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COMPETITION ISSUES IN TELEVISION AND BROADCASTING

Contribution from Japan

-- Session II --

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COMPETITION ISSUES IN TELEVISION AND BROADCASTING

-- Japan --

1. Issues Involving Competition in the Television/Broadcasting Industry - Introduction

1. There have been significant changes in the market structure of the broadcasting industry in general, and the television sector in particular, because of the advancement of technology that altered the status of competition among broadcasters and telecommunications providers. In order to reorganize and streamline the system in response to the progress of digitalization, for the purpose of consolidation of systems regarding each type of broadcasting and improvement of the system regarding broadcasting, radio and telecommunications, broadcasting laws were revised in 2010 for the first time in 60 years to create a new regulatory framework. The Act Concerning Broadcast on Telecommunications Services, the Cable Television Broadcast Act, and the Act Concerning the Regulation of the Operation of the Cable Sound Broadcasting Service, were merged into the Broadcast Act. As a result, systems have been streamlined, consolidated and more flexible in granting market access to new entrants.¹

2. Considering the market change and regulation by the government under the new regulatory framework, the Japan Fair Trade Commission (hereinafter referred to as the “JFTC”) needs to rigorously enforce the Antimonopoly Act and seek to prevent any anticompetitive activities and mergers in the broadcasting industry. This report will examine proposed mergers that have been reviewed by the JFTC and discuss issues that must be addressed in analyzing the status of competition.

2. Application of the Antimonopoly Act to television broadcasters

3. The Antimonopoly Act prohibits unreasonable restraint of trade, private monopolization, unfair trade practices, and mergers that might be to substantially restrain the competition. Because the Antimonopoly Act is applied to all industries, television operators and broadcasters are subject to this act

¹ (1) Regarding broadcasting, a distinction has been made between “basic” and “general” broadcasting. Basic broadcasting means that the broadcasting using radio waves of frequencies allocated either exclusively or preferentially to radio stations broadcasting. Broadcasting that are not basic broadcasting are called general broadcasting.

(2) Regarding basic broadcasting, the system has been changed for enterprises which prefer to separate their operations into (i) establishing and managing radio station (hardware) and (ii) conducting broadcasting (software). Hence, under the new system, the authorizing process has been separated into “license” of radio station and “approval” of conducting broadcasting. In addition, the new system has co-existed with the current system where operators are required to obtain only single license in order to conduct broadcasting, for specified terrestrial basic broadcasters who prefer to keep single license for both hardware and software.

(3) The government has integrated the system for enterprises to enter into general broadcasting including cable television broadcasting, cable radio broadcasting and broadcasting on telecommunications. Under the new system, enterprises can enter into the above areas with only registration of their businesses. (Meanwhile, cable radio broadcasters are not required to register their businesses; they only have to notify the authorities of a plan to enter the market.)

similarly. Any activities that fall under the above types of violation are illegal and subject to cease-and-desist orders or surcharge payment orders. Mergers in the television and broadcasting market are also subject to review by the JFTC. Meanwhile, the Broadcast Act imposes restrictions on the ownership of basic broadcaster² which operates basic broadcasting operations such as television broadcasting under the “principle of eliminating media concentration.” (Article 93, paragraph 1, item 4, and paragraph 2)

4. The 2006 merger between SKY Perfect Communications Inc. and JSAT Corporation is an example worth studying, even though it took place before the Broadcast Act was revised.³

5. It should be noted that this study may not accurately describe the current situation, since it is based on a review released on June 19, 2007.

2.1 Outline of the case

6. This case relates to the plan formulated by SKY Perfect Communications Inc. (hereinafter referred to as SKP), which has a platform business related to broadcasting using communication satellites (hereinafter referred to as “CS broadcasting”) and JASAT Corporation (hereinafter referred to as JSAT), which has a transmission business using communication satellites, to merge to form a 100% subsidiary company of a holding corporation.

7. The relevant legislative provisions for this case are contained in Section 10 of the Antimonopoly Act.

2.2 Particular field of trade

2.2.1 Outline of broadcasting and communications

8. The provision of contents in Japan includes broadcasting and communications.

9. Broadcasting includes, for example, satellite broadcasting, cablecast (hereinafter referred to as CATV), and terrestrial broadcasting; and communications include, for example, Internet and telephone. Furthermore, broadcasting and communications are divided into two fields: one whereby contents are provided to customers free of charge and one whereby contents are provided to customers with a charge. The main source of revenue for the former is advertising income and viewing fees for the latter.

10. In broadcasting, after digital broadcasting using CS began in 1996, all the broadcasting and communication enterprises have undergone (or are making) the transition from analog form (a method in which images are transmitted by analog modulation) to digital form (a method in which images are transmitted by digital signals) whereas CS broadcasting using analog signals does not presently exist and analog broadcasting using broadcasting satellites (hereinafter referred to as “BS broadcasting”) is scheduled to be fully introduced by 2011. With countrywide broadbandization scheduled for completion in 2010 and the complete transition from terrestrial analog broadcasting to terrestrial digital broadcasting by July 24 of the following year, digitization is being vigorously promoted at the present time. In the area of communications, communication services similar to broadcasting are being realized as a result of broadbandization of the Internet Network and the development and dissemination of one-segment broadcasting so that the boundaries between broadcasting and communications are being blurred. In this

² Basic broadcaster means “approved basic broadcaster” defined under the Broadcast Act or “specified terrestrial basic broadcaster” defined under the Radio Act. (The Broadcast Act, Article 2, item 23)

³ Another case worth examining would be the JFTC recommendation decision issued on Oct. 13, 2004, against USEN Broad Net Works and another company.

document, communication services similar to broadcasting are included when “broadcasting business” is referred to.

2.2.2 *CS digital broadcasting*

A. The working structure

11. The parties concerned are involved in a business related to CS digital broadcasting. The digital broadcasting business in Japan consists of “commissioning broadcaster⁴,” which provides programs, and “commissioned broadcaster⁵,” which delivers the programs from the communication satellite using radio waves, and the “platform company.” Among the three parties, the commissioning company pays the fees for the use of a transponder (a repeater installed on a satellite) and the fees for the commissioning of digitization of broadcasting signals to the platform company. The commissioned broadcasting company pays the fees for commissioning the operations from the multiplexing of the digitized broadcasting signals to the uplink to the platform company. SKP is the only platform company that exists at present, and there are two commissioned broadcasting companies including JSAT. Multichannel broadcasts are being provided by SKP using the communications satellites, “SKY PerfecTV!,” which are located at longitude 124 degrees east and longitude 128 degrees east, respectively, and are owned by JSAT, and the communication satellite, “SKY PerfecTV! 110⁶,” which is located at longitude 110 degrees east and co-owned by two companies including JSAT.

B. Flow of reception and transmission

12. In CS digital broadcasting, broadcast programs are provided by program providers as in the case of terrestrial broadcasting. However, since most programs that are broadcast are transmitted using analog signals, it is necessary to digitize the analog signals in order to broadcast via the communication satellites. The digitized broadcast signals are further multiplexed (this is where multiple analog message signals or digital data streams are combined into one signal), and the multiplexed signals are modulated to high-frequency signals that can be transmitted to the satellite and sent to the stationary communication satellite located at an altitude of 36,000 km using a large-scale satellite antenna dish (this process is called “uplink”). The communication satellite receives the broadcast signals transmits the broadcast signals using the installed transponder to the ground (this process is called “downlink”). These signals are received by the small-scale satellite antenna dish installed at each home and the programs are viewed on a conventional TV through a dedicated receiving apparatus.

2.2.3 *Pay-broadcasting digital delivery business*

A. Outline of the pay-broadcasting digital delivery business

13. The CS digital broadcasting service provided by the parties concerned is a type of digital pay-broadcasting. In digital pay-broadcasting, in addition to CS digital broadcasting, there are BS digital broadcasting, CATV and IP broadcasting (multi-channel broadcasts are provided using the exclusive IP

⁴ A name according to the Broadcast Law. Although the name according to the Law Concerning Broadcast on Telecommunication Services is a broadcasting company on telecommunication services, such a company is collectively referred to as a “program provider” in this document.

⁵ A name according to the Broadcast Law. Although the name according to the Telecommunications Business Law is a telecommunication company, such a company is collectively referred to as a “transmission company” in this document.

⁶ The name was changed to “e2 by SKY PerfecTV !” in February 2007.

network on broadband circuits and programs are viewed on the TV receiver connected through dedicated equipment).

B. Market trends

14. The number of subscribers to “Sky PerfecTV!” and “Sky PerfecTV ! 110” for CS digital broadcasting has increased each year for the past five years, with an additional 1 million subscribers compared with five years ago. On the other hand, CATV and IP broadcasting are promoting differentiation from CS digital broadcasting by providing a unit price system for “triple play” that includes video distribution, high-speed Internet, and telephone. As a result of the fierce competition for market share among the three businesses, the average viewing fees per subscriber are decreasing year by year.

C. Efforts to attract subscribers

15. In view of the full transition to terrestrial digital broadcasting in 2011, all the broadcasting companies are taking a range of measures to increase the number of subscribers. Satellite broadcasting companies are trying to increase the number of subscribers for the device common to three bands that enables terrestrial digital broadcasting, BS broadcasting, and 110-degree CS broadcasting to be viewed using only one receiver; and CATV companies are endeavoring to enhance multi-channel broadcasting and community broadcasting. IP broadcasting companies are increasing the number of channels while implementing a free trial campaign for a limited time.

16. Some of the CATV companies are changing the transmission route from satellites, which have the disadvantage of “rainfall attenuation” (distortion of images caused by bad weather) to terrestrial optical circuits.

17. In IP broadcasting, there is a trend where companies which started with VOD (a system in which the subscriber can view desired images when they want to view) are now entering the multi-channel broadcasting business.

2.2.4 *Defining the particular field of trade*

18. CS digital broadcasting, which is the business of the parties concerned, is a type of digital pay-broadcasting. From the viewpoint of subscribers, there is little difference in the contents and image quality among the types of broadcasting because functions and utility are similar, and the pay-broadcasting companies are competing for new subscribers. Therefore, the digital pay-broadcasting delivery business is the target of the investigation in this document.

19. In the digital pay-broadcasting business, the program providers provide the platform companies with programs, then the platform companies carry out digital processing, and the programs are finally delivered to the subscribers through the transmission companies, which transmit programs using satellites or terrestrial optical circuits. Of the parties concerned, SKP conducts the platform business and JSAT conducts the transmission business. Therefore, the business combination of both companies corresponds to vertical business integration and the particular fields of trade are defined by referring to the platform business as the upstream market and the transmission business as the downstream market.

20. Since these business fields cover the entire country and there are no special conditions, the geographical region is defined “nationwide”.

3. Investigation of the effects of the business combination on competition

3.1 Changes in the number of subscribers and market size for pay-broadcasting

21. The number of the subscribers to pay-broadcasting, which is the only data available, has increased each year for the past five years resulting in slightly fewer than 25 million subscribers in 2005. The transition from analog to digital is being rapidly implemented and a battle for market share is being fought among CS digital broadcasting, CATV, and IP broadcasting, and this is expected to expand demand in the future.

3.2 Platform business

A. Platform business

22. The basic functions carried out by a platform company in digital pay-broadcasting delivery include: digital processing, contents delivery, EPG (electronic program guide) data delivery, and access control. All of these are indispensable for digital delivery.

B. Market share/HHI

23. Market share (based on the number of subscribers) of each company in the platform business is as shown in the table below. HHI is approximately 3,400.

Platform Business: Company Market Share

Rank Order	Company	Market Share
1	SKP	Approx. 45%
2	Company A	Approx. 35%
3	Company B	Approx. 15%
4	Company C	Approx. 5%
5	Others	0 – 5 %
	Total	100%

Note: Number of subscribers as of the time of examination

C. Existence of competitors

24. There are multiple competitors whose market share is 10% or more.

D. Existence of a large number of program providers

25. There are as many as about 100 program providers and they provide all-round programs to any of the platform companies since they desire to acquire as many as subscribers as possible. For example, popular programs to which many people subscribe, such as hit animated cartoons, classic animated cartoons, and sports programs, are delivered to multiple platform companies.

E. Ability to change partner company

26. As can be seen from the fact that some CATV companies have replaced SKP with other platform companies, it is easy for CATV companies to change platform companies.

F. New market entry arising from the expansion of IP broadcasting

27. As a result of the increase in the number of subscribers to FTTH, new entrants into the market are expected due to the expansion of IP broadcasting.

3.3 *Transmission business*

A. Transmission business

28. The transmission business is one in which digitized contents are transmitted to subscribers using satellites or terrestrial optical circuits.

29. It is said that the transmission cost using terrestrial optical circuits is lower than that using satellites.

30. The transmission routes differ depending on the platform company, and SKP delivers contents through JSAT.

B. Market share

31. Market share (based on the number of subscribers) of each company in the transmission business is as shown in the table below.

Transmission Business: Company Market Share

Rank order	Company	Market share
1	JSAT	Approx. 50%
2	Company F	Approx. 10%
3	Company G	Approx. 10%
	Total of the companies using terrestrial optical circuits	Approx. 30%
	Grand Total	100%

Note: Number of subscribers as of the time of examination.

C. Existence of competitors

32. There are competitors whose market share is 10% or more.

D. Ability to change partner company

33. In some cases, when the platform company is changed, there is an automatic change in the transmission company.

E. Superiority of terrestrial optical circuits

34. Terrestrial optical circuits enable program delivery at lower costs because the transmission cost is lower than that of satellites.

4. Review in Terms of the Antimonopoly Law

4.1 *Review of Independent Action That May Interfere with Free Competition*

A. JSAT's rejection of accepting the commissioning of transmission business from companies other than SKP

35. Since major competitors other than JSAT exist and transmission using terrestrial optical circuits is superior to transmission using satellites in terms of cost, it is unlikely that the business of companies other than SKP will be jeopardized even if JSAT refuses the commissioning of transmission business. Therefore, independent action of the parties concerned will not substantially restrict competition in the platform business.

B. SKP's rejection of the commissioning of transmission business to companies other than JSAT

36. Since there are major competitors which are provided with programs from companies other than the parties concerned and new entrants into the platform business are expected due to the expansion of IP broadcasting, it is unlikely that the business of companies other than JSAT will become more difficult even if SKP refuses the commissioning of transmission business to companies other than JSAT. Therefore, independent action of the parties concerned will not substantially restrict competition in the platform business.

4.2 *Review of Concerted Action That May Interfere with Free Competition*

37. Since new entrants are expected in the platform business, which is the upstream market, due to the expansion of IP broadcasting, competition is active in the market. In the transmission business, which is the downstream market, competition is also active between satellites and terrestrial optical circuits because terrestrial optical circuits are superior to satellites in terms of cost. Therefore, cooperative action of the parties concerned with other competitors will not substantially restrict competition in either the upstream business or the downstream business.

5. Conclusion

38. The analysis above suggests that this case does not actually interfere with free competition in the market concerned.