

Hub-and-Spoke Cartel Cases

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Hub-and-Spoke Cartel Cases

- Experience in Japan where officials of the procurement agency have acted as a hub -

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“Communication of Intention” has to be verified to prove a cartel

◆ **“Unreasonable restraint of trade” (Anti-monopoly Act or AMA sec.2 ⑥)**

1. Business activities, by which any enterprise, by contract, agreement or any other means irrespective of its name, **in concert with other enterprises, mutually restrict** or conduct their **business activities** in such a manner as to fix, maintain or increase prices, or to limit production, technology, product facilities or trade counterparties,
2. Thereby causing a substantial restraint of competition in any particular field of trade

➤ **“Communication of Intention”** has to be verified in addition to concerted activities.

□ **Tokyo high court decision in 1995: Toshiba Chemical Corporation case**

- Communication of Intention means that “an enterprise **recognizes or predicts** the implementation of the same or similar kind of price increases among enterprises and accordingly, **intends to collaborate** with such a price increase.

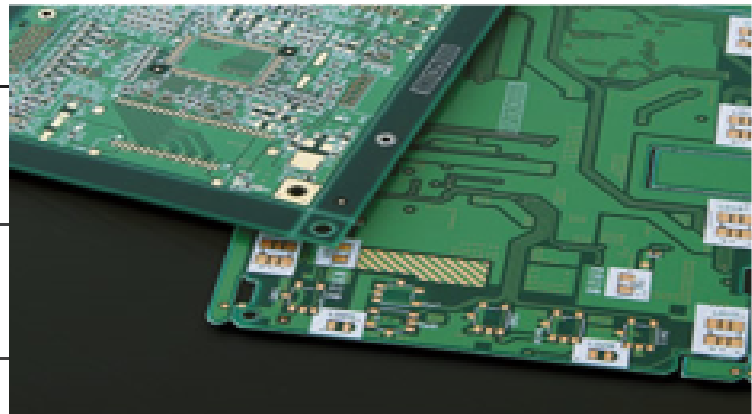


How is a hub-and-spoke cartel proven in the AMA?

- Whether a hub-and-spoke cartel is acknowledged as illegal conduct or not rests on whether the existence of ‘communication of intention’ among competitors is proved or not.
- Toshiba Chemical Corporation case introduced an effective solution to show the existence of communication of intention ; the “**presumption method**”
- Tokyo High Court decision in 2008 of the “**Toshiba and NEC case**” where officials of the procurement agency acted as a hub.



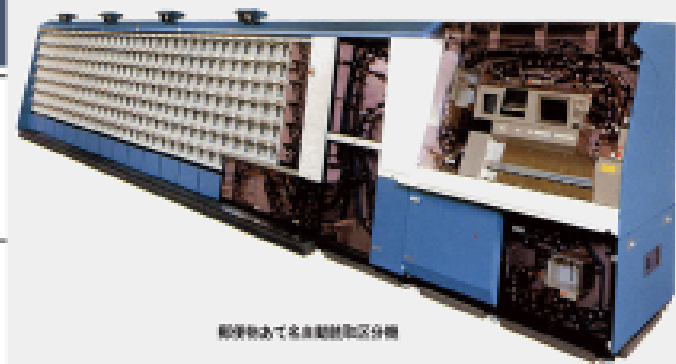
Toshiba Chemical Corporation case in 1995



Date of court decision	September 25, 1995 (Decision of the Tokyo High Court)
Number of violators	8 companies (only Toshiba Chemical claimed the case)
Products	paper phenol copper clad laminates
Findings (At a special meeting on June 10, 1987)	<ul style="list-style-type: none"> ➤ 8 companies exchanged opinions on raising the price and, out of the eight companies, the three largest initially declared that they would raise prices, while the remaining five (including Toshiba Chemical) were requested to follow the largest three. The five companies did not express an opinion opposing the request.
Overview of the decision	<ul style="list-style-type: none"> ➤ If an enterprise exchanges information about price increases with other enterprises and accordingly, does the same or a similar act with them, the court may presume that 'communication of intention' exists unless there is a special fact which showed that they undertook a price increase based on an independent judgment irrespective of the acts of other enterprises".

Toshiba and NEC case in 2008

Date of court decision	December 19, 2008 (Decision of the Tokyo High Court)
Number of violators	2 companies (both of them claimed the case)
Products	Automatic Postal Code Reading and Sorting Machines Ordered by the Ministry of Posts and Telecommunications
Findings (From 1980's till 1994)	<ul style="list-style-type: none">➤ Prior to the opening of each designated bidding, one of the two companies received unofficial notice on the bidding from the officials in charge.➤ Only one company which received an unofficial notice from the officials in charge participated in bidding and the other company which did not receive an unofficial notice declined to submit bids.
Overview of the decision	<ul style="list-style-type: none">➤ It could presume that at least there was a tacit communication of intention to continue the same practice as before 1994, that is only the company which received unofficial notice from the officials would participate in the bidding and receive the order.





Thank you for your kind attention.

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