

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 2 on Competition and Regulation

FINANCING OF THE ROLL-OUT OF BROADBAND NETWORKS

-- Note by Japan --

16 June 2014

This document reproduces a written contribution from Japan submitted for Session IV of the 57th meeting of the Working Party No. 2 on Competition and Regulation on 16 June 2014.

*More documents related to this discussion can be found at:
<http://www.oecd.org/daf/competition/>*

Please contact Ms. Cristiana Vitale if you have any questions regarding this document [E-mail: cristiana.vitale@oecd.org].

JT03359030

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.



1. Introduction

1. Since the competition principles were introduced into the telecommunications business by the privatization of Nippon Telegraph And Telephone Public Corporation (currently the NTT group¹) in 1985, the entry of businesses into this sector has rapidly increased and, as of 2010, there are approximately 15,000 telecommunications carriers² in Japan. The multiple revisions of the Telecommunications Business Act, which came into force accompanying the privatization mentioned above, have made it easy for newcomers to enter the sector and promoted to create a competitive environment.

2. In Japan, the penetration of fixed broadband services³ had expanded through ADSL (Asymmetric Digital Subscriber Line), which provides the service using the existing fixed telephone lines, followed by the transition to the new high speed FTTH (Fiber To The Home), which provides the service using newly laid fiber optic cable. Additionally, in recent years mobile broadband services⁴ have been spreading rapidly.

3. The progress achieved to date in the penetration of broadband in Japan and its future policies are described below.

2. ADSL

4. In Japan, the penetration of broadband services has been promoted by the Japanese government since the beginning of the 2000s, with the goal of “Creating advanced telecommunications networks at the world’s highest level” under the “e-Japan Strategy”. The penetration of ADSL services, which provide services through existing fixed-line telephone networks, has progressed significantly since this period. The goal of the above strategy was to increase the availability of high speed broadband services including ADSL to cover 30 million households by 2005, but, in fact, it reached 46.3 million out of a total of 51.71 million households in 2005 (the broadband coverage rate⁵: approximately 90%).

5. This rapid expansion was facilitated by a significant decrease of telecommunications fees as well as improvement of service and transmission speeds due to active new entry and vigorous competition resulting from systemic reforms such as the development of rules regarding the unbundling and collocation of the network with the aim of encouraging competition in the telecommunications sector.

6. The JFTC has also taken the following actions/measures in this sector, where NTT East and NTT West are both the subsidiaries of NTT Corporation.

¹ The NTT group at present consists of NTT Corporation (holding company), NTT East and NTT West (regional), NTT Communications (long-distance and international), NTT docomo (mobile), NTT Data (data communication and system integration) and numerous other subsidiaries.

² So-called “Notifying Business Operators” which do not install the equipment of telecommunications network, etc. account for 90% of telecommunications carriers.

³ FTTH, DSL, CATV (Cable TV), Internet.

⁴ BWA (Broadband Wireless Access), LTE (Long Term Evolution), 3.5th Generation mobile phone.

⁵ The broadband coverage rate is calculated by dividing the number of households to which broadband services are available by the total number of households under the census of the basic residents’ registration. The number of households to which broadband services are available is estimated under certain assumptions according to the information provided by the carriers.

Date	Outline of alleged conduct	Measures Taken by the JFTC	Relevant/Applicable Provision of the law
December 20, 2000	NTT East had hindered DSL telecommunications carriers requesting connection to subscriber's lines from entering the market and impeded the business activities of DSL telecommunications carriers, thereby putting those carriers at a major competitive disadvantage.	Warning against NTT East	Article 3 of Antimonopoly Act (Private Monopolization)
December 25, 2001	NTT East and NTT West charged the users of other telecommunications carriers fees for the construction works for replacing the protector or switching to metal cable to provide ADSL services, while providing the above replacing or switching works to their own users free of charge, thereby inducing customers by unjust benefits or interfering with competitor's transactions.	Warning against NTT East and NTT West	Article 19 of Antimonopoly Act (Unfair Trade Practices Item 9 designated by JFTC Notice[Customer Inducement by Unjust Benefits] and Item 15[Interference with a Competitor's Transactions])
December 4, 2003	At the time of construction works needed to start ADSL services requested by other telecommunications carriers, NTT East undertook sales activities for its FTTH services to users of the other telecommunications carriers through the construction companies it entered into distribution agreements, thereby unjustly interfering the transaction between other telecommunications carriers and their subscribers.	Warning against NTT East	Article 19 of Antimonopoly Act (Unfair Trade Practice Item 15 [Interference with a Competitor's Transactions])

7. According to the report published by the JFTC in 2004⁶, some telecommunications carriers pointed out that these warnings contributed to the fair competition among NTT and other ADSL telecommunications carriers, promoting the vigorous competition among them.

8. Subsequently, due to the lowered fees of FTTH with faster transmission speeds from around 2003, the demand of users shifted towards FTTH. As of 2013, the number of DSL subscribers, which reached a peak of 14.48 million in 2005, had decreased to 5.74 million.

3. FTTH

9. For the provision of FTTH services, it is necessary to construct new optical fibers at an enormous cost. Therefore, in accordance with the Act on Temporary Measures concerning Telecommunications Infrastructure Improvement (enacted in 1991), the government promoted infrastructure development by stimulating private-sector incentives to invest in broadband including optical fibers, through providing low-interest loans, guarantee of liabilities, interest subsidies, and tax benefits for the facility development of fiber optic networks by private carriers.

⁶ "Report on survey concerning the actual conditions of competition in broadband services, etc." (April 27, 2004; Japan Fair Trade Commission).

10. In addition, the government carried out support projects to provide a grant (Subsidy for Promotion of Development of Telecommunications Infrastructure in Rural Areas) to the municipalities of areas under disadvantageous condition, such as small populations, for the development of broadband by private carriers. As a result of these efforts, the ratio of FTTH coverage combined with that of FTTB (Fiber To The Building) reached 86.5%⁷ in 2008.

11. In relation to a case involving FTTH, the JFTC found that when NTT East provided a FTTH service to the user's residences using its optical fiber equipment, it set a lower fee for its users than the fee charged to specific telecommunications carriers which use the above optical fiber equipment of NTT East to provide the FTTH service equivalent to that of NTT East to users.

12. Given that the above findings are in violation of Article 3 of the Antimonopoly Act ("Prohibition of private monopolization"), the JFTC issued a hearing decision against NTT East, on March 26, 2007⁸.

13. Due to these efforts, business entries into the market have increased, active competition has been promoted, and fees of FTTH that were higher than that of ADSL has been lowered. As a result, the penetration of FTTH services has progressed and the number of FTTH subscription exceeded that of ADSL subscribers in 2009. As of 2013, the number of subscribers of FTTH was more than quadruple for that of ADSL as the table below shows.

Trend in the number of subscribers to fixed broadband services (Unit: 10,000 subscribers)

	DSL	FTTH	CATV Internet	Total fixed broadband subscribers
2007.3	1,401.3	879.5	360.7	2,642.7
2008.3	1,271.1	1,215.5	387.2	2,875.0
2009.3	1,118.4	1,502.1	411.0	3,032.8
2010.3	973.5	1,780.2	531.4	3,286.3
2011.3	820.1	2,021.8	567.2	3,410.2
2012.3	670.5	2,230.5	590.6	3,492.5
2013.3	574.0	2,385.4	601.2	3,530.0
2013.12	470.2	2,501.9	606.4	3,579.3

(Source: Ministry of Internal Affairs and Communications Website)

⁷ Source: OECD website "Broadband Portal" (<http://www.oecd.org/sti/broadband/oecdbroadbandportal.htm>).

⁸ NTT East filed a suit to rescind the decision described above and the Tokyo High Court made the decision to dismiss this appeal on May 29, 2009. Following the Tokyo High Court's decision, the Supreme Court refused NTT East's final appeal on December 17, 2010; consequently this decision was final and binding.

4. Future Projects

14. Due to the rapid penetration of broadband services⁹ that commenced in the early 2000s, as described above, as of the end of March 2013 the broadband coverage rate (including that of ultrahigh-speed broadband) which indicates the availability of the services¹⁰ has reached almost 100% (households basis: 54.17 million households in total).

15. In addition, mobile broadband has recently begun to spread rapidly in Japan, mainly through the use of smartphones, due to the increase in transmission speeds and the investments in the installation of base transceiver stations for mobile phones by three major private telecommunications carriers. As of December 2013, the number of mobile ultrahigh-speed broadband subscribers¹¹ was 45.557 million, significantly exceeding that of fixed ultrahigh-speed broadband subscribers¹² at 27.708 million.

16. The government is also carrying out projects such as providing subsidies for the costs of developing the base transceiver station and maintaining the transmission lines in areas with unfavorable conditions such as rural areas, upon the development of facilities for the transmission lines required for the establishment of a base transceiver station by wireless communication carriers (Wireless System Expansion Support Project). For mobile broadband telecommunications facilities, the development of a competitive environment has conventionally been encouraged, for example, through imposing the access obligation on the installer of the mobile networks to make connections when requested by other telecommunications carriers as that on installer of fixed networks, based on the Telecommunications Business Act.

17. Furthermore, since 2014 February, Ministry of Internal Affairs and Communications (MIC), which is in charge of information and communications policy, has begun an inquiry about a theme entitled “The Ideal State of Information and Communications Policies toward the 2020s” for economic growth and better lives of people through further spread and development of information and communications infrastructure at the world’s highest level.

18. In this inquiry, to attain the proper ICT infrastructure toward the 2020s, a discussion is to be made on the review of the competition policy in the telecommunications sector. The conclusion is planned to be reached within 2014.

19. Also, from the perspective of further promotion of free and fair competition in the telecommunications sector, the JFTC and the MIC established, in 2001, “the Guidelines for Promotion of Competition in the Telecommunications Business Field”, in which the basic viewpoints concerning the Telecommunications Business Act and the Antimonopoly Act have been specified with the list of problematic conducts (the most recent revision made in April 2012). These guidelines show viewpoints of the JFTC and the MIC concerning the application of the Antimonopoly Act and the Telecommunications Business Act, under their respective responsibilities, as well as the desirable actions to be taken voluntarily by the telecommunications carriers, from the viewpoint of encouraging competition in the telecommunications business.

⁹ Broadband is defined as FTTH (Fiber To The Home), DSL (Digital Subscriber Line), cable internet, FWA (Fixed Wireless Access), Satellite, BWA (Broadband Wireless Access), LTE (Long Term Evolution), 3.5th generation mobile phone. 3.5 Generation mobile phone.

Ultrahigh-Speed Broadband is defined as FTTH and cable internet providing a download speed higher than 30Mbps.

¹⁰ See footnote 5 for the definition of broadband coverage rate.

¹¹ Total of 3.9G Access Service and BWA Access Service.

¹² Total of FTTH Access Service and CATV Access Service of 30Mbps downlink or above.