

## **Competition in Japan's Telecommunication Sector: Challenges for the Japan Fair Trade Commission**

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### **I. JFTC's Role in the Telecommunication Sector**

(To publicize the competition policy to promote structural reform)

1. Today, the Japanese government is implementing various structural reform policies that are crucial for revitalizing the economy. One particularly important policy is the dramatic development of IT. The government's IT strategy intends to boost the telecommunications market, as this constitutes the core infrastructure of Japan's economy.

The JFTC, which is in charge of the competition policy, is therefore working hard to encourage competition in telecommunications. First I'd like to explain the measures we've already actually taken, and then outline our policy for national competition. We have often been criticized by the Americans, who claim that our Antimonopoly Act is inadequate and not fully enforced. And, yes, we've heard criticisms such as, "The Fair Trade Commission is a watch dog that does not bite." This is a total misunderstanding. I want to dispel such humiliating views by showing that the JFTC has a powerful roar and a sharp bite to encourage competition.

(Is the connection charge too high?)

2. Early last year, Japanese telecommunications services were criticized by the U.S. and the E.U. Claiming that the connection fees set by NTT are too high, the U.S. government requested the Japanese government to reduce the fees. As you know, NTT has a strong monopoly over regional networks and the subscriber lines in Japan. During a consultation between the two governments, there was an exchange of views such as "The connection rate should be reduced by 40%" and "That's not possible. It can only come down by 22% in 4 years". The reported exchange puzzled me. Both American corporations which seek connections and NTT which provides connections are private firms. Why should our governments negotiate about the rates imposed by private firms? Such rates should of course be set under the market mechanism. Neither government should interfere. Our governments should focus their discussions on positive deregulation, strict enforcement of antimonopoly laws and so forth to promote competition in the telecommunications market. They should not address the issue of raising or reducing rates. Sound competition in the

market will allow the rate to settle to a fair level by itself.

(Revitalizing competition in the telecommunications market)

3. With this background, the JFTC is striving to encourage competition in the Japanese telecommunications market by various means.

(Brief history of system reforms related to telecommunications)

4. First, surveys, studies and proposals were made for a policy to deregulate the telecommunications sector. Until 16 years ago, the Japanese telecommunications business had been monopolized by a state enterprise. The system was reformed in 1985 and the state enterprise was privatized into the present NTT. At the same time, newcomers were allowed to enter the market. However, the system reforms and deregulation were inadequate. The regional networks and the subscriber lines were owned solely by NTT, so new entrants could not do business without smooth connection to NTT's regional networks. NTT was still just the same as when it was a state enterprise, and was so huge that new entrants could not compete as equals. Despite NTT's privatization and market liberalization, there was still no free competition in the telecommunications market.

(Fair Trade Commission's proposal for system reform)

5. In 1995, the JFTC therefore proposed that NTT be split up and that various regulations be eased to accelerate competition in the telecommunications market. Two years ago NTT was reorganized into three companies under a holding company system in the name of promoting competition, but the reorganization actually left it as one corporation, the NTT group, as the holding company owned 100% of the stocks of the divided three companies. Thus, nothing had changed except that newcomers had to compete with the three NTT subsidiaries after the reorganization instead of NTT itself before. Consequently, competition was not promoted.

(Need for reorganizing the NTT group)

6. Therefore, in June 2000, the JFTC made other proposals as follows. First, the remaining regulations such as the permission system for each narrowly defined category of business and the sanction system for connection rates should be greatly eased to allow free business activities. Second, the organization of NTT should be reviewed in view of the ineffectiveness of restructuring it into a holding company to promote competition. As a result of the restructuring, the scope of business of NTT's subsidiaries was segmented geographically as well as by type of business, which actually restricted flexibility of business

and weakened competition somewhat. DoCoMo, the leader in the cellular phone business in Japan, was separated from NTT and established as an independent company in the infancy of cellular phones, but even now it is controlled by NTT which owns 67% of the shares. This distorted competition in both the fixed and mobile telephone markets, and such distortion has expanded to the whole telecommunications market. The proposal states that the situation must be reviewed urgently.

(Strict enforcement of the Antimonopoly Act for promoting competition)

7. The second point is strict enforcement of the Antimonopoly Act to promote competition in telecommunications, and especially to ensure efficient entry into the market. Due to substantial monopolization by the giant NTT of regional networks and the subscriber lines, which are essential in the telecommunications business, it is crucial to make the market readily accessible to new entrants. If a new entrant requests connections from NTT and is rejected without legitimate reason, the JFTC considers this to be hindering market entry and so a violation of the Antimonopoly Act. Last December, firms which wanted to start offering DSL services (high-speed digital data communication via telephone metal circuits) asked NTT to connect to its telephone circuits. In response, NTT attached strict conditions to the connection and deliberately prolonged the negotiations to delay the start of their businesses. It is also suspected that NTT impeded the newcomers by using the latter businesses information for NTT's own benefit. The JFTC warned NTT of suspicion of violation of the Antimonopoly Act and publicly announced this warning.

(Promotion of competition by the JFTC as the central figure)

8. In Japan, the Ministry of Home Affairs is in charge of administering the telecommunications business under the Telecommunications Business Act. However, I feel it is adequate and important that competition in the telecommunications market should be promoted by the JFTC on the basis of the Antimonopoly Act. This is because promoting competition should be carried out by a fair and neutral entity. The Fair Trade Commission is an independent administrative commission and can take greater responsibility than the Ministry of Home Affairs, which protects and fosters the telecommunications industry and issues permissions and licenses. The starting point is the Antimonopoly Act as the fundamental law concerning competition, and the JFTC is responsible for enforcing this Act.

(Establishment of guidelines for securing competition in telecommunications market)

9. Accordingly, the JFTC will continue to strictly enforce the Antimonopoly Act to ensure competition in the telecommunications market. As a part of this effort, draft guidelines on the

Antimonopoly Act entitled “ Guidelines for Promotion of Competition in the Telecommunications Business Field” were published last month, and we are now inviting comments on it from various quarters. I hope to receive many opinions on it from the U.S., too.

(Contents of the guidelines)

**10.** In these draft guidelines, actions in the telecommunications market that constitute problems under the Antimonopoly Act are defined as clearly as possible. For instance, the following acts will be regarded as problems on the basis of the Antimonopoly Act:

- To refuse connection without legitimate reason, or to afford unfavorable terms in this respect
- To refuse to lease utility poles, ducts or conduits, or to afford unfavorable terms in this respect
- To set discriminatory rates for new entrants, to interfere with their transactions
- To discourage contents providers from dealing with other firms in adopting their contents, and so forth.

(Promotion of competition by eliminating vertical consolidation)

**11.** It has also been pointed out that control by a dominant telecommunications operator of contents providers and handset manufacturers through stock acquisitions or mergers could violate the Antimonopoly Act. This is important, as vertical unbundling further accelerates horizontal competition in each field of business.

By making these problems known, we will increase the transparency of implementing the Antimonopoly Act and help to prevent violations.

(Competition-promoting measures by firms)

**12.** The draft guidelines also suggest some measures by firms which are desirable for promoting competition. Examples include blocking the exchange of information between the connection department and the business department within an firm, and drawing up a compliance program to prevent violations of the Antimonopoly Act.

## **II. JFTC's Duties and Japan's Competition Policy**

(Two functions of the JFTC: Law enforcement and policy management)

**13.** I hope that I've explained enough about the roles and work of the Fair Trade Commission. I'd just like to summarize them, and take a look at the future..

First, the FTC is responsible for policy management for promoting competition in

addition to enforcement of Antimonopoly Act. This is a feature less found in the competition authorities of other major countries, and I am proud of it as a member of the JFTC. The Fair Trade Commission intends to further strengthen the two functions.

(Strengthening the functions of the JFTC)

**14.** The Koizumi cabinet has put structural reforms at the center of Japan's economic policy. The reforms call for establishing competition policy suitable for the 21<sup>st</sup> century, and to strengthen the structure and functions of the Fair Trade Commission. This means the following:

(Strict enforcement of the Antimonopoly Act)

**15.** First is strict enforcement of the Antimonopoly Act. This means not only eliminating all actions that block market entry, but also cartels and other restrictive practices. One notorious characteristic of Japanese economy is the bid-rigging for competitive tenders for public works. Contract prices are thus raised by 20% or even 30%, thus wasting taxes to the disgust of both taxpayers and the government. Bid-rigging is of course a clear violation of the Antimonopoly Act and so the Fair Trade Commission will continue to strictly eliminate bid-rigging.

The combination of firms by mergers or stock acquisitions should also be examined strictly and promptly based on the Antimonopoly Act, including tie-ups with foreign firms. Firms are rapidly restructuring in Japan to cope with severe economic circumstances and to keep pace with economic globalization. The situation requires our close attention and decisive action must be taken as needed.

(Elimination of international cartels: Promotion of international cooperation for the enforcement of the Competition Law)

**16.** Frankly speaking, I am frustrated by the lack of enforcement of the Antimonopoly Act regarding international cartels involving Japanese firms. Although international cartels have been exposed in the U.S. and the E.U., and Japanese firms have paid huge penalties, the Fair Trade Commission has been unable to collect enough evidence from its investigations of the Japanese firms involved to indict them for violations of the Antimonopoly Act, and so has been unable to make them pay surcharges. These Japanese firms pay surcharges to foreign governments but not to their own government. We are quietly considering ways to counter this. In promoting competition, we must first establish cooperative relations with other countries. Fortunately, we signed an agreement for cooperation with the United States two years ago, but its contents need to be reviewed and improved on an ongoing basis.

(Prevention of Antimonopoly Act violations)

**17.** If an Antimonopoly Act violation is discovered, the JFTC will foreclose it appropriately. Nevertheless, it is perhaps even more important to take measures to deter Antimonopoly Act violations. Therefore, the JFTC tries to increase public awareness of the Antimonopoly Act by preparing guidelines on the Act for various fields of business as I mentioned earlier. We are also actively giving consultation to firms seeking advice in advance for specific cases. These are so-called “no action letters”.

(Policy management: Reformation of regulations)

**18.** The second point is the policy management as stated before. This is divided into two parts. One is the regulatory reform. To encourage competition in the market, efforts by companies to restrict competition must be eliminated. However, without reforming the bureaucratic regulation system that stifles competition at the same time, a competitive market cannot be established. Enforcement of the Competition Act and regulatory reform should therefore proceed simultaneously.

The JFTC began to tackle the issue of deregulation 20 years ago, before anyone else in Japan. Since structural reforms, which are the core policy of the Koizumi cabinet, should focus on regulatory reforms, the importance of the JFTC will increase. And yet regulatory reform has still not been completed even within the JFTC. One of its duties is to propose a policy for organizational reform including the easing and abolition of regulations preceded by detailed studies and analysis of the situations in which regulations were necessary, and to assess changes of circumstances and the adverse impact of continued regulation. Proposals should be discussed publicly and improvement measures drawn up based on discussions. To clarify this mechanism, it is also important to specify in the Antimonopoly Act that the JFTC will also address regulatory reforms.

(Policy management: Reinforcement of the Antimonopoly Act)

**19.** Another point in the policy management is to prepare a draft of revisions for strengthening the Antimonopoly Act in order to increase the deterrent against restrictive practices. The Antimonopoly Act provides for criminal punishment and a surcharge system. However, the present system in which the JFTC accuses to a Public Prosecutor’s Office to request criminal punishment should be reviewed and facilitated.

(Substantiation of the surcharge system)

**20.** The surcharge system against cartels and bid-rigging is effective for deterring

violations. Offenders are ordered to pay surcharges totaling several billion yen a year. In one case the surcharge exceeded ten billion yen, and in another a firm was ordered to pay several billion yen. Thus, the surcharge system is a strong deterrent. But as the offenses to which surcharges can be imposed are limited to price-related issues like cartels and bid-rigging, extension of its scope through amendment of the Antimonopoly Act should be discussed. We should also consider introducing a leniency program in the future.

(Strengthening the structure of the Fair Trade Commission)

**21.** The present structure of the Fair Trade Commission must be dramatically revised to ensure efficient enforcement of the Antimonopoly Act and more satisfactory policy management. Fortunately, structural reinforcement of the Fair Trade Commission is included in the present cabinet's programs, and efforts to achieve this must be continued.

(Substantial personnel increase in the JFTC)

**22.** There are two main issues. One is a substantial increase in the number of regular staff of the general secretariat. The number is fixed at 570, but we hope this will be increased to around 1,000 in 5 to 6 years. Personnel will be added mainly in the investigation section for Antimonopoly Act violations, the examination section for mergers and acquisitions, the consumer administration section and the regulation reform section. These efforts will encounter various difficulties due to the ongoing administrative streamlining in Japan, but we're determined to achieve the intended increase in staff members.

(Positioning the JFTC within the Cabinet Office)

**23.** Another issue is the positioning of the Fair Trade Commission in the nation's administrative organization. At present, it belongs to the Ministry of Home Affairs, which controls the telecommunications sector among others. But we firmly believe the JFTC should be separated from the business-controlling authorities and belong to the cabinet office, in order to publicly show that its policy on competition is fair and neutral. We intend to make this happen as quickly as possible.