

Cease and Desist Order and Surcharge Payment Order Against Corporate Bidders for the  
Subway Construction Project Commissioned by the City of Nagoya

November 14, 2007  
Japan Fair Trade Commission

The Japan Fair Trade Commission (JFTC), in accordance with the provisions of the Antimonopoly Act (AMA), investigated the corporate bidders for the Subway Line No. 6 Extension Project <sup>(Note 1)</sup> commissioned by the City of Nagoya and found that they had committed an act in violation of the provision in Article 3 (Prohibition of Unreasonable Restraint of Trade) of the AMA. Accordingly, on November 12, 2007, the JFTC issued against them a cease and desist order pursuant to the provision in Paragraph 2, Article 7 of the AMA and a surcharge payment order pursuant to the provision in Paragraph 1, Article 7-2 of the AMA as detailed below.

(Note 1) Refers to a set of civil engineering construction connected with the project for the extension of the Nonami-Tokushige section of the High Speed Railway Line No. 6 ordered by way of general competitive bidding.

1. The numbers of corporations involved in violation and corporations subject to the cease and desist order and to the surcharge payment order, and the amount of the surcharge.

Number of corporations in violation	Number of corporations subject to the cease and desist order	Number of corporations subject to the surcharge payment order	Amount of surcharge <small>(Note 2)</small>
33	33	14	1,920,300,000 yen

(Note 2) In accordance with the provision in Paragraph 6, Article 7-2 of the Antimonopoly Act, the calculation ratio of 15% was applied to those corporations subject to the surcharge payment order which have faced a previous surcharge payment order within ten years before the date of commencement of the investigation. (This applies only to cases in which the previous surcharge payment order has been settled.) For those corporations subject to the surcharge payment order, which have been convicted of unreasonable restraint of trade and have faced a pecuniary punishment in a final court decision in a case similar to the violation stated in 2 below, the surcharge is set at the amount calculated by subtracting a half of the fine, in accordance with the provision in Article 14 of the AMA.

2. Outline of the violation

During the period from early December to mid-December 2005, the 33 corporations, through communication from an Obayashi Corporation advisor or other personnel <sup>(Note 3)</sup>, or through consultation <sup>(Note 4)</sup> with the advisor concerning a predetermined winner of bid, agreed that a predetermined winner of bid for the project of the Subway Line No. 6 Extension Project procured by the City of Nagoya be designated as a predetermined winner of bid and that the other corporate bidders cooperate to ensure that the predetermined winner of bid be able to receive the order. Such a conduct, contrary to the public interest, substantially restrained competition in the field of trade for the Subway Line No. 6 Extension Project ordered by the City of Nagoya.

(Note 3) Refers to the former advisor to the Nagoya Branch of Obayashi Corporation and sales personnel of this branch.

(Note 4) Refers, for example, to a statement of aspiration to receive an order placed by the City of Nagoya in connection with the Subway Line No. 6 Extension Project.

### 3. Outline of the cease and desist order

- (1) Respective boards of directors of the 33 corporations shall adopt a resolution to confirm that the agreement mentioned in 2 above has ceased to exist and to ensure that they never engage in similar conduct to that described in 2 above, voluntarily and separately acting to win bids in the future.
- (2) Each of the 33 corporations shall make notification of the measures taken in accordance with (1) above to the City of Nagoya as well as to the other 32 corporations. In addition, it shall make them fully understood by its employees.
- (3) The 33 corporations, among themselves or in collaboration with any other entrepreneur, shall not determine a predetermined winner of any bid to be placed by the City of Nagoya for a set of civil engineering construction concerning the high-speed railway project in the future.
- (4) Morimoto Corporation, Takenaka Civil Engineering & Construction Co., Ltd. and Meiko Construction Co., Ltd. shall each take necessary actions to implement what is described from a. to d. below, whereas the other 30 corporations shall each take measures necessary to implement what is specified in b. below.
  - a. Formulation or revision of action guidelines on receipt of orders from the public sector for compliance with the AMA;
  - b. Regular training for relevant sales personnel on compliance with the AMA regarding the receipt of orders for sets of civil engineering construction procured by the City of Nagoya as well as periodical audits performed by legal affairs personnel;
  - c. Development or revision of regulations on disciplinary action against officers and employees involved in any violation of the AMA;
  - d. Establishment or revision of effective internal notification or investigation systems, including indemnification, etc. for those reporting any violation of the AMA and those subject to internal investigations.

### 4. Due date of surcharge payment

February 13, 2008

◆ Application of the leniency program

In this case, one enterprise was granted immunity from surcharge payment.

The JFTC decided to take a policy that it would publish at the JFTC's website (<http://www.jftc.go.jp/dk/genmen/kouhyou.html>) names, places of head offices and representative directors of enterprises that were granted lenient treatment, along with information on immunity from or percentage of deduction of surcharge applied for each applicant in accordance with the leniency program, if such enterprises asks the JFTC to publish them.

The reason why the JFTC has decided to reveal them based on such a request is that public entities, including the Ministry of Land, Infrastructure and Transport, made it clear that such enterprises could enjoy advantages that a period of debarment from participation in bids for public works would be significantly shortened, and so on.