

Points to be considered further
(Provisional Translation)

I: Structure of the digital advertising market

- (a) What is the reality of transactions in the digital advertising market (such as the price-determining process and various contract patterns) and its market structure?
- (b) What are the “sources of power” that give market power to vertically integrated platform operators in the digital advertising market? How have they been built up? Is the market power of platform operators expected to be increasing further in the future?

[Examples of possible sources of power]

- Possession of “customer contacts”/“media” (inducement through ad) that attract many consumers’ attention and time. (Examples: Google: Smartphone OS, Web search, browser and YouTube, etc., Facebook: SNS and Instagram)
- Accumulation of data that improve the accuracy of targeted advertising through data acquisition from their own contacts for data collection and from other publishers.
- Vertical integration of an intermediating function (such as ad exchange and advertising network) that matches an advertiser and publishers, together with their own media.
- Power to design a digital advertising market
- Technology to execute matching in real time

[Examples of factors in considering future directions of the market power]

- Future changes in “customer contacts” and contacts for data collection (Examples: Smart speaker, wearable device, smart glasses, VR, IoT, car, home appliances/payment and settlement, healthcare, and mobility)
- Diversification of data types and increase of targeting power along with changes in the contacts above
- Restrictions due to enhancement of management of personal data

II-1: Transparency and fairness of the digital advertising market

(a) What kinds of nontransparent and unfair state or conduct exist in transactions between digital platform operators and advertisers/publishers?

(b) If they exist, what are the measures to improve and/or prevent them?

[Examples that can be thought of as nontransparent, unfair state or conduct]

<From the viewpoints of advertisers>

- Sufficient transparency is not secured against ad fraud at verification and explanation of traffic. When it is discovered, a quick refund should be made.
- Efforts should be made to secure brand safety against the risk of an advertisement being placed on publishers that may damage the brand value.
- The level of viewability in Japan is low compared with other countries, and guarantee of a viewability level requested by advertisers, accurate monitoring, and regular information disclosure should be made.
- Verification and measurement by a third party on ad effectiveness, as well as on ad fraud, brand safety and viewability, should be performed against the publishers.
- Transparency in supply chain should be increased (transaction details, price, fees and cost, ad placed page and media, and data).
- Audience data should be provided so that advertisers can perform data analysis. Verification of audience data by a third party should be possible as well. etc.

II-2: Transparency and fairness of the digital advertising market

(a) What kinds of nontransparent and unfair state or conduct exist in transactions between digital platform operators and advertisers/publishers?

(b) If they exist, what are the measures to improve and/or prevent them?

[Examples that can be thought of as nontransparent, unfair state or actions]

<From the viewpoints of publishers>

- In the advertisement supply chain, transparency of the price-determining process and fees is not secured.
- Search algorithms are modified unilaterally without transparency, and an explanation from the publisher side is not accepted. Transparency is not secured concerning the ranking order.
- System changes are required to make based on the unilateral decision of digital platform operators without specifying the reasons.
- There is a suspicion that digital platform operators treat their own media favorably. etc.

III: Concerns over possible conduct that may impede competition in the digital advertising market

- **What types of conduct that may impede competition are of concern while digital advertising market is getting more oligopolistic?**

[Examples of cases where concerns are pointed out or cases that entered into dispute in foreign countries and the like]

- In the allocation of ad inventory by digital platform operators, is there any concern that they favor their own media?
- Is there any concern that digital platform operators may restrict access to their media only through their own advertising intermediary service? Is there any concern that advertisers may be prevented from using other platforms?
- When matching advertisements, do digital platform operators demand to defer connection with other matching platforms until the bidding decision of their own platform is made, leading to impeding competition among platform operators?
- In addition, following a vertical integration of an intermediating function that matches an advertiser and publishers, is there any concern over conflicts of interest?
- Is there any concern that a digital platform operator may include a clause that blocks other competing matching platforms in its contract with publishers?
- While marketing data are enclosed by platform operators, is there any concern of unreasonable shutdown of access through API with other competing companies?
- With market designing power as a background, is there any concern that new entry is unduly blocked?
- Due to bundling of searches with an OS and a browser, has data collection of search advertising become oligopolistic, leading to impeding competition among platform operators? etc.

IV: Transparency of collection and use of personal data

(a) In the reality that individuals do not sufficiently recognize the mechanisms and actual conditions of targeted advertising and the collection and use (profiling) of personal data for that purpose, what kinds of efforts are taken to address the concerns of individuals? Are they functioning well?

[Examples]

- Is the information on which individuals' judgment related to the collection and use of personal data is based provided to them in an easy-to-understand format?
- Do platforms acquire consent from individuals only after they understood sufficiently?
- Is it clearly disclosed to users what type of profiling is conducted? Is it guaranteed not to be used for purposes that can bring seriously disadvantageous consequences that the users did not anticipate?
- Are the acquired personal data kept in such a manner that the individual can control them easily?
- Concerning targeted advertising based on profiling, is transparency on reasons of advertisement display secured? Is an easy-to-use means for opt-out provided?
- How are the efforts organizationally and technically implemented in the digital platform operators to manage data separately, as required, which are acquired for various purposes?
- Is the means (such as authentication) utilized to check the reliability of the entity itself that collects and uses the personal data?
- If cognitive limit is assumed, is any complementary mechanism considered?
- What do we think of the idea to pursue the possible scope of data usage that should not be approved even if consent is given, provided that understanding how the data are used is complex and exceed the cognitive limit, that use of data may affect important choices in life, or that use of data may have unfavorable impacts on society?
- What do we think of the idea of a "data fiduciary" (regardless of consent, asking for data handling also in consideration of whether it is beneficial for the person or for society)?
- What do we think of a mechanism such as an Ethical Review Board being requested in "Information Banks" in Japan?

(b) What kinds of new technologies or mechanisms can be considered to address the concerns above?

Future course of action

1. Public proposals

Up to the end of January next year, we plan to solicit public proposals on issues above and other issues widely from stakeholders such as advertisers, advertising agencies, publishers, advertising technology companies, and digital platform operators, as well as from experts and consumers.

2. Research on actual conditions: Research on the actual conditions of digital advertising market is underway.

From the viewpoints of the Antimonopoly Act, and how the fairness and transparency of transactions, and use of information (including personal information) by firms, should be, we will research the following by surveying the firms in digital advertising market as well as consumers, considering multisided market structures, including both business-to-business (BtoB) and business-to-consumer (BtoC), with the cooperation of relevant ministries and agencies.

- i) Survey on transactions of advertising intermediation services between firms: BtoB
 - Questionnaire to and hearings from relevant firms
- ii) Survey on transactions of services for consumers such as search and SNS: BtoC
 - Questionnaire to general users and hearings from relevant firms

3. Discussion in the Working Group

From January, in addition to the public proposals and survey on actual conditions above, and including hearings from relevant persons, detailed discussions will be conducted on each point, targeting an interim report next spring.