

Competition Evaluation Advisory Board Summary of Minutes (5th Meeting)

1. Date

Friday, May 18, 2007, 3 p.m. to 5 p.m.

2. Location

Conference Room 1001, 10th floor, Ministry of Internal Affairs and Communications

3. Attendees

- Members (last names in Japanese alphabetical order; honorifics omitted)

Koichiro Agata; Takanori Ida; Hiroshi Ohashi; Yosuke Okada; Noboru Kawahama; Masatsugu Tsuji; Sawako Nohara; Shuya Hayashi; Masako Wakui

- Ministry of Internal Affairs and Communications

Sakurai, Director-General of the Telecommunications Business Department; Suzuki, Director of the Telecommunications Policy Division; Imagawa, Senior Planning Officer of the Telecommunications Policy Division; Nishizawa, Deputy Director of the Telecommunications Policy Division; Yokote, Deputy Director of the Traffic Division

4. Content of proceedings

○ Proceedings

A free discussion was planned on the evaluation results in the “FY2006 Evaluation of Competition in the Telecommunications Industry.” For the purpose of a free and robust exchange of opinions the meeting was not open to the public.

5. Main discussion

(1) Draft of the results of the FY2006 competition evaluation

The secretariat explained the standardized evaluation based on the documents distributed.

○ Are there any specific criteria for each of the evaluation results described on page 4 of Document 2-1?

→ In the EU, there are indices (Merkmal) for the market share of 50% or more, 40% or more, and less than 25%. While the market share is not the only thing taken into account, as a general guideline market power is determined to exist as follows: a market share of 50% or more with no particular denial factor of market power, a market share of 40% or more with some supplemental qualitative and/or others factors, or a market share of 25% or more with specific factors such as the existence of essential facilities.

○ Are such criteria clarified anywhere?

→ Factors for determination are specified in the basic policy and the criteria in the EU and other regions are noted for reference purposes; however, criteria specifically for the competition evaluation are not specified. Due to the present situation where the competition evaluation does not directly lead to the making of regulations, the determination is made objectively with various determining factors comprehensively taken into account. In future, the competition evaluation may possibly be implemented in connection with dominant carrier regulations, and it will be necessary to study the setting of clear numerical standards from the perspective of transparency of administration and other factors. However, on the other hand, some experts point out that numerical values, such as the market share, should not be the sole criteria.

○ It is somewhat difficult to logically link a large market share with the existence of market power. It is too tough for carriers if all of them are automatically regarded as having market power after making all efforts to increase market share, and such practices will make economists feel uncomfortable. Since actual determination is based on prices and other various factors, I guess that this is just a matter of expression.

→ This is the point that we are consulting experts of the Antimonopoly Act about. The logic is that, taking into account not only the market share and the like but also such factors as the existence of barriers against new entrants and the development stage of the market, the probability of the existence of market power is high and therefore regulations in advance are desirable. This approach is different from that taken by the Fair Trade Commission, where the presence of practices that restrict competition is determined after the fact and the existence of market power, if any, leads to illegality.

○ The levels of charges are referred to on page 31 of Document 2-1. Are these based on actual prices? It will be important to see the actual amount users pay with discounts and other programs taken into account.

→ At the moment they are not based on actual prices. The pricing structure particularly for mobile phone services is complicated and this needs attention. This point is referred to separately in the strategic evaluation. Another thing that needs study is whether to list the ARPU, the consumer price index and others together in future.

○ What about the criteria for the existence and exercise of market power in the case of cooperation on page 4 of Document 2-1? Are there any complementary factors other than the HHI, like in the case of the market share of a single carrier?

As for mobile communications on page 33 of Document 2-1, the price plans offered will be different for new subscribers and existing subscribers. It is not always the case that users choose their price plan rationally, and the competition to acquire new customers is likely to intensify.

→ In the case of cooperation, in addition to quantitative standards, such as the market shares of

the top three carriers and the HHI, other factors, as listed in the basic policy, are taken into account in reaching conclusions.

For the competition for new customers and existing customers respectively in the mobile phone market, discussions are ongoing in the Study Group on Mobile Business regarding incentives, terminal prices, communication fees and so on. They are not within the scope of this evaluation.

○ In the mobile phone market, cases where users are locked in will also have to be checked even if, for example, the market is small. This kind of viewpoint will be necessary because such practices are possible by differentiating charges for outgoing calls and incoming calls.

→ In Europe, markets are evaluated by dividing them into outgoing call and incoming call markets, and there are some markets where all the carriers are defined as monopolistic in the respective incoming call markets. Since some think that this kind of market definition is not realistic, this type of approach has not been adopted at the present stage.

○ There is a description of “concerns about leverage” on page 4 of Document 2-1. Are there any such specific practices that cannot be regulated specifically by the present laws and/or guidelines?

→ Opinions about this point are offered by various carriers and discussions are being held in various study groups. In competition evaluation, however, specific cases are not pointed out individually.

○ Competition evaluation is referred to only from the perspective of dominant carrier regulations; however, it is important to ensure competitors’ free business activities. For example, the CATV Internet market is not evaluated by municipality. What about this point?

→ The present competition evaluation is designed to be basis material for dominant carrier regulations and emphasis is placed on this. With the establishment of the strategic evaluation, however, evaluation and analysis are conducted for ad hoc points of discussion. This should be utilized in future.

As for CATVs, the coverage was certainly divided into areas by municipality at the establishment stage. However, such areas no longer exist and the deployment to various areas is not restricted. On the contrary, MOSs covering a broad range have emerged as a result of mergers and acquisitions.

○ To the evaluation of FTTH on page 60 of Document 2-1, each geographical market will have to be taken into account, as in the case of ADSL. There is a significant difference in the situation regarding competition between eastern and western Japan.

→ The text of Document 3-1 refers to the situation regarding competition in each regional block. We will also incorporate it in the overview in Document 2-1, as pointed out.

The secretariat explained the strategic evaluation based on the documents distributed. Mr. Ida (member) and Mr. Ohashi (member) also gave relevant explanations based on Documents 4 and 5.

- As for Document 5, consumer surplus will increase not only for those who have used the MNP but also for those who have not.
- The part of the price reduction caused by intensified competition is not taken into account here. If it is incorporated, the value will be greater. Not all of the price reduction can be attributed to the effect of the MNP.
- As for Document 4, can the reason relating to consumers' attributes and so on not be analyzed?
- An analysis is possible; however, it is difficult to usefully analyze in depth the reason for consumers choosing a competition policy, for example, the specific reason for leverage.
- Also in competition evaluation, as is in the case relevant to the analysis of migration and the analysis of adjacent markets, it is difficult as of now to analyze individual factors objectively in depth. There is the opinion, mainly held by competing carriers, that this part should rather be evaluated proactively. However, since the standardized evaluation in one way is more like a periodic health examination, it may be an idea to make an in-depth analysis as part of the strategic evaluation.
- To estimate switching costs in Document 5, the defining equation of Shapiro and Varian will be a good reference.
- What kind of pricing structure is adopted for the price data on page 15 of Document 5?
- The assumption is for rational consumers who choose an optimum price plan by calculating all patterns for each company.
- In Document 4, the estimations are significantly different for 2G and 3G. The trend of mobile phones in Japan is different in one aspect from the European trend, and it is interesting to consider whether or not Japan is unique in terms of what considerations consumers base their choices on.
- The figure showing the data by prefecture on page 7 of Document 2-2 is very interesting. With regard to this point, we want to hear carriers' opinions on the difference in competition on the facility basis and on the service basis in the public conference. It will be also important to make comparisons on a time-series basis.
- The data are publicly available, but this is the first time the figure has been released. The data have only been available for two years.
- As for page 9 of Document 2-2, the market share aspect as well as the price should be taken into account, since inter-carrier trading has a significant impact on competition at the retail level. The reverse situation is also possible where investments are made in facilities because retail prices are high and the market share is satisfactorily large. It will be interesting to

conduct an in-depth analysis.

With the expectation of the development of CATVs in future, the description of the political implications on page 49 of Document 2-1 should refer to the need for attention to be paid to the situation by prefecture and the trend of MSOs.

Since it is important to share the standards for designating factors that determine market power, it will be better to describe this part in detail to the extent possible, even in the summary version of the document.

→ It is a delicate matter to clarify the standards for the determining factors. Even if we ask officials or the Fair Trade Commission, there is no full list to check with, and the conclusion is that there are different points for markets with different characteristics. Making the list clearer will cause the misunderstanding that all markets should be checked fully against the list. It will be necessary to check quantitative standards without fail but literally “comprehensively take into account” all other factors.

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