

Competition Evaluation Advisory Board Summary of Minutes (1st Meeting)

1. Date

Tuesday, September 18, 2007, 5 p.m. to 6:30 p.m.

2. Location

Conference Room 901, 9th floor, Ministry of Internal Affairs and Communications

3. Attendees

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

Koichiro Agata; Takanori Ida; Hiroshi Ohashi; Noboru Kawahama; Yosuke Okada; Masatsugu Tsuji (Chair); Masayuki Funada (Acting Chair)

- Ministry of Internal Affairs and Communications

Terasaki, Director-General of the Telecommunications Bureau; Takeuchi, Director-General of the Telecommunications Business Department; Ando, Director of the General Affairs Division; Taniwaki, Director of the Telecommunications Policy Division; Takachi, Senior Planning Officer of the Telecommunications Policy Division; Matsuda, Deputy Director of the Telecommunications Policy Division; Abe, Deputy Director of the Telecommunications Policy Division

4. Content of proceedings

- Opening
- Greeting by the Director-General of the Telecommunications Bureau
- Introduction of the members and others
- Proceedings

5. Main discussion

(1) Draft of the implementation items of the fiscal 2007 evaluation of competition in the telecommunications industry

(2) Draft of the outline of the fiscal 2007 evaluation of competition in the telecommunications industry

The secretariat explained the basic principles of competition evaluation and so on for fiscal 2007, based on the documents distributed.

- The only meaningful way of using evaluation is to feed the results back. So far competition evaluation has been fed back into the evaluation system itself; has it been fed back into the policy system? For example, the HHI of mobile communications has changed only a little. How is this specifically interpreted?

→ Competition evaluation is regarded from the beginning as a way to see the market from the

perspective of a third party. We are not currently considering clearly recommending that the results of competition evaluation be reflected in policy measures. However, the results of competition evaluation are going to be used as a basis for the determination of the direction of policy measures for competition safeguards and other matters.

→ The draft report of the Panel on Neutrality of Networks proposed that competition evaluation be linked to dominant carrier regulation. Issues should be extracted and problems should be clarified through competition evaluation, and we think we are approaching the next step.

- Competition evaluation has conventionally been based on market definition and microscopic analysis has been made individually in separate domains. However, analysis may not have been made from the perspective of the entire telecommunications market. Evaluation from such a perspective may be required in the fiscal 2007 evaluation.
- Competition evaluation has conventionally been made through analysis focusing on services. However, it will be difficult to analyze platforms, which could be categorized as belonging to either services or networks. A wide range of opinions should be sought so a consensus can be formed.
- I could not clearly identify how the fiscal 2006 evaluation results in particular are reflected in the fiscal 2007 standardized evaluation. Discussions were had on how to differentiate the use of the term “existence” from “exercise” of market power. The perspective of how to deal with the fiscal 2006 evaluation results will facilitate understanding on this matter. With regard to strategic evaluation, it would be a good idea to consider a method for promoting cooperation between platforms for the benefit of consumers by reference to other industries, such as the household electric appliance industry.
- Surely it is necessary to identify what kind of impact platforms have on competition and the convenience of users. For example, a check must be made to see whether the difference in the platform causes a lock-in effect in the ability to switch carriers using mobile phone MNP.
- The Study Group on Mobile Business indicated that platform services should be open to MVNOs. In this case, the setting of rates will be a significant issue.
- The situation in Japan is peculiar in the sense that networking the platform for mobile communications is likely to cause a monopoly situation. However, this analysis should refer to potential problems caused between different layers.
- Competition evaluation cannot be discussed without referring to ARPU. Above all, the structural issue of rates is an important point of discussion. Even if the rate structure is set based on costs, the market must be activated, without misleading it.
- Japan’s device market is also peculiar. This is related to the SIM lock issue and studies examining the social welfare aspects are also necessary.

- The idea of promoting competition to create innovation is understandable. It is, however, difficult to analyze platform users themselves because they are not a clearly defined group. Also from the perspective of the Antimonopoly Act, it is important to identify which part of the platform is to be extracted. Useful information will be obtained in response to the invitation to submit opinions (NOI).
- It would be desirable for competition evaluation to be positioned in the PDCA cycle and for the appropriate personnel to take individual measures.
 - With regard to platforms, discussions about mutual cooperation will be held based on the results of the evaluation, and the direction is very clearly shown this time as to how the results of competition evaluation will be used for the next set of policy measures.
- We are interested in intercarrier transactions. We do not know whether or not an analysis was made for fixed communications only. Conventionally, lines dedicated to short-distance were, together with voice calls, a focal point of discussions. While intercarrier transactions have now been liberalized, we are interested in what types of transactions are actually being made in a market that is almost monopolized by NTT. We think that competition evaluation should include the concept of “examination” prior to evaluation.
 - Four domains in the retail market are assumed to be within the scope of intercarrier transactions. We will make efforts directed at giving us an understanding of the whole picture in terms of what kinds of transactions are conducted. We will then analyze the issue of how rates are decided to discover the mechanism. We also expect to find out what kinds of issues exist based on the results of the separately planned invitation to submit opinions (NOI).
- In the case of leasing dedicated lines from NTT, the choice of either wholesale or interconnection will be available. There will be various requests made to NTT, such as a preference for wholesale rather than interconnection. How are these situations organized?
 - Interconnection with NTT East and West is regulated in detail in the agreement concerning interconnection. Services beyond the scope of the regulations can be bought and sold wholesale. However, in the case of wholesale, the supply side cannot find out if the part sold wholesale is used for network construction.
- Intercarrier transactions were also referred to in the fiscal 2006 competition evaluation. The Ministry of Internal Affairs and Communications previously expressed the opinion that the distinction between wholesale and retail is not clear in the designated telecommunications facilities system. However, in the fiscal 2007 evaluation, they are clearly differentiated from each other. What is the reason for this?
 - In the designated telecommunications facilities system, designated facilities are defined based on the market share of the facilities concerned. In this sense, markets could be assumed to form a three-layer structure consisting of a physical network market, a wholesale market,

and a retail market. Although the ADSL market is a competitive market, regulations against prohibited practices are imposed on services as dominant carrier regulations. There could be an argument on this matter.

- As for market definition, the SSNIP test is successful in the case of the retail market. How is an analysis going to be conducted for the wholesale market? For example, from the demand aspect in the wholesale market, there will be the option of either independently constructing a network or leasing one.

→ It is difficult to collect price data in the wholesale market. But no alternative technique has been found. Under such circumstances, studies aimed at defining markets must be conducted.

- Why is there a discrepancy between “make” and “buy” in NTT East and West, as described on page 352 of the fiscal 2006 report? Is the competition on the FTTH service basis related to the way of shared access as insisted upon by SoftBank? We want a further in-depth analysis of the fiscal 2006 evaluation to be conducted.

→ We will continue our analysis following the one for fiscal 2006. In addition, we will conduct an analysis of the provision of services to see how it is actually realized in our efforts to understand the actual situation first. We will also analyze domains other than FTTH.

- Among the items of strategic evaluation, it may be difficult to compile an interim summary of the evaluation of platforms in December. It might be better to include a reference to the possibility of extending the deadline.

- In market definition so far, attention has been focused only on the number of subscription contracts in the domain of mobile communications. We would suggest that analysis be conducted, for example, on the differences in the market shares of voice calls traffic and packet communications traffic.

→ In the final stage of selecting a certain service, the service cannot be provided by other carriers in the case of data communications. It is, therefore, difficult to divide traffic into categories. However, your comment is well understandable and studies will be conducted with your comment used as a viewpoint for analysis.

- On page 21 of the draft of the implementation items, it seems that packet data will be collected. But whether or not the data can be made public will be decided through negotiations with carriers. We hope that studies by carrier will be conducted and the data be disclosed accordingly.

→ We understand.

(3) Report of the Study Group on Mobile Business

- The study group's report refers to, the “standard plan concerning wholesale telecommunications services provided by MNOs.” On the other hand, however, nothing is said about the interconnection agreement. Is this because it is taken for granted that the agreement

will be made? Operators or carriers owning category II designated telecommunications facilities are obligated to disclose the interconnection agreement. If various MVNOs actually emerge, they will have to be dealt with individually in accordance with wholesale telecommunications services. How can a standard plan be created to meet these different individual requirements? For example, while about two-thirds of plans are liberalized under the Electricity Utilities Industrial Law, the regulatory agency obligates electricity utilities to disclose the standard rate in light of their monopolistic nature. It seems that, thanks to this measure, the specific rate for users is unlikely to be substantially different from the standard rate.

→ The present MVNOs carry out wholesale trade in many cases. Therefore, carriers or operators newly entering the industry cannot accurately estimate the required costs, which results in asymmetrical information. In this context, the disclosure is requested not by regulations but as a “measure.”

As for not referring to interconnection, operators or carriers owning category II designated telecommunications facilities are required to make the interconnection agreement and the rate of interconnection is based on the addition of an appropriate cost and an appropriate profit. As for the appropriateness of the rate of interconnection, due to the issue of the inclusion of sales incentives in the rate, the report states that accounting rules should be reviewed. A total framework to facilitate the entry of MVNOs into the market is being reviewed.

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