

Surcharge Payment Order against Suppliers of Petroleum Products Ordered by the Defense Agency's Central Procurement Office (the present Equipment Procurement and Construction Office)

January 18, 2008  
Japan Fair Trade commission

On January 16, 2008, the Japan Fair Trade Commission (JFTC) issued surcharge payment orders against three suppliers of petroleum products for the Defense Agency's Central Procurement Office (the present Equipment Procurement and Construction Office) in accordance with Article 48-2(1) of the Antimonopoly Act (AMA) before amended in 2005, a provision that is applicable pursuant to transitional measures in the amendment law (Act No. 35 of 2005) of the AMA.

This case pertains to the decision (Decision No. 7 1999) against Cosmo Oil Co., Ltd. and two other companies (hereinafter, "the three companies") issued on February 14, 2007. The JFTC made recommendations on November 17, 1999 against the three companies and eight other entrepreneurs <sup>(Note)</sup> (hereinafter, "the eleven companies") with regards to the violations described in paragraph 1 below, but the three companies dissatisfied the recommendations and disputed on them before hearing examiners.

From March 15 to 16, 2007, the three companies filed a lawsuit to have the decision rescinded at the Tokyo Supreme Court.

(Note) With regards to the other eight entrepreneurs, recommendation decision was issued on 20 December 1999 and the surcharge payment order was issued on 27 November 2000.

#### 1. Violations pertaining to the Surcharge

Regarding procurement orders for petroleum products (automobile gasoline, kerosene, light oil, Class A heavy oil, and turbine aircraft fuel) from the Japan Defense Agency Central Procurement Office (the present Equipment Procurement and Construction Office), the three companies, from April 1995 at the latest, acted together with another eight companies (with respect to turbine aircraft fuel, with another six companies) to allocate a predetermined winner for each type of fuel and

to secure the predetermined winner to receive the orders. Such conducts, contrary to the public interest, substantially restrained competition in the field of trade for those types of petroleum products. (Violates Article 3 of the AMA and falls under “Pertaining to consideration of goods” in Article 7-2(1) of the AMA.)

2. Entrepreneurs subject to the Surcharge Payment Order and the amount of the Surcharge

(Names of entrepreneurs and amounts of surcharges for each entrepreneur are outlined in Annexes 1 and 2.)

(1) Entrepreneurs subject to the Surcharge Payment Order	3 companies
(2) Surcharge Payment	4,484,600,000 yen

3. Due Date

17 March 2008

### Annex 1: Entrepreneurs Subject to the Order

No.	Name of Business	Headquarters	Representative
1	Nippon Oil Corporation	3-12, Nishi Shimbashi 1-chome, Minato-ku, Tokyo	Representative Director, President Shinji Nishio
2	COSMO OIL CO., LTD.	1-1-1, Shibaura, Minato-ku, Tokyo	President Yaichi Kimura
3	SHOWA SHELL SEKIYU K. K.	2-3-2, Daiba, Minato-ku, Tokyo	President, Representative Director Yasuo Murayama

### Annex 2: Surcharges per Entrepreneur

No.	Name of Business	Surcharge (unit: 10,000 yen)					Total
		Automobile gasoline	Kerosene	Light oil	A Heavy oil	Turbine powered aircraft fuel	
1	Nippon Oil Corporation (Note)	4,267	5,263	52,151	21,697	132,223	215,601
2	COSMO OIL CO., LTD.	2,375	3,830	35,828	15,639	117,443	175,115
3	SHOWA SHELL SEKIYU U K. K.	1,480	2,449	3,898	14,647	35,270	57,744
Total		8,122	11,542	91,877	51,983	284,936	448,460

(Note) Nippon Oil Corporation is the company made by the merger on April 1, 1999 between one of the violating parties, Nihon Sekiyu KK, and another violating party, Mitsubishi Sekiyu KK, changing the trade name to Nisseki Mitsubishi KK, and then, on June 27, 2002, to Nippon Oil Corporation. Therefore, in accordance with the amended AMA and Article 7-2(5) of the AMA prior to the 2005 amendment, the surcharge payment order has been issued against Nippon Oil Corporation because the violations by Mitsubishi Sekiyu KK are regarded as violations conducted by Nippon Oil Corporation.