

Fundamental Principles for Improvement of Rules Corresponding to the Rise of Digital Platform Businesses

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Ministry of Economy, Trade and Industry

Japan Fair Trade Commission

Ministry of Internal Affairs and Communications

1. Basic Evaluation of Digital Platform Operators

- Digital platform operators, which utilize ICT and data to provide users with a “field” upon which various services are offered under the Fourth Industrial Revolution, have become innovation leaders that continue to drive new businesses, and have become important for Japan’s socio-economy as their benefits are dramatically raising the possibility of access to the market for small and medium-sized companies and benefitting consumers.
- On the other hand, digital platform businesses operate multi-sided markets composed of multiple layers of users, and their characteristics, including network effects, small marginal costs and economies of scale tend to facilitate monopolization or oligopolization.
- Based on these evaluations, under the following fundamental principles, consideration of institutions and enforcement to improve trading environment surrounding digital platform operators will be advanced promptly under the cooperation of relevant ministries.

2. Fundamental Principles

(1) Perspective of Legal Evaluation of Digital Platform Operators

- In considering the institution and enforcement for safety management of users and consumer protection, the importance, technical standards, and users’ convenience of digital platform operators at the point of time and in the business field under consideration will be taken into account. The design of institution and enforcement will be considered in the way that digital platform operators are regarded not merely as a “provider of field” but also as the points of control.
- In such consideration, it will be taken into account that digital platform operators often have the following features, and that giant digital platform operators notably are more likely to have these features.

- ① They provide an essential basis for socio-economy.
- ② They design, operate and manage a field itself participated by many consumers (individuals) and businesses.
- ③ Such field is essentially highly manipulative and technically non-transparent.

(2) Promotion of Sound Development of Platform Businesses

- Along with the platformization of industries and businesses, it is necessary to facilitate further development of digital platform businesses in Japan, so that innovation keeps being generated.
- Therefore, in addition to developing and attracting innovative technologies and companies, consideration on institutional improvement of industry-specific regulations that are not able to respond to platform businesses will be proceeded, including discussion on whether they need to be revised, while maintaining consideration of the following factors.
 - ① Whether or not the existing industry-specific regulations exert adequate controls from the viewpoints of their respective social benefits and values to be protected.
 - ② How to appropriately divide the roles and responsibilities concerning protection of interests protected by laws between digital platform operators on one side, and businesses and consumers (individuals) on the other side.
 - ③ Whether a level playing field with regard to competition conditions is ensured between existing businesses and digital platform operators, and between domestic and foreign digital platform operators.
 - ④ Whether there is room to design systems that effectively make use of certification and audit in order to ensure trust, or to introduce flexible ways of regulation such as co-regulation, which combines self-regulation and legislation.

(3) Ensuring Transparency to Achieve Fairness with respect to Digital Platform Operators

- With regard to digital platform operators, lack of transparency of the rules and systems could possibly lead to a hotbed of unfair trade practices and infringement of privacy in the relationship with users (businesses and consumers (individuals)), and the possibility of this is notably higher when it comes to giant digital platform operators.

- Therefore, in order to realize transparency and fairness, the following measures will be implemented.
 - ① As a starting point to achieve transparency and fairness, understanding of the actual state of trade practices will be advanced through large-scale, comprehensive and thorough surveys.
 - ② The establishment of an expert organization with advanced knowledge in a variety of fields including digital technology and businesses will be considered.
 - ③ The introduction of disciplines to ensure transparency and fairness, such as obligations to make available and disclose certain rules or trade conditions, will be considered.

(4) Ensuring Fair and Free Competition in Digital Markets

- Enforcement of competition law as an *ex-post* regulation will become more and more important as digital platform operators tend to expand and oligopolize or monopolize the market, so measures based on the characteristics of the digital market should be implemented.
- Therefore, the operation of the Antimonopoly Act and related institutions to ensure fair and free competition in digital markets will be considered, such as the review of business combination that takes into account of data and innovation, the application of the rules about abuse of superior bargaining position with respect to the relationship with consumers, who provide data related to themselves as a consideration for the services.

(5) Considering Rules on Data Transfer and Open Data

- As digital platform operators accumulate massive amounts of data, rules on transfer of data and open data, such as data portability and open API, have certain significance in this data-driven society, not only as consumer policy but also as competition policy and improvement of competitive environment.
- Therefore, consideration on the content and appropriateness of rules on transfer of data and open data will be advanced, taking into account various viewpoints such as the approach that regards them as an individual's right to manage and control access to their own data, or an approach that aims for the improvement of competitive environment which keeps generating innovation.

(6) Establishment of Balanced, Flexible and Effective Rules

- In considering each of the above, establishment of effective rules will be intended, taking into account flexible ways such as co-regulation, which combines voluntary regulation and legal regulation, in order to sufficiently and appropriately ensure the effectiveness of rules, while taking innovation in the digital sector into account.

(7) International Application of Laws and Harmonization

- From the viewpoint of international equal footing, consideration on the extraterritorial application of Japanese laws and systems concerning effective enforcement of applicable laws on foreign businesses will be proceeded, so that domestic businesses and foreign businesses conducting similar businesses for Japan are subject to equivalent rules.
- In considering disciplines surrounding digital platform operators, consideration will be proceeded in the direction of intending international harmonization.