

Study Group on a Comprehensive Legal System for Communications and Broadcasting
Summary of Minutes (8th Meeting)

1. Date

Monday, March 26, 2007, 6 p.m. to 7:50 p.m.

2. Location

Special Conference Room 1, 8th floor, Ministry of Internal Affairs and Communications

3. Attendees

Mr. Horibe, Chair; Mr. Murai, Vice-Chair; Mr. Ando, member; Mr. Takaya, member; Mr. Hasebe, member; Mr. Funada, member; Mr. Murakami, member

Mr. Aritomi, Vice-Minister for Policy Coordination; Mr. Mori, Director-General of the Telecommunications Bureau; Mr. Terasaki, Director-General for Policy Planning; Mr. Nakata, Deputy Director-General of Minister's Secretariat; Mr. Sato, Director of the Information and Communications Policy Bureau; Mr. Naito, Head of the Communications and Broadcasting Legal System Planning Office

4. Outline of proceedings

(a) Issues related to the platform

The Secretariat gave presentations on the "Material for the 8th Meeting of the Study Group—Platform" (Reference 2) and the "Draft—Discussion Points Related to the Platform" (Reference 4). Then, Dr. Shuya Hayashi, Assistant Professor, Graduate School of Nagoya University, gave a presentation entitled the "Meaning of and Study Issues on the ITC Platform from the Perspective of Economic Laws" (Reference 3), on how the ICT platform can be positioned from the perspective of fair competition, including cases relating to intellectual property rights and broadcasting, followed by a question and answer session. The outline is as follows:

- To the question on the possibility of the market being closed to service portals for such as electronic commerce and access portals for such as search systems, the answer was given that, "In principle, the close of the market has something to do with all platforms."
- To the question of how the platform is evaluated from the perspective of economic laws while the importance of the platform is sometimes discussed in relation to international competitiveness, the answer was given that, "Discussions are made from the perspective of fair competition, with the international competitive and public perspectives being abstracted; however, those perspectives are very important factors to be taken into consideration in the platform discipline."

- To the question of what kinds of issues are considered to arise from the perspective of fair competition if the convergence of communications and broadcasting progresses in Japan, the answer was given that, "If a company dominant in the communications field enters the broadcasting business, rival companies (in the broadcasting field) may possibly be ousted from the market unless fair competition is ensured. Similarly, the perspective of leverage is important."

(b) Free discussion

A free discussion was held, in which Assistant Professor Hayashi also participated. As a result of the discussion, it was determined to continue discussion from two approaches, that is, the "elimination of the bottleneck nature from the perspective of ensuring the free circulation of information, the promotion of innovation, and others," and "ensuring potential penetration from the perspective of user protection." The following were the main opinions raised in the free discussion:

- Equal treatment and prevention of abuse of power in the market will be some of the institutional issues regarding communications and broadcasting laws and regulations.
- Mediation in trade systems such as electronic shopping malls is needed, quite apart from the discussion of whether or not they are monopolistic and/or have market power. Alternatively, some kinds of regulations will be required for the platforms used in such trade systems, such as the implementation of security functions, without which consumers may suffer unexpected damage.
- Terrestrial broadcasting does not involve direct transactions with the audience; however, it may cause a bottleneck due to its position between content creators and the audience, and its increasing domination of the market. In the U.S., it has been traditionally believed that, as shown in the case of dealing with Time Warner, if the practice of a broadcasting operator impedes competition, it needs to be eliminated.
- Discussions must be made on the platforms used in the communications and broadcasting field regarding whether practices impeding competition are conducted not only at the wholesale level but also in the relationship with end users, as well as on what they imply.
- Public and social perspectives, including the development of a ubiquitous network society and the free circulation of information, are critically important, and fair competition and public perspectives will have to be balanced in the form of convergence including this aspect.
- From the perspective of international competition, the platform is a matter of a business strategy. The nature of platforms which were institutionally created in advance, and those formed subsequently by competition must be clearly distinguished, and regulating only the latter will be inappropriate now that there is no platform available in Japan which dominates the world

market. Regulations should be placed on natural monopolies, and on institutions arising from the monopoly or the oligopoly depending on the institution; however, the placement of regulations only because of the existence of a platform will restrict innovation.

- Even in the case of a platform which may later become monopolistic, anti-competitive practices as well as practices problematic from the perspective of consumer protection, will have to be regulated. Also, if the nature of vertical integration is strengthened, regulations will have to be firmly placed on the effect the lower layers—which become monopolistic or oligopolistic earlier on—have on the upper layers.

- Even if the network externality functions effectively, cautious attention will be required regarding the placement of regulations, if it is possible to deal with this issue through innovation, unless there is a very strong reason for the public benefit. It is important how the speed of innovation is evaluated (estimated); however, it is very difficult to evaluate (estimate) it accurately in advance. Therefore, the basic policy will have to be “regulations after the fact,” if regulations are ever required.

- In the case of the convergence of communications and broadcasting, how to deal with cases where the bottleneck nature and/or the closed nature of the platform emerge where services are expanding diagonally or laterally with respect to the layer (e.g., triple-play service) will be an important issue.

- For the platform, checking in advance will be a must from the perspective of protecting consumers.

- In the convergence of communications and broadcasting, when considered from the aspect of the information communication law, it will be difficult to regulate everything in the communications and broadcasting field by competition laws, and it will be necessary to consider regulations taking into account the aspect of free circulation of information and consumer protection.

- The platform is software architecture itself, which is artificially defined and develops fluidly and rapidly. It will be difficult to define precisely what the platform, the subject of the regulations, precisely is.

(c) Next meeting

The next meeting will start at 5 p.m. on Monday, April 16, 2007. The agenda topics will be “issues relating to transmission infrastructure.”

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