

Consultation case related to joint activities aiming to achieve carbon neutrality by constituent enterprises of a petrochemical complex

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Japan Fair Trade Commission

The Japan Fair Trade Commission (hereinafter referred to as the "JFTC") received a consultation from Idemitsu Kosan Co., Ltd., Tosoh Corporation, Tokuyama Corporation, NIPPON STEEL Stainless Steel Corporation and Zeon Corporation (hereinafter referred to as "Idemitsu Kosan and four other companies"), which manufacture and sell petrochemical product, etc. (hereinafter referred to as "the products") at a petrochemical complex located in Shunan City, Yamaguchi Prefecture (hereinafter referred to as the "Shunan Complex") regarding joint activities aiming to achieve carbon neutrality at the Shunan Complex, and the JFTC answered that there is no problem under the Antimonopoly Act. In this regard, the JFTC has decided to publish the summary of the consultation case as it will be informative to other enterprises and trade associations (hereinafter referred to as "enterprises, etc.").

I. Summary of the consultation case

1. Summary of consultation

Idemitsu Kosan and four other companies will jointly carry out the following initiatives mainly described in (1) to (3) in order to achieve carbon neutrality in the Shunan Complex by 2050 (Note).

(Note) Carbon neutrality means “the maintenance of equilibrium between the amount of greenhouse gas emissions generated from human activities and the amount of greenhouse gas emissions absorbed through the maintenance and intensification of greenhouse gas absorption” and is to be achieved by 2050 in Japan. (Article 2-2 of the Act on Promotion of Global Warming Countermeasures)

(1) In order to switch from fossil fuels to materials including ammonia, which does not emit carbon dioxide during combustion, for the fuel used in facilities including power generation equipment to obtain the electricity necessary for manufacturing the products, they will carry out the following initiatives from (a) to (d). As a result, they are expected to reduce significant amount of carbon dioxide emission per year.

- (a) Installation and use of joint power generation equipment, etc. that use ammonia, etc. as fuel
- (b) Joint purchase of ammonia, etc. used in above (a) and joint development of a reception system
- (c) Planned disposal of power generation equipment, etc. owned by each company that become unnecessary due to above (a)
- (d) Exchange of information necessary for considering the feasibility of implementing the initiatives

in (a) to (c) above (not including information such as product prices)

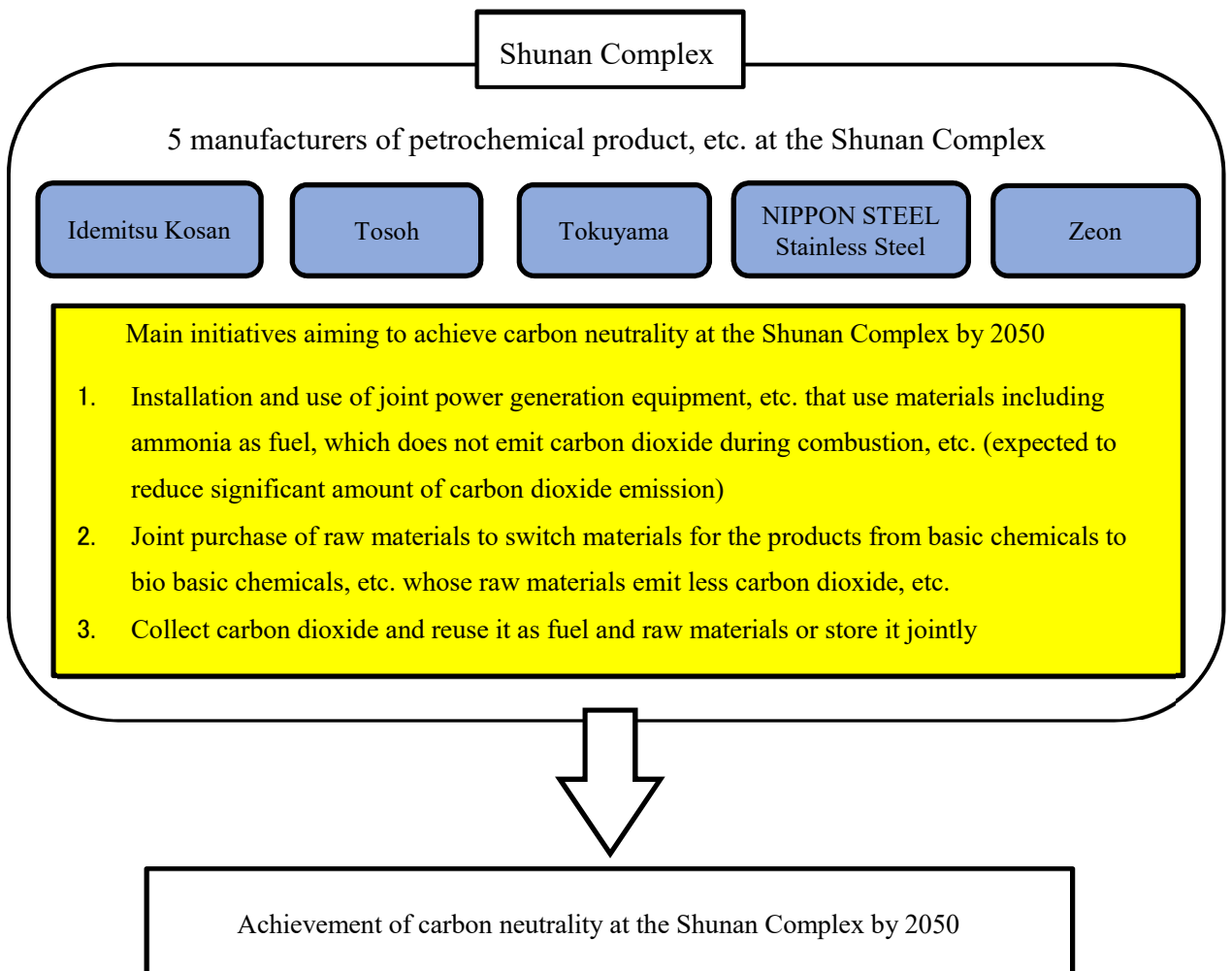
(2) In order to switch materials for the products from basic chemicals (ethylene, propylene, etc.) whose raw materials are fossil fuels, to bio basic chemicals, etc. (bio-ethylene, bio-propylene, etc.) whose raw materials (biomass, etc.) emit less carbon dioxide, they will carry out the following initiatives from (a) to (c).

(a) Joint purchase of raw materials for bio basic chemicals, etc.

(b) Joint production of bio basic chemicals, etc. using the raw materials jointly purchased in above (a)

(c) Exchange of information necessary for considering the feasibility of implementing the initiatives in (a) and (b) above (not including information such as product prices)

(3) Collect carbon dioxide emitted during product manufacturing and reuse it as fuel and raw materials or store it jointly.



2. Analysis under the Antimonopoly Act

(1) (a) Such 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, products, facilities or counterparties, thereby causing, contrary to the public interest, a substantial restraint of competition in any particular field of trade will compose an unreasonable restraint of trade (Article 2, paragraph 6 of the Antimonopoly Act) and will pose a problem under the Act. (Article 3 of the Act).

(b) 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 goods. Such activities are expected to contribute to the interests of general consumers, for example through reduction of greenhouse gas emissions. Therefore, those activities are basically unlikely to pose problems under the Antimonopoly Act most of the time.

On the other hand, if activities of enterprises, etc. have solely anti-competitive effects to restrain fair and free competition among enterprises, etc. by imposing restraints on the prices/quantities, customers/distributions, technologies/facilities, etc. of individual enterprises, those activities are likely to harm the interests of general consumers, such as by stifling innovation including the creation of new technologies, by increasing the prices of goods or services, or by degrading the quality of goods or services. Such activities pose problems under the Antimonopoly Act even where those are nominally aimed at contributing to the realization of a green society.

Furthermore, if specific activities of enterprises, etc. are considered to have anti-competitive effects as well as pro-competitive effects, whether those activities pose any problem under the Antimonopoly Act is found by comprehensively considering both types of effects generated by the activity with the rationality of the activity's purpose and the adequacy of the means employed for them (e.g., whether there are any less restrictive alternatives). (The Guidelines Concerning the Activities of Enterprises, etc., Toward the Realization of a Green Society under the Antimonopoly Act (hereinafter referred to as the "Green Guidelines", Introduction, 2. Basic concept)

(c) Among the joint activities of enterprises, etc., those activities that are not expected to have any anti-competitive effects do not pose problems under the Antimonopoly Act.

Most of the joint activities of enterprises, etc. that satisfy the following factors are considered to fall under the category of acts without anti-competitive effects: not affecting matters that constitute important means of competition including prices, not restraining entry of enterprises, and not excluding incumbents from markets. Accordingly, it is likely that, in many cases, the joint activities of enterprises, etc. toward the realization of a green society can be implemented in a manner that does not pose any problem under the Antimonopoly Act. (The Green Guidelines, Part I Joint Activities, 1

Acts that do not pose problems under the Antimonopoly Act)

(2) (a) As the joint activities described in above 1 (1) are expected to result in significant reduction of carbon dioxide emission, the initiatives mainly described in 1 (1) to (3) above carried out by Idemitsu Kosan and four other companies to achieve carbon neutrality at the Shunan Complex are recognized as the initiatives toward the realization of a green society. Based on this, the JFTC considered the case as follows.

(b) First, the JFTC considered the competitive impact of the initiatives mainly described in 1 (1) to (3) above on Japan's manufacturing and sales market for the products manufactured by Idemitsu Kosan and four other companies at the Shunan Complex.

(i) These initiatives will affect the cost of the products manufactured by Idemitsu Kosan and four other companies at the Shunan Complex. However, regarding many of the products, any problem under the Antimonopoly Act will not be posed since there is no competitive relationship among Idemitsu Kosan and four other companies for them, and anti-competitive effects by the joint activities are not expected. Therefore, a substantial restraint of competition in any particular field of trade will not be caused.

(ii) Furthermore, regarding the products manufactured by Idemitsu Kosan and four other companies at the Shunan Complex in competing with each other, though anti-competitive effects by the joint activities are expected, any problem under the Antimonopoly Act is not posed. The reason is that since the geographical markets for these products are defined as "all of Japan," etc., there are influential competitors other than Idemitsu Kosan and four other companies, or competitive pressure from users of the products concerned, etc., so a substantial restraint of competition in any particular field of trade will not be caused.

(c) Next, the JFTC examined the competitive impact of the joint purchase of ammonia, etc. under the initiative in 1 (1) (b) above and the joint purchase of biomass, etc. under the initiative in 1 (2) (a) above on the purchasing market for ammonia, etc. and biomass, etc.

(i) Power generation using ammonia, etc. as fuel and manufacturing of bio basic chemicals, etc. using biomass, etc. as raw materials are currently unestablished technologies, so the future demand and supply of ammonia, etc. and biomass, etc. are uncertain.

(ii) However, as the demand and supply of ammonia, etc. and biomass, etc. are expected to expand due to the global carbon neutral movement, competitions in the purchasing markets for ammonia, etc. and biomass, etc. are expected to become active going forward. And the amount of ammonia, etc. and biomass, etc. that are expected to be purchased in the joint activities are limited compared to the supply amount. Therefore, though anti-competitive effects by the joint activities are expected, a substantial restraint of competition in any particular field of trade will not be caused. Thus, any problem under the Antimonopoly Act is not posed.

(d) Since any initiatives mainly described in 1 (1) to (3) above carried out by Idemitsu Kosan and four

other companies are not expected to cause a substantial restraint of competition in any particular field of trade, these do not pose any problem under the Antimonopoly Act.

3. Summary of answer

Since the joint activities described in 1 (1) to (3) above carried out by Idemitsu Kosan and four other companies are intended to achieve carbon neutrality in the Shunan Complex, and the joint activities will not cause a substantial restraint of competition in the production and sales markets for the products of Idemitsu Kosan and four other companies as well as will not cause a substantial restraint of competition in the purchase markets for ammonia, etc. and biomass, etc. jointly purchased by Idemitsu Kosan and four other companies, so any joint activities do not pose any problem under the Antimonopoly Act.

In addition, even if there is a joint activity other than described in 1 (1) to (3) above, the joint activity carried out by Idemitsu Kosan and four other companies to achieve carbon neutrality at the Shunan Complex will be considered not to cause a substantial restraint on competition in any particular field of trade except in cases where it will constitute an anti-competitive conduct like a sales-price cartel of the products, as mentioned in 2 above. Thus, it does not pose any problem under the Antimonopoly Act.

II. Consultation with the JFTC

In the implementation of activities toward the realization of a green society, enterprises, etc. may choose to consult with the JFTC in advance on whether the specific activity they intend to carry out may pose any problem under the Antimonopoly Act. They may also make their own judgments in this regard by reference to the Green Guidelines, this consultation case, etc. To encourage the activities of enterprises, etc. toward the realization of a green society, the JFTC actively responds to their requests for advice in light of the Green Guidelines and this consultation case, etc. while maintaining close communication with enterprises.