



公正取引委員会
Japan Fair Trade Commission

Survey on LNG Trades

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0 What is the JFTC?



■ The Japan Fair Trade Commission (JFTC)

- independent administrative commission established in 1947
- enforcing the Antimonopoly Act (AMA) that prohibits private monopolization, unreasonable restraint of trade (such as cartels and bid riggings) and unfair trade practices
- administrative powers to issue the cease-and-desist orders, surcharge payment orders against the violation of the AMA, as the enforcer of the AMA
- conducting surveys , making guidelines among other things to prevent illegal activities
- cooperation with foreign competition authorities

1 Objectives



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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
- Asian economic growth
- The development of unconventional natural gas (Shale revolution)

Recent concern

- Japanese users are concerned that destination restrictions will prevent them from reselling excess LNG inside or outside Japan in future,
- Japanese government had decided to promote abolishment of destination restrictions at the Cabinet meeting.

The JFTC has initiated a survey in order to clarify the problems in the perspective of competition policy and the Antimonopoly Act.

2 Survey methods

- Subject: LNG sales to domestic users etc.

- Survey period: July 2016 to May 2017

- Methods: Questionnaires and interviews

- I. Questionnaires

- 14 domestic users (Total share: approximately 96%)

- 32 domestic and foreign suppliers (Total share: approximately 95%)

- 6 foreign users

- II. Interviews

- 17 users (14 domestic and 3 foreign users)

- 10 suppliers (3 domestic and 7 foreign suppliers)

- 4 others

- The JFTC focused on the three points from the perspective of competition policy:

- I. Destination Restrictions

- Restrictions on designation and diversion of destinations by buyers

- II. Profit Share Clauses

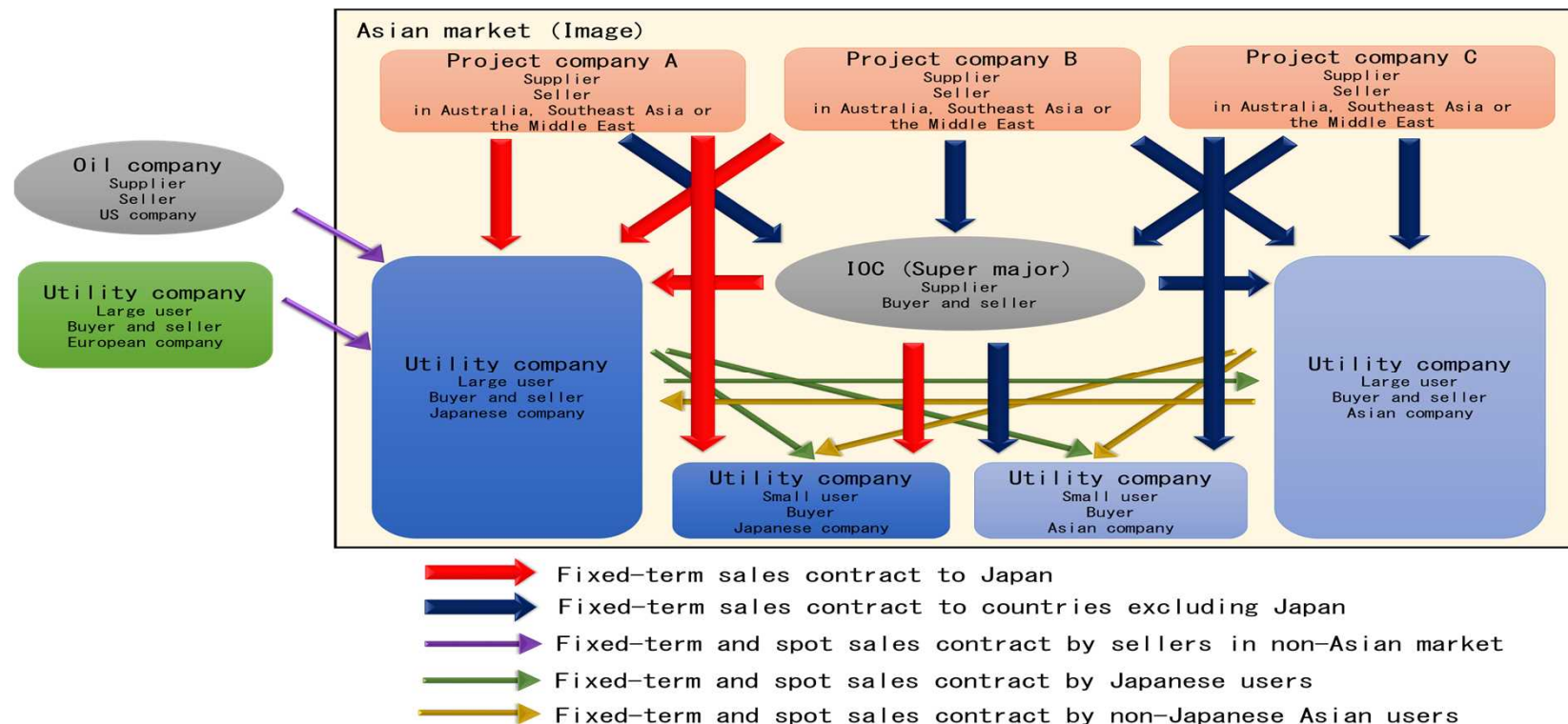
- Clauses that obligates a buyer to share a part of resale profit with a seller when the buyer resells LNG to third parties by means of diversion.

- III. Take or Pay Clauses

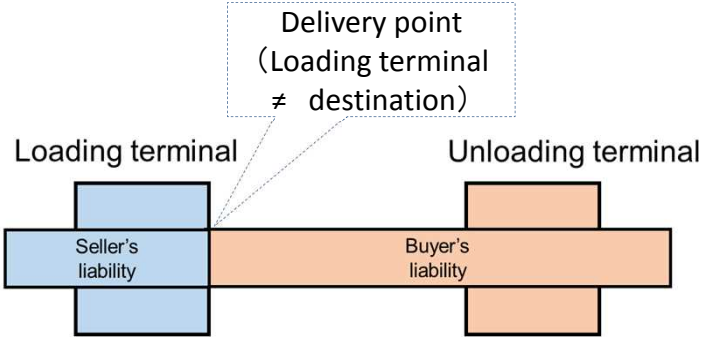
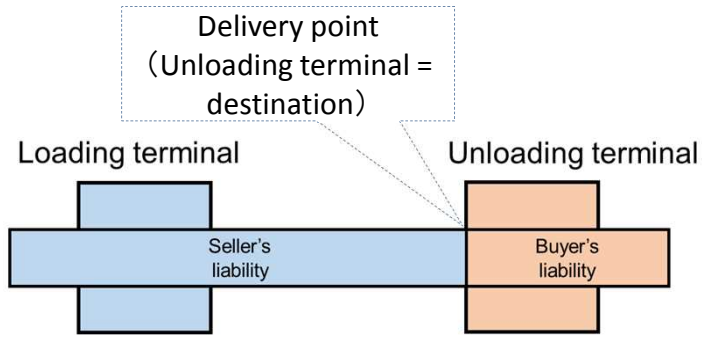
- Clauses that obligates a buyer to pay for all the contracted volume, even if the buyer does not actually receive the full contracted volume.

4 Market Environment of LNG Trades

- In this report, we discuss the influence of destination restrictions provided by fixed-term contracts with Japanese customers on competition both in the fixed-term contract market (Asian market) and in the spot contract market (World market).
- When we discuss the influence on competition, it is necessary to take into account that the quantity of LNG newly procurable for buyers is limited in the fixed term contract market and/or in the spot contract market.



5 Terms of Delivery

	FOB (Free on Board)	DES (Delivered Ex-Ship)
Transportation Liability the Burden of Expenses and Risk Property		
Necessity Reasonableness	<ul style="list-style-type: none">■ <u>Destination clauses are not necessary</u> to specify the unloading terminal that is not the delivery point.■ Because buyers have properties and risks of LNG after the delivery points, the <u>restrictions on diversion by sellers are not generally considered as reasonable.</u>	<ul style="list-style-type: none">■ <u>Destination clauses are necessary</u> to specify the unloading terminal that is the delivery point.■ Because sellers have properties and risks of LNG until the unloading terminals, <u>“seller’s consent” to diversion should be necessary.</u>

6 Points of View from the Perspective of Competition Policy

(i) Destination Restrictions



Actions that may lead to competitive concerns

FOB

- ☆ 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)

DES

- Necessary and reasonable restrictions are not basically harmful under the AMA. However, they may lead to competitive concerns,
- ☆ when a seller refuses its consent to diversion, even if a buyer's request meets all requirements of necessity and reasonableness (Unfair Trade Practices: Trading on Restrictive Terms)
 - ★ when a 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 Points of View from the Perspective of Competition Policy

(ii) Profit Share Clauses



Actions that may lead to competitive concerns

FOB

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

DES

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 a seller, or (ii) when such clauses have some effects to prevent a buyer from reselling because a seller request 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 Points of View 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 a seller's bargaining position is superior to that of a 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:
 - LNG sellers should neither provide competition-restraining clauses nor adopt competition-restraining business practices, when LNG sellers conclude a new contract or revise a contract after the expiration.
 - LNG sellers, at least, should review competition-restraining business practices, as for the existing contracts before the expiration.
- The JFTC will keep monitoring the LNG market and enforce the AMA against any violations vigorously.



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For more information, please visit



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