

Cease and Desist Order and Surcharge Payment Order  
Against the Participants in the Bidding for Molten Metal  
Sold by Local Governments  
( Tentative Translation )

October 17, 2008  
Japan Fair Trade Commission

The Japan Fair Trade Commission (JFTC) investigated the entrepreneurs that participated in the bidding for molten metal or the like (Note 1) sold by local governments in accordance with provisions of the Antimonopoly Act and found that the entrepreneurs were in violation of the provision of Article 3 of the Act (Prohibition of unreasonable restraint of trade). The JFTC today issued cease and desist orders in accordance with the provision of Paragraph 2, Article 7 of the Act and surcharge payment orders in accordance with the provision of Paragraph 1, Article 7-2 of the Act as shown below.

Note 1: Metal mixtures generated at the waste disposal facilities include a material called “molten metal” exhausted at all times from the outlet of the melting furnace in the facilities (i.e. the equipment to melt the bottom ash, fly ash and so on including the gasifying furnace to directly melt the wastes), a material called “inclined metal” obtained by inclining the melting furnace of the facilities and a material called “furnace bottom metal” taken out by cutting the settled and hardened substances at the bottom of the melting furnace of the facilities. The term “molten metal or the like” refers to these raw materials used for refining of copper and gold, silver and other precious metals.

1. Number of Violating Entrepreneurs, Number of Entrepreneurs Subject to the Cease and Desist Orders and the Surcharge Payment Orders as well as their Surcharge Amounts (See the attached table for the names of the subject entrepreneurs and the surcharge amounts for each of them etc.)

Number of violating entrepreneurs	Number of entrepreneurs subject to the cease and desist orders	Number of entrepreneurs subject to the surcharge payment orders	Surcharge amount
6 companies	3 companies	2 companies	7,240,000 yen

2. Outline of the Violation

Mitsubishi Materials Corporation (hereinafter referred to as “Mitsubishi Materials”), Materials Eco-Refining Co., Ltd. (hereinafter referred to as “Materials Eco-Refining”), Nikko Environmental Services Co., Ltd. (hereinafter referred to as “Nikko Environmental Services”), Eco-System Japan Co., Ltd. (hereinafter referred to as “Eco-system Japan”), Tokyo Shoji Co., Ltd. (hereinafter referred to as “Tokyo Shoji”) and Dowa Holdings Co., Ltd. (hereinafter referred to as “Dowa Holdings”) (six companies in total) made the following agreements among them at the end and after March 2004 (Note 2), in accordance with the proposal from Mitsubishi Materials. The purpose of the agreements was to prevent an increase in the purchase price for the molten metal or the like (those excluding the metal generated at Hitachi Clean-up Center established by the City of Hitachi and at the intermediate processing facilities in Kagawa Prefectural Naoshima Environment Center

established by the Kagawa Prefecture, hereinafter referred to as the “Specified Molten Metal”) sold by local governments by means of competitive bidding, designated bidding, discretionary contract based on collected estimations or special appointment contract at discretion (hereinafter referred to as “Competitive Bidding or Discretionary Contract”):

- A. In the phase where the sale of Specified Molten Metal generated at a generation source (Note 3) is expected or in the phase of bidder designation, estimation collection or the like:
- (a) If any of the companies has purchased the Specified Molten Metal generated at the generation source, such record shall be taken into consideration to decide the company to purchase the Specified Molten Metal generated at the source (hereinafter referred to as the “Planned Purchaser”) through discussion.
  - (b) If none of the companies has purchased the Specified Molten Metal generated at the generation source, the Planned Purchaser shall be decided through discussion considering the results of sales activities to the local government selling the Specified Molten Metal generated at the generation source.
- B. (a) Companies other than the Planned Purchaser shall work together to achieve purchase by the Planned Purchaser by moderating their sales activities to the local government which sells the Specified Molten Metal so as not to be designated or inquired for estimation.
- (b) If any company other than the Planned Purchaser participates in the competitive bidding, designated bidding or estimation collection conducted for sale of the Specified Molten Metal, the price for purchase shall be determined by the Planned Purchaser and companies other than the Planned Purchaser shall work together so that the Planned Purchaser can purchase the molten metal at such price.

Under the above agreements, the above 6 companies (As for communications and arrangements between Nikko Environmental Services and Tokyo Shoji (or Eco-System Japan on and after April 1, 2004) or Dowa holdings, Mitsubishi Materials and Materials Eco-Refining served as intermediary) decided the Planned Purchaser and managed to realize purchase by such Planned Purchaser, and thereby substantially restricted competition in the field of purchase of molten metal sold by local governments by means of competitive bidding or discretionary contract contrary to the public interest.

Note 2: Tokyo Shoji and Dowa Holdings took such actions until March 31, 2004 and Eco-System Japan took such actions on and after April 1, 2004.

Note 3: A “generating source” refers to the waste disposal facilities equipped with melting furnaces from which molten metals are taken out.

### 3. Outline of the Cease and Desist Order

- (1) Mitsubishi Materials, Materials Eco-Refining and Nikko Environmental Services (hereinafter referred to as the “3 Companies”) shall respectively acknowledge that they have stopped taking the action described in item 2 above and shall have resolutions adopted at their respective Board of Directors to the effect that they will avoid joint decision of the Planned Purchaser and will accomplish purchasing for the Specified Molten Metal independently in the future.
- (2) The 3 Companies shall respectively notify the measures adopted in accordance with item

(1) above to the other 2 companies and to the local governments which sell the Specified Molten Metal and shall have the measures taken thoroughly disseminated to their employees.

(3) The 3 Companies shall respectively not decide the Planned Purchaser of the Specified Molten Metal among them, or in cooperation with other companies in the future.

(4) The 3 Companies shall respectively take necessary measures to perform the following matters in the future:

A. Review of their behavior policies on observation of the Antimonopoly Act in relation to competitive bidding or discretionary contract for purchase of the Specified Molten Metal

B. Periodic training courses for the sales staff in charge of the Specified Molten Metal and periodic audit by legal staff on observation of the Antimonopoly Act in relation to competitive bidding or discretionary contract for the Specified Molten Metal based on the results of the review described in item A above

4. Outline of the Surcharge Payment Order

Mitsubishi Materials and Materials Eco-Refining shall, by January 19, 2009, pay 5,130,000 yen (Mitsubishi Materials) and 2,110,000 yen (Materials Eco-Refining) respectively (7,240,000 yen in total) (See the attached table).

Attached Table

No.	Entrepreneur	Principal Office	Cease and Desist Order	Surcharge Payment Order	Surcharge Amount (Unit: 10,000 yen)
1	Mitsubishi Materials Corporation	5-1, Otemachi 1-chome, Chiyoda-ku Tokyo			513
2	Materials Eco-Refining Co., Ltd.	6-23, Takanawa 4-chome, Minato-ku, Tokyo			211
3	Nikko Environmental Services Co., Ltd.	3453, Miyatacho, Hitachishi, Ibaraki		-	-
4	Eco-System Japan Co., Ltd. (Note 1)	14-1, Sotokanda 4-chome, Chiyoda-ku, Tokyo	-	-	-
5	Tokyo Shoji Co., Ltd. (Note 2)	35-4, Nihonbashi-hakozakicho, Chuo-ku, Tokyo	-	-	-
6	Dowa Holdings Co., Ltd. (Note 3)	14-1, Sotokanda 4-chome, Chiyoda-ku, Tokyo	-	-	-
Total				3 companies 2 companies	724

Note 1: The trade name was changed from TechnoClean Co., Ltd. to this name effective on April 1, 2004.

Note 2: Tokyo Shoji transferred its business to purchase and sell scrap nonferrous metal including molten metal to TechnoClean Co., Ltd. effective on April 1, 2004 and has not been engaged in such business since then. Further, it had a

resolution for dissolution on November 30, 2004 and completed liquidation on March 9, 2005.

Note 3: The trade name was changed from Dowa Mining Co., Ltd. to this name effective on October 1, 2006. At the same time, the company had Dowa Eco-System Co., Ltd. and Dowa Metals & Mining Co., Ltd. succeed the business to purchase scrap nonferrous metal including molten metal and to manufacture nonferrous metal materials by corporate division and has

Note 4: " " in the table indicates the entrepreneur to which the cease and desist/surcharge payment order is addressed.

Note 5: " - " in the table indicates the violating entrepreneur to which the cease and desist/surcharge payment order is not