

Decision in Hearing against Kanto Kogyo Co., Ltd.

December 2, 2003

Japan Fair Trade Commission

The Japan Fair Trade Commission ("JFTC ") rendered an initial decision for the hearing against the respondent Kanto Kogyo Co., Ltd. (hereafter "respondent ") on September 28, 2001, and thereafter had a hearing examiner conduct the hearing proceedings. As a result, on November 28, 2003 the JFTC ruled against the respondent under the provisions of Section 54(2) of the Antimonopoly Act.

1. Profile of respondent

Kanto Kogyo Co., Ltd.

Naka-ku, Yokohama-shi

2. Summary of decision

(1) Summary of violations

In connection with fumigation services for fumigated cargo^(NOTE), conducted using the fumigation warehouses of Japan Airlines Co., Ltd. (hereafter "Japan Airlines ") and International Air Cargo Terminal Co., Ltd. (hereafter "International Air Cargo Terminal ") (hereafter the two companies Japan Airlines and International Air Cargo Terminal shall be referred to as "the two bonded warehouseurs "), which are engaged in bonded warehousing in the New Tokyo International Airport (hereafter "Narita Airport "), the respondent and Kanto Fumigation Co., Ltd. (hereafter "Kanto Fumigation ") (hereafter the two companies the respondent and Kanto Fumigation

shall be referred to as “the two fumigators”) substantially restrained competition, contrary to the public interest, in the trade field of fumigation services for fumigated cargo in Narita Airport by concertedly fixing fumigation fees, etc. and by agreeing which of the two fumigators would perform fumigation depending on which bonded warehouse the fumigated cargo had been brought into.

(NOTE) Fumigated cargo denotes imported plants that have been unloaded from an aircraft and brought into a bonded warehouse and which, as a result of inspection under the provision of the Plant Protection Law, have been ordered to be disinfected or disposed of, and the consignee or customs broker has decided to disinfect.

(2) Summary of elimination measures

A By a method previously approved by the JFTC, the respondent must make known to users concerned with fumigation services of fumigated cargo in Narita Airport that:

(a) regarding the fumigation services of fumigated cargo performed by the respondent using the fumigation warehouses of the two bonded warehouse owners in Narita Airport:

a. the various types of fees stated in the Attachment of the attached draft decision that had been concertedly fixed with the fumigators of fumigated cargo from October 1997, at the latest; and

b. the agreement made between the fumigators of fumigated cargo around July 1987 to use the fumigation warehouses of the two bonded warehouse owners every other month respectively and in principle to fumigate the fumigated cargo brought into the bonded warehouse of Japan Airlines in the fumigation warehouse of Japan Airlines and to fumigate the fumigated cargo brought into the bonded warehouse of International Air Cargo Terminal in the fumigation warehouse of International Air Cargo Terminal

have been abolished; and

(b) that the respondent voluntarily resolves that in future, it will not, concertedly with other fumigators, in connection with fumigation services for fumigated cargo in Narita Airport, fix various types of fees, or determine the party that will perform the fumigation service depending on which of the bonded warehouses the fumigated cargo has been brought into.

B The respondent must not in future, concertedly with other fumigators, in connection with fumigation services for fumigated cargo in Narita Airport, fix various types of fees, or restrain other trade partners.

C The respondent must promptly notify the Fair Trade Commission of the measures taken under the above two paragraphs.

3. Background of this case

August 9, 2001 Recommendation

September 28, 2001 Decision to initiate hearings

November 16, 2001 Date of first hearing

July 8, 2003 Date of tenth hearing (Conclusion)

October 9, 2003 Delivery of draft decision

Summary of decision

1. Summary of fact pattern

This case is the matter of a hearing whereby, in connection with fumigation services for fumigated cargo performed using the fumigation warehouses of the two bonded warehousemen in Narita Airport, the substantial restraint of competition by the two fumigators, contrary to public interest, in the trade area of fumigation services for fumigated cargo in Narita airport through the concerted fixing of fumigation fees, etc. and agreement on which of the two fumigators would perform the fumigation depending on which of the bonded warehouses the fumigated cargo had been brought into is considered to correspond to unreasonable restraint of trade prescribed in Section 2 (6) of the Antimonopoly Act and to violate the provision of Section 3 of the Antimonopoly Act.

2. Main points in dispute in this case

- (1) Whether or not the two fumigators concertedly fixed fumigation fees, etc. in Narita Airport.
- (2) Whether or not the two fumigators had made an agreement on aspects such as the sharing of fumigated cargo in Narita Airport.
- (3) Whether or not the Fair Trade Commission's execution of proceedings to order elimination measures against the respondent grossly deviates from reasonable discretion.
- (4) The applicability of conditions in Section 54 (2) of the Antimonopoly Act (whether or not elimination measures are necessary)

3. Judgments on points in dispute

- (1) Concerted fixing of fumigation fees, etc.
 - a. Fact of concerted fixing of fumigation fees, etc.

It is recognized that, from October 1997, at the latest, in relation to fumigation services for fumigated cargo performed using the fumigation warehouses of the two bonded warehouseers in Narita Airport, having obtained the consent of the Steering Committee of Fumigation Warehouses, the two fumigators concertedly fixed the fumigation fees, etc. stated in the attachment of the attached draft decision.

b. Substantial restraint of competition

Since the two fumigators, which are the only fumigators present in the market in this case, i.e., the trade area of fumigation services for fumigated cargo in Narita Airport, concertedly fixed the same fumigation fees, etc., the act of concertedly fixing fumigation fees, etc. in this case ought to be regarded as an act that brought about a situation whereby, with respect to the fumigation fees, etc. of fumigation services for fumigated cargo performed using the fumigation warehouses of the two bonded warehouseers in Narita Airport, the two fumigators concertedly fixed prices and could control the market, and this act ought to be described as equivalent to the substantial restraint of competition.

c. Public interest

The act of concertedly fixing fumigation fees, etc. in this case is recognized as being an act that wipes out price competition in fumigation fees, etc. associated with fumigation services for fumigated cargo performed using the fumigation warehouses of the two bonded warehouseers in Narita Airport, and as being an act that harms the interest of general consumers.

(2) Agreement on the sharing, etc. of fumigated cargo

Based on the evidence it is recognized that, around July 1987, the two fumigators held discussions on fumigation services for fumigated cargo performed using the fumigation warehouses set up by the two bonded warehouseers in Narita Airport, and, having agreed that the respondent would use the fumigation warehouse of Japan Airlines in odd months and the fumigation warehouse of International Air

Cargo Terminal in even months and that Kanto Fumigation would use the fumigation warehouse of International Air Cargo Terminal in odd months and the fumigation warehouse of Japan Airlines in even months, they agreed that in principle they would fumigate the fumigated cargo brought into the bonded warehouse of Japan Airlines in the fumigation warehouse of Japan Airlines and the fumigation cargo brought into the bonded warehouse of International Air Cargo Terminal in the fumigation warehouse of International Air Cargo Terminal respectively.

(3) Discretionary deviation

a. The Fair Trade Commission's execution of procedures to order elimination measures against the respondent is not recognized as groundless discriminatory treatment even on consideration of the words and actions of the hearing examiner in charge of this case.

b. Of the violations in this case by the respondent, the concerted fixing of fumigation fees, etc. by the two fumigators is itself an offence, and there is no evidence of facts indicating that, by taking proceedings to order elimination measures in relation to the violation in question and by issuing warnings in relation to the suspected act of concertedly fixing the handling fee of fumigation cargo and the usage fee of fumigation warehouses, the Fair Trade Commission had discriminatory intent against the respondent and this cannot be described as groundless discriminatory treatment compared with the treatment of the two bonded warehouse owners. Also with respect to the agreement on aspects such as the sharing of fumigated cargo in this case by the two fumigators, recognition of facts corresponding to violations is as stated in the aforementioned findings, and as regards the execution of proceedings to order elimination measures in relation to the violations in question, there is no evidence of facts indicating that the Fair Trade Commission had discriminatory intent against the respondent.

(4) Applicability of conditions in Section 54 (2) of the Antimonopoly Act (whether or not elimination measures are necessary)

The violations in this case committed by the two fumigators existed at the time of the initial decision for the hearing on September 28, 2001, but it is recognized that on November 8, 2001 they had already been abolished as a result of Kanto Fumigation having ceased the violations in this case. However, the market in this case is monopolized by the two fumigators and the two fumigators have maintained cooperative relations for a long time and, since it can be assumed that competition in the market in this case has not adequately recovered, it is necessary to order against the respondent the measure of making it known that the acts in question have been abolished and other measures necessary to ensure that the acts in question have been eliminated, and this case should be described as corresponding to "if deemed particularly necessary" prescribed in Section 54 (2) of the Antimonopoly Act.