Chinese Petroleum Corporation

1454th Commissioners' Meeting (2019)

Case: CPC was complained for violating the Fair Trade Law for giving industrial users discounts on pipeline use expenses
Keyword(s): Public natural gas enterprise, quantity discount
Reference: Fair Trade Commission Decision of September 18, 2019 (the 1454th Commissioners' Meeting)
Industry: Gas Supply (3520)
Relevant Law(s): Articles 9, 20 and 46 of the Fair Trade Law

Summary:

1. The FTC received complaints against Chinese Petroleum Corporation, Taiwan (hereinafter referred to as "CPC") regarding its returning the "gas consumption volume deposit" to industrial users up to the equivalent of an NT$0.8333 discount per cubic meter, higher than the NT$0.46 per cubic meter gross profit of private natural gas businesses. In addition, the quantity discount given was illegitimate enticement. As a result, the informer was unable to compete with CPC.

2. Findings of the FTC after investigation and grounds for disposition:

(1) CPC was the one and only natural gas importer and producer in the country and sold it to power companies, public natural gas enterprises, industries and cogeneration businesses. According to the Natural Gas Enterprise Act, the rates for different types of users had to be approved by the Bureau of Energy. Meanwhile, public natural gas businesses could also sell natural gas to industrial users. Therefore, CPC and 24 other public natural gas businesses had vertical transaction and horizontal competition relations on the industrial natural gas market.

(2) Natural gas consists of methane which is lighter than air. Both the boiling point and flash point of methane are below -160℃. Natural gas has to be transported with pipelines. The production process, components, physical and chemical characteristics, storage devices, convenience of use, market segmentation and conversion barriers, and price decision of natural gas are all different from those of bottled gas. In this case, the product market was defined as the industrial natural gas market and the geographic market is the island.

(3) In 2018, CPC accounted for 44.60% of the industrial natural gas market. The figure did not meet the threshold set forth in Article 8 of the Fair Trade Law for the FTC to consider CPC a monopolistic enterprise while the company also had not engaged in anything to be regarded as abusing its market power. At the same time, the deposit CPC returned belonged to each user who had paid in advance. It was not deducted from the amount charged by CPC. At the same time, the quantity discount CPC gave industrial users was part of the selling price. According to the law, the discount shall be regulated by the competent authority and the Fair Trade Law was not applicable. CPC gave price quotations to specific users that the informer complained about, but the actual selling price was still higher than the gas-purchasing price of the informer after the quantity discount was subtracted. In other words, no measures were taken to entice trading counterpart as described in Article 20 of the Fair Trade Law.

(4) As specified in Article 46 of the Fair Trade Law, when other laws apply to the competition conduct of an enterprise and do not conflict with the legislative purposes of the Fair Trade Law, such other laws shall prevail. Since it is already set forth in Article 33 of the Natural Gas Enterprise Act that a natural gas utility enterprise has to present the price of the natural gas it produces or imports to the central competent authority for approval and this regulation does not conflict with the Fair Trade Law, the pricing practices of CPC shall be regulated by Natural Gas Enterprise Act. In addition, the current natural gas market was a market of free competition and CPC's share of the industrial natural gas market was declining year after year. Based on existing evidences, the FTC found it difficult to conclude CPC's practice of returning the deposit to its customers was in violation of the Fair Trade Law.

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