

Summary of Minutes of the Sixth Round Table Conference on the Neutrality of Networks

1 Date and time: April 19 (Thurs), 2007 10:30 to 12:50

2 Location: Special Conference Room No.3, 9F, Ministry of Internal Affairs and Communications

3 Attendees:

(1) Members (Honorifics omitted)

Takanori Ida, Hiroshi Esaki, Kiyohisa Ohta, Yoshinori Sakai (Deputy Chairman), Nobuko Takahashi, Toshihiko Hayashi (Chairman), Masayuki Funada, Hiroyuki Morikawa

(2) Ministry of Internal Affairs and Communications

Mori (Director-General of the Telecommunications Bureau), Sakurai (Director-General of the Telecommunications Business Department), Taniwaki (Director of the Tariff Division), Ninomiya (Senior Planning Officer of the Tariff Division), Samura (Director of the General Affairs Division), Suzuki (Director of the Telecommunications Policy Division), Ohashi (Director of the Computer Communications Division), Imagawa (Senior Planning Officer of the Telecommunications Policy Division)

4 Agenda (Deliberation of the main points of argument)

The Secretariat explained the main points of argument based on Documents 6-1 and 6-2.

Below is the outline of the discussion that followed:

[Main discussions]

(Member)

To whom additional fees should be charged for increased traffic is pointed out as a concern, and whether this can be committed to the market mechanism is also questioned. I would agree to all of these. What matters will be the complementary role that the supervisory authority should play when the market mechanism does not work. As for the measures for protecting users, it says in (3) on page 23 of Document 6-1 that the broadband rate plan has become too complex to be easily understood. It seems to me that the question lies in the announcement of the raising of optical fiber service rates by some leading ISPs. For example, the raise in rates has so far been limited to condominium-types on the ground of upgraded services, but it is not easy to understand why only part of the users will suffer the raise due to the upgrading of services. Setting of rates requires calculation of costs and

prices, but it is also not easy to understand. Thinking from the viewpoint of neutrality, while it is natural to think that the cost should be incurred by the heavier users who are getting to occupy the band, the cost has actually been collected from general users, who are easy targets to be charged. I am afraid this proves to be discriminatory treatment, since the principle of cost sharing for public goods is not respected. It seems that the government should make an announcement to reassure consumers in the light of the consumer protection principle.

While there may be a view that leading ISPs can set their rates freely since they are free of any restrictions, it is unclear how the raised portion of rates are allocated to the designated telecommunication facilities or how the same are allocated to the applied operations when line operators and ISPs are selling integrated services. The raise by NTT East and West will become a social issue, but the current raise by ISPs is undergoing introduction.

(Ministry of Internal Affairs and Communications)

As for the subject of whether the Internet can or should be restricted, basically, no restriction will be made on the Internet. As for packet shaping, the fundamental idea is to take a consensus-building approach instead of imposing restrictions. Regarding the viewpoint of user protection that you pointed out, page 44 of Document 6-2 mentioned the rate comparison information provision service by Ofcom of the UK in relation to (3) on page 23 of Document 6-1. Ofcom certifies those rates that meet certain structures in rate comparison by this system. There are various rate comparison sites in Japan, which may be one of the subjects for deliberation. Next, it is difficult to think about the issue of costs as business models become more and more diversified. As you can see on page 21 of Document 6-1, it has become more difficult to consider the appropriateness of rates due to cases where business costs are covered by advertisement income and due to the appearance of businesses in which community-type business facilities and independent business facilities co-exist. Rates have so far been considered based on the general cost principle, but now it can be said that the original framework itself has crashed. As for ISPs being providing broadband services in a bundle, the cost is separately calculated for NTT and ISPs, since ISPs are connected to NTT in providing their services. There is no mixing of costs.

(Member)

I understand that you first pointed out that the appearance of rate systems that will not meet the principle of public goods is feared. When changing rates based on the principle of public goods, with a view to charge such as heavy users who pose a greater load on network resources more once the things begin to move, systems may appear that “collect from where it is easy to collect” even if there is a just reason. This does not correspond to the principle of public goods. If you feel it is unfavorable, then what can we do instead? Whether users

are to select a rate system or not must be noted or the idea that this is a problem may be created.

(Ministry of Internal Affairs and Communications)

As for the raise by ISPs that was pointed out earlier, the purpose of our policy is to disseminate broadband service, but we also have great interest in the trend that the rate for the service will show. This time, individual companies will change their service menus, and thus we, the government side, should refrain from saying yes or no to the issue. However, if this turns into a wider-scale issue, we may address it in some way. This raise in rates is due to the unsuccessful prospect in the fundamental assumption for setting the rates, rather than what is involved in the upgrading of condominium-type services. Regarding condominium-type services, we understand that the rates have so far been lower because they have not occupied much of the band due to the branching use of access lines, but that the rates will be raised since the line quality has improved and the line speed has become almost equal to that for general households. We will see no such raise in rates for general households in the future due to the same reason. Services for condominiums have substitutability based on the competition among many providers, and although we are interested in it, it does not necessarily mean that we, the Government, are thinking of taking some immediate action.

(Member)

The good and bad aspects of P2P have been mentioned. The good aspects should be promoted, but it is necessary to discuss the business uses, including carrier providers. You would do better to discuss the development of rules. The solution to the YouTube problem is to allow cache to be used in Japan. Copyright may be involved, but if it is allowed for efficient delivery, the discussion on free-sharing neutrality may also be improved.

(Member)

I guess such issues have been studied in the P2P working group. Do you have any additional explanations?

(Ministry of Internal Affairs and Communications)

These main points of argument include the points of argument in the working group. Now they started discussion on the relationship between P2P and the policies/systems based on the organized facts such as how P2P is used, who uses it and what is going on abroad. How should the Government side change rules to cope with the rise of P2P? Businesses using P2P technologies will emerge also in Japan. It is necessary to support the development of the direction of business models based on a social consensus.

In Japan, P2P generally implies Winny, but it is necessary to promote building of social consensus on aspects including improving of the use efficiency of networks. For that

purpose, we want to make a demonstration experiment field for concrete problem solutions. Also for the relationship with copyright protection, we need to work out the kinetics for building social consensus. We are promoting a review of the system by content holders, carriers, platform providers and CDN providers, and expect to conclude our discussion by the end of June.

(Member)

Regarding the relationship between the Internet and next-generation networks on page 4 of Document 6-1, we make a clear distinction between NGN and the Internet. For the Internet, we will discuss problematic points but make no restriction in advance, and we will discover what we should do about next-generation networks. This is fine, but do we place OABJ-IP telephones and 050-IP telephones, which are situated between both, in next-generation networks? The discussion on the vertically-consolidated model seemed to focus on mobiles. As for the order of discussions, are we going to discuss mobiles later?

(Ministry of Internal Affairs and Communications)

It is necessary to conceptually typify and organize the Internet and next-generation networks. It is appropriate to consider the characteristics of the Internet and the philosophy of next-generation networks by making a sharp distinction between them. In that sense, OABJ is an issue relating to next-generation networks and 050 is a bit indefinite. We have not thought about mobiles in such a way, but it may be necessary to think about it whether they should be discussed under the neutrality. In addition, the neutrality of mobiles has recently been discussed in the United States, and we believe they should not be excluded from discussion.

(Member)

Section 2 of Document 6-1 mentions little about terminals. It mentions the separation of the ASP system and vertical models. The point here is that how we can make the technical standard open and global for their connectability so long as they conform to the standard. That terminals are strongly bundled with their own carriers relates to the neutrality. How far are we going to address the matter in this conference?

(Ministry of Internal Affairs and Communications)

Terminals are addressed in two or more study groups, but we are holding a study group dedicated to terminals, so we wish to introduce the outcome as soon as it is reached and to include what can be included. A separate study group, which is working in parallel with us, has been held for mobile businesses, and we would like to reflect what could be reflected.

(Member)

As for the three principles for securing the neutrality mentioned on page 3 of Document 6-1, (1) says that it should be accessible as desired to the application layer; and (3) says that it

should be usable in a fair manner. How are the terms “access” and “use” used differently? We cannot tell what will happen to the platform layer in the far future and the certification function may be separated in the platform layer, as various modules will appear in the future. Therefore, it seems that the expression “accessible” sounds more appropriate than “usable” in (3). How can we address the matter?

(Ministry of Internal Affairs and Communications)

Page 8 of Document 6-2 shows the four principles for the neutrality of networks released by FCC of the United States; that is, 1) right to access content; 2) right to enjoy applications and services; 3) right to connect terminals as desired; and 4) right to enjoy competition. It says “consumers” in considering competition policies, while “users” is used in general. Since those who use networks include not only consumers but also content providers, the term “consumers” as used here means mass consumers. Regarding the three principles, the phrases “accessible as desired” and “usable in a fair manner” may be changed to “accessible”. However, 1) means just accessible as desired as to content applications but 3) has a nuance of a competitive rule to strictly determine whether the compensation for the communication service and platform are appropriate or not and to ensure that they are provided in a non-discriminatory manner. 1) differs from 3) in that the supervisory function is to be realized in the Internet without restrictions.

(Member)

This phrase encompasses various issues. When thinking of “accessibility” and “affordability”, 1) appears to be based on the concept of accessibility while 3) appears to be based on the concept of affordability. I think it would be better to remove the ambiguity from the expression so as not to cause any misunderstanding, but it matters that the subject of the sentence is “consumers”. In addition, 3) deals with what to do with literacy and complicated rate systems and it implies that ISPs will have responsibility for those. It is a delicate issue, because the term “user” implies the knowledge, ability and reason to use the service, but “consumer” also implies guaranteed rights of consumers to access and use services at proper rates.

(Member)

It seems the term “user” is more appropriate, although it has no more than a general concept. The term “use” appears to mean to use just one thing, while the term “access” means to use one among two or more things, so I commented on them.

(Member)

It is not easy to define what consumers are under the Consumer Protection Law, but since the establishment of the Consumer Contract Law several years ago, the consumer interests may be unjustly impaired if committed to free contracting because of information

asymmetry, and thus consumers remain less powerful in making a contract. Consequently, the Consumer Protection Law has been established in order to protect consumers (living natural persons). The law intends to not only provide protection, but also guarantee it as the right of consumers. Providers may prefer to avoid as much as possible making restrictions by law or government and encourage free deals, but consideration is required for consumers. It would be all right, because the three principles you pointed out are just principles and have no standard value that can be demanded as a legal right.

(Member)

Fear of rate raises may appear if things are left untouched, so it is important to work out a framework for creating capable competitive providers. What is to be provided will become uncertain unless an organization is in place for constant studies. From the standpoint of consumers, it is necessary to conduct auditing since variation and arbitrariness exist in operations for changing ISPs. ISPs naturally want to induce consumers to their own company. It is necessary to establish an organization to watch the fairness.

(Member)

In connection with this, there are cases of nonpayment by insurance companies. Although deregulation is being promoted in the insurance industry and competition was introduced, a great number of such cases happened. If any similar phenomenon were to happen in the telecommunication industry and the Internet, what responses could be found within the framework of the current laws?

Individual providers provide services by mutual agreement with consumers, but can the Government side address cases where, for example, consumers cannot get their proper interests due to their lack of necessary knowledge or information asymmetry?

(Ministry of Internal Affairs and Communications)

Under the Business Law, the important matters in contracts must be explained. Considering this, a guideline that illustrates what is to be explained is under development among the operators concerned. Of course, to determine if that is sufficient is a separate discussion.

(Member)

The problem of nonpayment of insurance surfaced the autumn before last. Consumers have unsuccessfully been negotiating separately with individual operators. That they even failed to solve the problem by appealing to dispute processing institutions (the tribunal of the Life Insurance Association of Japan) was often the case. The Financial Services Agency then set up a user service consultation room to accept claims, thus inspections were conducted based on such monitoring to reveal the cases. Many problems stemming from information asymmetry between consumers and providers are found in the entire financial field, not only in the insurance industry. Dispute processing by providers groups is not sufficient, and it is

now at the phase where an across-the-industry dispute processing institution must be established. Information asymmetry is substantial also in the information communication field, and providers must achieve their accountabilities. At the same time, a third-party institution for solving problems is required. Page 14 of Document 6-1 mentions “Reinforcement of the dispute processing function” as another matter to be studied, but consumers are not appearing in front. Since things differ in cases between professionals—namely, providers— and cases between professionals and amateurs—namely, providers and consumers— it is necessary to establish a rule. The dispute processing approach will depend on the rule. There is no dispute processing organization for consumers in the information communication field. It may be appropriate to discuss cases of consumer disputes in this meeting. What causes a dispute is hardly seen by consumers in this field. In the financial field, private-sector groups were networked several years ago to try to prevent troubles between industries but, in fact, many problems occurred there. I would ask the Government to think of establishing a system or third-party institution that allows proper processing of troubles that are attributable to no one.

(Ministry of Internal Affairs and Communications)

The dispute processing function that you pointed out falls under the story between a professional and a professional of communication operators from the viewpoint of cost sharing. Now, the dispute processing procedure under the Business Law cannot handle disputes between a communication operator and a content provider who is not a communication operator. We stated the matter here since the question is what we think of that point. From the viewpoint of consumer protection, we see, on the final page of Document 6-1, that while various routes are taken in order to connect communication between one end to another end in the vertical integration, it is hard to locate whether the cause is at the terminal, at the OS or on the network side. Users do not know who to consult, it is a problem, and some practical measures are required. It is also necessary to have a viewpoint of adopting principles to comply with the Financial Services Law and what to do with ADR. In addition, the Business Law provides, as a contact, a comment application system that stipulates that processing shall be faithfully implemented. I think we need to discuss whether a more systematic form of response can be made.

(Member)

Nonpayment of insurance falls under the matter of a contract violation, but in the case of communication business, I do not know what it says in contracts. It may be difficult to call it a contract violation.

The case of the raise in the rate of the condominium-type optical fiber service may correspond to the unreasonable discriminative handling under Article 6 of the Business Law

if the raise in rate can be realized as due to, for example, the high switching cost for condominiums while competition is too severe for houses. This can be the subject of a business improvement order. If there is any violation of contracts in deals with consumers and rates, some actions should be taken. As for page 23, we would ask you to write the statement to cover a wider scope.

(Ministry of Internal Affairs and Communications)

Usually when an entire condominium subscribes to broadband, the management association will place a limit. When a particular provider attempts to raise the rate for the condominium-type service, it seems that no problem exists as long as the substitutability of the service is assured. Improper discriminatory handling can be the subject of a business improvement order if there is any discrimination against particular individuals or particular areas. An extremely strict discipline will be applied in the operation of such an order.

(Member)

I have been thinking that user protection cannot be the primary issue in discussing the neutrality of networks, but it seems to me that it will be a big issue when we consider the transition to NGN. It is important to think of the efforts seen on pages 44 and 45 of Document 6-2. For example, NGN has become a carrier-management network that performs session communication on a SIP basis, thus the specifications and standards of providers will have significant meaning. NGN is to be developed in cooperation with terminal vendors, and no benefit is attached for NGN alone. It will be a convenient service only when added value is attached. However, it is necessary to ensure international consistency as mentioned on page 23 of Document 6-1, and we are afraid that, for example, some type of terminals cannot be used while various services are provided. I request preventive measures to protect users in transition to NGN before problems surface.

(Ministry of Internal Affairs and Communications)

As you see on page 20 of Document 6-1, the transmission rate of packets to certain users may be reduced through priority allocation or round about action of routing, but the disadvantage is that it is invisible from outside. In the dominant controls, unauthorized competitive behavior in business activities is visible while restriction of packets is invisible, which makes it a difficult matter to consider.

(Member)

As you see on page 4 of Document 6-2, discussions on neutrality have been made across a wide range of layers. Is there any possible corresponding law system other than the Telecommunication Business Law? Is there not any mismatch occurring between the frame of discussion and the part that can be worked out? In addition, it seems that the legal system has limitations since it cannot have an immediate influence on consumer protection, content

and ISPs. Please tell us which can be addressed and which cannot.

(Ministry of Internal Affairs and Communications)

As the Telecommunication Business Law covers telecommunication services, content and terminals are not directly covered. Yet, in relation to the dominant controls, if a certain operator concerned is providing discriminatory handling to upper layers, we will check if they are handling it fairly by indirectly entering via a communication operator. In case of layers, the Telecommunication Business Law covers up to the physical network and communication platform. It seems that to address the part beyond the coverage through a consensus approach such as ADR and making a guideline means to place them in the policy road map. It is indeed necessary to organize the whole thing.

(Member)

Is it impossible to widen the coverage of the Telecommunication Business Law?

(Ministry of Internal Affairs and Communications)

It is a sensitive matter.

(Member)

In the past decade, the financial world has attempted to introduce market rules, since the rules among operators have limitations. First there was the Financial Instruments Sales Law (a special rule of the Civil Law), but the advent of the Japanese SOX Act was the reinforcement of the market rule and transaction rule. It is also necessary also in the communication field to develop not only rules for operators, but also market rules and transaction rules.

(Member)

We must continue to discuss how to make legal improvements. As vertically integrated businesses emerge, problem consciousness is mentioned regarding whether the trade condition for those having dominant power in any layer providing services jointly with operators in other layers can be “just committed to the market transaction rules”. It may be possible that the things go in the direction you pointed out under unfavorable circumstances. On the other hand, the world of broadcasting is now a vertically integrated business, thus we may think of the impact on it.

(Ministry of Internal Affairs and Communications)

The reasonable ground for considering the neutrality of networks within the closed world of communication has been lost, and it is necessary for us to keep in mind the fusional partnership of communication and broadcasting. As for the fusional partnership, a study on the legal system is being promoted, and we may address the matter as we watch the balance with it. However, it is unnatural to exclude fusing outside the scope and we take it for granted to include it in the scope. As stated in (4) on page 22 of Document 6-1, there is a

question as to whether market dominance can be determined by dividing it with the border. While global business development is done for content application layers, communication layers (physical networks) move within the scope restricted by the border. In cases where the market is geographically determined, the scope of the market dominance may differ. This is the viewpoint of the competition policy that we have never had. Furthermore, it is true that problems that never existed before are arising since the Internet is borderless, such as, for example, the problem of sovereignty when any dispute occurs between foreign ISPs and Japanese carriers/ISPs.

(Member)

As for transition to NGN, even though some may provide legacy ISP services as an alternative when accessing NGN, it may be unsound if the bias placed on NGN is inappropriate. It is necessary to develop rules that allow other services to provide similar possibilities. From the standpoint of consumers, please make rules that allow equal footing.

(Ministry of Internal Affairs and Communications)

In the case of Japan, the transmission services provided by NTT and ISPs are separated. Verizon Communications of the United States bundles ISPs. Unbundling is promoted more in Japan, which is a factor for creating broadband competition. It is important to allow consumers to select NGN and the Internet. This may be a subject for discussion.

(Member)

The initial-stage ISPs are in the state you pointed out, but ISPs and operators that promote the dissemination of FTTH are almost becoming distributors of cellular phones who receive sales promotion expenses from communication providers. Whether or not the Internet will be provided in an independent form is a sensitive matter.

(Ministry of Internal Affairs and Communications)

We see a number of difficult problems in positioning ISPs. Regarding NGN connection, it is also a question of whether to connect via NNI or from upstream via SNI. We also regard how to consider the positioning of ISPs and the relationship with NGN when the IP address changes from IPv4 to IPv6 as an issue.

(Member)

Fusing was mentioned earlier, but Section 1 states the principles (about consumers), Section 2 states the matters among providers, and Section 3 states the fair use of networks, which actually refers to the matter of controlling the abuse of market dominance (specifically the matter of NTT East and NTT West). What cause the matter of fair use agreements in contracts with consumers are not only problems that derive from the abuse of market dominance. Therefore, can you make Section 3 cover a little bit wider scope?

(Ministry of Internal Affairs and Communications)

Section 2 and Section 3 do not directly mention consumers, as you pointed out. We thought that ensuring fair competition would lead to the diversification of services and realization of consumer interests through reduced rates. However, based on your suggestions, we will be reorganizing the sections before preparing a draft report.