

Evaluation of Competition in the Digital Advertising Market Final Report : Summary

April 27, 2021

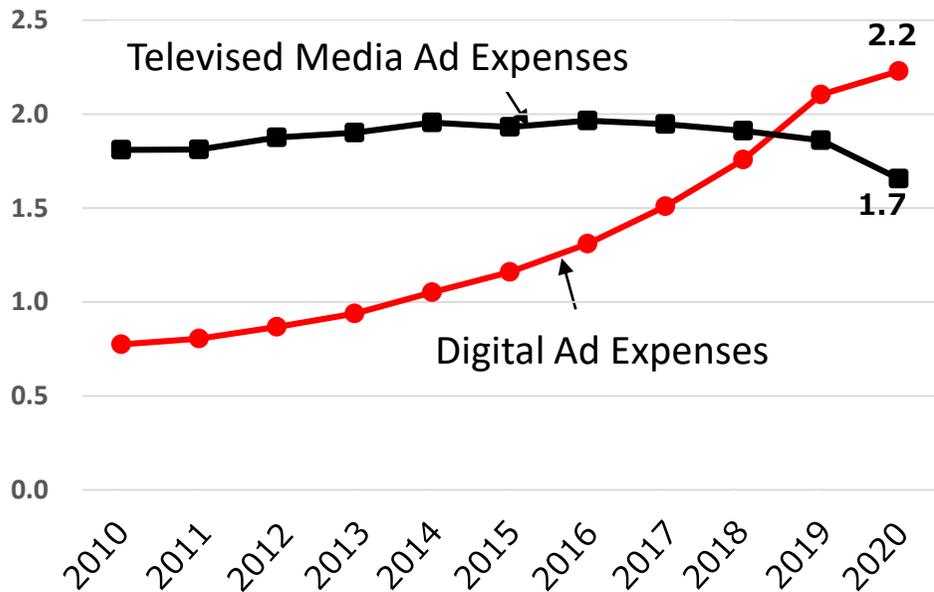
**Secretariat of the Headquarters for Digital Market Competition
Cabinet Secretariat, Japan**

Significance of the Digital Ad Market: Provides easy access to customers for small and mid-sized companies and functions as “infrastructure” to support free internet services

- **Digital ad expenses** are increasing year by year, and **they surpassed televised media ad expenses for the first time in 2019**. Digital ad expenses were **approximately 2.2 trillion yen in 2020 (106% year-on-year)**, growing so far as to account for **36% of all ad expenses (approximately 6.2 trillion yen) in Japan**.

Trends in Digital Ad Expenses

(Trillion Yen)

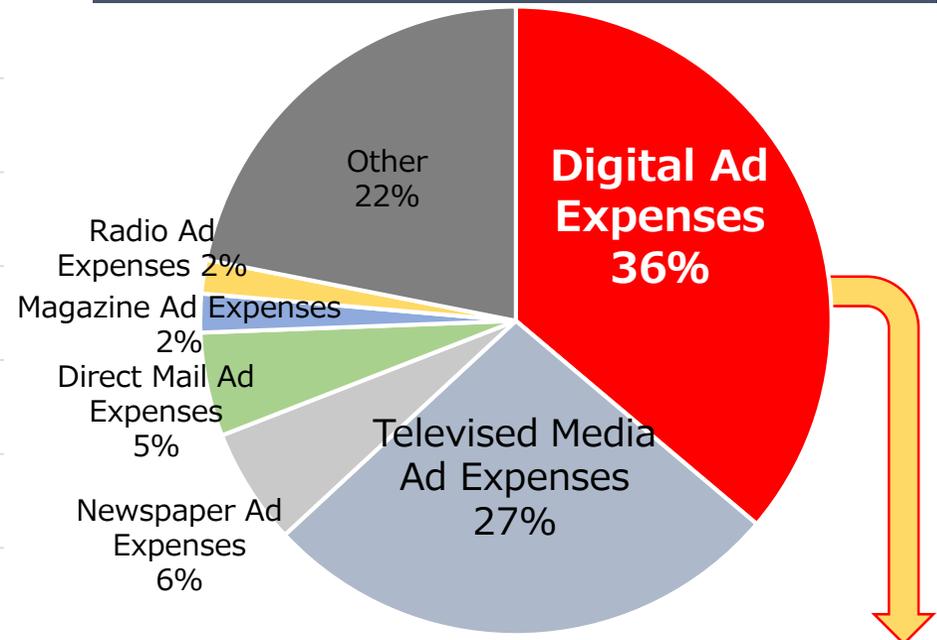


(Note) Televised Media Advertising: Ad expenses for terrestrial television and satellite media

(Source) based on “Ad Expenses in Japan” by Dentsu.

Breakdown of All Ad Expenses in Japan

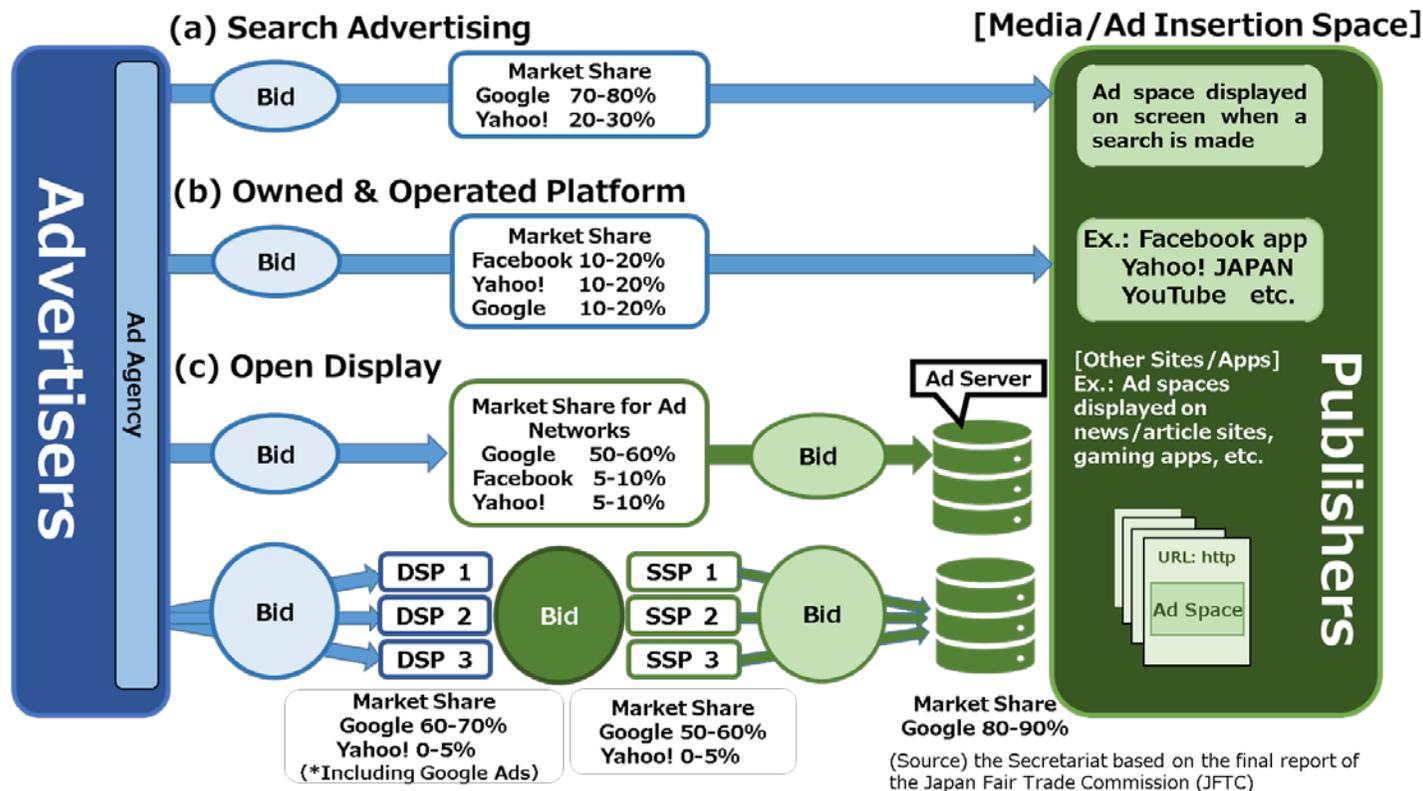
(6.2 Trillion Yen in Total, 2020)



- In the breakdown by transaction methods, **programmatic advertising accounted for 1,455.9 billion yen (82.9% of all digital ad expenses)**
- **568.7 billion yen** for ads on **social media (32.4% of all digital ad expenses)**

- The digital advertising market is comprised of **publishers who sell advertising spaces** on their own websites and/or apps, **advertisers who purchase advertising spaces and place ads**, and **platform operators (PFs) and advertising technology companies**, who mediate between them.
- **Targeted advertising**, which analyzes various data and delivers ads tailored to individual preferences, and **other new technologies have been developed rapidly**.
- At the moment when an individual views a website, **advertising spaces** provided by publishers on their own websites and/or apps **and ads submitted by advertisers are matched, and the matched ads are delivered in real time** by a highly complex system. Bid transactions take place instantly in vast numbers.
- Initially, functional specialization (of functions supporting sellers and functions supporting buyers, for example) occurred as many advertising technology companies providing digital advertising technologies entered the market. However, **vertical integration later advanced as a result of acquisitions by PFs that engage in matching**.

Structure of the Digital Advertising Market (Basic Flow)



■ Issues relating to competitive environment:

- With regard to the businesses that mediate advertising transaction, there are claims that advertisers tend to choose PFs possessing media capable of appealing to many consumers (e.g. YouTube in the case of Google) while publishers providing advertising spaces tend to choose PFs that cover many advertisers, so that **network effects function on both sides and the market becomes oligopolistic.**
- There are concerns that **data is becoming concentrated within certain PFs** and oligopolization is accelerating as data distribution becomes restricted due to privacy protection.
- Consequently, **the influence of certain PFs is growing in terms of market design and operation.**
- **Sudden rule changes and system modifications by PFs leave no room for negotiation** and are burdensome for advertising technology companies and others.
- **Data on how consumers responded to advertisers' ads (i.e., audience data) is not sufficiently provided to advertisers by PFs.**

- 60% of advertising technology companies feel there are problems and concerns with a certain PF when system changes are made.
Reason: "Sudden system changes are burdensome to respond" (47%) *Multiple responses
Source: Questionnaires by the Japan Fair Trade Commission

■ Issues relating to market transparency:

- **The complexity of overall system and extremely rapid changes cause difficulty for the parties concerned to grasp market conditions.** In particular, matching by real-time bidding is handled on the system with algorithms, **resulting in much opaqueness (black box).** (There is a possibility that there will be significant changes in the digital ad business model within a year due to responses to the issues on privacy.)
- **Lack of transparency in transaction details and prices.**
- As a result of vertical integrations of functions in advertising intermediation, **there are concerns of conflicts of interest and self-preferencing for own media by PFs.**

- 40% to over 60% of related businesses are concerned about PFs' self-preferencing for their own media
Advertising technology companies: 64%, publishers: 54%, advertisers and ad agencies: 40%
Source: Questionnaires by the Japan Fair Trade Commission

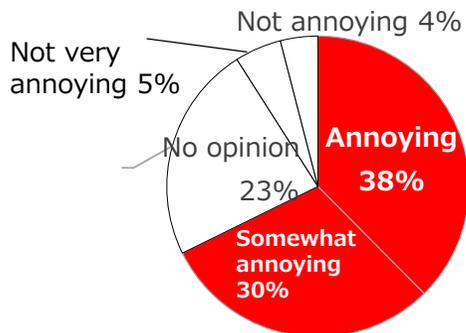
■ Issues of "Quality" in the Digital Ad Market:

- Amid the rapid development of digital advertising, there are **various problems in the quality of services** provided in the digital advertising market. As a result, the market is at **an undesirable equilibrium**, with **advertisers bearing the risk for damage to their brand**, **publishers suffering a weakened operational base**, and **consumers discomforted**.
- **For advertisers**, there are problems including fraudulent acquisition of ad revenue by ill-intentioned actors (**ad fraud**), the risk that ads will be delivered to websites that could damage the brand (**brand safety**), and instances when ads are not viewable for consumers because they are not sufficiently displayed (**viewability**). There is also dissatisfaction that the number of views (which is the basis for billing) is **not objectively measured by a third party**.
- **For publishers**, there are complaints of poor transparency in transaction details; specifically, there are **concerns that revenue is not being properly distributed to them**, as they cannot see how much advertisers paid for their advertising space. There are concerns that, if this situation continues, **the business base of media companies investing time and money in creating contents will be eroded**.
- **Seventy percent of consumers feel that targeted advertising is annoying or somewhat annoying.**
- **Consumers** providing data used in targeted advertising **are concerned about the handling of personal data**.

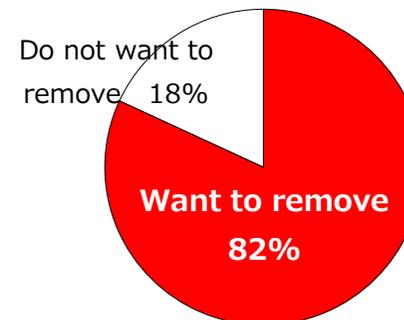
- 60% of advertisers and ad agencies are dissatisfied with the ad fraud countermeasures by a certain PF
- More than 50% of publishers feel there are problems and issues with a certain PF in terms of supply chain transparency.
Reasons: "Better transparency is needed for transaction details and prices" (42%), "Better transparency is needed for handling fees and costs" (39%) *Multiple responses

Source: Questionnaires by the Japan Fair Trade Commission

70% of consumers feel that targeted advertising is annoying or somewhat annoying.



80% of consumers would want to remove targeted advertising if they could change settings in advance.



(Source) Consumer Affairs Agency questionnaire survey

(Note) Both charts are for search engine sites. Shopping platforms have a similar trend.

- **The digital advertising market is exposed to a variety of issues concerning the digital markets**, including competitive environment, transparency, enclosure of data, service and information quality in digital spaces, and privacy.
⇒ **Touchstone** for thinking about the establishment of rules for the digital markets
- Since **the businesses that act as advertisers and publishers are diverse in scale and industry** and **almost all consumers come into contact with digital ads**, it is important to **make it easy for anyone to understand** the issues and risks for the digital ads.
⇒ An environment is essential where **a variety of actors can work to resolve these issues**.

Basic Principles for Rulemaking

- 1) Establish the following three points as essential elements for the sound development of the digital advertising market.
 - (1) Secure **"fairness"**
 - (2) Improve **"transparency"**
 - (3) Ensure **"availability of choice" for each market actor** including general consumers, through the above.
- 2) As this is a fast-changing market, build a **framework that encourages solutions through innovation** rather than excessively inhibiting innovation.
- 3) **Issues should be addressed with a cross-cutting perspective** that takes into account the impact that responses to concerns related to personal data handling will ultimately have on the market competition.

[Approach to Issues]

*Use an effective approach in accordance with what is needed for each issue

- **The Act on Improving Transparency and Fairness of Specified Digital Platforms ('the Act on Improving Transparency')** is a framework suitable to address the issues in the digital advertising market. In order to address the issues through innovation from businesses in fields where the speed of change is swift, this Act **adopts the "co-regulation" methodology** where the government and private enterprise each bear their respective roles, **having large-scale platforms implement the detailed solution through their own innovation** while having **the government provide the general framework**.
- Going forward, we will work to **establish the necessary rules, such as by making the digital advertising market subject to the Act on Improving Transparency**.
- Applying the Antimonopoly Act strictly when a violation of the AMA is found. **Using other approaches as well according to the issues** (the Act on the Protection of Personal Information, the Telecommunications Business Act, etc.).

Basic Principles

- Based on digital platform providers voluntarily and proactively working to improve transparency and fairness. Stipulates that **government involvement and regulations will be kept to a minimum** (adopt the “co-regulations”, **regulatory methodology that delegates details to the voluntary efforts of businesses, while also setting out the general framework for regulations in law**).

Platforms Subject to Regulation

- Designate from among the digital platforms as “**specified digital platform providers**” the businesses providing platforms that have a particular need for a high level of transparency and fairness in transaction and **make them subject to regulation**. (The market and the threshold are to be stipulated by the Cabinet Order.)
- Specifically, for the time being, large-scale online malls and app stores for which the actual state of transactions has been clearly ascertained through surveys are subject to regulation.

The Role of Specified Digital Platform Providers

- Specified digital platform providers **are required to disclose information on transaction conditions, to establish procedures and systems, and to submit a report with a self-evaluation** each fiscal year that covers the measures they have implemented and an overview of their business.
 - * Obligated to notify users providing products beforehand when changing their terms and conditions and to establish a system for handling complaints and disputes.

The Role of the Government

- Perform **monitoring and reviews of the operation** of platforms based on the reports and **publish the results of evaluations** together with the overviews of the reports. In the process of the review, **listen to the opinions of clients, consumers and scholars** and promote the sharing of issues and mutual understanding between the actors involved.
- **In cases where a violation of the Antimonopoly Act is found, the Minister of Economy, Trade and Industry** can, based on the Act on Improving Transparency, **request that the Japan Fair Trade Commission take measures**.

* The regulations in this act apply **regardless of whether the business is located in Japan or abroad**. The act stipulates **the procedures for service by publication** with reference to examples where the Antimonopoly Act has been applied to the business located abroad as well.

• Digital platforms in the digital advertising market and related ones fall into the following **four types**.

Type 1: Ad Intermediary Digital Platforms (1)

Services enabling ad spaces to be provided, by connecting publishers who wish to provide their ad spaces with advertisers who wish to place ad contents.



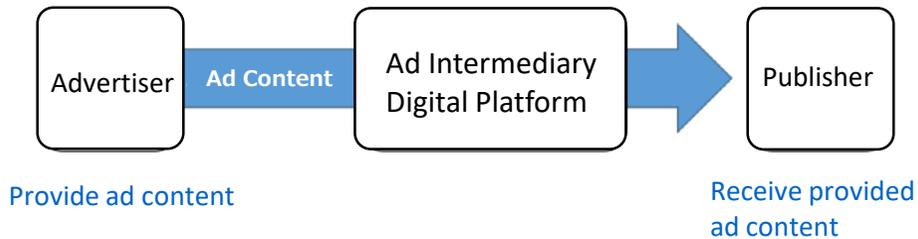
Type 3: Media-Integrated Digital Ad Platforms

Services promoting the provision of products that are advertised, by connecting advertisers who wish to place ads related to their products with consumers who wish to use search services or media such as SNS.



Type 2: Ad Intermediary Digital Platforms (2)

Services enabling ad content to be provided, by connecting advertisers who wish to provide their ad contents with publishers who wish to provide ad spaces for the ad contents.



Type 4: Online Search Services

Services connecting consumers with corporate website users, who have the expectation of attracting consumers through search result exposure, thereby promoting the provision of their products.



OTransparency

Thorough accountability related to the quality of digital ads such as ad fraud (*issue (1), issue (2) (respond in issue (1))*)

Disclosure of connection rules for third party measurement tools (*issue (3)*)

OConcerns Over Data Enclosure

Disclosure of conditions for obtaining and using audience data (*Issue (4)-2*)

OConcerns Over Conflicts of Interest and Self-Preferencing

Formulate and publish "Conflict of Interest and Self-Preferencing Management Policy," etc. (*issue (4)-3, (5), (6)*)

OFairness in Procedures, etc.

Prior notification and explanation of reasons for system/rule changes

Explanation of reasons for restriction of client activities or for refusal of transactions

(*issue (8), (8)-2, issue (7) (handle as a category of issue (8))*)

OPersonal Data

Disclosure of the handling of personal data in an easy-to-understand form (*issue (10)*)

OSearches

Disclosure of main parameters and setup of consultation desks (*issue (9)*)

Evaluation of competitive environment on the default setting of search engines (*issue (4)-1*)

Approach

Proceed with legal consideration toward applying the Act on Improving Transparency.

Guidelines of Ministry of Internal Affairs and Communications

Legal review on the application of the Act on Improving Transparency.

Enforcement of the Antimonopoly Act in case of violations

Direction to Address Issues (Transparency)

Transparency

Quality-related issues in the digital advertising market
(Issue (1))

(Issues)

- While the digital ad market has developed rapidly, issues related to service “quality” exist in such areas as the fraudulent acquisition of ad revenue by ill-intentioned actors (ad fraud), the risk of ads listed on sites that could damage the brand of advertiser itself (brand safety), ads not being seen by consumers (viewability), and unpleasant consumer experiences (user experience).

(Evaluation)

- To address these issues, there is a need for the actors involved, including advertisers and publishers, to implement countermeasures with the correct awareness and a need to enhance mutual understanding for transactions. This is an issue that should be co-worked by all stakeholders in the industry.
- In consideration of the serious risks in the digital ad market, which is currently exceptionally difficult to understand and which has a significant asymmetry of information, all of the service providers are expected to thoroughly carry out the accountability related to the risks.
- Imposing set regulations related to **accountability for these risks**, especially on **large scale platforms**, considering the number of users, the number of ads handled, and the amount of information, can lead to addressing the issues in an effective form.
- In the framework of the review by the government, it is essential to increase the overall effectiveness by promoting improvement in conditions while listening to the views of diverse actors, including advertisers and ad agencies; supporting an expansion in the number of actors using the JICDAQ framework (an effort to verify quality led by industry groups); and clarifying practices that do not lead to excessive demands for mid to small sized platforms.

(Direction to Address the Issues)

- **Easy-to-understand disclosures of the information that can be obtained and the ways to obtain information on quality such as ad fraud.**
- **Establishment of procedures and systems** aimed at the improvement of the overall situation (e.g., improving the understanding of advertisers and publishers through easy-to-understand explanations; contributing to industry-wide efforts).
- Implementation of **monitoring and review** by the government on the progress of the initiatives
→ **Promote behavioral changes of stakeholders including “Advertisers’ Behavioral Reforms on Purchasing Digital Ads”**
*Consider government support for creating information sharing mechanisms to counter illicit actors together with relevant ministries and agencies.

⟨Approach⟩

Proceed with legal consideration toward **applying the Act on Improving Transparency. Large scale platforms will be subject to the rules.**
(Listed below as “Application of the Act on Improving Transparency”)

Voluntary efforts of industry groups

Transparency

Lack of Transparency in Prices and Transaction Details
(Issue (2))

(Issues)

- Among publishers, there are concerns about the lack of transparency in price and transaction details; that they cannot see how much advertisers paid for their ad; about whether revenue is being appropriately distributed to them; and that the media will not have a viable financial base.

(Evaluation)

- Difficult to uniformly obligate the disclosure of prices and handling fees through some regulation or other due to the technological difficulties arising from Japan’s transaction structure and due to concerns about business secrets and privacy.
- On the other hand, through addressing issue (1) it is considered that increasing the awareness of advertisers about digital ad quality, encouraging them to select high quality content for their ad placements, and having publishers construct mechanisms and environments for evaluating their own content value, including efforts such as private marketplaces that collect ad spaces from high quality sites, will lead to an essential solution to the problems that lie behind these issue.

(Direction to Address the Issues)

- **With addressing issue (1), handle efforts to improve consciousness of quality** for evaluations of content value.
- It is important that stakeholders voluntarily align and use the tools of private companies or other methods to make efforts to figure out current conditions of fee structure, etc. These efforts should be evaluated in the **monitoring and review** by the government that is to be implemented for issue (1).

⟨Approach⟩

Voluntary efforts among businesses (using the tools of the private sector or other methods)

Application of the Act on Improving Transparency (addressing issue (1))

Direction to Address Issues (Transparency, Concerns About Data Enclosure)

<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Transparency</p>	<p>Accepting Third Party Measurement Tools (Issue (3))</p>	<p>(Issues)</p> <ul style="list-style-type: none"> The issues that stem from advertisers' demands for <u>measurements by third parties</u> of the results from <u>the number of ads displayed, the number of views, and the number of clicks</u>, which form the basis of billing, and <u>comparisons of platforms in a cross-cutting manner</u>. It is pointed out that there are <u>restrictions on the acceptance of tools</u> for measuring ad reach indices by third parties in some platforms and that there is <u>insufficient transparency and fairness in reviews and processes</u>. <p>(Evaluation)</p> <ul style="list-style-type: none"> Enabling advertisers to use third party tools when they request <u>will lead to their opportunities to make rational choices</u>. This is also important from the perspective of <u>securing a fair competitive environment</u>. <p>(Direction to Address the Issues)</p> <ul style="list-style-type: none"> Disclosure of access points and connection conditions when providers of third-party tools request a connection; disclosure of reasons when unable to connect Establishment of procedures and systems to deal adequately with connection requests for third party tools (e.g., <u>presenting conditions in advance; not unduly refusing requests</u>). Implementation of monitoring and review by the government (evaluation of whether authorizations are being appropriately carried out, etc.). 	<p>⟨Approach⟩ Application of the Act on Improving Transparency</p>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Concerns about Data Enclosure</p>	<p>Restrictions on Data Provision by Platforms, etc. (the "Walled Garden" issue) (Issue (4)-2)</p>	<p>(Issues)</p> <ul style="list-style-type: none"> The issues stem from advertisers' dissatisfaction at <u>not being sufficiently provided by the platforms with the audience data</u> that is based on the response of consumers to the ads that advertisers have placed. <p>(Evaluation)</p> <ul style="list-style-type: none"> For advertisers, <u>audience data</u>, such as information related to interests and preferences of people who react to their ads, <u>is an important asset that they use to improve understanding of their customers and the accuracy of their ad placements as well as to place ads efficiently</u>. There is a concern that they are not being sufficiently provided with these data by large-scale platforms. <p>(Direction to Address the Issues)</p> <ul style="list-style-type: none"> Disclosure of whether or not advertisers can obtain audience data, the details on what audience data can be obtained, and the ways to obtain those data. Establishment of procedures and systems to deal adequately with requests for audience data (e.g., <u>consultation desk, providing opportunities to hear the opinions of advertisers</u>) Implementation of monitoring and review by the government (evaluation of whether appropriate measures are being taken, etc.). 	<p>⟨Approach⟩ Application of the Act on Improving Transparency</p>

Direction to Address Issues

(Concerns About Conflicts of Interest and Self-Preferencing)

<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Concerns About Conflicts of Interest and Self-Preferencing</p>	<p>Lack of Transparency in Data Use Within Platforms (Issue (4)-3)</p> <p>Conflicts of Interest (Issue (5))</p> <p>Self-Preferencing (Bidding Design, etc.) (Issue (6))</p>	<p>(Issues)</p> <ul style="list-style-type: none"> • Originates in the situation where the <u>matching and bidding processes are not transparent (black box)</u> and the situation where <u>data usage</u> obtained from advertisers and publishers <u>lacks transparency</u> within the platforms. Clients are concerned that there may be <u>conflicts of interest</u> and <u>self-preferencing</u> in the platforms. <p>(Evaluation)</p> <ul style="list-style-type: none"> • Characteristics of the Digital Advertising Market: <ul style="list-style-type: none"> ✓ Matching is performed <u>(1) automatically (2) at high speeds</u>. Additionally, the number of these matches is <u>(3) enormous</u>. ✓ (4) <u>There are no regulations that guarantee objective fairness in matching</u>. ✓ (5) <u>There is an aspect in which some matching mechanisms must be made secret</u> as there is the possibility of abuse by third parties. • From the perspective of the users of the platforms, even if there were conflicts of interest and/or self-preferencing in the platforms, <u>it would be exceptionally difficult to recognize this. It is also exceptionally difficult to verify this from the outside</u>. <p>(Direction to Address the Issues)</p> <ul style="list-style-type: none"> • <u>Disclosure of the details of the data</u> that platforms obtain from advertisers and publishers and make use of, as well as <u>disclosure of the conditions related to the collection and use of these data (to which extent they are used)</u>. • <u>Specify and break into types the transactions and activities where there may be risks for conflicts of interest and/or self-preferencing. Formulate and publish policies related to the methods to manage the risks of each type and the governance systems (“Conflicts of Interest and Self-Preferencing Management Policy”)</u>. • Implement the necessary measures based on the Policy. • Implementation of <u>monitoring and review</u> by the government (evaluate what kind of internal governance is being implemented and whether it is actually functioning effectively, etc.). 	<p>(Approach) Application of the Act on Improving Transparency</p>
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Direction to Address Issues (Fairness in Procedures)

Fairness in Procedures

System/Rule Changes, Restrictions on the Business Activities of Clients /Refusals of transactions
(Issue (8), Issue (8)-2)

(Issues)

- Clients of PFs have pointed out that there are occasions where it turned out that they receive no explanation or notification prior to system or rule changes, or where the period prior to changes is insufficient, and where they often have no room for negotiation at the time of prior notification or explanation.
- Clients of PFs have pointed out that they have similar issues when they are imposed some restrictions on their business activities or even when they are refused to transact.

(Evaluation)

- From the perspective of securing business predictability for clients of PFs, preventing arbitrary decisions by PFs, and preventing undue disadvantages for clients of PFs, some measure is needed.

(Direction to Address the Issues)

- **Prior disclosure of details and reasons to clients of PFs** when there are system or rule changes, when some restrictions are imposed on business activities, or when transaction is refused.
- **Establishment of procedures and systems** for handling complaints and inquiries (e.g., visualization of processing status of complaints; establishment of a system where appropriate decisions can be made in Japan branch offices of PFs).
- Implementation of **monitoring and reviews** by the government (evaluations of whether appropriate measures are being taken)

(Approach)

Application of the Act on Improving Transparency

Fairness in Procedures

Restrictions on Access to Own Media
(Issue (7))

(Issues)

- For the sale of YouTube’s ad spaces, Google had been allowing other DSP businesses that it had approved to purchase the spaces prior to 2015, but in January 2016 Google restricted these purchases to Google’s own DSP. As a result, some argue that advertisers have no choice but to use Google’s DSP and that other DSPs, unable to intermediate YouTube’s ad spaces, cannot compete with Google.

(Evaluation)

- While there is a shared awareness that YouTube has an overwhelming presence in digital video advertising, the inability to place ads on YouTube has had a negative impact on the business activities of at least some DSP businesses, and a situation has arisen where this may have led to a loss of willingness to invest for new service development by other DSP businesses. It is hard to say that there are no concerns about competition.
- It is probable that if a platform with integrated media changes its rules by utilizing the strengths of this media as a lever, this might lead to impeding fair competition in other layers.

(Direction to Address the Issues)

- These issues can be understood as a category of issue (8) and (8)-2 and the measures listed for (8) and (8)-2 will be implemented to address this type of issues.

Direction to Address Issues (Handling of Personal Data)

Handling of Personal Data

Concerns About the Collection and Use of Personal Data
(Issue (10))

(Issues)

- There is a need to clarify the following points concerning the handling of personal data that is collected and used by the parties concerned such as platforms for targeted advertising and to dispel the concerns and anxieties of consumers.
 - (1) Whether transparency and effectiveness of consent controls for the collection and use of data are adequately secured
 - (2) Whether they engage in appropriate consideration and handling in view of the cognitive limit of consumers

(Evaluation)

- The platforms are providing a certain level of information about personal data they collect and use, but consumers do not have a sufficient level of understanding about the complex data flow (including use of data across devices), how the data is processed, and what factors cause an ad to be displayed.
- Platforms also provide opportunities to choose options such as opt-out (to stop targeted ads), but recognition and use of these options is still insufficient.
- A concern of users about personal data handling is one factor for the negative reception of consumers towards targeted advertising. This is an issue that also carries a risk of damage to the brands of advertisers.

(Direction to Address the Issues)

- There is a need for the parties concerned, such as the platforms, ad tech businesses, and publishers, to work towards securing transparency and effectiveness of consent controls. The following points will be addressed, therefore, via **the Ministry of Internal Affairs and Communications(MIC) "Personal Data Protection Guidelines in the Telecommunications Industry,"** which is scheduled to be re-examined this fall.(this re-examination will be done in conjunction with the Personal Information Protection Commission and industry groups).
 - ✓ **Disclosure of the details of the collected data and the conditions for collecting and using these data**
 - ✓ **Disclosure of the fact that targeted advertising is implemented and the providing of opportunities for prior settings and opting out**
 - ✓ **Disclosure of whether to provide options for use of service when consumers refuse to provide or allow use of their data**
 - ✓ **Disclosure of the availability of data portability and its methods**
- **Monitoring** how far the understanding and recognition/use of options has progressed among consumers, especially **for large scale platforms,** based on the above Guidelines.
- From the perspective of the risk of damage to brands for advertisers, **disclosures and monitoring based on the Act on Improving Transparency** will be consistent with the results of the re-examination of the Guidelines of the MIC mentioned above. Carry out monitoring in conjunction with the MIC as well. In implementing the measures, take into consideration the status of implementation of the above-mentioned Guidelines and keep the measure to the minimum extent necessary (specifically, not to hamper the compliance of businesses for evaluations).
- It is desirable for industry groups related to targeted advertising to strengthen the promotion of specific efforts for sensitive information in view of the cognitive limit of consumers (e.g., setting forth industry guidelines).

(Approach)

Application of the Personal Data Protection Guidelines in the Telecommunications Industry (Guidelines based on the Act on the Protection of Personal Information and the Telecommunications Business Act)

Application of the Act on Improving Transparency (measures based on the re-examination of the above-mentioned Guidelines)

Voluntary efforts by industry groups

Direction to Address Issues (Searches)

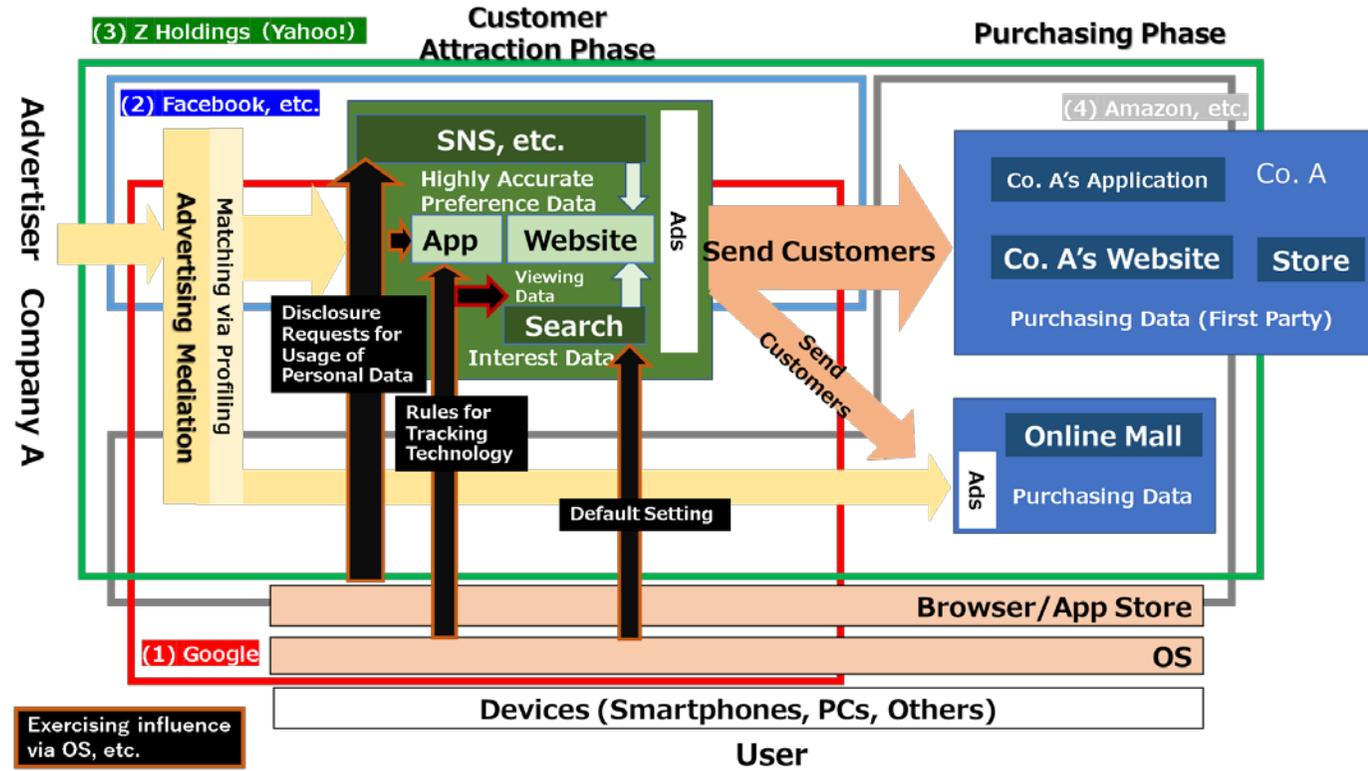
Searches	<p>Changes to the Main Parameters of Search Engines (Issue (9))</p>	<p>(Issues)</p> <ul style="list-style-type: none"> • <u>Changes to the algorithms, such as fundamental changes of the weighting among the parameters that decide search rankings, can significantly affect the business operations</u> of corporate website users. • <u>Some platforms disclose a certain amount of information about the mechanisms in their search algorithms and the main parameters for their search engines.</u> However, some <u>corporate website users have pointed out that these explanations are abstract.</u> • Corporate website users have also stated that they have <u>given up inquiring</u> about changes to the search engine algorithms as <u>it is meaningless even if an inquiry is made</u>, that there is nowhere to inquire in the first place, or <u>that they do not know where to inquire.</u> <p>(Evaluation)</p> <ul style="list-style-type: none"> • <u>There is a need to take measures that increase the effectiveness of disclosures about changes that could have a major impact on corporate website users (i.e. changes to major factors)</u> • While it is necessary to bear in mind both (i) the difficulty of responding individually to inquiries from a vast number of corporate website users, and (ii) the concerns about impairing neutrality by providing information only to a certain party, there is a need to address, <u>to a necessary and reasonable extent</u>, complaints and inquiries related to changes to major factors. <p>(Direction to Address the Issues)</p> <ul style="list-style-type: none"> • <u>Disclosure of major factors to decide website rankings</u>, disclosure of the details and reasons in the event of discriminatory treatments, and <u>prior disclosure of the details and reasons of changes to major factors</u> (to the extent that does not cause harm). • <u>Establishment of procedures and systems</u> for addressing <u>complaints and inquiries</u> concerning changes to search algorithms • Implementation of <u>monitoring and review</u> by the government (evaluations of platforms' measures) 	<p>⟨Approach⟩ Carry out legal review on the application of the Act on Improving Transparency, including the review on the relations between platforms and corporate website users</p>
Searches	<p>Issues of Search Engine Default Settings (Acquisition of Data Used for Advertising, etc.) (Issue (4)-1)</p>	<p>(Issues)</p> <ul style="list-style-type: none"> • <u>Once the OEMs for Google's Android OS devices decide to pre-install Google apps such as search, there is a need to place the Google apps on the home screen.</u> • There are cases where contracts are concluded to the effect that the OEMs and/or carriers for Android devices agree to <u>promote specified Google services on the devices (there are also cases where the default setting for the search access points is Google search)</u> and in exchange <u>Google pays to these companies a certain percentage of the revenue obtained from the services promoted on the relevant devices.</u> <p>(Evaluation)</p> <ul style="list-style-type: none"> • There is a possibility that <u>Google, which is in a monopolistic position for search services, concludes contracts with OEMs and/or carriers by means of economic enticement based on its enormous ad revenue, and that in fact users are locked into Google search for many search access points.</u> It is hard to say that there are no concerns that <u>Google maintains or strengthens its competitive advantage.</u> <p>(Direction to Address the Issues)</p> <ul style="list-style-type: none"> • <u>The Japan Fair Trade Commission will strictly enforce the Antimonopoly Act in case of any violations.</u> • <u>It is important to examine the impact on the competitive environment based on the layer structure</u> where a variety of apps are used on Operating Systems, etc. that play the role of infrastructure. 	<p>⟨Approach⟩ Strict enforcement of the Antimonopoly Act by the Japan Fair Trade Commission in case of any violations</p> <p>Examine the impact of the layer structure on the competitive environment</p>

<The Structure of Competition among Platforms in Overview of the Digital Market as a Whole>

•The digital advertising market is a service that “attracts customers” on searches, SNS, websites, and apps and then “sends customers” to the advertisers (the stores) or the apps, where they may finally make a “purchase” after having gained interest from the advertising. Operating systems, etc. have an influence on rules such as for the handling of personal data in the “customer attraction” phase.

Structure of Competition among Platforms in the Digital Advertising Market

- Google:**
Has secured the customer attraction phase such as searches leveraging its OS/browser while also mediating ads
- Facebook, etc.:**
Has secured the customer attraction phase for posting sites
- Z Holdings(Yahoo!):**
Has secured the customer attraction phase such as searches and portal sites and is also expanding to the purchase phase
- Amazon, etc.:**
Expanding from the purchase phase to ads



○Future Competitive Outlook

<Factors for Change>
 •Restrictions on tracking data such as a ban on third party cookies.
 → **Possibility of a widening competitive gap with platforms** that possess first party data

<Counteracting Movements>
 •Advertisers/Platforms: Use of first party data, expansion of ad business in the purchasing phase
 •Publishers: Development of private marketplaces that appreciate content value
 •Ad Tech Services: Strategy of differentiation via marketing services, such as through the use of first party data and cooperation with original media

→ It is less probable that these will change the existing competitive structure.

○ Issues to be Closely and Continuously Monitored

〈Vertical Integrations of the Digital Advertising Market〉

For the time being, promote voluntary efforts and dispel concerns via co-regulation approach for transparency.

→ Continue to monitor market conditions and international debates over how to evaluate the vertically integrated structures.

〈Effect of Strengthening Privacy Protection on Competition〉

Concerns that limitations of tracking viewing history might solidify the oligopolistic structure.

→ Watch the impact on the competitive environment, including trends in counteracting movements (alternative technology, emphasis on first party data, content targeting, etc.).

〈Influence of Operating Systems, etc. on Structure of Competition〉

Operating systems, etc. have an impact not only on the digital advertising market but also on “rules of the game,” such as privacy and default settings for searches and other apps, and they may significantly affect the structure of competition.

→ Examine the impact of the layer structure, which is based on operating systems, on the structure of competition in the digital markets, as a forthcoming evaluation of competition.

〈Social “Distortions” in Digital Economy Underpinned by the Digital Advertising Market〉

While digital economy is underpinned by digital ads, distortions such as the “filter bubble effect” or “fake news” brought about by the extreme attention economy have become more noticeable.

→ Mitigate these drawbacks and aim at building digital society based on trust through realizing the “Trusted Web”

Trends in Policies regarding Digital Platforms in Other Jurisdictions and Japan's Position (1)

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- **Recent trends in establishing cross-cutting rules** regarding digital platforms in various jurisdictions (references below) :
 - (1) Explore rules which apply to **large scale platforms**.
 - (2) **Ex ante regulations**, as there is a strong network effect and a rapid increase in influence on the market.
 - For (1), **Japan has adopted an approach that limited rules to large scale platforms** in the Act on Improving Transparency, **in advance of other jurisdictions**.
 - For (2), Japan has adopted a **co-regulation** approach in consideration of the need to strike a balance with innovation.
 - ⇒ **Continue to review the rules**
- Various actions in several digital markets (see next page). If the Act on Improving Transparency were to be applied to the digital advertising field in Japan, **Japan might be ahead of the curve globally in establishing rules in this field**.
 - ⇒ **Disseminate Japan's rules and frame of thought** for the digital advertising market. **Contribute internationally** to the rulemaking for the digital markets.

〈1. Activities Related to the Establishment of Cross-Sectional Rules〉

Sources: Press releases of respective jurisdictions, etc.

○Europe (European Commission)

- Regulation on platform transaction transparency (platform-to-business regulation) went into effect in July last year
- Announced (in December last year) the draft of "Digital Markets Act" which prescribes, in particular, the list of prohibited practices (self-preferencing, tie-ins, data-related activities) by large sale platforms. The draft of this Act is expected to be debated in the European Parliament beginning this year.

○Japan

- The Act on Improving Transparency and Fairness of Digital Platforms went into effect on February 1 this year (applied to large-scale operators of online shopping malls and app stores)
- Revised M&A guidelines in the Antimonopoly Act (not yet revised in US or EU)
- Formulated guidelines on abuse of a superior bargaining position in transactions between digital platforms and consumers

○United States

- US House of Congress (Subcommittee on Antitrust, Commercial, and Administrative Law of the Committee on the Judiciary): Published investigative report on Big Tech companies on October 6 last year. (Proposed the structural separations of platforms, line of business restrictions, prevention from self-preferencing, and an obligation for data portability)
 - (→ Items related to measures to address actions when platforms have not reached the monopoly (e.g., when they abuse their superior bargaining position) and to reduce the burden of proof for the antitrust law violations)

Source: Press releases of respective jurisdictions, etc.

2. Actions in Specific Markets

1) Searches



OEuropean Commission: Tying related to Google Search was found illegal in 2018 (introduction of the search choice screen as a remedy) → In litigation



OUS Department of Justice: Sued Google for anti-competitive practices in the search market in October last year (38 states also sued, including over self-preferencing)



OJapan: Evaluation of competition on the search market as one of the issues in the digital advertising market study

2) Digital Advertising



OEuropean Commission: Google preventing rivals (such as Microsoft and Yahoo) from placing their search ads was found illegal in 2019 → In litigation



OCMA : Published final report on digital advertising in July last year → British government examining regulation framework.
: Opened an investigation into Google's policy changes to remove third-party cookies on Google Chrome in January this year ("privacy sandbox")



OJapan: Implemented evaluation of competition at the Headquarters for Digital Market Competition (final report in April this year). Fact-finding survey on digital platform operators' trade practices by JFTC as well (published in February this year).



OUS Department of Justice (and states): Under investigation (10 states including Texas suing Google for excluding other companies) (FTC suing Facebook)



OACCC (Australian Competition and Consumer Commission)
· Formulation of a draft of the news media bargaining code in July last year. Law went into effect in February of this year.
· Inquiring current market conditions related to digital ads (interim report in January this year). Plan to be reported to the government this summer.
· Also continuing periodic inquiries related to digital platforms (published first interim report on October 23 last year)

3) App Store



OEuropean Commission: Began full-scale investigation into Apple's app store commission fees and other rules in June last year.



OUS Private Litigation: A gaming company filed a suit against Apple for its app store processing fees in August last year, and the confrontation has intensified.