

Report regarding trade practices on digital platforms

- Business-to-Business transactions on online retail platform and app store -

October 2019

Japan Fair Trade Commission

Table of Contents

Chapter 1	Digital economy and competition policy	5
Section 1	Digitalization of economy and penetration of digital platforms	5
Section 2	Characteristics of digital platforms	6
1.	Two-sided market and network effect.....	6
2.	Low marginal cost and economies of scale.....	6
3.	Benefits provided by digital platforms.....	6
4.	Centralization, switching cost, and lock-in.....	7
Section 3	Concerns for digital platforms and responses	7
1.	Concerns about the competition policy in Japan.....	7
(1)	Abuse of superior bargaining position	7
(2)	Exclusion of other digital platform operators by monopoly / oligopoly	8
(3)	Exclusion of competitors.....	8
(4)	Anti-competitive merger	9
2.	Responses of the JFTC	9
(1)	Dealing with violations of the AMA strictly and precisely.....	9
(2)	Implementing merger review considering digitalization of economies.....	10
(3)	Clarifying thoughts of abuse of superior bargaining position on the transactions between digital platform operators and consumers.....	10
(4)	Implementing continuous fact-finding surveys	11
Section 4	Creating a competitive environment for digital platforms.....	11
1.	Making transparent of trade conditions, etc.	11
2.	Data transfer and openness	11
Chapter 2	Fact-finding survey on online retail platforms and app stores	13
Section 1	Purpose, etc.	13
1.	What kind of trades the JFTC focused on	13
2.	How the JFTC conducted this Survey	13
(1)	Survey through Information-offering form on website	13
(2)	Questionnaire survey for sellers and consumers using digital platforms.....	14
(3)	Voluntary interview.....	14
Section 2	Market Overview	15
1.	Overview of the online retail platform market.....	15
(1)	Scale of the consumer e-commerce market.....	15
(2)	Business relations.....	17

(3) Transaction flow	17
(4) Competition environment.....	18
2. Overview of the app store market.....	19
(1) Overview of the app store market.....	19
(2) Business relations.....	19
(3) Transaction flow	20
(4) Competition environment.....	21
Section 3 The position of digital platform operators within transactions.....	22
1. Influential positions in the market	22
2. Monopolistic or oligopolistic positions	22
3. Superior bargaining positions	22
4 Sellers opinions related to bargaining positions of digital platform operators.....	23
(1) Online retail platform operators	23
(2) App store operators	24
Section 4 Business transactions and reviews.....	26
1. Acts which could do sellers harm	27
(1) Change in business terms with contract revision	27
(2) Calculation methods and grounds of commission fees.....	34
(3) Tasks requested towards sellers	39
(4) Withholding of the payment of sales proceeds	42
(5) Action to damaged/lost products in the warehouse.....	45
(6) Handling consumers returns or refund request.....	48
(7) Purchase requests of advertisement spots	52
(8) Penalty system for violation of contract.....	54
2. Acts which could exclude competitors.....	57
(1) Restriction of use of other app stores.....	57
(2) Direct sale by using transaction data collected by each seller.....	61
(3) Differential treatment between seller and digital platform operator or their related companies	64
(4) Review of competing products	69
3. Acts which could restrict sellers' business.....	72
(1) Most Favored Nation clause (MFN clause).....	72
(2) Restrictions on sales promotional activities.....	75
(3) Setting a commission on an electronic payment through an app purchase and restriction on the payment outside of an app.....	79
(4) Setting of retail price tiers	84

4. Acts which could lack fairness or transparency	86
(1) Algorithms of search results display	86
(2) Explanation and disclosure of information to sellers	89
(3) Review criteria and their application	95
(4) Consultation systems/Mean of dispute resolution	100
Chapter 3 Conclusion	104
Section 1 Points of this Survey	104
1. Thoughts on the AMA	104
(1) Acts which could do sellers harm	104
(2) Acts which could exclude competitors	104
(3) Acts which could restrict sellers' business	105
2. Thoughts on the competition policy	105
Section 2 Future initiatives	106

Chapter 1 Digital economy and competition policy

Section 1 Digitalization of economy and penetration of digital platforms

Technological innovation called the “4th industrial revolution” which includes rapidly increasing processable data like big-data, improvement of computational calculation and AI, etc. is making progress. Under the 4th industrial revolution, digital platforms are making use of telecommunication technologies, offering various “places” for services to third parties, and giving birth of breakthroughs and innovations in business.

“Surveys regarding users (consumers) of digital platforms”^[1] published by the Japan Fair Trade Commission (hereinafter referred to as the “JFTC”) on April 17 2019 found that consumers used various kinds of digital platforms. Moreover, as more than 80% of respondents said “I use it at least once a day”, digital platforms are used so frequently that they have become a part of our life.

Digital platforms bring significant benefits to our social and economic life, that is, efficiency (e.g. making it possible to reach to necessary data) and safety (e.g. helping us avoid dealing with some vicious businesses). As a result, digital platforms have had a strong influence on our social and economic life and the influence continues expanding driven by characteristics of digital platforms stated as follows.

Seeing the top 10 companies as of 2008 in terms of market capitalization, companies of oil, manufacture, communication, and finance ranked high. As of 2018, six out of 10 were occupied by digital platform operators. Their businesses are reaching to physical areas like manufacturing. American and Chinese digital platform operators have dominated higher rank.

<Chart 1: Transition of the world's top 10 companies>

2008			2018		
	Company Name	Market Cap.		Company Name	Market Cap.
1	PetroChina	57T Yen	1	Apple	96T Yen
2	Exxon Mobil	49T Yen	2	Alphabet (Google)	82T Yen
3	General Electric (GE)	34T Yen	3	Amazon.com	78T Yen
4	China Mobile Int'l	32T Yen	4	Microsoft	77T Yen
5	ICBC (中国工商银行)	30T Yen	5	Tencent Holdings	56T Yen
6	Microsoft	26T Yen	6	FaceBook	56T Yen
7	Petróleo Brasileiro S.A	25T Yen	7	Berkshire Hathaway	55T Yen
8	Royal Dutch Shell plc	23T Yen	8	Alibaba Group Holding	51T Yen
9	AT&T	22T Yen	9	JPMorgan Chase & Co.	42T Yen
10	BP	21T Yen	10	ICBC (中国工商银行)	38T Yen
	
12	Toyota Motor	21T Yen	23	Toyota Motor	24T Yen
※ at the end of February			※ at the end of February		

Source: The 23rd Future Investment Conference (February 13, 2019) handout

[1] <https://www.jftc.go.jp/en/pressreleases/yearly-2019/April/190417.html>

Section 2 Characteristics of digital platforms

Digital platforms go across various industries and offer a wide range of services.^[2] It is said that they have some specific characteristics as follows.

1. Two-sided market and network effect^[3]

In general, a platform business is a two-sided market in which multiple layers of companies and consumers exist under the platform and the network effect works. Network effects consist of a direct network effect and an indirect network effect. A direct network effect is an effect that the more participants belong to the same network, the more the utility for the participants increases. An indirect network effect is an effect in which there are a plurality of participant groups belonging to the same network, and as the number of participants in one group increases, the utility for the participants in the other group increases.

2. Low marginal cost and economies of scale^[4]

Since a digital platform is a place for transactions using information and communication technology as well as data, a marginal cost for providing services can be low. As a result, a scale of the network can be efficiently expanded, and a better service can be provided at a lower cost.

3. Benefits provided by digital platforms

Digital platforms can generate tremendous benefits by integrating and structuring large amounts of data scattered across the two-sided market and using them efficiently. Taking an online retail platform targeted in this survey as an example, a long-tail strategy^[5] which uses data makes it easy for consumers to find and purchase low-demand products, and

^[2] Digital platforms which offer “places” to third party through telecommunication include 1) online shopping mall, 2) internet auction, 3) online flea market, 4) application market, 5) search service, 6) webcast (movies, videos, music, and e-books, 7) booking service, 8) sharing economy platforms, 9) social networking services, 10) video sharing services, 11) electronic payment services, etc.

^[3] Two-sided market and network effect are referred in “Economic Analysis on Network Externalities” (September 2003, Competition Policy Research Centre of the JFTC), “Economic Analysis on Network Externalities and Switching Costs” (November 2005, Competition Policy Research Centre of the JFTC), The Cross-sectional System Study Group for the Fourth Industrial Revolution Compiled a Report” (September 2016, Ministry of Economic, Trade and Industry), “WHITE PAPER Information and Communications in Japan” (July 2019, Ministry of Internal Affairs and Communications), “Competition Policy for the digital era” (May 2019, European Commission), Australian Competition and Consumer Commission “Digital Platforms Inquiry” (July 2019), Digital Competition Expert Panel “Unlocking digital competition” (March 2019, the UK).

^[4] Low marginal cost and economies of scale are also referred in Australian Competition and Consumer Commission “Digital Platforms Inquiry” (July 2019) and Digital Competition Expert Panel “Unlocking digital competition” (March 2019, the UK).

^[5] A sales strategy which includes not only a small number of top-selling products (heads) but also many niche products with low sales (long tails) is called a long-tail strategy.

for businesses to sell such products. Moreover, for small and mid-sized businesses and start-ups, digital platforms can help lower barriers to entry into domestic and foreign markets. In addition, consumers can also select from a large number of products and services by using a digital platform. Besides, by making transactions through digital platform operators which can afford to bear a large amount of money to maintain security, a certain level of security can be guaranteed on a transaction even with businesses which have trouble maintaining such level of security alone.

4. Centralization, switching cost⁶⁾, and lock-in⁷⁾

On the other hand, due to low marginal cost and strong economies of scale, concentration would occur on a few particular digital platforms, which may lead to monopolization and oligopolization. In addition, since the accumulation and utilization of data will lead to further expansion of services, the digital platform participants may bear high switching costs and a lock-in effect can work due to the switching costs. While the network effect, economies of scale, etc. work, and the concentration of data on the digital platform increases the utility for the participants, switching costs between digital platforms tend to increase.

Section 3 Concerns for digital platforms and responses

1. Concerns about the competition policy in Japan

(1) Abuse of superior bargaining position

In this way, the concentration of data on a digital platform supported by the network effect and economics of scale may involve switching costs and lock-in effects. Because of these characteristics of a digital platform, a digital platform operator may be in a superior position over business partners. In particular, a digital platform operator that has a strong position in the market is likely to be in a superior position over many business partners.

It can be said that a digital platform operator with a superior position is able to give disadvantages to their business partners. Actually, in surveys conducted so far, there have been a certain amount of responses suggesting dissatisfaction at changes in trade conditions.⁸⁾

⁶⁾ When it is necessary to invest extra efforts and resources in switching digital platforms compared to not switching, the extra efforts and resources are called switching costs. See “Economic Analysis on Network Externalities and Switching Costs” (November 2005, Competition Policy Research Centre in the JFTC)

⁷⁾ If you would like to stop using a digital platform but cannot do that because of switching costs, it is called “lock-in”.

⁸⁾ “Questionnaire survey for suppliers” (October 2018, Ministry of Economic, Trade and Industry), “Interim report regarding trade practices on digital platforms” (April 2019, JFTC)

A digital platform operator can be in a superior position over business partners which include not only companies but also consumers. Some digital platform operators adopt a business model which provides goods and services free of charge in exchange for collecting personal data. While digital platform operators are creating economic values by analyzing and utilizing large amounts of personal data collected from consumers, the consumers can be seen that they are receiving services in return for providing personal data.

Data collection, use, and management methods taken by digital platform operators are one of the most important means of competition among digital platform operators. “Surveys regarding users (consumers) of digital platforms” published by the JFTC on April 17, 2019 uncovered that consumers were concerned about the collection, use, and management of data by digital platform operators and that they perceived disadvantages. If a digital platform operator unfairly does a business partner harm in the light of normal business practices, they could violate the Antimonopoly Act (hereinafter referred to as the “AMA”).

(2) Exclusion of other digital platform operators by monopoly / oligopoly

Digital platform operators which have achieved critical mass⁹ may gain monopolistic and oligopolistic status, combined with network effects in a two-sided market. The fact that a digital platform operator which offers attractive prices and services to companies and consumers is further selected by them and then resulting in having a monopolistic and oligopolistic status is definitely a manifestation of competition. However, innovation should not be hindered by excluding other digital platform operators or blocking an entry of competing ones. For example, if a digital platform operator in a monopolistic or oligopolistic position unreasonably prevents other companies from using competing digital platforms, they could violate the AMA.

(3) Exclusion of competitors

If a digital platform provides its own products and services, they may compete with businesses which open a store or sell products and services on the digital platform. Since a digital platform operator can basically set the conditions for usage of the digital platform, they could exclude competitors by using their status. If a digital platform operator unfairly excludes competitors, they could violate the AMA.

⁹ Critical mass is a minimum demand required in a two-sided market for a successful digital platform operator. See “The Antitrust Analysis of Multi-Sided Platform Businesses” (David S. Evans and Richard Schmalensee, December 2012)

(4) Anti-competitive merger

Digital platform operators continue creating interdisciplinary, cross-cutting, and complex business models, and creating new business models through disruptive technological innovation, without staying in a traditional vertical business. The core of their service is to connect consumers and consumers, consumers and businesses, and businesses and businesses by using data.

It is also assumed that companies with advanced information and communication technologies will enter different industries, integrate services from multiple industries and provide for customers. Digital platform operators are not limited to existing services, but provide new services or provide innovative services by combining them. Under this process, they may acquire companies from different industries. If they start to provide innovative services, they will bring the benefits of attractive prices and services to consumers. On the other hand, we need to keep an eye on digital platform operators which have a strong position in the market so that they will not acquire a startup company to seize future competitors, substantially restrain competition, or prevent innovations.

2. Responses of the JFTC

In order to respond to the competition policy concerns mentioned in Subsection 1 above, the JFTC is taking the following actions.

(1) Dealing with violations of the AMA strictly and precisely

The JFTC will respond strictly and precisely to the violations of the AMA listed in Subsection 1 (1) to (3) above. Prompt problem solving is especially important because, in the digital market, a large number of businesses, mainly small, and mid-sized and start-up companies, conduct a wide variety of transactions with a large scale, and the effects of the act in question are widespread. The JFTC will continue swiftly correcting and resolving competition concerns by utilizing commitment procedures while strictly dealing by cease and desist orders according to the nature of the case.

The commitment procedure was introduced in December 2018 as contributing to the early correction of competition concerns and the expansion of the area in which the JFTC and businesses solve them in a coordinated manner. The procedure can contribute to quick problem solving because it is a mechanism for resolving alleged violations of the AMA by an agreement between the JFTC and businesses, and it is possible to encourage businesses to correct suspected violations without establishing facts. Proactive use of this in the rapidly changing digital field will be one of the effective solutions.

(2) Implementing merger review considering digitalization of economies

The JFTC will implement an appropriate merger review considering characteristics of digital platforms, such as two-sided market, referred in Section 2 above.

And the JFTC will revise “Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination” to clarify our thoughts on conducting merger review in terms of mergers in digital sector considering characteristics of digital platforms and any cases in which companies like start-ups which are small in scale right now but hold valuable assets such as data or patents would be acquired.

In addition, the JFTC will also revise “Policies Concerning Procedures of Review of Business Combination” to clarify in terms of mergers and acquisitions in which digital platform operator tries to have an enormous compilation of data by acquiring start-ups that the JFTC shall conduct merger review in case the total consideration for the acquisition is large and is expected to affect domestic consumers in order to properly scrutinize a business combination plans even if the business combination plans are not required to notify because only the amount related to domestic sales, etc. of a start-up as an acquired company do not meet the standards.^[10]

(3) Clarifying thoughts of abuse of superior bargaining position on the transactions between digital platform operators and consumers

Enforcing the AMA will be required against abuse of superior bargaining position on the transactions between digital platform operators and consumers. The targets of applying rules on abuse of superior bargaining position have been limited to business to business transactions so far. But, given dealing with abuse of superior bargaining position on the transactions between digital platform operators and consumers has been a practical challenge with a widespread of digital services, the JFTC will clarify thoughts of abuse of superior bargaining position on the transactions between digital platform operators and consumers.^[11]

^[10] The JFTC seeks public comments on both the draft of “Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination” and that of “Policies Concerning Procedures of Review of Business Combination”. It is conducted from October 4 to November 5 2019 and the revised ones are expected to be published within this year.

^[11] The JFTC sought public comments on “Guidelines Concerning Abuse of a Superior Bargaining Position under the Antimonopoly Act on the Transactions between Digital Platform Operators and Consumers that provide Personal Information, etc.”. It was conducted from August 29 to September 30 2019 and the Guidelines are expected to be published within this year.

(4) Implementing continuous fact-finding surveys

The JFTC will have a better understanding for trade practices on digital platforms and organize our thoughts on the AMA for it, and then ensure a predictability for businesses as well as prevent potential infringements against the AMA. Because a nature and business model of digital platforms varies and they are generating a new service one after another, it is necessary for the JFTC to continue perceiving current circumstances on digital platforms by implementing continuous fact-finding surveys.

This time, as a starting point for a discussion in order to achieve transparency and fairness of trade, the JFTC launched, first of all, a fact-finding survey regarding trade practices on online retail platforms and app stores (hereinafter referred to as “this Survey”) in which issues have been repeatedly pointed out.

The JFTC will continue conducting specific fact-finding surveys for other sphere in which digital platform operators do business and organize our thoughts on the AMA and competition policy in Japan.

Section 4 Creating a competitive environment for digital platforms

1. Making transparent of trade conditions, etc.

It is absolutely necessary for important trade conditions to be defined in order for businesses and consumers to make an independent and reasonable choice. Therefore, creating a rule regarding disclosure of trade conditions etc. which digital platform operators should obey can be helpful preventing an infringement against the AMA and creating competitive environment on the basis that innovation could not be encumbered.^[12] Moreover, it is preferable for a digital platform operator itself to take vigorously any actions for transparency of trade conditions and compete with other digital platforms over quality, user-friendliness, and security of the digital platform.

2. Data transfer and openness

Data is accumulated through the way for businesses or consumers to keep using the service provided by digital platforms. Since businesses or consumers see a history of past usage and enjoy the services which suit their gusto, and an additional cost would be required when they make the switch to other digital platforms, they may be locked-in the digital platform which they currently use.

^[12] The European Commission (hereinafter referred to as the “EC”) will impose a discipline on “online intermediation services” from the viewpoint of fairness and transparency in accordance with “REGULATION (EU) 2019/1150 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services” (hereinafter referred to as “regulation on promoting fairness and transparency”) which shall apply from 12 July 2020.

To promote competition among digital platforms and secure an opportunity to choose digital platforms, it is preferable for businesses or consumers to be independently able to manage their data accumulated in a particular digital platform. That is to say, it is important for digital platform operators to give businesses or consumers permission to transfer or open their data transfer on demand from them by unlocking an API.^[13] Data transfer and openness is expected to revitalize competition through such as creation of a wide variety of services using the data. And it also provides businesses or consumers with a wide variety of alternatives, and thereby it is expected that competition over a quality of services such as protection of privacy and security may be energized.^[14] In so doing, it is necessary to utilize a data accumulated in the digital platform and not to hinder incentives to provide new services. Unjust data acquisition and unjust data hoarding could be a violation of the AMA.^[15]

^[13] “API” stands for Application Programming Interface which means a rule for functions of a particular program to be used in the other programs.

^[14] As for an importance of smooth circulation of data, Japanese government advocated a promotion of “Data Free Flow with Trust” in G20 Summit held in June 2019 in Osaka, Japan.

^[15] See the Chapter 4 of the Report on “study of data and competition policy” prepared by the Competition Policy Research Center of the JFTC.
(https://www.jftc.go.jp/cprc/conference/index_files/170606data01.pdf, Japanese only)

Chapter 2 Fact-finding survey on online retail platforms and app stores

Section 1 Purpose, etc.

The “Future Investment Strategy 2018,” which was decided by the Cabinet in June 2018, specifies that a set of rules should be put in place to deal with the rise of digital platform businesses and practical measures for it should be taken immediately. Based on the decision of the Cabinet, Ministry of Economy, Trade and Industry (METI), the JFTC and Ministry of Internal Affairs and Communications (MIC) launched the “Study Group on Improvement of Trading Environment surrounding Digital Platforms” which included academic experts on July 2018. The members of the Study Group published the “Interim Discussion Paper: Improvement of Trading Environment surrounding Digital Platforms”. Following the Interim Discussion Paper, the METI, the JFTC, and the MIC jointly formulated the “Fundamental Principles for Improvement of Rules Corresponding to the Rise of Digital Platform Businesses.”

Given the Principles stipulate “(a)s 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,” the JFTC conducted, first of all, a fact-finding survey regarding trade practices on online retail platforms and app stores, both of which have been pointed as thorny, in order to identify whether there are any concerns for the AMA or competition policies in Japan.

1. What kind of trades the JFTC focused on

This Survey focuses on transactions by online retail platform operators or app store operators (“online retail platform operators” and “app store operators” are hereinafter referred to collectively as “digital platform operators”) and businesses selling at these online retail platforms or app stores (hereinafter referred to collectively as the “sellers”). Thoughts on the AMA and the competition policy stated in Section 4 below also takes the online retail platform and app store market into consideration.

2. How the JFTC conducted this Survey

(1) Survey through Information-offering form on website

On January 23, 2019, the JFTC established a contact point for receiving information on its webpage in order to widely collect and grasp information such as trade practices of digital platform operators. With this, the JFTC received a total of 914 comments as follows (as of September 30, 2019).

A) Inputs on online retail platform	795
-------------------------------------	-----

B) Inputs on app store	20
C) Others	99

(2) Questionnaire survey for sellers and consumers using digital platforms

From February 2019 to March 2019, the JFTC conducted 1) the surveys on trade practices between sellers and online retail platform operators, 2) the surveys on trade practices between app developers and app store operators, and 3) Surveys regarding users (consumers) of digital platforms. The JFTC organized these results and published the “Interim report regarding trade practices on digital platforms” (hereinafter referred to as the “Interim Report”) on April 17, 2019.

(3) Voluntary interview

Along with (1) and (2) mentioned above, the JFTC has also interviewed a total of 93 individuals (as of September 30, 2019) as seen below, to collect and grasp information related to trade practices by digital platform operators.

A) Online retail platform operators	5 individuals
B) Sellers on online retail platforms	42 individuals
C) App store operators	3 individuals
D) Developers on app stores	43 individuals

Section 2 Market Overview

1. Overview of the online retail platform market

(1) Scale of the consumer e-commerce market

As online retail platform markets are included in the consumer e-commerce market, the market scale in Japan is as follows:

<Chart 2-1 The scale of the consumer e-commerce market>

Year	Sales
2014	12 trillion 797 billion yen
2015	13 trillion 774.6 billion yen
2016	15 trillion 135.8 billion yen
2017	16 trillion 505.4 billion yen
2018	17 trillion 984.5 billion yen

Source: Created by the JFTC based on the METI “the FY2018 Survey of Infrastructure Development Status for Data-driven Society in Japan (E-Commerce Market Survey)”

Among this, the market scale for merchandise sales, which make up of over half of the consumer e-commerce market, is gradually growing, as seen in three different statistics seen below:

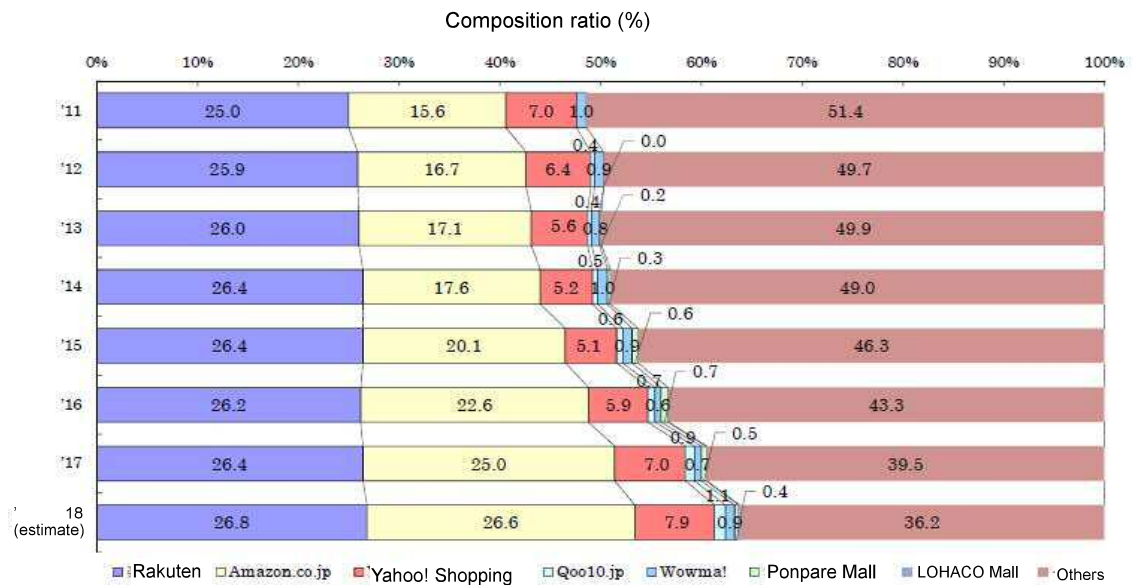
<Chart 2-2 Consumer e-commerce market scale for merchandise sales>

year	Sales		
2014	6 trillion 804.2 billion yen	6 trillion 148.6 billion yen	7 trillion 124.4 billion yen
2015	7 trillion 239.8 billion yen	6 trillion 731.8 billion yen	7 trillion 742 billion yen
2016	8 trillion 4.3 billion yen	7 trillion 446.4 billion yen	8 trillion 530.3 billion yen
2017	8 trillion 600.8 billion yen	8 trillion 191.1 billion yen	9 trillion 362.3 billion yen
2018	9 trillion 299.2 billion yen	8 trillion 879.9 billion yen (estimate)	10 trillion 220.2 billion yen
Source	Created by the JFTC based on the METI “Report on Infrastructure Organization related to the data-driven-type society in Japan (market survey related to electronic commerce)” (2015 to 2018)	Created by the JFTC based on the (Fuji Keizai Management Co., Ltd.) “Actual Status of Mail-order/e-commerce Businesses and Future Outlook 2019” [Translated from Japanese by the JFTC.]	Created by the JFTC based on the (Euromonitor International Ltd.) “Passport” ¹⁶

Furthermore, as seen in the following two statistics for the consumer e-commerce market, the total shares of online retail platforms make up the majority of shares in 2018.

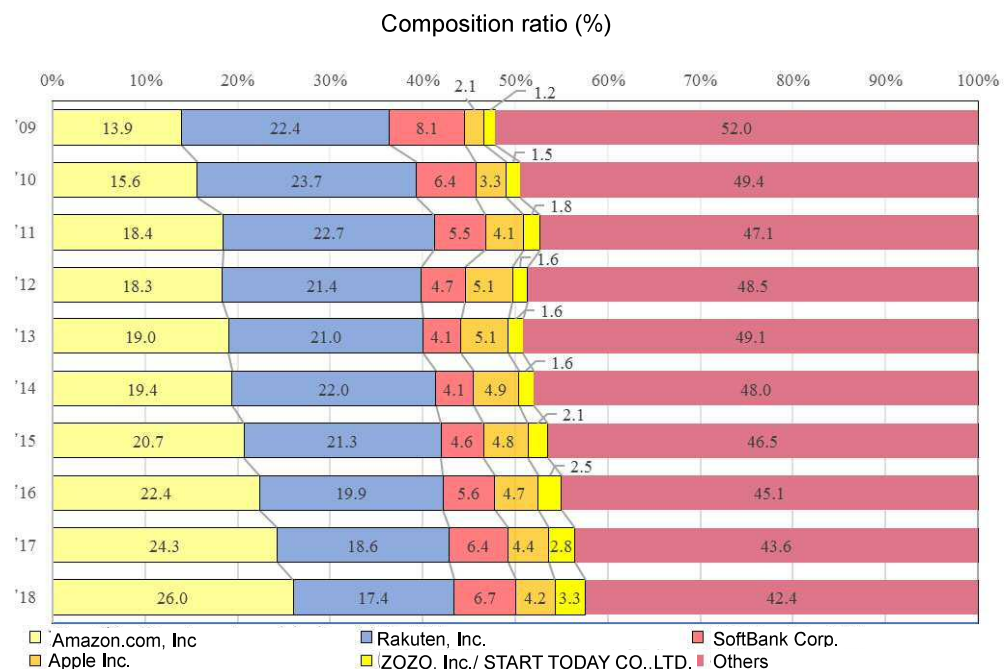
¹⁶ “Passport” contains digital categories along with merchandise sales categories.

<Chart 2-3 Consumer e-commerce market shares¹⁷⁾>



* "Others" mean businesses excluding the seven malls or companies that have their independent mail-order sites

Source: Fuji Keizai Management Co., Ltd "Actual Status of Mail-order/e-commerce Businesses and Future Outlook 2019"



Source: Created by the JFTC based on the Euromonitor International Ltd. "Passport"

¹⁷⁾ The chart for "Actual Status of Mail-order/e-commerce Businesses and Future Outlook 2019" is for the merchandise sales category, and the chart for "Passport" is for the merchandise sales category and the digital category as well.

(2) Business relations

A) Transactions between online retail platform operators and sellers

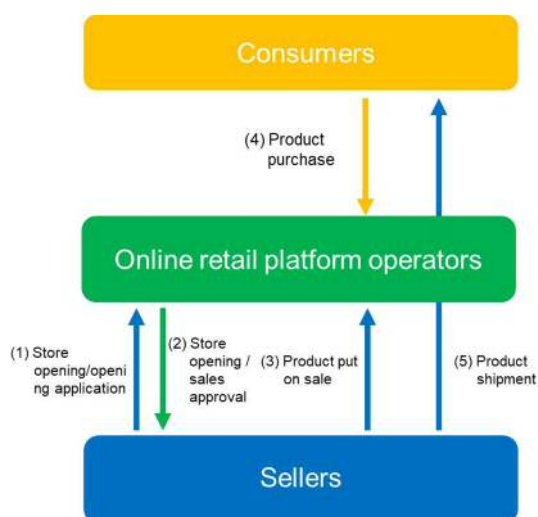
Online retail platform operators construct / provide systems that enable sellers to open stores / sell goods. Terms related to opening shop / selling goods at online retail platforms^[18] are agreed between online retail platform operators and sellers. Online retail platform operators generally introduce a business model in which they collect initial commission fees to open shop / sell goods, fixed monthly commission fees, and sales commission fees according to sales, etc.^[19] from sellers.

B) Transactions between online retail platform operators and consumers

Online retail platform operators construct / provide go-between services on online retail platforms that connect consumers with sellers for purchasing and selling transactions, etc. With the provision / use of these services, online retail platform operators and consumers agree on contracts related to the use of online retail platform.

(3) Transaction flow

The following is the standard flow of transactions at online retail platforms.



(1) Sellers apply to open stores / sell goods to online retail platform operators.

^[18] These terms may have various names such as “terms”, “contract”, “guideline”, etc. However, in the Report, the agreements made between digital platform operators and sellers (or consumers) will be stated as “contract”. The same goes as well for app stores.

^[19] As for fee collection, online retail platform operators generally receive payments from consumers in place of sellers, and payments are made to sellers after necessary fees are deducted.

- (2) Online retail platform operators review stores / goods and make approvals (disapprovals).
- (3) If approved, sellers are able to sell goods on the online retail platform.
- (4) Consumers purchase goods sold by these sellers on the online retail platform.^[20]
- (5) Sellers deliver their goods to consumers.^[21]

(4) Competition environment

Due to its characteristics as a two-sided market, online retail platform operators face competition in attracting sellers to participate in their online retail platforms out of all others, along with competition with other online retail platform operators in attracting consumers to make purchases on their platforms out of all others.

Furthermore, competition among sellers also exists toward having consumers purchase their merchandise. Also, in some cases, some online retail platform operators or their related companies directly sells merchandise that competes with goods sold by sellers. In cases like this, competition takes place between the online retail platform operators or their related companies and sellers.

^[20] To purchase goods on online retail platforms, consumers select methods of payment (such as credit cards, bank transfer, etc.) offered by the online retail platform to make payments.

^[21] There are different delivery methods of products purchased by consumers from sellers such as 1) sellers directly deliver products to consumers, and 2) online retail platform operators temporarily keep products for seller in warehouses, to be sent to consumers when purchased.

2. Overview of the app store market

(1) Overview of the app store market

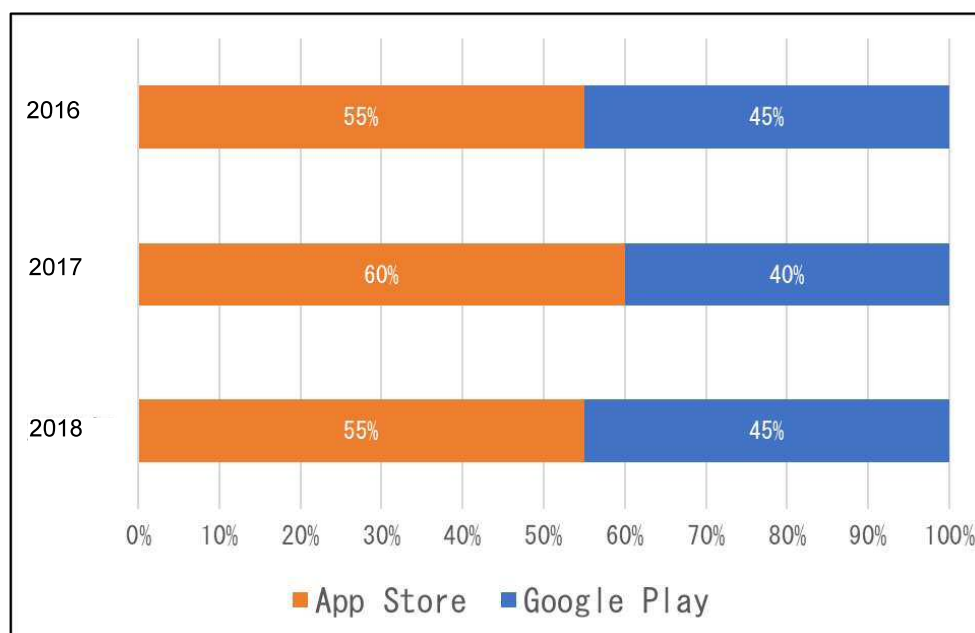
The market scale and shares of app stores in Japan are as in the following chart:

<Chart 3-1: Market scale of app stores>

Year	Sales
2016	1,272,672,300,000 yen
2017	1,529,980,000,000 yen
2018	1,662,711,500,000 yen

Source: App Annie survey information

<Chart 3-2: Sales shares in the app store market>



Source: App Annie survey information

(2) Business relations

A) Transactions between app store operators and app developers

App store operators construct / provide systems that enable app developers to distribute applications within app store applications^[22]. Contracts related to app store use are established between app store operators and app developers. App store

^[22] Applications are broadly categorized into native applications and web applications. Of these, native applications are developed to be used in specific operating systems (hereinafter referred to as "OS") or specific platforms. Web applications are used within web browsers. In the Report, native applications are stated as "applications", and web applications are clearly indicated each time.

operators review applications uploaded by app developers for distribution. Consumers are only able to download applications which have passed this review.

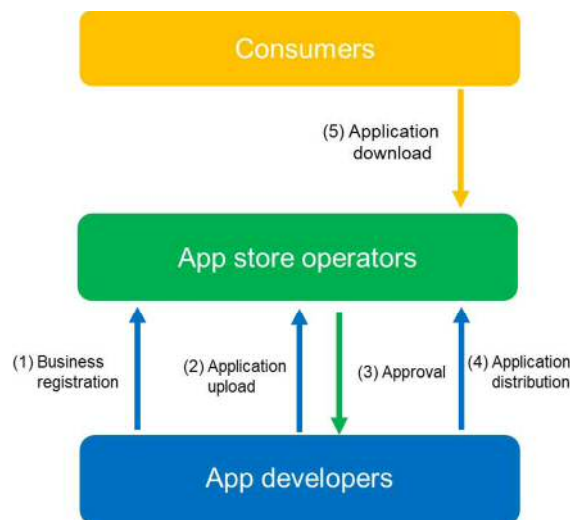
Furthermore, app store operators generally introduce a business model in which they collect account registration commission fees from app developers, along with sales commission fees according to application sales within the app stores and sales of digital content within each application^[23]. When selling applications through an app store or digital contents within an application, app developers need to use payment options provided by the app store operators (hereinafter referred to as “in-app purchases”).

B) Transactions between app store operators and consumers

App store operators construct / provide go-between services for app stores that link consumers with app developer applications and digital contents within applications, for buying and selling transactions, etc. With the provision / use of these services, app store operators and consumers agree on app store contracts.

(3) Transaction flow

The following is the standard flow of transactions at app stores.



- (1) App developers register for at the app store operators as application distributors.
- (2) App developers upload applications to be distributed.

^[23] App store operators receive payment from consumers for applications or digital content, and pay the balance to app developers after necessary commission fees have been deducted.

- (3) App store operators review the uploaded applications and make approvals (disapprovals).
- (4) App developers distribute the approved applications through the app store.
- (5) Consumers download these application (for a fee, or free) from the app store for use.

(4) Competition environment

Due to its characteristics as a two-sided market, the app store market faces competition in attracting app developers to distribute applications at their app store out of all others, along with competition with other app store operators in attracting customers to make purchases at their app store out of all others.

Furthermore, competition among app developers also exists toward having consumers purchase applications from them. Also, for some app stores, app store operators themselves or related companies distribute applications that compete with those distributed by app developers. In cases like this, competition occurs between app store operators or their related companies and app developers.

Section 3 The position of digital platform operators within transactions

1. Influential positions in the market

The more consumers use a digital platform, the more sellers gather on that digital platform. And the more sellers gather, the more consumers gather on that digital platform. Based on these indirect network effects, digital platform operators popular among sellers and consumers are often positioned in an influential position in the market^[24], and supposing they are not, there is a possibility of their positions rising rapidly.

“Acts which could restrict sellers’ business” will be mentioned in Subsection 3 of Section 4. When digital platform operators in an influential position in the market conduct this type of activity, they could violate the AMA as unfair trade practices.

2. Monopolistic or oligopolistic positions

As digital platform operators who have an influential position in the market expand their market shares and raise their ranks, competitors are not supposed to be able to compete on digital platforms for the quality, product lineups, commission fees and so on. As “Acts which could exclude competitors” will be mentioned in Subsection 2 of Section 4, when digital platform operators conduct this type of activity, they could violate the AMA as private monopolization.

Furthermore, digital platform operators or their related companies sometimes directly sell their products to consumers. When that is the case, while the ratio of direct sales differs among digital platform operators, they will be competing with sellers on the products. When digital platform operators sell products on their own digital platform, and if the digital platform is regarded as a single market, the digital platform operators are highly likely on a monopolistic or oligopolistic position.

3. Superior bargaining positions

If a party who has superior bargaining position against the other transacting party makes use of such position to impose a disadvantage on the transacting party, unjustly in light of normal business practices, such act would impede transactions based on the free and independently select of the said transacting party, and put the said transacting party in a disadvantageous competitive position against its competitors, while putting the party having superior bargaining position in an advantageous competitive position against its competitors. Since such act poses the risk of impeding fair competition, it is regulated as

^[24] Article 3 (4) of Section 1 of the “Guidelines Concerning Distribution Systems and Business Practices under the Antimonopoly Act”. A general standard of whether one’s position is recognized as influential in the market is having shares over 20%.

unfair trade practices, that is, “Abuse of Superior Bargaining Position.”²⁵

Although this is mentioned in Subsection 1 of Section 4 “Acts which could do sellers harm,” there are cases in which digital platform operators hold a superior bargaining position for transactions with sellers. This is where if a digital platform operator makes a request that is substantially disadvantageous for a seller, the seller would be unable to avoid accepting such a request on the grounds that the seller has difficulty in continuing the transaction with the digital platform operator and thereby the seller's business management would be substantially impeded. In determining the presence or absence of superior bargaining position, the degree of dependence by the seller on the transactions with the digital platform operator, the position of the digital platform operator in the market, the possibility of the seller changing its business counterpart, and other concrete facts indicating the need for the seller to carry out transactions with the digital platform operator are comprehensively considered.

The characteristics of digital platforms are to be taken into account in considering the position of digital platform operators in the market. In other words, because an indirect network effect works on digital platforms, more sellers and consumers tend to use the same platforms. Therefore, digital platform operators who have an influential position are highly likely regarded as having superior bargaining positions against more sellers.

4 Sellers opinions related to bargaining positions of digital platform operators

(1) Online retail platform operators

Overall, it has been indicated that 1) the dependence of sellers on online retail platform operators is substantially high, which forces the sellers to stay on the online retail platform, and 2) since an online retail platform brings in a large number of customers, even if sellers are not satisfied with it, they have no choice but to use it.

<Degree of dependence>

- We are not able to transfer to another online retail platform from the current one because we have a substantial business dependence on this particular online retail platform.

<Reputation and ability to attract customer of online retail platforms>

- Online retail platforms offer a various lineup of goods that can be easily searched by consumers. For this reason, there is a high possibility of consumers finding our products. Furthermore, online retail platforms are

²⁵ “Guidelines Concerning Abuse of a Superior Bargaining Position under the Antimonopoly Act” Article 1 of No.1

reliable and trustworthy, and so our company depends on online retail platforms for business.

- A certain online retail platform is very gorgeous and popular because customers are able to enjoy shopping just like at real stores. The number of customers that flock to this mall is extremely attractive to us, and so even if we are not satisfied with the online retail platform, we have no choice but to use it.
- Although it is difficult for consumers to find our website, it is a piece of cake through the website of an online retail platform to do so. What is more, online retail platforms are easy for consumers to use because these platforms make it easy to buy products. That is why we cannot avoid using online retail platforms to sell goods in the e-commerce world.

(2) App store operators

From app developers, most opinions stated that 1) within the oligopolization of app stores, their businesses depends on app stores in which they earn half or more of their sales, and 2) disseminating an application throughout consumers without the help of app store distribution is extremely difficult and it feels like they are at the bidding of app store operators, but they are not able to complain.

<Degree of dependence>

- Within the oligopolization of app stores, more than half of our company's sales depend on a particular app store, and so we are afraid of getting our account deleted by them.

<Reputation and ability to attract customer of app stores>

- Applications are now at the height of their popularity. Disseminating an application throughout consumers without the help of app store distribution is extremely difficult and being rejected by app store operators is a matter of life or death for our company. For this reason, it feels like we are at the bidding of app store operators, but we are not able to complain.
- Doing business with a certain app store operator is absolutely necessary. This is because many users still have concerns over security in downloading applications through a website, and so we realized that there is no way to distribute applications but to use an app store. That is why we need to obey anything app store operators say.
- A certain app store is preinstalled in a very eye-catching location, so consumers tend to use this to get any applications they need. That is why we have no

choice but to use the app store services to have consumers download our application.

- Because there is virtually no alternative app store to take the place of the two major app stores, our company considers it necessary to use these app stores in order to continue business in the application industry. We will not be able to continue our application business without these app stores.
- Many consumers still have concerns over the security of web services. That is why having an application in an app store is one type of safe/secure standards for users, unlike services only found on websites.

Section 4 Business transactions and reviews

In this section, we will categorize acts by digital platform operators in online retail platforms and app stores, which have been pointed out by sellers. The acts are categorized into four categories: 1) Acts which could do sellers harm, 2) Acts which could exclude competitors, 3) Acts which could restrict sellers' business, and 4) Acts which could lack fairness or transparency.

Most of the topics are shared between online retail platforms and app stores, and thoughts on the AMA and competition policies are applicable whether the digital platform may be an online retail platform or an app store.

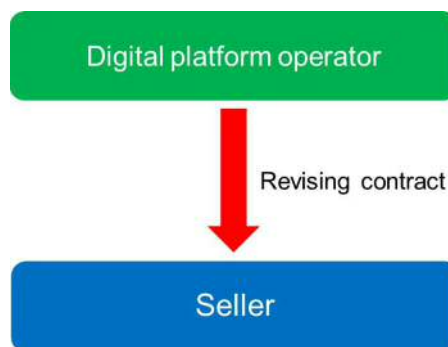
However, acts such as "1(5) Action to damaged/lost products in the warehouse," "1(7) Purchase requests of advertisement spots," and "1(8) Penalty system for violation of contract" have only been indicated by sellers on online retail platform. On the other hand, acts such as "2(1) Restriction of use of other app stores," "3(3) Setting a commission on an electronic payment through an app purchase and restriction on the payment outside of an app," and "3(4) Setting of retail price tiers" have only been indicated by app developers, and the thoughts on the AMA and the competition policy are as stated in each section.

1. Acts which could do sellers harm

(1) Change in business terms with contract revision

Sellers on online retail platform have pointed out that without having been asked for agreement on contract revision, they were forced to accept the revision that would 1) raise commission fees, 2) launch a new payment method, and 3) force the sellers to use unnecessary communication tools. Furthermore, app developers have pointed out that contracts were modified in a unilateral manner by app store operators, and app developers were forced to agree with contract revision and that they have no choice but to accept it due to the risk of having their services in the app store restricted.

On the other hand, online retail platform operators have pointed out that 1) increase in commission fees is necessary in light of maintaining and improving services and are deliberated through various viewpoints such as cost fluctuations, 2) incorporating new payment method is to expand the lineup of the payment methods, reduce the load of settlement-related tasks, and reinforce measures toward fraudulent orders, and 3) incorporating communication tools has the aim of fulfilling requests from both sellers and consumers. Furthermore, app store operators have pointed out that negotiations with all participating app developers is impossible, and that their platform allows all app developers to conduct business fairly, regardless of their company size.



A. Trading practices (online retail platforms)

(A) Consent toward changes in contracts

<Sellers>

- Changes in contract arrive as a one-sided notification from operators, leaving us no choice but to comply.
- Notification of changes in contract was sent to sellers from operators, and there was no process asking for consent.

<Operators>

- It states in the contract that we can implement contract revision with a notification. Furthermore, it is also stated in the contract that continuing to use our services after revision of a contract means that the other party consented to the revision. Sellers confirm the stipulations in the contract and create a sales account only if they consent to the contract.
- The reason we do not believe it is necessary to have the consent of sellers at each contract revision is because we aim to sell to consumers by providing uniform services to many sellers, and participation of these sellers will effectively gather more consumers than if they created similar systems independently. Furthermore, competition among operators is harsh. It is not feasible to go around individually and acquire consent from all parties when we are faced with daily tasks of improving and expanding functions and services. There will be a need to continuously offer services corresponding to individual parties if individual consent is required. That will mean a surge in operation costs to be shifted towards service fees or mean withdrawing from the business. Still, we make efforts to make any revisions widely known by repeated notifications beforehand to alleviate stress on sellers as much as possible by giving them leeway to prepare as needed.
- Even without prior consent from sellers, contract revisions are applied with the continued business transactions of sellers at notification / after notification from operators to sellers. The reason that consent is not necessary in contract revisions is that the contracts are established to unify many entities within one integrated standard. If prior consent was needed to revise contracts, we would need to maintain services corresponding to the former contract even if one of the many tens of thousands of sellers was to disapprove. This would cause our management business to fall behind competitors and new services to the market. It will also be inconvenient and difficult for consumers to use. Additionally, fees necessary to maintain systems for the former contract will also be needed, forcing us to raise various commission fees, which will only be a further disadvantage for sellers. Note that prior notification on contract revisions is sent to sellers with ample time before implementation.
- It is stated in our contract that we are at liberty to revise the contract at any time. However, for revisions that create a large impact on sellers, we often conduct interviews with sellers beforehand. Still, we do not explicitly acquire consent from sellers when revising contracts. The continued use of services by sellers is proof of consent to any contract revisions. If any sellers state they do

not agree with the contract, they will not be able to continue business based on the former contract before revisions. Having a uniform contract for sellers allows for efficient and swift a large amount of transactions of the same type and is needed to stabilize transactions being made. Additionally, changing rules per seller will hinder the foreseeability for consumers wanting to purchase merchandise, so it is only rational to conduct a uniform business based on a contract.

(B) Increase in commission fees

<Sellers>

- There is only prior notice of revision of commission fees, and this notification does not ask for sellers' consent. Sellers have no choice but to accept the price raise if we are to continue using services.
- There is prior notice for increases in commission fees. However, there is no room for negotiation or selecting consent, but only a one-sided notification that requests acceptance.

<Operators>

- When commission fees are raised, various deliberations are made with reasons such as 1) necessity born from service maintenance and improvement, 2) shift in costs necessary to provide various services, 3) to meet commission fee standards to maintain a competitive edge on other rival companies, 4) to maintain fairness among sellers, and 5) opinions from sellers on commission fees.
- Furthermore, when commission fees are to be raised, notification of the change is conducted beforehand to allow sellers ample time to comprehend and make preparations for the change. Consideration is made towards sellers, so they do not incur any unjust damage to profits.

(C) Mandatory use of new payment systems

<Sellers>

- Our company told an operator that we refused to incorporate the new payment system, because according to estimates calculated at our company, the new payment system would have ill effects such as increasing the commission fees we had to pay. However, the new system was forcibly introduced.
- New payment systems were decided for a particular online retail platform. We objected to the new systems because we forecasted they would 1) mean a

larger commission fee burden, 2) call for expenses to renovate our in-house system and 3) although the new systems would mostly shorten payment period, the payment period for some of them frequently used by our customers would be extended. However, ultimately, the new payment systems were forcibly introduced.

- Due to the introduction of new payment services at a certain online retail platform, we had to incorporate “post payment settlement” and “convenience store settlement”. We did not want to incorporate “post payment settlement” because this method has stores at risk of footing product fees and delivery fees if customers did not receive their ordered goods. Additionally, there were many stories of empty orders for “convenience store settlement”, so we objected to this as well. However, we were forced to incorporate these payment methods, although we did not want to.

<Operators>

- The reason new payment systems were incorporated was 1) to boost sales by offering more diverse methods of payment (formerly, payment methods for consumers differed among sellers, and many stated that it was confusing), 2) to alleviate the burden of settlement-related tasks for sellers, 3) to reduce risks of fraudulent orders by reinforcing countermeasures, 4) to improve financing for sellers by shortening payment reception cycles, and 5) to standardize commission fees per payment type. The new payment system called for a drastic change in the commission fee system, making it difficult to simply compare commission standards—some businesses experienced an increase, and some a decrease. Additionally, the timing for the system change was made with consideration towards the concerned businesses using service functions and with enough time for preparation and system development. Furthermore, to prevent trouble at transition, we took care to offer support for sellers, such as determining the final transition date only after confirming with each seller’s status.
- Consumer payment methods are specified by our company. This is to provide an online retail platform which is comprehensible and convenient for consumers by creating an environment with standardized payment methods for all sellers. Furthermore, we believe that it cannot be helped that payment is not made to sellers when purchases made by “post payment settlement” are not received by customers and sent back. Rejection of delivery does not occur because of payment methods, as it is not a phenomenon unique to “post payment

settlement". Additionally, "post payment settlement" and "convenience store settlement" are popular with customers who do not have credit cards, so we believe it is an opportunity to boost sales for sellers.

(D) Mandatory use of communication tools

<Sellers>

- There is a chat service that allows sellers to correspond to consumer inquiries on a certain online retail platform. However, sellers were forced to incorporate this service. The chat function calls for quick response to consumers, but this is not feasible for sellers like us, who are running their business with only two staff members. In this way, we are forced to incorporate functions that we cannot even use.
- We were forced to incorporate a communication tool that allows us to chat with consumers. We were not asked for consent beforehand and was only notified about the decision to include this function. Suppose we receive an inquiry from a consumer—we have to respond immediately, or risk our reputation going down. We are not capable of using this chat service, because our store does not have that many staff members and we do not have time to stay glued to the computer screen all day. Still, we were forced to incorporate chat functions.

<Operators>

- Chat tools were introduced to benefit both users and sellers because there were users who wanted satisfactory answers to their inquiries, and there were requests from the seller side asking for a way to contact users who did not answer telephones. This tool aids purchasing activities of the consumer and as a result, improves the appeal of our online retail platform, taking us a step ahead of competitors. For this reason, having sellers use this tool becomes a prerequisite. Note that we have listened to the voices of sellers and have implemented a major revision that allows sellers to respond at their convenience, instead of the former instant reply functions, in order to alleviate the load on sellers.

B. Trading practices (app stores)

- Consent toward changes in contracts

<Developers>

- Although there are notifications beforehand from operators about contract revisions, as a general rule, there is no negotiation process and we have no

choice but to agree to revisions.

- An operator stipulates in the contract that they are able to revise the contract at their discretion, at any time.
- Whenever there is a change in contract, the system has an “Agree” button that we need to click before continuing use of the app store, leaving our company no choice but to click the Agree button.
- An operator tends to change contracts at their own discretion without any prior notification. Although there is a process asking for our consent, there is a need to agree to the revisions in order to login to the system control panel. We cannot distribute our applications without logging in, so that left us no choice but to agree to the contract revision.

<Operators>

- Our company needs to update the store’s terms of use to the extent necessary to provide a safe and robust platform protecting both users and developers. Most changes to the store’s terms of use are made to comply with the law, to secure users’ profits, or to protect users. When changing the terms, our company gives prior notice with a certain reasonable notice period to developers as set out in the existing terms of use. Where changes are more significant, the operator may solicit input from developers that may be affected by the changes, provide a longer notice period before making the changes, and provide more detailed explanations about the changes. Changes are often based on feedback from developers and users. Under the terms of use, a developer is deemed to have agreed to the changes if it continues using the app store as set out in the existing terms of use. This helps to maintain a safe and robust platform where users and developers all over the world can have a consistent experience in using the app store, as well as to treating developers equally.
- There are 20 million registered developers on the app store. It would be impossible for us to negotiate with every developer. A standard agreement is the most efficient means of interacting with all developers. It also ensures all developers, large or small, are subject to the same terms. When we update our rules, we will, through the management system, notify our developers of the update two weeks before the update. New conditions will not be imposed on developers unless they click the “accept” button on the administration screen. On the other hand, we will not give an advance notice when our guidelines are changed. The updated guidelines will be effective when they are published.

However, developers will be given a period of time to respond to the updated guidelines. However, apps live on the app store before the guideline's changes are effective have 6 months from the date the guidelines were revised to comply.

C. Thoughts on the AMA and the competition policy

There are cases in which digital platform operators revise their contract and 1) raise commission fees paid by sellers to digital platform operators, and 2) introduce new, mandatory services and establish a commission fee for this. This type of contract revision could be a violation of the AMA (Abuse of Superior Bargaining Position) when a digital platform operator, who is in a superior bargaining position over the seller, provides disadvantages to the seller unreasonably in light of normal business practices.

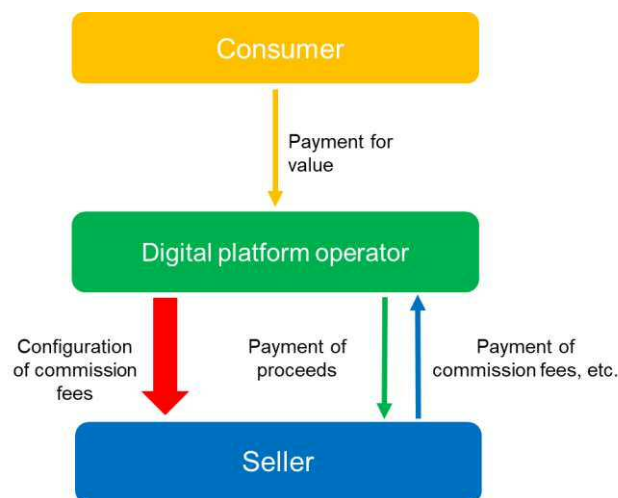
In making such a decision, some of the points to be considered include: 1) the content of disadvantageous factors which fall upon sellers with the change in contract, 2) whether there are reasonable grounds on which the contract needed to be revised, 3) the period from notification to implementation of the business transaction revisions with contract change, and 4) the number of sellers which have no choice to accept the disadvantageous terms in order to continue using digital platforms, regardless of having no profit with incorporating a new system.

In order to increase the fairness and transparency of transactions and ensure a fair competitive environment, it is necessary for digital platform operators to 1) offer thorough explanations beforehand on the revisions to sellers, 2) lend an ear to reasonable opinions from sellers, if any, and make deliberations as much as possible based on these views, and 3) provide enough time from contract revision notification to implementation.

(2) Calculation methods and grounds of commission fees

Many sellers on online retail platform have pointed out that 1) it is not reasonable to base commission fee calculation on delivery fees added to sales, 2) the grounds on which commission fees are calculated is not clarified, so it is not clear whether the commission fees are justified or not, 3) it is not reasonable to collect commission fees for returned products, and 4) commission fees are collected for suspended accounts. Additionally, app developers have pointed out that the method of establishing commission fees is not made clear.

On the other hand, online retail platform operators have pointed out that 1) basic commission fee calculations are made by incorporating delivery fees, etc. as well as sales, as a reasonable amount for using the online retail platform system, 2) information related to commission fee calculation has already been disclosed, 3) returns and refunds also cost a certain amount, so sharing appropriate costs are necessary, 4) monthly commissions and sale-related commissions are not collected when an account is inactive, and 5) some services are being used even if an account is suspended, so monthly commission should be collected. Additionally, app store operators have pointed out that commission fees were applied to costs needed to operate app stores.



A. Trading practices (online retail platforms)

(A) Commission fees charged for factors other than sales

<Sellers>

- An operator calculates commission fees based on a total of product retail sale prices and delivery fees. Delivery fees are generated between delivery companies and our company and has nothing to do with operators. Basing commission fees on this seems unreasonable to us.

- An operator used to calculate commission fees only on the retail price of products. However, somewhere along the way, it started to charge commission fees by adding cash-on-delivery fees. Originally, cash-on-delivery fees are compensation made between delivery companies and our company. We feel that this calculation method is not reasonable.

<Operators>

- All transactions made on the platform are the basis for commission fee calculation, whether it may be sales, consumer tax, delivery fees, etc. Fees excluding sales are calculated for commission fees as a reasonable consideration for system use. This is due to inevitable charges handled by our company via our online retail platform for system changes caused by, for instance, consumer tax revision and other factors.
- In addition to product sales, delivery fees and gift-wrapping fees are also incorporated into the sales commission ratio. If only product prices were incorporated into commission fee calculation, some sellers may set lower sales prices and higher delivery prices in order to avoid paying the proper sales commission fees. Furthermore, stating lower sales prices will cause consumers who only look at product prices to falsely believe that they are paying a lower total price. That is why adding commission fees in addition to product prices is a reasonable way to avoid sellers from putting lower price tags only on their merchandise.

(B) Commission fees related to affiliate advertisement ²⁶

<Sellers>

- Sellers do not know if affiliate commission fees are actually based on products sold through affiliate advertisements. We sense that our business has more repeater customers, so it is unlikely that purchases made through affiliate advertisements reach the level of the affiliate commission fees charged to us. Due to this, we are not convinced that affiliate commission fees are being properly calculated and pay commission fees in doubt.
- A certain management business does not clarify which affiliate advertisements

²⁶ Affiliate programs are systems that link client websites to other websites and offer compensation to the website administrator (fixed amount or fixed ratio) when member registration or purchases are made at that website (Source: Japan Interactive Advertising Association “Basic Practices/Guideline and Glossary for Internet Advertisement Publishing 2019” [Translated from Japanese by the JFTC.]). Furthermore, sellers are charged with commission fees when products are purchased at online retail platforms through affiliate advertisements.

are promoting products. Thus, it is not certain if the affiliate commission fees are actually based on sales made through affiliate advertisements. As a result, there is nothing we can do but pay the amount the operator says.

<Operators>

- The system does not notify individual sellers of which affiliate sites visitors passed through to make purchases. This is because 1) some affiliate mediums do not disclose original referrers (the original page users were on before being linked to the commercial site), making it difficult for our company to acquire that information, 2) the vast number of individual transactions made through affiliates and the original referrer data make it difficult to store and process cost-wise, 3) there is a risk of business information, such as the detailed inflow of affiliate mediums per entity to our online retail platform and the collaborative relationships between affiliate mediums and our company, being shared and applied externally, with rival operators. On the other hand, our company discloses the number of click-through for affiliate links and sales information generated through affiliates (such as purchased date, product name, genre, sales amount, tariff, amount of result rewards) to sellers.

(C) Commission fee collection related to returns

<Sellers>

- An operator collects commission fees related to returns from sellers when customers return a product. We, as a company, do not understand the grounds on this logic or the aim of paying commission fees, and are extremely unsatisfied that our company must handle commission fees for returned products, even though no profit was made because of the return from consumers.
- We do not agree to the commission fee related to returns. Having a product returns means that the product does not generate sales. Even this alone is damaging to business. We believe it is strange that a return commission fee is collected along with this, causing sales to go in the red.

<Operators>

- We have sellers bear a certain amount of commission fees when consumers return a certain product. This is because there is always a certain amount of initial order processing or credit card settlement fees related to returns and refund process. Thus, we believe it is reasonable to have sellers bear some of the constant commission fees that are necessary for returns.

(D) Commission fees during account suspension

<Sellers>

- Sellers are not able to sell any goods while their account is suspended, meaning that they are not receiving services from operators at that time. Yet, even if an account is on suspension, some commission fees continue to be collected.

<Operators>

- Sales commission is a fee which is generated with each sale/order. Thus, no sales commission fees will be collected after an account has been suspended, excluding sales commission fees for transactions made before the suspension of an account. Furthermore, there is no monthly registration fee after an account has been suspended.
- Even if steps were taken for store opening suspension, monthly store fees are still collected from these sellers. This is because 1) operation and maintenance of sellers' pages are necessary, even if their store is suspended, and 2) services such as "shipment processing for already received orders", and "inquiries from purchasers" are still provided for sellers, meaning that monthly store fees are necessary.

B. Trading practices (app stores)

<Developers>

- The content of app store commission fees is unclear.
- We understand that opinions stating that the current commission fee is reasonable if distributing applications worldwide. However, our application is generally geared toward only domestic users, so that that does not apply to us.

<Operators>

- Developers pay an initial one-off registration fee of USD 25 when developers create a developer account (the registration fee is paid only once). If a developer decides to distribute its apps entirely for free, our company collects no money from the developer in return for the services it provides, other than the initial one-off registration fee. If a developer decides to charge for its apps, our company also charges the developer a service fee of 30% generally for each purchase made through the app store. The service fee is reduced to 15% for subscribers that the developer retains after twelve consecutive paid months. Our company makes large investments in app development tools as well as

operating and developing the app store including developer support, hosting and distribution, compliance and payment systems. The fees collected from developers help to support these investments and services.

- We collect commission at the rate of 30 percent with regard to the digital content sold or services provided through the app store including the downloading of paid apps and purchases within apps. The commission becomes 15 percent for subscriptions that are renewed after the first year. The commission income is used for the operation of the app store as well as the development, maintenance, and management of the tools and platform used by developers. The vast majority of developers, including Japanese developers, sell their apps, in multiple countries.

C. Thoughts on the AMA and the competition policy

Generally, digital platform operators collect commission fees from sellers using their digital platforms and use these commission fees to operate their digital platform. When collecting these commission fees, actions such as 1) forcing more disadvantageous content on sellers than what was decided formerly and 2) using the advantageous business position between digital platform operators and sellers for one's own profit to collect commission fees without clearly defined could be a violation of the AMA (Abuse of Superior Bargaining Position) when a digital platform operator, who is in a superior bargaining position over the seller, provides disadvantages to the seller unreasonably in light of normal business practices.

In making such a decision, some of the points to be considered include: 1) the relation between commission fees and direct profit acquired by sellers by using services the commission fees are based on, 2) costs, etc. necessary to operate and renew systems for digital platforms, and whether there are reasonable grounds for commission fee calculation and claims, and 3) the number of sellers who have no choice but to accept the commission fee in order to continue using digital platforms.

In order to increase the fairness and transparency of transactions and ensure a fair competitive environment, it is necessary for digital platform operators collecting commission fees from sellers to 1) offer thorough explanations of factors such as the commission fee amount, grounds of calculation, details, method of use, etc., and 2) have the contents down in writing.

(3) Tasks requested towards sellers

Sellers on online retail platform have pointed out that tasks such as changing product images on online retail platforms to a uniform layout are forced upon them, and app developers have pointed out that unnecessary tasks are forced upon them at application reviews.

On the other hand, online retail platform operators have pointed out that these tasks were called for in order to provide comprehensive product images to users, and app store operators have pointed out that they call for standardization of similar applications in order to shut out spam.



A. Trading practices (online retail platforms)

<Sellers>

- We were instructed by an operator to make the backgrounds of product images totally white, and to reduce the size of lettering in the image to 20% or less. The task needed to be done by a deadline, or there would be penalties we would have to pay. By all rights, sellers should be able to exert their own unique expertise and schemes. However, the all-white background prevents us from having our own flair and does not allow us to stand out in a crowd. This poses a risk of our products' sales going down. We believe that forcing us to do these tasks is a major issue.
- Our company received an order from an operator to make our product image backgrounds white. This task called for the product background to be completely white with the text ratio at 20% or smaller. There were a large number of products that needed to be modified and a deadline to be met, so we, the staff, had to work around the clock. Changing the background to a white color does not mean better sales, so we believe that this task was extremely unreasonable.

<Operators>

- Our company has requested that sellers limit the components in product images (a photo background or white background, text components within 20% for the first image only, and no border lines). The surge of smartphone users causing our online retail platform to be used in dramatically different ways, along with the increase of product images being shared on social media are some of the reasons for this request. In this environment, users have stated that, “the product images are cluttered with too much information, making it difficult to search for items”. Furthermore, based on the results of user surveys related to product images, we requested this task to sellers because there was a need to create product imagery that would easily resonate with consumers to increase click ratio and boost sharing on social media.
- A point system for violations was applied (after March 1, 2019) for sellers who did not comply to the image modification tasks. Note that we implement close communication with each seller before applying points. The reason why we have image modification as one target of the violation point system is because this initiative has a great impact on the overall online retail platform (an actual survey for users proved that there was a dramatic increase in incoming numbers from social media), and to ensure the effectiveness of this initiative.

B. Trading practices (app stores)

<Developers>

- An operator instructed us to integrate two applications with completely different content into one application. We filed an objection towards the operator, and although our claim was ultimately recognized, the review period was longer than usual. Naturally, applications with different content should not need to be bundled together. This order caused excess stress on our company and stripped us of profits that we should have had.

<Operators>

- The request to integrate apps into one is made to eliminate spam on the app store by providing all the functionalities in connection with certain apps in a single app. This also contributes to the interests of users. We have never instructed developers to integrate different categories or different content types of apps into one.

C. Thoughts on the AMA and the competition policy

Due to aims such as establishing a uniform image for their digital platform, digital

platform operators may request that sellers take actions such as to edit their images. Actions like these could be a violation of the AMA (Abuse of Superior Bargaining Position) when a digital platform operator, who is in a superior bargaining position over the seller, provides disadvantages to the seller unreasonably in light of normal business practices.

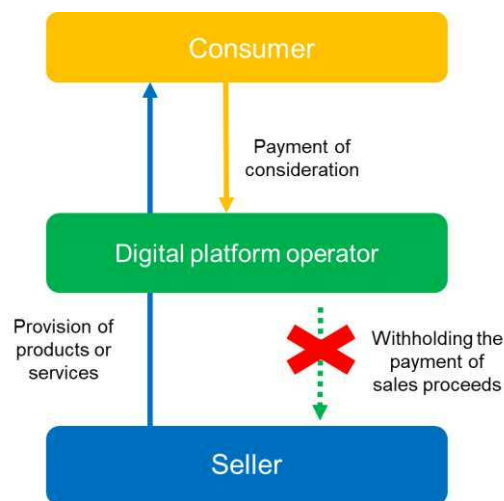
In making such a decision, some of the points to be considered include: 1) the relationship between necessary fees for the task in question and direct profits to sellers, such as sales increases due to the task requested by the digital platform operator, 2) whether there are reasonable grounds on which the requested tasks to sellers are made, and 3) the number of sellers which have no choice but to accept the requested tasks in order to continue using digital platforms.

In order to increase the fairness and transparency of transactions and ensure a fair competitive environment, it is necessary for digital platform operators who request a certain task to sellers to 1) appropriately share fees between digital platform operators and sellers, 2) provide a sufficient amount of time for conducting tasks, 3) offer sellers a sufficient explanation on reasons why tasks are necessary, and 4) take opinions from sellers related to task requests, if any, as much as possible into consideration.

(4) Withholding of the payment of sales proceeds

Sellers on online retail platforms have pointed out that the payments of their sales proceeds are forcibly withheld. App developers have pointed out that the payments of their sales proceeds remain withheld with no good reason.

On the other hand, online retail platform operators have pointed out that, if there is any fraud or an illegal act that has been committed, for example, they withhold the payments of sales proceeds for the purpose of preventing the recurrence of such act. App store operators have pointed out that they withhold the payments of sales proceeds when they discover any act that violates laws or fraudulent activity.



A. Trading practices (online retail platforms)

<Sellers>

- If a seller engages in an act that violates the contract which results in the suspension of their account, the operator may withhold the payment of sales proceeds to the seller. Also, the payment of sales proceeds may not be made to the seller if their account is closed. Even if there had been an act which violated the contract, it does not seem fair to have such a rule that allows the operator to withhold the payment of sales proceeds that should have been made in the first place.
- We have received an email from the operator which stated that they will “suspend our account and withhold sales proceeds at that time” on the suspicion of our products being counterfeit products. In the email, the operator requested us to submit the “information of our suppliers” to determine whether or not our products are counterfeit. We were hesitant to give such information

to the operator, which could be a potential competitor, but had no choice but to give the information to get our sales proceeds back. However, the operator sent us a notification stating that the information is not sufficient for them to determine whether or not our products were counterfeit products so that they will 1) permanently withhold our sales proceeds, 2) not provide details on the reason and 3) not answer any further inquiries and then unilaterally terminated the contract.

<Operators>

- We may withhold sales proceeds of sellers when: it is necessary for the sellers to provide a refund to the purchaser according to the terms and conditions that they agreed, there is any suspicious activity on their accounts, their accounts have been suspended or there is any suspicion of fraud or counterfeiting. In any case, the withholding of sales proceeds will be released if the compensation period stipulated in the contract has passed or once it is confirmed that there has been no fraudulent activity. The reason for withholding sales proceeds is to pay the amount to be refunded to the purchaser based on the contract or to prevent the recurrence of fraud and illegal acts by withholding the sales proceeds.

B. Trading practices (app stores)

<Developers>

- Our app and account have been deleted by an operator who considered our app a gambling app. However, our app is simply for playing and does not instigate gambling behavior. Our sales proceeds at the time when our account was closed remain withheld by the operator.

<Operators>

- We withhold payments to the developers when: 1] there is evidence of a fraudulent or other illegal act by the developers to consumers; or 2] accurate tax information is not provided by the developers.

C. Thoughts on the AMA and the competition policy

When a digital platform operator receives the price of a product paid by a consumer on behalf of a seller, the digital platform operator pays the sales proceeds to the seller after subtracting the fee, however, the digital platform operator may withhold the payment depending on the transaction situation. When such a digital platform operator, who is at a superior bargaining position over the seller, provides

disadvantage to the seller unreasonably in the light of normal business practice by withholding the payment of sales proceeds, this could be a violation of the AMA (Abuse of Superior Bargaining Position).

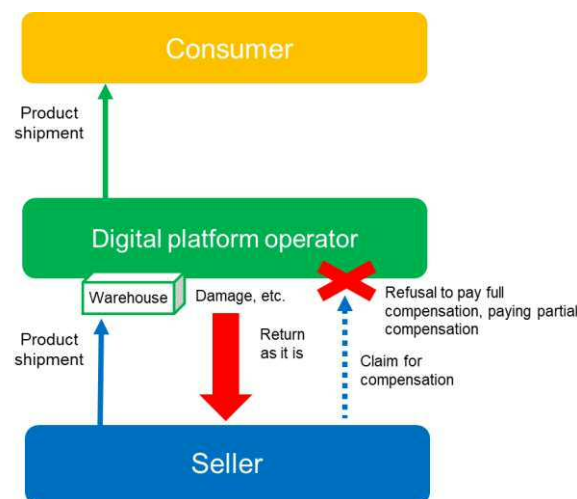
In making such a decision, some of the points to be considered include: 1) the contents of disadvantages experienced by the seller due to the digital platform operator withholding the payment of sales proceeds, 2) the presence or absence of a reasonable reason for the digital platform operator to withhold the payment, such as an objective doubt on the transaction between the seller and consumer, and 3) the number of sellers that have no choice but to accept the disadvantages to continue to use the digital platform.

In order to increase the fairness and transparency of transactions and ensure a fair competitive environment, it is necessary for digital platform operators to specify in writing the conditions for withholding sales proceeds, the basis for calculating the amount to be withheld, the withholding period and the conditions for releasing the withheld sales proceeds.

(5) Action to damaged/lost products in the warehouse

When consumers purchase products from the sellers on online retail platforms, the products are either shipped directly from the sellers or from the warehouse of the online retail platform operators where the products have been stored. In the latter type of transactions, the sellers on online retail platforms have pointed out that 1) online retail platform operators do not accept claims for compensation for products that were damaged inside their warehouse even when the sellers collect and present as much evidence as possible, and 2) even if the damage is compensated, the compensation is not made in full and the sellers are forced to bear some of the burdens.

On the other hand, online retail platform operators have pointed out that 1) they determine the point at which the damage/loss of products was most likely to have occurred based on the evidence, and 2) compensate the amount equivalent to the sales proceeds of the same product to the sellers based on the contract.



A. Trading practices (online retail platforms)

<Sellers>

- When we got our product from the warehouse of the operator, we found that our product was damaged. Thinking that the damage was made inside the warehouse, we asked the operator for compensation but the operator repeatedly demanded us to provide it documents and explanations. After repeating the same exchanges many times, the operator finally demanded us to provide “a photo or image that shows how the product was packaged” at the time when the product was returned from the warehouse to our company. However, we do not have any photo or image of unopened packaging because

we noticed the damage only after opening the box that was returned to us from the warehouse. The operator should have known that we don't have such photo but is trying to avoid compensation payment by making an unreasonable request. The operator also unilaterally argued that "if the damage was made inside the warehouse, it should have been compensated but no compensation has been made yet, so it is unthinkable that the damage was made in the warehouse". In addition, we were asked to provide the same explanation every time we talked to the staff at the operator because there was no single person handling our case. In the end, we determined that we cannot waste any more effort and time and gave up the compensation.

- We were compensated for the damage that was made in the warehouse of the operator. However, the amount of compensation did not cover the full amount of the damaged product. The contract provides that the compensation amount shall be determined in consideration of the sales history, etc. of the sellers, however, the detailed calculation method is unknown to sellers. We do not understand why sellers have to bear part of the compensation when the product was damaged due to the negligence of the operator.

<Operators>

- With regard to product damage, we ask sellers to submit images, etc. that show the damage to the product and the outer box to determine the point at which the damage was most likely to have occurred.
- With regard to product loss, we determine the point at which the product loss was most likely to have occurred, in principle, based on records, such as the carrier's delivery record, the delivery record made when the product arrived at the warehouse and the shipping record.
- If we determine that a product delivered by a seller has been damaged or lost at our fault, we compensate the seller for the amount equivalent to the sales proceeds expected by exchanging the damaged or lost product with the same product or selling the same product. The seller can make an objection to our decision and in that case, we reinvestigate the case based on the relevant information.

B. Thoughts on the AMA and the competition policy

When a digital platform operator stores or ships products of sellers from its own warehouse, it may require the sellers to bear the burden for damage, etc. that have occurred to the products. When such a digital platform operator, who is at a superior

bargaining position over the seller, provides disadvantage to the seller unreasonably in the light of normal business practice by 1) not specifying provisions for compensation in advance, or 2) specifying provisions that set the conditions to receive compensation more severe than necessary which makes it practically impossible for sellers to receive compensation for the damage, etc., this could be a violation of the AMA (Abuse of Superior Bargaining Position).

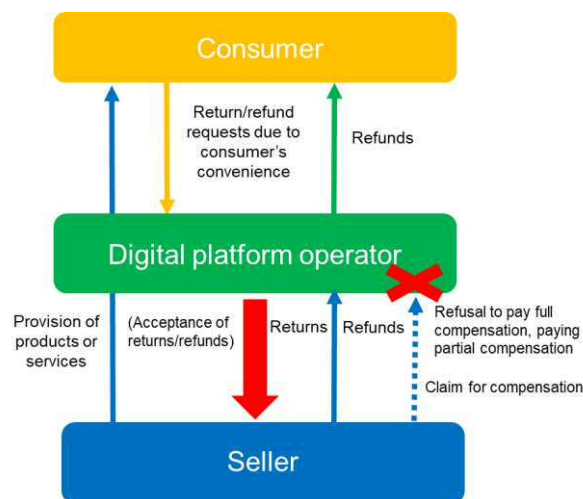
In making such a decision, some of the points to be considered include: 1) the contents of disadvantages experienced by the seller due to the digital platform operator not compensating for the damage, etc. or compensating only for partial damage, 2) the presence or absence of rationality regarding compensation standards, and 3) the number of sellers that have no choice but to accept the disadvantages to continue to use the digital platform.

In order to increase the fairness and transparency of transactions and ensure a fair competitive environment, it is necessary for digital platform operators to set standards that would allow appropriate sharing of costs for the damage, etc. with sellers and specify in writing the amount of compensation and conditions for compensation.

(6) Handling consumers returns or refund request

Sellers on online retail platforms have pointed out that 1) they are practically forced by the online retail platform operators to accept returns even if they are fraudulent returns, and 2) they do not receive enough compensation even if losses are incurred by returns. App developers have also pointed out that 1) refunds are unconditionally accepted if they are applied within a certain period, and 2) refunds are accepted even after the items are used by consumers, causing damage to developers.

On the other hand, online retail platform operators have pointed out that 1) they deal with returns in accordance with the return contract and sellers can also make objections, and 2) they compensate sellers for the amount equivalent to the same product based on the contract. App store operators have pointed out that 1) they accept refunds requested within a certain period to protect consumers and developers, and 2) they give refunds based on the contract.



A. Trading practices (online retail platforms)

(a) Forced acceptance of returns

<Sellers>

- When we ship products directly from our own warehouses, we can communicate directly with purchasers, which allows us to better deal with return/exchange requests. For example, if a customer requests a return/exchange assuming that the product is a defect, but in fact, the product did not work simply because the customer put the batteries in a wrong way, we can directly help the customer to solve that problem. Also, we can provide the customers more details about the product so that they would change their minds about making return/exchange requests. On the other hand, when we

ship our products through the warehouses of some operators, they unconditionally accept return requests regardless of their conditions. This kind of practice causes harm to our business because we don't have any opportunity to convince our customers to change their minds about returning their products and are unable to sell the returned products as they are because product packages would get damaged or dirty in the process of the return.

- Some operators accept return requests at their own discretion regardless of product conditions, for example, a bath salt product containing five individual packets is returned with four of them missing and a cosmetic cream product is returned with its content scooped by a spoon. Even when it is obvious that returned products have been used, these operators still accept them.

<Operators>

- We may decide whether or not to accept product returns/exchanges according to the provisions of the contract presented and agreed to by sellers in advance. However, when we determine that product returns are unreasonable, such as when the product has been damaged by the purchaser, we do not accept the returns.
- When an objection is raised by the seller to our decision to accept the return / exchange, we reinvestigate the case in principle. If it is determined that the seller is not responsible for the return/exchange, we compensate the seller for the amount that the seller would have gained if the return/refund was not accepted.

(b) Compensation for the losses incurred by returns

<Sellers>

- When our product was returned, we found that the content had been replaced by the orderer. Therefore, we asked the operator for compensation and as the operator requested, we submitted the photo, which was taken at the time we delivered the product. However, the operator did not agree to compensate reasoning that it was unclear whether or not the photo was taken at the time of product delivery. We are frustrated with the situation because if this photo cannot be accepted as evidence, we don't know what more we can submit as evidence.
- When our product was returned, we found that the content had been replaced by the purchaser, so we asked the operator for compensation. We were able to receive compensation as a result but the compensation amount covered only

about half the product. We are not sure how the compensation amount was calculated and felt that it was concealed from us.

<Operators>

- With regard to damage, etc. that occurred during the return of products, we determine whether or not to compensate the seller based on the information obtained from the customer, such as the product receipt and storage conditions, and images, etc. provided by the seller that show the damage on the product and its outer packaging box. If the seller makes an objection to our decision, we reinvestigate the case in principle. When compensating to the seller, we compensate for the amount equivalent to the product based on the provisions of the contract presented and agreed to by the seller in advance.

B. Trading practices (app stores)

<Developers>

- Some operators specify in their contract that even after consumers sign a contract for the use of app or digital contents with the developer and pay the price for it, they give refunds to consumers unconditionally if they request within 48 hours of their payment. In fact, these operators sometimes agree to give refunds without our permission when they are requested by consumers in accordance with the provisions of such contract. In such a case, we gain no consideration but see a loss despite the fact that we provide the service based on the contract with the consumer.
- Some operators give refunds without permission based on the return requests made by consumers. There have been many cases where consumers maliciously took advantage of such situation, which caused us damage, for example, a consumer asked for a refund after he/she used the item and the operator gave him/her the refund. These incidents cause us damage, so we would like the operator to first share with us the reasons why consumers are asking for refunds and determine whether the refunds are requested for reasonable reasons, instead of making their own decisions without asking.

<Operators>

- In order to ensure that users are able to easily request a refund and to protect developers from losses caused by fraudulent transactions and refund requests from malicious users, our company allows users to request a refund through the app store within 48 hours of the purchase of the app. After 48 hours, our company recommends, in principle, that users contact the developer directly to

request a refund. In this case, developers make their own decisions as to whether or not to provide a refund based on their own terms of use and legal requirements.

- We give refunds to users in accordance with the rules in certain cases including where the user makes a request for cancellation of an app within 90 days from its downloading. Due to the number of apps on the app store and the app store customers, it would be impossible to communicate with every developer about every refund request. We have teams to evaluate customer complaints and deny fraudulent or unjustified requests and prevent abuse. It is not in our financial interest to allow fraudulent, unjustified, or abusive refunds. It is in our interest, and in our developers' interest, to maintain a high level of customer satisfaction by granting refunds where warranted.

C. Thoughts on the AMA and the competition policy

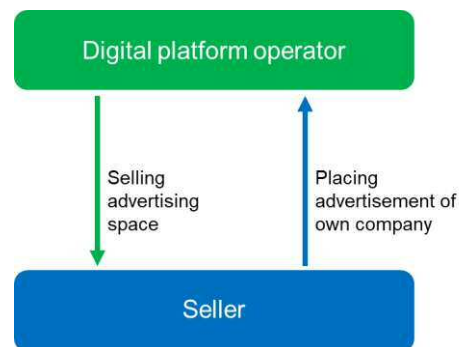
When a digital platform operator receives a return/refund request for a purchased product by a consumer, they may demand the seller to bear the burden for the loss associated with it. When such a digital platform operator, who is in a superior bargaining position over the seller, provides disadvantages to the seller unreasonably in the light of normal business practice by demanding the seller to bear the burden for the loss associated with such return/refund, this could be a violation of the AMA (Abuse of Superior Bargaining Position).

In making such a decision, some of the points to be considered include: 1) the contents of losses to be borne by sellers due to the digital platform operator accepting the returns/refunds, 2) the presence or absence of rationality regarding return/refund acceptance standards, such as whether or not the digital platform operator accepts returns/refunds even when there is no fault of the seller and makes the seller bear the burden for the losses associated with their decisions, and 3) the number of sellers that have no choice but to accept the losses associated with the returns/refunds to continue to use the digital platform.

In order to increase the fairness and transparency of transactions and ensure a fair competitive environment, it is necessary for digital platform operators to specify in writing the conditions and cases that are eligible for returns/refunds. Moreover, when the detailed conditions cannot be clearly indicated due to reasons, such as malicious use of such standards, it is also necessary to consider designating a third party (hereinafter referred to as "mediator") who will endeavor to resolve disputes between the parties in a fair and independent manner (see Subsection 4 (4) below).

(7) Purchase requests of advertisement spots

Sellers on online retail platforms have pointed out that they had no choice but to accept the online retail platform operator's request to purchase advertising space²⁷ because of the implications made by the operator that not purchasing advertising space will negatively affect the subsequent transactions. On the other hand, online retail platform operators have pointed out that they have never made any implication that refusing to purchase advertising space would affect the subsequent transactions and that there is also no such internal rule.



A. Trading practices (online retail platforms)

<Sellers>

- We did not intend to place our advertisement when a special sale was held on the online retail platform. Then, the operator threatened us that they “will not allow us to participate in the next special sale”, which practically forced us to place our advertisement.

<Operators>

- We have never instructed our staff to tell sellers who refuse to purchase advertising space that “it will affect the future transactions” and do not believe that our staff members made such an implication to sellers. There is also no such internal rule specifying that we can exclude sellers who refuse to purchase advertising space from the subsequent opportunities to purchase.

B. Thoughts on the AMA and the competition policy

Digital platform operators requesting sellers to purchase advertising space is not a direct violation of the AMA as long as it remains a request. However, when such a

²⁷ “Advertising space” refers to a position or time zone on online retail platforms available for advertisement placement.

digital platform operator, who is in a superior bargaining position over the seller, provides disadvantage to the seller unreasonably in the light of normal business practice by requesting the seller to purchase advertising space, this could be a violation of the AMA (Abuse of Superior Bargaining Position).

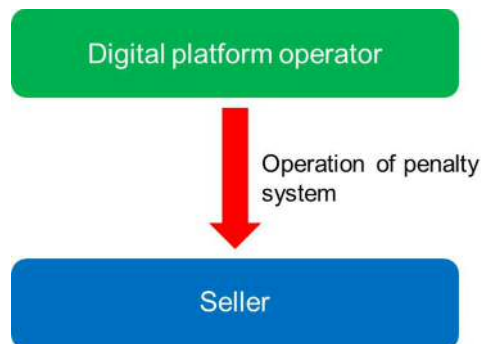
In making such a decision, some of the points to be considered include: 1) the contents of disadvantages experienced by the seller having no choice but to purchase advertising space, 2) if there is a difference in the handling of sellers that purchased or did not purchase advertising space, the presence or absence of rational reasons for such handling, and 3) the number of sellers that have no choice but to accept the advertising space purchase request to continue to use the digital platform.

In order to increase the fairness and transparency of transactions and ensure a fair competitive environment, it is necessary for digital platform operators to specify in writing whether or not there is a difference in the handling of sellers that purchased or did not purchase advertising space and details of such handling.

(8) Penalty system for violation of contract

Sellers on online retail platforms have pointed out that punitive measures, such as penalties, are compulsorily imposed by online retail platform operators if they violate the contract.

On the other hand, online retail platform operators have pointed out that they have prepared measures other than the cancellation of the contract from the viewpoint of preventing any act that violates the contract and ensuring the effectiveness.



A. Trading practices (online retail platforms)

<Sellers>

- Some operators have introduced a “violation point system”. The system applies measures, such as “lowered display order in search results”, “restricted use of functions” and “collection of penalties” when the number of violation points reach a certain level and “cancellation of contract” for malicious violations. It seems like the system is being used as a means to force the sellers to obey the intentions of operators.
- The penalties imposed based on the “violation point system” are collected without fail and highly compulsory because they are offset by the sales proceeds paid by the operator to sellers.
- Some operators specify that the bank account of sellers to which customers “bank transfer” their product payments must be an affiliated bank of the operators. If any other account than such bank is designated for receiving product payments, a certain number of violation points are added under the violation point system, generating a penalty. Certainly, collecting penalties is understandable to keep the soundness of online retail platforms, however, even if that is the case, sellers should be allowed to choose a bank other than the affiliated bank of the operators for receiving their product payments.

<Operators>

- The violation point system scores the degree of violation committed into the number of points and takes prescribed measures for the relevant sellers whose points have exceeded the predetermined points for the year. Before the system was established, there were many sellers that violated the contract and also in a repeated manner. However, the only practical measure that was available to address such situation was cancellation of the contract, which could not be brought into action easily. Therefore, we have prepared measures other than cancellation of the contract from the viewpoint of preventing violations and ensuring the effectiveness. For the stores that have violated the contract in the past but are now working to remedy such violations, we also set penalties to the extent that the amount is not too high. With the introduction of this system, we have seen the number of repeated violations dropping and the results of efforts to prevent the occurrence of violations improving. Therefore, we eliminated penalties for minor violations. Taking into account the opinions of sellers and the purpose of the system, which is to prevent violations, we have also revised the system so that sellers can be exempted from various restrictions by taking classes.
- When we charge penalties to sellers, we offset the penalty to be collected from each seller from the sales proceeds to be paid to each seller.
- For the bank account to be used when consumers select “bank transfer” as the payment method for their purchased products, we require all sellers to use our affiliated bank as the destination bank account. After the payments are received from consumers, we then transfer them to the bank account designated by the sellers. The reason why we are using this system is because there have been malicious businesses that pretended to be our online retail platform or sellers’ stores and deceived our consumers to transfer payments to their accounts, which caused problems between consumers and sellers. Therefore, to ensure the safety and security of our consumers, we unified the bank account for customers to transfer their product payments to our designated bank account and wiped out such malicious businesses. We do not believe that the system created any inconvenience to sellers because they can still receive their payments to their designated bank account the same as before.

B. Thoughts on the AMA and the competition policy

Establishing rules that must be followed by sellers to protect consumers using

online retail platforms contributes to consumer protection and instituting incremental penalties until reaching cancellation of the contract can provide sellers an opportunity to work on problems. However, when such a digital platform operator, who is in a superior bargaining position over the seller, provides disadvantage to the seller unreasonably in the light of normal business practices by imposing excessive penalties for such purposes, this could be a violation of the AMA (Abuse of Superior Bargaining Position).

In making such a decision, some of the points to be considered include: 1) the contents of disadvantages experienced by the seller due to penalties, 2) the presence or absence of rationality regarding the levels and reasons of penalties, and 3) the number of sellers that have no choice but to accept the disadvantages to continue to use the digital platform.

In order to increase the fairness and transparency of transactions and ensure a fair competitive environment, it is necessary for digital platform operators to ensure that penalties are set at a level that meets the purpose to be achieved and also clarify their applications.

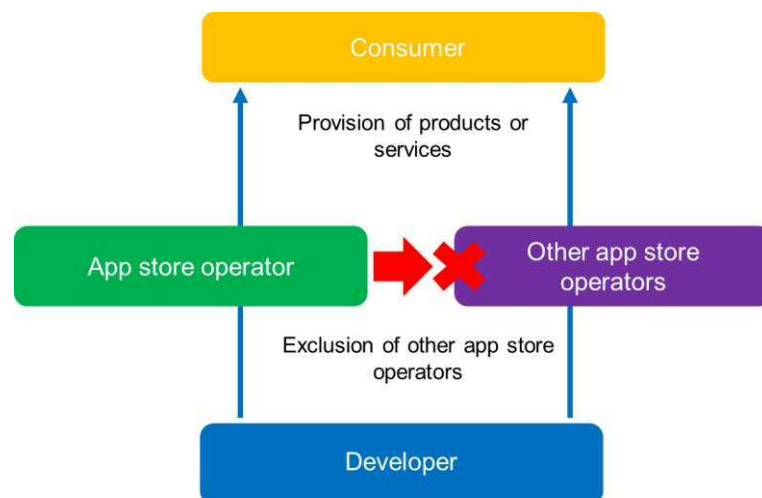
Meanwhile, there is also an aspect that providing a clear description of the details of the judgment criteria for penalties can allow malicious avoidance to occur easily and thus, it may be necessary to provide such description with some room for interpretation to prevent such acts. In such a case, it is also necessary to consider designating a mediator in case of disputes over penalties (see Subsection 4 (4) below)

2. Acts which could exclude competitors

(1) Restriction of use of other app stores

App developers have pointed out that 1) consumers are prohibited from installing other app stores than the one which a digital platform operator having developed a particular OS operates on the OS, 2) a warning message appears when consumers try to download apps on particular devices through websites, 3) providing apps that include experiences that mimic the app store and transferring virtual currency^[28] among different apps are restricted, and 4) displaying the names of other app stores is restricted.

On the other hand, app store operators have pointed out that 1) consumers are not restricted from installing web app stores but are prohibited from installing app stores operated by third parties to ensure the security of the OS and prevent the consumer experience from being damaged, 2) the purpose of the warning message displayed when consumers try to download an app is to keep consumers safe, 3) providing apps which include experiences that mimic the app store and transferring virtual currency among different apps is restricted to ensure the quality of the app and reduce the risks of fraudulent acts, and 4) displaying the names of other app stores is not allowed by the contract since the advertisements within apps are treated as part of the app itself.



A. Trading practices (app stores)

(a) Restricting consumers from installing app stores operated by third parties

<Developers>

- On one OS, consumers are allowed to install multiple app stores. However, on another OS, consumers are not allowed to install other app stores than the one

^[28] Virtual currency refers to coins, etc. that can be used within the app.

operated by the operator that developed the OS. Therefore, consumers are not allowed to download the apps through any app store other than the one listed on the OS.

<Operators>

- With regard to the app store listing apps running on the OS that we have developed, we prohibit our users from installing app stores operated by third parties on the OS, while web app stores are permitted on the OS. Apps require access to our intellectual property. Limitations on third party app stores on the OS ensure the security of the OS and to prevent consumer experience from being damaged. If such installation was permitted, it would pose malware and privacy risks and would not allow us to verify the operability on the OS due to our inability to review the apps distributed through such app stores. Customers choose our platform because we review each app in our app store. Such app stores operated by a third party would not necessarily conduct the same level of review, or review to our standards. This would confuse our customers and erode our brand.

(b) Warnings for apps distributed outside an app store

<Developers>

- When consumers try to download an app through the website, a warning message, “this app can be potentially harmful”, appears. Because of this kind of warning message, there are now about 60 to 70% of consumers who download apps from the app store. Considering that there are malicious apps out there, it may be unavoidable for the operator to display such warning message. However, we believe that it also has the effect of decreasing consumers from downloading apps through other means than the app store.

<Operators>

- The purpose of the warning message displayed when a consumer tries to download an app is to secure the safety of users, and our company runs these checks to the extent possible regardless of whether an app is being downloaded from the app store, another app store, or directly from a developer’s website. Our company aims at safeguarding the entire platform by running automatic checks for potentially harmful apps. If the tool encounters a potentially harmful app, users are almost always warned that the app could be harmful, and asked if they want to proceed. However, the final decision to whether download and install an app almost always remains with the user. The tool has never issued

warning messages against all apps downloaded through other means than the app store operated by our company, but issues warnings only to the limited users, for whom actual risks of potentially harmful apps are found.

(c) Restricting distribution of apps with similar functions as app store

<Developers>

- An operator is opposed to apps that have similar functions as app store. For example, providing an app in which multiple games are included is prohibited by the contract since it mimics the experiences offered by the app store.
- An operator might not allow virtual currencies that can be used between apps. If there is a common virtual currency, we want to use it.

<Operators>

- We strive to prevent the developers from providing apps that include experiences that mimic the app store, in order not to confuse consumers. Apps that themselves appear to be an app distribution platform will confuse customers into thinking that the app provides the same level of review and quality control as the app store, which may not be true.
- Transferring virtual currency among different apps is currently prohibited by our policy. This is because our company aims to reduce the risks of wrongful use of virtual currencies in fraudulent acts (e.g., money laundering). Allowing developers to treat in-app items as commodities, and users to trade in-app items across different app titles, would significantly increase the risk of these items being used fraudulently (e.g., virtual currency stolen in an app may be converted into real currency.).

(d) Prohibiting displays related to other digital platforms

<Developers>

- An operator rejects apps if their description contains any word about other app stores. We have no intention to invite consumers to switch to other app stores but are simply prohibited from displaying that our apps are also available in other app stores.

<Operators>

- We have neither restricted the ability of the developer to distribute an app through another platform nor made an exclusive request in connection with the apps and web apps.
- Our company treats adverts within apps as part of the app itself, and those

advertises must also therefore comply with the terms of use for distributing an app on the app store. Our company does not distribute other app stores on the app store, nor any app that facilitates the distribution of other apps. This is because our company cannot guarantee that the apps distributed on other app stores meet the same quality and safety standards as those distributed on its own app store.

B. Thoughts on the AMA and the competition policy

If restricting consumers from downloading apps from app stores operated by an app store operator is an indispensable means for the operator to achieve the legitimate purpose of protecting consumers by ensuring the security of apps, it will also benefit the consumers.

However, when digital platform operators restrict consumers' download of apps by other means than app stores which they operate with a view to unjustly interfering with a transaction between companies providing services which compete the service the digital platform operators provide and sellers or consumers, they could violate the AMA (e.g. Interference with a Competitor's Transactions)²⁹. If the competition between app store operators increases by preventing such actions, it can be expected to see the reduction of commission imposed by app store operators, which have been pointed out to be high.

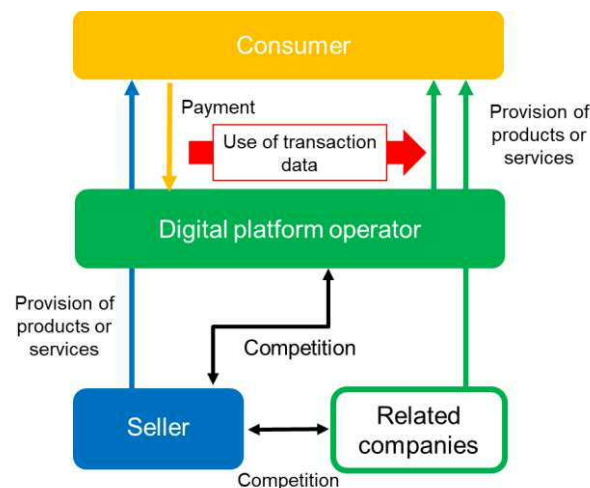
In order to improve fairness and transparency of trade and ensure a fair competitive environment on digital platform, digital platform operators need to consider whether there might be other less restrictive means than restriction of downloading apps without their app stores in an effort to achieve to keep consumers safe by ensuring secured apps.

²⁹ Depending on the position of the operator and the situation of the competitors, there may be practical restrictions on competition, which may fall under private monopolization (the same applies below). See Subsection 2 of Section 3 above.

(2) Direct sale by using transaction data collected by each seller

Sellers on online retail platforms have pointed out that online retail platform operators does a follow-up sale of the same kind of products as the ones sellers provides on the platform by using a transaction data which the digital platform operators would be able to obtain by using the standing. App developers have pointed out that they assume that app store operator is capable of obtaining the information on consumers who at one time subscribed their paid plan, and may use the information for sales promotion activities for its own app of the same genre.

On the other hand, online retail platform operators have pointed out that they never make use of transaction data collected by each seller for their direct sale and app store operators have pointed out that transaction data will be used to recommend to consumers the apps that are specialized for them, but personal information is not used for anything other than this purpose.



A. Trading practices (online retail platforms)

<Sellers>

- An operator, when they find popular products on their online retail platforms, starts to purchase and sell the products on their own. Since the operator has all transaction data of sellers, such as the sales volume, sales price and customer information, they may be using the data to identify the best-selling products and sell them following the sellers. As a true story, we once sold “a certain seasoning”, which we expected to be popular and had not been put up by the operator itself yet. The product was sold very well. However, several months after we started to sell the product, the operator itself suddenly started to sell

the product as well. As a result of the price competition with the operator, we withdrew from selling the product because the price had fallen to a level where it was no longer profitable.

- An operator, when they obtain information about a product on their online retail platform that is “expected to sell very much”, starts to stock the same product on their own and directly sell it at the lowest price. In fact, we had a new product that was sold very well at the beginning but was no longer sold after a certain time. After we had investigated the cause, we found that the operator started directly selling it on its online retail platform. Products directly sold by the online retail platform operators often offer the lowest price, so we had to further lower our price, which ultimately reduced our profit.

<Operators>

- We have never used the individual data of sellers, such as the sales volume and amount of a specific product, to determine whether or not to start selling such product. When we need to refer to the sales prices of other companies including sellers, we use information which is publicly available.
- With regard to handling of the sales data of sellers, we have established provisions to protect such data of sellers. These provisions specify that any undisclosed information of sellers shall be regarded as confidential information and our employees may access, use or disclose the information only for the purpose of supporting the sellers.

B. Trading practices (app stores)

<Developers>

- An operator does not allow developers that use in-app purchase to communicate with their app users concerning their account billing issues. As a result, for example, we cannot identify the reasons why our users, who had been subscribing to our paid app plan, cancelled their membership (e.g., whether they unsubscribed on their own will, they were automatically unsubscribed simply because their credit card had expired). The operator can obtain the information of our users who had been members of our paid plan in the past, so it would be possible that they may use the information to promote the sales of their own apps that are of the same genre.

<Operators>

- In accordance with the relevant rules, transaction data will be used to recommend to users the apps that are specialized for them, and personal

information is not used for anything other than this purposes. Recommending apps that are specialized for a relevant user helps the user discover new apps and eventually contributes to the interests of the developers.

C. Thoughts on the AMA and the Competition Policy

When an operator itself or its related company sells products on its own digital platform, they are in a position to compete with sellers/developers who provide consumers with the same kind of products on the digital platform. By being in the position of an operator that operates and manages the digital platform, the operator is also able to technically obtain the sales data, customer information and other data related to transactions conducted by competing sellers on the digital platform.

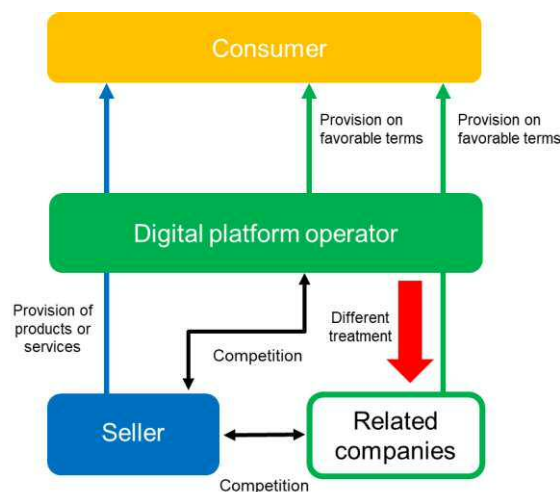
In such a case, when digital platform operators unjustly interfere with a transaction between sellers who compete with the digital platform operators and consumers by using transaction data which the sellers have collected including sales information and customer information to help the sales activity of themselves or their related companies, they could violate the AMA (e.g. Interference with a Competitor's Transactions).

With regard to a transaction data which digital platform operators are capable of obtaining by using the standing, in order to improve fairness and transparency of trade and ensure a fair competitive environment on digital platform, digital platform operators need to make, for example, the following information available to sellers and consumers; 1) the information as to whether they or their related companies may use and 2) its purpose, purview and conditions to get access to the data if they or their related companies actually use the data.

(3) Differential treatment between seller and digital platform operator or their related companies

Sellers on online retail platforms have pointed out that 1) products sold by online retail platform operators themselves or their related companies are listed high in search ranking results; 2) online retail platform operators' related companies receive preferential treatment in payment methods and others; and 3) commission for the use of a digital platform is not charged to online retail platform operators and their related companies when they directly sold products. App developers have pointed out that they feel disadvantaged compared to digital platform operator in terms of search results and commission rate.

On the other hand, online retail platform operators have pointed out that 1) search algorithms evaluate products of all sellers fairly, 2) they or their related companies are not treated preferentially in terms of payment methods, and 3) they and their related companies are partially or entirely exempted from paying a commission but it is not reasonable to judge fairness just by comparing whether commission has been paid or not, as they pay for marketing of their online retail platforms, thereby contribute to profits of sellers as well. App store operators have pointed out that 1) they never treat themselves preferentially when displaying search ranking results or app recommendation, and 2) they don't impose a commission on themselves to use an app store they operate but they have made investments in development, maintenance and management of the app store.



A. Trading practices (online retail platforms)

(a) Treatment in display of search results

<Sellers>

- An online retail platform operator shows products sold by its group companies high in display of the search ranking results although their prices are not the lowest.
- In an online retail platform, products sold by its operator's related companies are placed in advantageous positions and given red-colored backgrounds to attract attention from consumers even if prices of these products are not the lowest.

<Operators>

- Search algorithms evaluate products of all sellers fairly. We never favor our or our related companies' products.
- When a certain product has been selected, if a screen for comparing prices and sales terms of different sellers for the selected product is opened (different from the usual product search result screen generated by search queries), only in this screen, we label and give different-colored backgrounds to the products related to our group companies to make them recognizable as so. This is because we want to clearly show that these products are provided by us so that consumers could choose them with peace of mind in terms of delivery schedule, delivery/installation services, etc. It is beneficial to consumers in that they could purchase products in a safe and secure manner.

(b) Treatment in payment methods

<Sellers>

- In an online retail platform, postal transfer was removed from available payment methods. Accordingly, postal transfer which had been used became unavailable in sellers. However, it continued to be available at a related company of the online retail platform operator. We thought it was extremely unfair that we were forced to give up the use of postal transfer without any other choice while the operator's related company was allowed to use it continuously.

<Operators>

- With regard to payment methods, we never treat sellers differently based on whether they are our related companies or not.

(c) Treatment concerning commission

<Sellers>

- Sellers pay sales commission to online retail platform operators. However, the

operators do not need to pay such commissions. Therefore, we have no chance to outdo them in price competition.

- An online retail platform operator has a direct sales division which seems to be paying no commission. Because of this, the operator has a price advantage and is able to sell products on more favorable terms than other sellers.

<Operators>

- When we sell products, we do not pay sales commission or the like to ourselves. This is because the business of selling products by ourselves is based on a business model and cost structure that are totally different from those of the online retail platform business, e.g., the use of a purchasing control system, etc. As well, we conduct marketing activities for our retail platform at our expense, which contributes to profits of sellers too. Therefore, it is not reasonable to compare the business of sellers with our retail business just by whether sales commission has to be paid or not in exchange for the use of the online retail platform.
- We charge commission to our subsidiaries and related companies as well. However, they are partly exempted from payment commission, contributions to the reward point fund, etc. It is because we want to have users enjoy benefits of using multiple related services we provide. In other words, while there are no restrictions on how our subsidiaries or related companies should use gains they receive from this preferential treatment, we expect them to return part of the gains to users. As a result, users have easier access to products or services of our subsidiaries or related companies, which will be eventually to the benefit of users as there will be more opportunities for purchasing safe and secure products or services. The increase of such safe shopping opportunities will help maintain the brand value of our online retail platform and contribute to strengthening its competitiveness in the market. As for search results display which is one of the main factors directly affecting sales opportunities, we don't give our subsidiaries or related companies preferential treatment. Therefore, we believe that partial exemption from payment commission and contributions to the reward point fund falls within a reasonable range.

B. Trading practices (app stores)

(a) Treatment in display of search results

<Developers>

- With regard to app distribution, we compete with an app store operator. In the

recommendation section of an app store operated by them, our apps have never been featured as recommended apps.

- We distribute an app which is competing with one that is distributed by an app store operator. Until a certain point in time, a search query of the name of our app generated a search result which ranked our app in the fifth place or higher. But after that, our app's position in search rankings gradually dropped for some unknown reason. In the end, the search result from the same query listed dozens of other apps above our app which was placed at the lowest. Furthermore, we are not satisfied that our app is ranked low despite its superior position in the genre to which our app belongs based on the number of active users.

<Operators>

- We routinely promote apps that compete with its own. These decisions are made by an editorial team. Whether or not an app competes with our own services is not a factor they consider when selecting apps to promote. And we never artificially favor the apps and web apps distributed by us or any other apps in terms of search rankings. Search results on the app store are displayed based on search keywords. The search algorithm is designed to rank the subjects based on what it assumes the user is looking for. Furthermore, we determine recommended apps based on recommendations by our team in charge and machine learning on the basis of actual downloads. In addition to this, we disclose app rankings to the public based on the number of downloads in the case of free-of-charge apps, or based on the income generated by the relevant app in the case of paid apps.
- Our company does not systematically recommend its own apps over the apps of other developers in "recommended" sections of the store. In fact, the vast majority - approximately 90% - of recommended apps on the initial pages of its app store are suggested to users through an automated process.

(b) Treatment concerning commission

<Developers>

- While we need to pay a 30% commission to an app store operator, the operator which distributes same kinds of apps competing with ours seems to be exempted from paying this commission. Therefore, we feel disadvantaged in price competition.

<Operators>

- We do not impose the commission on ourselves because we have made huge investments in the development, maintenance, and management of the infrastructure required to operate our app stores around the world. We are also a vertically integrated company, so it makes little sense for us to charge itself for distribution on its own platform. This vertical integration allows us to offer benefits to consumers. The benefits of the vertical integration, in general, i.e., the efficiency, have been recognized by economists and legal academics, and even by a number of competition authorities in the world.
- Our own apps and contents are not directly charged 30% or 15% fees. Where our own apps are monetized, a proportion of the revenues from those apps is invested in the maintenance and improvement of the high-quality platform and services the app store operator provides, including the app store. This allows developers to develop and distribute apps and enable users to use the apps with a sense of security.

C. Thoughts on the AMA and the Competition Policy

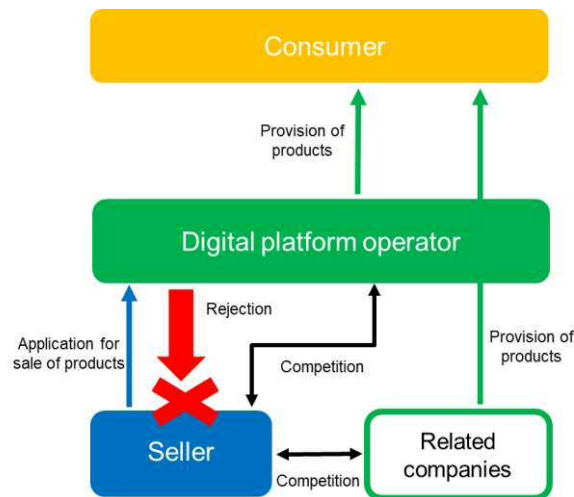
There are cases where digital platform operators themselves or their related companies sell products on their digital platforms. In such cases, when digital platform operators unjustly interfere a transaction between sellers who compete the digital platform operators and consumers by giving sellers unfair treatment compared to the digital platform operators itself or their related companies on commission rate or display method regarding search results, managing arbitrarily search algorithm to give the goods which they or their related companies sell on the digital platform preferential treatment, they could violate the AMA (e.g. Interference with a Competitor's Transactions).

In order to improve fairness and transparency of trade and ensure a fair competitive environment on digital platform, digital platform operators need to disclose the main parameters and weights determining search ranking, to give a notice to consumers if the digital platform operators put ads spot and the related goods on the top of the search results so as not to give consumers mistaken impression, give same treatment to both the digital platform operator itself or their related companies and sellers in terms of the commission rate or display method as well as make clear the contents and reasons to both sellers and consumers if the digital platform operators give themselves or their related companies differential treatment.

(4) Review of competing products

Sellers on online retail platforms have pointed out that their products were rejected because these products would compete with those sold by the online retail platform operators. App developers have pointed out that they are treated unfairly, for example the operators arbitrarily change the contract, concerning their apps which compete with those distributed by app store operators' related companies.

On the other hand, online retail platform operators have pointed out that all sellers including competitors of the operators are subject to the same review criteria. App store operators have pointed out that apps of their competitors are never treated differently from any other app.



A. Trading practices (online retail platforms)

<Sellers>

- We planned to sell a particular product in our store, but our application for sale of the product was rejected perhaps because the product was also sold by the online retail platform operator itself.

<Operators>

- When reviewing contracts for opening a store or selling products, we apply the same review criteria to all sellers and whether or not the product is sold by our group company is not part of the review criteria. In fact, products sold by our group company are usually sold by other sellers as well.
- We have set a contract which has a provision to the effect that companies providing services competing with ours, i.e., operation of a shopping mall, etc., may be refused opening of stores. However, we have never applied this

provision to any sellers.

B. Trading practices (app stores)

<Developers>

- There has been a case in which our app was repeatedly rejected, despite the fact that it complied with the then current contract, as there were no restrictions in place under the standard interpretation of those rules. We believe there is a strong possibility that this was because a competing app was being offered by the operator. After that, the operator changed the contract, expanding the discretionary scope to reject the apps.
- Regarding the stamps we developed to offer for messaging apps, we posted links to both of the stamps usable in apps offered by a particular app store operator and the stamps usable in other messaging app which compete with the ones which the operator, for the purpose of advertising both stamps. While the operator did not see any problem with links for stamps usable in the app they provide, however, they viewed links for stamps usable in the competing messaging app as a problem. As a result, we were forced to discontinue posting the link for the stamps usable in the competing messaging app.

<Operators>

- Our screening is based on existing guidelines, rather than treating apps of competitors differently to other apps. There are hundreds of apps on the app store that compete against our own services. We have not revised our guidelines in order to restrict the sale of contents or competing apps. Considering the fact that we receive commission on sales of such apps and digital content or services, there is no financial incentive for us to restrict them, and it is our interest to have the most quality apps on the app store because it makes our products more attractive to consumers.

C. Thoughts on the AMA and the Competition Policy

When a digital platform operator or its related companies sell products on the digital platform, they compete with sellers which sell the same types of products.

In general, operators are free to choose trading partners, so they are allowed to reject opening of stores or selling of products by particular sellers. However, if they reject opening of stores or selling of products by sellers in order to achieve unjust purposes under the AMA, including eliminating sellers selling products that compete with those sold by the operators themselves or their related companies, maintaining

the prices of the products among others, they could violate the AMA (e.g. Refusal to Trade).

In order to improve fairness and transparency of trade and ensure a fair competitive environment, digital platform operators need to 1) formulate review criteria with clear language, 2) make sure that the review criteria are fair and 3) as a rule, notify sellers in advance in case of rejecting opening of stores or selling of products and provide them with reasons thereof.

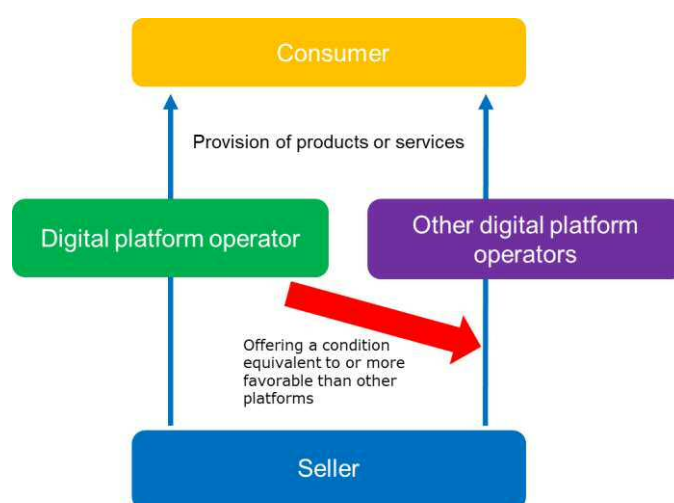
At the same time, because detailed review criteria might be more susceptible to abuse, in some cases, they should leave room for interpretation to prevent abuse. In such cases, digital platform operators need to develop a system to receive inquiries from sellers and thereby provide consultation concerning review. (See Subsection 4 (4) below)

3. Acts which could restrict sellers' business

(1) Most Favored Nation clause (MFN clause)³⁰

Sellers on online retail platforms have pointed out that an online platform operator requested them to set prices and other conditions in such a way that they would be equal or superior to those at other online platform and so on. App developers have pointed that they were under restrictions to set prices of contents when sold outside of apps higher than the prices offered in the apps.

On the other hand, online retail platform operators have pointed that they never force sellers to adopt a certain sales price or product variety. App store operators have pointed that they never suggest to set any retail price.



A. Trading practices (online retail platforms)

<Sellers>

- A few years ago, we received a request from an online retail platform operator to offer conditions, i.e., prices, points which consumers can use as cash on the platform, coupons and delivery charges, which are equal to those we set at other online retail platforms and so on.

<Operators>

- We do not request or instruct sellers to set sales prices and product variety that are equal or superior to those set at other online retail platforms
- To increase customers using our online retail platform, we sometimes ask sellers to increase a product variety and set competitive sales prices. However,

³⁰ In this section, an MFN clause refers to provisions in which a digital platform operator requires sellers/developers to offer, in its digital platform, sales prices and product variety which are equal or superior to those offered by them in other sales channels.

it is part of our proposal for services that are available to sellers. So, we are careful not to mislead sellers into believing they are forced to or have no choice but to follow our proposals.

B. Trading practices (app stores)

<Developers>

- Although it is possible to lower prices of our contents by using our proprietary payment system, we are under restrictions by an app store operator not to cut the prices applied to price paid through our website lower than in-app purchase on the app store. Under the contract, app developers are not allowed to reduce consumers' motivation to use in-app purchase, and we are afraid that setting price paid through our website lower than in-app purchase may be construed as breaching the contract, although the contract does not explicitly prohibit sellers from setting different prices.

<Operators>

- We have never made any such requests regarding price settings for apps or digital content to the developers based on the rules. The relevant rules stipulate communications focused on users intending to avoid in-app purchase; they have no connection to price settings. Developers can choose how to price their content, regardless of whether it is an app or web app, both within our app store and outside our app store. In-app purchase has nothing to do with setting of prices. In-app purchase is the mechanism to purchase digital content within an app. Developers offer apps that fall within our "reader" (which allow developers to sell digital content outside the app store and make it available to consumers in our app store). Those apps do not need to use in-app purchase at all, and pay no commission to us.

C. Thoughts on the AMA and the competition policy

In cases where a digital platform operator sets an MFN clause against sellers, they are placed under restrictions in terms of discounting prices and increasing a product variety outside of the digital platform, which leads to less competition concerning price and product variety.

If an MFN clause is adopted by a digital platform operator, competing platform operators are unable to differentiate themselves in sales prices or a product variety. Accordingly, it 1) makes the market less accessible to new entrants which try to enter the market with lower commission and 2) disincentivizes competitors to compete by

offering a richer product variety.

Thus, when digital platform operators offer an MFN clause against sellers, competition among the sellers and that among the digital platforms may not be able to benefit from competition on a price and product variety. Especially, when a strong digital platform operator in a market offers an MFN clause, or together with other digital platform operators and then price maintenance effects^[31] or market foreclosure effects^[32] occur, they could violate the AMA (Trading on Restrictive Terms).

<Reference: Case of Amazon Japan G.K. (Released on June 1, 2017)>

The JFTC has investigated Amazon Japan G.K. in accordance with the provisions of the Antimonopoly Act as Amazon Japan G.K. has been suspected to restrict business activities of the sellers in Amazon Marketplace by including the price parity clauses (Note 1) and the selection parity clauses (Note 2) in the seller contracts. During the JFTC's investigation, Amazon Japan G.K. proposed to promptly take voluntary measures. As a result of the JFTC's review on this proposal, the JFTC recognized these measures would eliminate the suspected violation mentioned above and decided to close the investigation on this case.

(Note 1) Clauses to require sellers to ensure that prices and sales terms for products they sell in Amazon Marketplace are the most advantageous for purchasers among the prices and sales terms for identical products they sell via other sales channels.

(Note 2) Clauses to require sellers to offer in Amazon Marketplace all variations in color and size, etc. of all products they sell via other sales channels.

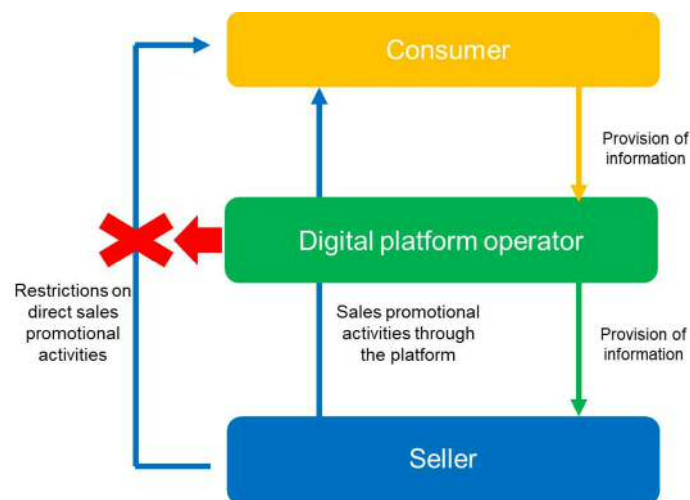
^[31] Cases where price maintenance effects arise refer to cases where a vertical non-price restraint tends to impede competition among a counterparty to the restraint and its competitors and enable the counterparty to reasonably freely control its prices for a product or products in question in its own discretion and thus maintain or raise market prices of such product(s). (Part I 3 (2) b of the Guidelines Concerning Distribution Systems and Business Practices under the Antimonopoly Act)

^[32] Cases where foreclosure effects arise refer to cases where a vertical non-price restraint tends to cause situation that new entrants to the relevant market and the enterprise's existing competitors are excluded and/or opportunities available to them are reduced (for example, a situation where such restraint makes difficult for them to easily acquire alternative trading partners, and causes increase of their expenses for conduct of business and/or their discouragement from entering the market or developing new products). (Part I 3 (2) a of the Guidelines Concerning Distribution Systems and Business Practices under the Antimonopoly Act)

(2) Restrictions on sales promotional activities

Sellers on online retail platforms have pointed out that 1) they are prohibited from using customer information for their sales promotional activities, and 2) they are prohibited from conducting sales promotional activities by posting links leading to the outside of the online retail platforms. App developers have pointed out that they are prohibited from conducting sales promotional activities by using serial codes, etc. which were obtained outside of the app stores.

On the other hand, online retail platform operators have pointed out that 1) they impose certain restrictions on the use of customer information to protect personal information and retain customers, and 2) they impose certain restrictions on sales promotional activities conducted outside of their online retail platforms to prevent circumvention of commission payment. And app store operators have pointed out that allowing sales promotional activities by using serial codes, etc. outside of the app stores would be equivalent to allowing bypassing of commission payment for the use of the app stores.



A. Trading practices (online retail platforms)

(a) Use of customer information

<Sellers>

- Information on customers who purchased products on an online retail platform is provided by the online retail platform operators. However, sellers are not allowed to conduct sales promotional activities independently by using the said information. To be more specific, they are unable to directly distribute e-newsletters to customers' email addresses as the email addresses are masked

by the online retail platform operators. As well, they are prohibited from sending direct mail to customers by using their postal address information.

- In an online retail platform, sellers are allowed to send e-newsletters to consumers through the operator's system. However, they are prohibited from directly conducting sales promotional activities by using customer information.

<Operators>

- We do not disclose consumers' email addresses or credit card numbers to sellers. It is because we want to eliminate consumers' concerns by preventing leakage and unintended use of their personal information. In fact, we receive many concerns from consumers about leakage and unintended use of their email addresses and others by sellers.
- Under a contract for selling products, sellers are not allowed to disclose purchasers' information to third parties or use it for marketing purposes. We established this provision to protect personal information so that consumers could enjoy shopping without concerns and also to prevent other distribution channels from benefitting from customer data obtained through high-traffic online retail platform and thereby stealing our customers. We apply strict control to purchasers' information and make sure that it could not be used for any purpose other than their support.

(b) Posting of external links

<Sellers>

- In an online retail platform, we are prohibited from conducting sales promotional activities by posting links to our website.
- In an online retail platform, we cannot conduct sales promotional activities by posting links to the outside of the online retail platform.

<Operators>

- Under a contract, we prohibit sellers from providing URLs to their websites in our online retail platform, and we make sure to have sellers read and accept details of the contract before they create their accounts. It is because sales commission in the online retail platform is the main source of revenue for the operators. If we allow navigation to external sites, we won't be able to collect commission and maintain the service quality provided to sellers, and will eventually face difficulties in continuing our business.
- We prohibit sellers from directing users to transactions outside of our online retail platform by setting hyperlinks to external websites or other means. It is

because if customers who were directed to transactions outside of our online retail platform purchase products directly from sellers, commission payment to us is circumvented and the business model of online retail platform operation will be fundamentally rejected. We also believe that such restrictions will help prevent trouble which may occur if customers are unknowingly directed to external websites and find themselves unable to receive services that would be available in our online platform.

B. Trading practices (app stores)

<Developers>

- We once conducted sales promotional activities in which we published serial codes in advertising media outside of an app store and provided digital contents to users who entered the serial codes in a particular app. However, sales promotional activities through such methods were prohibited by the app store operator. We hope such methods will be allowed in future as they would increase our business opportunities.
- We once came up with ideas for sales promotional activities outside of app stores. One of the ideas, for example, was selling goods which had keywords and enticing customers to buy them and enter the keywords in our app for some benefits in the app. However, we have given up such activities as they are prohibited by the contract. We think this is an opportunity loss for us in that we would be conducting such promotional activities, were it not for the contract.

<Operators>

- The developer is free to conduct any type of sales or promotion activities outside the app store. However, we do not allow apps in the app store to request codes acquired by purchasing items from other places in order to make use of any sort of special features, functionality, or content. This violates the rules forbidding the bypassing of in-app purchases. If this were allowed, the developer would employ such means to avoid paying the commission for use of the app store.

C. Thoughts on the AMA and the competition policy

Certain restrictions imposed by digital platform operators on the use of customer information benefit consumers as long as such restrictions are implemented to achieve proper purposes including protection of personal information.

However, when digital platform operators unjustly interfere with sale by sellers through not providing customer information gained through sale by sellers in order to

favor sale by the operators themselves or their related companies, they could violate the AMA (e.g. Interference with a Competitor's Transaction).

As well, restrictions on sales promotional activities outside of digital platforms may have positive effects in promoting competition by resolving the free-rider problem³³ in some cases. However, such restrictions may constitute a violation of the AMA (Trading on Restrictive Terms) when they result in price maintenance effects. (Price maintenance effects suggested here occur when price competition among sellers outside of an influential digital platform is impeded and thus price is maintained as a result of the operator of the influential digital platform imposing restrictions on sales promotional activities outside of its digital platform.)

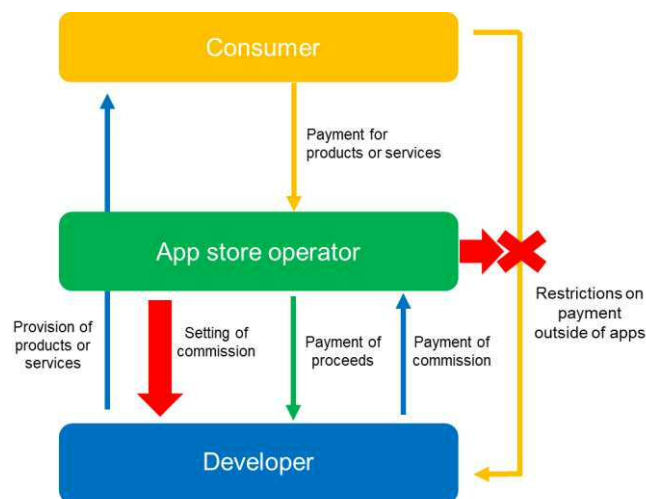
In order to improve fairness and transparency of trade and ensure a fair competitive environment, digital platform operators need to put in writing whether or not sellers have access to customer information and the scope of accessible customer information, and the scope of and reasons for restrictions placed on sales promotional activities outside of their digital platforms among others.

³³ The free-rider problem described here refers to the situation as follows: If sellers sell products on digital platforms while conducting sales promotional activities outside of the digital platforms, the digital platform operators receive fewer commissions. As a result, the business model of digital platforms will no longer be viable and the operators will cease its active efforts such as digital platform development, maintenance and management, sales promotional activities, at their expense, which may lead to consumers who otherwise would purchase products on the digital platforms purchasing them elsewhere.

(3) Setting a commission on an electronic payment through an app purchase and restriction on the payment outside of an app

App developers have pointed out that 1) the only way of an electronic payment in an app is the way which an digital platform operator of an app store provides, 2) they are prohibited from encouraging a consumer to make an electronic payment outside of an app, and 3) as a content with an intellectual property right requires a license fee, it is difficult for them to make profits, considering a commission which they pay to a digital platform operator of an app store.

On the other hand, app store operators have pointed out that 1) they request an electronic payment through an app, considering convenience of consumer and prevention of fraud, 2) they prohibit posting of links to external websites in apps to prevent developers from circumventing payment of a commission, and 3) a commission is one of the necessary costs to operate an app store.



A. Trading practices (app stores)

(a) Designation of settlement methods

<Developers>

- An app store operator put pressure on us a number of times to introduce in-app purchase, saying that the operator would no longer provide support for user account registration (including for free service users) unless we introduced in-app purchase. As a result, we decided to introduce in-app purchase which required us to pay a 30% commission on all sales inside the app. Because of this, we had to raise prices for digital contents for paid services distributed in our apps.
- Developers are not allowed to choose any payment methods concerning

provision of digital contents other than those through app store operators. If this is not the case, we will introduce payment methods through which we do not have to pay a 30% commission. If a 30% commission is not required, we will be able to increase demand by investing in development and thereby improving our apps.

<Operators>

- Our company invests significantly in order to provide a high-quality app store which can be used safely and with a sense of security. While developers that distribute their apps for free (as many do) do not pay a service fee for access to this app store, the on-going investment in the platform is made possible by the service fees charged to those developers that charge for their apps or content. In addition, the app store's payment system protects users and at the same time gives developers easy access to users around the world without having to negotiate with numerous jurisdiction-specific payment systems. However, our company exceptionally allows developers to use payment methods other than in-app purchase for, for example, physical goods and services that are not provided through the app store.
- In-app purchase must be used for sale of digital content and services within apps. Such payments are recognized to have many benefits, as they are easy for consumers to use (for example, in-app purchase works with all apps, and customers do not need to set up different payment accounts with each developer, or provide their payment method information to each developer). This settlement method also helps prevent fraudulent transactions. Further, the commission gained via the in-app purchase are essential in order to cover the costs of running the app store.
- In-app purchase is also how we get compensated for running the app store and developing the tools for developers to create and distribute their apps. It is effectively the cash-register of the app store.
- A developer can choose to sell digital content outside the app and make it available inside the app without using in-app purchase. This is possible through our rule.

(b) Prohibition of acts which can lead to payment outside of apps

<Developers>

- We sell contents through web browsers as well. Actually, we want to cut sales prices, if purchased through our website, lower than those in an app and set

links to our web pages on the app to enable sales price comparison between our website and the app. However, we have not been able to do so because such acts are prohibited by the app store operator.

- We once displayed, in our app, links to our web pages where consumers were able to purchase our digital contents at lower prices than those in the app. But later it was rejected by the app store operator who said it was a violation of the contract. Because of this, our app now do not show links to such web pages.
- A contract with an app store operator prohibits us from showing, in apps we distribute, links to a payment system on our website. Because of this, if users want to buy services we provide on our apps, they first have to find our website and navigate through the website to reach the pages where they could buy the services. It takes a lot of time and effort.

<Operators>

- Developers selling digital content and services may not provide links to websites or in other ways stimulate behavior to use payment methods other than in-app purchases. This includes showing the price of digital content that can be obtained outside the app. This provision is intended to prevent avoidance of our in-app purchase and thereby circumventing payment of a commission to us. Allowing links outside the app or encouraging consumers to make purchases outside the app would harm the app store business model by essentially eliminating all app store revenue. Namely, the operation of our app store, from which all of the developers enjoy the benefits, requires a large amount of costs which are born by the commission. Furthermore, it is unfair for developers to take advantage of our platform by distributing apps on it and obtaining customers from it, then pushing those customers to a payment method in which we earn no commission.

(c) In-app purchase for provision of contents which incur royalties

<Developers>

- We sell digital contents in our app and when they were sold, we pay on average around 60% of sales price to rights holders as royalties. Coupled with this, we have to pay a 30% commission on sales to the app store operator. Such payments leave us with only around 10% of contents' retail prices. Considering other expenses than those payments, it is extremely difficult to secure a certain profit.
- We have to pay around 60% of sales price as royalties. In addition, we are

charged a 30% commission by the app store operator, if consumers use in-app purchase to buy digital contents. In other words, we have to run our business with the remaining around 10% of proceeds, so the impact of a 30% commission is significant. We have introduced a payment system through our website too, in which a rate of its commission is a small percentage. Currently, only a few percent of consumers use the payment through our website, but without them we won't be able to keep our business afloat.

<Operators>

- Most apps distributed on the app store are free, and developers are able to distribute their apps on the store for free (except for the initial registration fee). However, those developers that choose to charge for their apps or in-app purchases pay 30% fees of the amount paid by users in apps in addition to the initial registration fee. For subscription products, that fee is reduced to 15% from the following month if the consumer has used a subscription for 12 consecutive months. These fees support investment in the operation of the app store, OS development and maintenance, etc.
- We take 30% as commission fees for providing services or the sale of digital content through our app store, including downloads of paid apps and in-app purchases. The commission fee is 15% for subscriptions renewed after the first fiscal year. The income from these commission fees helps us to run the app store and to support investment in building tools and platforms for users to enjoy. A developer can choose to sell digital content outside the app and make it available inside the app without using in-app purchase. This is possible through our rule.

B. Thoughts on the AMA and the Competition Policy

App store operators review the safety of apps distributed from the app stores for the purpose of consumer protection and others, and charge a certain amount of commission on in-app purchase to recover cost required for the review as well as operation and management of the app store. Setting commission on in-app purchase does not immediately constitute a violation of the AMA.

If app store operators allow only in-app purchase as a means of payment by consumers and place restrictions on other payment outside of the apps, it could constitute a violation of the AMA. For example, music and video contents are distributed outside of apps, including through websites, and consumers may visit websites where businesses distribute such contents and pay for them. In such a case,

even if the same contents are distributed on apps, consumers should be able to choose payment outside of the apps over in-app purchase. As well, developers are under certain restrictions concerning price setting due to the commission charged on in-app purchase, whereas payment outside of apps may create price-reduction effects because it is not subject to such restrictions. As a result, providing means of payment outside of apps will benefit consumers.^[34]

Accordingly, when app store operators unreasonably force sellers to use an electronic payment through an app and prohibits a payment outside of an app, restrict a price of a payment outside of an app, or prevent sellers unreasonably from providing information on the payment outside of an app, the app store operators could violation the AMA (Trading on Restrictive Terms). In addition, when app store operators give themselves or their related companies preferential treatment (2 (3) B (b) above) or restrict sellers' promotional effort ((2) B above) in parallel with setting the commission, thereby the sellers who provide consumers with their apps competing the apps provided by app store operators would be excluded or when the price of apps or digital content would be maintained by preventing competitors from entering the market, the app store operators could violate the AMA (e.g. Interference with a Competitor's Transactions).

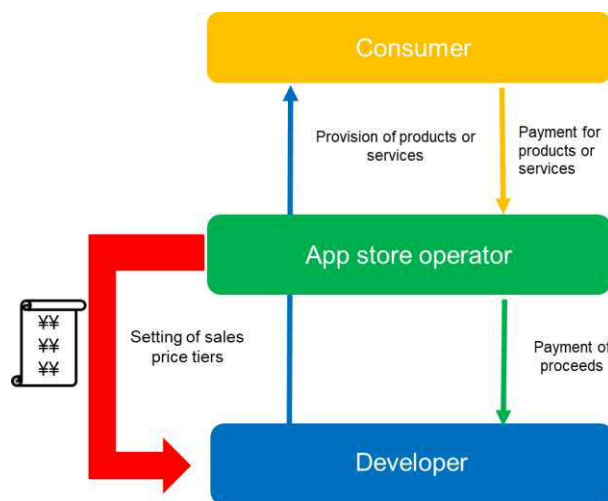
In order to improve fairness and transparency of trade and ensure a fair competitive environment, app store operators need to set commission at levels which are based on reasonable grounds so that developers distributing apps which compete with those distributed by the app store operators or their related companies would not be eliminated or that new market entries would not be obstructed.

^[34] Commission charged by app store operators is also discussed previously in (1) B of Subsection 2.

(4) Setting of retail price tiers

App developers have pointed out that 1) in a certain app store, when they set prices for apps, they are sometimes not able to choose prices as they want because they are required to choose prices from a fixed price table, and 2) they are not free to set prices because sales price tiers are in place.

On the other hand, app store operators have pointed out that 1) their pricing system is necessary to distribute apps worldwide, and 2) retail prices of their own apps or digital contents in the app store are not restricted by the price tiers and they are free to set its prices.



A. Trading practices (app stores)

<Developers>

- In an app store, we are not free to set prices for our products because we need to choose them from a certain price range decided by the app store operator. To illustrate the issue, let us give you an example of fictional price options. If there are price options of 100 yen, 200 yen and 300 yen to choose, we may go for 100 yen, which is too cheap for us to make profit, or choose 200 yen, which is too expensive for consumers to pay for our app. We, therefore, are unable to set the right price for the app and feel deprived of an opportunity for selling the app at the right price.
- An app store operator has set a certain price range and does not allow developers to set prices outside of it. On the other hand, other app store operator allows developers to set sales prices of apps as they want in units of one yen. If the price of an app varies depending on app stores, we may have

to respond to questions from consumers asking why the price varies. Considering the cost of handling such inquiries, we have adopted the same price in both app stores. In this respect, if an app store operator has set a price range, developers in other app store, which is supposed to allow free pricing, are also practically subject to similar pricing restrictions.

<Operators>

- The reason why we provide price tiers - from which developers choose, not the operator - is because the app will be provided in many countries. The app will be sold in the local currency, so if one sales price range is selected, the amount in the local currency of many countries can be set automatically, allowing it to be sold in regions all around the world. Technical factors prevent us from offering price tiers in units of 1 yen. It is also important to note that price tiers increase customer understanding of our platform and the goods and services offered there. This has benefits for developers by increasing customer trust, which leads to more sales.
- When we sell our own apps or digital content, we freely sell them at prices different from the levels, based on which other developers set prices to sell their own apps or digital content. However, wherever possible, we strive to use the same levels as those that developers can use in the pricing of our own apps and others.

B. Thoughts on the AMA and the Competition Policy

A pricing approach in which developers choose prices for their products sold on a digital platform from a price range set by the digital platform operator may increase the convenience of developers which try to sell products in multiple countries and regions.

However, prices are supposed to be set at the discretion of each business. Nevertheless, if an operator offers very few tiers of available retail price ranges and thereby restricts business activities of developers and price maintenance effects arise as a result, it could constitute a violation of the AMA (Trading on Restrictive Terms).

In order to improve fairness and transparency of trade and ensure a fair competitive environment, even if app store operators wish to set a price range for products sold on their platforms, they need to adopt a system in which developers have as much discretion as possible in pricing by, for example, offering many tiers of price ranges.

4. Acts which could lack fairness or transparency

(1) Algorithms of search results display

Sellers on online retail platforms have pointed out that 1) criteria of display of search (ranking) results is not transparent, and 2) online retail platform operators may arbitrarily change search (ranking) results. App developers have pointed out that a search ranking mechanism is not transparent as apps listed high in terms of the number of downloads or the amount of in-app purchase are ranked unduly low in search results.

On the other hand, online retail platform operators have pointed out that 1) details of search algorithms has not been disclosed to prevent fraud, but main parameters has been publicly available from the standpoint of fairness, and 2) search algorithms give all stores and products fair evaluation and the operator does not arbitrarily manipulate search results of specific stores or products. App store operators have pointed out that they explain parameters to developers and does not artificially manipulate search results.

A. Trading practices (online retail platforms)

<Sellers>

- An online retail platform operator has not disclosed any information on the mechanism of its search rankings. We don't know how the rankings have been determined.
- We feel that online retail platform operators can manipulate search ranking results . At the moment, our products are displayed in the first pages. But we are afraid the ranking of our products will drop if we do something unusual because we think the operator can change the rankings as it wishes.
- In an online retail platform, there is a system in place in which sellers can improve arbitrarily their products' search rankings in the online retail platform as they wish by paying advertising fees to the operator.

<Operators>

- With regard to rankings of products in search results, we have disclosed and explained factors which determine the rankings (e.g., the product's information, price, stock status) and sales record to sellers.
- On pages designed for sellers of our website, we provide guidance on key factors determining search rankings (e.g. the product's relevance to the search query, browsing and purchasing behavior or each user). However, we do not provide details of search algorithms we use. It is because we do not want products users are not seeking to appear at high ranks as a result of sellers' fraudulent action taking advantage of the algorithms. In addition, because

search algorithms are supposed to evaluate products of all sellers fairly, we cannot manipulate arbitrarily rankings of search results and search results for specific stores or products.

- Advertisement spaces which can be bought by sellers may be set above our search rankings. These spaces should be distinguished from search rankings below. We may also include sales promotional fees paid to us by sellers into computation of rankings of search results. This is because we view our online retail platform as an online shopping catalog, and our business model is based on collection of sales promotional fees from sellers in exchange for their products being highlighted in the catalog. We have explicitly stated this to both consumers and sellers, so we believe it is fair that rankings are systematically affected partly by advertisement fees paid to us.

B. Trading practices (app stores)

<Developers>

- We understand that our app is one of the top apps in terms of both the number of downloads and the amount of in-app purchase, outperforming many other apps in the same genre. Despite this, our app does not appear high in search results. In addition, it was not included when the app store featured the same app genre. We feel that these mechanism are opaque.
- In an app store, there was a period when a certain search query generated a search result which was always topped by an app distributed by the app store operator. The operator keeps the search logic secret and does not release user data either, so it is impossible for us to produce accurate evidence.

<Operators>

- The details of search algorithms of app stores are confidential. However, main algorithms are based on multiple standards, such as [1] user ratings, [2] reviews, [3] number of downloads, [4] adverts, [5] app info. These main criteria are explained to developers through e-learning, and developers are also given tips on how to ensure their app ranks higher in search results. Our company does not adjust the organic search results to move its own apps higher in the search results.
- The searching algorithm is designed so that the results are ranked by the frequency of the words searched by the users. For examples: 1) the relevance of the words (keywords and explanation about the app); 2) the behavioral signal (whether they are downloaded in many times or not in light of the number of

searches), 3) the quality signal (whether they are frequently downloaded or not). However, we do not disclose detailed parameters of the searching algorithm, because the Developers may artificially increase the search ranking of their apps to affect the search results.

C. Thoughts on the competition policy

As the thoughts on the competition policy concerning search algorithms provided above in (3) C of Subsection 2, in order to increase fairness and transparency of trade and ensure a fair competitive environment, digital platform operators need to 1) disclose main parameters and weights determining search rankings, and 2) give a notice to consumers if the digital platform operators put ads spot on the top of the search results so as not to give consumers mistaken impression.

(2) Explanation and disclosure of information to sellers

Sellers on online retail platforms have pointed out that 1) explanation of change of the contract or commission, setting of a reserve, and billing details is unclear; and 2) online retail platform operators do not give clear explanation of review results. App developers have pointed out that 1) they are repeating application in vain because app store operators don't provide specific reasons for rejection in review of their app, and 2) as they are not provided with sufficient information on refunds, they are unable to take appropriate measures on their customers.

On the other hand, online retail platform operators have pointed out that 1) they provide explanation about change of the contract on various occasions, and 2) they show relevant provisions of the contract and reasons for suspension of sale of products or sellers' accounts but don't provide detailed reasons for rejection in order to prevent fraud. And app store operators have pointed out that 1) they illustrate problems recognized in review by using screenshots and others, and 2) they provide detailed information on refunds to developers as well.

A Trading practices (online retail platforms)

(a) Explanation concerning change of the contract

<Sellers>

- Some online platform operators explain the background of commission change but don't provide clear reasons for the new rates and amounts.
- A problem is that some online retail platform operators do not disclose reasons for an increase of commission. As they do not give us any information, we cannot help but suspect they are just increasing their profit margins on no justifiable grounds.

<Operators>

- We explain the summary of change of the contract and its objectives by, for example, posting them as "Announcement" on our special administration website for sellers, or sending email.
- We provide explanation on the main points and purposes of change of the contract on various occasions including meetings which sellers attend, and also set aside some time for explaining the matter to individual sellers, if necessary. With regard to the decision on new rates of commission, we make it a rule to carefully examine them from a legal perspective, so that they would be appropriate for the value provided to sellers.

(b) Explanation concerning commission

<Sellers>

- The bills for commission are not easy to understand. In other words, there are so many items subject to charging that we cannot closely verify all of them. Even if there is an error in an amount, it will be hard to track down.

<Operators>

- We sometimes hear from sellers that it is hard to understand the breakdown of commission. Accordingly, we improve it on an as-needed basis. To be more specific, in our store administration website for sellers, they have access to detailed explanation on how to calculate commission, and a function to access their billing statements, etc.

(c) Explanation concerning reserves

<Sellers>

- An online retail platform operator sometimes withholds part of proceeds to be paid to sellers as a “reserve”. As for the reserve, we have had explanation from the operator that part of proceeds is withheld in the operator to provide for cases where purchasers seek to return what they purchased. However, the basis for calculation of the reserve or until when such withheld payment will be retained remains unclear as they are not provided in the contract either.

<Operators>

- We determine whether a reserve should be set through risk assessment based on the seller’s practice or track record. To be more specific, if we decide that we are likely to receive claims for refunds from purchasers for reasons such as non-delivery of a product or a delivery of the wrong product, we set a refund to be able to take necessary and reasonable measures for protecting purchasers. Our special administration website for sellers also illustrates conditions which necessitate setting a reserve.

(d) Explanation concerning review results

<Sellers>

- Some online retail platform operators provide simple explanation for reasons for suspension of selling of products or sellers’ accounts and show relevant provisions on the contract. However, they do not individually explain specific reasons why our product violates the contract.

<Operators>

- Our special administration website for sellers clearly presents the contract listing cases of conduct which are subject to suspension of selling of products or sellers' accounts, and we show sellers the relevant provisions on the contract which they have violated. When we receive inquiries from sellers asking for reasons for suspension of selling of products or sellers' accounts, we respond individually and provide explanation to each seller.
- In case of suspension of an account, etc., we send sellers relevant provisions on the contract that provide a basis for the suspension and specific reasons thereof via email. When we receive complaints from consumers and need confirmation on facts from a seller, we request the seller to submit a written statement, and then determine whether to suspend the seller's account or not based on the arguments from both sides.
- If a seller commits a fraud including harming consumers, we suspend selling of products or the seller's account to protect consumers, but do not provide specific reasons in detail for the review result. It is because some sellers, if they are informed on specific reasons in detail, try to get around them wrongfully. Withholding specific reasons, we believe, is necessary for ensuring safety and security.

B. Trading practices (app stores)

(a) Explanation concerning review results

<Developers>

- An app store operator shows provisions of the contract which we violate but does not provide any specific reasons. Therefore, we have no choice but to find the reasons by ourselves. In an actual case, when our app was rejected by the app store operator on the grounds that the app's operation was not "smooth", we asked what exactly the operator meant by "smooth," but did not receive any response. We then earnestly shortened the operation time and made application again, which was again rejected. We ended up repeating this process a number of times.
- When an app store operator denied our app's application, they only said we were in violation with the contract, and gave no further detail. To be more specific, the operator told us through a tool on the administration screen that we were violating a certain provision, but did not specify which part of the provision we were violating, so we had no idea what the problem was. As we knew the operator would not respond to our questions, we had to find the problem by

ourselves. To do so, we made application to the operator by removing some functions from the app. As it was again rejected, we made application again by removing some other functions from the app. We repeated this a few times, when the operator indicated another provision as the reason for rejection, instead of the previous one. At that time too, the operator gave us no specific reason, so we had no idea what was wrong.

<Operators>

- We explain the reasons for rejection to the developers. For example, we give appropriate explanation about “which article of the guidelines is infringed” and “what the problem is” using the screenshot of the problematic part. Developers can reach out to app review through our portal site, via email, or via telephone. All of these contact methods are publicly available to developers. We employ Japanese speaking reviewers to deal specifically with Japanese developers.

(b) Disclosure of information concerning refunds

<Developers>

- We think the problem is that app store operators do not provide information on refund processing. In malicious cases, for example, a consumer may buy and use contents, and later claim for refunds. Even in such cases, app store operators approve refunds. We should be able to take some measures against such consumers but we have a hard time doing so because operators do not provide information on refunded customers.
- Sometimes, the amount of refunds does not match what we think is correct but the reason for the gap usually remains unknown because we are provided with too little information on processed refunds. Because the reason cannot be identified, we have to face greater administrative workload concerning confirmation on auditing.
- Without refund information from operators, we are not able to see the actual condition of “double refunds” - a purchaser claiming a refund from us after obtaining a refund from an operator.
- When an operator receives a claim for a refund from a consumer, the operator decides on and provides a refund without asking us. After such a refund, the operator usually provides us information that is too little or too late, so we suffer a loss. For example, in some actual cases, we end up continuing to provide our paid service for free for one month to consumers who have already received refunds from the operator because the operator does not immediately inform us

on the refund information.

<Operators>

- Our company provides developers with reporting tools that enable the developer to see detailed refund information, as well as similarly detailed information (such as sales revenue and number of downloads) on various metrics related to an app's performance. For example, this tool gives developers access to see specifics of the refund amount per order on a daily basis. Developers can also check the status of individual orders in real time. When a refund by the user is made, we disclose the reason for the refund with developers to a certain extent, especially to prevent refund fraud and abuse concerning the refund. However, there are certain cases where our company cannot disclose the information from the user. This may include information that is irrelevant to the refund or information that the user does not expect it to be shared with developers or information, etc., which includes some personal information of the user or a third party. This is done to protect users' privacy, etc.
- Information is made available to the developers about the name of the app for which the refund was made, the amount refunded, and the number of refunds. Such data are organized on a monthly basis and can be downloaded in an excel format. However, we do not disclose the names of the consumers who got a refund. This is to prevent the developers from retaliating against consumers.

C. Thoughts on the competition policy

If details of commission, etc. are unclear, it may adversely affect management decisions by sellers, including decisions on prompt cost reduction or pricing based on the demand, and consumers may not be able to fully enjoy reduction of prices and other merits from competition.

As well, if sellers do not have access to refund information which is important to improve quality of products and services, competition for quality based on consumer needs does not work either. In addition, insufficient explanation for review results (including cases of review criteria themselves being unclear as discussed below in (3)) may lead to chilling effects on business activities by sellers.

At any case, it is consumers that suffer a disadvantage in the form of unchanged prices, no improvement of quality or no creation of new products. In order to improve fairness and transparency of trade and ensure a fair competitive environment, digital platform operators need to take the following measures:

- (a) Disclose in writing such information as change of commission, etc., billing details, refunds and sales.
- (b) Inform sellers in advance as a rule when operators deny opening of stores/selling of products after review, and provide as clear explanation as possible for reasons for the review result.

(3) Review criteria and their application

Sellers on online retail platforms have pointed out that 1) review criteria are unclear and thus results are unpredictable, and 2) results of product review vary depending on seller subject to review. App developers have pointed out that 1) criteria for app review by app store operators are unclear, 2) app review periods vary and it is hard to predict when the release can be, and 3) results of app review vary depending on developer subject to review, reviewer of the app store operator, and the time of review among others.

On the other hand, online retail platform operators have pointed out that 1) they do not disclose review criteria in detail to prevent fraud; and 2) they have worked on improvement of the relevant systems and operations by sharing information with related departments. App store operators have pointed out that 1) they set review criteria and continuously improve them, 2) under normal circumstances, review will be completed in a few hours to dozens of hours, and 3) they have applied the same review criteria to all businesses.

A. Trading practices (online retail platforms)

(a) Review criteria

<Sellers>

- We filed an application with required documents for opening a store to an online retail platform operator, but were rejected in the review. There is no information on the review criteria, so we have no idea why our application was rejected.
- Review criteria are vague. As well, provisions on prohibition are so abstract that operators virtually can prohibit anything as they wish. Because criteria are vague, we cannot help being extremely cautious in selling new products.

<Operators>

- We do not release the details of the review criteria. We prevent sellers which caused consumer damage or committed a fraud in the past from opening stores again. We also do not allow sale of inappropriate products which may cause consumer damage. We do not release the details of the review criteria because disclosing them may invite such sellers to get around the criteria unjustly. Withholding the review criteria, we believe, is necessary for ensuring safety and security.
- We have released the review criteria for products by stating matters to be observed in the contract, etc. We have heard from sellers that our review criteria, especially for the review of opening stores, are not transparent. In such

a case, we provide explanation as best as we can according to the details of their claim, but we withhold the details of the review criteria for opening stores as a measure to prevent businesses with malicious intent from opening stores.

- When we hear from sellers that our review criteria are not transparent, we provide explanation as best as we can according to the details of their claim. We, however, withhold the review criteria to prevent fraud, etc.

(b) Review results

<Sellers>

- We felt an online retail platform operator was unfair and unreasonable when it placed restrictions just on our selling of a particular product which our competitor has been allowed to sell.
- In an online retail platform, we received an order to stop selling a particular product out of the blue. We felt it was unfair because only we were subject to such a sales suspension order while our competitors continued to sell the same type of products. Then, we asked the operator to issue suspension orders for the other stores too. The operator told us that the responsible department would be informed on this but the issue was left unaddressed for more than half a year. Then, after another half year, we again contacted the operator and they replied “The product in question is ok to sell, please resume sales.” As a result, we were deprived of a sales opportunity.

<Operators>

- When we receive a claim or inquiry saying that product review decisions vary depending on our reviewer, we make sure that related departments are informed and try to respond to the requests from sellers as much as possible. We also share the matter with related departments and discuss how to improve the relevant systems and operations.

B. Trading practices (app stores)

(a) Review criteria

<Developers>

- As the criteria for app review are vague, we want them to be clearer. In actual cases, for example, our apps were rejected a number of times although we were sure they met the criteria. As rejection of apps which have been developed after some investment will incur additional cost, seriously affecting our business activities, we want clearer criteria in advance.

- There is a risk in app development, which is we are not sure whether the app will be approved in review before you actually develop the app. Coupled with this, there are cases where functions denied on our apps are approved and installed on apps made by others. Non-transparency of review criteria inhibits the motivation of app developers even if they want to create new apps, and prevents the benefit of app development from reaching consumers.
- As the text of the contract is vague and review results vary depending on reviewer of the app store operator, we are concerned that our apps may be rejected at any time and feel that our app development may be under chilling effects. As the performance of smartphones continue to advance, quality of apps is also getting higher, which has led to a longer development period and higher development cost. As we are staking the fate of our company on the success of individual apps, their rejection will seriously affect our business, so we cannot casually try developing apps.

<Operators>

- App reviews are conducted in accordance with publicly available terms of use. Our company seeks to provide the terms of use in plain and simple language so that they are clear and easy to understand for developers. In addition, those terms of use are available in Japanese. Moreover, developers are also free to contact our company to ask questions about the app review process before submitting their apps for review.
- Its fact is true that we cannot anticipate every situation when developing the review criteria. We have made improvements as deemed necessary according to the lapse of time and deepening of the review process. We review over 100K apps each week and approves most apps within 48 hours. It is not in our interest to reject apps. However, we want to ensure the apps that are approved in the app store work, and do not harm the customer experience.
- Our app store review guidelines are publicly available at our website.
- Developers can reach out to app review through our portal site, via email, or via telephone. We employ Japanese speaking reviewers to deal specifically with Japanese developers. Developers can get more information about any app rejection by submitting a follow up question to the reviewer, or submitting an appeal to the app review Board.
- We provide a tool to developers that allows them to test their apps and collect feedback. And our developer support group provides many kinds of assistance to developers, including guides and documentation, support articles, news and

updates, developer forums, etc.

(b) Review periods

<Developers>

- If we do not know when our app application will be approved, and work under a tight schedule, we (are placed under pressure and) fear that we may end up missing a scheduled release date. Therefore, we need to allow sufficient time for review when making application.
- The app review period varies. It takes only around three days in some cases but may take as long as around two weeks at the end of a year or other busy times when many apps wait for review. It is extremely hard to predict when we will be able to release apps, so we hope to see some rough standard.

<Operators>

- The review period of the app is around 24 to 48 hours. This is not provided in the guidelines, etc., because it may sometimes exceed 48 hours. However, we publicly proclaim that we would complete the app review within 24-48 hours.
- Once the app has been uploaded, the review by our company is in many cases completed within a few hours, or in some cases a few days. In general, our company applies the same review process irrespective of whether an app is similar to other apps that a developer provides, although this may vary for certain sensitive scenarios (such as apps “designed for family”).

(c) Review results

<Developers>

- At an app store operator, opinions submitted in the app review may significantly vary depending on the reviewer. If a reviewer had approved an app we developed but their successor has found a problem within it, then we have to deal with the problem. It is perplexing if a reviewer indicates a problem with something that has been previously approved. We try to deal with problems that have significant impact by setting up a schedule and getting prepared in advance, but if minor problems are pointed out all of a sudden, the schedule will be messed up and we will be unable to start distributing the app as planned.
- The review criteria are vague and sometimes provisions of the contract that are deemed to be violated vary depending on the reviewer. With regard to notification of app review results, we are required to apply again every time we are notified of a violation, which means a higher development cost because we

have to contract out the relevant work to outside service providers which we entrust with our app development.

<Operators>

- All of the developers are reviewed under the same criteria regardless of whether their apps compete against the apps we offer. All developers can reach out to us for assistance with the publicly available number and email addresses we make available to them.

C. Thoughts on the competition policy

Thoughts on the competition policy are the same as provided above (2) C (Explanation and disclosure of information to sellers). In addition, in order to improve fairness and transparency of trade and ensure a fair competitive environment, digital platform operators need to take the following measures:

- (a) Make the review criteria concerning sale of products clearer and improve consistency in the review. (The need for leaving room for interpretation in review criteria should be accepted as clearer criteria may make it easier to circumvent the rules, but in such a case, operators should consider appointing mediator(s) in preparation for a dispute concerning review criteria. (See (4) below.))
- (b) Disclose the state of operation (the number of applications, the number of rejections and reasons thereof, review periods, etc.) and increase predictability for sellers.
- (c) Improve the review system and strive to ensure that review results are as fair as possible.

(4) Consultation systems/Mean of dispute resolution

Sellers on online retail platforms have pointed out that 1) they are unable to resolve the issue of penalty such as suspension of sale of products, etc. even by consulting the operators, and 2) as a specific court is designated as the agreement jurisdictional court, it is hard for sellers based in remote areas to file a lawsuit. App developers have pointed out that 1) they are not able to consult app store operators in advance concerning interpretation of the contract or matters that might be viewed as problems even though results of app review by the operators have significant impacts on the continuation of their businesses, and 2) as cost of litigation concerning issues which occur in an app store is huge, they just have no choice but to waive a lawsuit.

On the other hand, online retail platform operators have pointed out that 1) they have a consultation system in place and make systems for objection and rereview against penalties available to sellers, and 2) designating a specific court as the agreement jurisdictional court is reasonable because sellers are located across Japan. And app store operators have pointed out that 1) developers are able to file an objection against app rejection, etc. online at any time; and 2) it is unrealistic to choose different governing laws and a jurisdiction for each developer when there were many users and developers around the world.

A. Trading practices (online retail platforms)

(a) Consultation systems

<Sellers>

- When our account was suspended, we wanted to get information on the format for improvement reports to be submitted to the online retail platform operator and specific measures for improvement, so we consulted the operator. However, the operator provided nothing about the format or measures and simply sent us a perfunctory email response. Contacting the call center which was supposed to handle inquiries from sellers got us nowhere, either as we were just told that they could not put us through to the responsible department and that they knew nothing about the matter we were calling about.
- It was around a few months after we started selling products in an online retail platform that we suddenly received email indicating our account would be suspended for account review and that the payment of proceeds would be suspended for 30 days. We asked a reviewer about this but (s)he gave us no satisfying answer. When we turned to the seller support desk which have been set in the operator and is different from the reviewer, we were again told that

they knew nothing about individual cases. We offered to provide necessary information for the review while asking them to speed up the process as much as possible, but the operator replied that the review period would not be shortened. After all, consultation did not help us at all.

<Operators>

- We have an inquiry desk for sellers open 24/7/365.
- In case of suspension of an account, a seller who has the account can usually file for rereview, and if approved, their account will be reinstated. Rereview is conducted by the review division around the clock.

(b) Means of dispute resolution

<Sellers>

- A contract with an online retail platform operator states that a specific court shall have the exclusive jurisdiction. For small businesses located in remote areas, however, it is difficult to raise money required for appearing in court, and after all virtually impossible to file a lawsuit.

<Operators>

- As we have sellers across Japan, stipulating that a specific court shall have the exclusive jurisdiction and be the venue of court is widely practiced and also reasonable.

B. Trading practices (app stores)

(a) Consultation systems

<Developers>

- As we sell digital contents on our apps, any decision or recommendation from app store operators on the details of the contents will have the largest impact on our business. Concerning the expression in digital contents in Japan, we hope that some more consultation services are available. This is not the matter of just us but the whole industry is hoping to have opportunities to talk with operators.
- An app store operator imposes trade terms unilaterally and leaves no room for negotiations. It does not provide an inquiry form or service desk for negotiations of trade terms in the first place, although a consultation desk is available for account application and app review. We want means or opportunities to negotiate trade terms.

<Operators>

- If developers have concerns or questions about app reviews, they can contact our company's teams in Japanese through multiple methods (such as via email or Help Center page). Further, developers can contact in Japanese via an online form to protest against our company's decisions or to receive additional explanations on violations (it only takes a few minutes to fill out the form). They can point out that their apps are not in violation of the terms of use, and explain the reasons as to why their apps should not be rejected or removed, or why their accounts should be reinstated. In addition, our company is always working on making improvements and investing to make the terms of use more comprehensible in response to developers' requests - for example, by inserting explanatory images and adding more descriptions on typical violations.
- If the developer is dissatisfied with our rejection of their app, the developer can file a complaint with us. The complaint can be submitted through the online administration screen and the developer can directly contact the division in charge of app review at any time. The division has Japanese-speaking staff as well. There are 20 million app store developers around the world and more than 700K thousand in Japan. It is impractical and impossible to negotiate terms of the developer agreements with each developer. Doing so would also mean that each developer would be subject to different terms. Ultimately this means smaller developers would get worse terms than larger developers. We think this is unfair. We want to treat all developers the same.

(b) Means of dispute resolution

<Developers>

- If an unfair rejection has occurred in an app store, developers can do nothing but file a lawsuit. But if the developer is a one-man business, they cannot help accepting the situation reluctantly unless they are well off enough to afford litigation. On the contract, the app store operator and a one-man business have an equal relationship, but in reality, the former is in a stronger position.
- With regard to damage we suffered due to reasons attributable to an app store operator, we considered filing a suit for damages. But we decided that litigation would be impractical and gave up the idea because we would have to pay more than the amount of the damage we suffered as well as because the procedural burden would be great due to the issue of governing laws and jurisdiction.

<Operators>

- Developers can appeal against enforcement actions (e.g. app rejection) via an

online appeal form. Our teams will re-evaluate the developer's app and, where necessary, explain to the developer by providing instructions as to how to republish the app or reinstate the account. Therefore, developers can always contest enforcement actions without resorting to court action.

- Any claim arising from or relating to our company's relationship with developers under the terms of use with developers shall be governed by the law having the jurisdiction over the state in which our company's head office is located. In addition, the courts located in the state in which our company's head office is located shall have the exclusive jurisdiction to settle all legal matters that arise out of or relate to the relationship between our company and developers. With billions of users and millions of developers spread all over the world, it is unrealistic to choose a different governing law for each developer or user in our agreements.
- There are a number of options to resolve rejections beyond litigation. If the developer files a suit against us, the suit will be governed by the laws applicable to our head office location according to the policy and the local court has jurisdiction.

C. Thoughts on the competition policy

In order to improve fairness and transparency of trade and ensure a fair competitive environment, digital platform operators need to develop a system to accept inquiries from sellers and provide consultation concerning review.

In addition, to try a mediation out of court in case of a dispute which cannot be resolved between the both parties, digital platform operators need to consider 1) appointing mediator(s) and 2) sharing expenses required for the mediation between operators and sellers in reasonable proportion while keeping the burden to be borne by sellers under a certain level so that the burden would not be excessive to the average sellers.

Chapter 3 Conclusion

Section 1 Points of this Survey

1. Thoughts on the AMA

Acts which companies opening a store and selling their products or services through digital platforms have pointed out through this Survey fall into the following classifications;

- 1) Acts which could do sellers harm
- 2) Acts which could exclude competitors
- 3) Acts which could restrict sellers' business

(1) Acts which could do sellers harm

Because a digital platform generates network effect and merit of scale, a digital platform operator has high degree of probability to be at a superior bargaining position over sellers. The JFTC has pointed out the acts likely to be a violation of the AMA as an Abuse of Superior Bargaining Position on Subsection 1 of Section 4 of Chapter 2 in the Report.

In terms of online retail platform and app store, because of a nature as two-sided market, the more consumers join, the more sellers join, and the more alternatives consumers take, the more consumers who join the digital platform increase. Thereby, competition has occurred among digital platform operators in attracting sellers and consumers. This is a normal competition.

However, because of this nature, digital platform operators could be at superior bargaining position over sellers due to lock-in effect through increasing a switching cost. When such a digital platform operator provides disadvantage to a seller unreasonably in the light of normal business practice by increasing a commission rate unilaterally through a revision of a contract, this could be a violation of the AMA as an Abuse of Superior Bargaining Position.

(2) Acts which could exclude competitors

The JFTC has pointed out the acts likely to exclude competitors on Subsection 2 of Section 4 of Chapter 2 in the Report. It falls into the classifications of i) exclusion of other digital platform operators, and ii) exclusion of competing sellers.

Since a digital platform operator competes with other digital platform operators in attracting sellers and consumers, when a digital platform operator unjustly interferes with a transaction between other digital platform operators and the sellers or consumers, this could be a violation of the AMA as Interference with a Competitor's Transactions.

In addition, because a digital platform operator may give a direct sale to consumers on its own digital platform, they are in a position to compete with sellers who provide consumers with the same kind of products or services on the digital platform. When a digital platform operator gives themselves or their related companies preferential treatment by, for example, using transaction data collected by each seller such as sales data or customers' data which they are able to obtain by using the standing for their sales activity and manipulating search algorithm on the digital platform in an arbitrary manner, this could be a violation of the AMA as Interference with a Competitor's Transactions.

(3) Acts which could restrict sellers' business

The JFTC has pointed out the acts likely to restrict sellers' business on Subsection 3 of Section 4 of Chapter 2 in the Report. As referred to in (2) above, a digital platform operator may prevent sellers using its digital platform from doing business due to the standing to operate and manage the digital platform. A digital platform operator might, in some cases, put a kind of restriction on sellers' businesses for a genuine purpose such as consumer protection. But when a digital platform operator excludes their competitors or blocks new entries into the market by restricting sellers' business, and then price maintenance effects or market foreclosure effects occur, they could be a violation of the AMA as Trading on Restrictive Terms.

In addition, some developers providing apps have pointed out that they are prohibited to encourage consumers to make an electronic payment outside of an app and provide them with information on the payment. And other developers have indicated that it is difficult to make profits given a commission rate obliged to pay to the digital platform operator of the app store as a content with an intellectual property right requires a license fee. Setting a commission for in-app purchase itself would not raise a concern on the AMA immediately. However, when a digital platform operator unreasonably forces to use an electronic payment through an app and prohibits a payment outside of an app, restricts a price of a payment outside of an app, or prevents a seller unreasonably from providing information on the payment outside of an app, this could be a violation of the AMA as Trading on Restrictive Terms.

2. Thoughts on the competition policy

This Survey shed light on acts which should be revisited to improve fairness and transparency of trade from the viewpoint of competition policy. One of the acts is, for example, an opaque search algorithm. Where a digital platform operator manages search

algorithm arbitrarily to give themselves unjust preferential treatment, an independent and reasonable choice by a consumer could be distorted. The Report identified that digital platform operators need to disclose the main parameters and weights determining search ranking as well as how to deal with ads spot in order to improve fairness and transparency of trade.

The Report also identified in terms of uncertainty of trade conditions that digital platform operators need to clarify in writing the trade conditions and consider setting up mediators in case of a dispute with sellers.

As you can see in the Interim Report, many sellers pointed out concerns on fairness and transparency for a broad range of points listed in the Interim Report. Given that, it is useful to set a kind of rules in a specific regulation to enhance voluntary effort by a digital platform operator.^[35] And it would be appropriate to mull potential issues including the ones identified in Subsection 4 of Section 4 of Chapter 2 above. In so doing, it is necessary to keep in mind that a digital platform has been a driving force for innovation and the regulation would not be excessive so as not to disturb the innovation.

Section 2 Future initiatives

The JFTC has identified some issues on competition policy in terms of digital platforms in Section 3 of Chapter 1 of the Report. Many of the issues has been pointed out by sellers through this Survey. In case recognizing any particular cases, which include competitive concern, not limited to conducts referred to in the Report, the JFTC shall apply strict and proper enforcement toward those cases in order to enhance competition in digital platform sector and increase consumer interests.

In addition, among issues identified in Chapter 4 of the Report, the JFTC will continue taking a close look into the following practices particularly which include issues peculiar to the digital platform economy because of its fast-changing nature;

1) How digital platform operators revise their rules.^[36]

^[35] As stipulated in the regulation on promoting fairness and transparency, the EC is going forward to impose a duty to disclose important trade conditions as well as ensure fairness and transparency on digital market. For example, the regulation on promoting fairness and transparency stipulates providers of online intermediation services shall ensure that their terms and conditions are drafted in plain and intelligible language, and be easily available to business users at all stages of their commercial relationship with the provider of online intermediation services, including in the pre-contractual stage. It also stipulates a provider of online intermediation services shall provide the business user concerned with a statement of reasons to restrict or suspend the provision of its online intermediation services to the business user on a durable medium. Furthermore, it stipulates a provider of online intermediation services shall specify a provision of internal complaint-handling system and mediation in the terms and conditions.

^[36] See the Subsection 1 (1) of Section 4 of Chapter 2 of the Report

- 2) Whether digital platform operators make use of transaction data of the companies using those platforms for direct sales by the operators or their related companies.³⁷
- 3) Whether digital platform operators give themselves or their related companies preferential treatment by, for example, manipulating search algorithm.³⁸

In order to maintain competitive environment in digital platform sector, it is necessary to discuss and take an action from varieties of perspective such as an appropriate control by sector-specific regulations, implementing a scheme to promote data transfer and openness, an appropriate protection of a personal information as well as an enforcement of the AMA. The JFTC participates in the discussion under Conference for Digital Market Competition, which was established recently, works actively on coordination and cooperation among relevant ministries, and maintains competitive environment.

³⁷ See the Subsection 2 (2) of Section 4 of Chapter 2 of the Report

³⁸ See the Subsection 2 (3) of Section 4 of Chapter 2 of the Report