

Hearing Decision against Idemitsu Kosan Co., Ltd. and Three Other Companies  
(Fixing of the Selling Price of PolyPropylene)

August 10, 2007  
Japan Fair Trade Commission

On June 27, 2001, the Japan Fair Trade Commission (“ JFTC ”) decided to commence hearing procedures concerning Idemitsu Kosan Co., Ltd. (“Idemitsu”), Sumitomo Chemical Co., Ltd. (“Sumitomo Chemical”), SunAllomer Ltd. (“SunAllomer”) and Tokuyama Corporation (“Tokuyama”), collectively referred to as “the Respondents.” Subsequently, the Commission ordered the hearing examiners to carry out the hearing procedures. On August 8, 2007, the JFTC issued its decision against the Respondents in accordance with Article 54 ,Paragraph 3 of the Antimonopoly Act, which were the provisions prior to the amendment pursuant to the Law No. 35 of 2005.

1. Profiles of Respondents

Entrepreneur	Location	Representative
Idemitsu Kosan Co., Ltd.	3-1-1 Marunouchi, Chiyoda-ku, Tokyo	Masao Harada
Sumitomo Chemical Co., Ltd.	2-27-1 Shinkawa, Chuo-ku, Tokyo	Hiromasa Yonekura
SunAllomer Ltd.	2-2-24 Higashi Shinagawa, Shinagawa-ku, Tokyo	Godard von Ilsemann
Tokuyama Corporation	1-1 Mikagecho, Shunan, Yamaguchi Prefecture	Shigeaki Nakahara

2. Chronological Proceedings

May 30, 2001: Recommendation No. 7 of 2001  
Jun. 27, 2001: Decision on commencement of hearing procedures  
Sep. 12, 2001: First hearing  
↓  
Aug. 4, 2006: The 28th hearing (completion of hearing procedures)  
By May 17, 2007: A draft decision sent to the Examinees  
By May 31, 2007: Opposition to draft decision and claims for direct statements to the Commission  
Jul. 12, 2007: Hearings of direct statements  
Aug. 8, 2007: Decision

3. Summary of the Decision

(1) Summary of the violation and others

The Respondents conspired with other entrepreneurs and decided to raise the selling price of polypropylene, except that for which there was an effective contract on naphtha-linked pricing, where the selling price is moved in tandem with the price of the raw material, namely naphtha. In so doing, contrary to the public interest, they substantially restricted competition in the field of polypropylene sales in Japan.

(2) Summary of the principal text

a Sumitomo Chemical and SanAllomer shall confirm that the agreement on raising the polypropylene selling price executed among these two firms and other entrepreneurs on March 6, 2000 (the “Agreement”) is defunct.

- b Each of Sumitomo Chemical and SanAllomer shall make notification of the following to their trade partners engaging in sales of polypropylene and to polypropylene users.
  - (a) Measures taken in accordance with the preceding paragraph
  - (b) Each of the companies will set their polypropylene selling prices neither mutually nor jointly with other entrepreneurs but independently
- c Each of Sumitomo Chemical and SanAllomer shall set its polypropylene selling prices independently, not mutually nor jointly with other entrepreneurs.
- d As Idemitsu and Tokuyama decided to increase the polypropylene selling price for users applicable from April 2000 to 10 yen per kilogram jointly with other entrepreneurs on March 6, 2000, they violated Article 3 of the Antimonopoly Act. It is confirmed that this conduct is already discontinued.
- e With respect to the violation committed by Idemitsu and Tokuyama as stated in d above, no order for any particular action will be issued to these two Respondents.

(3) Issues

- a Establishment of the Agreement (Issue 1)
- b A particular field of trade (Issue 2)
- c Necessity of taking measures (Issue 3)

(4) Summary of the judgments on the issues

- a Issue 1: establishment of the Agreement

There are no particular facts contrary to the credibility of the direct evidence of the establishment of the Agreement at a meeting of department managers on March 6, 2000. The developments until this meeting and the behavior of the seven firms after the meeting are consistent with the establishment of the Agreement. In view of these facts, it is verified that the Agreement was established at the meeting of department managers.

In light of all the evidence specified in the draft decision, the violation was discontinued on or after May 30, 2000 and by October 25, 2000 at the latest. The Agreement is confirmed to have been dropped at that time.

- b Issue 2: a particular field of trade

The assertion made by the investigators was relevant. In this case, it is evident that polypropylene as a whole, excluding that for which the selling price was set by the naphtha linked pricing method, constitutes a single particular field of trade.

- c Issue 3: necessity of taking measures

- (a) Sumitomo Chemical and SanAllomer

It is verified that the violation existed before the decision to commence hearings procedures and that it no longer exists. At least six years have passed since it was discontinued in 2000. Meanwhile, the number of entrepreneurs manufacturing and selling polypropylene has decreased from seven to four.

The Respondents freely exchanged information on the specific relationship between the naphtha price and their polypropylene prices, although this information should not be disclosed to any other company. After the termination of the act of violation, the polypropylene subcommittee and the meetings of department managers ceased. This change followed the onsite inspection conducted by the JFTC. After the decline in the number of entrepreneurs manufacturing and selling polypropylene from seven to four, it became even easier for the entrepreneurs to exchange information as mentioned above and to reach an agreement on a polypropylene price increase than it was when the act of violation took place. The interlocking relationship between the naphtha price and

polypropylene prices is relatively simple. It is therefore likely to be easy to build a common consensus on raising the polypropylene price. In the polypropylene and other polyolefin industry, unreasonable restraint of trade was repeated in the form of a price increase. In particular, Sumitomo Chemical was previously subject to administrative measures on one occasion for price fixing in the polypropylene market and on three occasions for price fixing in the polyethylene market. In view of these factors, the Respondents can be deemed to be at risk of committing a similar violation again in the future.

For these reasons, it can be recognized that the criterion of “if it (...) deems it necessary” stipulated in Article 54, Paragraph 2 of the Antimonopoly Act applies to Sumitomo Chemical and SanAllomer.

(b) Idemitsu and Tokuyama

Although investigators claim that Idemitsu effectively runs the business of manufacturing and selling polypropylene of Prime Polymer Co., Ltd. (“Prime Polymer”), these two companies are separate legal entities. Idemitsu holds only a 35% stake in Prime Polymer. Thus it is impossible to confirm that Idemitsu effectively operates the polypropylene manufacturing and selling business. Moreover Tokuyama does not presently engage in the business of manufacturing and selling propylene. Therefore it should be recognized that the criterion of “if it (...) deems it necessary” stipulated in Article 54, Paragraph 2 of the Antimonopoly Act does not apply to Idemitsu and Tokuyama.