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Negotiating Group on Basic Telecommunications

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COMMUNICATION FROM JAPAN

Response to Questionnaire on Basic Telecommunications

The attached communication is circulated at the request of Japan to members of the Negotiating Group on Basic Telecommunications.

RESPONSE OF JAPAN TO THE QUESTIONNAIRE ON
BASIC TELECOMMUNICATIONS

PART I

Answer 1

The concept of basic telecommunications is not provided for as such in the regulatory framework of Japan. On the other hand, out of the telecommunications services supplied by Type II Telecommunications Carriers (hereinafter referred to as "Type II Carriers"), referred to in Japan's Schedule of Specific Commitments, the following are considered basic telecommunications:

Packet-switched data transmission services (MTN.GNS/W/120 2.(b))

Circuit-switched data transmission services (ibid. 2.(c))

Telex services (ibid. 2.(d))

Facsimile services (ibid. 2.(f))

Private leased services (ibid. 2.(g))

The following answers are based on the presumption that the basic telecommunications falls under the category of services listed in 2.C (a)-(g) and (o) in the Services Sectoral Classification list (MTN.GNS/W/120).

Answer 2

Under the Japanese regulatory regime, telecommunications carriers consist of Type I Telecommunications Carriers (hereinafter referred to as "Type I Carriers") who supply telecommunications services by establishing switches, transmission routes and other fundamental network facilities, and Type II Carriers who supply telecommunications businesses other than the above.

Answer 3

Not applicable (see Answer 1 above).

Answer 4

Japan has no monopoly or exclusive service suppliers in the basic telecommunications sectors except for telegraph services.

Answer 5

Same as Answer 4.

Answer 6:

Same as Answer 4.

NTT and KDD monopolize domestic and international telegraph services respectively for the time being.

Foreign capital participation in NTT and KDD is both limited to less than one fifth of the total capital.

(Current foreign capital participation accounts for 1.37 per cent in NTT and 2.06 per cent in KDD (as of March 1994).)

Answer 8

There are no inter-governmental agreements relating to the supply of basic telecommunications networks and services.

PART II

The following answers are both for sections of A and B.

Answer of (i) Overview

(1) Under Japan's Telecommunications Business Law, Type I Carriers must acquire governmental permission and General Type II Carriers submit a notification to Ministry of Posts and Telecommunications (hereinafter referred to as "MPT"). The Telecommunications Business Law requires Special Type II Carriers (Type II Carriers that meet certain criteria in terms of circuit scale, etc.) to register themselves at MPT.

(2) Foreign capital participation in Type I Carriers is limited to less than one third of the total capital. However, capital participation in NTT and KDD must be less than one fifth respectively, in accordance with laws governing these companies.

Regulations on foreign capital participation in international satellite communications businesses were eliminated in June 1994.

(3) There are no restrictions for foreign capital participation for Type II Carriers.

Answer of (ii) Modes of supply

Except in the mode of consumption abroad, the Telecommunications Business Law requires foreign companies to acquire governmental permission to participate in Type I Telecommunications Businesses (hereinafter referred to as "Type I Businesses") and foreign capital participation is limited to less than one third. In the case of international satellite communications, however, there is no limitation to foreign capital participation.

With respect to Type II Telecommunications Businesses (hereinafter referred to as "Type II Businesses"), there are no limitations to the modes of cross-border supply, consumption abroad and commercial presence.

However, with respect to the services referred to in Answer 1 above, Type II Carriers can only supply domestic telecommunications services (excluding voice transmission services supplied through the use of domestic leased circuits interconnected with public switched networks) in accordance with the contracts between Type I and Type II Carriers.

Answer of (iii) Market access

(1) The Telecommunications Business Law requires foreign companies to acquire governmental permission to participate in Type I Businesses and foreign capital participation is limited to less than one third of the total capital.

(2) The Telecommunications Business Law does not restrict foreign companies' market access except for requiring them to register or notify their participations in Type II businesses at MPT.

Answer of (iv) National treatment

Foreign telecommunications service suppliers can supply international satellite communications services of Type I Businesses and all the services of Type II Businesses. In those cases, the procedures and criteria which are applied to Japanese Telecommunications service suppliers will be accorded to foreign telecommunications service suppliers.

Answer of (v) Licensing

The Telecommunications Business Law requires governmental permission for Type I Businesses, notification for General Type II Businesses and registration for Special Type II Businesses.

Governmental permission to conduct Type I Businesses is granted under such criteria as adequate financial bases, technical capability and feasibility of business plans.

The following answers are only for section B.

Answer 1

There is no legal distinction between local and domestic long distance.

Answer 2

Laws governing NTT and KDD stipulate that NTT shall supply domestic telecommunications services and KDD shall supply international telecommunications services. No restrictions are applied to any other telecommunications service suppliers.

Answer 3

International resale of private leased circuit capacity supplying services such as MTN.GNS/W/120 2.C (a)-(g) is not permitted under/by provisioning conditions (contracts) of Type I Carriers, regardless of whether it is connected to the public switched networks or not. The international resale of switched voice capacity is not permitted either. (The Government of Japan (hereinafter referred to as "GOJ") authorizes those contracts.)

Answer 4

Resale of domestic private leased circuit excess capacity (excluding a circuit connected to the public switched network for voice transmission) is permitted by provisioning conditions (Tariffs) of Type I Carriers. (The GOJ authorizes those tariffs.) In this case, notification or register as Type II Carriers are required for those service suppliers.

Answer 5

Type I Carriers may construct and operate their own networks or invest in consortia to construct and operate such facilities. Foreign capital participation in Type I Businesses is limited to less than one third of total capital. (In the case of NTT and KDD, it is limited to less than one fifth.)

Answer 6

No distinctions.

Answer 7

Under the Telecommunications Business Law, Type I Telecommunications Carriers cannot refuse supply of telecommunications services without valid reasons and as long as terminal facilities meet certain technical standards and customer-provided telecommunications facilities meet certain circumstances. Type I Carriers cannot refuse requests made by owners of those facilities to connect Type I Carriers' lines to those facilities.

Answer 8

Same as Answer 6.

Answer 9

As the concept of public basic telecommunications service suppliers is not provided for as such in the regulatory framework in Japan, there are no legal obligations for such public suppliers. However, Type I Carriers are subject to obligation mentioned in Answer 7 above. However, NTT is required to provide stable nationwide telephone services throughout Japan.

Answer 10

There are no regulations on installation and supply of networks established privately by telecommunications suppliers.

Answer 11

No.

PART III

Answer 1

The GOJ is responsible for making and implementing regulatory policies and standards. However, telecommunications service suppliers may be asked to express their opinions at Telecommunications Technology Council, an advisory body to the Minister of Posts and Telecommunications, on the issues of technical standards to be set by the GOJ.

Answer 2

The GOJ is responsible for formulating and enforcing standards.

Answer 3

The GOJ is the only level of government which is responsible for formulating and enforcing regulations on telecommunications, and the MPT is the only body directly in charge. The procedure for filing complaints on decisions made by the regulatory bodies are set out in the Telecommunications Business Law, the Radio Law and the Administrative Procedure Law.

Answer 4

A person seeking to operate a radio station must obtain a licence from the Minister of Posts and Telecommunications. The criteria applied for the assignment of radio frequencies are the conformity to the radio frequency allocation principle and the prevention of interference with other radio stations.

However, in accordance with the provisions of Article 5 of the Radio Law, a foreign national is generally not qualified for a radio station licensee.

Answer 5

Foreign satellite communications carriers who have obtained permission for Type I Businesses in accordance with the provisions of Article 9 of the Telecommunications Business Law receive national treatment with respect to earth station licences.

However, these carriers can only operate international telecommunications businesses on such conditions as installing radio station equipments in artificial satellites and earth stations which relay radio communications between specific fixed points.

Answer 6

MPT allocates the numbers to identify long-distance, international and mobile carriers, and data network identification codes, etc.

Answer 7

Yes.

Answer 8

They are technical standards set out by the Telecommunications Business Law, Regulations on Terminal Facilities, the Radio Law and Regulations on Radio Equipments. See Answer 11.

Answer 9

(1) The Telecommunications Technology Council deliberates technical requirements, which are the basis for technical standards to be decided by MPT. In this process, the Telecommunications Technology Council will hear views from private sector, foreigners and other parties concerned.

In the process of setting technical standards, there are other opportunities to hear opinions of relevant parties. The private standardization organizations such as the Telecommunications Technology Committee (TTC) which develops voluntary standards, discuss draft standards at various meetings in which foreign companies can participate.

Answer 10

All terminals that are connected to the telecommunications networks, including telephones, facsimiles and mobile phones, are subject to certification. Although self-certification is not allowed, certification is granted after reviewing documents prepared by the applicants which incorporate data measured by themselves. There are no inter-governmental agreements for mutual recognition. Foreign-produced equipments are handled in the same manner as mentioned above.

Answer 11

As per the technical requirements set out by telecommunications service suppliers as well as technical standards specified by relevant laws and regulations. The following are the principles for those technical requirements and standards.

- (1) Terminal facilities shall not damage telecommunications circuit facilities or the functions of such facilities.
- (2) Terminal facilities shall not cause problems for other subscribers who use telecommunications circuit facilities.
- (3) The demarcation of responsibilities shall be clear between the telecommunications circuit facilities provided by the service suppliers and terminal facilities provided by subscribers.
- (4) The outbreak of harmful interference with other radio stations shall be prevented.

Answer 12

Possible.

Answer 13

Under the Telecommunications Business Law, as long as terminal facilities meet certain technical standards and customer-provided telecommunications facilities meet certain circumstances, network-based suppliers cannot refuse requests made by owners of those facilities to connect network-based suppliers' lines to those facilities.

Answer 14

Authorization from MPT is necessary for an agreement to interconnect telecommunications facilities between Type I Carriers. With respect to agreements on interconnection between Special Type II Carriers, when either or both parties concerned supply international VAN services, authorization from MPT is required. In other cases, notification to MPT on such agreements is required.

Answer 15

Under the Japanese law, network-based suppliers are not required to provide interconnection for other basic telecommunications networks or service suppliers. However, MPT retains the authority to order them to enter into an agreement on interconnection at the request from the party (parties) concerned in accordance with provisions of the Telecommunications Business Law, in the following cases: when negotiations for such interconnection fail to be conducted or come to an agreement, and when MPT deems interconnection especially necessary and appropriate to promote the public interest.

Answer 16

It is permitted.

Answer 17

As mentioned in Answer 14 above, authorization from MPT is required for an agreement on interconnection between Type I Carriers etc. Agreements on interconnection, including interconnection charges, may be negotiated on a case-by-case basis. However, unfair or discriminatory treatment is not allowed. The publication of such agreements depends on intention of the carriers who concluded the agreement.

Answer 18

There are no safeguards against anti-competitive practices of monopolies or dominant suppliers. However, as mentioned in Answers 14 and 15, certain criteria are set for interconnection.

In the case of NTT, in order to promote fair and effective competition, measures have been taken:

- to separate mobile communications business from NTT,
- to introduce an independent division system in NTT,
- and to prevent cross-subsidization inside NTT, etc.,

based on "measures in accordance with Article 2 of Supplementary Provisions of the Nippon Telegraph and Telephone Corporation Law".

Answer 19

There are no relevant safeguards because no distinction is made between dominant telecommunications service suppliers and others.

In the case of NTT, measures have been taken to promote smooth interconnection between NTT's network and other telecommunications carriers' networks, and to ensure the openness of NTT's network to them, based on "measures in accordance with Article 2 of Supplementary Provisions of the Nippon Telegraph and Telephone Corporation Law".

Answer 20

There are safeguards against anti-competitive measures; for example, prohibition of private monopolies, unjust pricing for transactions and unjust transaction methods, under the Anti-trust Law. Mergers of Type I Carriers are subject to approval under the Telecommunications Business Law.

Answer 21

There are no such safeguards.

Answer 22

Regardless of whether it is a monopoly/dominant supplier or not, Type I Carriers must obtain authorization from MPT for tariffs, access charges and accounting rates. Type II Carriers can set charges at their own discretion.

Answer 23

Authorization from MPT is required for provisioning conditions (tariffs) including charges set by Type I Carriers. Type I Carriers must report profits and losses for each type of service, based on accounting ordinances of the GOJ, and must have their accounts examined by independent certified accountants. Special Type II Carriers must submit provisioning conditions (contract conditions), including charges, to MPT.

Answer 24

Type I Carriers are not allowed to provide volume discounts targeted for specific users or groups. The accounting rates must be determined through an agreement between Japanese Type I Carriers and foreign telecommunications carriers.

Answer 25

No.

Answer 26

The charges of Type I Carriers must be determined based on proper costs under efficient management. Costs consist of operating expenses, depreciation expenses, various taxes and appropriate return. Costs are allocated in accordance with the ordinance of MPT on accounting. Type II Carriers can set their charges at their own discretion, and there are no general rules pertaining to the allocation of costs.

Answer 27

None.

Answer 28

- (1) Telecommunications service suppliers are allowed to build their own facilities.
- (2) Telecommunications service suppliers must obtain permission from MPT when they wish to acquire or modify facilities.

The criteria are included in Answer (v) licensing.

Answer 29

Foreign telecommunications service suppliers can supply international satellite communications services of Type I businesses and all the services of Type II Businesses. In those cases, the same procedures and criteria as are applied to Japanese telecommunications service suppliers will be accorded to foreign telecommunications service suppliers.

Answer 30

Authorization is required for Type I Telecommunications Services. However, it is possible to supply services without obtaining approval if the services are supplied on a trial basis by the Type I Carriers.

Answer 31

The GOJ determines the status of a new service by issuing the ordinance if necessary.