

The proposed acquisition of the stock of
Tokyo Kohtetsu Co., Ltd. by Osaka Steel Co., Ltd.

February 9, 2007
Japan Fair Trade Commission

The Japan Fair Trade Commission (hereinafter “JFTC”) has undertaken reviews of the acquisition of the stock of Tokyo Kohtetsu Co., Ltd. (hereinafter “Tokyo Kohtetsu”) by Osaka Steel Co., Ltd. (hereinafter “Osaka Steel”), receiving the request from them for prior consultation.

The JFTC has responded to the parties that the acquisition does not appear to violate the provisions of the Antimonopoly Act given the materials concerning the details of the consultation that were submitted by the parties and the measures that will be taken by the parties (refer to the attachment for details).

The case was reviewed through documentary examination and detailed examination, and the results are hereby made public pursuant to the “Policies dealing with prior consultation regarding enterprise combination plans” (December 11, 2002).

I. Outline of the Proposed Acquisition

Through the proposed acquisition, Osaka Steel, which is engaged in the manufacturing and sale of structural steel beams, plans to acquire all the stock in Tokyo Kohtetsu, which is also engaged in the manufacture and sale of structural steel beams.

II. Views Based on the Antimonopoly Act

1. Particular field of trade

“Structural steel beams” is the general name of structural beams (long steel used in structural applications, manufactured by rolling to create beams having a determined cross-sectional shape) excluding H beams and light steel. It includes various kinds of products having different cross-sectional shapes, such as equal-angle beams and channel beams. When manufacturing structural steel beams, products with different cross-sectional shapes and sizes are produced using the same production facilities. However, with respect to size, in general, the production line used for large structural steel beams differs from that used for small- and medium-sized structural steel beams (hereinafter referred to as “small- and medium-sized structural beams”) for economic reasons. The production line used for large structural beams cannot be used as a substitute to manufacture small- and medium-sized structural beams. Based on the foregoing, the manufacturing and sales of small- and medium-sized structural beams has been defined as particular field of trade in this case.

The small- and medium-sized structural beams is used as support material in construction and civil engineering work, the frames of cranes used for the construction of steel towers and high-rise buildings, and structural material in industrial machinery, etc.

2. Evaluation Based on the Antimonopoly Act

(1) Examination about substantial restriction on competition by unilateral conduct

The combined market share of the parties after this acquisition will reach about 45%. In addition, under the current conditions, competitors have almost no sufficient excess capacity. In China, the production capacity has greatly expanded and it appears that there is the possibility of an increase in imports over the long term. However, in the light of circumstances whereby demand for steel materials has surged in China due to the Shanghai World Fair, the import of structural beams from China to Japan will not increase at least over the next two years. Therefore, imports do not appear to be applying sufficient pressure. Therefore, it is considered that the parties may be able to arbitrarily determine to a certain extent the price of the small- and medium-sized structural beams by their unilateral conduct.

(2) Examination of the substantial restriction on competition by coordinated conduct

Through this acquisition, the number of leading companies with a market share of more than 10% that manufacture and sell many kinds of products in the market of small- and medium-sized structural beams will decline from four to three and, therefore, the market will become more oligopolistic. Competitors have almost no sufficient excess capacity. In addition, as mentioned in (1) above, imports do not appear to apply sufficient pressure. Therefore, we consider that the price of the small- and medium-sized structural beams may be arbitrarily determined to a certain extent if the parties and the competitors engage in coordinated conduct.

3. Remedial measures proposed by the parties

The JFTC pointed out the problems indicated in 2. (1) and (2) above to the parties. Then the parties have proposed remedial measures through the supply of small- and medium-sized structural beams at a price equivalent to production costs to competitors that have a share smaller than that of the parties manufacturing and selling small- and medium-sized structural beams.

4. Evaluation based on the Antimonopoly Act in consideration of the remedial measures

A competitor who will be supplied the small- and medium-sized structural

beams by the parties through the proposed remedial measures for the problems indicated in 3 above, appears to be able to become a competitor that handles many kinds of products and has a market share of more than 10%. Accordingly, where there is the possibility of an increase in imports over the long term, it is considered that the parties will be precluded from arbitrarily determining the price of the small- and medium-sized structural beams to a certain extent if the remedial measures are implemented consistently, considering that it is expected that there is no possibility of imports for the time being.

III. Conclusions

The JFTC has determined that this acquisition will not substantially restrain competition in the field of manufacturing and sales of small- and medium-sized structural beams, provided that the parties consistently implement the measures to resolve the problems as the parties propose.

To ensure the implementation of the remedial measures proposed by the parties in the future, the JFTC will monitor the level of implementation of the measures through various means as necessary, including reports from the parties. The JFTC will also extensively monitor the state of competition in the relevant field of trade.

Acquisition of the Stocks of Tokyo Kohtetsu Co., Ltd. by Osaka Steel Co., Ltd. (Reply)

I. The Inquired Parties

Osaka Steel Co., Ltd. (hereinafter “Osaka Steel”) is engaged in the manufacture and sale of structural steel beams, etc.

Tokyo Kohtetsu Co., Ltd. (hereinafter “Tokyo Kohtetsu”) is engaged in the manufacture and sale of structural steel beams, etc.

II. Outline of the Acquisition and the Applicable Provisions under Law

Osaka Steel plans to acquire all the stock of Tokyo Kohtetsu.

The provisions of the Antimonopoly Act that apply to this acquisition are Article 10 of the Antimonopoly Act.

III. Purpose of the Acquisition

While competition in the field of structural steel beams is expected to intensify in the future due to a fall in demand for steel materials in Japan caused by the reduction in public works and the influx of imported products, the parties have planned this acquisition with the aim of strengthening of management base, establishing effective production and sales systems and enhancing technological capability.

IV. Particular Field of Trade

1. Outline of the product

“Structural steel beams” is the general name of structural beams (long steel used in structural applications, manufactured by rolling to create beams having a determined cross-sectional shape) excluding H beams and light steel. It includes various kinds of products having different cross-sectional shapes, such as equal-angle beams and channel beams.

Structural steel beams are manufactured by rolling blooms using a rolling machine with a caliber roll (a roll with a concave portion corresponding to the completed shape). Products with different cross-sectional shapes and sizes may be manufactured using the same production facilities by changing the caliber roll. However, the power of the furnace, the power of the rolling machine and the volume of material that can be rolled per hour differ between the facilities for manufacturing relatively large products and those for manufacturing relatively small products. Therefore, in general, the production line for manufacturing large structural steel beams differs from that for manufacturing small- and medium-sized structural steel beams (hereinafter referred to as “small- and medium-sized structural beams”).

Osaka Steel manufactures large structural beams as well as small- and medium-sized structural beams, while Tokyo Kohtetsu mainly manufactures small- and medium-sized structural beams. Both parties compete mainly in the field of small- and medium-sized structural beams.

The small- and medium-sized structural beams are used as supporting material in construction and civil engineering work, the frames of cranes used for the construction of steel towers and high-rise buildings, and structural material in industrial machinery, etc.

2. Definition of particular field of trade

With respect to structural beams, there is substitutability for suppliers in terms of the cross-sectional shape as mentioned in 1 above. However, with respect to size, the production line for large structural beams cannot be used as a substitute of small- and medium-sized structural beams for suppliers. Therefore, the manufacturing and sales field of small- and medium-sized structural beams has been defined as a particular field of trade (scope of commodities). In addition, the particular field of trade (geographical scope) is defined for the entire country.

V. Examination of the Effects of this Acquisition on Competition

1. Market scale

The market scale of small- and medium-sized structural beams is about 82.0 billion yen (approx. USD 680 million). Private sector construction investment has recovered over the past few years thanks to an increase in housing starts against a backdrop of economic growth and a rise in corporate capital investment. However, government sector construction investment declined due to the curtailment of expenditures on public works. Overall demand for construction has tended to decline slightly. Therefore, demand for small- and medium-sized structural beams, which are chiefly used as construction materials, have also tended to fall.

2. Market share

The following table shows the share of sales volume of all manufacturers in the small- and medium-sized structural beams market.

Through this acquisition, the combined share of the sales volume of the parties will become about 45%, giving it the largest share.

(HHI: About 3,300 and an increase in HHI: about 800 after this acquisition)

Ranking	Manufacturer	Market Share
1	A	About 30%
2	Osaka Steel	About 30%
3	Tokyo Kohtetsu	About 15%
4	B	About 10%
	Others	About 10%
(1)	<i>Combined share of the parties</i>	<i>About 45%</i>
	Total	100%

Note: The figures for the market shares in the above table have been rounded to the nearest whole number. Therefore, the total of the above shares is not 100%.

(Data source: Prepared by the JFTC based on materials submitted by the parties)

3. Status of users

The users of small- and medium-sized structural beams include construction companies, industrial machine manufacturers, shipbuilding companies, and manufacturers of steel towers for electric power transmission lines. The small- and medium-sized structural beams are mostly used as semi-processed materials in construction work and manufactures of machines. Small users account for the majority of users with the exception of some users such as shipbuilding companies. Manufacturers directly sell to some large users, including shipbuilding companies. Sales to small users are conducted through shop sales via trading firms and special agents.

There is no difference in quality among manufacturers or the inherent problems in using small- and medium-sized structural beams. Therefore, it is easy for users to change manufacturers. It is common for users in purchasing small- and medium-sized structural beams through a distribution company not to nominate the manufacturer. However, the conditions of tight supply and demand have continued in recent years. Therefore, under the current conditions, trading firms and special agents having direct trading relationships with manufacturers and large users find difficulty in changing manufacturers or changing the percentage of procurement from each manufacturer because of a concern that changing manufacturers may destabilize the supply.

4. Price trend

Price-cutting competition amongst manufacturers intensified during and before 2000 due to a decline in demand for small- and medium-sized structural beams, which was caused by the recession, and the price of the small- and medium-sized structural beams sharply dropped. However, during and after around 2004, the feeling of tight supply and demand returned to the market against the backdrop of a rise in demand in China. The price of iron scrap, which is the major raw material for small- and medium-sized structural beams sharply rose. Therefore, the price of the small- and medium-sized structural beams also increased greatly. The rate of increase in the price of small- and medium-sized structural beams is higher than the rate of increase in the price of iron scrap.

5. Excess capacity

Manufacturers reduced their number of employees during the past recession. Therefore, at the current number of employees, it is difficult to extend operating hours. Domestic demand for structural beams is expected to fall in the future, and it is difficult to expand the facilities and equipment and to increase their number of employees. Therefore, the competitors do not have sufficient excess capacity.

6. Import

Imported products have greater quality variations than domestically produced products. At present, overseas supply and demand is tight and imported products have no advantage in terms of price. Trading firms and special agents do not show any movement in increasing the handling of imported products due to the low demand for imported products. The percentage of imported products to total domestic sales volume is less than 1% partly due to the problem that the domestic distribution system has not been established.

Meanwhile, if the imported products have an adequate price advantage that can make up for the quality variation and the quality of imported products does not differ from the quality of domestically produced products; it is conceivable that demand for imported products will grow.

Then, looking at the conditions in China, which is a major exporter, to assess the future trends of imports, the production volume of the small- and medium-sized structural beams from China is more than 15 times the volume produced domestically. In addition, in China the production capacity of steel materials has greatly expanded and it appears that there is the possibility of an increase in imports. However, despite this expansion in production capacity in China, brisk demand for steel materials is expected to continue for the time being in the Asian and Middle East regions, including China, where demand for steel materials surged due to the Beijing Olympics to be held in 2008 and the Shanghai World Fair

scheduled for 2010. Therefore, sales at elevated prices in these areas seem expected to continue. Chinese manufacturers will not have an incentive to increase the volume of exports to Japan. In addition, under the current conditions, the problem with quality variation will not be solved immediately.

Based on the foregoing, in the light of the circumstances that demand for steel materials has surged in China due to the Shanghai World Fair, it is considered that the influx of a large quantity of imported products into Japan will not happen at least within the next two years, although there is the possibility of an increase in imports over the long term.

VI. Evaluation Based on the Antimonopoly Act

1. Examination about substantial restriction on competition through unilateral conduct

The combined share of the parties after this acquisition will reach about 45% of the market for small- and medium-sized structural beams. In addition, competitors have almost no sufficient excess capacity. Imports do not appear to apply adequate pressure on market prices. Therefore, it is considered that the parties may arbitrarily determine to a certain extent the price of the small- and medium-sized structural beams through their unilateral conduct.

2. Examination of substantial restriction on competition through coordinated conduct

Through this acquisition, the number of leading companies with a market share of more than 10% that manufacture and sell many kinds of products in the market of small- and medium-sized structural beams will decline from four to three and, therefore, the market will become more oligopolistic. Competitors have almost no sufficient excess capacity. In addition, imports do not appear to apply sufficient pressure. Therefore, it is considered that the price of the small- and medium-sized structural beams may be arbitrarily determined by the parties to a certain extent if the parties and the competitors engage in coordinated conduct.

VII. Remedial measures proposed by the parties

The JFTC pointed out to the parties the problems that this acquisition will create for the parties a position of exceptional strength after the acquisition, that competitors do not have sufficient excess capacity, and that there is no possibility of imports for the time being. Then the parties have proposed remedial measures for the problems through the supply of small- and medium-sized structural beams at a price equivalent to production costs to competitors that have a share lower than that of the parties in the manufacturing and sales field for small- and medium-sized structural beams.

VIII. Evaluation Based on the Antimonopoly Act in Consideration of the Remedial Measures

A competitor who will be supplied the small- and medium-sized structural beams by the parties through the proposed remedial measures for the problems, appears to be able to become a competitor that handles many kinds of products and has a market share of more than 10%. Accordingly, where there is the possibility of an increase in imports over the long term, it is considered that the parties will be precluded from arbitrarily determining the price of the small- and medium-sized structural beams to a certain extent if the remedial measures are implemented consistently, considering that it is expected that there is no possibility of imports for the time being.

IX Conclusions

The JFTC has considered that the parties will not be substantially to restrain competition in a particular field of trade, either by unilateral conduct or by coordinated conduct, as a result of this acquisition, provided that the parties consistently implement the remedial measures proposed by the parties.

To ensure the implementation of the remedial measures proposed by the parties in the future, the JFTC will monitor the state of implementation of the measures through various means as necessary, including reports from the parties. The JFTC will also extensively monitor the state of competition in the relevant field of trade.