

Issues Concerning Competition Policy in the Mobile Phone Market (Outline)  
(Tentative translation)

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The Japan Fair Trade Commission

The Japan Fair Trade Commission held interviews with related companies regarding the dealing practices for the mobile phone market, mainly in terms of promoting the entry of new mobile virtual network operators (MVNO), and examined issues concerning competition policy in the mobile phone market in light of a series of initiatives implemented by the Ministry of Internal Affairs and Communications.

### 1. Background of Examination

The telecommunications businesses, including mobile phone-related businesses, play a role in laying the industrial foundations for increasing productivity and creating new businesses. In addition, the number of mobile phone contracts per capita exceeds one. In this situation, communications services are now essential for daily life, and there has been a growing shift from feature phones to smartphones in recent years.

In the mobile phone market, it is important to promote competition in order to achieve lower communications service fees, terminal prices and service diversification through stimulating the creative initiative of enterprises by means of market mechanisms. That is, active competition will enable users to be free to select terminals in accordance with their needs, choosing from among a wide variety of services, including communications services, and price plans.

Meanwhile, because only a limited number of operators are able to receive radio wave allocations due to the limitations and scarcity of radio waves in the mobile phone market, it is not easy to promote competition through the new entry of mobile network operators (MNO). It is therefore particularly important to create and develop a competition environment where MVNOs, which provide mobile communications services by utilizing radio wave allocated to MNOs, can compete as market players.

For issues concerning competition policy in the mobile phone market, it is necessary not only to promote competition for communications contracts, on the whole, by correcting the sales methods of MNOs in terms of encouraging the new entry of MVNOs, but also to promote competition for manufacturing and selling mobile terminals (including

applications and OS) by correcting the dealing practices of MNOs and terminal manufacturers.

## 2. Issues Concerning Competition Policy in the Mobile Phone Market

### (1) Issues in the Communications Services Market

#### 1) Separation between communications contracts and terminal sales

Currently, the sales of terminals at sales agencies are based on the premise that users should enter into communications contracts (new and continuous) with MNOs, and terminals are unavailable separately. There is virtual integration between communications service provision and terminal sales. This package sale is based on a sales method that is able to achieve real terminal prices of zero or close to zero by discounting the large part of terminal prices from monthly communications fees if users continue their communications contracts for a certain period of time. The contracts that involve MNOs, agencies and users are so complicated that it is not always easy for users to thoroughly understand the contracts.

In the present situation, the employment of the sales method of MNOs' significantly discounting terminal prices from communications fees places the terminals sold by MNOs in an advantageous position relative to SIM-free smartphone terminals (including terminals provided by MVNOs) in terms of users' choice of terminals. As a result, MNOs can gain a competitive advantage over MVNOs in communications service deals.

Accordingly, it is desirable to review the abovementioned sales method in terms of competition policy.

Given the situation in which terminals sold by MNOs have a share of more than 90% of the terminal market and the aforementioned sales method is employed by MNOs respectively and parallelly, if the sales method impedes the new entry of MVNOs or cause difficulties to the business activities of MVNOs, it may cause problems in terms of the Antimonopoly Act (private monopolization, etc.). In this case, even if MNOs do not communicate their intentions to each other and individual MNOs make decisions on their own, their respective actions may cause problems in terms of the Antimonopoly Act.

#### 2) SIM lock

In most cases, MNOs limit the use of the terminals they sell by placing restrictions on the use of other communications services (SIM lock) by allowing users to obtain access to communications services provided by specific operators only when specific SIM cards are inserted into the terminals.

SIM lock prevents users from entering into new communications contracts with MVNOs and other MNOs by using terminals they already own (without buying new terminals), and increases switching costs. SIM lock has the effect of impeding the competition among MNOs and between MNOs and MVNOs.

Accordingly, it is desirable for MNOs to avoid applying SIM lock setting to terminals in terms of competition policy. In addition, if SIM lock setting prevents competing operators from entering into contracts with users, it may cause problems in terms of the Antimonopoly Act (private monopolization and interference with a competitor's transactions, etc.).

3) Contract period restriction and contract with automatic renewal (the so-called “two-year restriction”)

MNOs provide users with a payment plan that involves discounting the basic monthly fees by approximately 1,500 yen (hereinafter referred to as the “two-year contract plan”) on the condition that they will continue to be subject to a communications contract for two years. Unless a user makes a request to cancel this contract, it will be automatically renewed. If a user hopes to cancel their two-year contract plan, they do not have to pay a cancellation fee if the cancellation month falls 24 months after they entered into the contract on the basis of calculating the first month as the period from the date of application of the contract to the last day of the following month. However, users are required to pay a cancellation fee of 9,500 yen in all months other than the renewal month.

Generally speaking, the parties to the contract should be free to determine whether the contract period will be long or short, whether or not cancellation fees should be paid for cancellations before maturity and the specific amounts that should be paid in such case. On the other hand, it is undesirable to try to corral users by forcing them to pay unjust high cancellation fees for cancellations before the maturity of long-term contracts in terms of competition policy.

Accordingly, it is desirable not to collect cancellation fees for cancellations before

maturity from users or to minimize contract cancellation fees even if users have to pay such fees, and to introduce clearer and simpler procedures for contract cancellations in terms of competition policy.

In addition, if MNOs propose a long-term contract of relatively low fees to users and set unjust high contract cancellation fees that make it difficult for users to cancel the contracts before maturity, this may cause problems in terms of the Antimonopoly Act (private monopolization and interference with a competitor's transactions, etc.).

#### 4) Access to MNOs' communication networks, etc. (HLR/HSS)

Currently, MNOs are not required to open home location registers (HLR) / home subscriber servers (HSS), which are databases they own and manage and which are essential facilities for managing customer information, such as mobile phone numbers, terminal locations and users' contract statuses.

If HLR/HSS owned and managed by MNOs are opened and it becomes possible to connect HLR/HSS whose equipment MVNOs procure, own and manage with MNOs' networks, MVNOs are expected to issue original SIM cards. If MVNOs can issue original SIM cards, they will be able to respond to the needs of multiple MNOs both in Japan and abroad, and to provide services for IoT.

Because MVNOs' ownership and management of HLR/HSS on their own will make it possible to provide new services and promote competition through more diversified services in the mobile phone market, the opening of HLR/HSS by MNOs is desirable in terms of competition policy.

If MNOs place some necessary restrictions, such as technological standards, on MVNOs as the conditions for opening HLR/HSS, it will not cause immediate problems in terms of the Antimonopoly Act. If the standards of such conditions impede the introduction of new services by MVNOs beyond actual necessity, however, it may cause problems in terms of the Antimonopoly Act (refusal of trade, etc.).

#### (2) Issues in the Terminals Market

##### 1) Installment plan-based contracts to buy terminals

In most cases, when users buy terminals sold by MNOs from agencies, they pay through contracts on an installment plan provided by MNOs, except for corporate purchases.

For installment plan-based contracts provided by MNOs, they use specific fixed total prices of installment plan-based contracts that they enter into with users for individual terminal models, except for point discounts that they provide directly to users. This makes it impossible for agencies to change the total prices of installment plan-based contracts provided by MNOs in accordance with the selling prices they set themselves, or to reduce the total prices of installment plan-based contracts in response to partial payments from users for the majority of users who hope to buy terminals by using installment plan-based contracts provided by MNOs. As a result, it is difficult for agencies to sell terminals at prices other than the total prices of installment plan-based contracts fixed for individual terminal models.

If MNOs virtually restrict agencies' selling prices of terminals by fixing the total prices of installment plan-based contracts, it causes problems in terms of the Antimonopoly Act (resale price restriction and trading on restrictive terms).

In addition, if the price level of the terminals is likely to be maintained by MNOs' restricting agencies' selling prices or advertisements and their display methods for selling prices, or by terminal manufacturers' doing the same to MNOs and agencies, it causes problems in terms of the Antimonopoly Act (resale price restriction and trading on restrictive terms).

## 2) Promote the distribution of used terminals

The number of used smartphones that were distributed to the market in 2014 was just 2.27 million, and the sales of used smartphones relative to the market deliveries of new smartphones were just 8%.

Used terminal buyers, including terminal manufacturers and MNOs, are free to buy and dispose of used terminals in any manner they wish. But if terminal manufacturers or MNOs buy used terminals at unjust high prices, it may cause problems in terms of the Antimonopoly Act (unjust high price purchasing and interference with a competitor's transactions, etc.).

In addition, doing the following things in the disposal of used terminals could result in impeding the new entry of MVNOs, which may cause problems in terms of the Antimonopoly Act.

- Acts of terminal manufacturers that restrict MNOs' distribution of used terminals (trading on restrictive terms and interference with a competitor's transactions, etc.), including prohibiting MNOs from redistributing terminals that they took as trade-ins in the domestic market.

- Acts of MNOs and terminal manufacturers that restrict third parties' sales in the domestic market (trading on restrictive terms, etc.) when they sell terminals that they took as trade-ins to third parties.

### (3) Issues in the applications market (terminal OS and applications)

Generally speaking, an OS has preinstalled applications, such as a browser, which is part of the OS's basic functions. But terminals often have other applications preinstalled by terminal manufacturers and MNOs in addition to such applications. In particular, applications such as application stores are essential for users to download other applications, and terminal manufacturers typically preinstall those applications.

If OS providers or applications providers impede new entry and technological innovation, for example by doing the following things to terminal manufacturers and MNOs when they license the OS or applications with market appeal, both paid and free, it may cause problems in terms of the Antimonopoly Act (private monopolization, tie-in sales, trading on exclusive terms, trading on restrictive terms and interference with a competitor's transactions, etc.).

- Prohibit the development of competing OS or applications, or prohibit the manufacturing of terminals equipped with competing OS or applications

- Set the requirement of not preinstalling applications developed by other companies

- Require a default setting of their own developed applications (a setting that enables users to use the services in question if they do nothing) or require a setting in a specific screen space

### 3. Conclusion

As noted above, this survey presented ideas regarding issues concerning competition policy in the terminal, communications service and applications markets in terms of promoting the new entry of MVNOs in the mobile phone market.

These issues include both issues that could cause problems in terms of the Antimonopoly Act due to specific acts and their effects, and issues that related companies are expected to review from a mid-term perspective.

The Japan Fair Trade Commission expects that this report will contribute to promoting competition in each layer of the mobile phone market, which will eventually lead to providing customers with a broad range of low-priced related products and services. The Japan Fair Trade Commission will also pay close attention to the future trends of the market.

In addition, if the Japan Fair Trade Commission finds any specific fact that could contravene the Antimonopoly Act, it will carry out investigations; and if the Japan Fair Trade Commission confirms facts that demonstrate illegal acts, it will rigorously enforce the Act.