

TELECOMMUNICATIONS

Japan has set an ambitious goal of building one of the world's most advanced telecommunications network infrastructures by the year 2005. Given the "multiplier effect" of this sector in stimulating growth, investment, and efficiency throughout the economy, this is a laudable goal. Attempting to achieve this goal while at the same time maintaining and deepening competition, however, poses formidable policy challenges, given the susceptibility of advanced services to monopolization.

With both the "eJapan Strategy" and the Koizumi Administration's regulatory reform initiatives, Japan has begun to implement policies that can significantly contribute to economic growth and increased investment through the development of a more vibrant information technology sector. Parts of the current Three-Year Program for Promoting Regulatory Reform – such as rationalizing regulatory methods, increasing transparency of procedures, and ensuring increased competition in the IT sector – are of particular importance to the telecommunications sector.

Recent telecommunications policy initiatives in Japan have aimed to put this sector on a pro-competitive footing. This process has brought about improvements in the telecommunications and information technology environment in Japan, but it is incomplete. While the current momentum for reform in these sectors is encouraging, the United States urges Japan to complete the process of instituting and implementing a pro-competitive regime, rather than settle for something less.

SUMMARY OF RECOMMENDATIONS

- **Deregulating Competitive Carriers:** Eliminate or reduce filing and reporting requirements for competitive carriers, especially for wholesale services.
- **Regulatory Independence:** Establish a strong, independent telecommunications regulatory authority and eliminate government ownership of service providers.
- **Dominant Carrier Regulation and Competition Safeguards:** Strengthen and implement dominant carrier regulations to prevent competitive abuses by Nippon Telegraph and Telephone (NTT) and NTT DoCoMo.
- **Interconnection:** Reduce high interconnection rates and reform the inefficient rate structure that hinders the development of a competitive telecom market.
- **Rights of Way and Access to Incumbent Facilities:** Further facilitate access to infrastructure that competitors require to reach subscribers.
- **Resale/Unbundling:** Expand the scope of services subject to resale obligations and provide transparency for setting wholesale discounts. Broaden access to NTT network elements for competitors, including certain computer systems and require NTT to provide to competitors access to emergency services, which NTT currently denies.
- **Universal Service:** Fully evaluate whether a universal service subsidy program is necessary and ensure that any proposed subsidies are competitively neutral.
- **International Internet Services Policy:** Analyze how growth of and access to Internet services can be furthered not through regulation of international links but through enhanced competition in domestic bottlenecks.

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- I. Deregulating Competitive Carriers.** Although Japan has taken significant steps to improve its regulation of dominant carriers, it has done little recently to relieve the regulatory burdens still imposed on competitive carriers – burdens generally regarded as among the heaviest among OECD economies. Japan’s recent Three-Year Program for Promoting Regulatory Reform, however, focuses precisely on these kinds of issues (i.e. areas relating to rationality of regulation and IT promotion). To address these issues, which contribute significantly to the cost of doing business in Japan and act as a disincentive to investment, the United States recommends that for competitive carriers, the Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT) adopt the following measures:
- A. Institute a policy, and obtain any necessary legal authority from the Diet, to forbear from applying legacy regulations where competition in a market or market segment permits user interests to be achieved without government intervention; and where risks of competitive abuses are minimal;
 - B. For competitive market segments, institute class licenses, which do not require any application by providers, for both Type I and Type II services;
 - C. For services offered to the public generally, replace tariff filing requirements with Internet-based public notifications, eliminating any ex-ante MPHPT procedures;
 - D. For contract-based services, eliminate all filing and notification requirements;
 - E. For interconnection, entrustment, and other business arrangements between competitive carriers, eliminate all filing and notification requirements;
 - F. For initial licensing requirements, eliminate requirements to provide detailed cost justifications, financial assumptions, and network planning information beyond the general scope of services and description of network;
 - G. For network expansion, eliminate any approval processes, and limit any notification requirements to brief general descriptions;
 - H. For companies combining Type I and Type II operations, eliminate regulatory barriers preventing such carriers from operating seamlessly as integrated entities (i.e. able to provide customers Type I and Type II services as an integrated service offering); and
 - I. Permit carriers to operate both as Type I or Type II carriers using IRU’s, including wavelength-based IRU’s.

II. Regulatory Independence. Most OECD countries have recognized that an independent regulatory authority is the most effective means of providing a competitive framework for telecommunications services and expanding user benefits. By placing its regulatory authority for this sector within MPHPT, Japan has created an environment where the regulatory function can be unduly exposed to political interference. This problem is exacerbated by potential conflicts of interest associated with the fact that MPHPT pursues large-scale industrial policy programs, the implementation of which could have a significant competitive impact on this sector. While creation of the Telecommunications Business Dispute-Settlement Commission is a positive step, the United States is disappointed that creation of a truly independent regulator has been removed from consideration under the current regulatory reform agenda. In this light, the U.S. Government recommends that Japan implement the following measures to strengthen regulatory independence:

A. Independent Regulator

1. To minimize undue political involvement in regulatory decisions, which could compromise the impartiality of such decisions, initiate the full separation of the regulatory function from other MPHPT functions, including industrial promotion, as is done in other OECD countries;
2. Eliminate potential conflicts of interest between the government's role as owner and regulator of dominant carriers by introducing legislation to permit the full divestiture of government ownership in NTT companies, and eliminate all direct government involvement in the operational decisions of these companies; and
3. Limit potential personal conflicts of interest by strengthening safeguards related to private-sector secondments to MPHPT, and MPHPT facilitation of transition from public to private sector employment (*amakudari*).

B. Telecommunications Business Dispute-Settlement Commission

1. Empower the dispute-settlement commission with the authority and financial means to order substantive, independent audits of companies engaged in potentially infringing practices;
2. Empower the dispute-settlement commission with injunctive relief and authority to enforce decisions with monetary penalties;
3. Institute procedures (e.g. closed deliberations) to ensure that commission members are able to make decisions free of MPHPT and NTT influence; and
4. Require commission decisions and the rationale for such decisions to be made public.

- C. Other Measures: Institute procedures to facilitate parties' ability to appeal regulatory decisions.

III. Dominant Carrier Regulation and Competition Safeguards. The United States welcomed Japan's adoption of enhanced asymmetric regulation in its June 2001 amendments to the Telecommunications Law, which provided for clearer rules on carriers with a dominant position in its market and more specific obligations. The United States recommends that MPHPT vigorously implement and enforce such regulations, particularly in regard to:

- A. Unbundling advanced facilities, such as remote terminals and fiber optic cable;
- B. Non-discriminatory access to poles, ducts, conduits, and rights of way;
- C. Non-discriminatory access to Operations and Support Systems (OSS) for interconnection and access to unbundled network elements;
- D. Requirements for tariff filings and methods for evaluating pricing abuses by dominant suppliers (e.g. imputation tests);
- E. Guidelines to eliminate discriminatory pricing of origination services (e.g. *Telehodai*);
- F. Means to ensure that wireless termination rates are cost-based;
- G. Introduction of separate affiliation requirements to ensure that a dominant carrier does not abuse its position in the provision of value-added services (e.g. if NTT East or West were to enter the Internet services market);
- H. Accounting and reporting requirements (i.e. separate affiliate transaction rules) to ensure that a dominant supplier does not use revenues from a regulated service to subsidize a non-regulated service; and
- I. Competition-related performance metrics, including reporting requirements, and financial penalties for missing metrics. Such metrics should ensure that a dominant carrier treats competitors no less favorably than it treats itself or its affiliates in matters such as provisioning, quality of service, and repair and maintenance of all network services and facilities needed by competitors.

IV. Interconnection. In FY2001, the United States looks forward to Japan's putting in place amended ordinances on interconnection that implement rate reductions in a manner consistent with measures included in the Third Joint Status Report of the Enhanced Initiative on Deregulation and Competition Policy that:

- A. Ensure that NTT eliminates the interconnection surcharge applied to calls originating or terminating on ISDN lines;
- B. Eliminate non-traffic-sensitive costs from usage-based interconnection rates;
- C. Require the NTT regional companies to provide interconnection within six months of application or face financial penalties, and refrain from assessing “premium charges” unless there is a need for major network modification; and to require itemized charges for modification, subject to independent review;
- D. Ensure competing carriers the right to set retail rates for their subscribers for calls terminating on DoCoMo’s network; and
- E. Require NTT regional companies to expand the list of functions available on an interconnection basis to include all services currently available to NTT customers. In particular, require NTT East and West to provide emergency services (110) to competitors at a tariffed rate. For services where NTT can prove to an independent authority that a “value added” charge is valid, NTT should be obligated to provide such services to competing carriers at wholesale rates.

V. Rights of Way and Access to Incumbent Facilities. The U.S. Government recommends that Japan develop unified regulations within CY 2001, to be implemented throughout the Japanese Government in FY2001, which will require NTT to provide transparent, non-discriminatory, timely and cost-based access to all poles, ducts, conduits, inside wiring, and rights of way that it owns or controls. Such regulations would:

- A. Require NTT to make available, on a timely basis, all necessary information about facilities it controls to which competitors are entitled access, and allow other carriers to inspect these facilities;
- B. Ensure that rates, terms and conditions for access and construction and use are reasonable, cost-based and non-discriminatory, vis-a-vis other carriers and NTT’s own services. MPHPT should consider requiring disclosure of how charges were calculated in order to ensure that contracts are fair;
- C. Establish clear rules for costs and burden sharing associated with surveys and facility modifications;
- D. Require survey, construction and installation be made on a non-discriminatory basis within a specified time frame;
- E. Permit competitive carriers to install and maintain their own facilities – including their own or leased fiber optic cable – located on NTT property;

- F. Ensure these requirements are subject to an expeditious complaint settlement procedure; and
- G. As priority measures, by the end of CY 2001, the U.S. Government suggests that the Japanese Government:
 - 1. Extend the interconnection obligations that MPHPT has placed on certain parts of NTT's networks (e.g. up to the manhole closest to the switch) to other bottleneck facilities, including conduits and ducts linking fiber loops and customer premises;
 - 2. Eliminate the "30-centimeter" rule that prohibits efficient use of utility poles for competitive carriers' cables;
 - 3. Eliminate the winter/spring road digging moratorium set by the Ministry of Land, Infrastructure, and Transport;
 - 4. Eliminate mandatory 5-7 year intervals between digging of certain roads;
 - 5. Explicitly permit trenching of cables, as opposed to installation of conduits and tunnels; and
 - 6. Consider application of items A through F cited immediately above to electricity companies, utilities, railroads, and highway operators.

VI. Resale/Unbundling. The U.S. Government recommends that in FY2001, MPHPT:

- A. For all wholesale service product lines where it is dominant (leased lines, directory assistance, etc.), require NTT to provide tariffed, wholesale rates; and
- B. Require NTT to provide LRIC-based access where competition has not developed to:
 - 1. Local loops, including: high-capacity lines; sub-loops; dark fiber, and inside wiring owned by a designated carrier;
 - 2. Inter-office transmission facilities, or transport, including dark fiber;
 - 3. Enhanced extended link (EEL), including a combination of an unbundled loop, multiplexing/concentrating equipment, and dedicated transport; and
 - 4. Any mandatory service (e.g. emergency services, directory assistance services) where it may be economically infeasible for competitors to replicate.

VII. Co-Location. To promote the expansion of services such as DSL and other high-speed data services, the U.S. Government recommends that MPHPT ensure that NTT:

- A. Charges competing carriers the same rate it charges an NTT group company;
- B. Justifies the basis for charges to the regulatory authority and any interested carrier;
- C. Undertakes construction within a set period from the date of application;
- D. Allows other carriers to carry out maintenance of their own facilities; and
- E. Ensures that carriers have access to operation support systems (order, supply, maintenance, recovery, billing, access) for services and facilities accessed through co-location arrangements.

VIII. Transparency. To promote greater transparency and accessibility relating to regulatory measures, the United States recommends that MPHPT:

- A. Publish all regulatory decisions and an electronic version of the telecommunications *roppo* online;
- B. Permit electronic filing of public comments and on-line access to all comments, tariffs, licenses and other public information, including all carriers' interconnection agreements with NTT East and West; and
- C. Provide a minimum of 30 days to comment on proposed rules, and a 60-day comment period to the maximum extent possible.

IX. Universal Service. The U.S. Government recommends that – based on further detailed analysis of costs incurred and implicit benefits received by NTT – Japan more thoroughly evaluate whether a universal service subsidy program for basic voice services is necessary. If a universal service subsidy program for basic voice services can be fully justified, the U.S. Government recommends that:

- A. Funding only be made available where, on a prefecture-by-prefecture basis, cost exceeds the LRIC of providing basic voice service by a substantial margin;
- B. Incumbents' costs be offset by advantages conferred by its incumbent, universal presence (e.g. marketing advantages, control of a platform for profitable, non-basic optional services, etc.); and

- C. The 72,000 yen per-line subscriber line charge already assessed on NTT East and West's 60 million subscribers be deducted from network costs forming the basis of the analysis.

- X. **ICAIS.** The U.S. Government recommends that MPHPT, together with METI, take the lead in exploring how Internet charging arrangements internationally can be subject to greater competition through identification of key bottlenecks, particularly in monopoly environments, where domestic inputs such as leased lines, backhaul costs, and limited choice of local telecommunications service providers result in inflated user costs.