu Parking Systems (2004)

2.1.1. Background

2. Tokyu Parking Systems Corporation (hereinafter “Tokyu Parking Systems”) was a wholly owned “affiliated maintenance company¹” of Tokyu Car Corporation (hereinafter “Tokyu Car”), who manufactured double-deck and multi-deck mechanical parking garages. (Hereinafter “parking garages” [refer to the Appendix], and the parking garages manufactured by Tokyu Car shall be referred to as “Tokyu Car parking garages.”)

3. Tokyu Parking Systems provided maintenance services for parking garages owned by property management companies, who made maintenance contracts with Tokyu Parking Systems itself. In addition, Tokyu Parking Systems provided maintenance services, assigned by Tokyu Car, for parking garages owned by property management companies who made maintenance contracts with Tokyu Car.

4. Tokyu Parking Systems provided maintenance services for most of the “Tokyu Car parking garages” and had the biggest market share of parking garage maintenance services in Japan.

5. Affiliated maintenance companies made contracts with property management companies for the majority of maintenance services for parking garages in Japan. However, maintenance companies other than affiliated maintenance companies (hereinafter “independent maintenance companies”) made contracts with property management companies for certain maintenance services for parking garages.

6. Since a parking garage has a long durable service life, proper maintenance is necessary to prevent functional deterioration due to aging and to ensure the functions, safety, and smooth performance of parking garages at all times. In addition, since the specifications of the components of parking garages often vary depending on

1 “Affiliated maintenance company” means a manufacturer of parking garages who provides maintenance services itself or a subsidiary of the manufacturer.

manufacturers or types of parking garages, dedicated service parts for parking garages manufactured by service parts suppliers are often needed to properly maintain the parking garages. Furthermore, since parking garages are used for automobiles in daily use, if a failure occurs, maintenance companies are asked for an immediate repair from property management companies. Therefore, the ability to immediately and securely procure service parts for such repairs is an important factor in maintaining trust of the property management companies who make the contracts.

7. Tokyu Parking Systems exclusively supplied service parts dedicated to “Tokyu Car parking garages”, and such service parts were not available from other service parts suppliers.

2.1.2. Violation

8. In supplying service parts dedicated to “Tokyu Car parking garages” to property management companies and independent maintenance companies of parking garages, Tokyu Parking Systems took following conducts:

- (a) Although Tokyu Parking Systems had stock of the service parts and could ship them without delay, Tokyu Parking Systems significantly delayed the timing of shipment under the pretext of the so-called “shipment after order to a manufacturer,” that was, Tokyu Parking Systems sold service parts only after receiving new parts from the service parts suppliers.
- (b) Without justification, Tokyu Parking Systems sold service parts to independent maintenance companies at much higher prices than those for property management companies and owners of parking garages who made maintenance contracts with Tokyu Parking Systems or Tokyu Car. Tokyu Parking Systems also sold service parts to independent maintenance companies, based not on the amount just needed but on a certain amount required as a condition of the contract between Tokyu Parking Systems and service parts suppliers.

9. As a result of such conducts, independent maintenance companies were faced with difficulties in providing immediate maintenance service for “Tokyu Car parking garages” at low prices and lost credibility in the ability to procure service parts. As such, independent maintenance companies were hindered in the conclusion and retention of new/existing maintenance contracts for “Tokyu Car parking garages” with property management companies.

10. Such conducts unreasonably interfered with transactions between property management companies of “Tokyu Car parking garages” and independent maintenance companies who were in a competitive relationship with Tokyu Parking Systems with respect to the transactions for the maintenance service for “Tokyu Car parking garages.” And these conducts fell under the Interference with a Competitor's Transactions² as defined in Subsection 15 (as of the time of JFTC's decision, current Subsection 14) of the Designation of Unfair Trade Practices (JFTC Public Notice No. 15 of 1982); therefore, such conducts were found to be in violation of the provision of Article 19 of the AMA.

² Interference with a Competitor's Transaction: Unjustly interfering with trade between another enterprise that, domestically, is in a competitive relationship with oneself or with a company in which one is a shareholder or an officer, and its transacting party, by preventing the conclusion of a contract, by inducing a breach of a contract, or by any other means whatsoever.

2.2. Case against Mitsubishi Electronic Building Techno-Service (2002)

2.2.1. Background

11. Mitsubishi Electronic Building Techno-Service Co., Ltd., (hereinafter “MEBT”) was an “affiliated maintenance company³” established as a wholly owned company of Mitsubishi Electric Corporation (hereinafter “Mitsubishi Electric”) who was engaged in the manufacture and distribution of elevators (elevators, escalators, and small freight elevators, hereinafter the same shall apply). MEBT was engaged in the maintenance service of elevators and the distribution of dedicated replacement parts for elevators.

12. MEBT provided maintenance services for most of the elevators manufactured by Mitsubishi Electric (hereinafter “Mitsubishi Electric elevators”) and had the biggest market share of elevator maintenance services in Japan.

13. Affiliated maintenance companies made contracts with owners of elevators for the majority of maintenance services for elevators in Japan. However, maintenance companies other than affiliated maintenance companies (hereinafter “independent maintenance companies”) made contracts with owners for certain maintenance services for elevators.

14. Since elevators have a long durable service life, proper maintenance service is necessary to prevent deterioration of structural functions due to aging and to ensure functions, safety, and performance of elevators at all times. In addition, owners and management companies (hereinafter “owners”) of elevators must endeavor to maintain elevators owned or managed by them in proper condition according to the relevant laws, including the Building Standards Act.

15. Owners of elevators normally conclude maintenance contracts with maintenance companies of elevators to assign maintenance work. Since the designs of the components of elevators often vary in specifications depending on the manufacturers and types of elevators, dedicated replacement parts for elevators manufactured by manufacturers of elevators (hereinafter “replacement parts”) are often needed to properly maintain elevators. Especially when a failure occurs in important parts, such as a circuit board for control unit, repair with the replacement parts manufactured by manufacturers of elevators is inevitable. Furthermore, elevators are an indispensable method of lifting for medium- and high-rise buildings, and if a failure occurs, maintenance companies are asked for an immediate repair by the owners of the buildings.

16. MEBT was engaged in the distribution of replacement parts for “Mitsubishi Electric elevators”, and exclusively supplying the replacement parts manufactured only for “Mitsubishi Electric elevators” in Japan. And such replacement parts were not available from other replacement suppliers.

2.2.2. Violation

17. MEBT established guidelines on the distribution of replacement parts to independent maintenance companies and took the following conducts against them with regard to replacement parts based on the guidelines.

³ “Affiliated maintenance company” means a manufacturer of elevators who provides maintenance services itself or a subsidiary of the manufacturer.

- (a) Although MEBT had parts available for delivery and was able to deliver the parts without delay, MEBT, in principle, delivered the parts by the same due dates as those dates required when the parts were ordered and delivered from replacement suppliers.
- (b) Without justification, MEBT sold parts to independent maintenance companies at much higher prices than those for customers who made maintenance contracts with MEBT.

18. As a result of such conducts, independent maintenance companies were faced with difficulties in the immediate maintenance service at low cost for “Mitsubishi Electric elevators.” And these companies were forced to cancel their maintenance contracts for “Mitsubishi Electric elevators” or lost credibility in the ability to procure replacement parts. As such, these companies were hindered in the conclusion and retention of maintenance contracts with the owners of “Mitsubishi Electric elevators” and providing appropriate maintenance services.

19. Such conducts unfairly interfered with the transactions between the owners of “Mitsubishi Electric elevators” and independent maintenance companies who were in a competitive relationship with MEBT with respect to the maintenance service for “Mitsubishi Electric elevators” and fell under the Interference with a Competitor's Transactions as defined in Subsection 15 (as of the time of JFTC's decision, current Subsection 14) of the Designation of Unfair Trade Practices. Therefore, such conducts were found to be in violation of the provision of Article 19 of the AMA.

2.3. Case against Radiometer Trading (1993)

2.3.1. Background

20. Radio Meter Trading Co., Ltd. (hereinafter “Radio Meter Trading”) was a distributor of blood gas analyzers and solutions for the analyzer, such as the cleaning solutions (hereinafter “reagents”) in Japan. Radiometer K.K. exclusively imported the analyzers and reagents manufactured by Radiometer Medical A/S located in the Kingdom of Denmark, and supplied them only to Radio Meter Trading. Radio Meter Trading was the second biggest seller of blood gas analyzers in Japan.

21. Only reagents manufactured by Radiometer Medical A/S were used for the blood gas analyzers manufactured by Radiometer Medical A/S. Radio Meter Trading supplied these reagents to customers, such as hospitals through partner wholesalers.

2.3.2. Violation

22. Radio Meter Trading was worried about the loss of profits because importers of the reagents, manufactured by Radiometer Medical A/S and imported in parallel (hereinafter “parallel imported reagents”), sold the reagents at lower prices to partner wholesalers of Radio Meter Trading than the prices at which Radio Meter Trading sold the reagents to such wholesalers (hereinafter “wholesale price”). In order to deal with such a situation, Radio Meter Trading took the following conducts against such wholesalers.

- (a) Radio Meter Trading requested the wholesalers not to deal in parallel imported reagents.
- (b) Radio Meter Trading notified such wholesalers in writing that if they did not respond to such a request, Radio Meter Trading would discontinue the supply of

the reagents and maintenance and management services for blood gas analyzers manufactured by Radiometer Medical A/S.

23. As a result, partner wholesalers of Radio Meter Trading discontinued selling parallel imported reagents. Such conducts unfairly interfered with transactions between wholesalers of parallel imported reagents and the importers who were in a domestically competitive relationship with Trading Company and fell under the Interference with a Competitor's Transactions as defined in Subsection 15 (as of the time of JFTC's decision, current Subsection 14) of the Designation of Unfair Trade Practices; therefore, such conducts were found to be in violation of the provision of Article 19 of the AMA.

3. Case example of business combination

24. The manufacture and sale business of machinery such as boilers, steam turbines, gas turbines which constitute thermal power plants as well as the design and construction business of thermal power plants are collectively referred to as the thermal power generation systems business. The thermal power generation systems business also includes maintenance services for thermal power plants. Mitsubishi Heavy Industries, Ltd. and Hitachi, Ltd. are main players engaged in the sector of thermal power generation systems business in Japan.

25. In the case of integration in thermal power generation system businesses of these two companies (Major Business Combination Cases in Fiscal Year 2013⁴, Case 10), the JFTC reviewed competition in the fields of trade regarding "supercritical pressure thermal power plants supply business," "supercritical pressure boilers," "large steam turbines," and "large gas turbine combined cycle power generation plant supply business", in which the parties compete with each other and in which the integration seemed to have significant impact on competition.

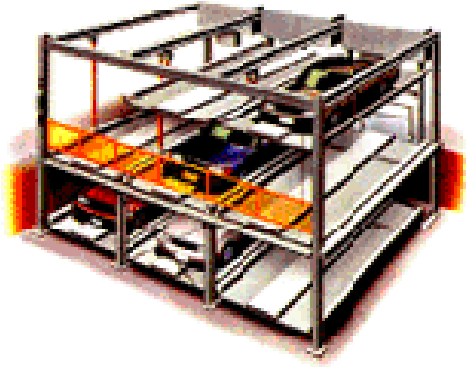
26. The JFTC defined the geographic market on products and services subject to the review based on the demands for the maintenance services. With regard to such definition of the geographic market, the JFTC provided the following explanation: "Domestic manufacturers provide products and services not only to domestic customers but also to foreign customers. On the other hand, in selecting suppliers of the products and services, domestic customers take into account the past supply records in Japan, the presence of maintenance systems, etc. Since only domestic manufacturers provide maintenance services in Japan, suppliers that meet the needs of domestic customers are limited to domestic manufacturers. Therefore, "all regions of Japan (the market for customers in all regions of Japan)" is defined as being the geographic market for these products and services."

⁴ <http://www.jftc.go.jp/en/pressreleases/yearly-2014/June/140611.html>

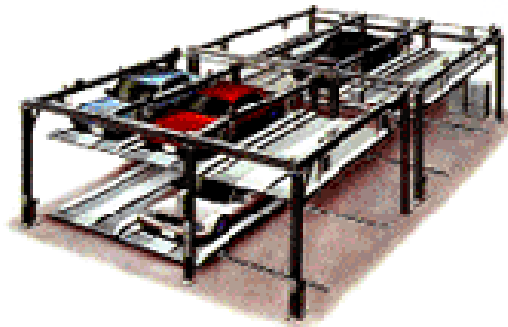
Appendix

Double-deck and Multi-deck Mechanical Parking Garages

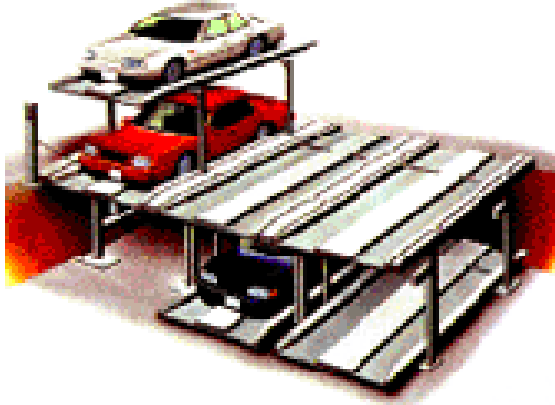
Multi-deck type
(Lift and slide type / Pit type)



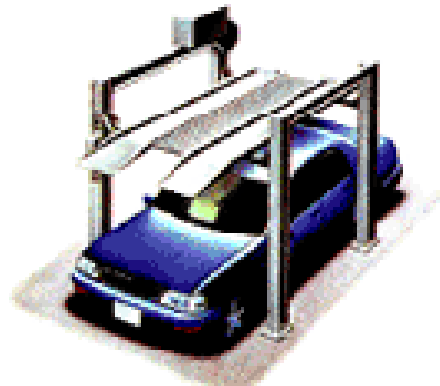
Double-deck type
(Lift and slide type / Vertical type)



Double-deck type (Lift pit type)



Double-deck type (Lift type)



Source: Website of Japan Parking System Manufacturers Association Incorporated