

Japan International Value-added Network Services Agreement (#2 Of 2) (1991)

[letterhead]

Deputy Minister for Policy Coordination

Ministry of Posts and Telecommunications

3-2 Kasumigaseki 1-chome

Chiyoda-ku Tokyo 100-90, J P N

June 25, 1991

ambassador S. Linn Williams

Deputy United States Trade Representative

Executive Office of the President

Washington, D.C. 20506

The Honorable J. Michael Farren

Under Secretary for International Trade

U.S. Department of Commerce

Washington, D.C. 20230

Dear ambassador Williams and Under Secretary Farren:

Consistent with the 1990 Policies and Procedures Regarding International Value-added Network Services and with regard to the implementation of the investigation process described in Section III of the attachment to my letter of April 27, 1991 to ambassador Williams and Assistant Secretary McBride, I am pleased to inform you that the Ministry of Posts and Telecommunications (MPT) has decided to take the measures described in the attachment to this letter.

I wish to confirm that our two parties will consult, at the request of either party, to discuss any questions or concerns regarding the measures specified in the attachment to this letter. I wish to confirm that these measures will be in effect until they are revised based upon the results of such consultations.

I also wish to confirm that if the MPT determines that a type of evidence, other than that described in I(2) of the attachment, would be sufficient, by itself, to trigger the investigation process described in the attachment, then the MPT will consult with the USG about the possibility of adding such new evidence to the list described in I(2) of the attachment.

Yours sincerely,

[signature]

Mitsuo Igarashi

Deputy Minister

for Policy Coordination A

[letterhead

TY NIT STAT S TRA R R S NTATIV
X C TIV OFFIC OF THE R SI NT
WASHINGTON, .C. 0506

June 5, 1991

The Honorable Mitsuo Igarashi

puty Minister for olicy Coordination
Ministry of osts and Telecommunications

3--3 Kasumigaseki I--Chome

Chiyoda--ku Tokyo 100

ar puty Minister Igarashi:

Thank you for your letter of June 5, 1991 and its Attachment concerning measures that the Ministry of osts and Telecommunication (MPT) has decided to take, consistent with the 1990 olicies and rocedures Regarding International Value-Added Network Services, and with regard to the Attachment to your letter to Ambassador Williams and to Assistant Secretary McBride of April 7, 1991.

We wish to confirm that our two parties will consult, at the request of either party, to discuss any questions or concerns regarding the measures specified in the Attachment to your letter. We also wish to confirm that these measures will be in effect until they are revised based upon the results of such consultations.

We also wish to confirm that if the MPT determines that a type of evidence other than that described in I() of the Attachment, would be sufficient, by itself, to trigger the investigation process described in the Attachment, then the MPT will consult with the SG about the possibility of adding such new evidence to the list described in I() of the Attachment.

Very truly yours,

[signature

S. Linn Williams

[signature

J. Michael Farren

ATTACHM NT

[attached to letter from puty Minister Igarashi

I. vidence e

1. If a Type I carrier believes that a Japanese side customer, or its joint and/or intracorporate users in Japan, is engaging in simple resale between Japan and the nited States, as referred to in the 1990 olicies and rocedures Regarding International Value_Added Network Services (1990 olicies and rocedures) and the April 7, 1991 letters between puty Minister Igarashi and Ambassador Williams and Assistant Secretary McBride, and as described in 7(a) & 7(b) below, such Type I carrier may file a complaint with the Ministry of osts and Telecommunications (hereinafter XMPT").

. A complaint must present " vidence." " vidence" is something which specifically shows simple resale between Japan and the nited States, as described in 7(a) or 7(b) below, and must include at least one of the following: 2

a. a signe sea e s a emen by a hi pa y ha an ffe ffe s f such simp e esa e has been ma e hem by a Japanese si e cus me i s J in an / in ac p a e use s in Japan;

b. an a ve isemen a ve isemen s ffe ing such simp e esa e;

c. a b chu e a pamph e exp aining p esen ing he ffe f se vices cha ges f se vices in a manne ha cea y emons a es such simp e esa e;

. a c n ac an applica i n f m f he c n ac ha cea y sh ws such simp e esa e;

e. an inv ice eceip ha cea y sh ws such simp e esa e.

3. In a i i n he evi ence in 2(a --2(e ab ve, he i ems, such as an a ice in a e ec mmunica i ns a e j u na , may sugges he p ssibi y f he exis ence f simp e esa e be ween Japan an he Uni e S a es, as esc ibe in 7(a (b be w. A Type I ca ie may use such a ices seek evi ence as esc ibe in 2(a --2(e ab ve. Such a ices wou , in c mbina i n wi h a eas ne f he ypes f evi ence in 2(a --2(e ab ve, c ns i u e evi ence sufficien p cee as esc ibe be w.

4. If a c mpain es n c n ain he ab ve equi e evi ence, he MPT wi n accep i .

5. If a c mpain is fie c n aining he ab ve equi e evi ence, hen he MPT wi i ec he Type I ca ie f wa a c py f he wri en c mpain he cus me f esp nse he MPT wi hin 30 ays. The MPT may i ec he Type I ca ie n ify he cus me ha cus me esp nses n esigna e by he cus me as c nfi en ia may be f wa e f c mmen he Type I ca ie. If any f he cus me esp nses a e esigna e c nfi en ia , hen he cus me sh u p epa e a n n-c nfi en ia summa y f each c nfi en ia esp nse ha may be f wa e f c mmen by he MPT he Type I ca ie .

6. A cus me is en i e submi a eques ismiss he c mpain f insufficiency. If such a eques is ma e,) he Type I ca ie is a we 15 ays esp n .

7. The MPT wi eview he c mpain an evi ence (an , if submi e , he eques ismiss an esp nse ha eques see if i cea y sh ws:

a he exis ence f a pa e n f ffe s f paymen f c n ac s f e ec mmunica i ns se vices by a Japanese si e cus me he s (ha is, use s f e ec mmunica i ns se vices ha n be ng he J in an / in ac p a e use g up as efine in he 1990 P icies an P ce u es an he Ap i 27, 1991 e e s be ween Depu y Minis e Igaashi an Ambassa Wi iams an Assis an Sec e a y McB i e , as if i we e in awfu c mpe i i n wi h a Type I ca ie ;

b ha such a Japanese si e cus me is pe a ing as a e ec mmunica i ns business.

8. If he c mpain an evi ence n cea y sh w simp e esa e be ween Japan an he Uni e S a es, as esc ibe in 7(a (b ab ve, if he cus me 's esp nse efu es he c mpain an evi ence, hen he MPT wi e mina e he p cee ings.

9. If he c mpain an evi ence cea y sh w simp e esa e be ween Japan an he Uni e S a es, as esc ibe in 7(a (b ab ve, an if he cus me 's esp nse es n efu e he c mpain an evi ence, hen he MPT may p cee he inves iga i n. If he MPT eci es p cee) he inves iga i n)f he ac ivi ies f a U.S. fi m in Japan, as esc ibe be w, he MPT wi n ify ha ecisi n he Gove nmen f he Uni e S a es f Ame ica (he einaf e he "USG" .

II. Reques f Inf ma i n

. If he c mpain an evi ence cea y sh w simp e esa e be ween Japan an he Uni e S a es, as esc ibe in I(7 (a (b ab ve, hen he MPT may i ec he Type I ca ie eques ha he Japanese si e cus me p vi e he f wing inf ma i n ega ing i s ac ivi ies. Excep as p vi e in 6 be w, inf ma i n wi n y be eques e ega ing cus me ac ivi ies in Japan:

a. he names an a esses f j in an / in ac p a e use s in Japan;)

b. the method to event which implementale, consistent with the requirement in the 1990 Policies and Procedures that the effective technical capabilities to event implementale:

c. the written answer to specific question necessary for the MPT to determine whether or not the effective implementale. Consistent with this, the MPT can, if necessary, a specific question of the Japanese intelligence community in Japan and its joint and/or intercountry operations in Japan concerning complaint made about its activities in Japan.

2. If requested by the Japanese intelligence community in Japan (i.e., the community located in Japan that ignores the contact with the Japanese Type I carrier), the MPT can also conduct a "connection test," if necessary. Additionally, in the case where the community that ignores the contact with the Japanese Type I carrier is located in the United States, each community may also request the MPT to conduct such a "connection test," if necessary. No "connection test" between Japan and the United States will be conducted within the territory of the United States without the consent of the U.S. Federal Communication Commission (FCC), on a case-by-case basis.

3. Failing to respond to the request for information in a manner consistent with the procedures described herein may be dealt with to the community's disadvantage in the MPT's final determination.

4. Information from the community will go directly to the MPT. The Type I carrier will never see the response, copies of response, or any other information forwarded to the MPT from the community, except a review herein. The MPT will not discuss at any time with a Type I carrier any of the above response or information, except a review herein.

5. A community may opt out in writing any request for information it deems necessary for a determination. If the MPT disagrees in writing, an request for information notwithstanding the opt out, then the community's request to submit the information but may also noting its opt out. Information submitted in response must be designated and the MPT must maintain a record with respect to such information.

6. No question will be asked by the MPT, no information requested or sought by the MPT, of community outside of Japan except as described in III below. MPT may ask Japanese intelligence community in Japan question concerning their activities. However, such Japanese intelligence community in Japan is under no obligation to provide information concerning its activities outside of Japan.

III. FCC Coordination

1. If the MPT has decided to investigate, on the basis of the complaint and evidence received or reviewed in I above, then, if appropriate, and if the MPT believes it is necessary to inquire about the activities of a community or its joint and/or intercountry operations in the United States, the MPT may refer to the FCC a written request for its coordination in determining whether the effective implementale between Japan and the United States, as described in I(7)(a)(b) above.

2. The FCC will provide information in response to specific question from the MPT necessary for the MPT to determine whether the effective implementale between Japan and the United States, as described in I(7)(a)(b) above.

3. The FCC will provide such information within a reasonable period of time, no more than 60 days.

IV. MPT's Determination

The MPT will review the information and response received pursuant to the above proceeding and request for information (together with the result of the "connection test," if requested by the community pursuant to II(2) above), to determine if the evidence contains evidence that clearly shows implementale between Japan and the United States, as described in I(7)(a)(b) above.

a. If the evidence does not contain evidence sufficient to clearly show the existence of such implementale, then the MPT will terminate the proceeding. The MPT will also notify the Type I carrier that it cannot file a new complaint on the same set of facts.

b. If the appellant establishes clearly prior to the expiration of the implementation, the MPT may request the Type I carrier to notify the applicant that the MPT has determined that the applicant is gagging the implementation. Unless the applicant files an appeal within 5 days with the MPT, the MPT may inform the Type I carrier that it may take immediate action to suspend the service and terminate the trade agreement with the tariff; alternatively, the MPT may request the Type I carrier to notify the applicant that unless the applicant files an appeal within 5 days with the MPT, the MPT may inform the Type I carrier that it may take action within a reasonable period of time to suspend the service and terminate the trade agreement with the provision of the tariff, if the applicant does not elect to file an appeal within 5 days with the MPT.

V. Appeal

If an appeal is made within 5 days to the MPT, the Type I carrier is entitled to use the service. The MPT will review the appeal and determine if the appeal is a reasonable basis for the expiration of implementation between Japan and the United States, as required by I(7)(a) and I(7)(b) above.

a. If the appeal is a substantial basis, the MPT will terminate the proceeding. The MPT will also notify the Type I carrier that it is not to file an explanation of the same in the future.

b. If the appeal is not a substantial basis, the MPT may request the Type I carrier to notify the applicant that the MPT has turned down the applicant's appeal and has informed the Type I carrier that it may take immediate action to suspend the service and terminate the trade agreement with the tariff; alternatively, the MPT may inform the Type I carrier to notify the applicant that it has informed the Type I carrier that it may take action within a reasonable period of time to suspend the service and terminate the trade agreement with the provision of the tariff, if the applicant does not elect to file an appeal within 5 days with the MPT, by the end of that period.

VI. Publication of Investigative Procedures

The MPT will publish in the Kapak summary of the above investigative procedures, after notifying the Type I carrier regarding the establishment of the procedures.

VII. Other

C. In accordance with Japanese laws and regulations, the MPT will observe through the investigative procedures required here to require the filing of the confidentiality of the information submitted to the MPT by an applicant, as required below:

a. Submission of Confidential Information

i. When an applicant brings a request for information to the MPT, the MPT at that time will identify any information other than items that the MPT believes already is generally available to the public.

ii. The MPT will immediately return to the applicant the information on other items the MPT knows are generally available to the public, as required by (i) above, and will retain responsibility for information on other items submitted by the applicant.

iii. All information on other items retained by the MPT will be treated as confidential by the MPT and will not be disclosed to the MPT, pursuant to relevant Japanese laws and regulations regarding confidentiality.

iv. In addition, the expiration of a filing requirement, applicable filing, and any material relating to the same, will all be treated as confidential pursuant to the above. Once any business material are designated as confidential, per (including Type I carrier), thereafter the whole submitted material to the MPT as the official of the MPT is, and have access to the confidential material.

b. Confidential Information of Other Items or Statements

i. MPT, in order to confirm the accuracy of a particular statement submitted by the applicant in response to MPT's request for information for the purpose of the investigation, will request the permission of the applicant for the 1

MPT to ascertain questions to the parties, regarding the particular information to be submitted. No confidential information, as described in (a) above, will be disclosed under any circumstances.

The Custome will then grant such permission, or will provide an explanation as to why it cannot agree to a particular method of determining the accuracy of such particular information to be submitted.

If a Custome refuses to grant such permission and refuses to submit an explanation for doing so, permission, the MPT will not be to inform the accuracy of such information to be submitted. The MPT may weigh the Custome's refusal negatively in its determination, and will so inform the Custome. However, under no

circumstances, if a Custome refuses to grant such permission, will the MPT divulge the contents of an information to be submitted for (b) above to any party outside the MPT and the Custome, including to the TPIA, nor will the MPT request the permission of the Custome to do so.

Parties

Violations of the above confidentiality provisions will be treated as violations with a national with the relevant Japan's laws and regulations, including the provisions of the National Public Service Law relating to Government officials' obligations to maintain confidentiality.

2. The TPIA shall require not to suspend discussions vis-à-vis the April 27, 1991 letter between Deputy Minister Aghash and Ambassador Williams and Assistant Secretary McBeath and the Attorney General, on the basis of a complaint concerning simplification between Japan and the United States, as described in I(7)(a)(b) above, until and unless there has been a determination by the MPT that the Japanese Custome or its joint users and/or potential users in Japan have engaged in simplification.

3. The TPIA shall require not to request that Custome provide them with a copy of an information request.

4. A Custome that is the subject of the complaint produced shall be allowed a timely opportunity to respond and comment on any complaints, possible complaints, or any other materials or information submitted in connection to the MPT.

5. There will at no time be any monitoring of Custome communications, or attempts to gather information beyond what is described herein, in connection with an investigation by the MPT of simplification between Japan and the United States as described in I(7)(a)(b) above.

6. Only a TPIA may file a complaint stating that a Custome is engaged in simplification between Japan and the United States as described in I(7)(a)(b) above. The only exception to this is that the MPT may, on its own motion, investigate, where there is a violation of simplification. In the event that the MPT takes action on its own motion, the same information may be requested, subject to the same limitations, as described above with respect to complaints by TPIA.

7. These provisions will take effect on July 1, 1991.

TANC offers these agreements electronically as a public service for general reference. Every effort has been made to ensure that the text presented is complete and accurate. However, copies needed for legal purposes should be obtained from official archives maintained by the appropriate agency. y