

Cease and Desist Order and Surcharge Payment Order Against Air Freight Forwarders
(tentative)

March 18, 2009
Japan Fair Trade Commission

The Japan Fair Trade Commission (hereinafter referred to as “JFTC”) had investigated companies engaged in international air freight forwarding business^(Note 1), under the provisions of the Antimonopoly Act (hereinafter referred to as “AMA”) and found that they had been involved in activities in violation of Article 3 (prohibition of unreasonable restraint of trade) of the AMA. Accordingly, the JFTC today issued against them a cease and desist order pursuant to the provision of Paragraph 2, Article 7 of the AMA and surcharge payment orders pursuant to the provision of Paragraph 1, Article 7-2 of the AMA, as described in 1 below.

The JFTC also made a request to Japan Aircargo Forwarders Association (hereinafter referred to as “Association”) that consists of companies engaged in international air freight forwarding business as described in 2 below.

(Note 1) Business to provide service of transporting outbound cargoes, upon demand of customers, by using transport services of air carrier companies (including, where applicable, collection and delivery of the cargo made prior to and following air transport).

1. Companies subject to the cease and desist order and to the surcharge payment orders

- (1) The number of companies involved in violation and companies subject to the cease and desist order and to the surcharge payment orders, and the amount of the surcharge (See also the appendix);

Number of companies involved in violation	Number of companies subject to the cease and desist order	Number of companies subject to the surcharge payment orders	Total amount of surcharge
14	12	12	9,052,980,000 yen

- (2) Outline of the violation the JFTC found is as follows;

The 14 companies listed in the appendix (hereinafter referred to as “the 14 Companies”), on air freight charges and fees of international air freight forwarding business, concluded agreements to newly charge consignors and/or consignees (hereinafter referred to as “shippers”) Fuel surcharge for shippers, AMS charges^(Note 2), Security charges^(Note 3), and Explosive inspection charges^(Note 4) as described below, and thereby, contrary to the public interest, substantially restrained competition in the market of international air freight forwarding business.

a. On September 18, 2002^(Note 5), the 14 Companies agreed that, when they are to be charged a fuel surcharge^(Note 6) by air carrier companies they use, they would charge the amount which is equivalent to that of the said fuel surcharge for the cargoes on which they issued house air waybills^(Note 7) (referred to as “HAWB”) as of October 16, 2002 or after, under the name of Fuel surcharge for shippers.

b. On November 22, 2004, the 14 Companies except Airborne Express, Inc. (hereinafter referred to as “the 13 Companies”) agreed that they would charge at least

500 yen per HAWB for all the cargoes on which they issued HAWB as of December 13, 2004 or after in principle, or as of January 1, 2005 or after at the latest, and which will be delivered to the United States or delivered via the United States to third party countries except those in Europe, under the name of AMS charges.

c. On February 20, 2006, the 13 Companies agreed that they would charge at least 300 yen per HAWB for all the cargoes on which they issued HAWB as of April 1, 2006 or after, under the name of Security charges, and would charge at least 1,500 yen per HAWB in addition to the Security charges, when the cargo is subject to explosive inspections, under the name of Explosive inspection charges.

(Note 2) Refers to fees charged to shippers to cover the cost to conform to the prior notification system on air freight cargoes including Automated Manifest System employed by the US Customs and Border Protection.

(Note 3) Refers to fees charged to shippers to cover the cost to conform to the aviation security measures implemented by the Ministry of Land, Infrastructure, Transport and Tourism.

(Note 4) Refers to fees charged to shippers to cover the cost to carry out inspections by Explosive Detection System or visual inspection in compliance with the aviation security measures referred in Note 3.

(Note 5) Nippon Express Co., Ltd. and DHL Global Forwarding K.K. joined the agreement by November 8, 2002 at the latest.

(Note 6) Refers to rate charged by air carrier companies in addition to air freight charges, which is applied during the period which jet fuel price soars and is adjusted in accordance with fluctuations of fuel jet price.

(Note 7) Refers to a document issued as air waybill between air freight forwarders and shippers to confirm conclusion of contract to transport cargoes.

(3) Outline of the Cease and Desist Order

a. The 14 Companies except Hankyu Hanshin Express Holdings Corporation (hereinafter referred to as “Hankyu Hanshin Express Holdings”), DHL Global Forwarding Japan K.K. and Airborne Express, Inc. (hereinafter referred to as “the 11 Companies”) shall each adopt at meetings of their respective boards of directors;

- a resolution confirming that the agreements described in (2) above have terminated, and
- a resolution that the 11 companies shall no longer determine, mutually among themselves or jointly with any other companies, the amount of air freight charges or fees for international air freight forwarding business, and they shall instead determine the said charges and fees at their respective discretion.

Additionally, Hankyu Hanshin Express Holdings shall adopt at meetings of its board of directors;

- a resolution confirming that the agreements described in (2) above have terminated,
- a resolution that it shall not allow Hankyu Express International Co., Ltd. (hereinafter referred to as “Hankyu Express”) to determine, mutually with the 11 Companies or jointly with any other companies, the amount of air freight charges or fees for international air freight forwarding business, and
- a resolution that it shall instruct Hankyu Express to adopt resolutions by Hankyu Express’s board of directors to the effect that Hankyu Express shall instead determine the said charges and fees at its own discretion.

b. Each of the 11 Companies shall notify the measures taken in accordance with a. above to the other 10 companies as well as Hankyu Express, inform its shippers of the measures above and make them well-known to its employees.

Additionally, Hankyu Hanshin Express Holdings shall notify the measures taken

in accordance with a. above to the 11 Companies, inform its shippers of the measures above and instruct Hankyu Express to make such measures well-known to Hankyu Express's employees.

c. The 11 Companies shall no longer, mutually among themselves or jointly with any other companies, determine the amount of air freight charges or fees for international air freight forwarding business.

Additionally, Hankyu Hanshin Express Holdings shall not allow Hankyu Express to determine, mutually with the 11 Companies or jointly with any other companies, the amount of air freight charges or fees for international air freight forwarding business.

d. The 11 Companies shall each take necessary measures for ensuring (a) - (d) below.

Additionally, Hankyu Hanshin Express Holdings shall instruct Hankyu Express to take necessary measures for ensuring (a) - (d) below.

(a) to create or revise the guidelines of their activities with regard to compliance with the AMA concerning international air freight forwarding business,

(b) to provide regular training program for their directors as well as employees and conduct regular audits by legal section, with regard to compliance with the AMA concerning international air freight forwarding business,

(c) to create or revise stipulations to reprimand their directors and employees involved in violations of the AMA, and

(d) to establish or improve an effective whistle-blowing system, including granting immunity to those who report violations of the AMA.

(4) Outline of the Surcharge Payment Order

Each of the 12 companies, including the 11 Companies and Hankyu Hanshin Express Holdings, shall, by June 19, 2009, pay the respective amounts of surcharge, described in the appendix and the total amount of it reaches 9,052,980,000 yen.

2. Request to the Association

The JFTC found that the 14 Companies, on the occasion of gatherings under the name of Administrators' meeting of the International Division of the Association, concluded the agreements described in 1-(2) above and exchanged information about the status of receiving Fuel surcharge for shippers, AMS charges and Security charges to retain the effectiveness of the agreements and that the President, etc. of the Association attended the said meetings. Therefore, the JFTC requested the Association to take preventive measures so that the activities such as described in 1-(2) above shall not be reiterated at any meetings of the Association.

Appendix

No.	Name of company	Location of principal office	Representative	Cease and desist order	Surcharge payment order and amount of surcharge
1	Nippon Express Co., Ltd.	1-9-3, Higashi-shimbashi, Minato-ku, Tokyo	Masanori Kawai, President		2,495,030,000 yen
2	Yusen Air & Sea Service Co., Ltd.	30-1 Nihonbashi Hakozaiki-cho, Chuo-ku, Tokyo	Shunichi Yano, President		1,728,280,000 yen
3	Kintetsu World Express, Inc.	1-6-1, Ohtemachi, Chiyoda-Ku, Tokyo	Hirokazu Tsujimoto, President and Chief Executive Officer		1,494,610,000 yen
4	Nishi-Nippon Railroad Co., Ltd.	1-11-7, Tenjin, Chuo-ku, Fukuoka	Kazuyuki Takeshima, President		851,960,000 yen
5	Hankyu Hanshin Express Holdings Corporation	6-4-18, Nishi-tenma, Kita-ku, Osaka	Hiroshi Ojima, President		674,140,000 yen
6	Nissin Corporation	6-84 Onoe-cho, Naka-ku, Yokohama	Masahiro Tsutsui, President		525,210,000 yen
7	Vantec World Transport Co., Ltd.	4-9-11, Nihonbashi-honcho, Chuo-ku, Tokyo	Hiroshi Kimura, President		417,890,000 yen
8	"K" Line Logistics, Ltd.	3-7-9, Shibaura, Minato-ku, Tokyo	Mamoru Shozui, President		320,780,000 yen
9	Yamato Global Logistics Japan Co., Ltd.	1-10-14, Shinkawa, Chuo-ku, Tokyo	Jun Tsunoda, President & Chief Executive Officer		277,320,000 yen
10	MOL Logistics (JAPAN) Co., Ltd.	2-5-1, Koraku, Bunkyo-ku, Tokyo	Toshifumi Kato, President		165,340,000 yen
11	Hanshin Air Cargo Co.,Ltd.	1-9 Kanda Sakuma-cho, Chiyoda-ku, Tokyo	Yutaka Yamada, President		90,900,000 yen
12	United Aircargo Consolidators, Inc.	5-5-5, Konan, Minato-ku, Tokyo	Toshinori Yuasa, President		11,520,000 yen
13	DHL Global Forwarding Japan K.K.	1-19-9, Tsutsumi-dori, Sumida-ku, Tokyo	Charles Kaufmann, Country Manager		—
14	Airborne Express, Inc.	1-37-8, Higashi-shinagawa, Shinagawa-ku, Tokyo			—
Total				12 companies	9,052,980,000 yen

(Note 1) The companies indicated with a circle “ ” in the table above are subject to the cease and desist order.

(Note 2) The companies indicated with a hyphen “ - ” in the table above committed a violation but are neither subject to the cease and desist order nor the surcharge payment order.

(Note 3) Hankyu Hanshin Express Holdings Corporation is former Hankyu Travel International Co., Ltd., which changed its business name to the current one on April 1, 2008, when it had Hankyu Express International Co., Ltd. take over international air freight forwarding business of its own in an absorption-type split, and has discontinued the business since then.

(Note 4) Airborne Express, Inc. used to be engaged in international air freight forwarding business, but has discontinued the business since December 31, 2003.