GUIDELINES FOR PROMOTION OF COMPETITION IN THE TELECOMMUNICATIONS BUSINESS FIELD

November 30, 2001
Fair Trade Commission
and
Ministry of Internal Affairs and Communications

(Amendment: December 25, 2002)

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I. Guidelines for promotion of competition in the telecommunications business field —necessity and framework

1. Necessity of Guidelines

Japan faces an urgent challenge to properly address rapid and extensive changes of its socio-economic structure that are taking place in a worldwide scale due to the utilization of information and telecommunications technology. While the telecommunications sector serves as an infrastructure for socio-economic activities, it is also expected to take a leading role for the creation of a society based on an advanced information and telecommunications network.

Taking such an important mission of the telecommunications sector, the Basic Law on the Formation of an Advanced Information and Telecommunications Network Society (Law No.144 of 2000) took effect on January 6, 2001. The so-called IT Basic Law calls for promoting fair competition among telecommunications business operators and for taking other measures necessary for encouraging the creation of a world-class advanced information and telecommunications network which is accessible by the public at a low cost (Section 17). The promotion of fair competition in this sector is one of the major policy agenda of the Japanese government.

Under the free economic system, in light of promoting fair and free competitions, Japan makes utmost efforts to ensure a dynamic development of its economy and to develop creativeness and ideas of entrepreneurs through market mechanism. In accordance with promoting deregulation, it is a fundamental principle that anticompetitive practices have been eliminated by the Antimonopoly Act (the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade, Law No.54 of 1947), a general competition law.

Despite this background, the following circumstances apply in the telecommunications business field:

(i) A competitive situation is hard to achieve because there are telecommunications carriers that are assumed to have market power, due to essential bottleneck facilities on which other telecommunications carriers need to rely, or big market shares.

(ii) Reliance on other telecommunications carriers is inevitable in so-called a network industry, where interconnection with competitors greatly increases the benefit of users, and rather where provision of service is difficult without interconnection,.

(iii) The speed of change in the market and the technology is extremely fast.

Considering these characteristics in the telecommunications business field, and the fact that the field is in a transition from a monopoly to competitive market, in order to more actively promote fair competition in the telecommunications business field, it is necessary to put measures for promoting fair competition into place, as well as ensuring the regulations necessary to secure public interest and benefit of users, by the Telecommunications Business Law (TBL, Law No.86 of 1984), in addition to deregulation and elimination of anti-competitive practice by the Antimonopoly Act, a general rule for competition.

Taking into account of the nature of these laws, both need properly enforced to encourage competition in the industry.

The Fair Trade Commission (FTC) that oversees the Antimonopoly Act, and the Ministry of Internal Affairs and Communications (MIC) that oversees TBL, decided to jointly formulate the guidelines for promoting competition in the telecommunications businesses in Japan. The Guidelines would also serve to prevent unnecessary confusion and burden that telecommunications carriers would have in the implementation of the two laws.

FTC and MIC will collaborate and work together to promote further competition in the telecommunications business field.

2. The framework of the Guidelines and basic principles

(1) Framework

The Guidelines is made up of:

a. Guidelines for promotion of competition in the telecommunications sector—necessity and framework,

b. Practices constituting problems under the Antimonopoly Act or Telecommunications Business Law (TBL),

c. Desirable practices of telecommunications carriers in view of promoting further competition, and

d. System for responding to reporting and consultations, and submission of opinions.

FTC and MIC show their views regarding the enforcement of the Antimonopoly Act and TBL, respectively under their responsibility in Chapter II. Chapter III describes concrete practices that telecommunications carriers are expected to pursue.

Chapter IV includes reports on violation cases of the two laws, legal consultation systems which confirm FTC and MIC whether a certain practice violates the Antimonopoly Act or TBL etc., and collaboration between FTC and MIC.

(2) Basic principle on the application of the Antimonopoly Act

a. FTC, strictly enforcing the Antimonopoly Act, has eliminated anticompetitive practices in the telecommunications sector in view of promoting fair and free competition. FTC continues to stick to this basic principle.

b. In addition to the strict enforcement of the Antimonopoly Act for fair and free competition (*1), FTC thinks it necessary to clarify and publicize its viewpoints regarding the enforcement of the Antimonopoly Act as much as possible prior to it's actual enforcement for the following purposes:

(a) Prevention of possible violations of the law by telecommunications carriers,

(b) Creation of the environment in which carriers can operate as autonomously as possible, and

(c) Ensuring the transparency of the law enforcement by concretely showing violation cases.

(*1) When FTC finds the violation of the AMA, it may order following the procedure of the law, to suspend the violation, to delete particular clauses in contracts, to transfer a part of the business or to take any other measures necessary to eliminate illegal practices. When a carrier acquires stocks of the other company or holds the other company's stocks and substantially restrains competitions in any particular field of trade, FTC may order, following the procedure of the law, the firm to dispose all or a part of the stocks, to transfer a part of the business, or to take any other measures needed to restore the situation.

(3) With the above-mentioned purposes, FTC clarifies business practices that would adversely affect competition in the telecommunications sector, mainly telecommunications service (*2), showing cases that the carriers would possibly face. In clarifying illegal practices, FTC took into account concerns shown by carriers regarding competition and past instances that violated the Antimonopoly Act.

(*2)"Telecommunications service" means intermediating communications of others through the use of telecommunications facilities, or any other acts of providing telecommunications facilities for the use of communications of others, according to Section 2-3 of TBL. What will be taken into account in applying the Antimonopoly Act is possible effect to competition. The markets, for example, include a regional telecommunications service market, a long-distance telecommunications service

market, an international telecommunications service market, and a satellite communications service market, a mobile telecommunications service market and a data transmission service market. Those markets are defined by the actual state of services.

In case of practices referred to in the section II of the Guidelines, legitimacy of specific practices by carriers, including foreign companies, is judged individually referring to the Antimonopoly Act and taking into account their possible effect to competition. (*3)

(*3) The Antimonopoly Act targets business practices that adversely affect competition, and applies to all of business operators. Effects of business practices to competition may differ from one operator to another even if they are same. For example, a newcomer to the telecommunications business tends to give minor effects to competition while telecommunications carriers with a relatively large amount of market shares can give a greater effect to the competition.

(4) Possible Antimonopoly Act violations are listed in case by case bases. Share holdings of carriers, and mergers and acquisition are also subject to the Antimonopoly Act. (Guidelines for Interpretation on the Stipulation that "The Effect May Be Substantially to Restrain Competition in a Particular Field of Trade" Concerning M&As by Fair Trade Commission on December 21, 1998)

Any practices which are not listed in the guidelines are also subject to being eliminated when they are found violating the law.

FTC will accumulate enforcement records, and review these Guidelines occasionally and dynamically referring to those past records responding to changing competitive environments in the telecommunications sector.

3. Basic approach to application of TBL

(1) TBL has already included various systems such as interconnection system with the purpose of providing an environment of fair competition in the telecommunications business field. Further measures for promoting competition have been enacted in the Law to partially amend TBL and related legislation (Law No.62 of 2001), through the introduction of asymmetrical regulations, by categorizing telecommunications carriers that are assumed to have market power (*4), hereinafter referred to as “dominant carriers”), and by setting up safeguards against anti-competitive practices that apply asymmetrically to dominant carriers.

Through the introduction of these systems, several categories of practices only prohibited to dominant carriers are clearly stipulated in the Law for the first time, and it becomes possible to effectively prevent and immediately eliminate such practices, whereas existing regulations on tariffs, interconnection / sharing agreements of telecommunications facilities and wholesale telecommunications services are deregulated / relaxed for other telecommunications carriers (telecommunications carriers without market power), enabling their business to develop in a more flexible manner.

These measures provide an environment for fair competition in the telecommunications market, which is expected to accelerate reduction in charges and advance in the nature and variety of services available.

(*4) "Telecommunications carriers that are assumed to have market power" are Type I telecommunications carriers that install Category I designated telecommunications facilities in accordance with Article 38-2 paragraph (2), and those that are designated by the Minister of MIC in accordance with the provision of Article 37-2 paragraph (1) of TBL.

(2) In order to ensure the smooth applications and operations of regulations and measures for fair competition under TBL (including systems introduced by the amended law), MIC

has categorized and exemplified practices prohibited to dominant carriers and practices liable to correction orders in TBL such as order to improve business activities and order to change charges. These practices are set out in the following Chapter, making the operation of TBL more transparent, helping to put in place an environment that enhances the business autonomy of telecommunications carriers.

(3) These Guidelines list practices constituting problems under TBL, but whether or not a specific individual practice by a telecommunications carrier is liable to correction orders under TBL is determined on a case by case basis in accordance with corresponding provisions of TBL. Even if a practice in question seems not to fall under one of them described in these Guidelines, the practice is still liable to correction orders if it constitutes prohibited practices in accordance with corresponding provision of TBL.

From the point of view of enhancing the environment for further fair competition, MIC will review the Guidelines occasionally and dynamically, approximately one year after their finalization at the latest, in response to changes in the telecommunications business field, including the emergence of new business models or new services.

II. Practices constituting problems under the Antimonopoly Act or Telecommunications Business Law (TBL)

1. Section pertaining to interconnection and sharing of telecommunications facilities

1) Interpretation of the Antimonopoly Act

(1) In providing telecommunications services, there are some facilities which are essential, but is recognized to be actually difficult to newly build same kind of things by carriers' own investments (hereafter referred to as essential facilities)(*1). Under such a circumstance, it will be almost impossible or extremely difficult to start new businesses if prospective telecommunications carriers are rejected to connect to such facilities of incumbent carriers (*2) or their procedures for the interconnection are delayed. In case that newcomers are not allowed to use only a necessary part of such facilities, they are forced to bear additional cost. If such interconnection to essential facilities are exclusively allowed to certain carriers, fair competition ground cannot be ensured.

(*1) Among such essential facilities are fixed subscriber line networks owned by telecommunications carriers with relatively large market shares. The networks are made up of switchboards located close to subscribers (hereafter referred to as terminal switchboards), telecommunications lines that link subscribers to subscribers' switchboards (hereafter referred to as terminal lines), switchboards that handle telecommunications lines from terminal switchboards (hereafter referred to as facilities including relay switchboards), and telecommunications lines that connect terminal switchboards to facilities including relay switchboards. Telecommunications lines include metal and fiber-optic lines.

(*2) One of examples is a problem concerning interconnection to subscriber line networks. Problems concerning sharing of the networks are handled just like interconnection cases.

(2) Under such circumstances, following practices hamper new entrants and make their business operations difficult(*3): telecommunications carriers with essential facilities reject competitors' request to connect to their subscriber line networks (*4) and to allow collocation (*5) , and they offer unfavorable terms to competitors in such transactions compared with those to their own departments or to their affiliates (*6). When those practices are found substantially restraining competition, they are regarded as "private monopolization" that is prohibited by Section 3 of the Antimonopoly Act. Even if they are not substantially causing restraint of competition in the market, but they could impede fair competition, they are regarded as "unfair trade practices" that are banned by Section 19 of the Antimonopoly Act. (*7)

Telecommunications facilities held by mobile telecommunications service providers are not regarded, in general, as facilities that are actually difficult to newly build. In some cases, however, it is essential for new providers of mobile telecommunications services to connect to telecommunications carriers with relatively large market shares. Due to the limitation of airwave allotment, moreover, making entries into this market is uneasy. Given such situation of the market, it violates the Antimonopoly Act when telecommunications carriers that provide mobile telecommunications service with relatively large market shares reject interconnection with competitors.

(*3) Among instances is a case that a telecommunications carrier finds it difficult to launch a new telecommunications service as an incumbent competitor with essential facilities rejects a request to connect to its networks.

(*4) "Interconnection to their subscriber line networks" includes those cases in which

only part of the networks necessary to the competitors —communication transmission or switchboard functions, for example—are used.

(*5) "Collocation" means offering physical spaces where equipment for interconnection can be installed, to those who want interconnection.

(*6) Affiliates mean concerns under the relationship that one's management policy can be controlled or substantially influenced through stock ownership by the other. Subsidiaries, parent companies and other subsidiaries of its parent company are regarded, among others, as affiliates.

(*7) As to application of the Antimonopoly Act to specific practices, see the Section I, 2, (2), (3).

2) Overview of the system for interconnection and others in TBL

(1) System for interconnection of telecommunications facilities

The object of the system for interconnection of telecommunications facilities is to ensure smooth interconnection between telecommunications carriers to avoid impairing fair competition or benefits of users that might result from conclusion of agreements where parties that are superior in bargaining power conclude agreements that are extremely unfavorable to the other parties in light of differences in bargaining power between telecommunications carriers, and similar practices that might effectively negate interconnection. The overview of the system is as set out below.

A. Interconnection duties of Type I telecommunications carriers

Except for the specific cases (*8) where there is a probability of impediment to the smooth provision of telecommunications service or similar circumstances, Type I telecommunications carriers are obligated to respond to interconnection requests from other telecommunications carriers for facilities of Type I telecommunications carriers (TBL, Article 38).(*8)

i. When there is a probability of impediment to the smooth provision of telecommunications service.

ii. When there is a probability that said interconnection might unfairly impair the interest of said Type I telecommunications carrier.

iii. When the telecommunications carriers that have requested interconnection have failed or may fail to pay the monetary amounts that they are to bear for the interconnection.

iv. When installation or repair of telecommunications facilities to meet the interconnection request are exceedingly difficult technologically or economically.

Type I telecommunications carriers must notify the Minister of MIC when they intend to formulate or amend an interconnection agreement regarding rates and conditions on interconnection to their own telecommunications facilities (except Category I and Category II designated telecommunications facilities below) with other telecommunications carriers (TBL, Article 38-4 paragraph (2)).

B. Designated telecommunications facilities system

Based on TBL, the Minister of MIC shall designate telecommunications facilities that need to be governed by special interconnection regulations to ensure fair competition and benefits of users in the light of their essentiality, their monopoly or their relatively large capacity of terminal lines. Telecommunications facilities that are designated by the Minister of MIC shall be Category I and Category II designated telecommunications facilities.

Firstly, Category I designated telecommunications facilities shall be regional network facilities that own fixed subscriber lines on a considerable scale and are

essential to the business development of other telecommunications carriers and monopolistic. For that reason, in terms of fairness and openness and to ensure smooth and speedy interconnection, Type I telecommunications carriers that install such facilities are obligated to submit articles of interconnection agreements to the Minister of MIC, to obtain authorization from said Minister and to publish them, and to provide interconnection unbundled from other network functions, to keep and publish interconnection accounting, and to calculate interconnection rates using the LRIC (long-run incremental costs) methodology for certain network functions.

Secondly, Category II designated facilities shall be mobile telecommunications facilities that accommodate a relatively large number of subscribers. The mobile telecommunications market tends to be an oligopolistic market where new entry is restricted because bandwidth of radio frequency is limited. Therefore, Type I telecommunications carriers that install them are obligated to formulate and publish articles of an interconnection agreement, and notify it to the Minister of MIC.

C. Agreements on interconnection

Type I telecommunications carriers that install Category I designated telecommunications facilities shall not be entitled to conclude agreements on interconnection to Category I designated telecommunications facilities with other telecommunications carriers, nor shall they be entitled to amend them, unless the agreements are based on articles of authorized interconnection agreements (TBL, Article 38-2 paragraph (6)). Moreover, agreements on interconnection that are concluded on Category I designated telecommunications facilities or amendments of them must, without delay, submit notification to the Minster of MIC (TBL, Article 38-2 paragraph (9)).

Type I telecommunications carriers that install Category II designated telecommunications facilities shall not be entitled to conclude agreements on interconnection to Category II designated telecommunications facilities with other telecommunications carriers, nor shall they be entitled to amend them unless the agreements are based on articles of notified interconnection agreements (TBL, Article 38-3 paragraph (4)). Moreover, agreements on interconnection that are concluded on Category II designated telecommunications facilities or amendments of them must be notified without delay to the Minister of MIC (TBL, Article 38-3 paragraph (6)).

(2) System for the sharing of telecommunications facilities

Agreements on the sharing of telecommunications facilities shall be concluded through negotiation of the parties.

The Minister of MIC may be involved in the authorization of agreements on the sharing of Category I designated telecommunications facilities that are executed by Type I telecommunications carriers and Special Type II telecommunications carriers to ensure proper and smooth usage of Category I designated telecommunications facilities, e.g., safeguards against unduly discriminatory treatment (TBL, Article 39-3 paragraph (1)).On the other hand, agreements on the sharing of telecommunications facilities that Type I telecommunications carriers or Special Type II telecommunications carriers conclude with other telecommunications carriers (excluding Category I designated telecommunication facilities), are to be notified to the Minister of MIC (TBL, Article 39-3 paragraph (5)). Moreover, agreements on the sharing of Category I designated telecommunications facilities that Type I telecommunications carriers that install said Category I designated telecommunications facilities conclude with general Type II telecommunications carriers, must be also notified (TBL, Article 39-3 paragraph (5)).

(3) Orders of interconnection and sharing of telecommunications facilities

Where a Type I telecommunications carrier, in spite of other telecommunications carrier's proposal to enter into an agreement to interconnect telecommunications facilities with said Type I telecommunications carrier, does not accept entering into negotiation or where said negotiation fails to come to an agreement, the Minister of MIC may, upon request of said telecommunications carrier, order the Type I telecommunications carrier to start or reopen the negotiation, in principle (TBL, Article 39 paragraph (l)).

Moreover, in instances other than the above, where, in spite of one's proposal to enter into an agreement to interconnect telecommunications facilities between telecommunication carriers (*9), the other party does not accept entering into negotiation or where said negotiation fails to come to an agreement, the Minister of MIC may, upon request of one of said telecommunications carriers, order the other telecommunications carrier to start or reopen the negotiation if the Minister deems such interconnection especially necessary and appropriate to promote the public interest (TBL, Article 39 paragraph (2) and Article 39-4 paragraph (1)).

(*9) Except case one or both of the parties are General Type II telecommunications carriers or both of the parties are domestic Special Type II telecommunications carriers.

3) Practices constituting problems under the Antimonopoly Act or TBL

(1) Practices constituting problems under the Antimonopoly Act

A. Practices involving interconnection to subscriber lines

Following practices of telecommunications carriers with relatively large market shares violate the Antimonopoly Act:

i. A telecommunications carrier, rejects interconnection or does any practices that are regarded as rejection of interconnection, by rejecting a request for interconnection to its subscriber line networks of other carriers who provide the same services or who are to provide them (hereafter referred to as competitor), setting the interconnection cost higher, declining to disclose enough information necessary for interconnection (*10), or intentionally delaying procedures for interconnection (*11), consequently to prevent competitors' new entry into the market, or to make competitors' operation difficult. (They fall under the categories of private monopolization and rejection of trade.) (*12)

(*10) Information necessary for interconnection includes the location for installing subscriber line network equipment, availability of the equipment (This includes expected time when equipment will definitely become available.), and any other information needed in advance.

(*11) Procedures for interconnection include a response to request for documents necessary for interconnection.

(*12) It will be no problem under TBL when there are legitimate reasons based on the Antimonopoly Act to reject interconnections.

ii. A telecommunications carrier gives unfavorable terms to competitors compared with those to their own departments or affiliates, by offering discriminatory fees for interconnection, providing limited information needed for interconnection, setting a discriminatory period for procedures for interconnection, or giving discriminatory treatment in handling registration of so-called "my line" priority connection, consequently to prevent competitors' new entry into the market or to make competitors' operation difficult,. (They fall under the categories of private monopolization and discriminatory treatment.)

B. Practices concerning collocation

Following practices of telecommunications carriers with relatively large market shares

violate the Antimonopoly Act:

i. A telecommunications carrier rejects collocation or does any practices that are regarded as rejection of collocation, by rejecting a competitors' request for collocation, setting higher costs for collocation, disclosing only a limited part of information needed (*13), or intentionally delaying procedures (*14), consequently to prevent competitors' new entry into the market or to make competitors' operation difficult. (They fall under the categories of private monopolization and rejection of trade of the Antimonopoly Act.) (*15)

(*13) Information needed for collocation includes the name and location of the buildings where switchboards and other equipment are installed, and the availability of space, and expected time when collocation will definitely become available.

(*14) Procedures for collocation include a response to request for documents necessary for collocation.

(*15) It will be no problem under the Antimonopoly Act when there are legitimate reasons based on TBL to reject interconnections.

ii. A telecommunications carrier gives unfavorable terms to competitors compared with those to their own departments or affiliates, by offering discriminatory fees for collocation, providing limited information needed for collocation, or setting a discriminatory period for procedures for collocation consequently to prevent competitors' new entry into the market or to make competitors' operation difficult. (They fall under the categories of private monopolization and discriminatory treatment.)

iii. While providing collocations, a telecommunications carrier causes disadvantage to competitors, by forcing them to conclude contracts for installation works and maintenance services of equipment for interconnection at a collocation site with itself or affiliated companies consequently to prevent competitors' new entry into the market or to make competitors' operation difficult. (They fall under the abuse of dominant position.) (*16)

(*16) It will be no problem when providers of installation works and maintenance services give minimum restrictions to protect telecommunications and other facilities.

C. Practices concerning the utilization of information on companies competing itself or their customers obtained at the time of interconnection or related occasions

Telecommunications carriers that provide interconnection to competitors usually receive such information as business areas and customers the competitors serve and expected amount of communications or the size of demand. The incumbent carriers, therefore, are in a position to learn about the competitors themselves and their customers through negotiations for interconnection. Any practices of the incumbents taking advantage of such a position violate the Antimonopoly Act.

A telecommunications carrier utilizes information on its competitors or their customers for it own or affiliates' benefit, consequently to prevent competitors' new entry into the market or to make competitors' operation difficult. (They fall under the categories of private monopolization and obstruction of trade.)

(*17) It will be no problem when a telecommunications carrier utilizes information on its competitors or their customers for its own connection-related businesses (for example, businesses to design networks to improve busy connections).

(2) Practices constituting problems under TBL

A. Practices that are subject to order to improve business activities

Practices exemplified described below for Type I telecommunications carriers that install Category I designated telecommunications facilities are unduly discriminatory treatment for specific telecommunications carriers on interconnection and the sharing of telecommunications facilities, or undue management in their operation, and, therefore, are detriment to proper implementation of the operation of other telecommunications carriers. For that reason, when it is deemed that there is a probability of significant impairment of the public interest, an order to improve business activities or to take other practices shall be put into effect (order to improve business activities) (TBL, Article 36 paragraph (4)).

(a) Unduly discriminatory treatment on interconnection and facilities sharing

Examples:

i. Preference is shown for interconnection and facilities sharing only to affiliates of the telecommunications carriers in question, for example, in agreements on interconnection or on facilities sharing.

ii. Delaying construction concerning interconnection or facilities sharing with other telecommunications carriers while such delays are not made in the cases of affiliates of the carriers in question.

(b) Undue management of operation on interconnection and facilities sharing

(aa) Items pertaining to procedures for information disclosure

Example:

i. Operating business activities not in accordance with the procedures, application forms and standard time frames prescribed in articles of interconnection agreement in response to requests for disclosure on procedure, charges and other information necessary for other telecommunications carriers to request for interconnection (*18).

(*18) Included are requests for information disclosure on: routes of subscriber lines; routes of inter-office lines; technical, physical conditions of lines; conditions of offices for collocation (overview, detailed), and other sites available for collocation.

(bb) Items pertaining to procedures for interconnection requests

Examples:

i. Refusal of a request for an interconnection with no justifiable reasons such as by stating that there is no telecommunications facility not actually in use for other purposes besides being financially and technically unfeasible to construct facilities.

ii. Failure to allow other carriers access to facilities to certify answers which indicate that requests for interconnection are refused because of lack of availability of telecommunications facilities not actually in use for other purposes.

iii. Limiting what services other telecommunications carriers may provide when interconnection with Category I designated telecommunications facilities is made.

iv. Adding to examples above mentioned, operations of business activities not in accordance with the procedures, application forms, and standard time frames prescribed in articles of interconnection agreement, in response to requests for interconnection.

(c) Items pertaining to collocation procedures

(aa) Refusals or discriminatory treatment on collocation

i. Refusals to accept facilities for collocation in spite of the fact that facilities should be accepted for collocation in principle when other telecommunications carriers see it as necessary for interconnection.
ii. Requiring the other telecommunications carriers which request for collocation to demonstrate evidences that facilities pertaining to a request for collocation are necessary for interconnection.
iii. Refusing to investigate whether collocation is feasible before investigation on the possibility of interconnection is done.
iv. Failure to respond to requests for caged collocation even though there is enough space.
v. Establishing irrational limitations in response to requests for collocation, such as setting minimum extent for occupying space or refusing requests due to presence of old facilities that have not been used for a long time.
vi. Failure to allow the usage of commercial power sources for collocation facilities even though it is physically possible to utilize the commercial power sources without uninterruptible power supply.
vii. Failure to ensure the equal conditions of collocation between other telecommunications carriers and the carrier in question and its affiliates.

(bb) Construction related to collocation
i. Refusal to allow other telecommunications carriers to undertake construction or maintenance for the collocation, putting limitations on other carriers' selection of construction contractors, or making safety standards for other carriers more stringent than those for the carrier in question.
ii. Sending a person with cost to attend construction or maintenance undertaken by other carriers for the collocation even though the attendance is not indispensable.
iii. Giving an order for construction etc. for other telecommunications carrier to a competitor of the said telecommunications carrier without the carrier's consent.
iv. Giving an order for construction etc. for other telecommunications carrier to a competitor of the said telecommunications carrier without consideration for preserving fair competition conditions, e.g., implementing measures to ban abuse of proprietary information obtained from the said competitors for outside purposes.
v. Dealing unequally with other telecommunications carriers by establishing construction charges or maintenance fees that the said telecommunications carrier is to bear, without using a proper method of calculation that serves to set low charges; without disclosing adequate information in the negotiation with the said telecommunications carrier; or without making proper allocations of charges among carriers.
vi. Sending a person with cost to attend construction or maintenance undertaken by other telecommunications carriers for collocation, failing to figure charges based on the least necessary amount of time for attendance; billing high monetary amounts that are not in line with the construction that is to be undertaken; or billing without an explanation of what is specifically being billed and how much individual construction or maintenance would cost.
vii. Failure to present an estimate of construction charges in a timely manner after the notification that collocation is possible, in case the construction is to be undertaken by the carrier in question.

(cc) Provision of reasons, Access, etc.
i. Failure to provide the specific site of the collocation inside the office etc. and the reasons why the site was selected when it is responded that collocation is possible.
ii. Failure to ensure that the reasons for selection of collocation sites are based on facts that it would be the most economical at the time of installation of the

collocation facilities, e.g., because of the shortest distance from the interconnection points, as long as there would be no deterrent to providing telecommunications services from the facilities.

iii. Failure to allow other telecommunications carrier to have access to premises for collocation to verify responses given to requests for collocation.

iv. Failure to allow the other telecommunications carrier to have access to premises that are not considered feasible for collocation because of a lack of available space, in order to verify such lack of available space.

v. Failure to allow other telecommunications carrier to be on-site; limiting the time span for on-site visits; being on-site to check such on-site visits without the consent of the other telecommunications carrier; or prohibiting giving comments necessary to ensure smooth implementation of the construction or maintenance, in the case that said telecommunications carrier has contracted the construction or maintenance for the collocation.

(dd) Others

* Adding to what are mentioned above, operating business activities not in accordance with the procedures, application forms and standard time frames prescribed in articles of interconnection agreement, in terms of access to premises for collocation, undertaking construction or maintenance that the other carriers are to do by themselves for collocation, or work pertaining to construction or maintenance for collocation that is to be done on the basis of contract from other telecommunications carrier.

(d) Other items

Examples:

i. Failure to apply technical requirements or interconnection rates that are in line with authorized or notified interconnection tariffs and other filings upon actual interconnection.

ii. Interconnection of Category I designated telecommunications facilities upon conditions that are unfavorable to other telecommunications carrier in comparison with those for interconnection of the telecommunications facilities of the carrier in question to Category I designated telecommunications facilities.

iii. Setting technical requirements that make interconnection extremely difficult or require significantly expensive interconnection cost without justifiable reason such as setting technical requirements for new network functions in accordance with the procedures specified in the TBL.

iv. Setting charges that other telecommunications carriers are to bear for contracting billing and collecting fees to end users, in an unfair or improper manner in light of appropriate costs under efficient management, or in an unfavorable manner in comparison with the charges that the carrier in question or its affiliates are to bear.

v. Promoting of own services when subscribers make inquiries about or follow procedures for a move from ISDN to analog in order to use services provided by other telecommunications carriers, or making use of information obtained in such situations for promoting own services.

vi. Requiring the other telecommunications carriers or the users of the services of other telecommunications carriers to provide the addresses of subscribers or other information when they apply for the services other telecommunications carriers are providing even though they are not essential information (*19) for the application.

(*19) Submitting the address of the subscribers would not be considered essential for registration for MYLINE (dialing parity) or application for DSL services.

vii. In the registration work of telecommunications carriers for MYLINE (dialing parity), giving precedence to registration of users that have selected the carrier in question or its affiliates over registration of users that have selected the other telecommunications carriers.

viii. Providing information obtained for facilities sharing to other sections of the carrier in question or affiliates or subsidiaries of the carrier in question for purposes other than original objective, such as business for other services.

ix. Failure to take practice in response to requests from the competitors so that dialing numbers of access points that competitors may establish to provide browser phone services can be given promptly from download centers (Dialing numbers of access points for browser phone services can be obtained from here.) to end users' equipments, under conditions that are the same as the dialing numbers of access points of the carrier in question.

x. Failure to disclose enough technical requirements for competitors to set up access points that can be accessed from terminals for the browser phone service of the carrier in question, and to provide services that are comparable to such browser phone services using those terminals.

xi. In carrying out the work of line changeover and the removal of impediments (including line failures that have occurred), giving precedence to the carrier in question or its affiliates except where essential communications must be secured.

Adding to the examples above mentioned, if it is deemed that there is a probability of significant detriment to the public interest because Type I telecommunications carriers are giving unduly discriminatory treatment to specific telecommunications carriers on interconnection or the sharing of telecommunications facilities and are unduly managing interconnection and facilities sharing, and as a result, there are impediments to the proper operation of other telecommunications carriers, such practices shall be subject to order to improve business activities (TBL, Article 36 paragraph (4)).

B. Circumstances that are subject to orders to apply for authorization to amend articles of interconnection agreement.

Orders to apply for authorization to amend articles of interconnection agreement shall be put into effect for examples like the ones that are set out below for articles of interconnection agreement that pertain to interconnection with Category I designated telecommunications facilities, when they are considered to impair the promotion of public interest (TBL, Article 36 paragraph (2)).

Examples:

i. Where interconnection conditions relating to functions, which are used for providing services by the telecommunications carrier in question, have not been stipulated in articles of interconnection agreement.

ii. Where technical requirements for standard interconnection points are not being established or are not being amended promptly and flexibly in response to new technological trends.

iii. Where interconnection charges are not set or amended flexibility so as to respond to the desires of the other telecommunications carriers, e.g., not set or amended according to differences of maintenance cost.

iv. Where, in providing the functions prescribed in the articles of the agreement concerning interconnection and the services using said functions, interconnection charges for said functions have been set at high rates without a justifiable reason in comparison with the amount obtained by subtracting expenses arising from sales

activities from user charges for said services (however, public telephone service and directory assistance service do not apply to this case at the moment).

C. Circumstances that are subject to orders to amend articles of interconnection agreement

Orders to amend articles of interconnection agreement shall be put into effect in the following circumstances for articles of interconnection agreement that were established and notified to the Minister of MIC, for interconnection with telecommunications facilities of Type I telecommunications carriers, when they are considered to impair the promotion of public interest (TBL, Article 36 paragraph (3) and Article 38-3 paragraph (3))

Examples:

i. Where interconnection rates have been set to exceed amounts figured by adding a reasonable rate of return to costs that would be proper under efficient management in articles of interconnection agreement (as calculated by adding proper net worth and net profit and similar factors to costs including proper depreciation expenses and expenses for maintenance of facilities and other cost).

ii. Where unfair conditions have been placed on the other telecommunications carriers, e.g., allowing interconnection only at points that would not be likely for interconnection in general; or in ways that would not be likely for interconnection in general; or placing extraordinary limitations on installation and maintenance, of devices that are necessary for interconnection within premises (such as limitations on places for installation, on maintenance, on access into premises for installation and maintenance).

iii. Where specific telecommunications carriers are treated unfavorably in comparison with conditions for telecommunications carriers other than those carriers in articles of interconnection agreement.

iv. Where items pertaining to liability with the other telecommunications carriers have not been properly or clearly stipulated in the articles of interconnection agreement.

D. Prohibited practices conducted by dominant carriers

The following practices by dominant carriers are subject to order to suspend / change practices (TBL, Article 37-2 paragraph (4) and Article 37-3 paragraph (4)), and if determined to impair the public interest, may constitute a reason for revocation of the Type I telecommunications carrier permission (TBL, Article 19 paragraph (1) item ii)).

Examples:

i. Abusing/providing proprietary information obtained from other telecommunications carriers or users of those carriers through interconnection (*20) to other sections or affiliates of the carrier in question for obstructive purposes outside of the original purposes of such information (*21) (TBL, Article 37-2 paragraph (3) item i)).

(*20) " Information obtained from other telecommunications carriers or users of those carriers through interconnection" shall mean, for example, the following types of data.

(i) Service commencement time frames, items of service, and service areas of other telecommunications carriers.

(ii) Status of distribution of users of services of the other telecommunications carriers and the status of changes thereof.

(iii) Transmission volume pertaining to services or users of such other telecommunications carriers that are transmitted through networks of dominant carriers and which are the interconnection parties for the other

telecommunications carriers (all traffic data such as telephone numbers called, number of calls, call duration, sales volumes, and so on).

(iv) Technical conditions used in interconnection (interfaces, methods of processing telephone numbers, etc.).

(v) Registration data on users of other telecommunications carriers for dialing parity (selection of telecommunications carriers for local, regional, inter-regional or international markets).

(*21) The use of information "for obstructive purposes outside of the original purposes of such information" shall mean use of information, for example, for the following purposes.

(i) Understanding the management status of other telecommunications carriers.

(ii) Providing services that counter those of other telecommunications carriers.

(iii) Conducting sales activities that are aimed at specific service areas of other telecommunications carriers.

(iv) Having users of other telecommunications carriers switch over to the carrier in question or its affiliates, or blocking amendment of contracts to switch to other telecommunications carriers.

ii. Preferential MYLINE (dialing parity) registration of users that have selected the carrier in question or its affiliates in comparison with users that have selected the other telecommunications carriers (TBL, Article 37-2 paragraph (3) item ii))

iii. The incomplete provision of information in terms of volume, quality, speed, etc. necessary for interconnection with Category I designated telecommunications facilities by Type I telecommunications carriers that install those facilities to other telecommunications carriers in comparison with specific affiliated carriers (*22) (TBL, Article 37-3 paragraph (3)).

("Information necessary for interconnection with Category I designated telecommunications facilities" shall include, for example, following types of data: availability of space in premises for the installation of equipment needed for interconnection (e.g., a station premises where switching equipment and similar exchange equipment is installed); the names and locations of such premises; compatibility with an interconnection when space available; time frame when a response will become possible if there is no compatibility; status of preparations and groundwork for facilities when interconnection is to be made; facilities blueprints; time frames when interconnection will be possible.)

(*22) "Specific affiliated carriers" shall be telecommunications carriers that fall under the category of subsidiaries of Type I telecommunications carriers that install Category I-designated telecommunications facilities, a parent company where said Type I telecommunications carriers are subsidiaries, or subsidiaries of said parent company (excluding said Type I telecommunications carriers) that are designated by the Minister of MIC (TBL, Article 37-3 paragraph (3) item i)).

iv. Unfavorable treatment of other telecommunications carriers in comparison with specific affiliated carriers by Type I telecommunications carriers that install Category I designated telecommunications facilities in the event of installation or maintenance of facilities, collocation, leasing of poles, ducts etc. (TBL, Article 37-3 paragraph (3) item i)).

2. Section pertaining to the Leasing of Poles, Ducts, Conduits, and other related facilities

1) Interpretation of the Antimonopoly Act

a Building poles, ducts, conduits, and other related facilities on public and private land for infrastructures costs prohibitively when telecommunications carriers try to build or expand their own lines. (Those carriers are hereafter referred to new entrants with infrastructure). Moreover, regulations including the road and river laws make it more difficult to build such facilities as poles, ducts, etc.. Without winning the lease of poles, ducts, etc. and other related facilities from a company that owns such essential facilities (*23), prospective telecommunications new entrants with infrastructure will find it difficult to enter the market or expand their business.

(*23) Electric powers, telecommunications and railway companies are among such firms.

b. Under such circumstances, for example, electric powers, telecommunications or railway companies owning poles, ducts, etc., can reject the lease requests or offer unfavorable terms to new entrants with infrastructure compared with those to their own departments or affiliates. As a consequence, they can hardly enter the market or they may find it difficult to do business. When those practices are found substantially restricting competition, they are regarded as “private monopolization” that is prohibited by Section 3 of the Antimonopoly Act. Even if the competition in the market is not substantially restrained, above-mentioned practices are regarded as “unfair trade practices” that are banned by Section 19 of the Antimonopoly Act when they tend to impede fair competition. (*24)

(*24) As to application of the Antimonopoly Act to specific practices, see the Section I, 2, 2),(3).

2) Overview of the system for authorization and arbitration concerning rights of way in TBL

a. When it is necessary and proper to use the poles, ducts, conduits, and similar equipment of others in order to install wires and cables, antennas, or other facilities accessory thereto for use of Type I telecommunications business (hereinafter referred to as "lines"), Type I telecommunications carriers shall be entitled to request negotiations on the usage of those poles, ducts, etc. with their owner (in the event that there is an entity that is using them based on rights other than title, such entities and the owner, hereinafter referred to as "facilities holders") upon authorization of the Minister of MIC (TBL, Article 73 paragraph (1)).

b. In the event that agreement of the parties cannot be obtained on the usage of poles, ducts, etc., discourse between the parties on specific usage conditions with the presupposition of permitting usage may be enforced after the public necessity, i.e., the smooth execution of telecommunications, has been weighed against the capability of the entity that is requested to permit usage to bear the encumbrance.

c. Arbitration system has been established to secure the effective usage of poles, ducts, etc. in light of the public nature of Type I telecommunications in the event that negotiations are not productive or cannot be executed. Type I telecommunications carriers shall be entitled to apply for decisions by the Minister of MIC for the usage of said poles, ducts, etc. (TBL, Article 74 paragraph (1)).

d. At the outset, Type I telecommunications carriers are, basically, to obtain permission to use poles, ducts, etc. through private contracts. However, an authorization and arbitration system has been established to authorize usage as a last resort and provide

security for effective usage in that it would be presumed to be a serious obstruction to the execution of Type I telecommunications that is in the public interest if there should happen to be a situation that compels a detour in installation of lines because of a refusal by facilities holders.

e. MIC established in April 2001 "The Guidelines for Use of Poles, Ducts, Conduits, and Similar Equipment Owned by Public Utilities" to function as a managerial standard for this authorization and arbitration (referred to as "the Guideline" in this section and chapter III).

(The main rules and regulations of the Guideline are set out below. Refer to the Guideline for information on practice constituting problems under TBL for facilities holders, details on practice that is desirable in view of promotion of fair competition and protection of users, and other specific sections of the Guideline.)

3) Practices constituting problems under the Antimonopoly Act or TBL

(1) Practices constituting problems under the Antimonopoly Act

A. Practices concerning leases of poles, ducts, conduits, and other related facilities

Following practices of companies that own poles, ducts, etc. violate the Antimonopoly Act:

i. A company rejects the lease of poles, ducts, etc. or does any practices regarded as rejection of a request for the lease of poles, ducts, etc.(*24-2), by setting higher costs for the lease (*25), disclosing only a limited part of information needed for the lease of poles, ducts, etc., (*26), or intentionally delaying procedures for the lease (*27), consequently to prevent entry of new entrants with infrastructure into the market or to make their operation difficult. (They fall under the categories of private monopolization and rejection of trade of the Antimonopoly Act.) (*28)

(*24-2) For lease agreements that stipulate an automatic renewal provision, rejecting a renewal of the agreement because a reason for rejection of the lease that is described in the Guidelines has occurred will not in itself become a problem. However, such an act will be a problem if renewal of an agreement is rejected without legitimate reason and without setting a sufficient advance notification period, in a manner that makes the operation of new entrants with infrastructure difficult.

(*25) Making unnecessary relocation or repair of poles, ducts, etc. conditional for the lease is regarded as “higher cost setting.” In case that relocation or repairing is necessary, setting their cost higher without legitimate reasons is also regarded as “higher cost setting.”

(*26)Information that carriers need to win the lease of poles, ducts, etc. and other related facilities includes the location of those facilities, availability and the expected time when they will definitely became available, and any other information needed in advance.

(*27) Procedures for the lease include a response to request for information needed for the lease of poles, ducts, etc.

(*28) It will be no problem when there are legitimate reasons based on the Guidelines to reject the lease.

ii. A company gives unfavorable terms (*29) for the lease of poles, ducts, etc. to new entrants with infrastructure, compared with those to its own departments or affiliates, by offering discriminatory fees for the lease, providing limited information, or setting a discriminatory period for procedures consequently to prevent their entry into the market or to make their operation difficult. (They fall under the categories of private monopolization and discriminatory treatment.) (*30)

(*29) Included in “unfavorable terms” is a case that a company tries to reduce the

cost by jointly constructing poles, ducts, etc. with affiliates while it refuses a joint construction work with new entrants with infrastructure. It consequently forces them to bear higher cost.

(*30) It will be no problem when differences arise in treatment between leases for telecommunications businesses and those for other businesses than telecommunications due mainly to the differences of reasonable costs involved.

B. Practices concerning tying leases of poles, ducts, conduits, and other related facilities to other services

The following practice of companies that own poles, ducts, etc. violate the Antimonopoly Act:

While providing the lease of poles, ducts, etc. to new entrants with infrastructure, a company unjustly forces them to use an optical-fiber portion that it had lain, even though it is not requested by them.(This falls under the categories of private monopolization and tie-in sales.) (*31)

(*31) In case such practices do not make their business operation difficult, they will not fall under illegal practices.

C. Practices concerning the utilization of information on companies competing itself or their customers obtained at the time of the lease of poles, ducts, conduits, and other related facilities

A Company owning poles, ducts, etc. and any other related-facilities is in a position to learn such information as the planned time, area and scale of the market entry by new entrants with infrastructure who are competing with itself or its affiliates through the lease procedures. Any practices taking advantage of such a position violate the Antimonopoly Act.

A company utilizes information on new entrants with infrastructure or their customers for its own or affiliates' benefit, consequently to prevent their entry into the market or to make their operation difficult. (They fall under the categories of private monopolization and obstruction of trade.)(*32)

(*32) It will be no problem when telecommunications carrier utilizes information on new entrants with infrastructure or their customers for the benefit of its own lease-related businesses (for example, a business to increase or repair poles, ducts, conduits, and other related facilities to improve strained services).

D. Practices concerning bundling

The following practices of telecommunications carries that have already got the lease of poles from other carriers violate the Antimonopoly Act:

A telecommunications carrier rejects a request for bundling (*33), sets higher costs for bundling, or intentionally delays procedures, consequently to unjustly obstruct the conclusion of the pole lease agreement of competitors when it is requested by a carrier with infrastructure to coordinate to bundle lines. (They fall under the categories of private monopolization and obstruction of trade.) (*33-2)

(*33) "Bundling" refers to the practice by which a Type 1 telecommunications carrier installs the requested transmission channel equipment by combining or "bundling" it with the fixed line telecommunications equipment that the Type 1 telecommunications carrier, cable television broadcast facility company and other companies have already installed on leased poles.

(*33-2) This will be no problem when the reason is determined to come under the reasons for rejection that are described in the Guidelines.

(2) Practices constituting problems under TBL

The following practices are not proper in terms of more actively promoting fair competition in the field of telecommunications business.

A. Refusal to lease without a justifiable reason

In terms of more actively promoting fair competition in telecommunications business field, facilities holders shall be requested to provide the facilities as long as there is no adverse effect on their business or in the Wire Telecommunications Equipment Ordinance (Cabinet Ordinance No. 131 of 1953) or provisions of other statutes, rules and regulations on such facilities (hereinafter referred to as "statutes, rules and regulations on facilities") and the Road Law (Law No. 180 of 1952) and provisions of other statutes, rules and regulations on the management of public property (hereinafter referred to as "statutes, rules and regulations on public property") when there are applications for provision of facilities from Type I telecommunications carriers.

For that reason, the Minister of MIC may give authorization when there is an application for authorization based on the provisions of Article 73 paragraph (1) of TBL from Type I telecommunications carriers, except in the instances set out below that describe reasons for refusal to lease under Article 3 of the Guideline.

i. When there is actually no space in the area where usage is desired.
ii. Where the facilities holders are scheduled to use all of the facilities for a period not exceeding five years (if a facilities plan for a longer period has been drafted pursuant to statutes, rules and regulations (in the event that there is a facilities plan that has been revised in consideration of the latest demand forecast or other indicators, said plan; the same shall apply hereafter), the period of said plan; the same shall apply hereafter) and the business year during which the facilities holders are scheduled to use the facilities has been expressly specified in the facilities plan.
iii. Where the facilities holders have plans for major renovation or removal of their facilities within five years and the business year during which the facilities holders are scheduled to carry out the renovation or removal of the facilities has been expressly specified in the facilities plan.
iv. Where the facilities holders intend to replace poles with underground facilities within five years and the business year during which the facilities holders are scheduled to carry out the replacement with underground facilities has been expressly specified in the facilities plan.
v. Where transmission line facilities that Type I telecommunications carriers would install do not conform to or are not clearly defined in the technical standards of the facilities holders and the installation of said transmission line facilities would make it difficult for the facilities holders to perform construction or maintenance, or there is a high probability thereof.
vi. Contracts on expense allocation, usage periods, and other usage conditions had not been actually performed in the past because of reasons attributable to the Type I telecommunications carrier; or there is a high probability that there will be serious inability to perform or that performance will become impracticable because relief is not practical.
vii. The installation of transmission line facilities that Type I telecommunications carriers would execute do not satisfy conditions of statutes, rules and regulations, or there is difficulty in acquiring permits (including permits for amendments) for rights of way and similar usage of roadways that Type I telecommunications carriers or facilities holders may receive or in amending permits and other licenses for rights of way when the facilities are subject to the application of provisions of statutes, rules and regulations on public property; or the high probability thereof.

viii. In addition to the provisions in item (vi), lack of performance in the past of provisions on confidentiality, bans on usage that is outside the scope of the objective, and items stipulated in other contracts because of reasons attributable to the Type I telecommunications carrier; or there is a high probability that there will be serious inability to perform or that performance will become impracticable because relief is not practical.

ix. Adding to instances above mentioned, when there is other impediment to the performance of public utilities that is carried out by the facilities holders, or there is a high probability thereof.

In the event that any person who holds such facilities as messenger wires, etc. that can be used for bundling cables (limited to the facilities installed on the poles owned by public utility corporations that correspond to facilities holders; hereinafter referred to as "bundling facilities") (when there is an entity that uses bundling facilities based on an authority other than ownership, such an entity or the holder; hereinafter referred to as "bundling facilities holders") provides Type I telecommunications carriers with bundling facilities, notwithstanding the provisions specified above, the Ministry of Internal Affairs and Communications shall, when receiving an application for authorization prescribed in Article 73 paragraph 1 of the Telecommunications Business Law from Type I telecommunications carriers, in principle, give authorization to said carriers except in the instances specified below (Article 14 Bundling in the Guidelines for Use of Poles, Ducts, Conduits and Similar Facilities Owned by Public Utilities).

i. The facilities holders that own the poles provided with bundling facilities (hereinafter referred to as "pole holders") have not indicated any need for bundling in their response to Type I telecommunications carriers pursuant to the provisions in Article 2 of the Guidelines for Use of Poles, Ducts, Conduits and Similar Facilities Owned by Public Utility Corporations.

ii. Bundling would lead to non-conformity with the technical standards of the pole holders.

iii. Bundling would make it difficult for the bundling facilities holders to perform construction or maintenance, or there would be a high probability thereof.

iv. Arrangements as prescribed in Article 14 paragraph 7 of the Guidelines for Use of Poles, Ducts, Conduits and Similar Facilities Owned by Public Utility Corporations were not fulfilled in the past because of reasons attributable to Type I telecommunications carriers, or there is a high probability of serious inability to perform the arrangements or of inability thereof that cannot be remedied.

B. Leasing on proposed conditions that are not proper

In terms of more actively promoting fair competition in telecommunications business field, the facilities holders shall be requested to make offers of fair and equitable conditions when providing facilities to Type I telecommunications carriers (basic principles of fairness). In addition, they shall be requested to avoid prejudicial treatment because of investment relations or other reasons (basic principles of non-discrimination).

For that reason, in the event that the proposal conditions offered by the facilities holders do not meet the criteria below (leasing periods under Article 4 of the guideline and remuneration for leasing under Article 6 of the Guideline) MIC may make decisions in view of that criteria in arbitration based on provisions of Article 77 paragraph (1) of TBL.

i. Usage period

A period of five years, in principle (when the facilities holders do not meet the desire of Type I telecommunications carriers because the facilities holders have a schedule for using the facilities themselves, the business year during which they are scheduled to use the facilities shall be expressly specified in the facilities plan).

ii. Remuneration for leasing

Appropriate facilities usage fees based on costs (which shall be calculated in principle by adding the total sum of outside capital expense, equity capital expense and tax on profit to depreciation expense and maintenance operating expense) (*34).

(*34) In calculating said costs actually, the calculation shall be performed by using either one of the formulae indicated in the separate Table in the Guidelines for Use of Poles, Ducts, Conduits and Similar Facilities Owned by Public Utilities or any other fair and reasonable method.

3. Section pertaining to the provision of telecommunications services

1) Interpretation of the Antimonopoly Act

(a) In a network industry like telecommunications services, the value of the network itself will increase when it attracts more subscribers. In selecting a telecommunications service, consumers tend to choose one that has the largest number of subscribers.
In addition, subscribers cannot keep their original telephone number when they change carriers. Therefore, they tend not to change carriers.
Under such peculiarities of the industry, for example, a telecommunications carrier with a relatively large share of the subscriber market can enclose customers by setting rates of its own telecommunications services lower than those of competitors.

(b) Under such circumstances, for example, a telecommunications carrier can set discriminatory telecommunications service charge in certain areas or for competitors' customers, or can provide services for customers on condition that dealing with competitors are not allowed. When those practices are found substantially restricting competition, they are regarded as "private monopolization" that is prohibited by Section 3 of the Antimonopoly Act. If they do not substantially restrict competition but they tend to impede fair competition in the market, they would be regarded as "unfair trade practices" that are banned by Section 19 of the Antimonopoly Act (*35).
(*35) As to application of the Antimonopoly Act to specific practices, see the Section I, 2, 2),(3).

2) Overview of charge system, tariff system, etc. under TBL

(a) Charge system
With regard to the provision of telecommunications services (excluding wholesale telecommunication services (*36)), despite the fact that charges of Type I telecommunications carriers are in principle on a notification basis (TBL, Article 31 paragraph (1)), however from the viewpoint of assuring fair competition and securing benefits of users, if the notified tariffs:
i. do not have methods of calculating charge that are stipulated either properly or clearly,
ii. unduly discriminate against certain person, or
iii. may impair the benefit of users because they may give rise to unfair competition with other telecommunications carriers or they may be extremely improper in view of social or economic conditions,
order to change charges may be issued (TBL, Article 31 paragraph (2)).
Regarding charges related to telecommunications services with significant impact on benefits of users, that are provided by Type I telecommunications carriers installing Category I designated telecommunications facilities through the usage of those facilities, a price cap system (system of upper price limits) is to be applied because of the monopolistic character, and authorization is required in the event that the charge index of charges exceeds the standard charge index.
(*36)"Wholesale telecommunications services" refers to telecommunications services provided exclusively for use of telecommunications business (TBL, Article 31 paragraph (1)).

(2) Tariff System
Tariffs, other than those provided by Type I telecommunications carriers installing Category I designated telecommunications facilities through the usage of those Category I

designated telecommunications facilities, shall be on a notification basis (TBL, Article 31-4 paragraph (1)).

In line with charges, from the viewpoint of assuring fair competition and securing benefits of users, if the notified tariffs fall under any of the following items:

i. those matters related to the responsibilities to be assumed by a Type I telecommunications carrier and its users and allocation methods of costs related to installation and other works of telecommunications facilities are not properly and clearly stipulated, or

ii. articles of the tariff unreasonably restrict utilization conditions of the telecommunication circuit facilities, or

iii. articles of the tariff include any provision that unfairly discriminate against any person, or

iv. due consideration is not paid to the matters relating to critical communications (TBL, Article 8 paragraph (1)), or

v. articles of the tariff lead to illicit competition with other telecommunications carriers, or infringe users' interest because the articles are extremely improper in light of socioeconomic conditions,

order to change said tariffs may be issued (TBL, Article 31-4.paragraph (2)).

(3) System for wholesale telecommunications services

System for wholesale telecommunications services are established by the Law to partially amend TBL and related legislation, which revises the system for contracting to provide non-tariff based services. These systems are aimed to increase flexibility in constructing networks of telecommunications carriers by broadening both the providers of services and the recipients of services, and regulating more relaxed regulations than those applied to telecommunications services for general users with respect to the provision of telecommunications services oriented towards telecommunications carriers.

Specifically, the following provisions are established.

i. Broadening service providers

Whereas, under the existing system for contracting to provide non-tariff based services, service providers were restricted to Type I telecommunications carriers, under the introduced wholesale telecommunications service system, Type I telecommunications carriers as well as special Type II telecommunications carriers may become providers.

ii. Broadening service recipients

Whereas, under the existing system for contracting to provide non-tariff based services, service recipients were restricted to Type II telecommunications carriers, under the introduced wholesale telecommunications service system Type II telecommunications carriers as well as Type I telecommunications carriers, thereby meaning all telecommunications carriers, are included in the scope of permitted recipients of wholesale telecommunications services.

iii. Relaxed regulations in comparison with services for general users

Whereas, under the existing system, contracts for providing non-tariff based services were on an authorization system, individual contracts as well as tariffs for the introduced wholesale telecommunications services will be on a prior notification system. Also unlike services for general users, tariffs will not be obligatory, and will be considered outside the scope of application of obligation to provide services stipulated in TBL, Article 34 (Article 31 paragraph (1), Article 31-4 paragraph (1), Article 31-4 paragraph (9) and Article 34), and regulations shall be more relaxed (TBL, Article 39-5 paragraph (3)).

3) Practices constituting problems under the Antimonopoly Act or TBL

(1) Practices concerning establishment of telecommunications service charge, etc.

A. Practices constituting problems under the Antimonopoly Act

Following practices of telecommunications carriers with relatively large market shares violate the Antimonopoly Act:

i. Setting service charge lower than its own interconnection charge only in an area where a competitor started or expanded business, consequently to make the competitor's business operation difficult. (This falls under the categories of private monopolization and discriminatory pricing.)(*37)

(*37) A pilot service offered to a limited period of time and a limited area may not always be acceptable under the Antimonopoly Act. It is judged synthetically with the following factors: Is it necessary for the carrier to offer the pilot service? How long will it last? How extensively will it be offered? What are rates? Can competitors provide similar pilot services? What are its affects to the competition? (The same can be said in other parts of (1) A and (2) A.)

ii. Setting charge of telecommunications services which are provided through its own or its affiliates' network lower than those which are provided through competitors' network, consequently to make competitors' business operation difficult. (This falls under the categories of private monopolization and discriminatory pricing.) (*38)

(*38) It will be no problem when there are differences in telecommunications service charges due to the differences of reasonable costs for connections and other services to be paid to competitors.

iii. A telecommunications carrierprovides services at rates remarkably lower than the cost for providing services (*39), consequently to prevent the entry of competitors into the market or make their business operation difficult. (This falls under the categories of private monopolization and dumping.)

(*39) A telecommunications carrier, for example, can commission sales promotion and other business-related operations to its affiliate at a remarkably low cost. It also buys specific telecommunications services from its affiliates at a remarkably law cost. Telecommunications carriers thus receives virtual cross-subsidies from affiliates. When such cross-subsidies make it possible to lower the cost of telecommunications and other related services, actual cost will be calculated for judgment.

iv. A telecommunications carrier unjustly lowers the service charge, offers discounted basic charge or does not charge installation fees on condition that customers purchase services only from it or its affiliates (This falls under the categories of private monopolization and exclusive business terms.) (*40)

(*40) In case such practices will not apparently reduce business opportunities of competitors, they will not be regarded as unjustly practices.

v. A telecommunications carrier unjustly interferes in setting of such affairs of competitors as service charge, contents of the services, conditions for services including the time to publicize the services, service areas and customers when it concludes an interconnection agreement with competitors, makes trust and consignment of business to them, or wholesales telecommunications services to them.(This falls under the categories of private monopolization and restrictive business terms.) (*41)

(*41) In case such practices will not apparently restrict autonomous business operations of competitors, they will not be regarded as unjustly practices.

B. Practices constituting problems under TBL

i. The following charges established by Type I telecommunications carriers may be subject to order to change charges under TBL (TBL, Article 31 paragraph (2)):

(i) Calculating methods of charges are not stipulated either properly or clearly:

Examples:

-Charge tables listing the provision that charges are determined by mutual negotiations

-Any other charges based on methods for calculating charges that are not properly and clearly stated in terms of fixed amounts, fixed rates, etc.

(ii) Charges include provision that unfairly discriminates against any person:

Examples:

-Line group discounts based simply on volume discounting with no limitation as to periods of usage, location in which lines are installed, type of communication etc., which permit discounts with respect to line groups under the same name but do not permit discounts with respect to line groups under different names.

-Charges that significantly differ between fixed-to-mobile calls and mobile-to-fixed calls, where such differences are not decreased or eliminated after some time has elapsed.

-Discounted charges applied only to specific users, such as clients or subsidiary companies, etc.

-Charges that do not have a rational basis for consistent discounting regardless of contract period, in spite that they include discount rate provisions equivalent to long-term contract discounts.

(iii) Charges that may impair the benefit of users because they may give rise to unfair competition with other telecommunications carriers or that may be extremely improper otherwise in view of social or economic conditions

Examples:

-Charges in business areas where competing carriers exist that are lower than other areas or that are discounted only within the area, without justifiable reason such as significant differences in costs.

-Charges set by dominant carriers applying higher charges or not applying discount services etc. on communications using networks of other telecommunications carriers rather than on communications using its own networks without justifiable reason such as higher interconnection rates of other telecommunications carriers.

-Charges that create unfair competition by cross-subsidization from a monopolistic area to a competitive area.

-Charges set significantly below appropriate costs so as to exclude or weaken competing carriers.

-Discounts that are conditional on not using the services of competing carriers.

-Prohibition of resale by Type II telecommunications carriers of line group discounts provided by Type I telecommunications carriers based simply on volume discounting with no limitation as to periods of usage, location in which lines are installed, type of communication etc., which permit discounts with respect to line groups under the same name but do not permit discounts with respect to line groups under different names.

-Charges that unfairly restrict the range of choice by users by abolishing choice of rates without a justifiable reason such as that the range of users is restricted.

-Charges by Type I telecommunications carriers that install Category I designated telecommunications facilities that discount or waive charges related to terminal lines such as (monthly) basic charges and construction charges etc. only to subscribers registered to its own fixed dialing parity ("MYLINE PLUS").

-Charges by Type I telecommunications carrier that install Category I designated telecommunications facilities that discount or waive charges related to terminal lines such as (monthly) basic charges and construction charges etc. only to subscribers to its own discounted services.

ii. The following practices by dominant carriers are subject to order to suspend / change practices (TBL, Article 37-2 paragraph (4)), and if determined to impair the public interest, may constitute a reason for revocation of the Type I telecommunications carrier permission (TBL, Article 19 paragraph (1) item ii)).

Examples:

(i) Establishing higher charges or denying discounted services etc. on communications using networks of telecommunications carriers other than affiliates of the carrier in question, than for communications using networks of said affiliates, without justifiable reason such as significant large gaps in interconnection rates between said affiliates and other carriers. (TBL, Article 37-2 paragraph (3) item ii)).

(ii) Practices restricting the content, time of inception, area, clients, charges etc. of telecommunications services provided by other telecommunications carriers related to connections, consignment or receipt of services, provision of services etc. between other telecommunications carriers (*42) (TBL, Article 37-2 paragraph (3) item iii)).

(*42) Including those to operate telecommunications services described in Article 90 paragraph (1) of TBL (the telecommunications services exempted by TBL).

(iii) In opening a portal site for browser phone services, establishing conditions for selection of portal sites set up by other telecommunications carriers that are unfair with respect to conditions for selection of the carrier's own sites or sites of its affiliates, for example, setting unequal numbers in key operations against the wishes of other carriers (TBL, Article 37-2 paragraph (3) item ii)).

(2) Practices concerning provision of bundled services

A. Practices constituting problems under the Antimonopoly Act

The following practices of telecommunications carriers with relatively large market shares violate the Antimonopoly Act:

When a telecommunications carrier offers a package of its own services and its own services or products, or affiliates', it sets prices of its own services or products, or affiliates' remarkably lower than their costs, consequently to make business operation of operators that competitively provides the same kind of the services or products difficult. (This falls under the categories of private monopolization and dumping.)

B. Practices constituting problems under TBL

The following practice by dominant carriers are subject to order to suspend / change practices (TBL, Article 37-2 paragraph (4)), and if determined to impair the public interest, may constitute a reason for revocation of the Type I telecommunications carrier permission (TBL, Article 19 paragraph (1) item ii)).

Example:

* Provision of discounted services exclusively bundled with services of affiliates of the carrier in question (TBL, Article 37-2 paragraph (3) item ii)).

(3) Practices concerning obstruction of transactions between competing telecommunications carriers and their customers

A. Practices constituting problems under the Antimonopoly Act

Following practices of telecommunications carriers with relatively large market shares violate the Antimonopoly Act:

i. A telecommunications carrier provides unjustifiable information on service quality of a competitor or does not give enough explanations to a customer, consequently to unjustly obstruct the conclusion of a contract between the competitor and the customer. (This falls under the categories of private monopolization and obstruction of trade.)

ii. A telecommunications carrierdelays the changeover to a competitor's line or suggests a possible changeover delay when a customer, canceling the contract, is making a new contract with the competitor, consequently to unjustly obstruct the conclusion of a contract between the customer and the competitor. (This falls under the categories of private monopolization and obstruction of trade.)

iii. A telecommunications carrier charges a large amount of penalty for breaking the contract when a customer cancels the contract for telecommunications services orbans the customer to make a new contract with another carrier for a certain period after the cancellation, consequently to unjustly obstruct the conclusion of a contract between the customer and the competitor. (This falls under the categories of private monopolization and obstruction of trade.)

iv. A telecommunications carrier charges an disadvantageous amount for required telecommunications services, such as construction or replacement of equipment, compared to the amount the carrier charges to its own customers or the customers of related entities for the construction, consequently to unjustly obstruct the business between the competitor and its customers (This falls under the categories of private monopolization and obstruction of trade.)

B. Practices constituting problems under TBL

When the following improper business practices by telecommunications carriers are considered to impair the benefit of users, they may be subject to order to improve business activities or take other measures (order to improve business activities) based on TBL (TBL, Article 36 paragraph (4) and Article 37).

Examples:

i. Providing users etc. with inaccurate information in relation to charges, quality, etc. of telecommunications services, or failing to provide full and accurate descriptions of required items, so as to interfere with the making of contracts between users etc. and other telecommunications carriers, to make them cancel closing contracts, or to induce customers to contract with the carrier's own services.

ii. Making suggestions to users to the effect that the quality of their service will be reduced if they contract with other telecommunications carriers, so as to interfere with the making of contracts with other telecommunications carriers.

iii. Interfering with the formation of contracts for transactions between customers etc. and other telecommunications carriers, by unfairly interfering with such transactions or inducing not to perform the contract or other methods for reasons of providing actual favorable treatment in time of abnormal conditions such as natural disasters or calamities.

iv. In relation to telecommunications services requiring line changeover work, etc., treating the users unfavorably or suggesting such unfavorable treatment to those users who intend to terminate existing contracts with the carrier in question or its affiliates and enter into a contract with other telecommunications carriers by intentionally delaying the work of line changeover, etc., thus unfavorably preventing the users from entering into a contract with other telecommunications carriers.

v. In performing DSL services that share lines with telephone services, refusing to respond to applications for service only for the reason that the telephone subscriber and applicant for DSL use are under different names without requesting users to correct applications etc.

vi. Changing preferred telecommunications carriers without obtaining the consent of the user ("slamming").

vii. Contracting optional services without obtaining the consent of the user or invoicing for unfairly high tariffs for services that are not used ("cramming").

viii. The instance in which other telecommunications carriers who provide DSL services by interconnecting their lines to fixed-system terminal lines of Type I telecommunications carriers do not promptly propose facilities removal work, etc. to said Type I telecommunications carriers, despite a proposal made by users to terminate the contract with the other telecommunications carriers, thus delaying the users' termination of the contract.

(4) Practices concerning trust and consignment of business to affiliates.

A. Practices constituting problems under the Antimonopoly Act

A telecommunications carrier owning subscriber line networks is in a better position to conduct sales and promotional activities than other carriers taking advantage of its contract on conventional telecommunications services with customers. Under such a circumstance, the following practice of telecommunications carriers with relatively large market shares violates the Antimonopoly Act.

While brokering telecommunications service contracts as an agent and accepting businesses commissioned by its affiliates, including those supporting affiliates' businesses, a company unjustly gives unfavorable terms to competitors compared with those to its affiliates, by unjustly rejecting competitors' requests of commissioning or setting higher rates for commissioning(This falls under the categories of private monopolization and rejection of trade.) (*43)

(*43) It will be no problem when such practices will not make competitors' operation difficult at all.

B. Practices constituting problems under TBL

i. When the following improper business practices by telecommunications carriers are considered to impair the benefit of users, they may be subject to order to improve business activities or take other measures (order to improve business activities) based on TBL (TBL, Article 36 paragraph (4) and Article 37).

Example:

* Granting favorable treatment for the purpose of consigning etc. business solely to affiliates of the carrier in question.

ii. The following practices by dominant carriers are subject to order to suspend / change practices (TBL, Article 37-2 paragraph (4) and Article 37-3 paragraph (4)), and if determined to impair the public interest, may constitute a reason for revocation of the Type I telecommunications carrier permission (TBL, Article 19 paragraph (1) item ii)).

Examples:

(i) Conducting exclusive business in conjunction with affiliates of the carrier in question, such as enclosing descriptions of products of said affiliates or applications, etc. with the same envelope when sending tariff details etc. to the user (TBL, Article 37-2 paragraph (3) item ii)).

(ii) Granting favorable treatment regarding charges or conditions of service such as consignment of business etc. to affiliates of the carrier in question (TBL, Article 37-2 paragraph (3) item ii)).

(iii) Granting proxy rights for billing users for basic charges of the carrier only to Type II telecommunications carriers that resale discount services provided by affiliates of the carrier in question (TBL, Article 37-2 paragraph (3) item ii)).

(iv) A Type I telecommunications carrier that installs Category I designated telecommunications facilities setting higher fees to be collected from other telecommunications carriers than fees collected from certain related carriers in relation to consigning business such as charges collection and product sales, even though under similar conditions such as cost, content of activities, sales volume, etc. (TBL, Article 37-3 paragraph (3) item ii)).

(5) Practices related to establishing tariffs

A. Practices constituting problems under TBL

Tariffs for telecommunications services of Type I telecommunications carriers (excluding wholesale telecommunications services and telecommunications services provided by Type I telecommunications carriers installing Category I designated telecommunications facilities by use of those facilities) are in principle on a notification system. However, order to change tariffs based on TBL may be issued in relation to tariffs in the following cases (TBL, Article 31-4 paragraph (2)).

i. Tariffs where matters related to the responsibilities to be assumed by a Type I telecommunications carrier and its users and allocation methods of costs related to installation and other works of telecommunications facilities are not stipulated either properly or clearly (TBL, Article 31-4 paragraph (2) item i)).

Examples:

(i) Tariffs in which matters related to suspension of use, termination of contracts, compensation for damages, and return of charges are not properly and clearly stipulated.

(ii) Tariffs in which unfairly high interest is applied to payments in arrears.

(iii) Tariffs having provisions that are so extremely advantageous to the telecommunications carrier and disadvantageous to the user as to violate the Consumer Contract Act.

ii. Tariffs that unduly restrict utilization conditions of the telecommunications circuit facilities (TBL, Article 31-4 paragraph (2) item ii)).

Examples:

(i) Tariffs restricting simple resale (tariffs in which a Type I telecommunications carrier providing telecommunications services such as telephones etc. and restricts the connection by stipulating that requests to connect to a telecommunications line will not be honored when a subscriber line and leased line are connected together).

(ii) Tariffs restricting use by suspending use etc. without a justifiable reason such as causes attributable to the responsibility of the user.

iii. Tariffs that unduly discriminate against any person (TBL, Article 31-4 paragraph (item iii))

Examples:

(i) Tariffs that unduly discriminate against users of interconnected telephones, such as suspension of use, termination of contracts, interest on payments in arrears, or payment deadlines.

(ii) Tariffs stipulating that service will not be provided to particular persons without a justifiable reason such as causes attributable to the persons attempting to receive provision of services.

iv. Tariffs that do not pay due consideration to the matters relating to essential communications (TBL, Article 8 paragraph (1)) (TBL, Article 31-4 paragraph (2) item iv))

Example:

* Tariffs without provisions securing essential communications or stating that general communications may in some cases be restricted for that purpose.

v. Tariffs that may impair the benefit of users because they may give rise to unfair competition with other telecommunications carriers or they may be extremely improper otherwise in view of social or economic conditions (TBL, Article 31-4 paragraph (2) item v))

Examples:

(i) Tariffs with provisions that the carrier provide services in business areas where competing carrier exists under more advantageous conditions than in other areas.

(ii) Tariffs related to conditions for providing a carrier's own services (suspension of use, termination of contracts, interest on payments in arrears, etc.), that are conditional on the use of services of affiliates of the carrier in question.

(iii) Tariffs in which unregistered users in dialing parity are handled not as "general dialing parity" (*44) but "fixed dialing parity" (*45) regardless of the wishes of the users.

(*44) A method of connecting to another telecommunications carrier by dialing a code such as 00XY, commonly called "MYLINE."

(*45) A method in which the user is connected only to the telecommunications carrier providing the registration, so that one is not connected to another telecommunications carrier even when dialing a code such as 00XY, commonly called "MYLINE PLUS."

(iv) Tariffs in which the contract sets conditions actually restricting the termination of the contract, such as periods in which termination is prohibited, when attempting to cancel the contract with the telecommunications carrier and switching to a different telecommunications carrier (However, this does not apply to cancellation fees etc. for termination during minimum usage periods.).

(v) Tariffs in which the minimum contract period is unfairly long in view of social and economic conditions.

(vi) Tariffs that significantly reduce the convenience of the user by abolishing services with no means to ensure the convenience of the existing user, which include continuing services for a while or offering alternative services even if new applications are not accepted.

(6) Practices concerning establishing of wholesale telecommunications service charges, etc.

A. Practices constituting problems under the Antimonopoly Act

How to select business partners in wholesale telecommunication services is basically a matter of freedom of the selection of trade partners. In principle, telecommunications carriers do not violate the Antimonopoly Act when they decides by themselves not to deal with a particular carrier because of such factors as rates, quality and services. They do violate the law, however, when they do so alone as a means of ensuring the effect of practices violating the law. And when they do so as a means of achieving a purpose that exclude competitors from the market , they may violate the law.

Following practices of telecommunications carriers with relatively large market

shares violate the Antimonopoly Act:

(i) A telecommunications carrier sets higher charge for wholesale telecommunications services (*46), does not provide enough information needed for receiving the wholesale services, delays procedures for the services, or provides unfavorable terms on costs, information and waiting periods to competitors, compared with affiliates, consequently to prevent competitors' new entry into the telecommunications services market for general customers (hereafter referred to as retailing services) or make it difficult for competitors to do business operations. (This falls under the categories of private monopolization and discriminatory treatment.)

(*46) The levels of charges that can depreciate earlier investment for telecommunications lines and other facilities will have no problem.

(ii) A telecommunications carrier offers wholesale services on condition that clients will not receive wholesale services from other carriers, or raises charge for wholesale services when clients also receive the same services from other carriers, consequently to prevent the carriers' new entry into the wholesale market or make it difficult for them to do business operations. (This falls under the categories of private monopolization and exclusive business terms.)

(iii) A wholesaling telecommunications carrier receives the information on the area where retail services is provided (information on demand), and expected amount of communications (information on the market scale) from clients. A wholesaler is in a position to learn about its competitors themselves and their customers while negotiating the wholesale services with them. Taking advantage of such a position, the wholesaler uses such information for the benefit of itself or its affiliates, consequently to obstruct the entry of competitors into the market or make their business operations difficult. (They fall under the categories of private monopolization and obstruction of trade.) (*47)

(*47) It will be no problem when a wholesaling telecommunications carrier utilizes information on competitors and their customers for setting up its own lines. (For example, designing networks to ease heavy work load.)

B. Practices constituting problems under TBL

i. The following practices by Type I telecommunications carriers, that hinder the proper performance of business by other telecommunications carriers and thereby may impair the public interest significantly, may be subject to order to improve business activities based on TBL (TBL, Article 36 paragraph (4)).

Examples:

(i) Failure to provide wholesale telecommunications services in accordance with notified formulation and amendment of wholesale tariffs or wholesale telecommunications service provision contracts.

(ii) Giving special preference to particular telecommunications carriers in relation to provision of wholesale telecommunications services, such as forming contracts to provide wholesale telecommunications services that give preference only to affiliates of the carrier in question.

(iii) Setting in wholesale contracts and applying to other telecommunications carriers charges and conditions more disadvantageous for other telecommunications carriers than the interconnection rates (discounted carriers rates) and interconnection conditions stipulated in articles of interconnection agreement.

(iv) Demanding documents unnecessary to applications for provision of wholesale telecommunications services or unnecessarily delaying response even though a prompt response is possible.

(v) Using information obtained in relation to performance of wholesale telecommunications for one's own business objectives.

ii. Practices related to formulating and amending of wholesale tariffs

Although Type I telecommunications carriers may formulate tariffs in relation to wholesale telecommunications services as desired, the formulation of tariffs as follows may be subject to order to change tariffs based on TBL, when the conditions stipulated said tariffs are considered to impair the promotion of public interest (TBL, Article 39-5 paragraph (3)).

Examples:

(i) Formulating and changing wholesale tariffs in which items of the carrier's own responsibility, methods of calculation of tariffs, etc. are not properly and clearly stipulated.

(ii) Formulating and changing wholesale tariffs in which unduly discriminatory treatment is applied to certain telecommunications carriers such as affiliates, subsidiaries of the carrier, etc.

(iii) Formulating and changing wholesale tariffs applying conditions more disadvantageous to other telecommunications carriers than the conditions stipulated in interconnection tariffs.

iii. The following practice by dominant carriers is subject to order to suspend / change practices (TBL, Article 37-2 paragraph (4)), and if determined to impair the public interest, may constitute a reason for revocation of the Type I telecommunications carrier permission (TBL, Article 19 paragraph (1) item ii)).

Example:

* Providing wholesale telecommunication services to affiliates of the carrier in question at lower charges and more advantageous conditions than other telecommunications carriers (TBL, Article 37-2 paragraph (3) item ii)).

4. Section pertaining to provision of on-line content

1) Interpretation of the Antimonopoly Act

a. Telecommunications carriers, using display screens of mobile or fixed line terminals (hereafter referred to as handy terminals) occasionally operates an information service system for handy terminals through which music, comprehensive information on city happenings, and banking services are provided.

Telecommunications carriers who operate such information service systems for handy terminals (hereafter referred to as information service operators) often show a menu list on the display with which users can get an access to information sites by simple key commands. They also list the information sites on the menu list under certain rules. Usually information service operators collect bills for such information services on behalf of contents providers in addition to bills for telecommunications services.

Customers tend to get access to sites listed in the menu more frequently than unlisted sites. For providers of contents, it is important to have their sites listed in the menu in competing with competitors.

In addition, handy terminal information service systems are not interpretable. Customers cannot get an access to sites listed on the menu of other systems. Under such a circumstance, it is important for information service operators to have attractive sites in its menu as many as possible.

b. Under such a circumstance, for example, an information service operator, deals with content providers with conditions that make them difficult to work with other operators(*48). When this practice is found substantially restricting competition, it is regarded as "private monopolization" that is prohibited by Section 3 of the Antimonopoly Act. Even if it does not substantially restrict competition, but it tends to impede fair competition in the market, it is regarded as "unfair trade practices" that are prohibited by Section 19 of the Antimonopoly Act (*49).

(*48) Information system operators usually set their own rules for listing in menus. However, some do not disclose such rules. In some other cases, rules are not clear even if they are disclosed to public. In such cases, information system operators tend to arbitrarily implement own rules, restricting content providers in working with other information system operators.

(*49) As to application of the Antimonopoly Act to specific practices, see the Section I, 2, 2),(3).

2) Practices prohibited under TBL, order to suspend / change practices, etc.

When a dominant carrier is a system operator and managing or operating an information service system for handy terminals, and said telecommunications carrier places undue compulsion upon, or intervention in the business of content providers, this constitutes prohibited practices under TBL (TBL, Article 37-2 paragraph (3) item iii)), is subject to order to suspend / change practices by the Minister of MIC (Article 37-2 paragraph (4)), and if determined to impair the public interest, may constitute a reason for revocation of the Type I telecommunications carrier permission (TBL, Article 19 paragraph (1) item ii)).

3) Practices constituting problems under the Antimonopoly Act or TBL

When information system operators with relatively large market shares may reduce business opportunities of competitors, reduce or nullify rate competition in the content

provision market by the following practices, it violates the Antimonopoly Act. (This falls under the categories of private monopolization, exclusive business terms, restrictive business terms.)

In addition, when the following practices by dominant carriers are recognized as undue compulsion, or intervention upon the operations of content providers, this constitutes prohibited practices under TBL, Article 37-2 paragraph (3) item ii) or 37-2 paragraph (3) item iii), is subject to order to suspend / change practices by the Minister of MIC (Article 37-2 paragraph (3) item iv)), and if determined to impair the public interest, may constitute a reason for revocation of the Type I telecommunications carrier permission (TBL, Article 19 paragraph (1) item ii)).

a. When a content provider tries to list its sites in competing carriers' services, a telecommunications carrier removes the provider's site from its menu or suspend the collection of bills on its behalf. A telecommunications carrier refuses (*50) listing of sites or collecting bills of providers who have already list their sites in competitors' menus (*51).
   (*50) It will be no problem to fairly refuse listing of or remove a particular provider's site in order to block inappropriate contents after clarifying what constitutes an acceptable content provider.
   (*51) When a telecommunications carrier unjustly refuses to list a particular site in the requested category, or when the carrier lists a particular site at the very bottom of the site tree to the undue disadvantage of its competitors, this will constitute a problem.
b. When content providers have already listed their sites in a telecommunications carrier's menu, or when content providers newly make a request to do so, the carrier prohibits them from listing in competitors' menus or producing contents in a language used by the competitors' menu.
c. A telecommunications carrier makes it conditional to involve itself in setting charge between content providers and customers (*52), without legitimate reasons, when it lists a site of a content provider.
   (*52) It will be no problem when telecommunications carriers do not approve bills for information services that are higher than a set amount in order to prevent troubles between customers and content providers, unless the maximum amount does not unduly restrict rate setting.

5. Section pertaining to manufacture and sale of telecommunications facilities

1) Interpretation of the Antimonopoly Act

a. In the telecommunications sector, technological innovations make progress quickly and new services based on new technologies are actively developed. Under such a circumstance, there is a case that a telecommunications carrier holds patents which is indispensable for manufacturing telecommunications equipment. Without a licensing arrangement with the patent holder, manufacturing and sales of the equipment are extremely difficult.

b. Under such a circumstance, for example, at the time of a licensing arrangement, a telecommunications carrier, forces manufacturers to buy its own or affiliates products or services in a licensing arrangement, or gives conditions that restrict businesses between the manufacturers and their suppliers. When these practices are found substantially restricting competition, they are regarded as "private monopolization" that is prohibited by Section 3 of the Antimonopoly Act. Even if they do not substantially restrict competition, but they tend to impede fair competition in the market, they are regarded as "unfair trade practices" that are prohibited by Section 19 of the Antimonopoly Act (*53).

As to the interpretation of the Antimonopoly Act concerning patent and know-how licensing agreements, judgment is made, in general, referring to the Guidelines for Patent and Know-how Licensing Agreements under the Antimonopoly Act (Fair Trade Commission July 30, 1999)

(*53) As to application of the Antimonopoly Act to specific practices, see the Section I, 2, 2),(3).

2) Practices prohibited under TBL, order to suspend / change practices, etc.

If dominant carriers place undue compulsion upon, or intervention in the business of telecommunications facilities manufacturers or sales outlets this constitutes prohibited practices under TBL (TBL, Article 37-2 paragraph (3) item iii)), is subject to order to suspend / change practices by the Minister of MIC (Article 37-2 paragraph (4)), and if determined impair the public interest, may constitutes a reason for revocation of the Type I telecommunications carrier permission (TBL, Article 19 paragraph (1) item ii)).

3) Practices constituting problems under the Antimonopoly Act or TBL

When telecommunications carriers prevent the other operators' business operation, the entry of competitors into the market, or make competitors' business operation difficult or may nullify rate competition of terminal facilities by the following practices, it violates the Antimonopoly Act. (This falls under the categories of private monopolization, tie-in sales, setting resale prices, and restrictive business terms.)

In addition, when the following practices by dominant carriers are recognized as undue compulsion upon, or intervention in business of telecommunications facilities manufacturers or sales outlets (*54) this constitutes prohibited practices under TBL, Article 37-2 paragraph (3) item ii) or 37-2 paragraph (3) item iii), is subject to order to suspend / change practices by the Minister of MIC (Article 37-2 paragraph (3) item iv)), and if determined to impair the public interest, may constitute a reason for revocation of the Type I telecommunications carrier permission (TBL, Article 19 paragraph (1) item ii)).

(*54) When, from the viewpoint of securing the benefits of users, the carriers stipulate that sales outlets should satisfy set service levels, in selecting their sales outlets, or when the sales outlets desireexclusive sales rights in (iv) below, this will be no problem

under TBL.

a. At the time of licensing arrangement which is indispensable to manufacture telecommunications equipment, a telecommunications carrier, without legitimate reasons, forces manufacturers to buy its own or affiliates products or services the manufacturers need to buy.
b. At the time of licensing arrangement or joint development contract which is indispensable to manufacture telecommunications equipment with equipment manufacturers, a telecommunications carrier, without legitimate reasons, does not approve a manufacturers' request to sell the equipment utilizing its patented technology to competitors, or delays the procedures for approval in case the carrier and equipment manufacturers have agreed such approval is necessary. By such practices, the sales of equipment utilizing its patent to competitor are restricted.
c. A telecommunications carrier forces terminal equipment (*55) sales firms to respect its suggested prices of its terminal goods.
   (*55) Terminal equipment includes telephone (both mobile and residential) and fax machines.
d. A telecommunications carrier does not allow its sales firms to handle competitors' products, forces them to handle only products it designates, or designates their sales areas.

Reprise: Asymmetric regulations for dominant carriers (prohibited practices)

Practices subject to asymmetric regulations for dominant carriers under TBL are listed in sections 1 to 5. These practices are reprised together with the overview of the system, for the convenience of telecommunications carriers.

1) Overview of the system

As a measure for the promotion of fair competition, TBL provides a system of asymmetric regulations by which dominant carriers are categorized and certain practices are prohibited in a manner that is asymmetric with regard to other telecommunications carriers.

In concrete terms, regarding dominant carriers the following practices (i)--(iii) are prohibited in advance (TBL, Article 37-2 paragraph (3)), and a system for order to suspend / change practices regarding such practices is established so that practice that infringes them can be immediately eliminated (TBL, Article 37-2 paragraph (4)).

(Prohibited Practices conducted by dominant carriers)

a. Abusing / providing proprietary information obtained from other telecommunications carriers through interconnection for outside purposes.

b. In telecommunications activities (that mean business activities of a telecommunications carrier for providing a telecommunications service (TBL, Article 2 item vi)), unduly favorable treatment or advantageous practices, or unduly unfavorable treatment or disadvantageous practices toward specific telecommunications carriers.

c. Undue compulsion upon, or intervention in the business of other telecommunications carriers (*1), telecommunications facilities manufacturers or sales outlets.

In order to contribute to the proper rates for telecommunications services, a Type I telecommunications carrier has an obligation to maintain and disclose accounts (Article 33 of TBL, Telecommunications Business Accounting Regulations [Ministerial Ordinance of the Ministry of Posts and Telecommunications No.26 of 1985]). Dominant carriers have an additional obligation to publish accounting information on income and expenditures with regard to telecommunications services, from the viewpoint of monitoring internal subsidization, and ensuring transparency of operating business (TBL, Article 37-2 paragraph (5)).

(*1) Including those to operate telecommunications services described in Article 90 paragraph (1) of TBL (the telecommunications services exempted by TBL), such as content providers.

A Type I telecommunications carrier installing Category I designated telecommunications facilities has a particularly strong power in the market, because of the bottleneck nature (monopolistic, essential for roll out of business by other telecommunications carriers) of the Category I designated telecommunications facilities, and if it treats other telecommunications carriers unduly unfavorably compared to a specified affiliated carrier (*2) backing the market power, then there is particularly large damage to fair competition among telecommunications carriers and to sound development of telecommunications.

(*2) "Specific affiliated carriers " shall be telecommunications carriers that fall under the category of subsidiaries of Type I telecommunications carriers that install Category I-designated telecommunications facilities, a parent company where said Type I telecommunications carriers are subsidiaries, or subsidiaries of said parent company (excluding said Type I telecommunications carriers) that are designated by the Minister of MIC (TBL, Article 37-3 paragraph (3) item i)).

For this reason, as far as TBL is concerned, a Type I telecommunications carrier installing Category I designated telecommunications facilities is in principle prohibited from giving unfavorable treatment to other telecommunications carriers in the specified activities in comparison with a specified affiliated carrier (*3) (TBL, Article 37-3 paragraph (3): Firewall regulations).

(*3) However, if there are unavoidable reasons stipulated in the applicable ministerial ordinance of MIC, this shall not apply (TBL Article 37-3 paragraph (3) proviso). Specifically, the following cases are regarded as "unavoidable reasons".

a. When other telecommunications carriers have failed or may fail to perform the articles stipulated in the contract, such as payment of the monetary amounts that they are to bear, usage period or other usage conditions, provisions on confidentiality, or prohibition on abuse for outside purposes etc. (Telecommunications Business Low Enforcement Regulations [Ministerial Ordinance of the Ministry of Posts and Telecommunications No.25 of 1985] Article 22-6).

b. Nippon Telegraph and Telephone East Corporation and Nippon Telegraph and Telephone West Corporation are required, for a while:

(a) to implement the following articles in the ones described in Supplementary Provision Article 3 paragraph (2) item iv and vi of the Law to partially amend the Nippon Telegraph and Telephone Corporation Law (Law No.98 of 1997) in the succession plan under Supplementary Provision Article 5 paragraph (6) of the Law.

i. Business entrustment concerning addition or renewal of information on contractors of voice transmission services provided by Specific affiliated carriers.

ii. Business entrustment concerning monitor and control of Specific affiliated carriers' facilities.

(b) to have obtained authorization from the Minister of MIC based on provisions of Article 15 of TBL as those necessary to implement the succession plan.

2) Practices constituting problems under TBL

The following practices by dominant carriers are subject to order to suspend / change practices (TBL, Articles 37-2 paragraph (4) and 37-3 paragraph (4)), and if determined to impair the public interest, may constitute a reason for revocation of the Type I telecommunications carrier of permission (TBL, Article 19 paragraph (1) item ii)):

a. Abusing / providing proprietary information obtained from other telecommunications carriers through interconnection for outside purposes (TBL, Article 37-2 paragraph (3) item i))

* Practice such as use for unintended purposes of information obtained in respect of interconnection with another telecommunications carrier, or provision of such information to another internal division or affiliates of the carrier in question (Section1. 3) (2) D (i)).

b. In providing telecommunications services, unduly favorable treatment or advantageous practices, or unduly unfavorable treatment or disadvantageous practices toward specific telecommunications carriers (TBL, Article 37-2 paragraph (3) item ii))

(a) Unfair treatment in MYLINE (dialing parity) registration of users and similar services (Section1.3) (2) D(ii)).

(b) Establishing discounted services only for communications using network of affiliates of the carrier in question (Section3. 3) (1) B(b) (i)).

(c) Provision of discounted services exclusively bundled with the services of affiliates of the carrier in question (Section3. 3) (2) B).

(d) Conducting exclusive business in conjunction with affiliates of the carrier in question (Section3. 3) (4) B(b) (i)).
(e) Granting favorable treatment regarding charges, or conditions of service such as consignment of business, etc. to affiliates of the carrier in question (Section3. 3) (4) B (b) (ii)).
(f) Granting proxy rights for billing users only for specific telecommunications carriers (Section3. 3) (4) B (iii)).
(g) Favorable treatment in providing wholesale telecommunications services to affiliates of the carrier in question (Section3. 3) (6) B(c)).
(h) Establishing unfair conditions, etc. in opening a portal site for browser phone services (Section3. 3) (1) B (b) (iii)).

c. Undue compulsion, or intervention upon the business of other telecommunications carriers, telecommunications facilities manufacturers or sales outlets. (TBL, Article 37-2 paragraph (3) item iii))

Examples:

i. Restriction on condition of telecommunications services provided by other telecommunications carriers (Section3. 3) (1) B (b) (ii)).
ii. Undue compulsion, or intervention upon content providers (Section4. 3) (i)–(iii)).
iii. Undue compulsion, or intervention upon the business of telecommunications facilities manufacturers or sales outlets (Section5. 3) (i)-(iv)).

d. Giving other telecommunications carriers unfavorable treatment in comparison with a specified affiliated carrier in installation or maintenance of telecommunications facilities, use of land and buildings and other works firmly affixed thereto, or provision of information necessary for interconnection with the Category I designated telecommunications facilities (TBL, Article 37-3 paragraph (3) item i))

Examples:

i. Unfair treatment regarding the provision of information necessary for interconnection. (Section1. 3) (2) D (iii)).
ii. Unfair treatment regarding installation or maintenance of facilities, collocation, leasing poles, ducts, etc. necessary for interconnection (Section1. 3) (2) D (iv)).

e. Giving other telecommunications carriers unfavorable treatment in comparison with a specified affiliated carrier in intermediary, commission, procuration of contract concerning provision of telecommunications services, or other business entrustment to other telecommunications carriers (TBL, Article 37-3 paragraph (3) item ii))

Example:

* Unfair setting of fees for collecting charges (Section3. 3) (4) B (b) (iv)).

III. Desirable Practices of Telecommunications Carriers in View of Promoting Further Competition

1) Prevention of unauthorized passage of information between sections responsible for interconnection and other internal sections and affiliated carriers

Dominant carriers are prohibited from abusing / providing proprietary information obtained from other telecommunications carriers through interconnection for outside purposes. In this regard, they are required to set up an effective firewall between sections responsible for interconnection and those responsible for sales and the like, and affiliated telecommunications carriers.

To minimize the unauthorized passage of such proprietary information, it is desirable that sections responsible for interconnection and those responsible for sales and the like be physically separated from one another, by, for example, positioning them on different floors, as well as that appropriate measures upon personnel movement between these sections be designed to ensure the effectiveness of the said firewall

In actual implementation of the above measures, it is desirable that internal manuals be prepared, above measures be properly carried out and those results be publicly disclosed, which lead to easy external monitoring.

2) Implementation report about firewall and its disclosure to public

In order to ensure more transparency of Type I telecommunications carriers that install Category I designated telecommunications facilities, it is desirable that there be public disclosure of the implementation report about firewall (*1), for which submission to Minister of MIC is a legal requirement (TBL, Article 37-3 paragraph (5)).

(*1) “Firewall” refers to measures (TBL, Article 37-3 paragraph (3)) intended to prohibit unfavorable treatment of other telecommunications carriers by Type I telecommunications carriers that install Category I designated telecommunications facilities in comparison with specific affiliated carriers.

3) Disclosure of information pertaining to subscriber line networks

With a view to promoting further competition, dominant telecommunications carriers owning subscriber line networks are expected to disclose the status of interconnection and collocation with other carriers, in terms of such information as the number of requests for interconnection or collocation, duration of procedures needed, the number of rejected cases, and reasons of rejection by separating competitors from their own departments or affiliates, so that it can be externally monitored that their favorable treatment is not given to their own departments or affiliates.

4) Leasing of poles, ducts, etc.

(1) Prevention of unauthorized passage of information between sections responsible for leasing poles, ducts, etc. and other internal sections and affiliated carriers

Companies owing poles, ducts, etc. are expected to set up an information barrier between their own departments and affiliates, so that information about new entrants with infrastructure obtained during the lease procedures can be shut out. As to specific measures to shut off information, at the same time, it is important to take those that can be monitored by outsiders while considering the protection of sensitive corporate information etc.

(2) Public disclosure of lease application procedures for poles, ducts, etc.

In order to promote further competition, it is desirable that telecommunications facility holders positively make efforts to promote transparency through the full disclosure of details, such as those listed below, pertaining to leasing and other applications in terms of the provision of telecommunication facilities.

Examples:

a. Preparation and disclosure of the standard operating procedures concerning application procedures for leasing, etc. (Article 13 of the Guidelines)

It is desirable that facilities holders shall prepare their standard operating procedures concerning the use of facilities and publicly disclose, in advance, the following items concerning the provision of facilities through online web sites.

(a) Location where applications for the provision of facilities can be submitted and relevant contact addresses

(b) Procedures for receiving the provision of facilities (a standard procedure from an application for a preliminary survey as involved in the provision of facilities (hereinafter referred to as "survey") to actual use of the facilities (including the procedures concerning the notification of facilities usage charges and the basis for the calculation thereof))

(c) Standard forms for application, notification and other documents as well as kinds of documents to be attached thereto

(d) Reasons why the facilities holders can refuse the provision of facilities

(e) Standard facilities-usage charges and the basis for the calculation thereof

(f) A standard period required from the time when an application for a survey is submitted to the time when a reply of acceptance or rejection for provision of facilities is given (a standard period for responding to a survey)

(g) The method of calculating costs pertaining to the survey to be conducted in connection with the provision of facilities

(h) A standard period required from the time when an application is made for the survey to the time when usage of the facilities is started

b. Information disclosure (Guideline, Article 12)

It is desirable that telecommunications facility holders provide, upon the receipt of an inquiry from Type I telecommunications carriers into the status of available utilities and to the extent possible, responses to said carriers concerning the status of telecommunication sections for which a commitment has yet to be made.

c. Preparation of standard guideline for implementation (Guideline, Article 13)

It is desirable that standard guideline for implementation (on a disclosure basis) vis-a-vis the usage of facilities consistent with the Guideline be publicly disclosed through the online websites referred to in (i) above.

d. Provision of documentation and other materials (Guideline, Article 2 of supplementary provisions)

In case of consideration and verification of the extent of improvements with respect to the usage of facilities pursuant to the terms of the Guideline and revision of the Guideline based on the results thereof on April 1 of every year, it is desirable that telecommunication facility holders keep needed cooperation, such as to supply requisite documentation and other forms of assistance.

(3) Public disclosure of leasing status

With a view to promoting further competition, companies owing poles, ducts, etc. are expected to disclose the status of the lease of poles, ducts, etc. to new entrants with infrastructure, in terms of such information as the number of applications, lease records, period of time necessary for obtaining the lease, the number of rejected cases, and reasons

of rejection by separating competitors from their own departments or affiliates, so that it can be externally monitored that their favorable treatment is not given to their own departments or affiliates.

5) Stimulation of wholesale telecommunications services market

In order to promote further competition by ensuring that the conditions applied to the provision of wholesale telecommunications services are transparent and fair, it is desirable that Type I telecommunications carriers, where possible, establish wholesale services tariffs or prepare and publish schedules listing the standard conditions applicable to wholesale services to maximum extent as possible.

6) Compiling a manual for preventing violations of laws

Dominant telecommunications carriers are expected to make out an in-house manual on the Antimonopoly Act and TBL, implement it strictly by holding in-house training. The manual should be lived up to not only by their own sales people but also sales agents.

IV. System for Responding to Reporting, Consultations, and Submission of Opinions

1. Reporting or consultations of violations, submission of complaints or other views concerning promotion of competition

The Antimonopoly Act stipulates that any person may report a fact that appears violating the law to FTC and ask it to take appropriate measures. (the Antimonopoly Act Section 45)

With a view to ensuring fair and free competition on the IT-related and public utilities sectors, FTC is determined to collect information efficiently and swiftly on the Antimonopoly Act violation cases in the telecommunications sector and to solve problems.

With a view to improving the transparency of law enforcement and to enhance the predictability on legitimacy of carriers' practices, FTC gives consultations on legitimacy of planned projects of carriers. It is also working out a system for responding to inquiries of firms if their planned projects have any legal problems under the jurisdiction of FTC. (It is a prior consultation system for business operations. (*1)

(*1) Prior consultation system is a service, upon request, to check if specific practices to be taken by an operator or an operators association violate laws under the jurisdiction of FTC (including the Antimonopoly Act, the Subcontracting Act the Premiums and Representation Act. In principle, FTC will send a written reply within 30 days after receiving an application for the consultation. (See the FTC's report on prior consultation system dated on October 1, 2001)

Under TBL, any person with complaints or other views on charges or other terms pertaining to the telecommunication services provided by telecommunications carriers may submit such opinions to the Minister of MIC (TBL, Article 96-2).

With respect to disputes concerning the conclusion of contracts or agreements for interconnection of the telecommunications facilities between telecommunications carriers, mediation or reconciliation may be requested from the Telecommunications Business Dispute-settlement Commission (TBL, Article 88-12 to Article 88-17).

To secure further fair competition in the telecommunications business field and to deal with increasing complaints and views submitted by telecommunications carriers, the Telecommunications Bureau's General Affairs Division has set up the Office of Fair Competition in order to reinforce said bureau's administrative disposition mechanism and to unify contact points. Based on the provisions of Article 96-2 of TBL, the Office of Fair Competition shall be the only body to receive opinions submitted by telecommunications carriers and shall conduct consultations and the like in relation to disputes arising between telecommunications carriers with regard to the promotion of fair competition in the telecommunications business field.

In addition, with regard to practices that telecommunications carriers intend to conduct, MIC has established procedures to examine to see if such practices infringe TBL, other laws and ordinances under the jurisdiction of MIC and to provide responses (prior confirmation (non-action letter) procedures). (*2)

(*2) Prior confirmation procedures are a service, upon request, to confirm in advance if specific practices to be taken by an operator or others concerning its or their own business activities are subject to laws and ordinances under the jurisdiction of MIC (MIC Prior Confirmation Procedures Regulations [Ministerial instruction of MIC No.197 of 2001]).

In principle, MIC will send a written reply within 30 days after receiving an inquiry on whether practices in contravention of the provision in which the basis of practices to notify administrative organizations are stipulated, such as disposal, notification or others for application based on TBL, the Radio Law, other laws and ordinances under the

jurisdiction of MIC, are subject to penal regulations, and whether practices are subject to application of provision stipulated the basis of disadvantageous disposal.

In addition to enforcing the provisions of the Antimonopoly Act and TBL, FTC and MIC shall conduct consultations concerning the views sets forth in these Guidelines or potentially problematic practice or similar matters related thereto (See the Table provided below for contact locations.).

2. Collaboration between FTC and MIC

As the Antimonopoly Act and TBL can be applied to the same practice in enforcing the two laws, from the viewpoint of coordinating the enforcement of the two laws and preventing unnecessary confusion and excessive burden of operators, FTC and MIC will contact each other and exchange information as follows:

(1) Acting upon consultations with FTC or MIC and submission of compliments or opinion to the MIC based on the provisions of Article 96-2 of TBL, FTC and MIC will notify each other of the occurrence thereof, giving due consideration of the desires of the party being conferred with or submitting, when FTC finds the case may violate the TBL or MIC finds it may violate the Antimonopoly Act.

(2) In implementing the Antimonopoly Act and TBL, FTC and MIC will exchange information on their respective administrative dispositions when necessary.

(3) FTC and MIC will set up liaison to exchange the information described above.

Table Reporting, consultation, etc., contact locations

Responsible administrative authority	Reporting, consultation, etc.	Division to be contacted	Contact information
Fair Trade Commission	Reporting of violations based on Article 45 of the Antimonopoly Act(*1)	Information Analysis Office, Investigation Bureau, General Secretariat, Fair Trade Commission (*2)	Chuo Godo Chosha Building No. 6 1-1-1 Kasumigaseki, Chiyoda-ku Tokyo 100-8987 TEL: (03) 3581-3387 FAX: (03) 3581-6050
	Prior consultation and General Consultation on Antimonopoly Act	Consultation and Guidance Office, Trade Practice Department, Economic Affairs Bureau, General Secretariat, Fair Trade Commission	Chuo Godo Chosha Building No. 6 1-1-1 Kasumigaseki, Chiyoda-ku Tokyo 100-8987 TEL: (03) 3581-5481 FAX: (03) 3581-1948
MIC	Submission of views based on Article 96-2 of TBL	Office of Fair Competition, General Affairs Division, Telecommunications Bureau, MIC (*3)	Chuo Godo Chosha Building No. 2 2-1-2 Kasumigaseki, Chiyoda-ku Tokyo 100-8926 TEL: (03) 5253-5827 FAX: (03) 5253-5830
	General consultations pertaining to TBL, etc.	Telecommunications Policy Division, Telecommunications Business Department, Telecommunications Bureau, MIC (*3)	Chuo Godo Chosha Building No. 2 2-1-2 Kasumigaseki, Chiyoda-ku Tokyo 100-8926 TEL: (03) 5253-5835 FAX: (03) 5253-5848

(*1) Web site address: http://www.jftc.go.jp

(*2) Concerning other district than Kantokoshinetu District (Ibaraki Prefecture, Tochigi Prefecture, Gunma Prefecture, Saitama Prefecture, Chiba Prefecture, Tokyo Prefecture, Kanagawa Prefecture, Niigata Prefecture, Nagano Prefecture and Yamanashi Prefecture), see Attached Table 1.

(*3) See Attached Table 2 for other offices that can be contacted regarding TBL.

Attached Table 1. Other offices that can be contacted regarding the Antimonopoly Act

Regional Offices, etc.	Reporting of violations based on Article 45 of the Antimonopoly Act	General Consultation of the Antimonopoly Act	Area of jurisdiction
Hokkaido Office Sapporo No. 3 Godo Chosha Odori-nishi 12, Chuo-ku Sapporo 060-0042	Investigation Division I TEL: (011) 231-6300 FAX: (011) 261-1719	General Affairs Division TEL: (011) 231-6300 FAX: (011) 261-1719	Hokkaido
Tohoku Office Sendai No. 2 Godo Chosha 3-2-23 Honcho, Aoba-ku Sendai 980-0014	Investigation Division I TEL: (022) 225-7095 FAX: (022) 261-5003	General Affairs Division TEL: (022) 225-7095 FAX: (022) 261-5003	Aomori Prefecture, Iwate Prefecture, Miyagi Prefecture, Akita Prefecture, Yamagata Prefecture and Fukushima Prefecture
Chubu Office Nagoya Godo Chosha Building No. 2 2-5-1 Sannomaru, Naka-ku Nagoya 460-0001	Investigation Division I TEL: (052) 961-9425 FAX: (052) 971-5003	General Affairs Division TEL: (052) 961-9421 FAX: (052) 971-5003	Toyama Prefecture, Ishikawa Prefecture, Gifu Prefecture, Shizuoka Prefecture, Aichi Prefecture and Mie Prefecture
Kinki-Chugoku-Shikoku Office Osaka Godo Chosha Building No. 4 4-1-76 Otemae, Chuo-ku Osaka 540-0008	Investigation Division I TEL: (06) 6941-2193 FAX: (06) 6941-2189	General Affairs Division TEL: (06) 6941-2173 FAX: (06) 6943-7214	Fukui Prefecrure, Shiga Prefecture, Kyoto Prefecture, Osaka Prefecture, Hyogo Prefecture, Nara Prefecture and Wakayama Prefecture
Chugoku Branch, Kinki-Chugoku-Shikoku Office Hiroshima Godo Chosha Building No.4, Naka-ku, Hiroshima 730-0012	Investigation Division TEL: (082) 228-1501 FAX: (082)223-3123	General Affairs Division TEL: (082) 228-1501 FAX: (082)223-3123	Tottori Prefecture, Shimane Prefecture, Okayama Prefecture, Hiroshima Prefecture and Yamaguchi Prefecture
Shikoku Branch, Kinki-Chugoku-Shikoku Office Takamatsu Godo Chosha No.2 1-17-33, Matushima-cho, Takamatsu 760-0068	Investigation Division TEL: (087) 834-1442 FAX: (087) 862-1994	General Affairs Division TEL: (087) 834-1441 FAX: (087) 862-1994	Tokushima Prefecture, Kagawa Prefecture, Ehime Prefecture and Kochi Prefecture
Kyushu Office Fukuoka Godo Chosha No.2 Bekkan, 2-10-7 Hakata-eki-higashi, Hakata-ku, Fukuoka, 812-0013	Investigation Division TEL: (092) 431-6033 FAX: (092) 474-5465	General Affairs Division TEL: (092) 431-5881 FAX: (092) 474-5465	Fukuoka Prefecture, Saga Prefecture, Nagasaki Prefecture, Kumamoto Prefecture, Oita Prefecture, Miyazaki Prefecture and Kagoshima Prefecture

Okinawa General Bureau Fair Trade Office, Fuso Building, 2-21-13, Maeshima, Naha 900-8530	Fair Trade Office TEL: (098) 863-2243 FAX: (098) 862-4580	Fair Trade Office TEL: (098) 863-2243 FAX: (098) 862-4580	Okinawa Prefecture

Attached Table 2. Other offices that can be contacted regarding TBL

Regional Telecommunications Bureaus, etc.	Division, etc., to be contacted	Area of jurisdiction
Hokkaido Bureau of Telecommunications Sapporo No. 1 Godo Chosha Kita Hachijo-Nishi, 2-1-1 Kita-ku Sapporo 060-8795	Telecommunications Business Division TEL: 011-709-2311 (ext. 4703) FAX: 011-709-2482	Hokkaido
Tohoku Bureau of Telecommunications Sendai No. 2 Godo Chosha 3-2-23 Honcho, Aoba-ku Sendai 980-8795	Telecommunications Business Division TEL: 022-221-0627 FAX: 022-221-0613	Aomori Prefecture, Iwate Prefecture, Miyagi Prefecture, Akita Prefecture, Yamagata Prefecture and Fukushima Prefecture
Kanto Bureau of Telecommunications 2-3-2 Otemachi, Chiyoda-ku Tokyo 100-8795	Telecommunications Business Division TEL: 03-3243-8633 FAX: 03-3242-0133	Ibaraki Prefecture, Tochigi Prefecture, Gumma Prefecture, Saitama Prefecture, Chiba Prefecture, Metropolitan Tokyo, Kanagawa Prefecture and Yamanashi Prefecture
Shinetsu Bureau of Telecommunications Nagano No. 1 Godo Chosha 1108 Asahi-cho Nagano 380-8795	Telecommunications Business Division TEL: 026-234-9971 FAX: 026-234-9999	Niigata Prefecture and Nagano Prefecture
Hokuriku Bureau of Telecommunications Kanazawa Hirosaka Godo Chosha 2-2-60 Hirosaka Kanazawa 920-8795	Telecommunications Business Division TEL: 076-233-4420 FAX: 076-233-4499	Toyama Prefecture, Ishikawa Prefecture and Fukui Prefecture
Tokai Bureau of Telecommunications Nagoya Godo Chosha Building No. 3 1-15-1 Shirakabe, Higashi-ku Nagoya 461-8795	Telecommunications Business Division TEL: 052-971-9401 FAX: 052-971-3581	Shizuoka Prefecture, Gifu Prefecture, Aichi Prefecture and Mie Prefecture
Kinki Bureau of Telecommunications Osaka Godo Chosha Building No. 1 1-5-44 Otemae, Chuo-ku Osaka 540-8795	Telecommunications Business Division TEL: 06-6942-8517 FAX: 06-6920-0609	Shiga Prefecture, Kyoto Prefecture, Osaka Prefecture, Hyogo Prefecture, Nara Prefecture and Wakayama Prefecture
Chugoku Bureau of Telecommunications 19-36 Higashi-Hakushima-cho, Naka-ku Hiroshima 730-8795	Telecommunications Business Division TEL: 082-222-3376 FAX: 082-502-8152	Tottori Prefecture, Shimane Prefecture, Okayama Prefecture, Hiroshima Prefecture and Yamaguchi Prefecture
Shikoku Bureau of Telecommunications 8-5 Miyata-cho Matsuyama 790-8795	Telecommunications Business Division TEL: 089-936-5042 FAX: 089-936-5014	Tokushima Prefecture, Kagawa Prefecture, Ehime Prefecture and Kochi Prefecture

Kyushu Bureau of Telecommunications 1-4 Ninomaru Kumamoto 860-8795	Telecommunications Business Division TEL: 096-326-7824 FAX: 096-326-7829	Fukuoka Prefecture, Saga Prefecture, Nagasaki Prefecture, Kumamoto Prefecture, Oita Prefecture, Miyazaki Prefecture and Kagoshima Prefecture
Okinawa Office of Posts and Telecommunications 26-29 Higashi-machi Naha 900-8797	Administration Division TEL: 098-865-2302 FAX: 098-865-2311	Okinawa Prefecture