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Competition in Digital Advertising Markets – Note by Japan

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More documents related to this discussion can be found at
<http://www.oecd.org/daf/competition/competition-in-digital-advertising-markets.htm>

Please contact Mr Chris PIKE if you have any questions about this document
[Email: Chris.PIKE@oecd.org]

JT03468432

Japan

1. Introduction

1. As business activities using digital platforms have rapidly expanded, benefits and competition concerns they have brought about have been pointed out in various jurisdictions.
2. The Japan Fair Trade Commission (hereinafter “JFTC”) has been vigorously working on competition issues in digital markets, including those in the digital advertising market, where the JFTC has recently conducted a fact-finding survey in order to grasp the actual market environment.
3. In this contribution paper, we would like to present characteristics of digital platforms and competition concerns, and introduce the content of the interim report of fact-finding survey regarding digital advertising.

2. Characteristics of Digital Platforms and Competition Concerns

4. Digital platforms, which have a characteristic of two-sided market, provide small and/or local but innovative businesses with a greater chance of competing than ever, and also offer consumers more choices for goods and services than ever, which lead to tremendous social welfare gain. However, many consumers and businesses might have suffered from the anticompetitive conducts of new emerging digital platform operators which took advantage of some unique features of the digital economy, such as direct and indirect network effects. Network effects could result in building up monopoly or oligopoly in digital markets, which put digital platform operators in a superior position over competitors, business partners or consumers, which might lead to competition issues such as (i) abuse of superior bargaining position¹ (ii) exclusion of competitors and (iii) anti-competitive mergers.
5. In this regard, the JFTC published the “Report regarding trade practices on digital platforms – Business to Business transactions on online retail platform and app store” on October 2019², in which the JFTC pointed out the characteristics of digital platforms and competition concerns in digital markets.

3. JFTC’s Recent Effort concerning Digital Advertising Market

3.1. Overview

6. From November 2019, the JFTC conducted a fact-finding survey focusing on the digital advertising market in order to understand the actual business practices of digital platform operators in this area. The survey was conducted via interviews and web-based

¹ The act making use of one's superior bargaining position over the counterparty unjustly in light of normal business practices could be regarded as abuse of superior bargaining position, which is banned by Article 19 of the Antimonopoly Act as a form of unfair trade practices. The regulation of abuse of superior bargaining position does not focus on the market position of violators but rather on the relative position in business relationships.

² <https://www.jftc.go.jp/en/pressreleases/yearly-2019/October/191031.html>

questionnaires to diverse entities such as advertisers, intermediaries, publishers and consumers.

7. In April 2020, the JFTC published the “Interim Report Regarding Digital Advertising”³ that summarized the results of the survey.

8. The following sections present the business practices and competition concerns in the digital advertising market from the report.

3.2. Market Size of the Advertising Sector

9. Japan’s advertising expenditure has been increasing every year. The total advertising expenditure in Japan in 2019 increased to about 7 trillion yen, of which 30% is the digital advertising expenditure (about 2 trillion yen). The digital advertising is expected to continue to increase, replacing the traditional type of advertising.

3.3. Businesses in Digital Advertising Transactions

10. Businesses in digital advertising transactions are categorized into (i) advertisers who advertise their commodities or brand by placing ads with advertising expense, (ii) publishers who own inventories and earn revenue and (iii) intermediaries who provide advertising platform services where they connect advertisers and publishers using ad tech⁴, and earns brokerage.

11. Advertisers and publishers need to make a contract with intermediaries in order to use the advertising platform services provided by the intermediaries. In many cases, digital platform operators play the roles of both intermediaries and publishers in digital advertising, which can be roughly divided into search advertising and display advertising depending on the types of advertising.

3.4. Search Advertising

12. Search advertising distributes ads that are linked to search queries. When a user enters a keyword in the search engine to perform a search, the search ads are displayed on the page showing search results. The media used to display search ads are i) search results pages of the companies who have their own search engine (mostly digital platform operators) and ii) search results pages of portal sites operated by companies who obtain a license to use the search engine of other companies.

13. Transactions on search advertising are conducted through the biddings on the advertising platforms provided by the intermediaries (mostly digital platform operators). Advertisers set keywords related to the product or service that they intend to advertise, URL to be displayed when an ad is clicked, advertising text to be displayed, target audience and bidding price for each keyword, and send them to the advertising platforms of the intermediaries. Then, when a user enters a search query that matches the keyword set by the advertisers, a bid for the inventory provided by the publishers is placed and the ad of the advertiser who wins the bid is displayed in the inventory of search results pages as mentioned above.

³ <https://www.jftc.go.jp/en/pressreleases/yearly-2020/April/20092901.pdf>

⁴ The technology that supports the automatic buying, selling and placement of digital advertisements.

3.5. Display Advertising

14. Display advertising displays static or video ads on social media or next to the content of a website which a user browses. Display ads are displayed according to the attributes of users by using the location data, etc. collected from the IP addresses of terminals and the data, such as a web browsing history of users, collected from cookies.

15. In general, in many cases, transactions on display advertising are conducted when a user accesses websites where inventories of publishers are placed, and then the publishers' request for some kind of ads to be displayed on the inventories is sent to the advertising platforms provided by intermediaries (mostly digital platform operators).

16. Meanwhile, advertisers set in advance the elements necessary for an ad campaign such as budgets, target areas, and target audience, and send them to the advertising platforms of the intermediaries.

17. Based on those information set by the advertisers and other information related to the users who browse the website, the intermediaries distribute appropriate ads to respective inventories of the publishers. In this regard, there are several methods for the intermediaries to choose appropriate ads for respective inventories on the advertising platforms. Roughly speaking, they can be divided into two cases: the case where the decision of intermediaries is made by a type of bidding called Real-Time Bidding, and the case where the inventories of the publishers are managed all together and the ads requested by the advertisers for distribution are distributed to the managed inventories.

18. In the process of implementing display advertising, there are both cases where specific digital platform operators perform the entire advertising intermediary services and where intermediaries operate some parts of the intermediary services by themselves and rely the rest of intermediary services to the digital platform operators. In the latter case, the intermediaries are in a contractual relationship with digital platform operators.

3.6. Competition Concerns

19. In the questionnaire, the JFTC asked advertisers, publishers and intermediaries that are in a contractual relationship with digital platform operators about the trade practices in the area of digital advertising. The JFTC also asked consumers such as search service users and social media users about their relationships with digital platform operators. Some of the opinions from the respondents are as follows:

3.6.1. Responses from Businesses

- Regarding contract revisions, when asked if the contract with each digital platform operator contained something unfair, 35-50% of the advertisers, 40-75% of the intermediaries and 25-65% of the publishers answered "yes" (the percentage differs depending on digital platform operators). Among these, answers like "*Contracts are uniform and cannot be changed based on negotiation*" stood out.
- Regarding the use of third-party services, when asked if there were any problems or issues on using the ad tech service provided by each digital platform operator, 90% of the advertisers, 90-100% of the intermediaries and 90% of the publishers answered that "there were no problem." In contrast, there were also comments such as "*The use of third-party services other than those provided by digital platform operators was restricted.*"

3.6.2. Responses from Consumers

20. According to the responses, it was found that many consumers did not recognize that digital platform operators, the providers of the search services and/or social media collected and used their information such as location data, a web browsing history for digital advertisements. It was also found that some consumers did not remember that they agreed with the terms and conditions concerning the use of search services and/or social media. Although 50% of consumers had concerns about the collection and the use of information, they would continue to use search services and/or social media because these services were useful.

3.7. Perspectives for Future Research and Examination

21. Following this interim report, the points below may be discussed as the perspectives for future research and examination of business transactions in digital advertising market: (i) whether digital platform operators impose unfair disadvantages on businesses that are obliged to use their platforms, by unilaterally changing the contract, etc., (ii) whether digital platform operators that also serve as intermediaries unjustly exclude other rival intermediaries, and (iii) whether digital platform operators unjustly restrain the business activities of companies, such as restricting distribution of digital ads that do not pass through their platforms.

4. Conclusion

22. As described above, the fact-finding survey helped the JFTC to grasp the overview of digital advertising markets, especially the trade practices centered on digital platform operators. The competition concerns of this area indicated in the interim report need to be further assessed and the JFTC will continue to work on this for the final report.