

Fair Trade Commission Disposal Directions (Policy Statements) on the Vertical Integration or Joint Operation between Liquefied Petroleum Gas Packing Enterprises and Retailers

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1. Background

Production and marketing of the liquefied petroleum gas(LPG) market can be divided into production, distribution, packing, and retail. Since 1993, the exclusive distribution rights held by the Liquefied Petroleum Gas Supply Department of the Veterans Affairs Council have been abolished. The importing sectors of the market were opened in 1999 and thus the overall deregulation has been completed since then. After the introduction of market competition mechanism over two decades in the LPG packing market and the LPG retail market, however, the vertical integration or joint operation between LPG packing enterprises and LPG retailers has become increasingly common. As these enterprises have upstream and downstream vertical trading relationship or horizontal competition relationship, the market power of the LPG packing enterprises would inevitably have an impact on the LPG retail market. In order to avoid the conducts regarding vertical integration or joint operation between LPG packing enterprises and LPG retailers violating the relevant provisions of the Fair Trade Law, this Policy Statements is stipulated accordingly. The purpose in preparing this Policy Statements is to help the relevant businesses understand and abide by the Fair Trade Law so as to reduce the risk of violation of law as well as to provide references to the Fair Trade Commission (hereinafter referred to as "the Commission") when it handles relevant cases.

2. Definitions

Terms used in this Policy Statements are defined as follows,

- (1) The term "liquefied petroleum gas (LPG)" refers to crude oil refining or natural gas processing that is precipitated by the main components of propane, butane, or a mixture of the two gas and is bottled through the liquefaction in high-pressure gas containers for consumers to use petroleum products, commonly known as bottled gas.
- (2) The term "LPG packing enterprise" refers to the enterprise that has a gas storage facility and packing equipments, filling gas into LPG gas cylinders, commonly known

as bottled gas distribution site.

- (3) The term "LPG retailer" refers to the enterprise engages the sale of LPG cylinders to end users, commonly known as bottled gas store.
- (4) The term "vertical integration" refers to cross management of other's business between the LPG packing enterprises and LPG retailers.
- (5) The term "joint operation" refers to specific operational arrangements between two or more LPG retailers to which jointly set up storage facilities, engage in collective gas purchasing and distribution operation, share trademarks or business symbols, set up a common telephone or network distribution center, or other core business decisions under a unified command.

3. Market Definition

The relevant market definition for LPG packing enterprises and LPG retailers is reviewed by the Commission in accordance with the Commission's "Principles of the Fair Trade Commission Regarding the Definition of Relevant Markets". In addition, the Commission will also conduct a substantive review that has the business model, transaction features, industrial characteristics and other factors of the LPG industry at issue taken into account when specific cases are concerned.

Product markets in principle are defined as follows,

- (1) LPG packing market;
- (2) LPG retail market.

Geographic markets in principle are defined as follows,

As LPG packing or retail sales are conducted by manpower distribution so that the region of a market is limited, the geographical market is defined in principle by the county or city in which the business is established. Nevertheless, the Commission shall define market scope on an individual basis if there is a need to define the market by secondary administrative regions such as township units when commercial practices, geographical features or other factors are concerned.

4. Calculation of Market Share

The market share is calculated as follows,

- (1) LPG packing market : The market share of the individual LPG packing enterprise is calculated to divide the LPG purchase and sales volume of the individual LPG packing enterprise by the total LPG purchase and sales volume of all LPG packing enterprises in the relevant market.
- (2) LPG retail market:
 - A. The market share of the individual LPG retailer is calculated to divide the LPG

purchase and sales volume of the individual LPG retailer by the total aggregate LPG purchase and sales volume of all LPG retailers in the relevant market.

- B. The market share of the individual LPG retailer is calculated to divide the turnover of the LPG retailer by the total aggregate amount of the turnover of all LPG retailers in the relevant market.
- C. In addition, the market share of the individual LPG retailer can also be calculated to divide the number of customers, stores, or other sales and production data by the aggregate number in proportion of customers, stores, or other sales and production data of all LPG retailers in the relevant market.

5. Merger

While LPG packing enterprises and LPG retailers engage in vertical integration or joint operation, they should submit a pre-merger notification to the Commission if the proposed arrangements meet the merger definition as described under the relevant provisions of the Fair Trade Law and the threshold for merger notification is present, provided that the proposed merger does not trigger any of the exemption provisions of the Fair Trade Law. Failure to do so may constitute a violation of Article 11 of the Fair Trade Law.

The term "merger" as used in the preceding paragraph refers to any one of the following conditions:

- (1) where an enterprise and another enterprise are merged into one;
- (2) where an enterprise holds or acquires the shares or capital contributions of another enterprise to an extent of more than one third of the total number of voting shares or total capital of such other enterprise;
- (3) where an enterprise is assigned by or leases from another enterprise the whole or the major part of the business or assets of such other enterprise;
- (4) where an enterprise operates jointly with another enterprise on a regular basis or is entrusted by another enterprise to operate the latter's business; or
- (5) where an enterprise directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise.

The threshold for a pre-merger notification as used in the preceding paragraph refers to any one of the following circumstances,

- (1) as a result of the merger the enterprise(s) will have one third of the market share;
- (2) one of the enterprises in the merger has one fourth of the market share; or
- (3) sales for the preceding fiscal year of one of the enterprises in the merger exceeds the threshold amount publicly announced by the competent authority.

The sales amount announced by the competent authority as defined in subparagraph 3 of the preceding paragraph refers to any one of the following circumstances:

- (1) The combined worldwide sales in the preceding fiscal year of the enterprises in the merger exceed NT\$40 billion and the domestic total sales of each of at least two of the enterprises in the merger in the preceding fiscal year also surpass NT\$2 billion.
- (2) If none of the enterprises in the merger is financial institution and the domestic total sales of one of the merging parties in the preceding fiscal year exceed NT\$15 billion while the domestic total sales of one of the other merging parties in the preceding fiscal year also surpass NT\$2 billion.
- (3) If any of the enterprises in the merger is financial institution and the domestic total sales of one of the merging parties in the preceding fiscal year exceed NT\$30 billion while the domestic total sales of one of the other merging parties in the preceding fiscal year also surpass NT\$2 billion.

The merger notification cases with respect to the vertical integration or joint operation between LPG packing enterprises and LPG retailers shall be reviewed under "Fair Trade Commission Disposal Directions (Guidelines) on Handling Merger Filings".

6. Prohibition on Concerted Actions

If a LPG packing enterprise or a LPG retailer, by means of contract, agreement or any other forms of mutual understanding, with any other competing enterprise at the same production and/or marketing stage to jointly determine the price of goods or services, or to limit trading terms of quantity, trading counterparts or trading territory with respect to such goods and services, or any other behavior that restricts each other's business activities, and results in an impact on the market function with respect to production, trade in goods or supply and demand of services, such concerted action may constitute a violation of Article 15 of the Fair Trade Law.

Examples LPG packing enterprises conducting with LPG retailers that might involve in illegal concerted actions are as follows,

- (1) jointly determine the LPG retail price or the LPG preferential discount;
- (2) jointly determine the price of other services, such as additional cylinder inspection fees and floor service fees;
- (3) jointly assign customers or business area;
- (4) setting up a revenue distribution center for the purpose of apportioning or equal division of the operating income.

7. Prohibitions on Resale Price Maintenance

If a LPG packing enterprise imposes restrictions on resale prices of the LPG goods supplied to its trading LPG retailers for resale to a third party without justifiable reasons, such conduct may constitute a violation of the provisions of Article 19 of the

Fair Trade Law.

8. Other Prohibitions on Anti-Competitive Conducts

Types of various conducts with respect to LPG packing enterprises engaging in vertical integration that might involve restrictions of market competition:

- (1) If a LPG packing enterprise causes another LPG packing enterprise to discontinue supply of LPG with a LPG retailer who does not participate in the vertical integration or joint operation, such conduct may be in violation of Subparagraph 1, Article 20 of the Fair Trade Law.
- (2) If a LPG packing enterprise applies preferential purchase pricing or other preferential trading terms to a PG retailer participating in the vertical integration or joint operation without any justifications, such conduct may be in violation of Subparagraph 2, Article 20 of the Fair Trade Law.
- (3) If a LPG packing enterprise enters into business with a LPG retailer participating in the vertical integration or joint operation by granting subsidies or other improper means so as to prevent competitors from participating or engaging in market competition, such conduct may be in violation of Subparagraph 3, Article 20 of the Fair Trade Law.
- (4) If a LPG packing enterprise causes LPG retailers to take part in a merger and acquisition or engage in the joint operation by coercion, inducement with interest, or other improper means, such conduct may be in violation of Subparagraph 4, Article 20 of the Fair Trade Law.
- (5) If a LPG packing enterprise causes LPG retailers to take part in concerted actions by coercion, inducement with interest, or other improper means, such conduct may be in violation of Subparagraph 4, Article 20 of the Fair Trade Law.
- (6) If a LPG packing enterprise causes a LPG retailer to adjust prices or offer preferential discount as part of the requirements for trade engagement by improper means, such conduct may be in violation of Subparagraph 5, Article 20 of the Fair Trade Law.
- (7) If a LPG packing enterprise causes a LPG retailer participating in the vertical integration or joint operation not to purchase LPG from other LPG packing enterprises as part of the requirements for trade engagement by improper means, such conduct may be in violation of Subparagraph 5, Article 20 of the Fair Trade Law.

Types of various conducts with respect to LPG retailers engaging in the joint operation that might involve restrictions of market competition:

- (1) If a LPG retailer causes a particular LPG packing enterprise to discontinue supply of LPG with other LPG retailers, such conduct may be in violation of Subparagraph 1, Article 20 of the Fair Trade Law.
- (2) If a LPG retailer prevents other LPG retailers from participating or engaging in

competition by inducement with low price or other improper means, such conduct may be in violation of Subparagraph 3, Article 20 of the Fair Trade Law.

9. Determination on a case-by-case basis

The Policy Statements merely set out examples and explanations of some common types of practices of LPG packing enterprises and LPG retailers that may constitute violations of the Fair Trade Law. The handling of individual cases will be determined upon the specific facts of each case.