2010 (Han) Nos.2 through No. 5

DECISION

Respondent: MT Picture Display Co., Ltd. (hereinafter referred to as the "Respondent MTPD")
1-15, Matsuo-cho, Kadoma City, Osaka
Representative of the Respondent: Motoo Kume, Representative Director

Respondent: PT. MT Picture Display Indonesia (hereinafter referred to as the "Respondent MTPD Indonesia")
Kawasan EJIP Industrial Park Plot 3-G, Desa. Sukaresmi, Kecamatan Cikarang Selatan, Kabupaten. Bekasi, Republic of Indonesia
Representative of the Respondent: Yoshitaka Yagaki, Liquidator

Respondent: MT Picture Display (Malaysia) Sdn. Bhd. (hereinafter referred to as the "Respondent MTPD Malaysia")
Wisma Goshen, 2nd Floor 60, 62 & 64 Jalan SS 22/21 Damansara Jaya 47400 Petaling Jaya Selangor, Malaysia
Representative of the Respondent: Yue Sau Yin, Liquidator

Respondent: MT Picture Display (Thailand) Co., Ltd. (hereinafter referred to as "Respondent MTPD Thailand")
No. 81/3,Tambol Taranan Moo 6, Amphur Muang, Nonthaburi Province, Kingdom of Thailand
Representative of the Respondent: Chommany Kankam, Liquidator

Attorney for the four abovementioned Respondents: Tetsuya Nagasawa

With respect to the hearing case on a cease and desist order issued to the Respondent MTPD based on the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947) (hereinafter referred to as the "Anti-Monopoly Act") prior to the revision, for which the provisions then in force shall remain applicable pursuant to the provisions of Article 2 of the Supplementary Provisions of the Act for the Partial

Revision of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 100 of 2013), and to the hearing case on a surcharge payment order issued to the Respondent MTPD Indonesia, the Respondent MTPD Malaysia and the Respondent MTPD Thailand in accordance with the Anti-Monopoly Act, the Japan Fair Trade Commission (hereinafter referred to as the "JFTC") investigated a draft decision submitted by the chief hearing examiner Shigeru Ito, hearing examiner Kazuhiro Hara, and hearing examiner Naofumi Tada. The JFTC decides as follows, based on the records of the case submitted by said hearing examiners pursuant to the provisions of Article 73 of the Rules on Hearings by the JFTC (Japan Fair Trade Commission Rules No. 8 of 2005) (hereinafter referred to as the "Rules") prior to the abolishment pursuant to the "Rule on the Development of the Rules related to the JFTC along with the Enforcement of the Act for the Partial Revision of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade" (Japan Fair Trade Commission Rules No. 2 of 2015), written objections submitted by investigators and Respondents pursuant to the provisions of Article 75 of the Rules, and statements obtained from the Respondents pursuant to the provisions of Article 63 of the Anti-Monopoly Act and Article 77 of the Rules.

Main Text

1.

(1) The cease and desist order dated October 7, 2009 issued against the Respondent MTPD (2009 (So) No. 23) shall be rescinded.

(2) The JFTC determines as follows: with respect to television cathode-ray tubes (Television CRTs) as listed in Appendix 3, for which the enterprises listed in Appendix 2 instructed purchases by their manufacturing subsidiaries, affiliated companies or contracted manufacturing companies located in countries indicated in the column of "Countries of locations of manufacturing subsidiaries, affiliated companies or contracted manufacturing companies in the Southeast Asia region" in Appendix 2, the Respondent MTPD agreed, for almost every quarter, to set the minimum target price, etc. for the next quarter to be complied with by each enterprise as the sales price for the aforementioned manufacturing subsidiaries, affiliated companies or contracted manufacturing companies, with the Respondent MTPD Indonesia, the Respondent MTPD Malaysia, the Respondent MTPD Thailand and the seven companies indicated in Appendix 1, by around May 22, 2003 at the

latest (however, the Respondent MTPD Malaysia joined the agreement as described below by around February 16, 2004 at the latest, and the Respondent MTPD Thailand by around April 23, 2004 at the latest); such agreement constitutes an unreasonable restraint of trade as specified in Article 2, paragraph (6) of the Anti-Monopoly Act and violates the provisions of Article 3 of said Act; and that the aforementioned agreement no longer existed on March 30, 2007.

2. All the hearing requests filed by the Respondent MTPD Indonesia, the Respondent MTPD Malaysia, and the Respondent MTPD Thailand are dismissed.

Reasons

I. Substance of Hearing Requests

1. Hearing Case 2010 (Han) No. 2 (related to the Respondent MTPD)
   The same substance as 1(1) of the main text.
2. Hearing Case 2010 (Han) No. 3 (related to the Respondent MTPD Indonesia)
   The Respondent requested the rescission of the surcharge payment order 2009 (Nou) No. 62.
3. Hearing Case 2010 (Han) No. 4 (related to the Respondent MTPD Malaysia)
   The Respondent requested the rescission of the surcharge payment order 2009 (Nou) No. 63.
4. Hearing Case 2010 (Han) No. 5 (related to the Respondent MTPD Thailand)
   The Respondent requested the rescission of the surcharge payment order 2009 (Nou) No. 64.

II. Outline of Case (Undisputed Facts between Parties and Public Knowledge)

1. Cease and Desist Order (Hearing Case 2010 (Han) No. 2)
   In this order, the JFTC found as follows: the Respondents reached an agreement with the enterprises listed in Appendix 1, for approximately every quarter period, to set the minimum target price, etc. for the next quarter to be complied with by the enterprises indicated in Appendix 2 (hereinafter referred to as the "Japanese Manufacturing and Sales Companies of CRT televisions") as the sales price for Television CRTs listed in Appendix 3 (hereinafter referred to as the "Specified CRTs"), for which they had instructed purchasing by their manufacturing subsidiaries, affiliated companies or contracted manufacturing companies located in the countries indicated in the column of "Countries of locations of manufacturing subsidiaries, affiliated companies, or contracted manufacturing companies in the

Southeast Asia region" of Appendix 2 (hereinafter referred to as the "Overseas Manufacturing Subsidiaries and the Like."); this act is against the public interest and substantially restrained the competition in the sales field of Specified CRTs; and such agreement constitutes an unreasonable restraint of trade as specified in Article 2, paragraph (6) of the Anti-Monopoly Act and violates the provisions of Article 3 of said Act. The JFTC also found that it was particularly necessary to issue a cease and desist order to the Respondent MTPD, and issued the cease and desist order to the Respondent MTPD on October 7, 2009 (2009 (So) No. 23; hereinafter this disposition shall be referred to as the "Cease and Desist Order"). The transcript of the written cease and desist order was served to the Respondent MTPD on October 8, 2009.

Meanwhile, the Respondent MTPD filed a request for a hearing for rescission of the Cease and Desist Order on November 6, 2009.

2. Surcharge Payment Orders (Hearing Cases 2010 (Han) No. 3 through No. 5)

In these orders, the JFTC found that the violation subject to the Cease and Desist Order pertains to the value of products specified in Article 7-2, paragraph(1), item (i) of the Anti-Monopoly Act, and ordered the payment of surcharges on October 7, 2009 as follows: the Respondent MTPD Indonesia to pay 580.27 million yen (2009 (Nou) No. 62), the Respondent MTPD Malaysia to pay 650.83 million yen (2009 (Nou) No. 63), and the Respondent MTPD Thailand to pay 566.14 million yen (2009 (Nou) No. 64), respectively. The transcripts of the written surcharge payment orders were served to the aforementioned Respondents on October 8, 2009, respectively.

In response to these orders, the Respondent MTPD Indonesia, the Respondent MTPD Malaysia, and the Respondent MTPD Thailand (hereinafter referred to as the "Respondent MTPD Indonesia and Two Other Companies") filed requests for hearing procedures seeking rescission of the surcharge payment order for each one of them on November 6, 2009, respectively.

III. Outline of Facts on which Decision is Premised (the facts for which evidence is listed in parenthesis at the end of the text are the facts found based on said evidence, and other facts are undisputed facts between parties or public knowledge.)

1. Parties, etc.

(1) Outline of Respondents

(i) The Respondent MTPD is an enterprise which has its headquarters at the aforementioned address. It succeeded the business related to Television CRTs from Matsushita Electric Industrial Co., Ltd. (the trade name was changed to

Panasonic Corporation as of October 1, 2008) as of March 20, 2003, and from Toshiba Corporation (hereinafter referred to as "Toshiba") as of March 31, 2003, respectively by an absorption-type company split, based on the agreement on the business merger related to Television CRTs between Matsushita Electric Industrial Co., Ltd. and Toshiba.

The trade name of the Respondent MTPD was "MT Picture Display Co. Ltd." until March 31, 2003; however, it was changed to "Matsushita-Toshiba Picture Display Co. Ltd." as of April 1, 2003, and further changed to the current trade name as of March 30, 2007.

(ii) The Respondent MTPD Indonesia was a subsidiary of the Respondent MTPD. It had its headquarters at the aforementioned address, and carried out the manufacturing and selling of Television CRTs; however, it discontinued the operation as of September 28, 2007 and started liquidation proceedings.

The Respondent MTPD Indonesia was a subsidiary of Toshiba; however, it became a subsidiary of the Respondent MTPD when Toshiba transferred all shares in the Respondent MTPD Indonesia to the Respondent MTPD on June 19, 2003. The Respondent MTPD Indonesia changed its trade name from PT Toshiba Display Devices Indonesia to the current trade name as of September 17, 2003.

(iii) The Respondent MTPD Malaysia was a subsidiary of the Respondent MTPD. It had its headquarters at the aforementioned address, and carried out the manufacturing and selling of Television CRTs; however, it adopted a resolution for dissolution as of October 8, 2007 and started liquidation proceedings.

(iv) The Respondent MTPD Thailand was a subsidiary of the Respondent MTPD. It had its headquarters at the aforementioned address, and carried out the manufacturing and selling of Television CRTs; however, it adopted a resolution for dissolution as of May 13, 2009 and started liquidation proceedings.

(2) Outline of Manufacturers and Sellers of Television CRTs Other than Respondents

(i)

(a) Samsung SDI is an enterprise that has its headquarters in the Republic of Korea.

(b) Samsung SDI Malaysia was a subsidiary of Samsung SDI. It had its headquarters in Malaysia, and carried out the manufacturing and selling of Television CRTs at least until the day set forth in 4. below.

(ii)

(a) Chunghwa Picture Tubes, Ltd. is an enterprise that has its headquarters in Taiwan.

(b) Chunghwa Picture Tubes Malaysia was a subsidiary of Chunghwa Picture Tubes. It had its headquarters in Malaysia, and carried out the manufacturing and selling of Television CRTs at least until the day set forth in 4. below.

(iii)

(a) LG-Philips Displays Co., Ltd. had its headquarters in the Republic of Korea, and carried out the manufacturing and selling of Television CRTs at least until the day set forth in 4. below.

(b) LG Displays Indonesia was an affiliated company of LG-Philips Displays. It had its headquarters in the Republic of Indonesia, and carried out the manufacturing and selling of Television CRTs at least until the day set forth in 4. below.

Most of the officers and employees of LP Displays Indonesia were dispatched from LG-Philips Displays. (Exhibits (Sa) No. 18-1 and 18-2)

(iv) Thai CRT Co., Ltd. had its headquarters in the Kingdom of Thailand, and carried out the manufacturing and selling of Television CRTs at least until the day set forth in 4. below.

(3) Outline of Japanese Manufacturing and Sales Companies of CRT televisions

The Japanese Manufacturing and Sales Companies of CRT televisions, as indicated in Appendix 2, had their headquarters in Japan, had manufacturing subsidiaries, affiliated companies or contracted manufacturing companies in Southeast Asia region, and carried out the manufacturing and selling of Television CRTs at least until the day set forth in 4. below.

2. Trade of Television CRTs

(1) The Japanese Manufacturing and Sales Companies of CRT televisions selected one or multiple enterprises out of the Respondent MTPD, Samsung SDI, Chunghwa Picture Tubes, LG-Philips Displays, Thai CRT (hereinafter collectively referred to as the "Respondent MTPD and Four Other Companies") and other manufacturers of Television CRTs, and negotiated with said enterprises about the outline of the scheduled purchase quantity for approximately each year, purchase price and purchase quantity for approximately every quarter, in addition to the specifications of the Television CRTs purchased by the Overseas Manufacturing Subsidiaries and the Like (hereinafter the selection and negotiation by the Japanese Manufacturing and Sales Companies of CRT televisions shall be referred to as the "Negotiation, etc."; the degree of involvement of the Japanese Manufacturing and Sales Companies of CRT televisions with the selection and negotiation and details thereof

are being disputed and this issue shall be assessed in VI 1. below).

The Negotiation, etc. was conducted on the premises that, if the Respondent MTPD was selected, the Respondent MTPD Indonesia and Two Other Companies would sell Television CRTs to their Overseas Manufacturing Subsidiaries and the Like.; if Samsung SDI was selected, Samsung SDI Malaysia would do so; if Chunghwa Picture Tubes was selected, the Chunghwa Picture Tubes Malaysia would do so; if LG-Philips Displays was selected, LG-Philips Displays and LP Displays Indonesia would do so; and if Thai CRT was selected, Thai CRT would do so, respectively.

(Exhibits (Sa) Nos. 2 through No. 8-2, Nos. 18 and No. 18-2, No. 40, No. 57, No. 63, No. 84, No. 96, Nos. 105-1 and 105-2, and Nos. 166 through No. 170)

(2) The Overseas Manufacturing Subsidiaries and the Like purchased Television CRTs mainly from the Respondent MTPD Indonesia and Two Other Companies, Samsung SDI Malaysia, Chunghwa Picture Tubes Malaysia, LG-Philips Displays, LP Displays Indonesia, and Thai CRT (hereinafter collectively referred to as the "Respondent MTPD Indonesia and Seven Other Companies") after the Negotiation, etc. (hereinafter the Television CRTs listed in Appendix 3 that the Overseas Manufacturing Subsidiaries and the Like purchased after the Negotiation, etc. shall be referred to as "the alleged CRTs"; the Specified CRTs that are alleged in the original order and by investigators are defined as the Television CRTs listed in Appendix 3 that the Japanese Manufacturing and Sales Companies of CRT televisions made the Overseas Manufacturing Subsidiaries and the Like purchase, as aforementioned in II 1; however, the part mentioning that the Japanese Manufacturing and Sales Companies of CRT televisions made the Overseas Manufacturing Subsidiaries and the Like "purchase" is being disputed between the parties as mentioned below; therefore, since it is found that the Overseas Manufacturing Subsidiaries and the Like purchased the Television CRTs listed in Appendix 3 that are subject to the agreement set forth in 3. below as a result of the Negotiation, etc., as found in the foregoing statements, the alleged CRTs were defined as above and its scope of products is the same as the Specified CRTs indicated in VI 1. (3)(iii) below).

(Exhibits (Sa) No. 2 through No. 8-2, No. 18 and No. 18-2, No. 40, No. 50, No. 51, No. 57, No. 59, No. 63, No. 84, No. 87, No. 88, No. 96, No. 105 and No. 105-2, and No. 165 through No. 170)

(3) The percentage of the total quantity of the alleged CRTs purchased from the Respondent MTPD Indonesia and Seven Other Companies out of the total quantity of the alleged CRTs purchased by the Overseas Manufacturing Subsidiaries and the

Like for five years from 2003 through 2007 was approximately 83.9%. (Exhibit (Sa) No. 11-2)

3. Agreement in Question

(1) The Respondent MTPD and Four Other Companies, as well as the Respondent MTPD Indonesia, Samsung SDI Malaysia, Chunghwa Picture Tubes Malaysia and LP Displays Indonesia continuously held meetings between their CRTs sales representatives in and outside Japan in order to stabilize the sales price of the alleged CRTs for the Overseas Manufacturing Subsidiaries and the Like, and made agreements approximately every quarter period to set the minimum target price, etc. for the following quarter to be complied with by each company as the sales price of the alleged CRTs for the Overseas Manufacturing Subsidiaries and the Like by May 22, 2003 at the latest (hereinafter this agreement shall be referred to as "the Agreement").

(Exhibits (Sa) No. 2, No. 7 and No. 7-2, No. 8 and No. 8-2, No. 14, No. 15, No. 17, No. 23, No. 25, No. 26 and No. 26-2, Nos. 105-1 and 105-2, Nos. 109-1 and 109-2, and No. 111)

(2) The Respondent MTPD Malaysia joined the Agreement by February 16, 2004 at the latest, and the Respondent MTPD Thailand by April 23, 2004 at the latest, respectively.

(Exhibits (Sa) No. 7 and No. 7-2, No. 8 and No. 8-2, No. 23, No. 27 and No. 27-2, No. 114, and No. 115)

4. Discontinuance of the Agreement

On March 30, 2007, Chunghwa Picture Tubes and Chunghwa Picture Tubes Malaysia expressed their intentions not to attend the meetings of sales representatives of CRTs due to issues related to the competition law, and said meeting was no longer held thereafter, since the Respondent MTPD also adopted the same attitude. Therefore, the Agreement substantially no longer existed on that day and thereafter.

(Exhibits (Sa) No. 7 and No. 7-2, No. 26 and No. 26-2, No. 34-1 and 34-2, and No. 105-1 and 105-2)

IV. Issues in Dispute

1. Whether the second sentence of Article 3 of the Anti-Monopoly Act can apply to this case (All Respondents);

2. Whether the cease and desist order issued to the Respondent MTPD satisfies the requirement: "if the JFTC finds it to be particularly necessary" (main clause of

Article 7, paragraph (2) of the Anti-Monopoly Act [before amendment by Law No. 51 of 2009])(Respondent MTPD);

3. Whether it violates the principle of equity to issue the cease and desist order to the Respondent MTPD, although the cease and desist order was not rendered against LP Displays Indonesia, a violator in this case (Respondent MTPD);
4. Whether it is possible to seek rescission of the Cease and Desist Order based on Article 70-12, paragraph (2) of the Anti-Monopoly Act in the hearing procedures (Respondent MTPD); and
5. Whether the sales amount of CRTs is the "the amount of sales from the relevant products or services" set forth in Article 7-2, paragraph (1) of the Anti-Monopoly Act, and provides the basis for calculation of the surcharges (Respondent MTPD Indonesia and Two Other Companies).

V. Allegations of Parties concerning Issues in Dispute

1. Issue 1 (Whether the second sentence of Article 3 of the Anti-Monopoly Act can apply to this case)

(1) Allegations of Investigators

(i) Approach to Application of the Anti-Monopoly Act to this Case

With respect to the territorial scope of application of the second sentence of Article 3 of the Anti-Monopoly Act, it is construed that the second sentence of said Article may apply in cases where all or part of the requirements for establishment of unreasonable restraint of trade that violates the second sentence of said Article, such as "mutually restrict or conduct the business activities," "substantially restrain competition in any particular field of trade," etc., are realized in Japan.

As for this case, as mentioned in (ii) and (iii) below, as the Agreement substantially restricted competition in the sales field of the Specified CRTs, including in Japan, considering the fact that Japan is included in the "sales field of Specified CRTs" as " particular field of trade," a part of the requirement for establishment of unreasonable restraint of trade, which is "to substantially restrain competition in any particular field of trade," occurred in Japan by the Agreement. Therefore, the second sentence of Article 3 of the Anti-Monopoly Act may apply to the Violation.

(ii) "Particular Field of Trade" in This Case

(a) It is understood that the "particular field of trade" referred to in Article 2, paragraph (6) of the Anti-Monopoly Act should be determined by considering

the trade subject to the concerted action of violators and the scope that may be affected, depending on the objectives, areas, forms, etc. of the trade, and by determining the scope of substantial restriction on competition (see Judgment of Tokyo High Court on December 14, 1993, High Courts Reports (criminal cases) Vol. 46, No. 3, p. 322 [Case of violation of the Anti-Monopoly Act against Toppan Moore Co., Ltd. and three other companies], etc.).

The trade subject to the Agreement and the scope of the competition that is substantially restricted by the effect of the Agreement was the trade related to the sales of Specified CRTs that was implemented in a region and form where the Japanese Manufacturing and Sales Companies of CRT televisions located in Japan negotiated and determined trade volume and price, etc. and the Overseas Manufacturing Subsidiaries and the Like located in Southeast Asia region purchased them in accordance with the decision, i.e. trade related to the sales of Specified CRTs where the Respondents and the seven companies indicated in Appendix 1 (hereinafter collectively referred to as the "Eleven Enterprises") competed with each other for acquisition of order receipts and prices in relation with the Japanese Manufacturing and Sales CompaniesManufacturing and Sales Companies of CRT televisions. This is determined as the "particular field of trade" in this case. Therefore, Japan is included in the particular field of trade in this case.

(b) The Japanese Manufacturing and Sales Companies of CRT televisions were performing a series of business activities related to the Specified CRTs under the role assignment where the Japanese Manufacturing and Sales Companies of CRT televisions, using the Overseas Manufacturing Subsidiaries and the Like as substantial manufacturing bases, negotiated and determined the purchase price and purchase quantity of the Specified CRTs with the enterprise selected from the Respondent MTPD and Four Other Companies, instructed the Overseas Manufacturing Subsidiaries and the Like to purchase the Specified CRTs from said enterprise or its subsidiary, etc. when giving instructions on design, specifications, etc. to the Overseas Manufacturing Subsidiaries and the Like, and had them manufacture CRT televisions. In addition, the Agreement was intended to avoid competition, setting the minimum target price, etc. to be presented for negotiation with the Japanese Manufacturing and Sales Companies of CRT televisions. On the basis of the foregoing facts, in this case, not only the Overseas Manufacturing Subsidiaries and the Like, but also the Japanese Manufacturing and Sales

Companies of CRT televisions are considered as a customer, from the perspective of the purpose of the Anti-Monopoly Act which directly protects fair and free competitive order. In this context, in the instant case, Japan is included in the particular field of trade.

(iii) The fact that competition in the sales field of the Specified CRTs was substantially restricted

(a) The phase "a substantial restraint of competition in any particular field of trade" as set forth in Article 2, paragraph (6) of the Anti-Monopoly Act is construed as the distortion of the process to determine the price and other trade conditions by free competition among the parties such as customers and suppliers that function in particular field of trade by mutual restriction, etc., such as cartels, etc. among enterprises, and the creation of conditions where said enterprises can control said field of trade (market)(forming, maintaining, and enhancing market-dominant conditions), in other words, to have the aforementioned adverse influences on the conditions that maintain the process of free competition that functions in the particular field of trade (fair and free competitive order).

(b) In the instant case, the percentage of the total purchase quantity by the Respondent MTPD Indonesia and Seven Other Companies out of total purchase quantity of the Specified CRTs by the Overseas Manufacturing Subsidiaries and the Like for five years from 2003 through 2007 was approximately 83.5% and accounted for a large portion of the total purchase quantity.

Therefore, it is found that the creation of the Agreement decreased overall competition in the sales field of the Specified CRTs, and created conditions where the Eleven Enterprises could control the market, the sales field of the Specified CRTs, with their intention to control trade conditions, such as price, etc., of the Specified CRTs that were determined by negotiation with the Japanese Manufacturing and Sales Companies of CRT televisions freely to some extent.

The Eleven Enterprises continuously held meetings based on the Agreement and set the minimum target price, etc. to be presented for negotiation with the Japanese Manufacturing and Sales Companies of CRT televisions located in Japan approximately every quarter. The Respondent MTPD and Four Other Companies negotiated the price of the Specified CRTs in and outside Japan based on said minimum target price, etc. with

the Japanese Manufacturing and Sales Companies of CRT televisions located in Japan.

Based on the aforementioned, it is obvious that the Agreement "substantially restrained competition in any particular field of trade," which is the sales field of the Specified CRTs.

(2) Allegations of the Respondents

(i) In order to allow extraterritorial application of the Anti-Monopoly Act under international law, it is necessary that "sufficient correlation" or a "close relationship" between Japan and the violation exists. This "sufficient correlation" or "close relationship" is found in cases where products or services pertaining to the violation are actually supplied in Japan, and it is not sufficient if only negotiation or decision, etc. on prices, etc. occurs in Japan.

(ii) Japan is not included in the particular field of trade in this case (Customers do not exist in Japan.)

(a) It should be understood that, in order to find that Japan is included in the particular field of trade (i.e. customers exist in Japan), the persons who actually receive the supply of products or services subject to the violation exist in Japan, or there should be special circumstances that are considered to be equivalent thereto substantially.

This is true because of the following reasons: the particular field of trade is a place of competition; it is an essential element of competition to supply products or services to customers (see Article 2, paragraph (4) of the Anti-Monopoly Act); and setting a supply of products or services to customers in Japan as a standard is common to regulations on business combinations in and outside Japan, it is clear and simple as a standard, and it is helpful to preventing conflicts with the competition laws and multiple punishments.

The Overseas Manufacturing Subsidiaries and the Like received the supply of CRTs. The alleged CRTs were not supplied to Japan. The alleged CRTs were not traded by setting Japan as the destination without changing their characteristics or forms. Therefore, in the instant case, it is impossible to say that Japan is included in the particular field of trade (customers exist in Japan).

(b) Investigators alleged that Japanese Television CRT Manufacturers/Distributors are also deemed as customers since they decided trade conditions and instructed the Overseas Manufacturing Subsidiaries and the Like to purchase the alleged CRTs.

However, as indicated in (iii) below, the aforementioned facts were not found. Even supposing that such facts are found, as these activities are totally different from the essential business activities as a consumer who receives supply of the alleged CRTs, it is impossible to consider that Japanese Television CRT Manufacturers/Distributors substantially received supplies of the alleged CRTs, in other words, to consider Japanese Television CRT Manufacturers/Distributors as equivalent to customers.

(iii) No facts can be found showing that Japanese Television CRT Manufacturers/Distributors decided trade conditions and instructed the Overseas Manufacturing Subsidiaries and the Like to purchase the alleged CRTs.

The trade conditions of the alleged CRTs, such as quantity and price, etc., were negotiated and determined between Japanese Television CRT Manufacturers/Distributors and the Respondent MTPD and Four Other Companies; however, it should be considered that Japanese Television CRT Manufacturers/Distributors accepted entrustment of the Overseas Manufacturing Subsidiaries and the Like and negotiated and decided trade conditions in lieu of the Overseas Manufacturing Subsidiaries and the Like under the central purchase negotiation method.

(iv) Even if the fact is found that Japanese Television CRT Manufacturers/Distributors decided the trade conditions and instructed the Overseas Manufacturing Subsidiaries and the Like to purchase the alleged CRTs for the Respondents, this fact was the internal circumstances of the counterparty of the trade, and the Respondent did not know said relationship between Japanese Television CRT Manufacturers/Distributors and the Overseas Manufacturing Subsidiaries and the Like. Therefore, it is not found that the Agreement was intended for trade pertaining to the Specified CRTs.

2. Issue 2 (Necessity of Cease and Desist Order)

(1) Allegations of Investigators

(i) The JFTC determined that it was necessary to issue the Cease and Desist Order, in comprehensive consideration of the facts that the Respondent MTPD was in violation for a long period of time, etc.

The necessity of a cease and desist order should be assessed based on circumstances actually occurred or existed at the time when such order is given. Therefore, the circumstances which occurred after said time do not have any influence on the judgment of the necessity of a cease and desist order.

(ii) Allegations of Respondent MTPD

(a) As of the time when the Cease and Desist Order was issued, the Respondent MTPD had transferred the role of manufacturing bases of Television CRTs in the MTPD Group, which was formerly assumed by the Respondent Indonesia and Two Other Companies, to Beijing Matsushita Color CRT Co., Ltd. located in the People's Republic of China (the Respondent MTPD held 50% of the investment equity, and half of the directors, including the representative director, were persons related to said Respondent; hereinafter referred to as "BMCC"), and continued the manufacturing and selling of Television CRTs.

Therefore, the Respondent MTPD was likely to commit a violation equivalent to the Violation when carrying out the business related to the Specified CRTs by giving instructions to and controlling BMCC.

As of the time when the Cease and Desist Order was issued, BMCC had not officially stopped production of Television CRTs, and the Respondent MTPD, although having decided to withdraw from the manufacturing and selling business of Television CRTs and announced that fact, the transfer of the investment equity in BMCC was not completed. Therefore, the aforementioned withdrawal from the business was not realized at that time.

(b) The amendment to the articles of incorporation as alleged by the Respondent MTPD was the addition of some new business purposes, i.e. "technology service and repair service of cathode-ray tubes" and "all business incidental or relevant thereto," and was not intended as withdrawal from the business related to Television CRTs. It rather defined that the Respondent would continue the manufacturing and selling of Television CRTs by instructing and controlling subsidiaries.

(2) Allegations of the Respondent MTPD

(i) The investigators alleged that the Respondent MTPD was likely to commit a violation equivalent to the Violation when carrying out the business related to the Specified CRTs, by instructing and controlling BMCC; however it is found to be groundless as mentioned below.

(a) The Respondent MTPD amended the articles of incorporation on June 30, 2009, removed the business of "research, development, manufacturing, and sales of picture display devices, such as cathode-ray tubes, etc., and their applied equipment" from the business purpose, and changed the business purpose to "technology service and repair service of cathode-ray tubes" and

"all business incidental or relevant thereto." This limited the Respondent's capacity to hold rights relating to the aforementioned business and those rights necessary for carrying out the business. Therefore, it became impossible for the Respondent to carry out the manufacturing and selling business of Television CRTs not only by itself, but also by instructing and controlling subsidiaries or affiliated companies. The Respondent, therefore, was no longer likely to commit violations equivalent to the Violation by instructing and controlling BMCC.

(b) Even if the Respondent MTPD had the capacity to hold rights in relation to carrying out manufacturing and selling of Television CRTs by instructing and controlling subsidiaries or affiliated companies even after the aforementioned amendment of articles of incorporation, the allegations of the Investigators are groundless as explained follows.

In other words, the Respondent MTPD discontinued production of Television CRTs in and outside Japan sequentially from around 2006, based on changes in the market environment where the demand for Television CRTs declined sharply along with a structural transition in the television market. In 2007, the Respondent MTPD Indonesia and the Respondent MTPD Malaysia dissolved and started liquidation proceedings along with the Respondent MTPD Thailand in 2009. On June 30, 2009, the Respondent MTPD amended its articles of incorporation to delete the manufacturing and selling of cathode-ray tubes from their business purpose. As a result, as of that day, only BMCC was continuing the manufacturing and selling business of Television CRTs; however, BMCC terminated employment of most of employees by July 2009 and discontinued the production of Television CRTs. The Respondent MTPD reached a basic agreement with BOE Technology Group Co., Ltd. (hereinafter referred to as "BOE") to transfer all of their investment equity in BMCC in September 2009, resolved the conclusion of the aforementioned transfer agreement at the board of directors' meeting, and then announced that they would discontinue the manufacturing and selling of Television CRTs.

Therefore, it should be considered that the Respondent MTPD had withdrawn from the business of manufacturing and selling of Television CRTs by instructing and controlling their own subsidiaries and affiliated companies at the time when the Cease and Desist Order was issued. Even if this were not the case, there was no chance that the Respondent would

cancel the transfer of investment equity in BMCC, newly start production, and continue the business of manufacturing and selling of Television CRTs by instructing and controlling BMCC after this Cease and Desist Order was issued. Therefore, the Respondent was not likely to commit a violation equivalent to the Violation by instructing and controlling BMCC.

(c) Based on the fact that BMCC is not a violator in this case, and that the investment equity of the Respondent MTPD was only 50%, the Respondent was not likely to commit a violation equivalent to the Violation by instructing and controlling BMCC.

(d) In consideration of the facts, such as that persons transferred from Toshiba, who mainly committed the Violation, were removed from the Respondent MTPD by March 2007, the Respondent was not likely to commit a violation equivalent to the Violation by instructing and controlling BMCC.

(ii) Consequently, issuing the Cease and Desist Order does not satisfy the requirement: "if the Fair Trade Commission finds it to be particularly necessary."

3. Issue 3 (Violation of the Principle of Equality)

(1) Allegations by the Respondent MTPD

The JFTC did not issue any cease and desist order to LP Displays Indonesia, which actually committed the Violation and continues to carry out the manufacturing and selling of Television CRTs; however, it issued the cease and desist order to the Respondent MTPD which had announced withdrawal from the business of manufacturing and selling of Television CRTs.

There is no reasonable reason to issue the cease and desist order to the Respondent MTPD, which had no possibility of continuing the business of manufacturing and selling of Television CRTs, not to LP Displays Indonesia which would be in higher need for issuing the cease and desist order.

Therefore, the Cease and Desist Order involves an abuse or excess of discretionary power from the perspective of the principle of equality, and therefore is unlawful.

(2) Allegations of the Investigators

LP Displays Indonesia, which is a violator in this case, was not in a position to negotiate and decide the sales price of the Specified CRTs sold by it based on the minimum target price, etc. set based on the Agreement with the Japanese Manufacturing and Sales Companies of CRT televisions; however, it was in the same position as the Respondent MTPD Indonesia and Two Other Companies, such as the position to receive instructions on the sales price of the Specified CRTs from LG-

Philips Displays and to sell the Specified CRTs according to said instructions. Therefore, it was not found to be necessary to issue a cease and desist order (with respect to LG-Philips Displays, which was in the same position as the Respondent MTPD, it was no longer necessary to issue a cease and desist order particularly, as it had completed the business transfer while the procedure for cease and desist order was pending).

Therefore, with respect to issuing the Cease and Desist Order to the Respondent MTPD, it does not violate the principle of equality nor is an abuse or excess of discretionary power.

4. Issue 4 (Rescission pursuant to Article 70-12, paragraph (2) of the Anti-Monopoly Act)

(1) Allegations of the Respondent MTPD

As of the time of this decision, the Respondent MTPD has completed a transfer of all investment equity in BMCC, has withdrawn from the business of manufacturing and selling of Television CRTs, and no employee is engaged in said business.

Therefore, as such situations satisfy the requirement: "If the Fair Trade Commission finds that maintenance of a cease and desist order or a decision … is inappropriate due to changes in economic conditions or other reasons, it may issue a decision to rescind or modify the cease and desist order" set forth in the main clause of Article 70-12, paragraph (2) of the Anti-Monopoly Act, the Cease and Desist Order should be rescinded based on said paragraph.

(2) Allegations of Investigators

The hearing proceedings are subsequent proceedings to re-examine whether the original order was lawful and appropriate, and therefore the base time for the judgment is the time of the original order. The allegations of the Respondent MTPD are related to the subsequent change of circumstances occurring after the original order, which should not be considered in the hearing proceedings.

5. Issue 5 (Whether the sales amount of the alleged CRTs is considered as the "the amount of sales from the relevant products or services" set forth in Article 7-2, paragraph (1) of the Anti-Monopoly Act and therefore provides the basis for the calculation of a surcharge)

(1) Allegations of Investigators

The amount of the surcharge should be calculated mechanically by the method of multiplying the sales amount of products or services subject to an unreasonable restraint of trade, etc. for the period of implementation of violation by a specified rate in accordance with the provisions of Article 7-2, paragraph (1) of the Anti-

Monopoly Act. Since it is found that the Agreement substantially restrained competition in a particular field of trade which includes Japan, i.e. the sales field of the Specified CRTs, the entire sales amount of the Specified CRTs is considered as the "the amount of sales from the relevant products or services" and therefore provides the basis for calculation of the surcharge.

(2) Allegations of the Respondent MTPD Indonesia and Two Other Companies

(i) The Anti-Monopoly Act and the Order for Enforcement of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Cabinet Order No. 317 of 1977; hereinafter referred to as the "Order for Enforcement of the Anti-Monopoly Act") has no express provisions to allow setting the sales amount related to trade in foreign countries as a basis for calculation of a surcharge, nor provisions related to the conversion method of foreign currencies. Consequently, the Anti-Monopoly Act does not contemplate that the sales amount related to trade in foreign countries should be used as a basis for calculation of a surcharge.

(ii) It should be construed that the sales amount to be a basis for calculation of a surcharge is limited to a sales amount, in cases where products affected by a competition restriction, such as maintaining or raising the price, are delivered in Japan.

The restrictive effects on competition by the Agreement occurred in the Southeast Asia region, not in Japan. The alleged CRTs were not delivered in Japan. Therefore, it is not allowed to use sales amount of CRTs as a basis for calculation of the surcharge.

VI. Assessment of JTFC

1. Issue 1 (Whether the second sentence of Article 3 of the Anti-Monopoly Act can apply to this case)

(1) This is a case of a price cartel where the Eleven Enterprises including the Respondents agreed to set the minimum target price and the like as the selling prices of the Television CRTs for the Overseas Manufacturing Subsidiaries and the Like located in Southeast Asia regions. The Agreement was made among the Respondents and foreign enterprises outside Japan, and the Overseas Manufacturing Subsidiaries and the Like who are direct purchasers of the Television CRTs subject to the Agreement (the alleged CRTs) are located outside Japan. Therefore, whether the second sentence of Article 3 of the Anti-Monopoly Act can apply to this case becomes an issue.

(2) Basic Approach on Application of the Anti-Monopoly Act to this Case

It is reasonable to construe that the second sentence of Article 3 of the Anti-Monopoly Act applies even if an enterprise commits a conduct that falls under Article 2, paragraph (6) of said Act outside Japan, at least where the competition in a particular field of trade is the competition over customers in Japan, and the competition in a particular field of trade is substantially restricted by the conduct in issue.

It is because of the following reasons: as the Anti-Monopoly Act promotes fair and free competition in Japan in order to promote the democratic and wholesome development of the national economy as well as secure the interests of general consumers (Article 1), and as the second sentence of Article 3 of said Act aims to prohibit the unreasonable restraint of trade and to protect fair and free competitive order in Japan, it is considered that the fair and free competitive order in Japan is infringed, regardless of whether an act falls under Article 2, paragraph (6) of said Act is committed in Japan or whether an enterprise that committed the conduct in issue is located in Japan or not, if at least the competition in a particular field of trade is the competition over customers located in Japan and if the competition in the particular field of trade is substantially restricted by the conduct in issue; and therefore it conforms to the purpose of the second sentence of Article 3 of said Act to apply said sentence.

On the assumption of the aforementioned, a definition on a particular field of trade in this case shall be made first, and then an assessment shall be made on whether the competition in said particular field of trade was the competition over customers located in Japan, and whether the competition in said particular field of trade was substantially restricted.

(3) Particular Field of Trade in this Case

(i) For the definition of the "particular field of trade" under Article 2, paragraph (6) of the Anti-Monopoly Act, it is considered sufficient to discuss the trade subject to the concerted actions performed by violators and the scope of the trade that may be affected by said actions (see the aforementioned Judgment of the Tokyo High Court on December 14, 1993).

As indicated in III 3. above, the Agreement sets the minimum target prices and the like to be complied with by the manufacturers as the selling prices of the alleged CRTs for the Overseas Manufacturing Subsidiaries and the Like. The transaction which was the subject to the concerted actions among the Eleven Enterprises relates to the sales of alleged CRTs, and the scope of the trade that may be affected by said actions is also the trade of the alleged CRTs. Thus, the

field of sales of the alleged CRTs is considered as the particular field of trade in this case.

(ii) Incidentally, the Respondents alleged that, as is the case of business combination regulations, the particular field of trade should be defined primarily based on the consideration of substitutability of the product/service from the standpoint of customers, and complimentarily based on substitutability of the product/service from the standpoint of suppliers shall also be taken into account.

However, the "particular field of trade" as indicated in Article 2, paragraph (6) of the Anti-Monopoly Act is to be defined in order to assess whether the competition in that field is substantially restricted by the concerted actions. The purpose and details of the concerted actions pertaining to the unreasonable restraint of trade is to substantially restrict the competition in a specific field of trade. Therefore, in general cases, it is construed that it is only necessary for defining the particular field of trade to consider the trade for which the concerted actions are implemented and the scope of the trade that may be affected by said actions.

Meanwhile, in case of the business combination regulations, it is impossible to say that the business combination itself substantially restricts competition in the specific field of trade immediately, and specific actions for specific products or services has not been done. Therefore, when assessing the impact, etc. of business combinations on the market, it is a general rule to define a particular field of trade based on objective elements, such as substitutability, etc. of products/services.

Thus, there are differences in characteristics between the business combination regulations and the unreasonable restraint of trade, namely, in the context of the unreasonable restraint of trade, substantial restriction of competition that has occurred by specific actions becomes an issue. Therefore, it is considered sufficient to define a particular field of trade under business combination regulations or unreasonable restraint of trade, applying the method suitable to each case respectively.

(iii) The original order defined the "Specified CRTs" as Television CRTs listed in Appendix 3 that Japanese Manufacturing and Sales Companies of CRT televisions had their Overseas Manufacturing Subsidiaries and the Like purchase. Although it is not included in the expression of the definition, it is obvious that the scope of Television CRTs which the Overseas Manufacturing

Subsidiaries and the Like purchase are assumed to be those purchased after the Negotiation, etc. based on the explanation of the reasons thereof. Therefore, since the alleged CRTs is defined as Television CRTs listed in Appendix 3 that the Overseas Manufacturing Subsidiaries and the Like purchase after the Negotiation, etc., the Specified CRTs and the alleged CRTs are in the same scope of products, and the sales field of Specified CRTs that the Investigators alleged to be the particular field of trade in this case and the sales field of alleged CRTs are the same (whether they are those that the Respondents had the Overseas Manufacturing Subsidiaries and the Like purchase, which the Respondents dispute, will be assessed in (4) below).

(4) Whether the competition in a particular field of trade in this case was conducted in relation to customers in Japan

(iv) On the assumption of the aforementioned, a discussion will be made actual conditions of trade of CRTs for each company of the Japanese Manufacturing and Sales Companies of CRT televisions.

(a) Orion Electric Co., Ltd. (hereinafter referred to as "Orion Electric")

1) Fact-findings

The following facts are found based on the evidences listed below, the stenographic record of interrogation of the witness Junichi Niwa, and Exhibit (Sa) No. 203 (copy of stenographic record of interrogation from a witness in the case of 2010 (Han) No. 6 [hereinafter referred to as "Case No. 6"]).

i) Relationship with the Contracted Manufacturing Company

a) World Electric (Thailand) Ltd. is a company for the manufacturing and selling of CRT televisions established in the Kingdom of Thailand as an overseas manufacturing base of CRT televisions of Orion Electric in 1988 and Korat Denki Ltd. in 1995 (hereinafter, the aforementioned two companies are collectively referred to as "World, etc.")

Orion Electric did not invest capital in World, etc.; however, it positioned World, etc. as its group company to manufacture their products, concluded a technical assistance agreement with World, etc., and has dispatched their employees as company representatives, officers, and employees of World, etc. since the establishment of World, etc.

(Exhibits (Sa) No. 1, No. 40 through 44, No. 46, No. 47, No. 148, No.

151-1 and 151-2, No. 152-1 and 152-2, and No. 173 through No. 179)

b) Orion Electric was manufacturing CRT televisions in its plants in Japan; however, it discontinued the manufacturing in 1995 at the latest and entrusted the manufacturing of CRT televisions by giving instructions on designs and specifications to contracted manufacturing companies, including World, etc.

Orion Electric adopted a built-to-order method with respect to the manufacturing and selling of CRT televisions, where Orion Electric entrust manufacturing to contracted manufacturing companies after receiving orders from wholesale dealers who are mass retailers, or customers for the original equipment manufacturing (OEM), and other customers.

(Exhibits (Sa) No. 1, No. 40 through No. 43, No. 46, No. 47, No. 173 through No. 178, and No. 180-1 and 180-2)

c) Orion Electric calculated costs in its department, such as the Planning Department, etc. for the purpose of improving price competitiveness and controlling the sales price of CRT televisions for which they received orders, and engaged in purchase, etc. including a selection of parts, such as cathode-ray tubes to be used with CRT televisions that Orion Electric entrusts the manufacturing to Word, etc., and determination, etc. of their purchase prices and purchase quantity. (Exhibits (Sa) No. 40, No. 153, No. 175, No. 176, No. 179, and No. 180-1 and 180-2).

It is stipulated in Article 1 of the technical assistance agreement indicated in a) above that World, etc. shall cooperate with Orion Electric by purchasing the necessary materials from Orion Electronic.

(Exhibits (Sa) No. 46, No. 47, No. 151-1 and 151-2, and No. 152-1 and 152-2)

d) Orion Electric purchased all of the CRT televisions manufactured using CRTs by World, etc. and sold them in and outside Japan, including North America, Europe, and Japan. World, etc. manufactured products by receiving entrustments from companies in addition to Orion Electric; however, the percentage of those sales was less than 10% of all sales.

(Exhibits (Sa) No. 40, No. 45, No. 149, No. 150, and No. 175 through No. 179)

ii) Trades related to CRTs in Question for the Period from around May 22, 2003 through March 29, 2007

a) Orion Electric selected one or multiple enterprise(s) mainly out of the Respondent MTPD and Four Other Companies, negotiated and determined specifications of CRTs with the enterprise(s), and also negotiated and determined a rough-scheduled purchase quantity of CRTs for approximately every year and the purchase price and purchase quantity of CRTs approximately for every quarter based on the scheduled purchase quantity.

(Exhibits (Sa) No. 2, No. 3, No. 6, No. 7 and No. 7-2, No. 40, No. 48 through No. 55-2, No. 166, No. 175, and No. 176)

b) Orion Electric sent parts lists or specifications forms indicating specifications, purchase price, purchase quantity, etc. of Television CRTs, or transmitted their data to World, etc., and instructed them to purchase Television CRTs, including the alleged CRTs from selected enterprise(s) as indicated in a). above or from their subsidiaries, etc.

(Exhibits (Sa) No. 40, No. 46 through No. 48, No. 151-1 through No. 153, No. 166, 175, and No. 176)

c) World, etc. followed the instructions indicated in b) above, placed orders for the alleged CRTs with an enterprise(s) selected by Orion Electric or their subsidiaries, etc. (in relationship with the Respondent MTPD Indonesia and Seven Other Companies, with the Respondent MTPD Malaysia, the Respondent MTPD Thailand, Chunghwa Picture Tubes Malaysia, LG-Philips Displays, and Thai CRT), and purchased them.

(Exhibits (Sa) No. 2, No. 18 and No. 18-2, No. 40, No. 153, No. 166, No. 175, and No. 176)

2) According to the aforementioned findings, the following facts were found: Orion Electric selected parts, such as cathode-ray tubes, etc., to be used for CT-based televisions for which manufacturing was entrusted to World, etc., and determined the purchase price, purchase quantity, etc. thereof; Orion Electric negotiated with an enterprise(s) selected out of the Respondent MTPD and Four Other Companies, and then determined the trade conditions of the alleged CRTs, such as the purchase price, purchase quantity, etc., and communicated the conditions to World, etc.; and World,

etc. purchased the alleged CRTs from suppliers that Orion Electric determined based on the trade conditions. If so, it was Orion Electric that substantially determined the suppliers of the alleged CRTs and important trade conditions, such as the purchase price, purchase quantity, etc. of the alleged CRTs. World, etc. was only following the instructions of Orion Electric. Therefore, it was not found that World, etc. was not actually involved in the decision of the suppliers of the alleged CRTs and important trade conditions. In other words, Orion Electric negotiated with enterprises that they selected, determined the suppliers of the alleged CRTs and important trade conditions, such as the purchase price, purchase quantity, etc. of the alleged CRTs, and then instructed World, etc. to purchase the alleged CRTs.

On the other hand, based on the details of the technical assistance agreement, which is the only agreement that regulates the relationship between Orion Electric and World, etc., (Exhibits (Sa) No. 46, No. 47, No. 151-1 and 151-2, and No. 152-1 and 152-2) and the fact that World, etc. actually cooperated with the procurement of CRTs by Orion Electric, the Respondent alleged that Orion Electric accepted entrustment of World, etc. and negotiated and determined the trade conditions of Television CRTs in lieu of World, etc. and therefore it cannot be considered that Orion Electric made World, etc. purchase the alleged CRTs.

However, under the aforementioned technical assistance agreement that the Respondent indicated, it only stipulates that World, etc. shall cooperate with Orion Electric in purchasing materials from Orion Electric and it does not prove that they were in the entrustment relationship that the Respondents mentioned. As mentioned in 1) i) c) above, based on the fact that Orion Electric calculated the cost of the CRT televisions to be manufactured by World, etc. and controlled the sales price, it was found that Orion Electric substantially determined the procurement of cathode-ray tubes and manufacturing and selling of CRT televisions. Therefore, it was not found that Orion Electric accepted entrustment of World, etc. with respect to procurement of the alleged CRTs.

Consequently, as mentioned above, it is found that Orion Electric negotiated with an enterprise(s) that Orion Electric selected, determined the suppliers of CRTs and important trade conditions, such as the purchase price, purchase quantity, etc. of the alleged CRTs, and then instructed

World, etc. to purchase the alleged CRTs.

(b) Sanyo Electric Co., Ltd. (hereinafter referred to as "Sanyo Electric")

1) Fact-findings

The following facts are found according to the evidences listed below: the stenographic record of the interrogation from the witness Kazumichi Koga, and Exhibit (Sa) No. 199 (copy of stenographic record of interrogation from the witness in the Case No. 6).

i) Relationship with Local Manufacturing Subsidiaries

a) Sanyo Electric was manufacturing CRT televisions in its plant in Japan; however, it established P. T. SANYO Electronics Indonesia in the Republic of Indonesia (hereinafter referred to as "Sanyo Electronics Indonesia") in 1996, and transferred manufacturing of CRT televisions to the company. (Exhibit (Sa) No. 184) With respect to the voting rights of Sanyo Electronic Indonesia, SANYO Asia Pte. Ltd., which is a 100% subsidiary of Sanyo Electronic and located in the Republic of Singapore held 82% thereof for the period from April 2002 through March 2004, and all of them in April 2004 and thereafter. (Exhibits (Sa) No. 1, No. 57, No. 181, and No. 183)

b) Sanyo Electric supervised the business related to CRT televisions that Sanyo Electric, Sanyo Electronic Indonesia, etc. carried out by September 30, 2006, such as the department in charge from "Multimedia Company," "AV Solutions Company," or "AV Company" (the name was different over time)(for example, when it was "AV Company," the "Television Controlling Business Unit") designed specifications of Television CRTs to be used by local manufacturing subsidiaries including Sanyo Electronic Indonesia (hereinafter collectively referred to as "Sanyo Electronic Indonesia, etc."), specifications of CRT televisions to be manufactured, standards related to the manufacturing method, etc., or inspection standards, instructed and controlled the business of Sanyo Electronic Indonesia, etc. through an annual business plan, quarterly check, monthly report, etc. Sanyo Electric also implemented purchases and negotiated collectively by the purchase department of each aforementioned company with respect to Television CRTs to be used by Sanyo Electric and Sanyo Electronic Indonesia, etc., in order to increase the efficiency of purchasing and to obtain an advantage of scale by a volume discount. (Exhibit (Sa) No. 57, Exhibits (Sa) No. 181 through No.

185)

c) Sanyo Electronic Indonesia did not have a sales department to sell the CRT televisions that they manufactured directly to customers. Therefore, the CRT televisions manufactured by Sanyo Electronic Indonesia by using the alleged CRTs were sold to Sanyo Sales and Marketing Kabushiki Kaisha and P.T. Sanyo Sales Indonesia according to the business plan approved by Sanyo Electric, and then sold outside the country by these companies. (Exhibit (Sa) No. 57, Exhibit (Sa) No. 181, and Exhibit (Sa) No. 183)

ii) Trade related to the alleged CRTs in Question for the Period from around May 22, 2003 through March 29, 2007

a) Sanyo Electric selected one or multiple enterprises mainly out of the Respondent MTPD, Samsung SDI, and LG-Philips Displays, received written specifications from the enterprises, and then negotiated and determined specifications of CRTs as well as the outline of the scheduled purchase quantity of the alleged CRTs for approximately every year and the purchase price and purchase quantity of the alleged CRTs for approximately every quarter based on the outline.
(Exhibits (Sa) No. 2, No. 3, No. 6, No. 50, No. 51, No. 57, No. 59 through 61-1 and -2, No. 154, No. 167, and No. 181 through No. 184)

b) Sanyo Electric communicated the determined trade conditions of the alleged CRTs, such as the purchase price, purchase quantity, etc., to the person in charge from Sanyo Electronic Indonesia via e-mail, and instructed it to purchase the alleged CRTs from the selected enterprises or their subsidiaries, etc. as indicated in a) above.
(Exhibits (Sa) No. 4, No. 57, No. 167, No. 183, and No. 184)

c) Sanyo Electronic Indonesia sent purchase order placement sheets for the alleged CRTs, received delivery of the alleged CRTs, received invoices, and made payments to the enterprises selected by Sanyo Electric their subsidiaries, etc. (in relation with the Respondent MTPD Indonesia and Seven Other Companies, the Respondent MTPD Indonesia, the Respondent MTPD Thai, Samsung SDI Malaysia, LG-Phillips Displays, and LP Displays Indonesia) in accordance with trade conditions determined by Sanyo Electric.
(Exhibits (Sa) No. 2, No. 18 and No. 18-2, No. 57, No. 167, No. 181, No. 183, and No. 184)

2) According to the aforementioned findings, Sanyo Electric controls the business related to CRT televisions carried out by Sanyo Electric and Sanyo Electronic Indonesia, etc.; negotiated with enterprises out of the Respondent MTPD, Samsung SDI, and LG-Philips Displays; determined trade conditions of CRTs, such as purchase price, purchase quantity, etc.; and communicated the conditions to Sanyo Electric Indonesia; and Sanyo Electric Indonesia purchased the alleged CRTs from the suppliers determined by Sanyo Electric. Based on these facts, it was Sanyo Electric that substantially determined the suppliers of CRTs and important trade conditions of the alleged CRTs, such as purchase price, purchase quantity, etc. Sanyo Electronic Indonesia was just following instructions of Sanyo Electric and therefore it was not found that Sanyo Electronic Indonesia was substantially involved in deciding the suppliers and important trade conditions of the alleged CRTs. In other words, it can be said that Sanyo Electric negotiated with the enterprises selected by Sanyo Electric, determined the suppliers of the alleged CRTs and important trade conditions of the alleged CRTs, such as the purchase price, purchase quantity, etc., and instructed Sanyo Electronic Indonesia to purchase the alleged CRTs.

On the other hand, the Respondents alleged as follows: Sanyo Electric negotiated and determined trade conditions with respect to Television CRTs that Sanyo Electronic Indonesia could not procure by themselves while summarizing and adjusting the intentions of Sanyo Electronic Indonesia in lieu of said company; therefore it should be considered that Sanyo Electric accepted the entrustment of Sanyo Electronic Indonesia and negotiated and determined trade conditions of Television CRTs in lieu of said company; however, it should not be considered that Sanyo Electric made Sanyo Electronic Indonesia purchase the alleged CRTs.

However, when Sanyo Electric conclusively determined trade conditions as a party of the negotiation, it was rather natural for Sanyo Electric, which conclusively determined trade conditions, to summarize the intentions of Sanyo Electronic Indonesia and other subsidiaries, etc., to promote the interests of the overall group by integrated purchasing, and to give consideration or adjust so that the trade conditions meet the individual intentions of Sanyo Electric Indonesia and other subsidiaries, etc. during this process.

Therefore, it was not found based on the abovementioned fact that Sanyo Electric accepted entrustment from Sanyo Electric Indonesia with respect to the negotiation and decision on the trade conditions of the alleged CRTs. Based on the aforementioned findings, it can be said that Sanyo Electric negotiated with the enterprises that they selected, determined the suppliers of the alleged CRTs and important trade conditions, such as purchase price, purchase quantity, etc. of the alleged CRTs, and instructed Sanyo Electronic Indonesia to purchase the alleged CRTs.

(c) Sharp Corporation (hereinafter referred to as "Sharp")

1) Fact-findings

The following facts were found according to the evidences listed below, and Exhibit (Sa) No. 200 (copy of stenographic record of the interrogation of the witness Yasuhiro Kawaguchi in the Case No. 6).

i) Relationship with the Local Manufacturing Subsidiaries or Affiliated Companies

a) Sharp manufactured CRT televisions at its plant in Japan; however, it discontinued the manufacturing in 2001 at the latest and manufactured CRT televisions only at local manufacturing companies or five affiliated companies indicated in A) through E) below (hereinafter collectively referred to as "SREC, etc.").

Sharp dispatched officers or employees of its company or its subsidiaries to SREC, etc. as officers, etc.

A) Sharp-Roxy Electronics Corporation (M) Sdn. Bhd. located in Malaysia (Sharp held 50% of voting rights.)

B) Sharp (Philippines) Corporation located in the Republic of the Philippines (Sharp held a majority of the voting rights.)

C) Sharp Manufacturing Thailand Co., Ltd. located in the Kingdom of Thailand (Sharp held 33% of voting rights by the end of March 2005 and all of voting rights in April 2005 and after.)

D) P.T. Sharp Electronics Indonesia located in the Republic of Indonesia (Sharp held a majority of the voting rights.)

E) Sharp Electronics (Malaysia) Sdn. Bhd. located in Malaysia (hereinafter referred to as "SEM"; Sharp held all voting rights.)

(Exhibits (Sa) No. 1, No. 63, No. 64, and No. 186)

b) Sharp made the AV System Business, Liquid Crystal Digital System Division 4 and other departments give prior approval to the business

plans of local manufacturing subsidiaries or affiliated companies, including production plans including the procurement amount of major parts, sales plans, personnel and inventory plans, etc., that were established by local manufacturing subsidiaries which were consolidated subsidiaries, etc. of Sharp, or affiliated companies. Sharp also controlled the business related to CRT televisions implemented by SREC, etc. and other manufacturing subsidiaries and affiliated companies for the purpose of increasing price bargaining ability, by selecting suppliers with respected to Television CRTs necessary for manufacturing the CRT televisions manufactured by local manufacturing subsidiaries or affiliated companies, settling negotiations with manufacturers of Television CRTs in terms of trade conditions, such as purchase price, purchase quantity, etc., and consolidating and collectively managing the purchases of Television CRTs.

(Exhibits (Sa) No. 63, No. 171, and No. 186 through No. 188)

c) Sharp and its sales subsidiaries, etc. outside Japan purchased most of the CRT televisions manufactured by SREC, etc. using the alleged CRTs and sold them in and outside Japan.

(Exhibits (Sa) No. 63, No. 69, and No. 165)

ii) Trade related to the alleged CRTs in Question for the Period from around May 22, 2003 through March 29, 2007

a) Sharp collected information on price trends of Television CRTs (sales price, sale volume, and trade conditions [TRADE TERM], etc. by inch-size of Television CRTs, by local manufacturing subsidiary or affiliated company of Sharp, and by type of cathode-ray tube for televisions) from the Respondent MTPD and Four Other Companies, etc.; discussed with design and development department of SEM and SEC, etc. based on said information and information on industry trends for Television CRTs and new development conditions, etc. of Television CRTs; adjusted specifications of Television CRTs and price trends, etc. of Television CRTs for the next half-year term mainly with the Respondent MTPD and Four Other Companies based on the results of the discussions; and negotiated by themselves with the enterprises selected from these enterprises and compiled trade conditions with

the enterprises every year around January to February and July to August with respect to the overall purchase price, purchase quantity, etc. of the alleged CRTs for SREC, etc. that would be traded in the first half (from April until September) and the second half (from October until March in the following year) of each fiscal year, while collecting technology information, such as specifications, etc. from enterprises, which were the other parties in the negotiations. (Exhibits (Sa) No. 2, No. 3, No. 7 and No. 7-2, No. 50, No. 51, No. 59, No. 63, No. 70 through No. 82-2, and No. 186 through No. 188)

b) Sharp communicated to SREC, etc. the overall price trends for SREC, etc. that were adjusted by the negotiation indicated in a) above, and confirmed with SREC, etc. that if SREC, etc. would negotiate additionally with the enterprise(s) or their subsidiaries, etc. as indicated in a) above in consideration of unique trade conditions, payment conditions, etc. or if SREC, etc. would purchase the alleged CRTs from said persons in accordance with the purchase price under said price trends. (Exhibits (Sa) No. 63 and No. 188)

c) Since overall price trends of SREC, etc. that were adjusted by the negotiation indicated in a) above and communicated by Sharp already reflected trade conditions, even if negotiating with the selected enterprise(s) indicated in a) above and their subsidiaries, etc. additionally after the confirmation indicated in b) above, in many cases SREC, etc. only negotiated the payment conditions of payment currency, etc. and used the price under the price trends that were adjusted by negotiation as indicated in a) above and communicated by Sharp as the purchase price of the alleged CRTs in principle. (Exhibit (Sa) No. 188)

d) Sharp requested the selected enterprise(s) as indicated in a) above to issue an official price quotation, which indicated the purchase price of the alleged CRTs, in accordance with the price trends that were adjusted additionally based on the negotiation indicated in a) above and the confirmation indicated in b) above. (Exhibit (Sa) No. 188 and Exhibit (Sa) No. 189)

e) SREC, etc. obtained official price quotations from the enterprises

selected by Sharp or their subsidiaries, etc. (in relation with the Respondent MTPD Indonesia and Seven Other Companies, all companies), placed orders for the alleged CRTs with them based on the statement on said price quotation, and purchase, order placement, and conducted delivery progress management, such as delivery, acceptance, and payment. (Exhibits (Sa) No. 2, No. 18 and No. 18-2, No. 63, No. 168, and No. 188)

2) According to the aforementioned findings, it was found that Sharp participated in the negotiation with the Respondent MTPD and Four Other Companies based on the discussion results with SREC, etc. and that SREC, etc. was able to negotiate with the Respondent MTPD Indonesia and Seven Other Companies individually with respect to trade conditions and payment conditions. However, it was found that Sharp controlled business related to CRT televisions carried out by SREC, etc. and other manufacturing subsidiaries and affiliated companies, negotiated with the enterprises selected from the Respondent MTPD and Four Other Companies, and then determined the purchase price, purchase quantity, etc. of CRTs, and that SRC, etc. purchased the alleged CRTs based on the directions of Sharp from the suppliers determined by Sharp in accordance with the price trends (purchase price, purchase quantity, etc.) that were determined after the aforementioned negotiation. Therefore, it was found that it was Sharp that substantially determined the suppliers of the alleged CRTs and important trade conditions for the alleged CRTs, such as purchase price, purchase quantity, etc. It can be said that Sharp negotiated with the enterprises that were selected by Sharp, determined the suppliers of the alleged CRTs and purchase price, purchase quantity, etc. of CRTs, and then instructed SREC, etc. to purchase the alleged CRTs.

On the other hand, according to the facts that SREC, etc. had the discretion of trade conditions for the alleged CRTs under the internal regulations of Sharp and that Sharp implemented negotiation and made decisions of trade conditions for CRTs by summarizing the intentions of SREC, etc. with respect to the information on price trends of cathode-rays tubes for televisions, adjusting them, and communicating them to the Respondent MTPD and Four Other Companies, the Respondents alleged that it should be construed that Sharp accepted the entrustment by SREC, etc. and implemented negotiation and made decisions on trade conditions for the

alleged CRTs in lieu of SREC, etc. and it should not be construed that Sharp made SREC, etc. purchase the alleged CRTs. Based on the fact that SREC, etc. have different legal personalities than Sharp even if they are subsidiaries or affiliated companies of Sharp and that the alleged CRTs were ordered in the name of SREC, etc., it is true that it is difficult to deny that SREC, etc. had discretion over trade conditions for the alleged CRTs formally. However, since Sharp consolidated the purchase, etc. of Television CRTs necessary for SREC, etc. according to the aforementioned findings, it was found that Sharp had substantial discretion over the supplier(s) of the alleged CRTs and important trade conditions, such as purchase price, purchase quantity, etc. of CRTs. Even if Sharp discussed with SREC, etc. with respect to price trends information when Sharp negotiated with the Respondent MTPD and Four Other Companies, it was found that Sharp only adjusted based on the intention of SREC, etc. and it was not found based on the fact that Sharp accepted entrustment by SREC, etc. for the negotiation and decision of trade conditions for the alleged CRTs.

Therefore, based on the aforementioned findings, it can be said that Sharp negotiated with the enterprises that Sharp selected, determined the suppliers of the alleged CRTs and important trade conditions, such as purchase price, purchase quantity, etc. of the alleged CRTs, and then instructed SREC, etc. to purchase the alleged CRTs.

(d) Victor Company of Japan, Limited (hereinafter referred to as "Victor Japan")

1) Fact-findings

The following facts were found according to the evidences listed below, and Exhibit (Sa) No. 201 (copy of stenographic record of the interrogation of witness Takashi Miyazaki in the Case No. 6).

i) Relationship with Local Manufacturing Subsidiaries or Affiliated Companies

a) Victor Japan established JVC Manufacturing (Thailand) Co., Ltd. (hereinafter referred to as "JMT") and JVC Electronics (Thailand) Co., Ltd. (hereinafter referred to as "JET") in the Kingdom of Thailand and JVC Vietnam Limited (hereinafter referred to a "JVL") in the Socialist Republic of Vietnam respectively by direct or indirect investment in order to manufacture CRT televisions to be sold by Victor Japan or a sales company that is a subsidiary or an affiliated

company of Victor Japan, and made them manufacture CRT televisions by instructing designs and specifications, etc.

JMT is a 100% subsidiary of Victor Japan; JVC Sales and Service (Thailand) Co., Ltd. (a 100% subsidiary of Victor Japan and held 50% of voting rights of JVC ASIA Pte. Ltd. that is located in the Republic of Singapore [hereinafter referred to as "JVC Asia"]) held 99% of the voting rights of JET; and JVC Asia held 70% of voting rights of JVL. The business of JVC Electronics Singapore Pte. Ltd. (hereinafter referred collectively with JMT, JET, and JVL to as "JMT, etc.") that is a 100% subsidiary of Victor Japan and located in Republic of Singapore was the product development, etc. of audio equipment; however, JVC Procurement Asia (A Division Company of JVC Electronics Singapore Pte. Ltd.), which was one of the departments of said company, procured part of the Television CRTs to be used by manufacturing subsidiaries of CRT televisions of Victor Japan.

(Exhibits (Sa) No. 1, No. 84 through No. 88, and No. 190 through No. 192)

b) Victor Japan made departments, including the Display Control Category of the AV & Multimedia Company, etc., compile orders from sales bases in various places, gave instructions on production to JMT, etc. based on the compiled orders, sold completed CRT televisions from the aforementioned sales bases, and thereby controlled the production, sales, and inventory of CRT televisions; and Victor Japan also controlled business related to CRT televisions carried out by Victor Japan, JMT, etc., and other manufacturing subsidiaries and affiliated companies, such as procurement of CRT televisions that JMT, etc. used in order to improve price bargaining power, etc. (Exhibits (Sa) No. 84 and No. 191)

c) JVL sold the CRT televisions that JVL manufactured in the Socialist Republic of Vietnam by themselves; however, since there was no marketing department to sell CRT televisions with JMT and JET, Victor Japan purchased most of the CRT televisions manufactured by JMT and sold them in and outside Japan, and JVC Sales and Service (Thailand) Co., Ltd., which is located in the Kingdom of Thailand and a sales subsidiary of Victor Japan purchased the entire amount of CRT televisions manufactured by JET and sold them in

Thailand. As mentioned above, the CRT televisions manufactured by JMT, etc. using the alleged CRTs were sold in and outside Japan based on the business plan that Victor Japan compiled. (Exhibits (Sa) No. 84, No. 190, No. 191, and No. 193)

ii) Trades related to the alleged CRTs in Questions for the Period from around May 22, 2003 through March 29, 2007

a) Until April 30, 2005, Victor Japan comprehensively considered with respect to the Television CRTs with the specifications conforming to the CRT televisions designed by the design department of Victor japan, such as performances, quality, production line conditions of manufacturers of Television CRTs, the time necessary for delivery, price, and previous trade conditions, etc.; selected one or multiple enterprises mainly from the Respondent MTPD and Four Other Companies; and negotiated and determined an outline of the scheduled annual purchase quantity with said enterprises in order to secure the Television CRTs for production volume of CRT televisions at each manufacturing base of JMT, etc. (Exhibits (Sa) No. 192 and No. 194-1 and -2)

Victor Japan concluded an agreement with Samsung SDI and LG-Philips Displays on the target annual purchase quantity and incentives in cases where they achieved the target, with respect to Television CRTs that local manufacturing subsidiaries and affiliated companies, including JMT, etc. would purchase (Exhibits (Sa) No. 192 and No. 194-1 and -2)

b) Victor Japan negotiated and determined the trade conditions of purchase price, etc. of the alleged CRTs approximately for every quarter with the selected enterprise(s) as indicated in a) above. (Exhibits (Sa) No. 2, No3, No. 7 and No. 7-2, No. 50, No. 51, No. 84, No. 89-1 through No. 94, No. 169, and No. 192)

c) Victor Japan communicated to JMT, etc. the trade conditions of the alleged CRTs, such as the purchase price, purchase quantity, etc. as indicated in a) and b) above via telephone, e-mail, facsimile, etc., and directed them to purchase the alleged CRTs from the selected enterprises as indicated in a) above or its subsidiaries in accordance with the trade conditions. (Said facts are found in consideration of the facts indicated in a) and b) above and Exhibit (Sa) No. 84 and

Exhibit (Sa) No. 169 comprehensively.)

d) In accordance with the trade conditions indicated in c) above, JMT, etc. sent purchase orders for the alleged CRTs to the enterprises selected by Victor Japan or its subsidiaries, etc. (in relationship with the Respondent MTPD Indonesia and Seven Other Companies, the Respondent MTPD Malaysia, the Respondent MTPD Thailand, Samsung SDI Malaysia, Chunghwa Pictures Tubes Malaysia, LG-Philips Displays, LP Displays Indonesia, and Thai CRT), accepted delivery of the alleged CRTs, received invoices, and paid the price.
(Exhibits (Sa) No. 2, No. 18 and No. 18-2, No. 84, No. 87 through No. 89-2, No. 169, and No. 192)

2) According to the aforementioned findings, it was found that Victor Japan controlled the business related to the CRT televisions carried out by Victor Japan, JMT, etc. and other manufacturing subsidiaries and affiliated companies, negotiated with the enterprises selected from the Respondent MTPD and Four Other Companies, and then determined the trade conditions of the alleged CRTs, such as the purchase price, purchase quantity, etc., and communicated them to JMT, etc., and that JMT. etc. purchased the alleged CRTs from the suppliers determined by Victor Japan in accordance with the trade conditions. In this case, it was Victor Japan that substantially determined the suppliers of the alleged CRTs and important trade conditions, such as the purchase price, purchase quantity, etc. of CRTs. Therefore, JMT, etc. only followed the directions of Victor Japan and it cannot be found that JMT, etc. was substantially involved with determination of the suppliers and important trade conditions of the alleged CRTs. In other words, it can be said that Victor Japan negotiated with the enterprises selected by Victor Japan, determined the suppliers of the alleged CRTs and important trade conditions for the alleged CRTs, such as purchase price, purchase quantity, etc., and then instructed JMT, etc. to purchase the alleged CRTs.

On the other hand, the Respondents alleged as follows: JMT, etc. negotiated with the Respondent MTPD Indonesia and Seven Other Companies for a cheaper price with respect to the price of the alleged CRTs that was determined by Victor Japan after negotiation with the Respondent MTPD and Four Other Companies and requested Victor Japan to negotiate again; therefore it cannot be considered that Victor Japan made JMT, etc.

purchase the alleged CRTs, but it can be considered that Victor Japan accepted entrustment by JMT, etc. and negotiated and determined the trade conditions of the alleged CRTs, such as price, etc. in lieu of JMT, etc. However, even if JMT, etc. negotiated the price with the Respondent MTPD Indonesia and Seven Other Companies, it was only to the extent that JMT, etc. requested slightly additional discount on the assumption of the price determined by Victor Japan (Exhibit (Sa) No. 201) and it cannot say based on said fact that Victor Japan accepted entrustment by JMT, etc. and negotiated and determined trade conditions for the alleged CRTs. As noted in the aforementioned findings, based on the fact that Victor Japan determined the suppliers and important trade conditions of the alleged CRTs and then instructed JMT, etc. to purchase them based on the decision, it can be said that Victor Japan made JMT, etc. purchase the alleged CRTs.

(e) Funai Electric, Co., Ltd. (hereinafter referred to as "Funai Electric")

1) Fact-findings

The following facts were found according to the evidences listed below, the stenographic record of the interrogation of the witness Shuji Inoue and Exhibit (Sa) No. 202 (copy of stenographic record of the interrogation of the witness in the Case No. 6).

i) Relationship with Local Manufacturing Subsidiaries

a) Funai Electric manufactured CRT televisions at its plant in Japan; however, it discontinued the manufacturing in 1993 and after, at the latest, and manufactured CRT televisions at Funai Electric (Malaysia) Sdn. Bhd. that was a 100% subsidiary of Funai Electric and located in Malaysia and at Funai (Thailand) Co., Ltd. that was located in the Kingdom of Thailand (hereinafter the two aforementioned companies are collectively referred to as "Funai Electric Malaysia, etc."). (Exhibits (Sa) No. 1, No. 96, No. 170, No. 195, and No. 196)

b) As mentioned in a) above, Funai Electric continued to control the business related to CRT televisions carried out by Funai Electric and local manufacturing subsidiaries and other subsidiaries of Funai Electric Malaysia, etc., such as supervising and managing research and development, technology and production management, quality management, quality assurance, marketing, sales, purchase, etc. other than the manufacturing of CRT

televisions at a department, such as the TV Division under the TV Business Group, etc., after Funai Electric transferred the manufacturing of CRT televisions to Funai Electric Malaysia, etc. (Exhibits (Sa) No. 96, No. 160, No. 163-1 and -2, No. 164-1 and -2, No. 196, and No. 197)

c) Funai Electric prepared product specifications and manufacturing instructions of the CRT televisions to be manufactured by Funai Electric Malaysia, etc. and sent them to Funai Electric Malaysia, etc. (Exhibits (Sa) No. 97, No. 98, No. 196, and No. 197)

d) Funai Electric purchased all of the CRT televisions manufactured using the alleged CRTs by Funai Electric Malaysia, etc. and sold them to customers in and outside Japan via Funai Hanbai Kabushiki Kaisha, DX Antenna Kabushiki Kaisha, and Funai Corporation Inc. that were 100% subsidiaries of Funai Electric. (Exhibits (Sa) No. 96, and No. 195 through No. 197)

ii) Trades related to the alleged CRTs in Question for the Period from around May 22, 2003 through March 29, 2007

a) Funai Electric negotiated with the enterprises selected mainly from the Respondent MTPD and Four Other Companies on the specifications and outline of the scheduled purchase quantity of the alleged CRTs that would be traded for the following one year, determined them, and negotiated and determined the purchase price and purchase quantity of the alleged CRTs that would actually be applied in the following quarter for approximately every quarter, for the purpose of a stable price and supply. (Exhibits (Sa) No. 2, No. 3, No. 7 and No. 7-2, No. 50, No. 51, No. 59, No. 96, No. 100, No. 101, No. 156, No. 170, No. 195, and No. 196)

Funai Electric negotiated with the Respondent MTPD on the outline of the purchase quantity of the alleged CRTs for each tube type for every business year. (Exhibit (Sa) No. 99)

b) The other party to the negotiation indicated in a) above submitted to Funai Electric a draft of product specifications and the technology department of Funai Electric checked and approved the draft of the specifications and completed the specifications. (Exhibits (Sa) No. 102-1 through No. 104-2, Exhibit (Sa) No. 196,

and Exhibit (Sa) No. 197)

c) Funai Electric communicated to Funai Electric Malaysia, etc. the trade conditions of the alleged CRTs as indicated in a) above, including the purchase price, purchase quantity, via phone or e-mail, and directed Funai Electric Malaysia, etc. to purchase the alleged CRTs from the selected enterprises indicated in a) above or its subsidiaries, etc. (Exhibits (Sa) No. 96, No. 170, and No. 196)

d) In accordance with the trade conditions of the alleged CRTs, such as the purchase price, purchase quantity, etc., that were communicated and directed by Funai Electric as indicated in c) above, Funai Electric Malaysia, etc. sent order placement sheet for the alleged CRTs to the enterprises selected by Funai Electric or its subsidiaries, etc. (in relation to the Respondent MTPD Indonesia with Seven Other Companies, the Respondent MTPD Indonesia and Two Other Companies, Samsung SDI Malaysia, Chunghwa Pictures Tubes Malaysia, LP Displays Indonesia, and Thai CRT), accepted delivery of the alleged CRTs, received invoices, and paid the price. (Exhibits (Sa) No. 2,No. 18 and No. 18-2, No. 96, No. 170, and No. 195 through No. 197)

2) According to the aforementioned findings, it was found that Funai Electric controlled the business related to CRT televisions carried out by Funai Electric and local manufacturing subsidiaries of Funai Electric Malaysia, etc. and their subsidiaries; negotiated with the enterprises selected from the Respondent MTPD and Four Other Companies; determined the trade conditions of the alleged CRTs, such as the purchase price, purchase quantity, etc.; and communicated the trade conditions to Funai Electric Malaysia, etc.; and Funai Electric Malaysia, etc. purchased the alleged CRTs from the supplier determined by Funai Electric in accordance with the decision. In this case, it was Funai Electric that substantially determined the suppliers of the alleged CRTs and important trade conditions, such as the purchase price purchase quantity, etc. of the alleged CRTs and Funai Electric Malaysia, etc. only followed the direction of Funai Electric. Therefore, it was not found that Funai Electric Malaysia, etc. was substantially involved in the choice of suppliers and important trade conditions of the alleged CRTs. In other words, it can be said that Funai Electric negotiated with the enterprises that Funai Electric selected,

determined the suppliers of the alleged CRTs and important trade conditions for the alleged CRTs, such as the purchase price, purchase quantity, etc., and then directed Funai Electric Malaysia, etc. to purchase the alleged CRTs.

On the other hand, the Respondents alleged as follows: based on the facts that the intention of Funai Malaysia, etc. was considered when Funai Electric determined the trade conditions of the alleged CRTs, and other facts, Funai Electric accepted entrustment by Funai Electric Malaysia, etc. and negotiated and determined the trade conditions of the alleged CRTs in lieu of Funai Electric Malaysia, etc.; therefore, it cannot be considered that Funai Electric made Funai Electric Malaysia, etc. purchase the alleged CRTs.

However, when Funai Electric conclusively determined trade conditions as one of parties to the negotiation, it is natural for Funai Electric, in the process, to consider or adjust the trade conditions in order to conform to the intentions of Funai Electric Malaysia, etc. while summarizing the intentions of Funai Electric Malaysia, etc. and promoting the interests of the whole Group by integrated purchasing during the negotiation.

Therefore, it was not found based on the aforementioned fact that Funai Electric accepted entrustment by Funai Electric Malaysia, etc. with respect to the negotiation and decision of the trade conditions of the alleged CRTs.

Based on the aforementioned findings, it can be said that Funai Electric negotiated with the enterprises selected by Funai Electric, determined the suppliers of the alleged CRTs and important trade conditions of the alleged CRTs, such as the purchase price, purchase quantity, etc., and then instructed Funai Electric Malaysia, etc. to purchase the alleged CRTs.

(i)

(a) Based on the findings indicated in 1) above, it is found that the Japanese Manufacturing and Sales Companies of CRT televisions sold CRT televisions manufactured by the Overseas Manufacturing Subsidiaries and the Like by themselves or via their sales subsidiaries; controlled production, sales, and inventory, etc. of CRT televisions manufactured by the Overseas Manufacturing Subsidiaries and the Like; procured Television CRTs that are the core part of CRT televisions; and controlled the business related to CRT televisions carried out by their Group companies.

(b) In addition to (a) above, it is found that Japanese Manufacturing and Sales

Companies of CRT Television negotiated with the Respondent MTPD and Four Other Companies in consideration of intentions of the Overseas Manufacturing Subsidiaries and the Like; determined the suppliers of the alleged CRTs and important trade conditions of the alleged CRTs, such as the purchase price, purchase quantity, etc.; and instructed the Overseas Manufacturing Subsidiaries and the Like to purchase the alleged CRTs based on the aforementioned decision and made them purchase the alleged CRTs. Therefore, it can be said that the Overseas Manufacturing Subsidiaries and the Like could not purchase and receive the alleged CRTs without negotiation and decision by the Japanese Manufacturing and Sales Companies of CRT televisions and the directions based on them.

In this case, even granting that it was the Overseas Manufacturing Subsidiaries and the Like that directly purchased the alleged CRTs and accepted the supply of products, considering the aforementioned roles played by the Japanese Manufacturing and Sales Companies of CRT televisions, the Japanese Manufacturing and Sales Companies of CRT televisions and the Overseas Manufacturing Subsidiaries and the Like can be integrally regarded as the purchaser of the alleged CRTs.

(c) Moreover, in consideration of the fact that the Agreement was to set the minimum target price, etc. of the selling price of the alleged CRTs for the Overseas Manufacturing Subsidiaries and the Like to be presented by the Respondent MTPD and Four Other Companies during the negotiation with the Japanese Manufacturing and Sales Companies of CRT televisions, it can be said that, in relation to the Japanese Manufacturing and Sales Companies of CRT Televisions, the Eleven Enterprises were in a competitive relationship by group, namely, a competition over the Japanese Manufacturing and Sales Companies in a bid to be selected as a supplier and a competition for trade conditions, such as purchase price, purchase quantity, etc. Thus, the Japanese Manufacturing and Sales Companies of CRT televisions, who had discretion to decide the supplier and important trade terms, can be regarded to have been in a position to be able to expect said competition from the Eleven Enterprises.

(d) In consideration of the above-mentioned facts, the Japanese Manufacturing and Sales Companies of CRT televisions can be regarded as customers of the alleged CRTs, and it can be said that the competition in the sales field of the alleged CRTs took place primarily over customers in Japan.

(e) On the other hand, the Respondents allege that, whereas customers should be

construed as persons who actually receive a supply of products, the Japanese Manufacturing and Sales Companies of CRT televisions are not customers of the alleged CRTs because it did not receive supply of the alleged CRTs. However, in this case, since there is an actor other than the party that actually receives the supply of products, who determined the suppliers of products and negotiated and determined important trade conditions of products, such as the price, amount, etc., it is necessary to determine customers in light of actual state of trade which the competition for said supply of products relates. Based on the actual state of trade which the competition for the supply of the alleged CRTs relates, as found in (i) above, the Japanese Manufacturing and Sales Companies of CRT televisions should be regarded as customers of the alleged CRTs, as indicated in the aforementioned explanation (this conclusion will not change even if the Overseas Manufacturing Subsidiaries and the Like which receive the supply of products, also can be considered as customers).

Therefore, the aforementioned allegations of the Respondents cannot be adopted.

(5) The Respondents alleged that since they did not recognize that the Japanese Manufacturing and Sales Companies of CRT televisions determined trade conditions of the alleged CRTs and directed their Overseas Manufacturing Subsidiaries and the Like to purchase them, it cannot be said that the subject-matter of the Agreement was the trade pertaining to the Specified CRTs.

However, in this case, the issue in question is whether the Agreement substantially restrained the competition in the particular field of trade, after determination of the particular field of trade by taking into account the trade for which the Agreement was made and the scope that may be affected thereby. Therefore, it is only necessary that the Agreement in question was made for the trade of the alleged CRTs and that the Respondents were aware of such fact (according to the aforementioned findings, it is obvious that the Agreement in question was made for the trade of the alleged CRTs and the Respondents were aware of that fact). It is not necessary that the Respondents recognized the fact that the Japanese Manufacturing and Sales Companies of CRT televisions determined trade conditions and instructed the Overseas Manufacturing Subsidiaries and the Like to purchase products, as referred to in the definition of the Specified CRTs.

Consequently, the aforementioned allegations of the Respondents are unreasonable.

(6) Substantial Restraint of Competition

(i) The expression "a substantial restraint of competition in any particular field of

trade" set forth in Article 2, paragraph (6) of the Anti-Monopoly Act means damaging the function of competition in the market related to said trade. In cases of the price cartel in this case, it is construed that enterprises, parties of the cartel, create the conditions by their intention where they can freely influence the price in said market to an extent (see Judgment of the Supreme Court, 1st Petty Bench, February 20, 2012, *Minshu* Vol. 66, No. 2, p.796 [case of claiming rescission of the decision by Araigumi, Co., Ltd. and three other companies]).

(ii) As indicated in III. 2. (3) above, in consideration of the fact that the percentage of the total purchase quantity of the Respondent MTPD Indonesia and Seven Other Companies out of the total purchase quantity of the alleged CRTs by the Overseas Manufacturing Subsidiaries and the Like for five years from 2003 until 2007 was a high proportion of approximately 83.5%, and that the Eleven Enterprises including the Respondents who were the violators in question negotiated the price of the alleged CRTs with the Japanese Manufacturing and Sales Companies of CRT televisions in accordance with the minimum target price established based on the Agreement, it can be said that the Agreement created conditions where they could freely influence the price of the alleged CRTs to some extent. Therefore, it is found that the Eleven Enterprises substantially restrained the competition by the Agreement in the sales field of the alleged CRTs, which is a particular field of trade in this case.

(7) Summary

According to the discussion above, the JFTC finds that the competition in the field of sales of the alleged CRTs took place mainly over customers in Japan, and that the Agreement substantially restrained the competition in said particular field of trade. The Respondents alleged that the second sentence of Article 3 of the Anti-Monopoly Act did not apply to this case on the assumption that the Japanese Manufacturing and Sales Companies of CRT televisions were not regarded as customers since they did not actually receive supply of the alleged CRTs. As explained above, it was found that the Japanese Manufacturing and Sales Companies of CRT televisions are customers and therefore the allegation lacks premise. Even if the Japanese Manufacturing and Sales Companies of CRT televisions actually did not receive supply of the alleged CRTs, it can be said that the fair and free competitive order in Japan were infringed in case that the competition in particular field of trade took place mainly over customers located in Japan, and that the said competition was substantially restrained, like this case. The fact that Japanese Manufacturing and

Sales Companies of CRT televisions actually did not receive supply of the alleged CRTs, may be circumstances that should be considered when said enterprises file a suit for damages against the Respondents on the grounds of violation of the Anti-Monopoly Act. Therefore, it stands to reason that the Anti-Monopoly Act can be applied to the facts from the perspective of recovering the fair and free competitive order in Japan.

Consequently, the second sentence of Article 3 of the Anti-Monopoly Act can apply to this case.

2. Issue 2 (Necessity of the Cease and Desist Order)

(1) According to the evidences listed below, the following facts were found in relation to the necessity of the Cease and Desist Order.

(i) The Respondent MTPD sold a plant located in Takatsuki City, Osaka Prefecture, which was one of its manufacturing bases of Television CRTs in September 2006. (Exhibit (Sa) No. 146 and Shin-Exhibit No. 70)

The Respondent MTPD had manufacturing subsidiaries of Television CRTs or affiliated companies in the United States of America, Republic of Indonesia, and Federal Republic of Germany, in addition to the Respondent MTPD Indonesia and Two Other Companies; however, with respect to manufacturing subsidiaries, etc. excluding the Respondent MTPD Indonesia and Two Other Companies were dissolved or the Respondent MTPD transferred all of its investment equity in them by July 1, 2007. (Shin-Exhibits No. 61 through No. 68-3 and No. 71 through No. 75-2)

(ii) The Respondent MTPD Indonesia dissolved and started liquidation proceedings in September 2007, the Respondent MTPD Malaysia in October 2007, and the Respondent MTPD in May 2009 respectively. In May 2009, it was only BMCC, of which 50% of the investment equity was held by the Respondent MTPD which continued the manufacturing and selling business of Television CRTs from among the subsidiaries or affiliated companies of the Respondent MTPD.

The Respondent MTPD was planning to withdraw from BMCC since around February 2007; however, it could not transfer investment equity nor liquidate the company since discussions with other investors were not settled. In May 2008, the Respondent MTPD agreed with the other investors to implement a structural reform (streamlining) of BMCC first. As a result, BMCC dismissed almost all employees who had no employment contract period by July 2009 and discontinued the production of Television CRTs in the same month at the request of other investors. Since the global demand for Television CRTs sharply declined and it

became difficult to continue the business of BMCC, as a result of various discussions between investors of BMCC, it was agreed that investors would make BMCC a 100% subsidiary of BOE (at that time, BOE held 30% of investment equity in BMCC), discontinue the business of Television CRTs, introduce a new business, and strive to re-start BMCC until the basic agreement indicated in (iv) below was concluded between the Respondent MTPD and BOE at the latest. (Shin-Exhibits No. 76-1 through No. 78-2, No. 80, No. 82, and No. 83)

(iii) On June 30, 2008, the Respondent MTPD changed its articles of incorporation by deleting the business of "research, development, manufacturing, and sales of picture display devices, such as cathode-ray tubes, etc., and their applied equipment" from its business purpose and adding "technical services and repair services of cathode-ray tubes" and "all of incidental and related business thereto." (Exhibits (Sa) No. 35 and No. 36, and Shin-Exhibit No. 79)

(iv) On September 10, 2008, the Respondent MTPD concluded a basic agreement with BOE to transfer all of the investment equity in BMCC to BOE. In this basic agreement, all provisions in the agreement to be concluded were agreed and it was only necessary that the Respondent MTPD and BOE undergo the specified procedures and conclude the agreement. (Shin-Exhibit No. 81)

(v) On September 18, 2008, the Respondent MTPD transferred all of its investment equity in BMCC to BOE and resolved to withdraw from the business of manufacturing and sales of Television CRTs completely at the board of directors' meeting.

(vi) On September 30, 2008, the Respondent MTPD announced that it would transfer all of its investment equity in BMCC to BOE and withdraw from the business of manufacturing and sales of Television CRTs completely. (Exhibit (Sa) No. 83)

(vii) On October 7, 2008, the JFTC issued the Cease and Desist Order to the Respondent MTPD.

(viii) On October 12, 2008, the Respondent MTPD concluded an agreement with BOE to transfer all of its investment equity in BMCC by setting the approval date of the Beijing Municipal Commission of Commerce as the transfer date. (Shin-Exhibit No. 84)

(ix) On October 27, 2008, BMCC resolved to discontinue production of Television CRTs at the board of directors' meeting and, on December 11, 2008, resolved to agree the transfer indicated in (viii) above at the board of directors' meeting. (Shin-Exhibit No. 85 and No. 86).

(x) On December 17, 2008, the Beijing Municipal Commission of Commerce approved

the transfer of all investment equity in BMCC as indicated in (viii) above. (Shin-Exhibits No. 87-1 and -2)

(2) Discussion

(i) The main clause of Article 7, paragraph (2) of the Anti-Monopoly Act (before amendment by Act No. 51, 2009) stipulates that even if an act of violation has ceased to exist, when the JFTC finds it to be particularly necessary, the JFTC may order the violator to take measures to publicize that the act has been discontinued and to take any other measures necessary to ensure elimination of that act. The expression "when the JFTC finds it to be particularly necessary" in said paragraph is construed to mean cases where an act of violation has ceased to exist at the time of original order, but said act of violation is likely to be repeated and cases where the results of said act of violation remains and the order of competition has not been recovered completely (see judgment of Tokyo High Court on September 26, 2008, *Kouseitorihikiiinkai Shinketsush*u (JFTC Decisions) Vol.55 p.910 [case of claiming a rescission of the decision by JFE Engineering Corporation and four other persons]).

(ii) According to the aforementioned findings, it was found that the Respondent MTPD closed manufacturing and selling bases of Television CRTs in and outside Japan one after another; continued discussions with other investors in order to withdraw from BMCC (transfer of investment equity or liquidation of the company), which was the only affiliated company that carried out the business of manufacturing and selling of Television CRTs; finally concluded a basic agreement (including an agreement on all provisions in the transfer agreement of investment equity to be concluded) with BOE, one of the investors; created conditions where it is only necessary that the parties in the agreement conclude the agreement after undergoing specified procedures; resolved at the board of directors' meeting to withdraw from the business of manufacturing and selling of Television CRTs by transferring all of the investment equity in BMCC to BOE; announced to that effect by the time when the Cease and Desist Order was issued; and the Respondent MTPD changed the articles of incorporation and deleted the business of manufacturing and selling of cathode-ray tubes from its business purpose during that time.

Looking at the television market at the time when the Cease and Desist Order was issued, demand has shifted globally from CRT-based televisions to flat-screen televisions using plasma displays and liquid crystal displays and the demand for Television CRTs has declined sharply (Exhibit (Sa) No. 179, No. 196, No. 201, and

No. 203; Shin-Exhibit No. 82, No. 83, and No. 85, and stenographic record of the interrogation of witness, Shuji Inoue). As indicated in the aforementioned finding, the Respondent MTPD closed the manufacturing and selling bases of Television CRTs in and outside Japan one after another, changed the articles of incorporation, and deleted the business of manufacturing and selling of cathode-ray tubes from the business purpose. It is presumed that these were due to a sharp decline in demand for Television CRTs. As indicated in the findings above, the reason why the Respondent MTPD decided to transfer all of its investment equity in BMCC to BOE was because the Respondent had been planning to withdraw from BMCC; investors in BMCC, including the Respondent, held discussions; and they reached an agreement between investors that BOE would acquire 100% ownership of BMCC, for which it became difficult to continue the business due to sharp the decline in global demand for Television CRTs, to discontinue the business of Television CRTs, to introduce a new business, and to strive re-start of BMCC.

As indicated in the findings above, when the Cease and Desist Order (October 7, 2009) was issued, BMCC had dismissed almost all employees who had no employment contract term and discontinued the production of Television CRTs. Based on the fact that there was a statement in the agenda of the board of directors' meeting of BMCC held on October 27, 2009 that the inventory of Television CRTs for export sales was small (Shin-Exhibit No. 85), it is presumed that it was almost in the same conditions at the time when the Cease and Desist Order was issued.

It cannot be found, then, that the Respondent MTPD was likely to commit a violation equivalent to the violation in question again by themselves or by directing and controlling subsidiaries or affiliated companies, excluding BMCC, at the time when the Cease and Desist Order was issued. According to the conditions of global demand for Television CRTs, the conditions of withdrawal of the Respondent MTPD from the business of manufacturing and selling of Television CRTs, staffing and operating conditions of BMCC, which was the only company out of the group of the Respondent MTPD and its subsidiaries and affiliated companies that did not officially discontinue the business of manufacturing and selling of Television CRTs, and progress of procedures related to the transfer of the investment equity and other conditions at the time when the Cease and Desist Order was issued, it is difficult to consider that the Respondent would cancel the transfer of investment equity in BMCC. Even if the transfer of investment equity in BMCC is not implemented due to some reasons, BMCC is

not regarded as a subsidiary of the Respondent MTPD, unlike the Respondent MTPD Indonesia and Two Other Companies; BMCC was not involved in the violation in question; BMCC was not in the condition to re-start production of Television CRTs, viewing from the objective standpoint; and the inventory of Television CRTs for export sales of BMCC was small. Based on these conditions, it cannot be found that the Respondent MTPD was likely to commit a violation equivalent to the violation in question again by instructing and controlling BMCC in the future.

Moreover, even based on the entirety of evidence in this case, it cannot be found that the consequence of the violation in question still existed and that recovery of the order of competition was insufficient.

Therefore, it is not found "particularly necessary" to issue the Cease and Desist Order against the Respondent MTPD.

(iii) In this case, as mentioned above, it was found that the Japanese Manufacturing and Sales Companies of CRT televisions are customers of the CRTs; however, it is doubtful to consider that the Japanese Manufacturing and Sales Companies of CRT televisions were still customers of the alleged CRTs at the time when the Cease and Desist Order was issued. From this perspective, it cannot be found that the Respondent MTPD was likely to repeat a violation equivalent to the Violation in relation to the Japanese Manufacturing and Sales Companies of CRT televisions, and it is not clear whether there still existed the competition which requires recovery of order. In other words, Victor Japan was not involved in sales of the CRTs in and after May 2005 and Sanyo Electric in and after October 2006, and they were no longer customers of the CRTs when the Cease and Desist Order was issued. Furthermore, Funai Electric announced its withdrawal from the business related to manufacturing and selling of CRT-based televisions around June 2009 (Exhibit (Sa) No. 196). With respect to Orion Electric, the percentage of sales of CRT-based televisions with World, etc. at that time declined drastically to a small amount (Exhibit (Sa) No. 179). According to the demand conditions for Television CRTs and conditions of other Japanese Manufacturing and Sales Companies of CRT televisions at the time when the Cease and Desist Order was issued as indicated in (ii) above, it is presumed that Sharp was also in the similar situation as other Japanese Manufacturing and Sales Companies of CRT televisions. Based on these facts, it is questioned whether to find that Funai Electric, Orion Electric, and Sharp were customers of the alleged CRTs.

Consequently, from the perspective of the customers of the CRTs, it cannot be

found that it is "particularly necessary" to issue the Cease and Desist Order.

3. Issue 5 (Whether the sales amount of the CRTs is considered as the "the amount of sales from the relevant products or services" set forth in Article 7-2, paragraph (1) of the Anti-Monopoly Act and is the basis of calculation of the surcharge)

(1) The term "relevant products" as used in Article 7-2, paragraph (1) of the Anti-Monopoly Act is construed to be products subject to mutual restriction, which is a violation, in other words, products that belong to the category of products subject to violation and are under mutual restriction that is a violation (Judgment of Tokyo High Court on November 26, 2010, *Kouseitorihikiiinkai Shinketsush*u (JFTC Decisions) Vol.57, part II, p.194 [case of claiming rescission of a decision by Idemitsu Kosan Co., Ltd.]).

It is obvious that the alleged CRTs are products belonging to the category of products subject to the violation in question and were under mutual restriction that is a violation. Therefore, the alleged CRTs can be considered as "relevant products," and the sales amount of the alleged CRTs calculated based on Article 5 of the Order for Enforcement of the Anti-Monopoly Act is used as the basis of calculation of the surcharges.

(2) Meanwhile, the Respondent MTPD Indonesia and Two Other Companies alleged that the Anti-Monopoly Act does not assume that the sales amount pertaining to trade in foreign countries is used as a basis of calculation of surcharges (V 5. (2)(i) above) and that the sales amount that is a basis of calculation of surcharges is limited to the sales amount in cases where products that are affected by the restriction of competition, such as maintaining or raising of prices in Japan, are delivered (V 5. (2)(ii) above).

However, with respect to the calculation of surcharges, Article 7-2, paragraph (1) of the Anti-Monopoly Act stipulates that in cases where an enterprise restrains trade unreasonably and the restriction pertains to the price of products, the JFTC must order to pay a surcharge in the amount equivalent to the amount obtained by multiplying the sales amount of relevant products during the period of continuance of violation calculated using the method provided by Cabinet Order by the surcharge calculation rate to the national treasury and only Articles 5 and 6 of the Order for Enforcement of the Anti-Monopoly Act stipulates the calculation method.

As indicated in (1) above, the term "relevant products" is construed as products subject to mutual restriction that is a violation; however, according to the above provisions, even if it is a trade in a foreign country (what it means is not always clear; however, it is officially construed as a trade carried out in a foreign country

between foreign corporations, like in this case), it cannot be construed that it cannot be a basis of calculation of surcharges solely based on that fact. In addition, according to the aforementioned provisions, it is not possible to interpret that it is imposed on the sales amount which is a basis of calculation of surcharges to be limited to the sales amount in cases where products that are affected by a competition restriction were delivered in Japan.

As indicated in 1. (7) above, in this case, it is found that the competition in the particular field of trade, which is the sales field of the alleged CRTs, took pace mainly over customers located in Japan and that the competition in said particular field of trade was substantially restricted by the violation in question. Therefore, it is not unreasonable to find that the alleged CRTs can be considered as "relevant products" and to use their sales amount as a basis of calculation of surcharges.

Consequently, the aforementioned allegations of the Respondent MTPD Indonesia and Two Other Companies cannot be adopted.

4. Conclusion

(1) Respondent MTPD (Hearing Case 2010 (Han) No. 2)

The Respondent MTPD concluded the Agreement with other enterprises as indicated in III 3. above, and substantially restricted the competition in the sales field of the alleged CRTs that is the sales field of the Specified CRTs, against the public interest. Therefore, it is found that this constitutes the unreasonable restraint of trade that is stipulated in Article 2, paragraph (6) of the Anti-Monopoly Act and is against the provisions of Article 3 of said Act.

However, as indicated in III. 4. above, it is found that the Agreement ceased on March 30, 2007 and therefore, as indicated in VI. 2., it is not found to be particularly necessary to issue a cease and desist order against the Respondent MTPD.

Therefore, the Cease and Desist Order should be rescinded pursuant to the provisions of Article 66, paragraph (3) of the Anti-Monopoly Act; however, since it is found that there was a violation which was found by the Cease and Desist Order, it is necessary to define that fact in the main text pursuant to the provisions of paragraph (4) of said Article.

(2) Respondent MTPD Indonesia (Hearing Case 2010 (Han) No. 3)

(i) Violation

The Respondent MTPD Indonesia concluded the Agreement with other enterprises as indicated in III. 3. above and thereby substantially restricted the competition in the sales field of the alleged CRTs that is sales field of the Specified CRTs, against the public interest. Therefore, it is found that this constitutes

unreasonable restraint of trade as specified in Article 2, paragraph (6) of the Anti-Monopoly Act and violates the provisions of Article 3 of said Act, and that this is related to the price of products as specified in Article 7-2, paragraph (1), item (i) of said Act.

(ii) Basis of Calculation of Surcharges (There is no dispute except that the sales amount of the alleged CRTs is subject to the calculation of surcharges. As explained in 3. above, the sales amount of the alleged CRTs is subject to the calculation of surcharges.)

(a) The Respondent MTPD Indonesia was a person that carried out the manufacturing and selling business of the alleged CRTs that is the Specified CRTs; it discontinued operation as of September 28, 2007; started liquidation proceedings as of said date; and discontinued all business activities thereafter.

(b) It is found that the day when the Respondent MTPD Indonesia conducted business activities as performance of the violation indicated in (i) above was before March 29, 2004. It is also found that the Respondent MTPD Indonesia no longer performed said violation on March 30, 2007 and after and that the business activity as performance of the violation ceased to exist on March 29, 2007.

Consequently, with respect to the Respondent MTPD Indonesia, since the period from the day when it conducted business activities as performance of the violation indicated in (i) above until the day when the business activities as performance of said violation no longer existed exceeds three years, the period of continuance of violation is for three years from March 30, 2004 until March 29, 2007 pursuant to the provisions of Article 7-2, paragraph (1) of the Anti-Monopoly Act that are applied after amendment by the provisions of Article 5, paragraphs (2) and (3) of Supplementary Provisions (before amendment by Act No. 51 of 2009) of the Act for the Partial Revision of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 35 of 2005; hereinafter referred to as the "Amendment Act 2005").

(c) The sales amount of the Respondent MTPD Indonesia pertaining to the alleged CRTs, that is the Specified CRTs, during the period of continuance of violation indicated in (b) above should be calculated based on the provisions of Article 5, paragraph (1) of the Order of Enforcement of the Anti-Monopoly Act. When it is calculated based on said provisions, the sales amount pertaining to the period before January 4, 2006, which is the effective date of the Amendment Act 2005 (hereinafter referred to as the "Effective Date of the Amendment Act 2005") out

of the violations indicated in (a) above is 4,663,375,407 yen and those pertaining to the period after the Effective Date of the Amendment Act 2005 out of the violations indicated in (a) above is 3,004,749,152 yen.

(d) The amount of surcharge that the Respondent MTPD Indonesia must pay to the National Treasury is 580,270,000 yen that is calculated by rounding off the fractions less than 10,000 yen of the total sum of the following amounts pursuant to the provisions of Article 7-2, paragraph (18) of the Anti-Monopoly Act.

1) Sales amount pertaining to the period before the Effective Date of Amendment Act 2005 out of the violations indicated in (a) above is the amount obtained by multiplying the aforementioned amount, 4,663,375,407 yen by 6%, which is the rate to be multiplied to the sales amount specified in Article 7-2, paragraph (1) of the Anti-Monopoly Act before amendment pursuant to the Amendment Act 2005, for which the provisions then in force are to remain applicable pursuant to the provisions of Article 5, paragraph (2) of the Supplementary Provisions of the Amendment Act 2005 (before amendment by Act 51 of 2009); and

2) Sales amount pertaining to the period on and after the Effective Date of Amendment Act 2005 out of the violations indicated in (a) above is the amount obtained by multiplying 3,004,749,152 yen by 10% pursuant to the provisions of Article 7-2, paragraph (1) of the Anti-Monopoly Act.

(iii) Consequently, 2009 (Nou) No. 62, the order of payment of surcharges, which ordered the Respondent MTPD Indonesia to pay the same amount of surcharges as the aforementioned amount is lawful and there is no reason for the request of a hearing procedures by said Respondent.

(3) Respondent MTPD Malaysia (Hearing Case 2010 (Han) No. 4)

(i) Violation

The Respondent MTPD Malaysia concluded the Agreement with other enterprises as indicated in III. 3. above and thereby substantially restricted the competition in the sales field of the alleged CRTs that is sales field of the Specified CRTs, against the public interest. Therefore, it is found that this constitutes unreasonable restraint of trade as specified in Article 2, paragraph (6) of the Anti-Monopoly Act, it is against the provisions of Article 3 of said Act, and it pertains to the price of products specified in Article 7-2, paragraph (1), item (i) of said Act.

(ii) Basis of Calculation of Surcharges (There is no dispute except the fact that the

sales amount of the alleged CRTs is subject to calculation of surcharges. It is as explained in 3. above that sales amount of the alleged CRTs is subject to calculation of surcharges.)

(a) The Respondent MTPD Malaysia was a person who carried out the business of manufacturing and selling of the alleged CRTs, that is the Specified CRTs, resolved the dissolution as of October 8, 2007, started liquidation proceedings as of said date, and discontinued all business activities thereafter. The Respondent MTPD Malaysia is an enterprise that falls under Article 7-2, paragraph (4), item (i) of the Anti-Monopoly Act (before amendment by Act No. 51 of 2009) on and after September 1, 2006.

(b) The day when the Respondent MTPD Malaysia conducted business activities as a performance of the violation indicated in (i) above is found to be April 1, 2004 when the Respondent MTPD Malaysia decided to sell the alleged CRTs, that is the Specified CRTs, by applying the minimum target price, etc. of the sales price for the Overseas Manufacturing Subsidiaries and the Like that those companies should comply with, based on the Agreement. The Respondent MTPD Malaysia discontinued said violation on and after March 30, 2007 and it is found that the business activities as performance of the violation ceased on March 29, 2007.

Therefore, with respect to the Respondent MTPD Malaysia, the period of continuance of violation is from April 1, 2004 through March 29, 2007 pursuant to the provisions of Article 7-2, paragraph (1) of the Anti-Monopoly Act that is applied after amendment by the provisions of Article 5, paragraphs (2) and (3) of the Supplementary Provisions of the Amendment Act 2005 (before amendment by the Act No. 51 of 2009).

(c) The sales amount of the Respondent MTPD Malaysia pertaining to the alleged CRTs, that is the Specified CRTs, during the period of continuance of violation indicated in (b) above should be calculated based on the provisions of Article 5, paragraph (1) of the Order of Enforcement of the Anti-Monopoly Act. When calculating the sales amount based on said provisions, the sales amount pertaining to the period before the Effective Date of the Amendment Act 2005 out of the violations indicated in (i) above is 8,276, 274,559 yen; the sales amount pertaining to the period on and after the Effective Date of the Amendment Act 2005 until August 31, 2006 is 1,494,573,982 yen; and the sales amount pertaining to the period on and after September 1, 2006 is 120,150,935 yen.

(d) The amount of surcharges that the Respondent MTPD Malaysia must pay to the National Treasury is 650,830,000 yen that is calculated by rounding off fractions less than 10,000 yen of the total sum of the following amounts pursuant to the provisions of Article 7-2, paragraph (18)(before amendment by Act No. 51 of 2009):

1) With respect to the sales amount pertaining to the period before the Effective Date of the Amendment Act 2005 out of the violations indicated in (i) above, the amount is obtained pursuant to the provisions of Article 7-2, paragraph (1) of the Anti-Monopoly Act by multiplying the aforementioned 8,276,274,559 yen by 6%, which is the rate to be multiplied by the sales amount as stipulated in Article 7-2, paragraph (1) of the Anti-Monopoly Act before amendment by the Amendment Act 2005, for which the provisions then in force are to remain applicable pursuant to the provisions of Article 5, paragraph (2) of the Supplementary Provisions of the Amendment Act 2005 (before amendment by Act 51 of 2009);

2) With respect to the sales amount pertaining to the period on and after the Effective Date of the Amendment Act 2005 until August 31, 2006 out of the violations indicated in (i) above, the amount obtained pursuant to the provisions of Article 7-2, paragraph (1) of the Anti-Monopoly Act by multiplying the aforementioned 1,494,573,982 yen by 10%; and

3) With respect to the sales amount pertaining to the period on and after September 1, 2006 out of the violations indicated in (i) above, the amount obtained by multiplying the aforementioned 120,150,935 yen by 4% pursuant to the provisions of Article 7-2, paragraph (1) and (4)(with respect to paragraph (4), before amendment by Act No. 51 of 2009).

(iii) Therefore, 2009 (Nou) No. 63, the surcharge payment order, which ordered the Respondent MTPD Malaysia to pay the same amount of surcharges as indicated above is lawful and there is no reason for the request of the hearing procedures by the Respondent.

(4) Respondent MTPD Thailand (Hearing Case 2010 (Han) No. 5)

(i) Violation

The Respondent MTPD Thailand concluded the Agreement with other enterprises as indicated in III. 3. above, and thereby substantially restricted

competition in the sales field of the alleged CRTs, that is the sales field of the Specified CRTs. It is found that this constitutes an unreasonable restraint of trade as stipulated in Article 2, paragraph (6) of the Anti-Monopoly Act, violates the provisions of Article 3 of said Act, and pertains to the price of products specified in Article 7-2, paragraph (1))(i) of said Act.

(ii) Basis of Calculation of Surcharges (There is no dispute except for the fact that the sales amount of the alleged CRTs is subject to the calculation of surcharges. It is as explained in 3. above that the sales amount of the alleged CRTs is subject to the calculation of surcharges.)

(a) The Respondent MTPD Thailand was the person who carried out the business of manufacturing and selling of the alleged CRTs, that is the Specified CRTs, resolved the dissolution as of May 13, 2009, started liquidation proceedings as of said date, and discontinued all business activities thereafter.

(b) The day when the Respondent MTPD Thailand conducted business activities as performance of the violations indicated in (i) above is found to be July 1, 2004 when the Respondent MTPD Thailand decided to sell the alleged CRTs, that is the Specified CRTs, by applying the minimum target price, etc. of the sales price for the Overseas Manufacturing Subsidiaries and the Like that those companies should comply with, based on the Agreement. The Respondent MTPD Thailand discontinued said violation on and after March 30, 2007 and it is found that the business activities as the performance of the violations ceased on March 29, 2007.

Therefore, with respect to the Respondent MTPD Thailand, the period of continuance of violation is from July 1, 2004 through March 29, 2007 pursuant to the provisions of Article 7-2, paragraph (1) of the Anti-Monopoly Act that is applied after amendment by the provisions of Article 5, paragraphs (2) and (3) of the Supplementary Provisions of the Amendment Act 2005 (before amendment of Act No. 51, 2009).

(c) The sales amount of the Respondent MTPD Thailand pertaining to the alleged CRTs, that is the Specified CRTs, during the period of continuance of violation indicated in (b) above should be calculated based on the provisions of Article 5 (1) of the Order of Enforcement of the Anti-Monopoly Act. When calculating the sales amount based on said provisions, the sales amount pertaining to the period before the Effective Date of the Amendment Act 2005 out of the violations indicated in (i) above is 6,011,288,632 yen; and the sales amount pertaining to the period on and after the Effective Date of the

Amendment Act 2005 is 2,054,638,148 yen.

(d) The amount of surcharges that the Respondent MTPD Thailand must pay to the National Treasury is 566,140,000 yen, which is calculated by rounding off fractions less than 10,000 yen of the total sum of the following amounts pursuant to the provisions of Article 7-2 (18)(before amendment by Act No. 51 of 2009):

1) With respect to the sales amount pertaining to the period before the Effective Date of the Amendment Act 2005 out of the violations indicated in (i) above, the amount is obtained pursuant to the provisions of Article 7-2, paragraph (1) of the Anti-Monopoly Act by multiplying the aforementioned 6,011,288,632 yen by 6%, which is the rate to be multiplied by the sales amount as stipulated in Article 7-2, paragraph (1) of the Anti-Monopoly Act before amendment by the Amendment Act 2005, for which the provisions then in force are to remain applicable pursuant to the provisions of Article 5, paragraph (2) of the Supplementary Provisions of the Amendment Act 2005 (before amendment by Act 51 of 2009);

2) With respect to the sales amount pertaining to the period on and after the Effective Date of the Amendment Act 2005 out of the violations indicated in (i) above, the amount obtained by multiplying the aforementioned 2,054,638,148 yen by 10% pursuant to the provisions of Article 7-2, paragraph (1).

(iii) Therefore, 2009 (Nou) No. 64, the surcharge payment order, which ordered the Respondent MTPD Thailand to pay the same amount of surcharges is lawful and there is no reason for the request of the hearing by the Respondent.

(5) The purpose of the objection to the draft decision based on Article 75 of the Rules by the Respondents and statement against the JFTC based on Article 63 of the Anti-Monopoly Act and Article 77 of the Rules are substantially a repetition of allegations in the hearing proceedings and do not affect the aforementioned conclusion.

VII. Application of Laws and Regulations

1.

(1) The hearing request by the Respondent MTPD has reasons to the extent of rescinding the Cease and Desist Order; however, it is found that there was an act which constitutes an unreasonable restraint of trade as prescribed in Article 2, paragraph (6) of the Anti-Monopoly Act and which violates the provisions of Article

3 of said Act before the time when the Cease and Desist Order was issued and that said violation ceased to exist at the time when the Cease and Desist Order was issued.

(2) All the hearing requests by the Respondent MTPD Indonesia, the Respondent MTPD Malaysia, and the Respondent MTPD Thailand are without reason.

2. Accordingly, the JFTC hereby decides on the hearing request by the Respondent MTPD as indicated in paragraph (1) of the Main Text pursuant to the provisions of Article 66, paragraphs (3) and (4) of the Anti-Monopoly Act and Article 78, paragraph (2) of the Rules; and decides on the hearing requests by the Respondent MTPD Indonesia, the Respondent MTPD Malaysia, and the Respondent MTPD Thailand as indicated in paragraph (2) of the Main Text pursuant to the provisions of Article 66, paragraph (2) of the Anti-Monopoly Act and Article 78, paragraph (2) of the Rules.

There is a supplementary opinion from Commissioner, Hiroyuki Odagiri.

The supplementary opinion of Commissioner, Hiroyuki Odagiri is as indicated below.

I have the same opinion as the majority opinion on the findings that the act of the Respondents constitutes an unreasonable restraint of trade as indicated in the Anti-Monopoly Act; however, since the location where the products were supplied or consumed based on said act is not limited to in Japan, I have a different opinion on what should be included in the sales amount that is to be the basis of calculation of surcharges. Therefore, I eventually agree with the majority opinion, but state a supplementary opinion.

(1) The Anti-Monopoly Act prohibits as unreasonable restraint of trade that an enterprise determines the price in cooperation with other enterprises and "substantially restrains competition in any particular field of trade against the public interest" (Article 2, paragraph (6) of the Anti-Monopoly Act). The Supreme Court states that "'against the public interest' means to be against fair and free competitive order, which is direct interests protected by said Act in principle" (Judgment of the Supreme Court on February 24, 1984, *Keishu* Vol. 38, No. 4, p.1,287 [Case of violating the Anti-Monopoly Act against Idemitsu Kosan Co., Ltd. and 25 other persons]). Subsequent judges followed this idea, such as "The Anti-Monopoly Act … is a basic law concerning economic activities and established in order to maintain and promote free economic order in Japan" (Judgment of Tokyo High Court on December 14, 1993, High Court [criminal cases] Vol.46, No. 3, p.322 [Case of respondents violating the Anti-Monopoly Act against Toppan Moore Co., Ltd. and three other persons]). Majority opinion in this case also followed the idea

and assessed, "it is considered that the fair and free competitive order in Japan is infringed, […] if at least the competition in a particular field of trade is the competition over customers located in Japan and if the competitions in the particular field of trade is substantially restricted by the conduct in issue; and therefore it conforms to the purpose of the second sentence of Article 3 of said Act to apply said sentence" (VI, 1. (2))

(2) However, these assessments do not define standards to determine in which cases fair and free competitive order are infringed. In particular, the aforementioned judgment of the Tokyo High Court used an expression, "free economic order in Japan"; however, it does not present a standard to determine in which case the free economic order is infringed in Japan. This is because, like the two cases subject to the aforementioned Supreme Court Judgment and Tokyo High Court Judgment, it is not necessary to define the standard in cases where all or most of the trade in a particular field of trade in question was implemented in Japan between suppliers residing in Japan and customers residing in Japan. However, in cases related to international trade and international specialization like this case, it is necessary to define a standard to determine in which cases the fair and free competitive order in Japan are infringed.

(3) The aforementioned judgment of the Tokyo High Court indicated in relation to determining the "particular field of trade" that "trades are bifocal and interactive economic activities over demand and supply of particular products or services." It can be considered that the particular field of trade can exist in Japan if a person residing in Japan is included among the customers or suppliers and therefore if there is an act violating Article 3 of the Anti-Monopoly Act, it is deemed that the fair and free competitive order in Japan is infringed. This can be called the Customer-Supplier Standard.

(4) However, customers and suppliers have at least three aspects respectively. In cases where international trade or international specializations are implemented like in this case, the judgment according to the Customer-Supplier Standard changes depending on which aspect of customers or suppliers is the focus. Customers usually have the following three aspects.

(i) Decision-maker (a person who determines the quantity of demand depending on the price or negotiates with sellers and determines the price and amount).

(ii) Products-receiver (a person who receives products; hereinafter limited to cases where the products-receiver also pays the price).

(iii) Surplus-taker (a person who acquires surplus obtained by deducting disutility

or costs for payment from utility or profits obtained from said products; the surplus means consumers surplus with respect to consumers and producers surplus with respect to producers).

With respect to suppliers, in the same way as customers, there are three aspects: decision-maker, products-deliverer, and surplus-taker. In cases of consumer products for which there is no export or import, all three aspects of customers are implemented by end-users in Japan and all three aspects of suppliers are implemented by manufacturing and selling companies in Japan. Therefore, in order to assess the existence of infringement of free competition and the economic order according to the Customer-Supplier Standard, it is only necessary to consider the effects on consumers in Japan and the effects on manufacturing and selling companies in Japan.

(5) However, like this case, in cases where the subject products are not consumer products, but intermediate products, which are cathode-ray tubes, one of the production elements, for manufacturing CRT televisions and all three aspects of customers and all three aspects of suppliers do not reside in Japan, a question arises as to which aspect of the Customer-Supplier Standard should apply. According to the interpretation of the Customer-Supplier Standard that can apply to the widest extent (hereinafter referred to as "Broad Interpretation"), if a person residing in Japan is involved with any one of the aspects of customers and suppliers, it has an influence on fair and free competitive order in Japan and therefore the Anti-Monopoly Act can apply. Based on the Broad Interpretation, for example, looking only at customers, if a decision-maker resides in country A, a products-receiver resides in country B, and a surplus-taker resides in country C, it can be considered that the fair and free competitive order of all of country A, country B, and country C are infringed and it is natural to apply the Anti-Monopoly Act of each country.

(6) However, if these three countries apply their own Anti-Monopoly Act to one act and impose adverse dispositions, such as surcharges, penalty charges, fines, etc., in order to confiscate unlawful profits or to impose sanctions in each country respectively, it cannot avoid causing criticism that it is duplicate and excess adverse disposition. In order to avoid the duplication, it is preferable to give consideration in order to avoid international duplication of adverse dispositions, such as that the country where the most appropriate person from among multiple aspects of customers or suppliers resides, imposes legal dispositions and other countries refrain to impose legal dispositions based on the international comity, or all countries may find that the action in question violates the Anti-Monopoly Act of their own country, but countries

other than the country where the most appropriate consumer or supplier resides refrain from imposing dispositions when determining the imposition of adverse dispositions, etc.

(7) Which aspect, then, should be focused on when determining the country where the most appropriate consumer or supplier resides as the premise to avoid international duplication of adverse dispositions? Given that the purpose of the Anti-Monopoly Act is "to promote fair and free competition, stimulate the creative initiative of enterprises, encourage business activity, heighten the level of employment and actual national income, and thereby promote the democratic and wholesome development of the national economy as well as secure the interests of general consumers" (Article 1 of said Act) and the Act mentioned the interests of general consumers, the Act focuses on customers in relation to customers and suppliers and focuses on customers as surplus-takers from among the three aspects of customers. In this regard, it is natural to construe that the Anti-Monopoly Act should apply when customers cannot acquire surplus lawfully.

(8) Based on the aforementioned, when the majority of customers as surplus-takers reside in Japan or only in that case, Japan should be in priority to impose adverse dispositions based on the Anti-Monopoly Act. This is referred to as the "Narrow Interpretation" hereinafter. In a cartel case, like this case, customers as surplus-takers, are the person who suffers damages, which are a decrease in surplus along with a price increase by the cartel. This indicates (iii) out of three aspects of customers. A person who directly purchases products subject to cartel (ii) is considered to usually correspond to also (iii) at the same time. Next, I will discuss who corresponds to the said person and where the person resides in the case of the CRTs below.

(9) The alleged CRTs were purchased by the Overseas Manufacturing Subsidiaries and the Like and used for manufacturing CRT televisions. In some cases the manufactured CRT televisions are sold directly at the local site, and in other cases they are sold to sales companies overseas, including Japan. In some cases these sales companies sell the CRT televisions to end-users residing in the country where said sales company is located, and in other cases they sell to end-users in third countries. The sales field of the alleged CRTs that is found to be the particular field of trade means, in short, the sales field of the Television CRTs for the Overseas Manufacturing Subsidiaries and the Like of the Japanese Manufacturing and Sales Companies of CRT televisions that are located in the Southeast Asia region and products receivers and price payers are the Overseas Manufacturing Subsidiaries

and the Like. Therefore, directly, these the Overseas Manufacturing Subsidiaries and the Like correspond to (ii) and also (iii) at the same time. However, if the price increase of cathode-ray tubes by cartel could be shifted to the retail price from sales companies to consumers, both sales companies of CRT televisions and consumers of CRT televisions can be considered to be persons who suffer damages, a decline in surplus, by the cartel, in other words, the person corresponds to (iii). In this case, it is not clear that how much the price increase was shifted to the retail price. If it was able to be shifted, there are CRT televisions manufactured by the Overseas Manufacturing Subsidiaries and the Like that were brought into Japan via a commercial distribution (in other words, CRT televisions for which the Japanese Manufacturing and Sales Companies of CRT televisions located in Japan once purchased and paid the price under the contract); however, those are not all of the production. The percentage of persons who reside in Japan out of end-users of CRT televisions is smaller and it is unknown, to be precise; however, there is no doubt that it is far below half. In other words, even if a sales company of CRT televisions is deemed to be a person who suffered damages from a cartel, the damage to persons who reside in Japan is limited to those pertaining to part of the alleged CRTs, and if the person is deemed to be an consumer of CRT televisions, the damage is limited to the additionally limited part.

Therefore, it is reasonable to consider the Overseas Manufacturing Subsidiaries and the Like who correspond to (ii) and (iii) and are direct purchasers of cathode-ray tubes, as the main persons who suffered damages from the cartel and to consider them as the standard for judging the most appropriate country when imposing adverse dispositions. If the Overseas Manufacturing Subsidiaries and the Like are used as a standard as mentioned above, they are not located in Japan.

(10) In conclusion, according to my idea that we should follow the Narrow Interpretation when judging whether to impose an adverse disposition, surcharge, even if the sales field of the alleged CRTs is considered to be a particular field of trade and violation of Article 3 of the Anti-Monopoly Act is approved, we should give consideration, such as not to impose surcharges based on the fact that products-receivers do not reside in Japan or imposing surcharges limited to the sales amount of the part of cathode-ray tubes based on the clients of CRT televisions manufactured and sold by using the alleged CRTs after finding the price-shift. In these cases, the majority opinion that is to order payment of the amount obtained by multiplying all sales amounts of the alleged CRTs by the statutory rate as the surcharges, should be considered as an excess adverse disposition. This becomes obvious in cases where a country where

one of the surplus-takers, the Overseas Manufacturing Subsidiaries and the Like, is located, imposes or is predicted with considerably high possibility to impose an adverse disposition, such as imposing fines, etc.

(11) However, as long as looking at the current Anti-Monopoly Act and preceding judgments pertaining thereto, it is difficult to consider that this interpretation is adopted. This is due to the following reasons.

Article 7-2, paragraph (1) of the Anti-Monopoly Act stipulates that the surcharge shall be the amount obtained by multiplying the "sales amount of relevant products or services calculated using the method provided by Cabinet Order" by the specified rate. And the judgment of the Tokyo High Court on November, 2010 ruled, "the 'relevant products' as indicated in Article 7-2, paragraph (1) of the Anti-Monopoly Act should be interpreted as products subject to mutual restriction, which is an act of violation; in other words, products that belong to the category of products subject to the act of violation and that are under mutual restrictions that are acts of violation," and "with respect to the products that belong to the category of products subject to violation, as to particular products, unless it is found that there are circumstances indicating that said products are excluded from mutual restriction that is a violation, such as an enterprise or trade association that committed the violation excluded said products from the objective of said acts explicitly or implicitly, etc., restriction by the violation affected to said products and they are included in relevant products that are subject to the calculation of surcharges." (Judgment of Tokyo High Court on November 26, 2010, *Kouseitorihikiiinkai Shinketsush*u (JFTC Decisions) vol.57, part II, p.194 [case of claiming rescission of decision by Idemitsu Kosan Co., Ltd.]). In accordance with this judgment, as long as the restriction by violation is affected, they are included in relevant products that are subject to calculation of surcharges regardless of the manufacturing and sales area of products that embedded said products.

(12) Based on the aforementioned, the majority opinion indicated "considering the aforementioned roles played by the Japanese Manufacturing and Sales Companies of CRT televisions, the Japanese Manufacturing and Sales Companies of CRT televisions and the Overseas Manufacturing Subsidiaries and the Like can be integrally regarded as the purchaser of the alleged CRTs" (VI. 1. (4)(ii)(b)); and approved that Japan, where (i)(the Japanese Manufacturing and Sales Companies of CRT televisions) are located, applies the Anti-Monopoly Act to all of the alleged CRTs and imposes surcharges, by finding that (i) is integral with (ii) and (iii)(the Overseas Manufacturing Subsidiaries and the Like) out of the three aspects of

customers. However, again, if countries where (ii) and (iii) are located also take legal measures, there will be a possibility that adverse dispositions may be duplicated.

(13) On the other hand, with respect to this case, since countries where the Overseas Manufacturing Subsidiaries and the Like are located and countries where end-users who eventually purchased CRT televisions reside did not take legal measures, such as imposing fines, if Japan also decided not to impose fines, despite the act of the Respondents to restrict competition, no country would impose adverse dispositions and the act to restrict competition is not likely to be imposed sanctions.

(14) Concerning the aforementioned situation and considering the fact that duplication of adverse dispositions has not occurred since foreign countries have not taken legal measures up until this moment, I agree with the majority opinion in this Case. However, in the future, if a similar case occurs and an adverse disposition has been imposed or is projected with a high possibility by the legal measures of other countries, it is necessary to design a system to avoid duplication of adverse disposition and so that the JFTC can give consideration when calculating surcharges.

May 22, 2015
Japan Fair Trade Commission
Chairperson: Kazuyuki Sugimoto
Commissioner: Hiroyuki Odagiri
Commissioner: Hideo Makuta
Commissioner: Wataru Yamazaki

(Appendix 1)

No.	Enterprise	Location of principal office
1	Samsung SDI Co., Ltd. (hereinafter referred to as "Samsung SDI")	Republic of Korea
2	Samsung SDI (Malaysia) BERHAD (hereinafter referred to as "Samsung SDI Malaysia)	Malaysia
3	Chunghwa Picture Tubes Co. Ltd. (hereinafter referred to as "Chunghwa Picture Tubes")	Republic of China
4	Chunghwa Picture Tubes (Malaysia) Sdn. Bhd. (hereinafter referred to as "Chunghwa Picture Tubes Malaysia")	Malaysia
5	LG-Philips Displays Korea Co., Ltd. (hereinafter referred to as "LG-Philips Displays")	Republic of Korea
6	PT. LP Displays Indonesia (hereinafter referred to as "LP Displays Indonesia")	Republic of Indonesia
7	Thai CRT Co. Ltd (hereinafter referred to as "Thai CRT")	Kingdom of Thailand

(Appendix 2)

No.	Enterprise	Location of principal office	Countries of locations of manufacturing subsidiaries, affiliated companies, or contracted manufacturing companies in the Southeast Asia region
1	Orion Electric Co., Ltd. (hereinafter referred to as "Orion Electric")	Echizen City, Fukui Prefecture	Kingdom of Thailand (contracted manufacturing company)
2	Sanyo Electric Co., Ltd. (hereinafter referred to as "Sanyo Electric")	Moriguchi City, Osaka Prefecture	Republic of Indonesia (manufacturing subsidiary)
3	Sharp Corporation (hereinafter referred to as "Sharp")	Abeno-ku, Osaka City	Republic of Indonesia, Kingdom of Thailand, Republic of the Philippines, and Malaysia (manufacturing subsidiary or affiliated company)
4	Victor Company of Japan, Limited (hereinafter referred to as "Victor Japan")	Kanagawa-ku, Yokohama City	Republic of Singapore, Kingdom of Thailand, Socialist Republic of Vietnam (manufacturing subsidiary or affiliated company)
5	Funai Electric Co., Ltd. (hereinafter referred to as "Funai Electric")	Daito City, Osaka Prefecture	Kingdom of Thailand, Malaysia (manufacturing subsidiaries)

(Appendix 3)

The following Television CRTs (however, excluding Television CRTs that manufacturing subsidiaries or affiliated companies of Victor Japan, which are located in countries indicated in the column of "Countries of locations of manufacturing subsidiaries, affiliated companies, or contracted manufacturing companies in the Southeast Asia region" of Appendix 2, purchased on and after May 1, 2005 and the manufacturing subsidiary of Sanyo Electric on and after October 1, 2006.)

(1) Round tubes for 14-inch size
(2) Round tubes for 20-inch size
(3) Round tubes for 21-inch size
(4) Flat tubes for 21-inch size and called "invar"
(5) Flat tubes for 21-inch size and called "AK"