

Abolition of Disposal Directions on Telecommunications Industry

1585th Commissioners' Meeting (2022)

Case: Abolition of Fair Trade Commission Disposal Directions
(Policy Statements) on Telecommunications Industry

Keyword(s): Telecommunications, policy statement, abolition

Reference: Fair Trade Commission Decision of February 9, 2022 (the
1585th Commissioners' Meeting)

Industry: Wired telecommunications activities (6101), Wireless
telecommunications activities (6102)

Relevant Law(s): Articles 5, 9, 13, 15, 19, 20, 21, 23, and 25 of the
Fair Trade Law

Summary:

1. The FTC enacted the Fair Trade Commission Disposal Directions (Policy Statements) on the Telecommunications Industry (hereinafter referred to as “the Disposal Directions on Telecommunications Industry”) in 2000 and made ten amendments between 2001 and 2017. In light of the continuous progress in telecommunications technologies, incessant improvement of the approaches and channels of services offered by telecommunications enterprises, changes in the management and structure of the domestic telecommunications industry, as well as the definition of specific telecommunications service markets, the standard for recognition of businesses with significant market status and the regulations on special regulatory measures to be taken by the competent authority set forth in the Telecommunications Management Act which took effect on Jul. 1, 2020, the FTC decided it was necessary to review the Disposal Directions on Telecommunications Industry comprehensively and evaluate whether they had to be abolished. After soliciting the opinions of the National Communications Commission and telecommunications businesses and associations, the FTC proposed to abolish the Disposal Directions (Policy Statements) on Telecommunications Enterprises, and the proposal was approved at the 1585th Commissioners' Meeting on Feb. 9, 2022.
2. The key reasons for the abolition are as follows:
 - (1) Difference between the current condition and the time when the directions were enacted: As a result of the enforcement of the Telecommunications Management Act on Jul. 1, 2020, a registration system was adopted in administration of telecommunications

enterprises. Compared to the regulation according to business type classification as specified in the Telecommunications Act or tight control through approval of telecommunication services in advance, regulation of the telecommunications market became more relaxed. Moreover, due to technological advancements and innovations, use of voice communications through communications software (like LINE, for example) already replaced the voice communications services available through fixed communications networks (including local calls and domestic and international calls). At the same time, the management and industrial structure of telecommunications services underwent transformation. The condition was not the same anymore.

- (2) The definition of key facilities in Point 2 was similar to the connotation of pivotal facilities described in Article 28(7) of the Telecommunications Management Act. There was no need for overlapping definitions. As for market definition stated in Point 3, the Principles of the Fair Trade Commission Regarding the Definition of Relevant Markets (hereinafter referred to as “the Relevant Market Definition Principles”) and the regulations in the Telecommunications Management Act were enough for the FTC to follow in defining relevant markets. The market share calculation and numerical items to use specified in Point 4 had been adopted for years and known to related businesses and agencies. Removal of the regulation would not have any negative effects. As to abuse of monopolistic status stated in Point 5, no concrete cases had occurred due to transformation of the telecommunications service market structure and changes in the approaches of provision of services. In addition, related regulations against abuse of monopolistic power by businesses with significant market status was already adopted in the Telecommunications Management Act. Therefore, overlapped regulation could be avoided in order to prevent doubts about applicability of laws. Point 6 was about merger, and yet Merger cases could be covered by Point 13(1)(i)(ii)(v) of the Fair Trade Commission Disposal Directions (Guidelines) on Handling Merger Filings (hereinafter referred to as “Disposal Directions on Merger Filings”). As for concerted action in Point 7, boycotting in Point 8, discriminatory treatment in Point 9, enticement with low prices in Point 10, vertical transaction restriction in Point 11, unfair competition in Point 12 and other practices able to affect trading order in Point 13, were all reiterations of related regulations in the Fair Trade Law. Deleting them would not have any effect on the FTC’s judgment of such

practices. When such cases happened, they would be handled according to the Fair Trade Law.

3. As a consequence of technological progress, telecommunications services were not the same as before. Telecommunications regulations and the structure of the domestic telecommunications industry today was also different from year 2000 when the Disposal Directions on Telecommunications Industry were enacted. Most of the regulations in the directions merely reiterated the regulations in the Fair Trade Law. They overlapped either with the regulations in the Relevant Market Definition Principles, the Disposal Directions on Merger Filings, or the Telecommunications Management Act. In addition, the National Communications Commission and telecommunications businesses and associations either agreed on abolishing the Disposal Directions on Telecommunications Industry or had no opinion on the abolition. In other words, there was no need to keep the Disposal Directions (Policy Statements) on Telecommunications Enterprises, Therefore, it was abolished.

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