

Approaches to a bill on improving transparency of transactions of digital platform operators (provisional name)

1. Current Status and Issues

- Transaction environment issues discerned from the surveys (*)
(* Surveys on online malls and app stores)
 - The lack of transparency with regard to amendments to terms, grounds for rejecting transactions, data use, and the like and the very low predictability pertaining to such matters for trading partners pose problems.
 - Problems also exist in terms of the fairness of procedural matters, including the inadequacy of procedures and frameworks to deal with trading partners' opinions.
 - These types of problems might lead to conduct that impede fair competition.
- ⇒ Improving the transaction environment in relation to business users of digital platforms is a pressing need
- Sound development of digital platforms as important foundations for transactions must be sought, and fair and free competition must be promoted by establishing regulations that ensure transparency and fairness of digital platforms.

2. Approaches

(1) Scope of regulation

- In light of the following characteristics, “digital platforms” are to be defined:
 - (i) they generate network effects;
 - (ii) they are faced with multi-sided markets; and
 - (iii) they provide services via the internet.
- In addition, those that particularly require improvement in terms of transaction transparency and fairness are to be defined as specified digital platforms (“Specified Digital Platforms”) and to be principally subject to regulation. Elements such as those that follow are to be factored into consideration of sectors and scope:
 - (i) the necessity for the protection of trading partners in that genre in question (locked-in status of users, etc.);
 - (ii) the degree of that sector's impact on the lives of the people and the national economy; and
 - (iii) acknowledgement that a certain scale has been reached within that sector.

- Specifically, large-scale online malls and app stores for which the state of transactions has been clearly ascertained through surveys are to be subject to regulation for the time being.
- Administrative agencies are to conduct surveys regarding “digital platforms” in general to further examine the addition of sectors subject to regulation, to revise policy, and for other purposes.

(2) Information disclosure and establishment of procedures and frameworks to improve transparency and fairness

a) Disclosure of information on terms and conditions of transactions, etc.

- Disclosure to users of contract terms and conditions and prior notification of contract amendments and the like are to be made mandatory.

Examples of matters for disclosure:

Prior notification of contract amendments

Grounds for rejecting and suspending provision of goods

Scope of data use

Important elements for deciding search rankings

- Administrative measures: Recommendations and public announcements if disclosure is not conducted; orders for actions if correction is not made.

b) Ensuring fairness in operations

(Establishment of procedures and frameworks)

- Specified Digital Platform Operators are to take necessary measures based on principles prescribed by administrative agencies and are to establish procedures and frameworks.

Measures by Specified Digital Platform Operators:

Establishment of frameworks to deal appropriately with business users of digital platforms (including handling frameworks by agents located in Japan, and the like)

Establishment of procedures and processes to ensure fairness of transactions

Establishment of dispute settlement frameworks and the like

- Administrative measures: Administrative measures if necessary measures are not taken.

(Unjustifiable actions in transactions)

- In addition to the above, it is to be considered whether to state in law provisions prohibiting certain unjustifiable conduct in transactions, examining types of unjustifiable conduct truly necessary to be stipulated, while taking into consideration opinions of concerns that these prohibitive provisions might impede efforts to innovate.

Examples of unjustifiable conduct

Rejection of competing products

Forced use of its own services

Prioritized display of its own products

Unilateral imposition of disadvantageous amendments that cause material impediments to the operation of business

c) Reporting of operational status by Specified Digital Platform Operators and monitoring by administrative agencies

- Each Specified Digital Platform Operator is to regularly submit to administrative agencies a report of operational status regarding a) and b) above, affixed with a self-evaluation.

Report contents include:

- (i) Business outline
- (ii) Status of information disclosure
- (iii) Status of establishing operational procedures and frameworks
- (iv) Status of settlement of disputes, etc.
- Administrative agencies that receive a report are to review the operational status of the digital platform and announce an evaluation; in doing so, the administrative agencies are to hear opinions from business users of the digital platform and are to facilitate sharing of issues and mutual understanding among related parties.

(3) Cooperation with the Japan Fair Trade Commission

- A system for requesting action by the Japan Fair Trade Commission under the Antimonopoly Act is also to be established, to deal with cases where it is acknowledged that, going beyond the scope of regulations set out in the Digital Platform Operator Transaction Transparency Act (provisional name), a violation of the Antimonopoly Act might exist.

(4) Other regulations

a) Measures to readily enable business users of digital platforms to provide administrative agencies with information

- Legislative measures that readily enable business users of digital platforms to provide administrative agencies with information is to be implemented; for example, release from contractual obligations of confidentiality through administrative order to collect reports.

b) Competent ministers

- While the Ministry of Economy, Trade and Industry, which has jurisdiction over establishment of rules regarding transactions, is to be the main ministry involved, handling of the matters in cooperation, or jointly, with the Japan Fair Trade Commission,

the Ministry of Internal Affairs and Communications, is to be examined depending on whether matters in question fall under their respective jurisdictions.

c) Application of law inside and outside Japan

- The regulations of a bill on improving transparency of transactions of digital platform operators (provisional name) are to apply to digital platform operators both inside and outside Japan; therefore, appointment of agents located in Japan, arrangements for service-by-publication procedures, and other measures are to be examined, with reference to, for example, the Antimonopoly Act, currently applicable to foreign operators.