JFTC issues recommendations to Nippon Telegraph and Telephone East Corporation

December 4, 2003
Japan Fair Trade Commission

The Japan Fair Trade Commission (JFTC) investigated the Nippon Telegraph and Telephone East Corporation (hereinafter referred to as “NTT East”) in accordance with the provisions of the Antimonopoly Act and today issued the following recommendation as mentioned in I below based on the provisions of Section 48(1) of the Antimonopoly Act as it is violating Section 3 of the said Act (Prohibition of private monopolization).

(See appended Recommendation.)

JFTC also issued the following warning to NTT East as mentioned in II below against possible violation of Section 19 of the Antimonopoly Act (Interference with a competitor’s transactions: Paragraph 15 of the Designation of Unfair Trade Practices).

I. Recommendation

1. Profile of party concerned

<table>
<thead>
<tr>
<th>Name</th>
<th>Nippon Telegraph and Telephone East Corporation</th>
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<tbody>
<tr>
<td>Address</td>
<td>3-19-2, Nishi Shinjuku, Shinjuku-ku, Tokyo</td>
</tr>
<tr>
<td>Representative</td>
<td>Mr. Satoshi Miura, President</td>
</tr>
<tr>
<td>Outline of Business</td>
<td>Regional telecommunications services in Eastern areas of Japan</td>
</tr>
</tbody>
</table>

2. Outline of the violation (Refer to Appendix 1 to 3)

The NTT East offers an FTTH service (Note 1) named “B-FLET’S,” out of which it has introduced “New Family Type,” a new category for detached houses in June 2002. Despite the facts that the NTT East has set the interconnection charge (Note 2) for other telecommunications carriers and the users’ fee for the New Family Type (4,500 JPY) when using a split system (Note 2) which is not actually practiced, it allows its user to occupy one optical fiber cable in providing the said service. Thereby it practically offers the said service at the fee lower than the interconnection charge (5,074 JPY) for occupying one optical fiber cable. Through this conduct, the NTT East substantially restrains the competition in the field of FTTH service for detached houses in Eastern area of Japan by interfering with new entry of other telecommunications carriers who offer the FTTH service for detached houses using interconnection with the optical subscriber lines (Note 4) of the NTT East.

(Note 1) “FTTH (Fiber To The Home) service” refers to the connection service to provide internet access enabling broadband communications by connecting a terminal facility of telecommunications carrier and a user’s home with optical fiber. (Note 2) “Split system” refers to the system that an optical fiber cable from a terminal facility is split by splitter device into multiple users and is shared with the
users.

(Note 3) “Interconnection charge” refers to the charge that other telecommunications carriers pay to the NTT East for the interconnection with optical fiber facilities, etc. owned by the NTT East.

(Note 4) “Optical subscriber line” refers to the optical fiber line that interconnects between a terminal facility of a telecommunications carrier and a user’s home.

3. Outline of proposed elimination measures

(1) The NTT East should cease and desist from the conduct that it interferes with a new entry of other telecommunications carriers, who offer the FTTH service using interconnection with the optical subscriber lines of the NTT East, into the field of the FTTH service for detached houses, by allowing each user to occupy one optical fiber cable in providing the New Family Type service although it sets the interconnection charge and the users’ fee by way of the split system.

(2) The NTT East should make fair and proper indications on the contents of the New Family Type service based on the actually facility set used for the said service against general consumers.

(3) The NTT East should notify the telecommunications carriers who offers the FTTH service using interconnection with the optical subscriber line of the NTT East and general consumers of the measures taken in accordance with above 3 (1) as well as its commitment to the effect that it will refrain from the conduct similar to that described in 2 above in the future.

(4) The NTT East should refrain from similar acts as mentioned in 3 (1) above in the future.

4. Due date for acceptance or rejection of the recommendation

December 15, 2003

(Where the recommendation is accepted, a decision in line with the recommendation will be issued. Where the recommendation is rejected, a hearing procedure will be initiated.)

II. Warning

1. Outline of the suspected violation

On the occasion that other telecommunications carriers applied for accessing works of ADSL and other connection services, the NTT East has forced the engineering companies who concluded the agent agreements for the accessing work with the NTT East to conduct sales promotion activities for the NTT East’s B-FLET’S and other connection services to the subscribers of the said telecommunications carriers. It is acknowledged that this conduct by the NTT East is suspected of unjustly interfering with the transactions between other telecommunications carriers and their subscribers.
2. Outline of the warning

The NTT East should refrain from the similar conduct as above 1 in the future.
Recommendation No.34 of 2003

Recommendation

Mr. Satoshi Miura
President
The Nippon Telegraph and Telephone East Corporation
3-19-2, Nishi Shinjuku, Shinjuku-ku, Tokyo

The Japan Fair Trade Commission issues the following recommendation to the above party under the provisions of Section 48(1) of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (hereinafter referred to as “Antimonopoly Act”).

Main Text

1. The Nippon Telegraph and Telephone East Corporation should cease and desist from the conduct that it interferes with a new entry of other telecommunications carriers, who offer the FTTH service through interconnecting with optical subscriber lines of the said Corporation, into the field of the FTTH service for detached houses, by using the direct fiber cable connecting system in which the one optical fiber cable is occupied by an user, although it sets the interconnection charge for other telecommunications carriers and the users’ fee for the New Family Type based on the split system in which several users share the one optical fiber cable, that is not actually used, as to the connection service called “New Family Type,” a new category of the FTTH services called “B-FLET’S” which offer internet accessing services by optical fiber cables.

2. The Nippon Telegraph and Telephone East Corporation should make fair and proper indications on the contents of the afore-mentioned New Family Type service based on the actual facility set used for the said service to general consumers.

3. The Nippon Telegraph and Telephone East Corporation should notify the followings to the telecommunications carriers who offer the FTTH service through interconnecting with the optical subscriber line of the Nippon Telegraph
and Telephone East Corporation as well as general consumers. The manner of
the notifications should be subject to the approval of the Commission:
(1) The measures taken in accordance with those described in 1 above.
(2) The commitment to the effect that it will refrain from the conduct similar to
that described in 1 above in the future.

4. The Nippon Telegraph and Telephone East Corporation should refrain from
interfering with the new entry of other telecommunications carriers into the
FTTH service for detached houses through the conduct similar to that described
in 1 above in the future.

5. The Nippon Telegraph and Telephone East Corporation should promptly notify
the Commission with regard to the measures taken in accordance with those
described in 1 through 3 above.

Grounds of Recommendation

I Findings of Fact

1 (1) a. The Nippon Telegraph and Telephone East Corporation (hereinafter referred
to as “NTT East”) is headquartered at the address shown above, and
engages in the telecommunications business as the Type I licensed
telecommunications carrier based on the provision of the
Telecommunications Business Law in the area of Hokkaido, Aomori, Iwate,
Miyagi, Akita, Yamagata, Fukushima, Ibaragi, Tochigi, Gunma, Saitama,
Chiba, Kanagawa, Niigata, Yamanashi, and Nagano prefectures and Tokyo
Metropolis (hereinafter referred to as “Eastern area of Japan”).

b. The NTT East offers to general users the telecommunications service called
“B-FLET’S” which is the internet accessing services with optical subscriber
lines (hereinafter referred to as “FTTH service”) by utilizing its
telecommunications facilities.

c. The NTT East offers the service called the “Basic Type” (hereinafter
referred to as ‘Basic Type’) and the service called the “New Family Type”
(hereinafter referred to as ‘New Family Type’) as a category of B-FLET’S
for detached houses, and the number of these sales accounted for almost all
the sales of the FTTH services for detached houses in the Eastern area of

d. The NTT East offers the service called “Condominium Type” of which one
optical fiber cable is shared by several users within the housing complex as
a category of B-FLET’S for housing complexes besides detached houses. As
there are structural problems in the housing complex such as being difficult
to lay optical fiber cables and install equipments, the majority of accessing
works of optical subscriber lines (referring the optical fiber cables used as
subscriber lines, hereinafter the same applies) is for detached houses.
2 (1) a. As the Tokyo Electric Power Company announced to start the FTTH service business from the end of March 2002, the NTT East considered adding a cheap version of the service with the maximum communication speed of 100Mbps (hereinafter referred to as “100 Mbps”) for detached houses to the
lineups of B-FLET’S services around February to March 2002. The NTT East has offered the Basic Type that is the conventional service for detached houses at 9,000 JPY per month with the facility set where one optical subscriber cable is occupied by one user (hereinafter referred to as “direct cable connection system”). It seemed problematic to reduce its user fee to below the interconnection charge per one optical subscriber cable which exceeded 5,000 JPY per month from the viewpoint of fair competition with other telecommunication carriers connecting its optical subscriber lines, so it sought a way to set the competitive user fee of the FTTH service to that of the Tokyo Electric Power Company without reducing the interconnection charge per one optical subscriber cable. Instead of lowering the user fee for the Basic Type, the NTT East introduced the New Family Type that offered the service under the facility set where one optical subscriber cable of 100 Mbps was split into maximum 32 users (hereinafter referred to as “split system”). Due to the insufficient mass of demands for enabling the split system, however, the NTT East offered the New Family Type to customers in practice not by the split system but by the direct cable connection system using the same facility set as the Basic Type.

b. The NTT East decided to sell the New Family Type from June 1, 2002, and notified the Minister of Internal Affairs and Communications of its charge set at 5,800 JPY per month on Apr. 11 of the year. The NTT East also applied on the same date for an amendment of the Articles of Agreement Concerning Interconnection to the Minister of Internal Affairs and Communications so as to set the interconnection charge for the New Family Type service where one optical subscriber cable was split into maximum 32 which consists split 8 lines within the terminal facilities times split 4 lines outside of the terminal facilities. This amendment was approved.

c. The NTT East offered the New Family Type service to its subscribed users by the direct cable connection system without specifying what kind of facilities were used in offering the said service.

(2) a. The NTT East considered to reduce the user fee for the New Family Type around October 2002 because the Tokyo Electric Power Company lowered the user fee for its FTTH service around December 2002. The NTT East tried to justify the reduction of its user fee by the following two ways; one was because of the change of facility set based on the previous user fee
notified to the Minister of Internal Affairs and Communications on Apr. 11, 2002, and the other was the reduction of user fee with maintaining the facility set. In the latter case, it could not reduce its user fee without reducing the interconnection charge per one optical subscriber cable. In such a case, it was concerned that other telecommunications carriers would start the FTTH service for detached houses through interconnecting with the optical subscriber lines of the NTT East. Therefore, the NTT East decided to reduce its user fee on the grounds that the cost per user would become lower by increasing the number of users who share the optical subscriber lines between the terminal facilities and the splitter devices outside the terminal facilities through changing the facility set of the split system for New Family Type into that having 4 splits within the terminal facilities and 8 splits outside the terminal facilities. However, the split system was not actually utilized.

b. The NTT East applied for the amendment of the Articles of Agreement Concerning Interconnection to the Minister of Internal Affairs and Communications so as to revise the interconnection charge with telecommunications facilities used for New Family Type on Jan. 27, 2003 and it was approved. The NTT East also decided to reduce the user fee for New Family Type starting from Apr. 1, 2003, and notified to the Minister of Internal Affairs and Communications that the user fee was to be set at 4,500 JPY per month on Mar. 18 of the year. As a result, the user fee for New Family Type became lower than the interconnection charge per one optical subscriber cable. If only one split line among the maximum 32 splits was used under the split system like New Family Type, the interconnection charge per user became 17,145 JPY.

c. The NTT East continuously offered the facility set of the direct cable connection system to the users once subscribed for the New Family Type service even after the user fee for the said service was reduced.

(3) The NTT East, on the premise that the New Family Type service was offered by the direct cable connection system, promoted the reduction of the transaction period from the date of service application by users to the completion of accessing works. The substantial reduction of the period within the jurisdiction of Tokyo branch was turned into practice since February 2003. Thereafter, it has advertised that the FTTH service for detached houses can be accessed within six days at the earliest from the date of application for the service. Since the fee and the waiting time from the users’ applications to the accessing works were reduced, the number of subscriptions for the New Family
Type has increased drastically.

(4) Since the NTT East started to sell New Family Type, it has offered the said service to the subscribers using the direct cable connection system. As of Sep. 30, 2003, it made up no plan as to how much demands it would need to start the said service by the split system. In case the split system is applied, it is necessary to set up the plan for the location of installing the splitter device to be established outside the terminal facilities and the distribution routes, etc., but no plan was laid actually.

(5) Triggered by the demand from the Ministry of Internal Affairs and Communications to report on the facilities used for New Family Type, the NTT East decided on Oct. 27, 2003 at the Executives’ Meeting that it would offer the service by the split system to the new users after December of the same year. However, the specific plan to implement the said decision has not yet been fully formulated.

3 Due to the conducts described in 2 above by the NTT East, the carriers who wish to offer the FTTH service through interconnecting with the optical subscriber lines of NTT East are laid in the circumstances that it is difficult to set the competitive fee against the NTT East’s user fee after paying for the interconnection charge of the split system which is the premise in providing New Family Type service because there are no sufficient demands. However, the user fee for New Family Type is below the interconnection charge of one optical subscriber cable. Therefore, there exist no carriers who wish to offer the FTTH service for detached houses through interconnecting with the optical subscriber lines of the NTT East in the Eastern area of Japan.

II Application of the Law

According to the findings above, the NTT East, in its offer of the FTTH service for detached houses, set the interconnection charge and the user fee for New Family Type by the split system which has not been used in practice, in order to reduce the user fee without lowering the interconnection charge of the optical subscriber lines for other telecommunications carriers. However, it practically offers New Family Type service at the user fee lower than the interconnection charge per one optical subscriber cable while using the direct cable connection system, and excludes the business activities of the telecommunication carriers who offer the FTTH services for detached houses through interconnecting with the optical subscriber lines of NTT East. Thereby it is causing, contrary to the public interest, a substantial restraint of competition in the field of the FTTH service for detached houses in the Eastern area of Japan. This conduct falls under the private monopolization
stipulated by the Section 2(5) of the Antimonopoly Act and violates the provisions of Section 3 of the same Act.

December 4, 2003

Kazuhiko Takeshima, Chairman
Tadayoshi Honma, Commissioner
Makoto Kobayashi, Commissioner
Aiko Shibata, Commissioner
Hiroshi Mitani, Commissioner
Japan Fair Trade Commission