

Survey on LNG Trades

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UCWG BOS 4: 10:30-11:45

-Unilateral conducts in highly capital intensive industries-

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LNG (Liquefied Natural Gas) Project

- An LNG Project is, the business plan of an oil company regarding LNG production and sales, and the business activities based on the plan.

LNG supply chain

- LNG trade needs a chain of processes:



Natural gas production
in gas field



Liquefaction
at a loading terminal



Transportation
by LNG ship



Regasification
at an unloading terminal



Transportation
to final consumption area

Large initial investment

- To establish an LNG supply chain,
 - i. Oil companies need to invest in production facilities of gas field and loading terminals. This requires a large initial investment.
 - ii. Electricity and gas companies need to invest in unloading terminals.₁

Objectives: Recent changes in the demand and supply of LNG

- Restart of nuclear power plants and future diversification of energy mix
- Full liberalization of electricity and gas retail market
- Economic growth in Asia
- The development of unconventional natural gas (Shale revolution)

Survey Methods

- Subject: LNG sales to domestic users, etc.
- Survey period: July 2016 to May 2017
- Methods: Questionnaires and interviews
 - Questionnaires
14 domestic users (Total share: approx. 96%), 32 domestic and foreign suppliers (approx. 95%), 6 foreign users
 - Interviews
17 users (14 domestic and 3 foreign), 10 suppliers (3 domestic and 7 foreign), 4 others

I. Destination Restrictions

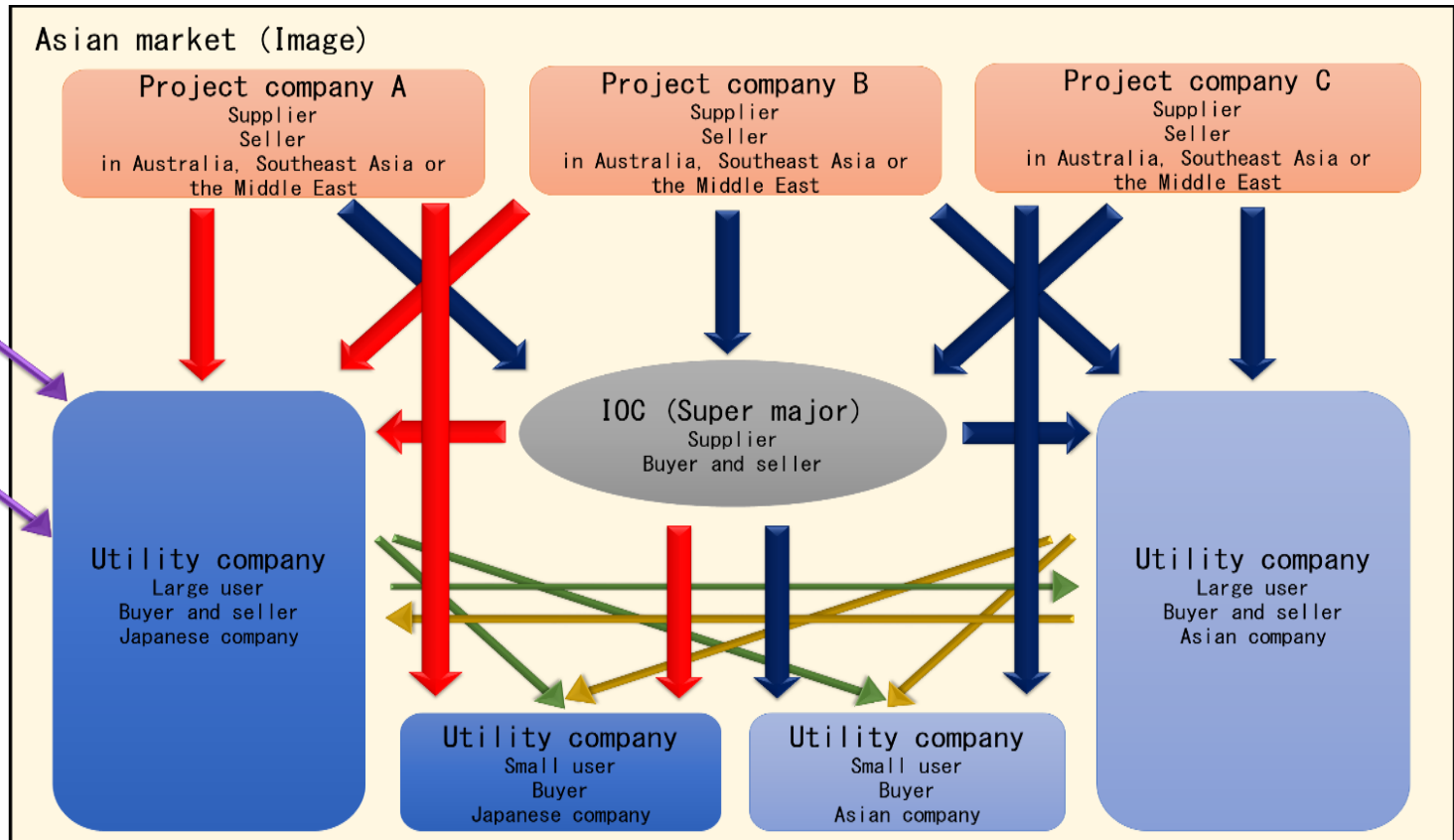
- Restrictions on designation and its diversion by buyers






II. Profit Share Clauses

- Clauses that obligates a buyer to share a part of resale profit with a seller when the buyer resells LNG to third parties by means of diversion

III. Take or Pay Clauses

- Clauses that obligates a buyer to pay for all the contracted volume, even if the buyer does not actually receive the full contracted volume

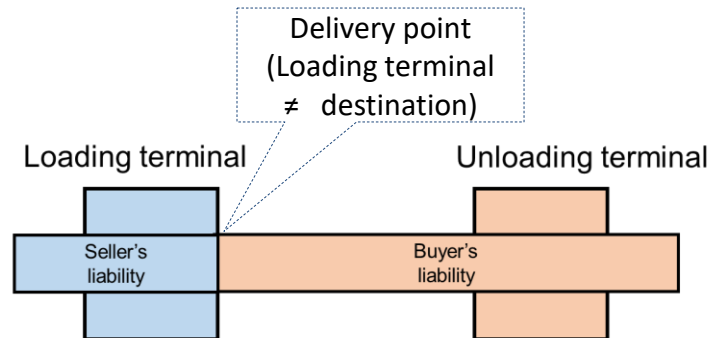


-  Fixed-term sales contract to Japan
-  Fixed-term sales contract to countries excluding Japan
-  Fixed-term and spot sales contract by sellers in non-Asian market
-  Fixed-term and spot sales contract by Japanese users
-  Fixed-term and spot sales contract by non-Japanese Asian users

Transportation
Liability, the
Burden of
Expenses and Risk,
and Property

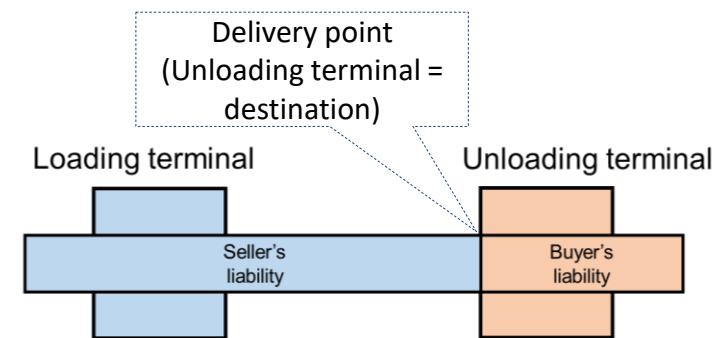
Necessity and
Reasonableness

FOB (Free on Board)



- Destination clauses are not necessary to specify the unloading terminal, which is not the delivery point.
- Because buyers have property and risks of LNG after the delivery points, the restrictions on diversion by sellers are not generally considered as reasonable.

DES (Delivered Ex-Ship)



- Destination clauses are necessary to specify the unloading terminal, which is the delivery point.
- Because sellers have property and risks of LNG until the unloading terminals, “seller’s consent” to diversion is necessary.

6 From the Perspective of Competition Policy

(i) Destination Restrictions

Actions that may lead to competitive concerns

FOB

DES

- ☆ Providing destination clauses (Unfair Trade Practices: Trading on Restrictive Terms)
- ★ The restrictions on diversion as well as providing destination clauses (Unfair Trade Practices: Trading on Restrictive Terms)

- Necessary and reasonable restrictions are not basically harmful under the AMA. However, they may lead to competitive concerns,
- ☆ when the seller refuses to consent on diversion, even if the buyer's request meets all requirements of necessity and reasonableness (Unfair Trade Practices: Trading on Restrictive Terms)
 - ★ when the seller, on an operational or contractual basis, requests competition-restraining requirements for diversion (Unfair Trade Practices: Trading on Restrictive Terms)

☆ : Actions that are likely to be in violation under the AMA.

★ : Actions that are highly likely to be in violation under the AMA.

6 From the Perspective of Competition Policy

(ii) Profit Share Clauses

Actions that may lead to competitive concerns

FOB

DES

★ Providing profit share clauses
(Unfair Trade Practices:
Trading on Restrictive Terms)

Providing profit share clauses is not basically harmful under the AMA. However, they may lead to competitive concerns,

☆ (i) when such clauses contribute to unreasonable profit sharing with the seller, or (ii) when such clauses have some effects to prevent a buyer from reselling because the seller requests for the disclosure of the profit or cost structure (Unfair Trade Practices: Trading on Restrictive Terms)

☆ : Actions that are likely to be in violation under the AMA.

★ : Actions that are highly likely to be in violation under the AMA.

6 From the Perspective of Competition Policy

(iii) Take or Pay Clauses

Actions that may lead to competitive concerns

Providing Take or Pay clauses is not basically harmful under the AMA. However, they may lead to competitive concerns,

☆when the seller's bargaining position is superior to that of the 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 (Unfair Trade Practices: Abuse of Superior Bargaining Position)

☆ : Actions that are likely to be in violation under the AMA.

★ : Actions that are highly likely to be in violation under the AMA.

- The JFTC requests the following points to LNG sellers:
 - When LNG sellers conclude a new contract or revise a contract after its expiration, they should neither provide competition-restraining clauses nor adopt competition-restraining business practices.
 - As for the existing contracts before the expiration, LNG sellers should at least review the competition-restraining business practices.
- The JFTC will keep monitoring the LNG market and vigorously enforce the AMA against any violations.

Thank You!

ご清聴有り難うございました

For more information, please visit



<http://www.jftc.go.jp/en/pressreleases/yearly-2017/June/170628.html>



“DOKKIN”

(JFTC's official mascot character)