

Port of Kaohsiung of the Taiwan International Ports Corporation

1501st Commissioners' Meeting (2020)

Case: Port of Kaohsiung of the Taiwan International Ports Corporation was complained for violating the Fair Trade Law for imposing anchorage management fees

Keyword(s): Anchorage management fee, Port of Kaohsiung, berth arrangement

Reference: Fair Trade Commission Decision of August 12, 2020 (the 1501st Commissioners' Meeting)

Industry: Ocean Transportation (5010)

Relevant Law(s): Articles 7, 9 and 46 of the Fair Trade Law

Summary:

1. The FTC received complaints stating that the Port of Kaohsiung (hereinafter referred to as "POK") of the Taiwan International Ports Corporation forced all the shipping companies operating in the Kaohsiung Port to sign contracts and pay for anchorage management fees while implying those who refused to enter the contract with the POK will receive disadvantageous treatment during arrival or departure of vessels under its power of berth designation and arrangement authorized by the Commercial Port Law. This would then increase the operating cost of those who refused to sign the contract. In addition, the anchorage management fees that the POK imposed on operators were not the same. The informer believed that the POK had abused its monopolistic market position and was in violation of the Fair Trade Law.
2. Findings of the FTC after investigation:
 - (1) Taiwan International Ports Corporation was created by the Ministry of Transportation and Communications in accordance with the Taiwan International Ports Corporation, Ltd. Establishment Act. The company is managed by the government under sole proprietorship and the main services it provides include mooring, towing, loading and unloading, as well as warehousing. With Port of Keelung, Port of Taichung, Port of Kaohsiung, and Port of Hualien as its affiliates, it is a state-owned enterprise given a special approval to manage the international ports in Taiwan. Being a company, it is an enterprise as described in Article 2(1)(i) of the Fair Trade Law. According to the Ministry of Transportation and Communications, anchorage management fees were collected from anchorage ground users as a result of business needs and the contractual approach was adopted under the principle of autonomy in private law and the principle of freedom of contract. Consequently, the POK's imposition of anchorage management fees was not a practice authorized by the Ministry of Transportation and Communications or the Maritime Port Bureau of the Ministry in accordance with Article 2(3) of the Administrative Procedure Act. It could not be considered an exercise of sovereignty state power of an administrative agency. It should be regarded a private management practice of a service provider. As a result, the Fair Trade Law was applicable.
 - (2) Taiwan International Ports Corporation (including all of its branches) possesses essential port facilities. No other enterprises are able to adopt economically

reasonable and technically feasible means to duplicate the status of the company or replace the company in a short time. The international port services the company offers have their overwhelming status and the company has the capacity to exclude market competitors. For this reason, the company was considered a monopolistic enterprise in the international port service market in this case. Collection of anchorage management fees was the management of POK as specified in Article 2(2)(i) of the Commercial Port Law. It was conducted according to Article 9(1) of the Regulations Governing the Investment to Build, or Lease to Operate the Commercial Port Facilities for State-run or Private Enterprises while the content and method of implementation also complied with the management purpose of improving the rate of use of the anchorage area. Shipping companies could act according to their sailing schedules and decide whether their vessels would anchor or not. In addition, the fee collection plan also included free of charge clause and preferential fee calculation clause. The result of its implementation already reduced the average anchorage time and vessel turnover rates. It was beneficial to anchorage ground management in the port and good for the safety of the traffic in the waters, which had been confirmed by the competent authority of the industry. Therefore, with available evidences, it was difficult to conclude the collection of anchorage management fees was an inappropriate decision with regard to price of product or service in violation of Article 9(ii) of the Fair Trade Law.

- (3) As for the accusation that the POK “took advantage of its power of berth designation and arrangement authorized by the Commercial Port Law to imply those who refused to enter the contract with the POK would receive disadvantageous treatment during arrival or departure of their vessels” and “imposed different anchorage fees on shippers,” the informer did not explain further or provide any evidences to prove the assertion. According to the evidences gathered, the FTC found it difficult to conclude there was any conduct of abuse of market position in violation of Article 9(iii)(iv) of the Fair Trade Law.

Summarized by: Tang, Shun-Chuan; Supervised by: Kuo, An-Chi