

Cease and Desist Order and Surcharge Payment Order against Manufacturers
and Sellers of Automatic Ambient Air Monitors
(Tentative Translation)

November 12, 2008
Japan Fair Trade Commission

The Japan Fair Trade Commission (JFTC) has examined the manufacturers and sellers of automatic ambient air monitors (automatic measuring instruments to continuously measure substances in the air. The same definition applies hereafter.) in accordance with the provision under the Antimonopoly Act and found that they were in violation of the provision in Article 3 of the Act (Prohibition of unreasonable restraint of trade). Accordingly, JFTC issued today cease and desist orders in accordance with the provision in Paragraph 2, Article 7 under the Act and surcharge payment orders in accordance with the provision in Paragraph 1, Article 7-2 of the Act as follows.

1. Violating entrepreneurs, entrepreneurs against which cease and desist orders and surcharge payment orders were issued and the surcharge amounts

No.	Entrepreneur	Principal Office	Cease and Desist Order	Surcharge Payment Order (Unit:10 thousand yen)
1	DKK-Toa Corporation	29-10, Takadanobaba 1-chome, Shinjuku-ku, Tokyo	○	6,656
2	Horiba, Ltd.	2, Miyano Higashi, Kisshoin, Minami-ku, Kyoto	○	3,706
3	Kimoto Electric Co., Ltd.	3-1, Funahashicho, Tennoji-ku, Osaka	○	2,415
4	Shimadzu Corporation	1, Nishinokyo Kuwabaracho, Nakagyo-ku, Kyoto	-	-
Total			3 companies	12,777

Note 1: "○" in the table indicates the entrepreneur against which the cease and desist order was issued.

Note 2: "-" in the table indicates the violating entrepreneur against which the cease and desist order or surcharge payment order was not issued.

Note 3: Shimadzu Corporation publicly announced that it stopped sales of automatic ambient air monitors on December 28, 2005. It has not been engaged in manufacture or sale of automatic ambient air monitors thereafter and stopped the violating actions at issue.

1. Outline of the Violation

DKK-Toa Corporation (hereinafter referred to as "DKK-Toa"), Horiba, Ltd. (hereinafter referred to as "Horiba"), Kimoto Electric Co., Ltd. (hereinafter referred to as "Kimoto Electric") and Shimadzu Corporation (hereinafter collectively referred to as "Four Companies") took the following action on and after June 10, 2004 at the latest to prevent decline of order prices for the designated automatic ambient air monitors (Note 4) (Note 5) ordered by governmental organizations or local governments by means of competitive bidding or quotation collection (hereinafter referred to as the

“Designated Automatic Ambient Air Monitors Ordered by Government Offices):

(1) The Four Companies represent whether or not they want to receive the order to the coordinator directly or indirectly and:

A. If only one entrepreneur wants to receive the order (this entrepreneur is hereinafter referred to as the “Applicant”), such entrepreneur will be appointed as the company to receive the order (hereinafter referred to as the “Planned Successful Bidder”);

B. If there are several entrepreneurs that want to receive the order, the Planned Successful Bidder will be decided through consultation among the Applicants via the coordinator considering the delivery results in the past by the Four Companies to the measurement office where the Designated Automatic Ambient Air Monitors Ordered by Government Offices will be installed.

(2) The bid price is decided solely by the Planned Successful Bidder or the coordinator or through consultation between them. Those other than the Planned Successful Bidder will cooperate so that the Planned Successful Bidder can receive the order at the desired price.

Under this agreement, the Four Companies substantially restrained competition in the field of trade of the Designated Automatic Ambient Air Monitors Ordered by Government Offices contrary to the public interest by deciding the Planned Successful Bidder and managing that such Planned Successful Bidder could receive the order.

Note 4: The following instruments among automatic ambient air monitors (except for those supplied under lease agreements) (If vehicles where the applicable automatic monitors are installed, accessories of the applicable automatic monitors or articles other than the applicable automatic monitors or services such as installation of the applicable automatic monitors are ordered together, such other articles or services will be included.)

1. Automatic monitor to measure the sulfur dioxide in the air
2. Automatic monitor to measure the carbon monoxide in the air
3. Automatic monitor to measure the suspended particulate matters in the air
4. Automatic monitor to measure the photochemical oxidant in the air
5. Automatic monitor to measure the nitrogen dioxide in the air
6. Automatic monitor to measure the non-methane hydrocarbons in the air

Note 5: The Four Companies participated in the competitive bids or quotation collection for the Designated Automatic Ambient Air Monitors Ordered by Government Offices by themselves or via sellers. In case of participation via sellers, they gave instructions about the bid price or quotation price to such sellers.

3. Outline of the Cease and Desist Order

(1) DKK-Toa, Horiba and Kimoto Electric (hereinafter collectively referred to as the Three Companies) shall respectively confirm that they have stopped the actions above in paragraph 2. They also shall make a resolution at their board of directors to the effect that they will not mutually or jointly with other entrepreneurs decide the Planned Successful Bidder for the Designated Automatic Ambient Air Monitors Ordered by Government Offices and that they will act independently of one another to receive the order.

(2) Each of the Three Companies shall notify the measures taken in accordance with (1) above to two other companies and to the government and local government offices which would order the designated ambient air monitor as well as to the sellers. Further, they shall disseminate such measures to their employees.

(3) Each of the Three Companies shall not decide the Planned Successful Bidder for

the Designated Automatic Ambient Air Monitors Ordered by Government Offices mutually or jointly with other entrepreneurs in the future.

4. Outline of the Surcharge Payment Order

The Three Companies shall, by February 13, 2009, pay the amount of 66,560,000 yen (in the case of DKK-Toa), 37,060,000 yen (in the case of Horiba) and 24,150,000 yen (in the case of Kimoto Electric) (127,770,000 yen in total).