

Report of the Study Group on Competition Policy for Data Markets - Outline -

Competition Policy Research Center (CPRC)

Japan Fair Trade Commission

June, 2021

Overview of data markets

- Data is called as “the oil of the 21st century” and has been recognized as a source of competitiveness in the digital age. Businesses have started to utilize data in physical space as well as in cyber spaces.
- For instance, in the area such as agriculture, shipping, healthcare, broadcast, energy or mobility, various data provided by market players has been accumulated in certain platforms and used for developing new businesses. A new form of data distribution and utilization, such as data transaction through intermediaries, is emerging.



Spaces for data distribution = Data markets

This report discusses competition issues in “data markets” which are defined as “Spaces for data distribution”. It covers each stage of data transaction and places for providing products and services using data to end users.

Stages focused by the report (from data generation to data use)



Basic policy approaches towards data markets competition

It is concerned that characteristics of digital markets such as network effects can enable digital platform operators, which accumulate huge amount of data, to monopolize/oligopolize markets, exclude rivals and deter new entrants. However, it should be noted that interventions in response to these concerns must not be too excessive to harm innovation.

For Industry Data

Considering the importance of clarifying rights and duties for data transaction, it is necessary to ensure transaction environments by establishing mechanisms solving concerns by businesses.

For Personal Data

Competition, data protection and consumer protection should not be discussed separately. It is necessary to discuss them as a whole considering balanced approaches.

6 points to consider data markets

I. Involvement of a wide range of stakeholders when establishing frameworks

- When establishing cooperation frameworks for data utilization, it is important to consider various needs of many stakeholders, which could avoid consequences that data accumulation through the frameworks is not large enough to develop or provide new products and services.
- With respect to personal data, careful consideration, with the involvement of government, is desirable to establish such frameworks in order to ensure individuals' security and trust.
- It is desirable to set rules among stakeholders in advance for preventing future damages to service users in case service providers abandon their businesses. However, such rules should not be too excessive as entry barriers.

II. Free and easy access to data

- It is desirable to ensure that as many businesses as possible have free and easy access to data. Businesses should be able to use results and know-how obtained from data processing and analysis for providing their services, with keeping in mind to secure the incentives of businesses to generate data.

6 points to consider data markets

III. Government's support for business activities in the areas where businesses cooperate or compete

- In order to support business activities in the area where businesses cooperate, government is required to make efforts such as providing guidelines for civil contracts or open government data.
- In terms of business activities in the area where businesses compete, government is required to regulate anticompetitive conduct.

IV. Ensuring data portability and interoperability

- Ensuring data portability is important to enable users to switch without obstacles or to use multiple different platforms (multi-homing).
- Especially for personal data, the mechanism in which certain intermediaries themselves transport individuals' data for them can be an option to ensure workable data portability.
- Interoperability among different systems should be carefully considered since it could generate additional entry cost and could harm innovations.

6 points to consider data markets

V. Privacy concerns

- It is important for businesses to provide sufficient explanations with users on their use of personal data and obtain adequate approvals from users in order to remove concerns by individuals.
- For instance, making additional rules based on “data fiduciary duty” can be an option to address such issues that digital platform operators collect and integrate personal data without being noticed.

VI. Rules for regulating intermediaries and digital platform operators

- Intermediaries operating “data sharing platforms” and “information banks” may cause competition issues since scale of economy and network effects can enable them to monopolize/oligopolize markets like digital platform operators when they collect huge amount of data. If necessary, ex-ante rules beyond the scope of the existing competition law framework can be an option especially in mature markets.
- Data hoarding by digital platform operators can be addressed by rules enabling other businesses to have access to data accumulated by digital platform operators on fair terms as well as rules ensuring data portability or interoperability.

Appendix: Study Group on Competition Policy for Data Markets

Overview of the Study Group

- The fields for competition in the rapidly changing digital age will be shifting from cyber spaces to the second phase where businesses use data to improve their business in physical (real) space.
- There are various efforts around the world such as “A European strategy for data” to ensure that high quality and large-scale data can be accessed easily and securely while keeping in mind the digital competition. Japan has also started formulating a data strategy.
- Under these circumstances, the “Study Group on Competition Policy for Data Markets” has been held for discussing various issues and challenges of competition policy in data markets.

Members of the Study Group

IKEGAI Naoto	Associate Professor, Hitotsubashi University Graduate School of Law
ITAKURA Yoichiro	Attorney, Hikari Sogoh Law Offices
KUROSACA Tatsuya	President and Chief Executive Officer, Kuwadate, Inc.
KOBAYASHI Shintaro	Public Policy Group Manager and Senior Consultant, ICT Media & Service Industry Consulting Department, Nomura Research Institute, Ltd.
KORENAGA Daisuke	Professor, Graduate School of Law and Politics, Tokyo Metropolitan University
MATSUSHIMA Noriaki (Chair of the Study Group)	Professor, Institute of Social and Economic Research, Osaka University Director, Competition Policy Research Center, Japan Fair Trade Commission
MORIKAWA Hiroyuki	Professor, Graduate School of Engineering, the University of Tokyo
WATANABE Yasutora	Professor, Graduate School of Economics, the University of Tokyo/ Director, U Tokyo Economic Consulting Inc.