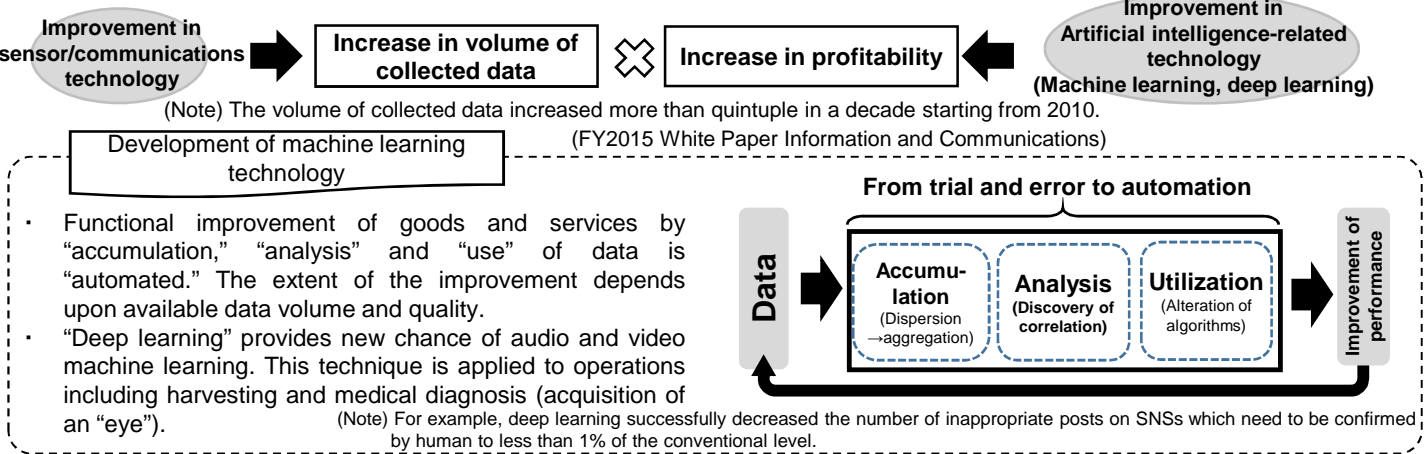


- In the context of the spread of IoT and the advancement of artificial intelligence-related technology, enhanced data availability for business has increased the possibility to improve productivity and to realize providing services optimized to individual consumers. To optimize the possibility, it is vital that any enterprise can collect and use data in fair and free competitive environments.
 - Given that it is pointed out that a large volume of data centers around certain enterprises, if such situation restricts competition and harms the interests of consumers, prompt response would be required under the Antimonopoly Act.
- (Note) The Basic Act on the Advancement of Utilizing Public and Private Sector Data also stipulates the promotion of data utilization.

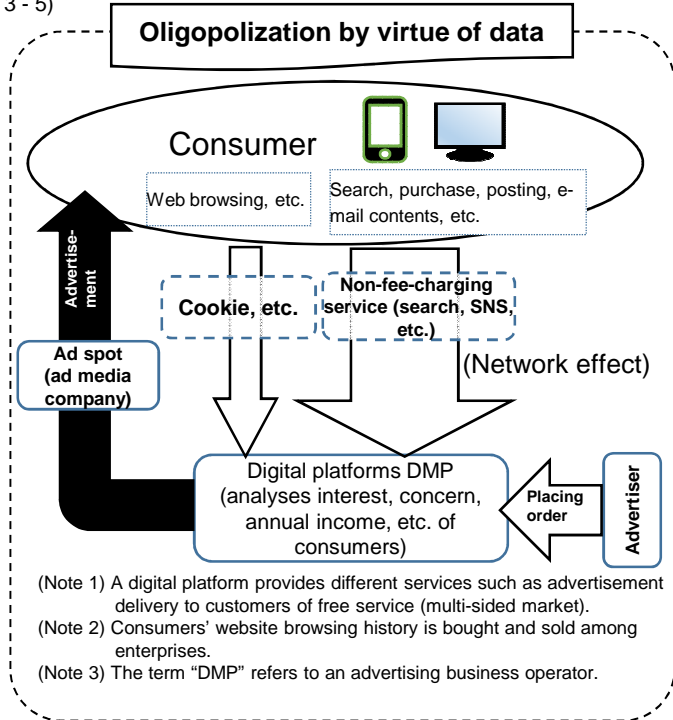
1. Current State of Competition (Chapter 2, Section 3)

(1) Data collection capability leads directly to the competitiveness of goods and services.



(2) Competitive Situation Surrounding Data (Chapter 2, Section 3 - 5)

- A digital platform collects a large volume of personal data through free service and utilizes them for advertising business, etc.
- (Note) Some people expressed concern about the possibility of “exclusion” by way of foreclosing data collection channels in the Internet advertising industry.
- The network effect such that “a large scale equals to convenience” combined with the cycle of “data → improvement of service brought by machine learning → further increase of data” tends to make a new entry into similar businesses even more difficult.
- At the same time, many companies have begun collecting industrial data (e.g. situation of person/equipment and diagnostic image) on a full scale. In some cases, the data collecting channels such as locations where a sensor is installed may be limited. Some people point to the occurrence of data “hoarding.” (The number of data-related merger cases almost tripled in a period from 2008 to 2012. OECD (2014)).



2. Basic Approach (Chapter 3, Section 2 and Chapter 4)

- Accumulation and utilization of data, in itself, promotes competition and creates innovation.
- At the same time, such issues as business combinations that could lead to restriction of competition including monopoly, unjust collecting (or exploitation) of data from consumers on small and medium-sized enterprises and unjust data “hoarding” should be addressed under the Antimonopoly Act.
- (Note) Most of these problems could be dealt with under the current framework of the Antimonopoly Act.
- In parallel with promotion of the portability of personal data, it is preferable that discussions on the subjects including the ownership of industrial data and promotion of data owned by the national government and statutory monopoly firms be deepened.

3. Reaction to Examination of Business Combinations Involving Data Accumulation (in terms of their markets)

(Chapter 3, Section 3(2) b) to d) and Chapter 5, Section 1)

○ Business combinations involving data accumulation should also be examined from the standpoints mentioned below:

- Whether the proposed business combination leads to reduction of competition for artificial intelligence techniques or goods and services related to data
- In the case where similar data are bought and sold in a data market, (regardless of the existence of competitive relationship in the product level), whether the proposed business combination has the effect of reducing competition in the “data market.” (e.g. continuing high price of the data)

(Note) In particular, (1) if the data collection channels are limited; and (2) if the cycle of functional improvement of the goods and services through machine learning using data has been enhanced by the network effect.

○ Free services such as SNS may be subject to the Antimonopoly Act from the perspective that they constitute a “market.”

(Note) In the case where there is a non-price competition over privacy information, etc. in SNS market, it can be required merger remedies which include the constrains on the change in the privacy policy of the businesses involved that could lead to creation of market.

【Example of Perception of Market】



4. Interference of Free Accumulation and Use of data

(If it could become a problem under the Antimonopoly Act)

○ **Unjust Data Collection** (Chapter 4, Section 1 (1))

- Along with a business alliance, an enterprise in a superior bargaining position as a party of the alliance unilaterally demands that the other party provide data to it.
- A digital platform (If its service “locks in” the customers) collects personal data by unjust conduct under Japanese laws and regulations.

(Note) Although such conduct fundamentally constitutes a problem under the Act on Protection of Personal Information, it could be subject to the Antimonopoly Act if it is liable to have harmful effects on competitive order.

【Reference】 • German Federal Cartel Office’s investigation against Facebook

- In connection with data collection, an overseas e-mail service provider uses email for ad serving (It is pointed out that domestic enterprises are not allowed to perform such conduct under the Telecommunications Business Act and this is not a preferable competitive environment).

○ **Unjust Data Hoarding by Monopolistic or Oligopolistic Enterprises** (Chapter 4, Section 2 (1))

Data hoarding refers to a refusal to admit access (Note) to the data which are essential to competitors’ business and for which it is technically or economically difficult to obtain data substitutable by competitors and/or customers without justifiable grounds, for example, in the cases shown below.

(Note) Such access includes use of data collection channels such as API connection.

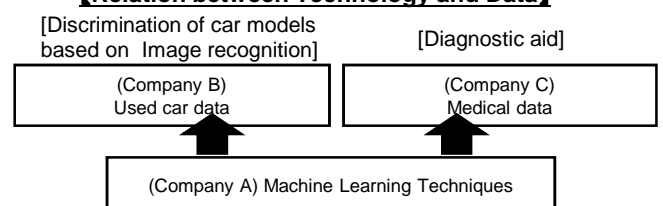
- (1) If the data has been disclosed to the competitors and there is no rational reasons to do so other than exclusion of competitors;
- (2) If there is an obligation to allow customers, etc. access to the data (Note) and if refusal of access would exclude competitors. (See note below)

(Note) For example, a person has the right to request information disclosure against the enterprise under the Act on Protection of Personal Information. Or else, if an agreement between parties such as that between a financial institution and a depositor allows access to the data including transaction histories.

○ **Others** (Chapter 4, Section 2 (3))

- Tying of data provision and data analysis
- An act of demanding not to trade with competitors on condition of providing data or analysis techniques, etc.

【Relation between Technology and Data】



5. Joint Collection and Use of Data

(Chapter 4, Section 1 (2) and Section 2 (2))

○ As a general rule, joint collection and joint use of data are regarded as pro-competitive (improvement of efficiency through establishment of standards, improvement of safety, etc.). However, care should be taken about joint data collection that would allow conjecture of competitors’ price and quantity (Details are described in the Report).

(Reference) Study Group on Data and Competition Policy

(1) Study Group Members

- Kaori Ishii, Associate Professor, Faculty of Library, Information and Media Science, University of Tsukuba
- Hideki Utsunomiya, Attorney at Law at Mori, Hamada and Matsumoto
- Noboru Kawahama, Professor at Kyoto University Law School
- [Chair] • Akira Goto, Emeritus Professor at the University of Tokyo
- Masahiro Samejima, Attorney at Law at Uchida & Samejima Law Firm
- Kazuo Tosa, Professor at Konan University Law School
- Jun Nakabayashi, Associate Professor, Faculty of Economics (Chief Researcher, Competitive Policy Research Center)
- Yasuyuki Nishioka, Professor, Faculty of Engineering and Design, Hosei University
- Yutaka Matsuo, Special Associate Professor, Graduate School of Engineering, the University of Tokyo
- Ryoji Mori, Attorney at Cyber Law Japan Eichi Law Offices
- Masako Wakui, Specially Appointed Professor, Graduate School of Law, Osaka City University (Chief Researcher, Competitive Policy Research Center)

[As arranged according to the Japanese syllabary, with titles omitted; Official positions are as of May 26, 2017]

(2) Observers

Cabinet Secretariat (IT Comprehensive Strategy Office)
Cabinet Office (Secretariat for Promotion of Intellectual Property Strategy)
Secretariat of Committee of Protection of Personal Information
Ministry of Internal Affairs and Communications
Ministry of Economy, Trade and Industry

(3) Secretariat

General Secretariat, Japan Fair Trade Commission (Economic Research Office, Economic Affairs Bureau)

(Note) JFTC has convened Study Group six times since January 20, 2017 on which the first round of Study Group was held. In addition to discussions among the members, presentation was made about activities by the relevant ministries and Internet advertising enterprises.