

BASF Taiwan Ltd.

1461st Commissioners' Meeting (2019)

Case: BASF Taiwan was complained for violating the Fair Trade Law for discontinuing supply and treating certain businesses discriminatively

Keyword(s): Acrylic resin, dispersant

Reference: Fair Trade Commission Decision of November 6, 2019 (the 1461st Commissioners' Meeting)

Industry: Manufacture of Chemical Material (1810)

Relevant Law(s): Article 20 of the Fair Trade Law

Summary:

1. BTC Chemical Corp. (hereinafter referred to as "BTC") filed with the FTC a complaint accusing BASF Taiwan Ltd. (hereinafter referred to as "BASF Taiwan") of terminating its distributorship early and refusing to accept its orders for dispersant products. At the same time, BASF Taiwan also gave another distributor, Tye Han Trading Co., Ltd. (hereinafter referred to as "Tye Han Trading"), lower prices to help Tye Han Trading take away BTC's market. BTC thought the practices of BASF Taiwan were boycotting and discriminative treatment in violation of Article 20(i)(ii) of the Fair Trade Law.

2. Findings of the FTC after investigation:

- (1) The key components of a dispersant are acrylic resin, surfactant and water. According to the product classification of the Ministry of Economic Affairs, the product market of this case was the acrylic acid co-polymer resin market. Since BASF Taiwan accounted for less than 1% of the market, there was no competition restrain concern in this case. There were other chemical suppliers in the market. Even if the distributorship of BTC was terminated, the company could still choose to sell the products of other suppliers.
- (2) Regarding the accusation of BASF Taiwan boycotting BTC, as both Tye Han Trading and BTC were BASF Taiwan's distributors, Tye Han Trading had no right to cut supply on BTC or refuse transactions. Tye Han Trading could not have instigated the boycott and used BASF Taiwan as an accomplice because Tye Han Trading was merely a distributor and had to rely on BASF Taiwan. No evidences showed that Tye Han Trading had the power to demand BASF Taiwan to discontinue supply on BTC. For this reason, this case did not involve boycotting. As for supply of dispersants and price quotation, they were the result of product shortages due to unexpected suspension of BASF Taiwan's production and annual maintenance in the UK plant. Therefore, the company was unable to give BTC price quotations. Another finding indicated that the sales of BTC from 2015 to 2017 were indeed declining year after year whereas other distributors were performing better each year. Hence, BASF Taiwan had its reason to terminate the distribution contract with BTC. Moreover, an application for arbitration for the dispute over the termination of distributorship was already filed. According to available evidences, the FTC found it difficult to conclude that BASF Taiwan had violated Article 20(i) of the Fair Trade Law.

- (3) As for the accusation of BASF Taiwan adopting discriminative treatment, inspections of transaction records provided by BASF Taiwan and BTC showed that BTC had before gotten lower wholesale prices for certain products. BTC accused BASF Taiwan of giving it higher dispersant prices than Tye Han Trading in March 2018. It was because BTC never ordered the product after April 2016 while Tye Han Trading continued to place orders. Therefore, BASF Taiwan gave Tye Han Trading better prices based on the business record and the quantity ordered. The practice was justifiable. Hence, according available evidences, the FTC found it impossible to conclude BASF Taiwan had violated Article 20(ii) of the Fair Trade Law.

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