

Opinions on Joint Operations of Express Buses
based on the Antimonopoly Act

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Fair Trade Commission

At the time of the publication in May 2003 on the treatment of the case of a suspected violation of the Antimonopoly Act by a bus operating company that operates express buses in the Tohoku area, the Fair Trade Commission announced that it would revise the report titled ‘Consultation Concerning General Passenger Transport Business Using Buses ’ issued in July 1997 (hereinafter referred to as the ‘1997 Opinion ’).

The Fair Trade Commission recently put together the ‘Opinion on the Joint Operations of Express Buses Based on the Antimonopoly Act ’ (hereinafter referred to as the ‘Current Opinion ’).

1. Background

The 1997 Opinion was an opinion based on the Antimonopoly Act about certain cases involving the joint management of a general bus business, which can be carried out without obtaining an agreement as provided in Paragraph 1 of Article 19 of the Road Transport Law, based on the systems and conditions then prevailing, when the scope of cartels exempted from the application of the Antimonopoly Act based on the Land Transport Law was narrowed in 1997.

The 1997 Opinion said that joint operations for which entrepreneurs coordinate fares, charges, and the frequency and system of operations pose a problem in view of the Antimonopoly Act in principle. However, with respect to the joint operations of express buses, it stated that, ‘Where an entrepreneur has difficulty beginning business on its own because it is difficult for the entrepreneur to bear itself the cost involved in the initial investment in facilities and equipment, etc. (examples here would include buses with express systems connecting cities with limited bus stops and system operations with a length of more than about 50 kilometers), an agreement on joint management to open a new route, excepting agreements involving the division of routes and markets, will not become a problem based on the Antimonopoly Act. ’

After 1997, however, control over the adjustment of supply and demand was abolished through the introduction of the revised Road Transport Law in February 2002, and a change in the competitive environment and certain new entries have been seen in the express bus business. In this environment, acts with the potential to lead to the exclusion of new entrants were conducted in May 2003. In light of the foregoing, we have decided to make clear cases that do not pose any problem in view of the Antimonopoly Act in principle, with respect to the part of the 1997 Opinion that pertains to the joint operation of express buses.

2. Gist of the viewpoint about the joint operations of express buses based on the Antimonopoly Act

We have made the following clarifications in the Current Opinion.

- A. The 1997 Opinion did not touch upon the acts, etc. of entrepreneurs that participated in joint operations that dealt with new market entrants. We therefore made it clear that, with respect to joint operations not considered problematic under the Antimonopoly Act in principle, if entrepreneurs participating in the joint operations jointly, conducted for example acts to exclude business activities through dealing with new entrants, acts to prevent new entrants such as failing to agree to the use of bus pods (denoting bus stations set up in front of railway stations) by the new entrants without due cause, or acts to unduly restrain an entrepreneur from withdrawing from the existing agreement and setting up new operations on its own, these acts would pose a problem in view of the Antimonopoly Act.
- B. The 1997 Opinion did not make it clear which cases are considered cases in which an entrepreneur will have difficulty in beginning business on its own. Therefore, the Current Opinion illustrates by example specific cases in consideration of the actual conditions of express buses.
- C. The 1997 Opinion only touched on cases in which an entrepreneur that has difficulty in beginning business on its own opens a new route. But the thinking concerning the change in circumstances that would make it possible for an entrepreneur to operate on its own was not necessarily clear. Therefore, the Current Opinion made it clear that, if it continues to be difficult for an entrepreneur on its own to maintain the route in question after a new route is opened, there will be no problems in view of the Antimonopoly Act.

- D. The 1997 Opinion did not place any limitation on the scope of agreements concerning joint operations that are not problematic under the Antimonopoly Act. Therefore, the Current Opinion made it clear that agreements, not exceeding the necessary scope according to the special nature of express buses described above, are not problematic under the Antimonopoly Act in principle.
- E. Based on the Current Opinion, cases that are considered problematic under the Antimonopoly Act will be judged based on the general theory of the Antimonopoly Act. Therefore, at the outset of the Current Opinion, the general theory is shown, and it is stated for confirmation that fare pooling, by which pooled fares will be divided in proportion to the frequency of operations, constitutes the restraint on fares mentioned in the general theory.

3. Future measures taken by the Fair Trade Commission

When problems arise based on the Antimonopoly Act, including acts to prevent market entry in connection with the joint operations of express buses, the Fair Trade Commission will strictly deal with them to facilitate the smooth new entries to express bus routes and the promotion of fair and free competition in the express bus business in line with the purpose of deregulation.

The Fair Trade Commission will also actively approach consultations concerning the joint operations of express buses, brought by bus operators, etc., as a means of preventing acts in violation of the Antimonopoly Act.