TELECOMMUNICATIONS SERVICES

Sub-section 4 of Chapter 8 of the EU-Japan EPA sets out the principles for regulatory framework for provision of telecommunication services. As per the language in Chapter 7 on technical barriers to trade, standards issued by the International Telecommunication Union (ITU), are generally followed, except when such standards or relevant parts of them would be ineffective or inappropriate for the fulfilment of the legitimate objectives pursued.
JAPAN’S TELECOM MARKET SIZE AND STRUCTURE

Since 2013, Japan’s telecom market size has remained roughly stable (in JPY terms) with revenues hovering between ¥ 13.5tn and ¥14.5tn, while 2012 saw total industry revenues fall below ¥13t. Japan’s mobile phone market meanwhile, is dominated by three mobile network operators (MNOs). These are NTT, Softbank, and KDDI, whose market-shares have been historically stable. While most operators own their own infrastructure, mobile virtual network operators (MVNOs) have grown from 5% of Japan’s market in 2014, to nearly 12% in 2019. All three dominant-firms have associated MVNOs.

**TOTAL SALES OF THE TELECOMMUNICATIONS SECTOR IN JAPAN FROM FISCAL YEAR 2011 TO 2017 (in trillion Japanese yen)**

<table>
<thead>
<tr>
<th>Year</th>
<th>Sales value in trillion Japanese yen</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>13.27</td>
</tr>
<tr>
<td>2012</td>
<td>12.96</td>
</tr>
<tr>
<td>2013</td>
<td>13.64</td>
</tr>
<tr>
<td>2014</td>
<td>13.69</td>
</tr>
<tr>
<td>2015</td>
<td>14.03</td>
</tr>
<tr>
<td>2016</td>
<td>14.19</td>
</tr>
<tr>
<td>2017</td>
<td>14.02</td>
</tr>
</tbody>
</table>

**DISTRIBUTION OF MOBILE PHONE SUBSCRIBERS IN JAPAN FROM FISCAL YEAR 2015 TO 2019 (by operator)**

- **Softbank Group (MVNO)**
- **KDDI Group (MVNO)**
- **NTT Docomo (MVNO)**
- **Softbank Group**
- **KDDI Group**
- **NTT Docomo**

This document has been prepared with the sole purpose of simplifying the understanding of some parts of the EU-Japan EPA and bears no legal standing.
LEGAL LANDSCAPE


• Cabinet Order for Enforcement of the Telecommunications Business Act: Regulatory Guidelines.

• Regulations for Enforcement of the Telecommunications Business Act: Regulatory Guidelines.

• Rules for Telecommunications Business Accounting: Telecoms industry accounting standards.

EPA COVERAGE FOR TELECOMMUNICATIONS

• EPA Art. 8.41 explains that the EPA outlines the regulatory framework for telecommunications services affecting trade in telecommunications services, except:
  - Broadcasting services
  - Editorial Content Services

• EPA Art. 8.42 establishes coverage for a range of telecommunications services and parties to services. This includes:
  - Essential Facilities
  - Associated Facilities
  - End-Users
  - Major Suppliers
  - Leased Circuits
  - Public Telecommunications Services
  - Public Telecommunications Transport Networks.
WHAT OBLIGATIONS ARE COVERED

NON-DISCRIMINATION

- EPA Art. 8.43(3): Provides that Japan and the EU (and its member nations) shall refrain from engaging in regulation concerning market segments that are competitive or that have low barriers to entry. For example, services provided by telecommunications suppliers that do not own network facilities.

- EPA Art. 8.44(1): Provides for service-supplier non-discrimination in terms of access to and use of public telecommunications transport networks and services.

- EPA Art. 8.44(2): Establishes that service-supplier non-discrimination includes private leased circuits, terminal and network-interface equipment, necessary to supply services, and use of necessary operating protocols.

- EPA Art. 8.44(3): Establishes that service-supplier non-discrimination includes intra-corporate communications of service suppliers, as well as access to information contained in databases in machine-readable form.

- EPA Art. 8.44(5): Establishes that no condition is imposed on access to public telecommunications transport networks and services other than as necessary to:
  - Safeguard public service responsibilities of public telecommunications suppliers, transport networks and services, in particular their ability to make their networks or services available to the general public.
  - Protect the technical integrity of public telecommunications transport networks or services.

- EPA Art. 8.44(6): Establishes that these conditions can include:
  - Restrictions on resale or shared use of services.
  - Requirement to use specified technical interfaces.
  - Inter-operability requirements for public telecommunications transport services
  - Restrictions on inter-connection of private leased or owned circuits with public telecommunications transport networks or services.
  - Notification, permit, registration and licensing.

- EPA Art. 8.46: Establishes non-discrimination if and when a supplier of public telecommunications transport services is required to offer its public telecommunications transport services for resale.

NUMBER PORTABILITY

- EPA Art. 8.45: Establishes provision of number portability for mobile services offered by that suppliers of public telecommunications transport services.

USE OF NETWORK FACILITIES AND INTERCONNECTION

- EPA Art. 8.47(1): Enabling use of network facilities and interconnection to be agreed on basis of commercial negotiation between suppliers.

- EPA Art. 8.47(2): Regulatory authorities have power to require, a supplier of public telecommunications transport networks or services to provide interconnection.
ANTI-COMPETITIVE PRACTICES

• EPA Art. 8.48(1): Protection from bundling or refusal to supply: Major suppliers prevented from engaging in or continuing anti-competitive practices, whether alone or in-group. Specifically, this includes:
  - Anti-competitive cross-subsidisation
  - Use of information obtained from competitors with anti-competitive results
  - Not making available technical information about essential facilities and commercially relevant information necessary to provide services.

• EPA Art. 8.48(2): Protection from refusal to supply: Regulatory authorities empowered to require major suppliers to accord to suppliers of public telecommunications transport networks or services treatment no less favorable than affiliates or subsidiaries when it comes to:
  - Availability of like telecommunications services and rates
  - Availability of technical interfaces.

TELECOMMUNICATIONS NETWORKS AND SERVICES LICENCING

• EPA Art. 8.51 (1): Simple registration (or notification). Prior explicit decision by regulatory authorities not required.

• EPA Art. 8.51 (2 to 4) Licences for use for radio frequencies may be required. Terms, conditions, and licencing to be made public. Decisions to be made in a reasonable period of time, and explained in writing.

TRANSPARENCY

• EPA Art. 8.53: Measures relating to access and use of public telecommunications transport networks and services made publicly available. This includes:
  - Tariffs and other terms and conditions of service.
  - Specifications of technical interfaces
  - Conditions for attachment of terminal or other equipment to networks.
  - Permits, registrations or licensing requirements.
Telecommunications

DISPUTE RESOLUTION

• EPA Art. 8.54(1 and 2): Suppliers of public telecommunications transport networks or services shall have timely recourse to regulatory authorities to resolve disputes in relation to rights and obligations of suppliers, or written explanation should telecommunications declines to initiate any action on a request to resolve a dispute.

• EPA Art. 8.54(3): Dispute resolution decisions shall be made public available to the public in accordance with the laws and regulations, respecting business confidentiality.

• EPA Art. 8.54(4): Public telecommunications transport networks or services suppliers aggrieved by regulatory decision may obtain review of decision by either the regulatory authority or an independent appeal body (which may or may not be a judicial authority).

• EPA Art. 8.54(5): Further review of that decision by an independent judicial authority, except if the supplier has accepted a procedure where the regulatory authority or independent appeal body issues a final decision.

• EPA Art. 8.54(6): An application for review by an appeal body or a judicial authority does not constitute grounds for non-compliance with the determination or decision of the regulatory authority.

INTERNATIONAL MOBILE ROAMING

• EPA Art. 8.57: Establishes framework for international mobile roaming between Japan and the EU. This includes:
  - Encourages enhancement of transparency and competition on international mobile roaming rates and technological alternatives to roaming services. This includes minimising impediments to the use of technological alternatives to roaming.
  - Encourages suppliers to make information on retail rates for international mobile roaming services for voice, data and text messages publicly-available.

• However, the EU-Japan EPA does not:
  - Regulate rates or conditions for international mobile roaming services.
  - Apply to intra-European Union roaming services.

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CHALLENGES

While the EU-Japan EPA offers EU businesses and professionals more opportunities to participate in Japan’s market landscape, EU businesses and professionals should take into consideration that other factors, such as cultural, linguistic, and regulatory barriers will need to be addressed in order to take full advantage of the EU-Japan EPA. Those businesses and professionals should therefore still expect regulatory oversight.

Japanese business and professionals operating in or accessing the EU market should likewise also expect regulatory oversight, including licensing requirements related to both national-level and European Union legislation.

MORE INFORMATION

The text and annexes of the EU-Japan EPA can be found on European Commission’s DG Trade website:

EU-Japan EPA Chapter on telecommunications services is also available on the European Commission’s DG Trade website:
DISCLAIMER

The Report has been prepared with the sole purpose of clarifying and simplifying the understanding of some parts of the EU-Japan EPA related to telecommunications services, and bear therefore no legal standing.

While utmost care was taken in the preparation of the report, the author, the EU-Japan Centre, and the European Commission cannot be held responsible for any error or omission.

This report does not constitute legal advice in terms of business development cases. As a result, only the legal text and annexes of the EU-Japan EPA, as well as relevant legislation in the EU and Japan prevail.

The Report reflects the view of the author who cannot be held responsible for any use which may be made of the information contained herein.