Remarks as prepared for

LNG Producer-Consumer conference 2017 on

"Survey on LNG Trades"

Isao Kasubuchi

Director General

Trade Practices Department

The Japan Fair Trade Commission

Tokyo, Japan

October 18, 2017

Today, I would like to speak to you about the summary of “Survey on LNG trades”, which the JFTC published in June 2017.

First of all, let me talk about the background of this survey.

In recent years, the LNG demand and supply has changed significantly by, for example, restart of nuclear power plants, full liberalization of electricity and gas retail markets and Shale revolution in the US.

Because of those changes Japanese users of LNG such as electricity companies and gas companies have concerns that destination restrictions will unfairly prevent them from reselling LNG oversupplied in Japan to inside or outside Japan in future.

The Japanese government had decided to promote the abolishment of destination restrictions at the Cabinet meeting.

Given these changes, the JFTC has initiated the survey on LNG trades.

【Point of the Survey】

Next, I would like to talk about the key point of the survey.

In this survey, we conduct the survey for LNG sales to domestic users. We ask for domestic and foreign users and suppliers by questionnaires and interviews.

In this report, the JFTC reviewed the influence of destination restrictions on competition in the fixed-term contract market (Asian market) and in the spot contract market (World market), and focused on three points from the perspective of competition policy.

First, destination restrictions are to restrict designation and diversion of destinations by buyers.

Second, profit share clauses are to impose an obligation on a buyer to share a part of resale profit with a seller when the buyer resells LNG to third parties by means of diversion.

Third, take or pay clauses are to impose an obligation on a buyer to pay for all the contracted volume, if the buyer does not actually receive the full contracted volume.

Regarding those restrictions or clauses, the difference in terms of delivery have influence on our views on destination restrictions and profit share clauses from the perspective of competition policy. Thus, I will briefly introduce the difference in the terms of delivery.

【Terms of delivery】

There are two types of terms of delivery which are generally used in LNG trades. First one is FOB (Free On Board) term that designates a shipment port in an exporting country as the delivery point. Second one is DES (Delivered Ex Ship) term that designates a destination port in an importing country as the delivery point.

Under FOB term, destination clauses are not necessary to specify the unloading terminal that is not the delivery point.

Because buyers have properties and risks of LNG after the delivery points, namely the loading terminals in exporting countries, the restrictions on diversion by sellers are not generally considered as reasonable.

On the other hand, under DES term, destination clauses are necessary to specify the unloading terminal that is the delivery point.

Because sellers have properties and risks of LNG until the unloading terminals, "seller's consent" to diversion should be necessary.

Based on this, I will explain the JFTC's views from the perspective of competition policy.

【The JFTC's views from the perspective of competition policy】

This table summarizes our views regarding destination restrictions, profit share clauses and take or pay clauses.

White star means actions that are likely to be in violation under the Antimonopoly Act.

Black star means actions that are highly likely to be in violation under the Antimonopoly Act.

As for destination restrictions, under FOB term, providing destination clauses is likely to be in violation of the Antimonopoly Act. In addition, the restrictions on diversion as well as providing destination clauses are highly likely to be in violation of the Antimonopoly Act.

On the other hand, under DES term, providing destination clauses is not basically harmful under the Antimonopoly Act. However, if a seller refuses its consent to diversion even when a buyer's request satisfies all requirements of necessity and reasonableness from the seller, such refusals are likely to be in violation of the Antimonopoly Act. Also, when a seller, on an operational or contractual basis, requests competition-restraining requirements for diversion, such requests are highly likely to be in violation of the Antimonopoly Act.

Next one is profit share clauses.

Under FOB term, providing profit share clauses is highly likely to be in violation of the Antimonopoly Act.

On the other hand, under DES term, providing profit share clauses is not basically harmful under the Antimonopoly Act.

However, (i) when such clauses contribute to unreasonable profit sharing with a seller, or (ii) when such clauses have some effects to prevent a buyer from reselling because a seller requests for the disclosure of the profit or cost structure, these are likely to be in violation of the Antimonopoly Act.

As to take or pay clauses, providing take or pay clauses is not basically harmful under the Antimonopoly Act.

However, when a seller's bargaining position is superior to that of a buyer and the seller unilaterally imposes take or pay clauses and strict minimum purchase obligation without sufficient negotiation with the buyer even after the seller has already gained sufficient return for the initial investment, imposing strict minimum purchase obligation as well as providing take or pay clauses are likely to be in violation of the Antimonopoly Act.

【Conclusion】

Based on this report, The JFTC requests the following points to LNG sellers. LNG sellers should neither provide competition-restraining clauses nor adopt competition-restraining business practices, when LNG sellers conclude a new contract or revise a contract after the expiration. Also, LNG sellers, at least, should review competition-restraining business practices, as for the existing contracts even before the expiration.

The JFTC has heard some news about the actions to improve contractual clauses voluntarily. The JFTC welcomes these actions and expects to accelerate the further improvement.

The JFTC will keep monitoring the LNG market and enforce the Antimonopoly Act against any violations vigorously. Also, the JFTC will contribute to the further development in the LNG market.