

1. Current Status and Issues

Transaction environment issues discerned from surveys of actual conditions for online malls and app stores

- The **lack of transparency** in relation to amendments to terms, grounds for rejecting transactions, data use, and the like and the **extremely 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 systems** to deal with trading partners' opinions
- These types of problems **could cause actions that impede fair competition**

Scale of the market:
 Market for online malls: 9 trillion yen in sales*; Number of product providers: 990,000 entities * Approx. 18 trillion yen if service industry is included
 Market for app stores: 1.7 trillion yen in sales; Number product providers: over 700,000 entities

Percentage of product providers that are forced to use digital platforms because of their heavy dependence on sales from the platforms:
 Mall A: 77% App store A: 51%
 Mall B: 64% App store B: 47%

Improving the transaction environment with respect to product providers that use 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 the transparency and fairness of digital platforms.

2. Outline

(1) Basic philosophy

The bill specifies the following: digital platforms contribute to an increase in benefits for users, as well as play an important role in increasing the vitality of and realizing the sustainable development of the Japanese economy and society; in light of this, measures for improving transparency and fairness of digital platforms should be implemented, primarily based on voluntary and proactive initiatives by digital platform providers, with government involvement or other regulations kept to the minimum; thereby digital platform providers can adequately exercise their originality and ingenuity, and mutual understanding in business relationship between digital platform providers and product providers is to be promoted.

(2) Scope of regulation

● Definition of "Specified Digital Platform Providers"

- "Digital platforms" are to be defined in terms of the following requirements:
 - they provide **places (multi-sided markets) to connect** product providers and consumers using digital technology;
 - they provide services via the **internet**; and (iii) they provide services utilizing **network effects** (through, for example, relationships where mutual benefits for product providers and consumers increase, thereby increasing the number of both providers and consumers)
- Among digital platforms that fall under (i) through (iii) above, those that are **particularly required to improve transparency and fairness** are to be stipulated as **"Specified Digital Platforms" ("Specified DPF")** by a Cabinet Order, and "Specified DPF Providers" are subject to regulation. In doing so, **genres and the threshold of scale are to be stipulated, and the scope is to be defined to the minimum necessity.**
- With the objective of increasing predictability, provisions for procedures to clarify whether a digital platform falls under the criteria specified by the Cabinet Order are to be established.
- Conduct survey for "digital platforms" in general to the extent necessary in order to review the regulated genres.

Elements in considering genres and scale stipulated as Specified DPF:
 (i) the degree of that genre's impact on the lives of the people and the national economy;
 (ii) the degree of concentration of use of certain digital platforms in that genres;
 (iii) the necessity for the protection of product providers based on actual conditions and circumstances;
 (iv) current situation of other regulations or measures and policies; and
 (v) certain scale (e.g., sales) has been reached within that genre.
 ⇒ 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 would be subject to regulation.

(3) Information notification and establishment of procedures and systems

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

- Notification of contract terms and conditions and prior notification of contract amendments and the like to users are to be made obligatory.** Appropriate exceptions, such as the case of being unable to notify due to security reasons, are to be stipulated.
- Administrative measures: **Recommendations and public announcements** if notification is not conducted
Administrative orders if correction is not made thereafter without justifiable grounds

Examples of items for notification:

- Criteria for rejecting transactions
- In the case of requesting the use of other services, that fact and the reasons
- In the case of requesting amendment of a contract or operations that are not included in the contract, prior notification of the details thereof and the reasons
- In the case of rejecting transactions, prior notification of that fact and the reasons

- Matters regarding handling of inquiries, complaints, and the like (whom to contact, process flow, and the like)
 - Basic matters for deciding search rankings (not notification of algorithms)*
 - Subject of and conditions for the data obtained and used by Specified DPF providers*
 - Whether product providers may obtain and use data, and if so, the extent thereof, the method of doing so, and the like
- (For the matters marked with *, notification is required to not only product providers but consumers.)

b) Establishment of procedures and systems through independent efforts

- Specified DPF providers are to establish procedures and systems based on principles prescribed by the Minister of Economy, Trade and Industry.**
- Administrative measures: **Recommendations and public announcements** if particularly necessary

Examples of items included in principles:

- Establishment of systems to deal appropriately with product providers (including local managers and the like)
- Establishment of procedures and systems to ensure fairness of transactions
- Establishment of dispute settlement systems and the like

c) Reporting and monitoring of operational status

- Each Specified DPF provider is to submit to the Minister of Economy, Trade and Industry its status regarding a) and b) above and **a report affixed with a self-evaluation thereof for every fiscal year**
- Upon receiving a report, the Minister of Economy, Trade and Industry is to **review the operational status of the Specified DPF and announce an evaluation**. In doing so, the Minister is to promote sharing issues and mutual understanding among related parties, **based on the basic philosophy, through hearing opinions in a properly balanced way from product providers, consumers, Specified DPF providers, and the like.** The Minister is also to **evaluate proactive initiatives as best practice.**

Report contents (not exhaustive)

- Business outline
- Status of information notification
- Status of establishing operational procedures and systems
- Status of settlement of disputes

- Specified DPF providers are to make their efforts to voluntarily improve transparency and fairness based on that evaluation**

(4) Cooperation with the Japan Fair Trade Commission

- Establish a system in which the Minister of Economy, Trade and Industry can request the Japan Fair Trade Commission to take actions under the Anti-monopoly Act when the Minister acknowledges that a case of possible violation of the Anti-monopoly Act has occurred.**

(5) Other regulations

a) Measures to lower the barriers for product providers to provide the information to the Minister of Economy, Trade and Industry

- Readily enabling product providers etc., who are under contractual obligations of confidentiality, to provide information through a process of collection of reports by the Minister of Economy, Trade and Industry**
- Prohibition of disadvantageous treatment for users who have reported any cases where a Specified DPF Provider does not comply with the regulation.**

b) Competent ministers

- The regulations will provide that the **Minister of Economy, Trade and Industry**, which has jurisdiction over rules regarding transactions, is to be the competent minister, and the Minister is to **consult the Minister of Internal Affairs and Communications** regarding any matters concerning data distribution or the like.
- Consultation regarding prescription of principles, implementation of surveys for general digital platforms, and the like will be **conducted with competent ministers having jurisdiction over the businesses concerned.**

c) Application of law in and outside Japan

The regulations of the Bill are to apply both in and outside Japan; therefore, **service-by-publication procedures are to be established** with reference to examples derived from the Anti-monopoly Act, which is currently applicable to overseas business operators, and other sources.

d) Review provisions

The Bill is to be examined for implementation of necessary revisions about three years after the Bill is to take effect, based on the status and the like of its enforcement.