

5th Osaka Symposium
Competition Policy Research Centre,
Japan Fair Trade Commission

Ecosystems by Digital Platforms

Introduction

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I. ISSUES

Digital platforms and
societal issues in Japan

Personal data

- acquisition
- use and profiling
- management

Digital platforms and
societal issues in Japan

Speech and information

- hate speech
- online defamation and revenge porn
- cyberbullying
- fake news

Consumer detriment

e.g. information products

Working conditions

- gig worker and self-employed
- fissured workplace
- law evasion

Abuse of a superior bargaining position (ASBP) in P2B

- rankings
- returns and reductions
- request of sponsorship money and other benefits

II. REGULATIONS

- Personal Data Protection Law
- Hate Speech Elimination Act and Ordinances
- Provider Liability Limitation Act &
 - - The Office for the Protection of Human Rights.
 - - Ministry of internal affairs and communication.
- Consumer Law
- Regulations on the abuse of superior bargaining positions under the Antimonopoly Act
- Transparency Act

Personal Data Protection Law

(Purpose)

Article 1 In view of the fact that the use of personal information is significantly expanding with the development of the digital society, this Law establishes the basic principles, the preparation of basic policies by the Government and other matters that form the basis of measures for the protection of personal information with regard to the proper handling of personal information, clarifies the responsibilities of the State and local governments, and defines the obligations of business operators and administrative bodies, etc. that handle personal information to comply with these characteristics. In addition to clarifying the responsibilities, etc. of the State and local governments, and defining the obligations, etc. to be observed by business operators and administrative organs, etc. that handle personal information in accordance with their characteristics, the **Personal Information Protection Commission has been** established to ensure the proper and smooth operation of the affairs and business of administrative organs, etc. and to ensure that the proper and effective use of personal information will contribute to the creation of new industries and a vibrant economy and society. The purpose is to protect the rights and interests of individuals, while giving consideration to the fact that the proper and effective use of personal information contributes to the creation of new industries and the realisation of a vibrant economic society and affluent life of the people, and to the usefulness of other personal information.

(Prohibition of improper use).

Article 19 Business operators handling personal information shall not use personal information in a manner that may encourage or induce illegal or unjustified acts.

(Proper acquisition).

Article 20 Business operators handling personal information shall not acquire personal information through deception or other wrongful means.

2 Except in the following cases, a business operator handling personal information shall not acquire personal information requiring special consideration without obtaining the prior consent of the individual.

(i) where required by law

(ii) where it is necessary for the protection of a person's life, body or property and it is difficult to obtain the consent of the person.

Hate Speech Elimination Act

(Official name: Act on the Promotion of Efforts to Eliminate Unjustifiable Discriminatory Speech and Behaviour against Persons of Foreign National Origin)

(Purpose)

Article 1 The purpose of this Law is, in view of the urgent need to eliminate unjustified discriminatory speech and behaviour against persons of foreign origin, to set out the basic principles and clarify the responsibilities of the State and others with regard to efforts to eliminate such discrimination, and to set out and promote basic measures.

...

(Consultation system in place).

Article 5 The State shall establish the necessary systems so that it can accurately respond to consultations concerning unjust discriminatory words and deeds against persons from outside Japan and prevent or resolve disputes concerning them.

2 Local governments shall, based on an appropriate division of roles with the State and in accordance with the actual conditions of the area concerned, endeavour to establish the necessary systems to enable them to respond appropriately to consultations concerning unfair discriminatory words and deeds against persons from outside Japan and to prevent or resolve disputes relating thereto. (2) The Government of Japan shall endeavour to develop the necessary systems to enable it to respond appropriately to consultations concerning unfair and discriminatory language and behaviour against persons from outside Japan and to prevent or resolve disputes relating thereto.

(e.g. improving education)...

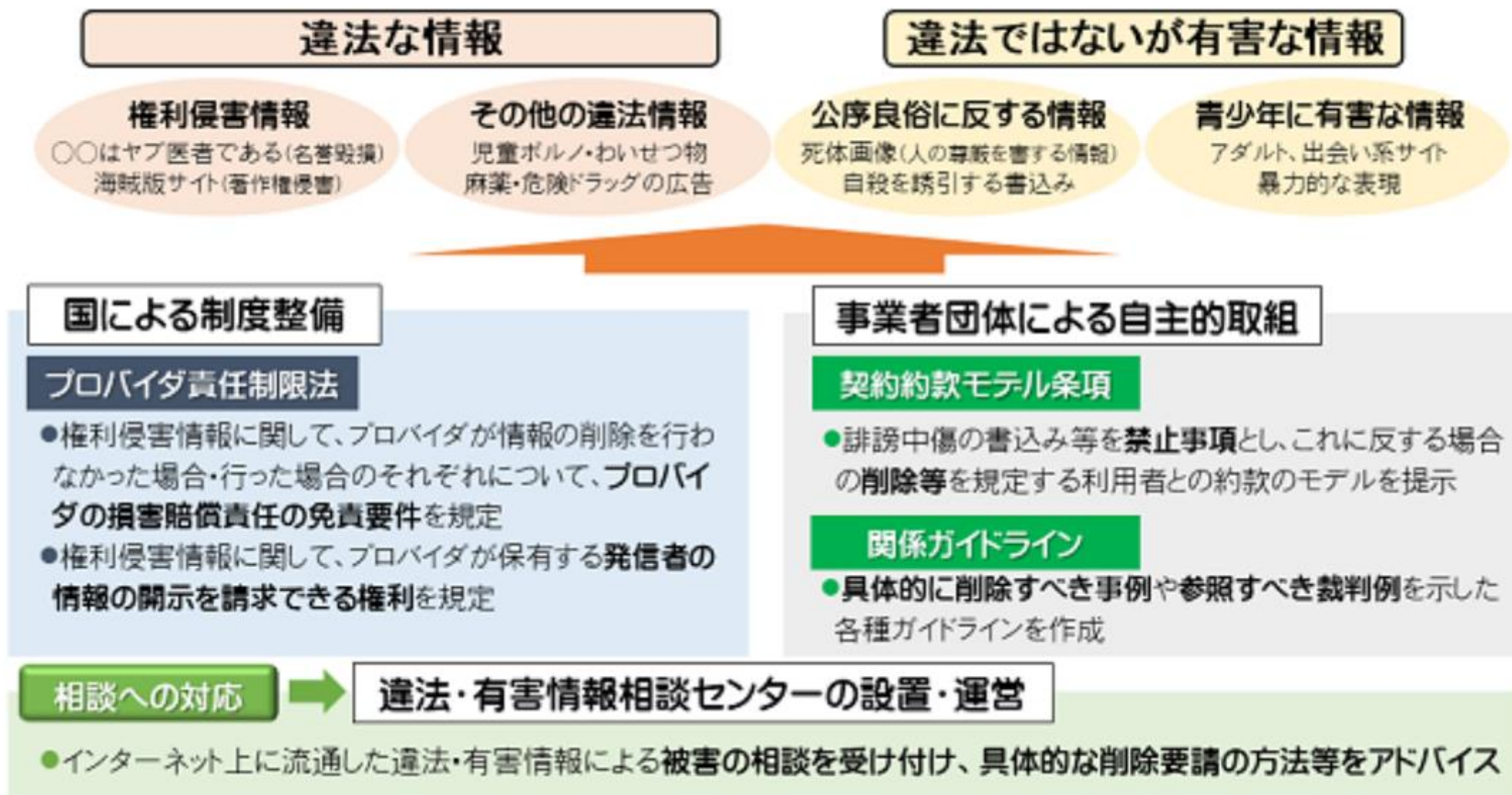
(e.g. awareness-raising activities)...

Provider Liability Limitation Act

- Limitation of liability of providers, etc. for damages: establishes provisions for cases where, when the rights of others are infringed by the distribution of information via specified telecommunications, the providers, etc. concerned are not liable for damages caused thereby.
- Request for disclosure of sender's information: establishes provisions allowing a person who claims that his or her rights have been infringed by the distribution of information by means of specified telecommunications to request the relevant provider, etc. to disclose the sender's information held by the provider, etc. in question.
- Court proceedings concerning sender information disclosure order cases: sets out the procedures, etc. concerning 'sender information disclosure order cases', which enable the disclosure of sender information through an integrated procedure.

Ministry of Internal Affairs and Communications, 'About the Provider Liability Limitation Act' (partly processed by the author)
<https://www.soumu.go.jp/main_sosiki/joho_tsusin/d_syohi/ihoyugai.html>

インターネット上の違法・有害情報への対応に関する概要



Act for the Protection of Consumers Who Use Digital Platforms

Article 1 In view of the fact that digital transaction platforms have become an important infrastructure for people's consumer life with the development of information and communications technology, this Law shall provide for the promotion of voluntary efforts by digital transaction platform providers to contribute to the protection of consumers' interests, requests by the Prime Minister for the suspension of the use of digital transaction platforms and measures pertaining to requests by consumers for the disclosure of information on dealers, etc. and the establishment of a public-private council. The Act on the Protection of the Interests of Consumers through the Use of Digital Transaction Platforms (Act on Specified Commercial Transactions (Act No. 57 of 1976), Article 2, paragraph (2) of the Act on Specified Commercial Transactions (Act No. 57 of 1976)), by providing for the following. (Meaning mail order sales as prescribed in Article 2(2) of the Act on Specified Commercial Transactions (Act No. 57 of 1976). The same shall apply hereinafter). The purpose of this Act is to ensure the cooperation of trade digital platform providers in promoting the appropriateness of transactions and the resolution of disputes pertaining to trade digital platforms (meaning mail order sales as defined in Article 2(2) of the Act on Specified Commercial Transactions (Act No. 57 of 1976)), thereby protecting the interests of consumers using trade digital platforms.

...

(Effort obligations of trading digital platform providers).

Article 3 A provider of a transaction digital platform shall endeavour to take the following measures in order to contribute to the promotion of proper transactions and the resolution of disputes pertaining to mail order sales conducted using the transaction digital platform it provides

(i) Measures shall be taken to enable consumers to smoothly communicate with the seller, etc. with regard to transactions pertaining to mail order sales conducted using said transaction digital platform.

(ii) where a complaint is received from a consumer using the said transaction digital platform concerning the indication of the conditions of sale of goods or specified rights or the conditions of provision of services by the seller, etc. in a venue provided by the said transaction digital platform, investigate the circumstances pertaining to the complaint and take other necessary measures to ensure that the (3) Take measures deemed necessary to ensure the appropriateness of the labeling.

.....

DeepL translator

Outline of the Act for the Protection of Consumers who use Digital Platforms

Problems such as **the distribution of unsafe products, etc.**, and **difficulty in identifying sellers in resolving disputes** exist on "**digital platforms**" such as online marketplaces. In response to this, **a new Act was prepared to protect consumer interests.**

Content of the New Act

(1) Obligations of Digital Platform Providers (Article 3)

- In order to contribute to the optimization of mail-order transactions (Business to Customer transactions) conducted using digital platforms and the promotion of dispute resolution, digital platform providers are **obligated to make efforts to implement and disclose an outline of the following measures** listed in ① to ③ below (and the Prime Minister draws up **guidelines** for specific content).
 - ① Measures **that enable smooth communication** between sellers and consumers
 - ② **Implementation of investigations, etc. as necessary** of complaints regarding the presentation of sales conditions, etc.
 - ③ Requesting sellers to provide information on **their identity** as necessary

(2) Suspension of Listing Products (Article 4)

- The Prime Minister **requests** that digital platform providers **remove listings, etc.** of unsafe products (* 1) when it is difficult to enforce relevant Individual Acts due to reasons such as that the seller cannot be specified (* 2)
 - ⇒ Exemption of digital platform provider liability for damages to sellers caused in response to requests
- (* 1) Products, etc. that have particularly false or misleading information on important particulars on their labelling (those regarding product safety, etc.)
- (* 2) If the seller can be identified, etc., handling will be in accordance with the Special Commercial Code, etc.

(3) Right to Request Disclosure of Information on Distributors (Article 5)

- Establishes **the right to request the disclosure of seller information** as necessary when consumers make a claim for damages, etc.
- * 1 Digital platform providers are not liable to sellers in responding to requests for disclosure in accordance with appropriate procedures.
- * 2 Not applicable if the amount of damages claimed for is less than a certain amount or the claim has been brought for an unjustifiable purpose

(4) Public-Private Council (Articles 6-9) / Reporting System (Article 10)

- **A public-private council** consisting of national government agencies, groups consisting of digital platform providers, consumer groups, etc. **will be organized to discuss matters that each entity is responsible for handling, such as dealing with malicious sellers.**
- Establishing of **a reporting system** in which **consumers, etc.** can report the risk of damage to consumers and request that **the Prime Minister** (Consumer Affairs Agency) takes appropriate measures in response to this

* Comes into force as of the date specified by Cabinet Order within one year from the date of promulgation.

* The review is to be made in the 3rd year of enforcement of this Act in light of the status of its enforcement and changes to economic and social conditions.

Abuse of superior bargaining position: definition

Antimonopoly Act (AMA) Art 2(9)

(v) engaging in any act specified in one of the following by making use of one's superior bargaining position over the counterparty unjustly, in light of normal business practices:

(a) causing the counterparty in continuous transactions (including a party with whom one newly intends to engage in continuous transactions; the same applies in (b) below) to purchase goods or services other than those to which the relevant transactions pertain

(b) causing the counterparty in continuous transactions to provide money, services or other economic benefits

(c) refusing to receive goods in transactions with the counterparty, causing the counterparty to take back such goods after receiving them from the counterparty, delaying payment to the counterparty or reducing the amount of payment, or otherwise establishing or changing trade terms or executing transactions in a way disadvantageous to the counterparty

Abuse of superior bargaining position

Procedures and Penalties

JFTC

Cease and desist order & Surcharge payment (1%) of turnover order

Warning and alert

Commitment procedure

Investigation-voluntary corrective measures-closure of the case

Private litigation: (single) damages and injunction.

Act on Improving Transparency and Fairness of Digital Platforms (Transparency Act)

Article 1 This Act provides for the creation of new data-based industries and changes in the socioeconomic structure on a global scale as a result of recent technological innovation in the field of information and telecommunications technology and for the increasing importance of the roles played by digital platforms. Taking into consideration of the autonomy and independence of digital platform providers and the need to protect the interests of User Providers of Goods, etc., the purpose of this Act is to improve the transparency and fairness of specified digital platforms by designating specified digital platform providers, disclosing the terms and conditions of provision by specified digital platform providers, evaluating the transparency and fairness of specified digital platforms, and taking other measures and contribute to the enhancement of the lives of the public and the sound development of the national economy by promoting fair and free competition in relation to specified digital platforms.

...

Article 3 In light of the recognition that Digital Platforms contribute to the enhancement of the benefits of users and play an important role in the vitality and sustainable development of Japan's economy and society, measures relating to enhancing the transparency and fairness of Digital Platforms shall be based on voluntary and proactive efforts by Digital Platform Providers to enhance the transparency and fairness of Digital Platforms and must be implemented with the objectives of enabling Digital Platform Providers to fully exercise their originality and ingenuity by keeping the involvement of the state and other regulation to the minimum necessary and of promoting mutual understanding in business relationships between Digital Platform Providers and the User Provider of Goods, etc.

...

https://www.meti.go.jp/english/policy/mono_info_service/information_economy/digital_platforms/pdf/1012_001a.pdf

Roles that specified digital platform providers should play

Disclosure of information, e.g., terms and conditions

Specified digital platform providers are required to **disclose terms and conditions** to users and send **a prior notification of changes in such conditions** to them. This requirement aims to improve the transparency of trading.

[Examples of items to be disclosed]

- ✓ Prior notice of detailed changes in terms and conditions and reasons therefor
- ✓ Details of requests by the digital platform providers for customers to use additional paid services and reasons therefor
- ✓ Scope of data use
- ✓ Reasons for rejecting or stopping customers from placing their products on platforms
- ✓ Basic matters that determine search ranking

[Administrative measures and penalties]

- ✓ Issuance of recommendations and publications to improve improper practices
- ✓ Execution of cease and desist orders only when no correction is seen in such practices
- ✓ Imposition of penalties on violators of the orders

Voluntary development of procedures and systems

Specified digital platform providers are required to take necessary measures in accordance with **the guidelines** under the Act and **develop fair procedures and systems**.

[Examples of details of the guidelines]

- ✓ Development of procedures and systems to secure fairness of the platform
- ✓ Development of systems for addressing complaints and settling disputes
- ✓ Development of systems for closely communicating with stakeholders (choosing administrators in Japan)
- ✓ Building of frameworks for understanding conditions that customers are facing

[Administrative measure]

- ✓ Issuance of recommendations and publications to providers to improve their practices in cases where such actions are necessary to ensure that platform providers appropriately and effectively carry out certain measures

Report on the current situation of platform operation

Details of the report

- (1) Outline of business
- (2) Current situation of addressing complaints
- (3) Current situation of information disclosure
- (4) Current situation of voluntary development of procedures and systems
- (5) Results of self-assessment

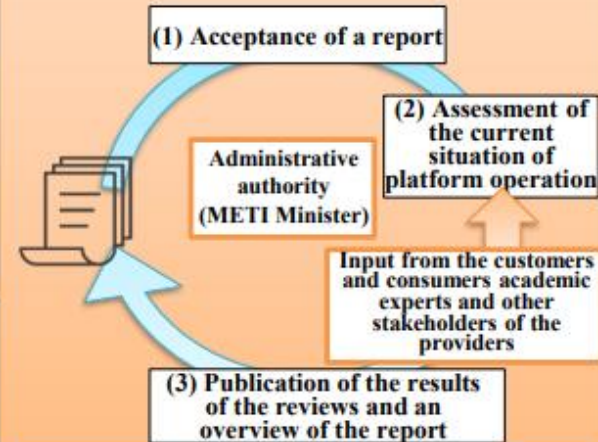
Note: Penalties may be imposed if a provider fails to submit a report or complete descriptions of required items

Voluntary actions to improve transparency and fairness in trading based on the results of the reviews

Roles of the administrative authorities

Implementation of reviews (assessment)

The administrative authority in charge is required to implement **reviews** of the current situation of specified digital platform providers' operation **with input from academic experts, customers and consumers of the providers, and other stakeholders** and to publicize the results of the reviews.



Request the JFTC to execute measures

The METI Minister is authorized to request the JFTC to take appropriate measures under the Antimonopoly Act if it is found that digital platform provider may be involved in any cases which are suspected of being violations of the Antimonopoly Act.

Ministry of Economy, Trade and Industry (METI), Designation of Digital Platform Providers Subject to the Transparency Act (1 April 2021)

(1) Digital platform providers of comprehensive online shopping malls selling goods

Designated Digital Platform Providers	Reference: Comprehensive online shopping malls selling goods provided by the relevant provider
Amazon Japan G.K.	Amazon.co.jp
Rakuten Group, Inc.	Rakuten Ichiba
Yahoo Japan Corporation	Yahoo! Shopping

(2) Digital platform providers of application stores

Designated Digital Platform Providers	Reference: Application stores provided by the relevant provider
Apple Inc. and iTunes K.K.	App Store
Google LLC	Google Play Store

https://www.meti.go.jp/english/press/2021/0401_001.html

METI, Cabinet Decision on the Cabinet Order to Partially Amend the Cabinet Order for Stipulating the Business Category and Scale under Article 4, Paragraph 1 of the Transparency Act (5 July 2022)

2. Outline of the Cabinet Order

As a response to the above, this Cabinet Order amends the Cabinet Order for Stipulating the Business Category and Scale under Article 4, Paragraph 1 of the Act on Improving Transparency and Fairness of Digital Platforms, adding the digital advertising sector to the scope of the TFDPA.

Specifically, it adds the following types of business categories and sizes in order to designate "specified digital platform providers" subject to the regulations under the TFDPA.

(1) Media-Integrated Digital Ad Platforms

(Platforms placing advertisers' ads on their own website such as search engines, portal sites, and SNS, by mainly using auctions)
sales of 100 billion yen or more per fiscal year in Japan

(2) Ad Intermediary Digital Platforms

(Platforms mediating between advertisers and website operators, by mainly using auctions)
sales of 50 billion yen or more per fiscal year in Japan

https://www.meti.go.jp/english/press/2022/0705_001.html

METI, Designation of Digital Platform Providers Subject to Specific Regulations Under the Transparency Act (3 October 2022)

(1) Media-Integrated Digital Ad Platform Providers

* Platforms placing advertisers' ads on their own website such as search engines, portal sites, and SNS, by mainly using auctions

Designated digital platform providers	(Reference) Details of businesses subject to specific regulations
Google LLC	A business that displays ads on Google Search or YouTube through Google Ads, Display & Video360, and other advertisement distribution services for advertisers
Meta Platforms, Inc.	A business that displays ads on Facebook (including Messenger) or Instagram through Facebook Ads, an advertisement distribution service for advertisers
Yahoo Japan Corporation	A business that displays ads on Yahoo! Japan (including Yahoo! Search) through Yahoo! Advertising, an advertisement distribution service for advertisers

(2) Ad Intermediary Digital Platform Providers

* Platforms mediating between advertisers and website operators, by mainly using auctions

Designated digital platform providers	(Reference) Details of businesses subject to specific regulations
Google LLC	A business that displays ads in media owners' ad spaces from AdMob, AdSense, and other services through Google Ads, Display & Video360, and other advertisement distribution services for advertisers

III. QUESTIONS

Questions

- Is the current legislation and system effective?
- Will the role of active competition in the marketplace somehow alleviate the problem?
- If so, how can competition be maintained and promoted?

.....

Questions

- Who should design an ecosystem? Who should set the rules?
- Self-regulation or co-regulation? (Why? Is it effective?)
- Is there any specificity regarding digital platforms?
- Is there any reason to consider that the traditional regulatory approach would be ineffective in relation to societal harm, including those inflicted on consumers and workers? Wouldn't only adjustments to expand to cover the current issues suffice?

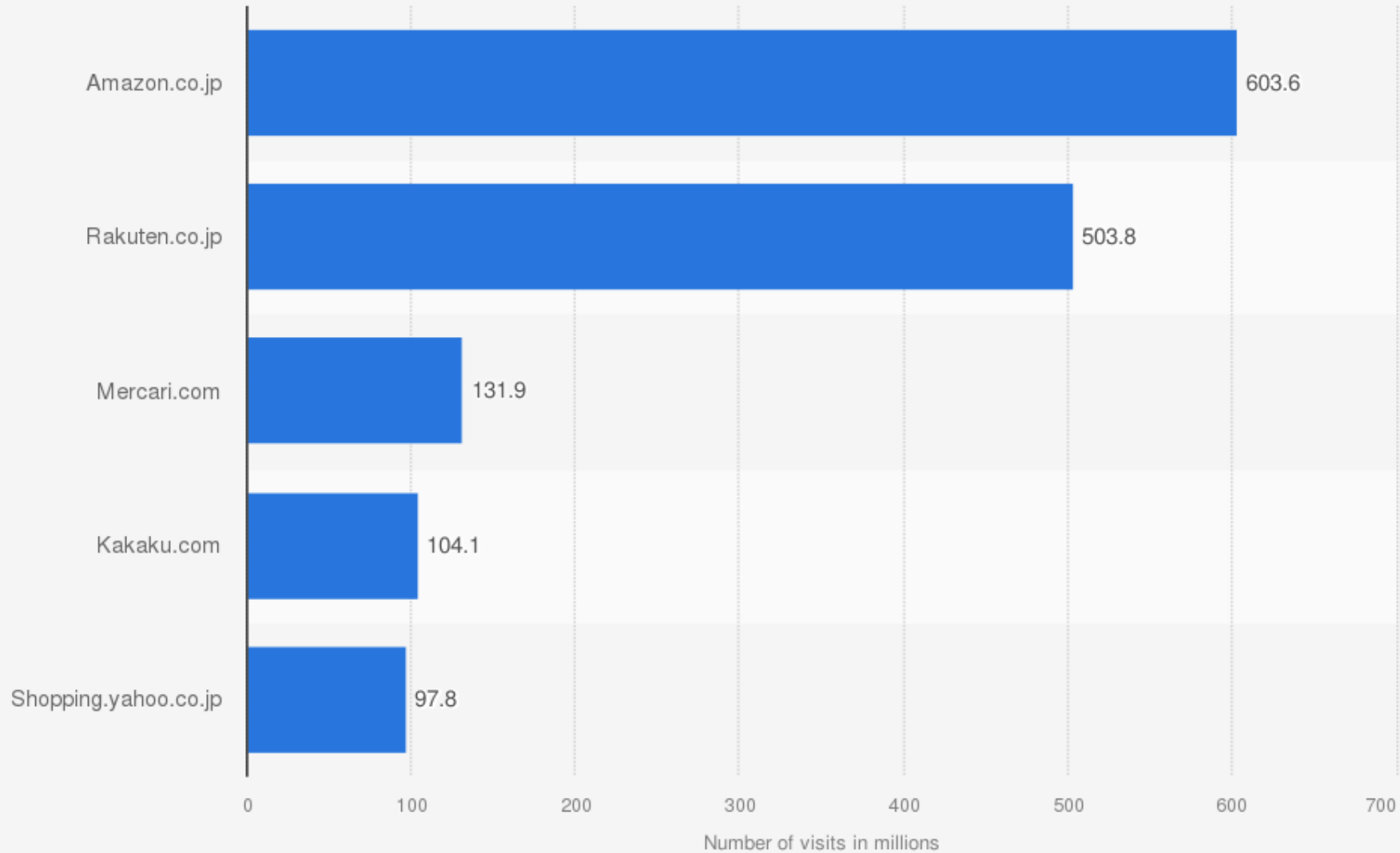
Questions

- Will the (more) active competition alleviate the problems?
- Is there excessive concentration in Japanese markets to begin with? If so (to any extent), how can we maintain and promote competition?
- Is there any trade-off between data protection and the disadvantageous treatment of business users vs competition?
- US GAFAM (GAMMA) vs Japanese digital companies (e.g. Softbank-Yahoo(JP)-LINE, Rakuten)? Are there any long-term benefits for citizens in Japan to strengthening the latter?

Questions

- What business models and backgrounds?
- Who is benefitting and how?
- Who should take responsibility and how?

Number of visitors to popular online retailers in Japan as of August 2022 (in millions)



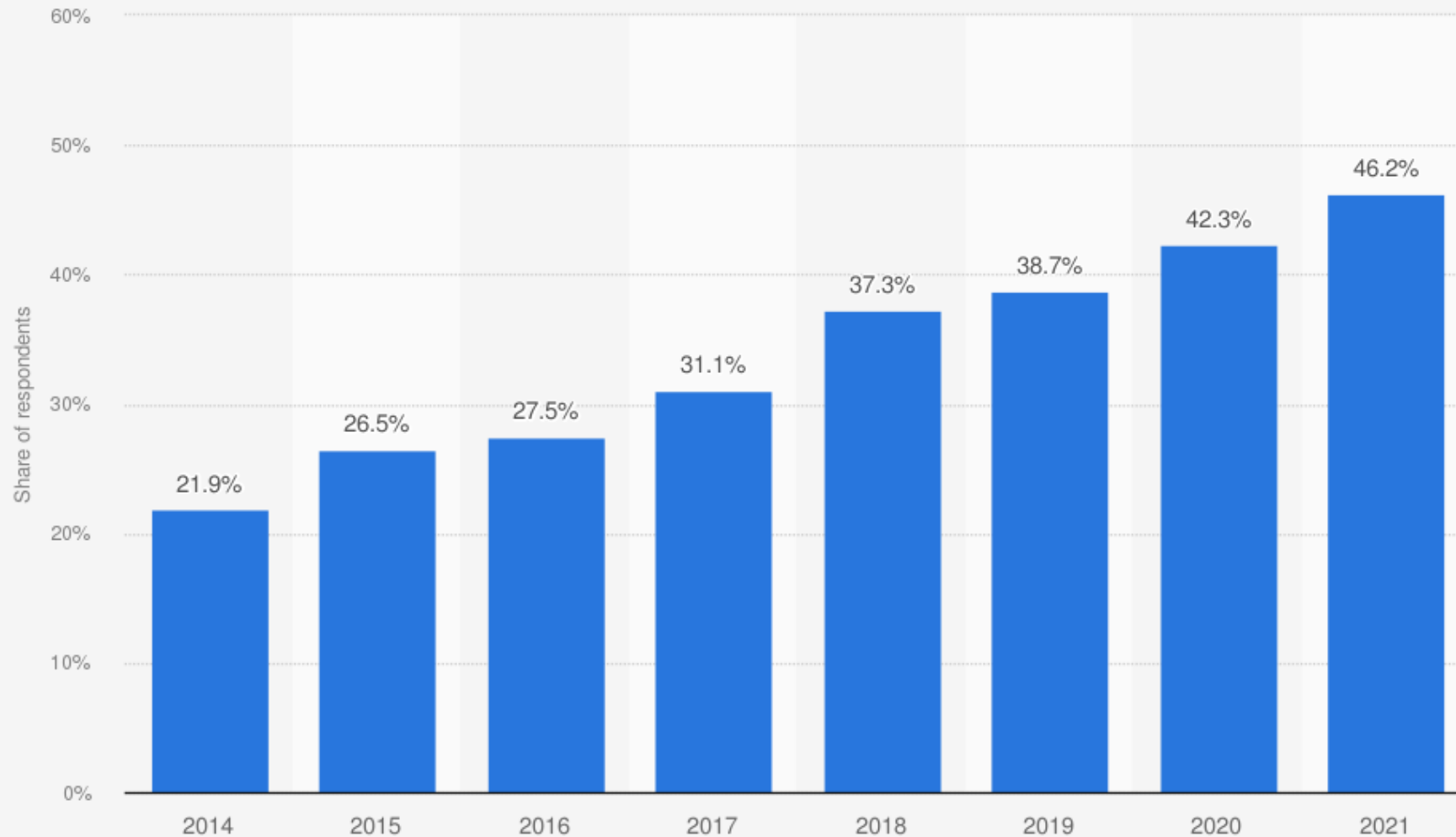
Source
SimilarWeb
© Statista 2022

Additional Information:
Japan; SimilarWeb; August 2022

Amazon's leading position allow it to abuse its position. ?

Is this competition issue? The Japanese market like this tipped?

Share of people who use Twitter in Japan from fiscal year 2014 to 2021



More accountable
SNS! (Twitter is doing
too little.)

What regulation,
though?

Sources

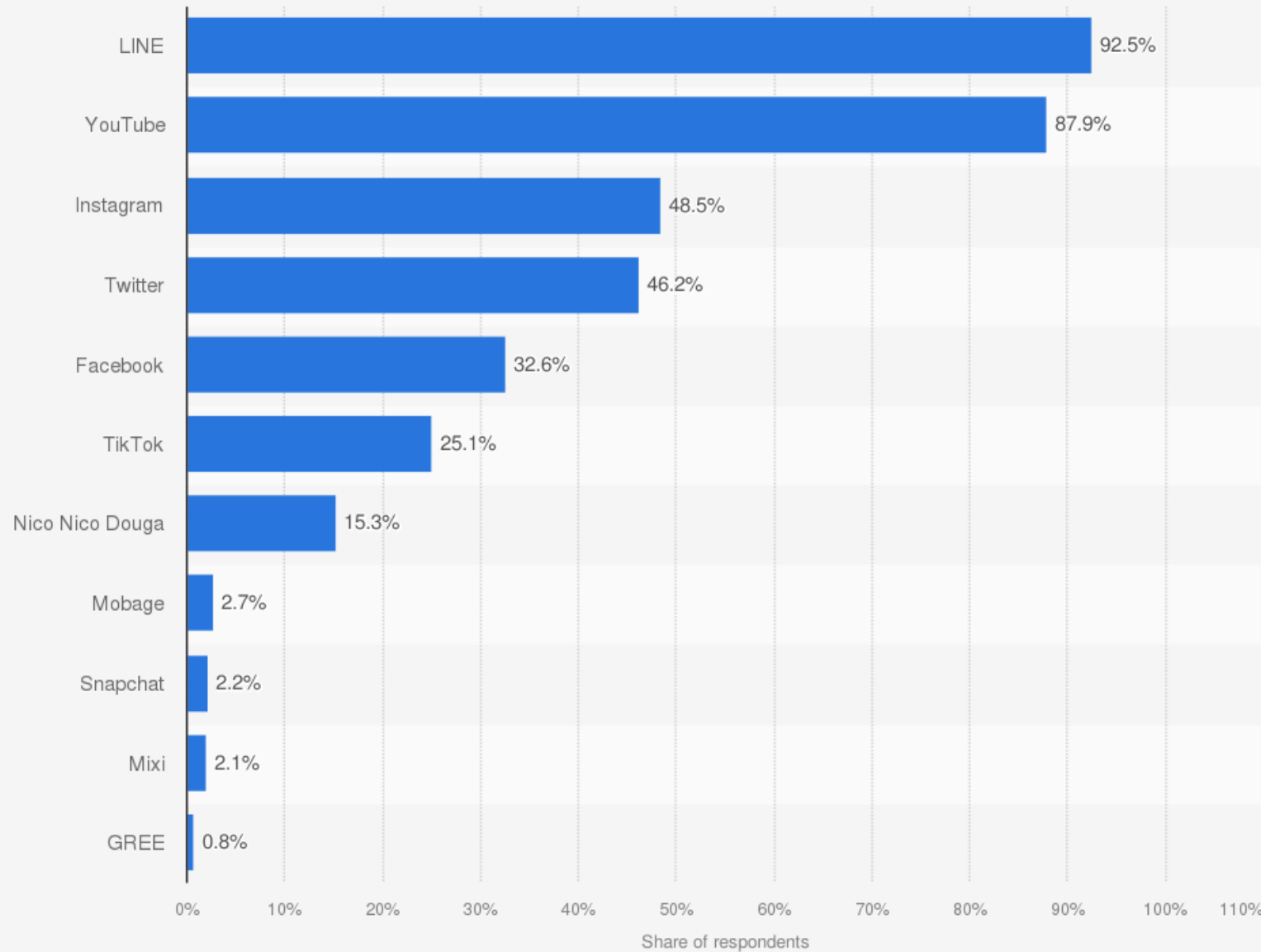
Ministry of Internal Affairs and Communications (Japan); Yamate Information Processing Center Ltd.

© Statista 2022

Additional Information:

Japan; Ministry of Internal Affairs and Communications (Japan); Yamate Information Processing Center Ltd.; November 31 respondents; 13-69 years; Questionnaire

Leading social media in Japan in fiscal year 2021, based on penetration rate



Sources

Ministry of Internal Affairs and Communications (Japan); Yamate Information Processing Center Ltd.

© Statista 2022

Additional Information:

Japan; Ministry of Internal Affairs and Communications (Japan); Yamate Information Processing Center Ltd.; November 30, 2021; 13-69 years; Online survey

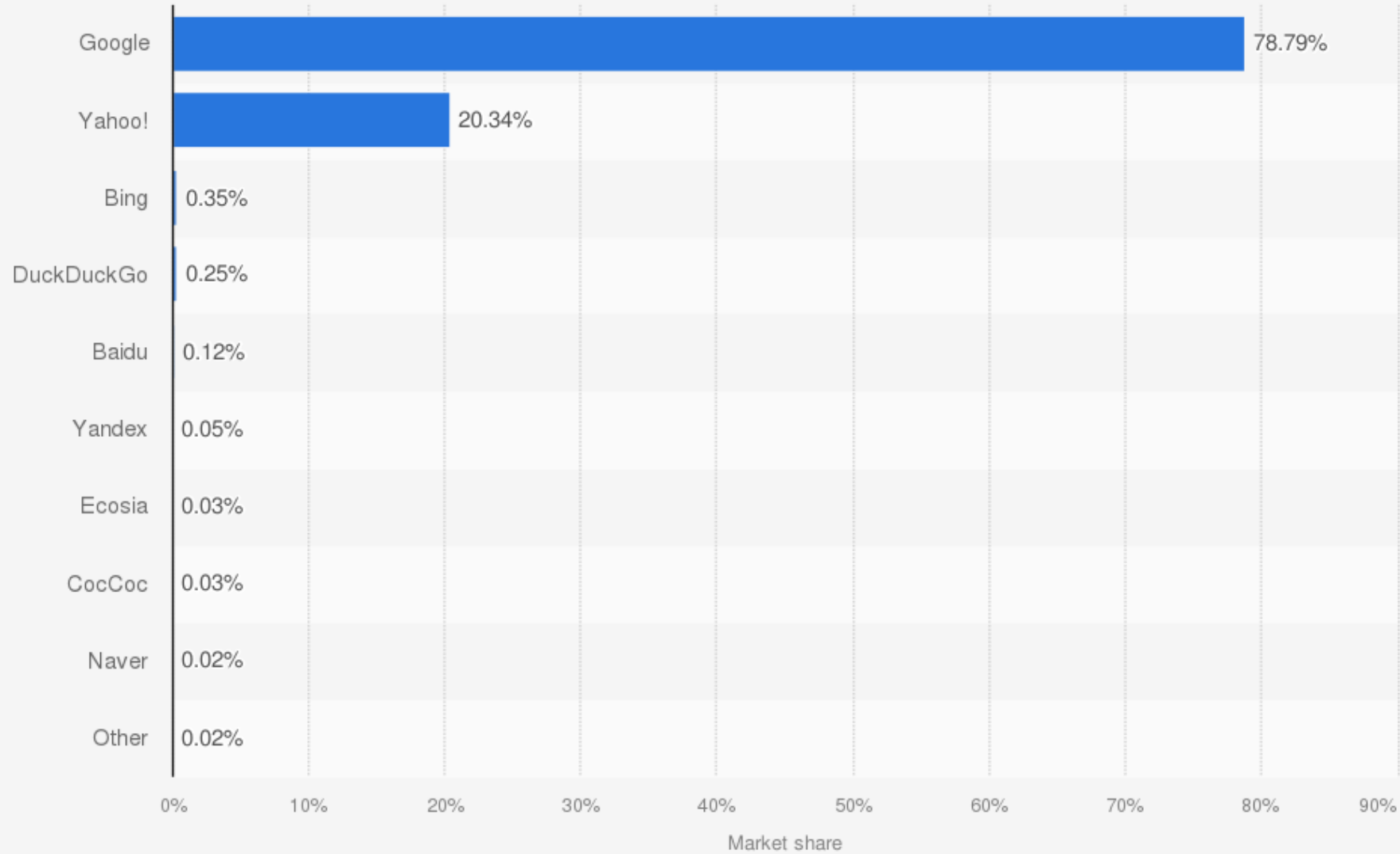
LINE, a dominant digital platform, caused the personal data leakage.

Lack of competition is bad for data-protection.

?

(Although the other small ones often leak the persona data...)

Most used mobile search engines in Japan as of March 2022



Source

StatCounter
© Statista 2022

Additional Information:

Japan; March 2022; based on page views of websites tracked by the source; mobile devices are defined as pocket-sized devices having a display screen with touch input or a miniature keyboard)

Restoring
competition?
How?
Efficient?

IV. Imminent Questions

Competition Assessment of the Mobile Ecosystem Interim Report Summary

April 26, 2022

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

<https://www.kantei.go.jp/jp/singi/digitalmarket/pdf_e/documents_22220601.pdf>

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<https://www.kantei.go.jp/jp/singi/digitalmarket/pdf_e/documents_22220601.pdf>

Thank you.

