

Cease and desist order, etc. against oil product retailers
operating service stations in Oyama, Tochigi Prefecture

November 28, 2007

Japan Fair Trade Commission

The Japan Fair Trade Commission (JFTC), in accordance with the Antimonopoly Act (AMA), investigated oil product retailers operating service stations in the city of Oyama in Tochigi Prefecture and found that SHIN ENE Corporation K.K. (“Shin-ene”) and Higashi Nihon Usami Co., Ltd. (“Usami”) had committed an act in violation of the provision of Article 19 of the AMA (falling under Paragraph 6 (Unjust Low Price Sales) in the Designation of Unfair Trade Practices). Accordingly, on November 27, 2007, the JFTC issued a cease and desist order to the two entrepreneurs an order as detailed in Part II below, in accordance with the provision of Paragraph 2, Article 20 of the AMA.

On the same day, the JFTC issued a warning as detailed in Part III below to Kanto Standard Co., Ltd. (“Kanto Standard”) as it was at risk of committing a violation of the provision of Article 19 of the AMA (falling under Paragraph 6 (Unjust Low Price Sales) in the Designation of Unfair Trade Practices).

Part I. Parties concerned

1. Cease and desist order

Entrepreneur	Head Office Location	Representative
SHIN ENE Corporation K.K.	26-25, Eki Minami-cho 6-chome, Oyama, Tochigi Prefecture	Tetsuya Kobayashi, Representative Director
Higashi Nihon Usami Co., Ltd.	7-17 Tatsumi 1-chome, Koto-ku, Tokyo	Saburo Usami, Representative Director

2. Warning

Entrepreneur	Head Office Location	Representative
Kanto Standard Co., Ltd.	2-3 Chuo-cho, Oyama, Tochigi Prefecture	Shigeru Tsukahara, Representative Director

Part II. Cease and Desist Order

1. Summary of the violation

- (1) a. Shin-ene sells gasoline to general consumers, operating three service stations in the city of Oyama in Tochigi Prefecture: the Express Oyama Service Station, the Plaza Oyama Service Station and the Express Oyama Minami Service Station. Shin-ene sets gasoline selling prices at the three service stations ensuring that one of the three stations sells gasoline at a lower price than any other service station in the city. To attract customers, each service station displays its gasoline selling price at the front of the station to make it known to general consumers.
- b. Usami sells gasoline to general consumers, operating three service stations in Oyama: the New Route 4 Oyama Bypass Service Station, the New Route 4 Oyama Minami Service Station and the Route 4 Oyama Kita Service Station. In consideration of services offered at these respective three service stations, it sets gasoline selling prices at each of these stations ensuring that one of the three stations sells gasoline at a price that is about one yen higher than the lowest selling price in the city. For the purpose of attracting customers, each service station displays its gasoline selling price at the front of the station to make it known to general consumers.
- (2) On June 18, 2007, Usami reduced the gasoline selling price at the Route 4 Oyama Kita Service Station to the previous day's selling price at the three stations run by Shinene. Since then, Shin-ene and Usami repeatedly and alternately lowered their respective selling prices. As a result,
 - a. Shin-ene sold gasoline at all the three service stations specified in (1)-a. above at prices up to more than 10 yen below its purchase price, inclusive of the transport cost, for a period of 37 days from June 28, 2007 to August 3, 2007.
 - b. Usami sold gasoline at the New Route 4 Oyama Bypass Service Station and the Route 4 Oyama Kita Service Station at prices up to more than 10 yen below its purchase price for a period of 37 days from June 28, 2007 to August 3, 2007 and at the New Route 4 Oyama Minami Service Station for a period of 36 days from June 28, 2007 to August 2, 2007.
- (3) The above-mentioned acts conducted by Shin-ene and Usami were found tending to make it difficult to do business activities for oil product retailers other than the two entrepreneurs in the city of Oyama.

2. Summary of the Cease and Desist Order

(1) Shin-ene

a. shall adopt the following resolutions at its board of directors meeting;

(a) A resolution to confirm that it has ceased the act of selling gasoline at any price lower than the purchase price inclusive of the transport cost, which was conducted at its three service stations, namely the Express Oyama Service Station, the Plaza Oyama Service Station and the Express Oyama Minami Service Station, from June 28, 2007 to August 3, 2007

(b) A resolution to conduct no act similar to that specified in (a) in the future

b. shall take necessary measures to make known to oil product retailers and general consumers its action taken in accordance with a. above, including by displaying a notice of such action for thirty days at the front of the three service stations listed in a.-(a) above; and

c. shall not conduct any act similar to that specified in a.-(a) above in the future.

(2) Usami

a. shall adopt the following resolutions at its board of directors meeting;

(a) A resolution to confirm that it has ceased the act of selling gasoline at any price lower than the purchase price, which was conducted at its two service stations, namely the New Route 4 Oyama Bypass Service Station and the Route 4 Oyama Kita Service Station, from June 28, 2007 to August 3, 2007, and at the New Route 4 Oyama Minami Service Station from June 28, 2007 to August 2, 2007.

(b) A resolution to conduct no act similar to that specified in (a) in the future

b. shall take necessary measures to make known to oil product retailers and general consumers its action taken in accordance with a. above, including displaying a notice of such action for thirty days at the front of the three service stations listed in a.-(a) above; and

c. shall not conduct any act similar to that specified in a.-(a) above in the future.

Part III. Warning (outline of the warning)

It has been found that Kanto Standard continuously sold gasoline at prices lower than the purchase price at a service station located in Oyama called the Oyama New Route 4 Service Station for 34 days from July 1, 2007 to August 3, 2007 and at another station called the Oyama Higashi Service Station for 29 days from July 1, 2007 to July 27, 2007. This conduct is suspected of causing tendency to make it difficult to do business activities for other oil product retailers located in Oyama and may violate the provision of Article 19 of the AMA (falling under Paragraph 6 (Unjust Low Price Sales) in the Designation of

Unfair Trade Practices). The JFTC therefore warned Kanto Standard not to conduct any such an act in the future.

Past Similar Cases

(1) Cease and desist orders and recommendations (against cases of sales of unjustly low prices conducted by retailers)

Case Date of Action (Date of Hearing Decision)	Descriptions
Action No. 3 of 2006 against Hamaguchi Sekiyu Y.K. Cease and desist order on May 16, 2006	For the purpose of eliminating other major oil product retailers with high sales volumes in the Tanabe district, Hamaguchi Sekiyu Y.K. continuously sold gasoline at two service stations in the district at prices lower than the purchase price or than the total amount of the purchase price and personnel and other sales expenses. This conduct was suspected of causing tendency to make it difficult to do business activities for other oil product retailers that had service stations in the district.
Recommendation No. 4 of 1982 against The Maruetsu, Inc. Recommendation on May 11, 1982 (May 28, 1982)	At the stores located in Matsudo of Chiba Prefecture, The Maruetsu, Inc. and Hellomart Co., Ltd. continuously sold milk at prices that were significantly lower than the purchase price and caused tendency to make it difficult to do business activities for specialized milk dealers that owned stores in the trading areas covered by the stores concerned.
Recommendation No. 5 of 1982 against Hellomart Co., Ltd. Recommendation on May 11, 1982 (May 28, 1982)	

(2) Warnings (against cases of sales at unjustly low prices conducted by oil product retailers since 2000)

Case Date of Warning	Descriptions
Warning against Ams Energy May 18, 2006	Ams Energy sold gasoline at its service stations in the Tanabe district at prices lower than the total amount of the purchase price and the sales expenses or than the purchase price alone. This conduct was suspected of causing tendency to make it difficult to do business activities for oil product retailers located in the surrounding areas of the service stations in question.
Warning against Hamaguchi Sekiyu Y.K. December 17, 2003	Hamaguchi Sekiyu Y.K. continuously supplied regular gasoline at a price that was substantially lower than the cost required for the supply at its service stations located in Arida-gun, Wakayama Prefecture. This act was suspected of causing tendency to make it difficult to do business activities for oil product retailers located in the surrounding areas of the service stations in question.
Warning against Ishibashi Sekiyu Co., Ltd. December 17, 2003	Ishibashi Sekiyu Co., Ltd. supplied regular gasoline at an unreasonably low price at its service stations in Arida-gun, Wakayama Prefecture. This conduct was suspected of causing tendency to make it difficult to do business activities for oil product retailers located in the surrounding areas of the service stations in question.

<p>Warning against Kakimotozekiyu Co., Ltd. March 27, 2002</p>	<p>Kakimotozekiyu Co., Ltd. continuously sold regular gasoline and premium (high-octane) gasoline at prices substantially lower than the cost required for selling them at its service stations located in Owani-machi, Minami Tsugaru-gun, Aomori Prefecture. This conduct was suspected of causing tendency to make it difficult to do business activities for oil product retailers located in the surrounding areas.</p>
<p>Warning against Shin Nihon Energy Co., Ltd. August 6, 2001</p>	<p>Shin Nihon Energy Co., Ltd. continuously sold regular gasoline and premium (high-octane) gasoline to customers, who hold memberships to pay by cash, at prices substantially lower than the cost required for selling them at its service stations located in Oyama, Tochigi Prefecture. This conduct was suspected of causing tendency to make it difficult to do business activities for oil product retailers located in the surrounding areas.</p>