

New Competition Promotion Program 2010

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Ministry of Internal Affairs and Communications (MIC)
Japan

Based on changes in the market environment caused by transition to IP-based networks, including the progress of broadband market deployment, transition from PSTN (Public Switched Telephone Networks) to IP (Internet Protocol) networks and diversification of business models, “New Competition Promotion Program 2010” was formulated as a roadmap of measures to be implemented from the viewpoint of setting out fair competition rules by the early 2010’s in order to further promote competition in telecommunications markets, and to secure user benefits.

1. Objectives of This Program

This program is a roadmap for developing fair competition rules to be implemented by the early 2010’s in telecommunications markets and is a detailed action plan of the “Process Program for the Reform of the Communications and Broadcasting Field” (announced by MIC in September 2006).

Specifically, with a full understanding of the fact that rapid changes of market structure are occurring in the transition to IP-based networks, a comprehensive review of competition rules in the overall broadband market, while keeping in mind each layer (business domain) from terminals to content and application, shall be undertaken based on this program following the report of the Study Group on a framework for competition rules to address the transition to IP-based networks (released in September 2006). MIC shall implement concluded measures expeditiously.

2. Specific Measures

Assurance of fair competition shall become the foundation for developing competition policies. MIC shall keep an appropriate balance between facility based competition where each carrier builds its own networks such as lines and the like, and service based competition where dominant carriers are forced to make their bottleneck facilities available to competitive carriers to provide services.

In addition, attention shall be paid to a method for assuring fair competition in response to the diffusion of the vertically integrated business model which crosses different layers.

(1) Promotion of Facility Based Competition

(a) Opening Up of Line Infrastructure

Simplification of procedural requirements for laying out of optical fiber on telegraph poles for installation of FTTH or FTTP (Fiber-to-the-Home/ Fiber-to-the-Premises, or "last one drop") by competitive carriers shall be promoted so that they can install their own FTTH or FTTP utilizing the main terminal lines of NTT East/West.

Specifically, MIC shall revise the "Guidelines for the Use of Infrastructure such as Telegraph Poles and Conduits Owned by Public Utilities" (April 2001) by the end of FY2006. The simplified procedural requirements shall be incorporated into this guideline and be implemented starting FY 2007.

Furthermore, an associated follow-up system comprising participating operators and the like shall be established to review the operational status of the simplified procedural requirements. The review results shall be made public regularly (once every year), followed by modifications of the above-mentioned guidelines if necessary.

In addition, a database shall be created to keep a record of disputes with

regard to these guidelines after FY2007 to promote information sharing among participating operators and the like.

(b) Opening Up of Optical Networks in Local Governments

Based on “IT New Reform Strategy” (decided in January 2006 by IT Strategy Headquarters) and “u-Japan Promotion Plan 2006” (September 2006), the government has set the target to achieve eliminating areas where no broadband service is available by FY2010. To achieve the target, based on “Next Generation Broadband Strategy 2010” (released by MIC in August 2006), systems to promote broadband deployment shall be established on national and regional levels consisting of relevant entities (carriers, the national Government, prefectures, municipalities and the like.)

From the viewpoint of promoting business development implemented by carriers through utilizing optical fiber networks owned by local governments, the “Standard Procedure concerning the Opening of Optical Fiber Networks Maintained and Owned by Local Governments to Telecommunications Carriers” (July 2002) shall be made known to the people concerned through the above-mentioned promotion systems. At the same time, further opening up of optical fiber networks owned by local governments shall be promoted by a variety of measures including the review of the operational status of how the portion of the optical fiber owned by local governments are utilized shall be made to provide the latest information by summer 2007.

(c) Promotion of Diversification of Access Networks

Active introduction of new wireless access technologies shall be promoted, such as introduction of high-speed wireless LAN systems in the 5GHz band and BWA (Broadband Wireless Access) systems using the 2.5 GHz band. In addition, the necessary provisions shall be developed for fixed broadband services such as CATV as necessary.

(2) Review of Designated Telecommunications Facilities System (Dominant

Regulations)

(a) Establishment of Competition Safeguard System

In the transition of network structures from PSTN to IP-based networks and advances in market integration, a review shall be required concerning the application of dominant regulations by accurately reflecting the actual status of the markets.

To this end, a Competition Safeguard System shall be established starting FY 2007, where the coverage of designated telecommunications facilities including the platform function (authentication and charging systems, Quality of Service (QoS) control functions and the like) are to be reviewed periodically (once every year). Along with this review, the effectiveness of fair competition requirements relating to the NTT Group (including conditions relating to the approval system of NTT East and West's business expanding relief in Item 5 of Article 2 of the NTT Law) are to be reviewed. Before launching the Competition Safeguard System, the "Guideline concerning the Application of Competition Safeguard System" shall be formulated by the end of FY2006.

The review results on the competition safeguard system shall be reported to the Information and Communications Council (an advisory group to the Minister of Internal Affairs and Communications). In this review process, results of the existing "Competition Review" separately implemented every year shall be taken into consideration as much as possible.

(b) Development of Competition Rules to Prevent Abuse of Joint or Collective Market Dominance

From the viewpoint of ensuring appropriate application of the dominant regulations, the collective business operations of NTT East/West and its subsidiaries and affiliates shall be reviewed with detailed information on the actual status, and then necessary measures shall be taken as appropriate, such as establishment of competition rules.

(c) Comprehensive Review of Designated Telecommunications Facilities Systems

Based on the move toward market integration along with transition to IP-based networks, a comprehensive review of designated telecommunications facilities systems (dominant regulations) shall be undertaken from the viewpoint of promoting the appropriate application of the dominant regulations. The considerations shall be undertaken along with a study on network neutrality (See (7) in the following).

Specifically, a framework to replace the current system is outlined as the process where the market definitions shall be made through competition review process and a system to recognize the existence of market dominance in each defined market. Based on this framework, more detailed systems shall be developed as much as possible by the end of FY 2007 and then the necessary systems shall be formulated as soon as practical for their application to be started by FY 2010.

(d) Consideration of Fair Competition Requirements concerning the Alliance between NTT East/West and NTT Docomo

With respect to Fixed Mobile Convergence (FMC) service provision in the alliance between NTT East/West and NTT Docomo, a requirement for ensuring fair competition shall be considered based on the application by NTT East/West and NTT Docomo within the procedure of the approval system of NTT East's and West's business expanding relief.

To enhance policy predictability, the basic concept for securing fair competition regarding the case shall be organized by summer 2007, with a review of the "Fair Competition Guideline in relation to the Expansion of the Business Scope of NTT East/West" (December 2001).

(e) Establishment of Interconnection Rules Concerning the Next-Generation Networks (NGNs) of NTT East/West

Based on the fact that NTT East/West aims to start full-fledged commercial services using NGNs from the latter half of FY2007, a study group to consider the framework of the interconnection rules concerning the NGNs of NTT East/West shall be set up in order to assure an environment for competitive carriers to commence provision of their services using NGNs without delay, keeping in mind the study to be concluded considering the timing for NTT East/West to launch full-fledged commercial services.

Any conclusion at the study group shall be formulated into interconnection rules after deliberation by the Information and Communications Council whenever necessary.

At the same time, with respect to the local IP-based networks of NTT East/West described as designated telecommunications facilities, the appropriateness of its designation shall be considered giving attention to the specifications on establishment of NGNs.

(f) Review of Accounting System (Interconnection Accounting and Accounting by Services)

Amid the transition of network and market structures, reviews of accounting systems shall be required in order to address such a transition of the environment. To this end, a study group to examine the framework of accounting systems in the telecommunications business (interconnection accounting and accounting by service) shall be established, with recommendations to be achieved by summer 2007, and with establishment of the necessary systems.

(g) Other matters related to Interconnection Rules

In addition to the above, from the viewpoint of taking specific measures to improve interconnection rules, reviews shall be undertaken, such as a review of collocation rules, preparation of rules concerning indoor wiring work, and reviews of handling information regarding the name of the owner of the line.

To this end, consultation of specific proposals concerning reviews of rules shall be invited from participating businesses, and reasonable proposals shall be selected and required rules formulated in accordance with the proposals.

As for the above-mentioned policy developments, they shall be deliberated in the Information and Communications Council with measures to be taken by summer 2007.

(3) Review of Calculation Method for Interconnection Charges of NTT East/West

(a) Review of Calculation Method for Calculating Interconnection Charge of PSTN

The calculation method for interconnection charges of PSTN (the current rules apply for three years FY2005 - FY2007) shall be deliberated in the Information and Communications Council, with recommendations to be achieved by the end of 2007.

At that time, specific recommendations concerning the framework of interconnection charge calculations for FY 2008 and FY2009 shall be achieved, and the basic direction concerning the framework of interconnection charge calculations from FY2010 onward shall be considered with certain recommendations to be achieved.

(b) Review of Calculation Method for Interconnection Charges for Fiber Optic Networks

The interconnection charge for optical fiber currently is calculated by the forward looking cost method, in which seven years (from FY2001 to FY2007) are used as the calculation period.

As for the review of the calculation method, basically, a specific study shall not take place until the submission of an application to MIC by NTT East/West. At that time, study shall be conducted from a variety of perspectives, including the frameworks of the calculation methods,

verifications of the number of core wires in operation, close inspection of prior investment costs in relation to equipment investment costs, verification of the life of optical fiber, responses to equipment investment risks due to competitive carriers and the like, followed by deliberation by the Information and Communications Council with recommendations to be achieved as soon as practical.

(c) Calculation Method for Interconnection Charges in Relation to NGNs

The calculation method for interconnection charges in relation to NGNs of NTT East/West shall also be considered in the study group to be held for considering the framework of interconnection rules regarding NGNs.

(d) Other

The preparation of application rules of the Stack Test and the review of the ex-post intercarrier compensation system and the like shall be deliberated at the Information and Communications Council, and then the necessary systems shall be prepared from those that can be put into practice by summer 2007.

(4) Competition Promotion in the Mobile Communications Market

(a) Revision of the "MVNO Business Guideline"

From the viewpoint of promoting further revitalization of the mobile communications market through the promotion of new market entry by MVNOs (Mobile Virtual Network Operators), the "The Guideline related to Application of Telecommunications Business Law and of the Radio Law" (June 2002) shall be revised by the end of 2006 in order to clarify the technological specifications of MNOs (Mobile Network Operators) and the conditions for transactions as well as clarification of legal status of MVNEs (Mobile Virtual Network Enablers).

(b) Review of Terminal Authentication System

From the viewpoint of promoting improvement in the international competitiveness of the overall IT industry in Japan through early realization of ubiquitous networks that assure openness, and through the world's leading product development and initiatives in international standardization, a study group for examination and study shall be set up by the end of 2006 to take up the subject of the basic functions of terminal devices compatible with IP-based networks, and the frameworks for authentication systems, with recommendations to be achieved by the end of 2007.

(c) Review of Business Models in Mobile Markets

A study group shall be established to consider a diverse number of future visions and the business models in mobile markets including each of the layers from the viewpoint of ensuring and developing user benefits in mobile markets by promoting competition, and also to consider the framework of the business model in mobile markets including terminal sales incentives, SIM (Subscriber Identity Module) locking and the treatment of User ID with recommendations to be archived by around summer 2007.

(5) Review of Tariff Policies

Amid the emergence of diverse business models and diversification of tariff systems, the framework of the current price cap system shall be reviewed and studied together with the review of the Universal Service System. (See (6) below)

The price cap system shall be studied taking into account that a review of the standard tariff index (the current index is applied for three years starting October 2006) is scheduled for FY2009.

In addition, amid the multiple emergence of new tariff systems, from the viewpoint of facilitating protection of user interest, information concerning inappropriate cases regarding tariff settings should be collected and guidelines formulated by referring to the cases, while at the same time undertaking examinations as necessary concerning preparation of the

legal system for user protection and development of standard tariff baskets, and the like.

(6) Review of Universal Service System

Amid dramatic changes of market structures, such as the spreading of broadband services, essential to be considered is a review of the Universal Service System to secure the spread of fixed telephone services nationwide, which is now a telecommunications service indispensable for national life.

To this end, a study group shall be established to consider a number of assumed alternatives (“feasibility study”) in order to review this system, with recommendations to be achieved by the end of 2007.

A full review of the system shall be conducted taking into account the government’s policy of eliminating broadband-zero areas (elimination of areas without broadband access), and based on the above-mentioned study recommendations, actual system conditions, and the like, through a discussion within the Information and Communications Council in 2009, necessary system preparations shall be implemented as soon as possible.

(7) Study Concerning the Framework for Network Neutrality

In the transition to IP-based networks, a study shall be undertaken concerning the framework for network neutrality, such as fair usage of networks (neutrality of the communications layer to the other layers) and fairness in cost sharing for the networks (neutrality of the cost sharing model for increasing network capacity).

To this end, with the principle of network neutrality as a mainstay, a study group for study and discussion shall be established from the viewpoint of identifying and organizing the issues for study in terms of competition policies on the assumption of full-scale transition to IP-based networks. This study group shall be attended by various concerned carriers and parties spanning wide-ranging fields, with the first recommendations to be

achieved by summer 2007.

Based on the first recommendations, final recommendations shall be achieved by summer 2008.

(8) Strengthening Dispute Settlement Functions

With the prospect of diversification of business models along with the transition to IP-based networks, strengthening of dispute settlement functions shall be promoted in order to promote smooth dispute resolution as soon as practical in broadband markets.

Specifically, with respect to submission of complaints or opinions (Article 172 of The Telecommunications Business Law), a mechanism shall be introduced not to disclose information that can identify the person who submitted the complaint, in case reasonable evidence is found that the secrecy of the individual must be protected. Guidelines on the mechanism shall be formulated by the end of FY2006.

Furthermore, with respect to the expansion and replenishing of the scope of handling dispute settlement functions, the necessary system shall be prepared as soon as practical, for example, by enabling the dispute settlement functions to handle disputes between telecommunications carriers and business operators in a higher layer such as content providers. In addition, part of the functions should be a mechanism capable of intermediary action and mediation in addition to the current function of arbitration ruling concerning the use of land and the like (including telephone and electric poles, ducts, and the like.).

(9) Review of Market Exit Rules

With respect to suspension and cessation of business activities of telecommunications carriers, based on the fact that this is not only due to the judgments of the management of relevant carriers, but also partly

depends on the responses of interconnection operators (interconnection carriers), certain rules shall be established concerning safeguard measures (such as a deposit system) against market exit, with guidelines to be formulated by the end of 2006.

(10) Other

Amid the transition to IP-based networks, in addition to secure further transparency of competition rules, the continuous review on the framework of telecommunications numbers shall be undertaken at study groups such as the Information and Communications Council, and the like.

Furthermore, administrations shall be actively involved in new international issues that arise as necessary, and from the viewpoint of assuring international conformity in competition rules, positively engage themselves in raising voices and diffusing information concerning policy trends not only in multilateral policy consultations such as OECD, ITU, APEC and the like, but also in bilateral policy consultations, so as to promote cultivation of consensus among regulatory authorities charged with making policy decisions in individual countries.

3. Follow-ups of this Program

From the viewpoint of securing transparency, a progress report of this Program shall be compiled in July every year and submitted to the Information and Communications Council for publication.

Moreover, since there is the prospect the rapid transition of the market structures, reviews (revolving) of the Program shall be implemented while at the same time assuring transparent procedures such as invitation of opinions, as necessary.

Based on the status of progress of this Program, comprehensive review of the legal system pertaining to overall telecommunications legal systems shall be implemented in 2010.

(Reference)

In the Agreement of the Government and the Ruling Party Concerning the Framework of Communications and Broadcasting [20 July 2006], the telecommunications area is mentioned that “From the viewpoint of realizing high-quality and low-cost information and communications services, for example, required fair competition rules such as openness of networks shall be prepared”, and that “With respect to NTT’s status issue, they shall be examined at the timing of 2010 after conducting close observations of the status of the spread of broadband services and the actions based on medium-term management strategy of NTT, and then recommendations shall be made as soon as practical”. It is also mentioned that “With respect to the comprehensive legal system concerning telecommunications and broadcasting, examinations shall be started as soon as practical with the premise of maintaining the mainstay broadcasting concept, with conclusions to be achieved by 2010.”

In response, “Basic Policies for Economic and Fiscal Management and Structural Reform 2006” (7 July 2005, Approved by the Cabinet) mentions that “Based on ‘Agreement of the Government and the Ruling Party concerning the Framework of Communications and Broadcasting’, with full understanding of the world conditions, reform will be promoted in the telecommunications and broadcasting areas.”