

JFTC Reviews the Proposed Acquisition of Shares in the Newly Established Manufacturing Subsidiary of  
NIPPON CHUTETSUKAN K.K. by Kubota Corporation (Overview)  
(Tentative Translation)

## **I. The Parties**

Kubota and NIPPON CHUTETSUKAN are both engaged in the manufacture and sale of ductile iron pipes.

The abbreviations of the Parties, etc. are shown in the table appendix.

## **II. Outline of the Case and Applicable Provisions**

In this case, Kubota plans to acquire 19.9% of the voting rights in the shares of the Newly Established Manufacturing Subsidiary (hereinafter referred to as the “Transaction”).

The applicable provision is Article 10 of the Antimonopoly Act.

## **III. Background of the Review, etc.**

Although the Transaction does not meet the notification requirements stipulated in Article 10, Paragraph 2 of the Antimonopoly Act, the Parties consulted with the JFTC, presenting the specifics of their business combination plan. In response, the JFTC reviewed the Transaction in accordance with Section 6 (1) of the “Policies Concerning Procedures of Review of Business Combination” (June 14, 2011), applying principles as equivalent to those for business combinations that require notification. As a result of the review, based on the premise that the Parties would implement their proposed remedies, the JFTC concluded that the Transaction would not substantially restrain competition in any particular field of trade.

Since the Parties made specific claims regarding efficiency improvements through the reduction of carbon dioxide emissions caused by the Transaction, the JFTC assessed them in line with the “Guidelines Concerning the Activities of Enterprises, etc. Toward the Realization of a Green Society Under the Antimonopoly Act” (March 31, 2023) (hereinafter referred to as the “Green Guidelines”).

## **IV. Subject of Review**

Ductile iron pipes are iron pipes made of ductile cast iron, and are mainly used as water pipes for water supply applications. They are classified into small diameter pipes (50 mm to 250 mm), medium diameter pipes (300 mm to 800 mm), and large diameter pipes (900 mm or larger) according to the pipe diameter.

The Parties plan that Kubota will only outsource certain manufacturing processes for small diameter ductile iron pipes to the Newly Established Manufacturing Subsidiary, whereas NIPPON CHUTETSUKAN will outsource all manufacturing processes for all diameter ductile iron pipes to it, and each of the Parties Group will individually conduct sales activities after the Transaction.

In this case, since the Transaction will form, maintain and reinforce an indirect joint relationship between the Parties through the Newly Established Manufacturing Subsidiary, there is a possibility that a coordinated relationship will arise between the Parties with respect to small diameter ductile iron pipes of

which both the Parties will outsource the manufacturing to the Newly Established Manufacturing Subsidiary. The Transaction therefore constitutes a horizontal business combination regarding the manufacture and sale of small diameter ductile iron pipes.

## **V. Definition of a Particular Field of Trade**

### **1. Scope of Products**

Pipes used as water pipes for water supply applications consists of polyethylene pipes, PVC pipes, and steel pipes as well as ductile iron pipes. However, ductile iron pipes and other pipes constitute different product range because of differences in earthquake resistance, price, usage records, and manufacturing facilities.

In addition, small, medium, and large diameter ductile iron pipes constitute different product range because of differences in flow rate and water pressure of water flowing inside and manufacturing facilities.

The JFTC therefore defined the scope of products as “small diameter ductile iron pipes.”

### **2. Geographic Scope**

Manufacturers of small diameter ductile iron pipes sell the products throughout Japan, and sales prices and transportation difficulties do not vary by region.

The JFTC therefore defined the geographic scope as “all regions of Japan.”

## **VI. Impact of the Transaction on Competition**

### **1. Type of Business Combination**

As described in Section IV above, the Transaction constitutes a horizontal business combination in the manufacture and sale of small diameter ductile iron pipes in all regions of Japan.

### **2. Horizontal Business Combination (Small Diameter Ductile Iron Pipes)**

#### **(1) Substantial Restraint on Competition by Unilateral Conduct**

While the JFTC noted that the Parties Group holds a high combined market share of approximately 70%, that import and entry pressure is negligible, and that competitive pressure from customers is limited, the JFTC did not find that the Transaction would substantially restrain competition in the particular field of trade through unilateral conduct by the Parties, taking into account the following:

- (a) The ability of the competitor (with approximately 30% market share) to constrain the Parties Group’s price rise is recognized to a certain degree;
- (b) On the premise of the remedies described in the Section VII below, the scope of Kubota’s manufacturing outsourcing is limited to certain manufacturing processes for small diameter ductile iron pipes, and thus, a certain degree of competition is likely to take place between the Parties;
- (c) A considerable amount of switching from small diameter ductile iron pipes to polyethylene pipes has occurred, and given the competitive situation in the market for polyethylene pipes for water

supply applications, a certain degree of competitive pressure from the adjacent market is recognized; and

(d) The Transaction would increase efficiencies, as described below.

With regard to the efficiencies<sup>[1]</sup> mentioned at (d) above, the JFTC examined, the Parties' internal documents and the reduction in carbon dioxide emissions specifically calculated by the Parties in accordance with the Green Guidelines<sup>[2]</sup>. The Parties Group plans to replace the current cupola furnaces with electric furnaces at the Newly Established Manufacturing Subsidiary after the Transaction to manufacture ductile iron pipes with lower carbon dioxide emissions. The JFTC found the efficiency improvement because all three requirements of "efficiencies" are satisfied as follows: (i) one of the Parties alone would not have been able to realize the early introduction of electric furnaces, and the introduction of electric furnaces was decided on the premise of the Transaction, which therefore means that the reduction in carbon dioxide emissions is considered an efficiency improvement specific to the Transaction; (ii) the electric furnaces were already ordered, and the switch to the electric furnaces is expected to reduce carbon dioxide emissions by a considerable amount compared to the conventional methods, making the efficiency improvement feasible; and (iii) the substantial reduction in carbon dioxide emissions is regarded as an improvement in quality<sup>[3]</sup>, and the consumer welfare will be increased.

## **(2) Substantial Restraint on Competition by Coordinated Conduct**

It is undeniable that even pre-Transaction, market participants can easily predict each other's actions in the market for the manufacture and sale of small diameter ductile iron pipes. This is because the products are homogeneous, the demand for renewal of water supply pipes, which is the main application, is relatively easy to predict and the room for technological innovation is considered to be small, and there has been no significant change in the market shares of the Parties Group and the competitor over the past several years. In addition, after the Transaction, the incentive for the Parties Group and the competitor to engage in coordinated conduct will be greater because the number of manufacturers will be decreased from three to two and the manufacturing costs in the certain processes outsourced by Kubota will be common between the Parties.

However, on the premise of the remedies described in Section VII below, the JFTC did not find that

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<sup>1</sup> "Efficiency is determined from the following three aspects: (i) improvement in efficiency should be an effect specific to the business combination; (ii) improvement in efficiency should be feasible; and (iii) improvement in efficiency should enhance the interests of users." (Green Guidelines Part IV, 2(2)C(A)(I))

<sup>2</sup> "In many cases, the activities of enterprises, etc. toward the realization of a green society are not intended to restrain fair and free competition among them but rather have pro-competitive effects such as promoting the creation of new technologies and excellent products." "Excellent products" may also include products that contribute to reducing greenhouse gases during the production ... of the product ... (Green Guidelines, Introduction, 2). "If a business combination toward the realization of a green society is likely to generate pro-competitive effects such as ... the creation of new products that can contribute to reduction of greenhouse gas, the business combination will also be highly regarded from the aspect of "efficiency" (Green Guidelines Part IV, 2(2)C(A)(I)).

<sup>3</sup> Green Guidelines Part I, 1 (Supposed case 5) states, "If it is clear that greenhouse gas emissions can be significantly reduced by changing manufacturing process, it is considered an improvement in quality, even if there is no direct change in the value in use for consumers, and it is recognized to have a competition promotion effect."

the Transaction would substantially restrain competition in the particular field of trade through coordinated conduct by the Parties Group and the competitor because a certain degree of competition would take place between the Parties, and a certain degree of competitive pressure from the adjacent market and the efficiency improvement were recognized.

### **(3) Summary**

As discussed above, on the premise that the remedies described in Section VII below will be implemented, the JFTC did not find that the Transaction would substantially restrain competition in the particular field of trade through unilateral conduct of the Parties Group or coordinated conduct with the competitor.

## **VII. Remedies Proposed by the Parties and Assessment of Them**

### **1. Overview of Remedies**

The Parties proposed the following remedies:

- (a) The scope of the manufacturing outsourcing shall be that as set out in Section IV above;
- (b) The Parties shall take measures such as access restrictions and transfer restrictions to eliminate concerns on sharing of sensitive information between the Parties through the Newly Established Manufacturing Subsidiary; and
- (c) For the purpose of monitoring the implementation of the measures described in (b) above, the Parties shall appoint, subject to the JFTC's approval, a third party who is independent of the Parties Group and possesses expertise as a monitoring trustee, and shall not consummate the Transaction until the monitoring trustee is appointed.

### **2. Assessment of Remedies**

On the premise that the remedies mentioned at 1 above will be implemented, the concerns on the sharing of sensitive information between the Parties through the Newly Established Manufacturing Subsidiary will be addressed, and thus, sales competition between the Parties is considered to be maintained.

## **VIII. Conclusion**

Based on the above, the JFTC did not find that the Transaction would substantially restrain competition in any particular field of trade.

Appendix: Abbreviations of the Parties, etc.

Kubota Corporation	Kubota
A group of companies that have already formed a joint relationship with Kubota as the ultimate parent company	Kubota Group
NIPPON CHUTETSUKAN K.K.	NIPPON CHUTETSUKAN
A group of companies that have already formed a joint relationship with NIPPON CHUTETSUKAN as the ultimate parent company	NIPPON CHUTETSUKAN Group
Kubota and NIPPON CHUTETSUKAN	Parties
A group of companies comprised of Kubota Group and NIPPON CHUTETSUKAN Group	Parties Group
A manufacturing subsidiary established by NIPPON CHUTETSUKAN spinning off its ductile iron pipe manufacturing plant	Newly Established Manufacturing Subsidiary