

Report regarding Fact-Finding Survey on Digital Platforms  
(Business-to-Business transactions on online retail platform and app store)  
(Summary)

October 31, 2019

## Digitization of the economy and penetration of digital platforms

Technological innovation called the **"4th Industrial Revolution"** is progressing, such as rapid increase of data processable, improvement of computing power, and development of artificial intelligence.



- Digital platforms that use information and communication technology and data to provide a "place" for a wide variety of services to third parties have been creating innovative businesses and take on the creation of innovation.

- Digital platforms have become widespread to our lives because consumers use various digital platforms and their usage is getting frequent.



Digital platforms have a **strong influence** on our social and economic life, and the **influence continues expanding**.

Comparison of the top global rankings of corporate market capitalization as of 2008 and 2018

2008 World's Top 10 Companies  
Mainly oil, manufacturing, telecom, and finance (Total 293 trillion yen)

2018 World's Top 10 Companies  
6 out of 10 (Total 419 trillion yen) are digital platform companies

	Company Name	Market Cap.
1	PetroChina	57T Yen
2	Exxon Mobil	49T Yen
3	General Electric (GE)	34T Yen
4	China Mobile Int'l	32T Yen
5	ICBC (中国工商银行)	30T Yen
6	Microsoft	26T Yen
7	Petróleo Brasileiro S.A	25T Yen
8	Royal Dutch Shell plc	23T Yen
9	AT&T	22T Yen
10	BP	21T Yen
	...	
12	Toyota Motor	21T Yen

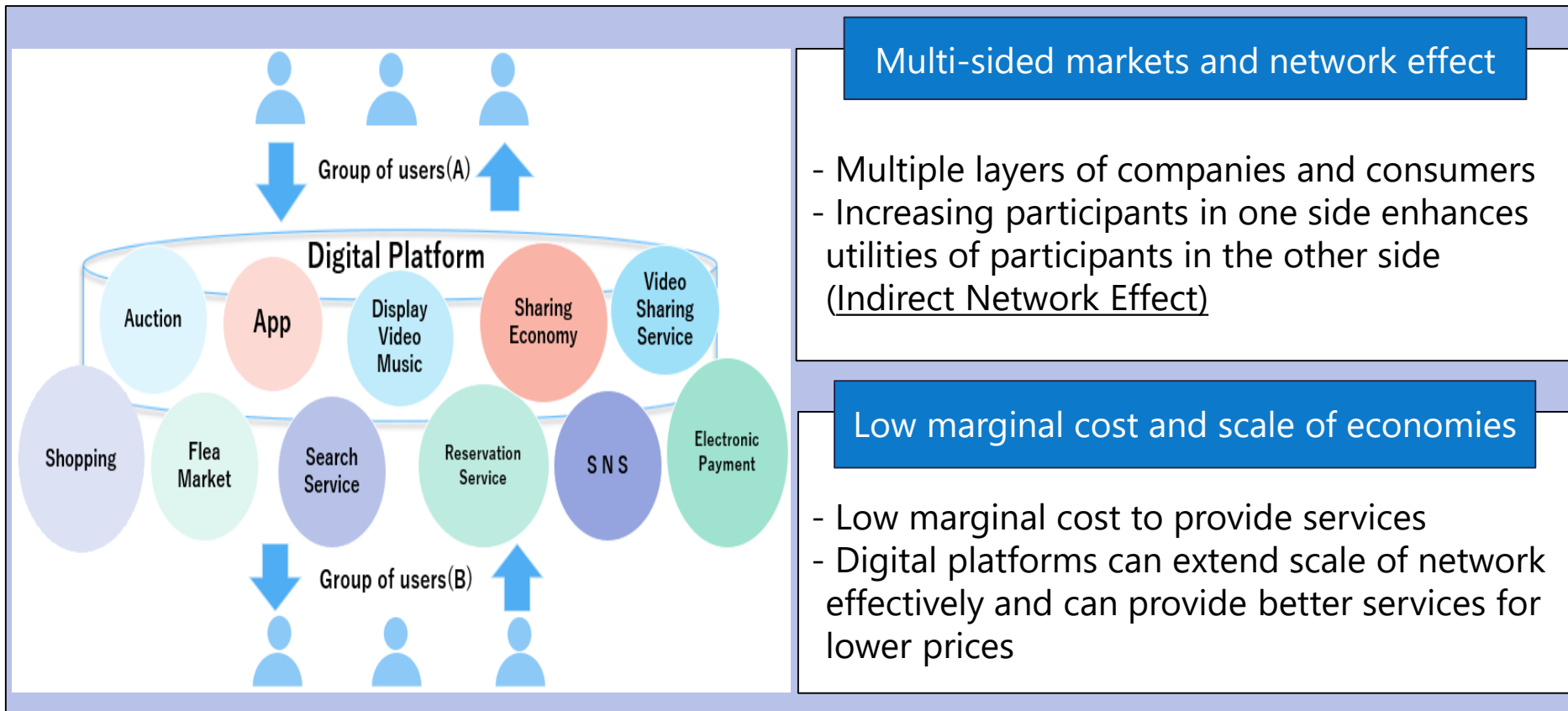
※ at the end of February

	Company Name	Market Cap.
1	Apple	96T Yen
2	Alphabet (Google)	82T Yen
3	Amazon.com	78T Yen
4	Microsoft	77T Yen
5	Tencent Holdings	56T Yen
6	FaceBook	56T Yen
7	Berkshire Hathaway	55T Yen
8	Alibaba Group Holding	51T Yen
9	JPMorgan Chase & Co.	42T Yen
10	ICBC (中国工商银行)	38T Yen
	...	
23	Toyota Motor	24T Yen

※ at the end of February

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

## Characteristics of digital platforms



### Multi-sided markets and network effect

- Multiple layers of companies and consumers
- Increasing participants in one side enhances utilities of participants in the other side (Indirect Network Effect)

### Low marginal cost and scale of economies

- Low marginal cost to provide services
- Digital platforms can extend scale of network effectively and can provide better services for lower prices

- Digital platforms can provide tremendous benefits by collecting and organizing big data in multi-sided markets and then making effective use of the data

- Concentration would occur on a few particular digital platforms, which may lead to monopolization and oligopolization
- Lock-in effect can work due to high switching cost

## Concerns about digital platform operators on competition policy

### Abuse of Superior Bargaining Position

Digital platform operator unjustifiably causes, in light of normal business practices, disadvantage for trading partners

### Exclusion of Other Digital Platform Operator

Dominant digital platform operator excludes other digital platform operators or prevents them from entering

### Exclusion of Competing Sellers

Digital platform operator, making use of its position of changing its own trade terms, excludes competing sellers

### Anti-Competitive Merger

Dominant digital platform operator conducts merger, which may be substantially to restrain competition

## Responses of the Japan Fair Trade Commission (JFTC)

**Dealing with violations of the Antimonopoly Act strictly and precisely**

### **Implementing continuous fact-finding surveys**

**The JFTC launched a survey on online retail platform and app store in which issues have been repeatedly pointed out**

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

**Implementing merger review considering digitalization of economies**

## July, 2018

Study Group on Improvement of Trading Environment regarding Digital Platforms launched by the JFTC, the METI and, the MIC

## December, 2018

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




As a starting point to achieve transparency and fairness, **understanding of the actual state of trade practices will be advanced through large-scale, comprehensive and thorough surveys**



## January, 2019

Fact-finding survey regarding trade practices on digital platforms launched by the JFTC

### Method

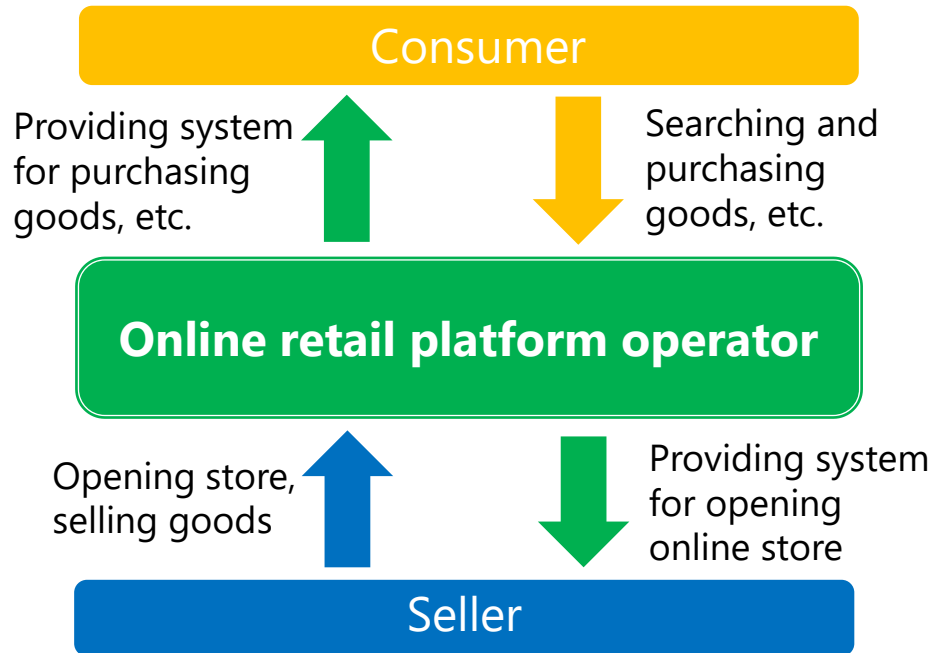
<p>(1) Information-offering form (As of Sept. 30, 2019) </p> <ul style="list-style-type: none"> <li>- Online retail platform 795</li> <li>- App store 20</li> <li>- Others 99</li> <li>Total 914</li> </ul>	<p>(2) Questionnaire (Feb. - Mar. ,2019) </p> <ul style="list-style-type: none"> <li>• Surveys regarding trade practices on <b>online retail platform</b></li> <li>• Surveys regarding practices on <b>app store</b></li> <li>• Surveys regarding <b>users (consumers) of digital platforms</b></li> </ul> <p>※Interim report published April 17, 2019</p>	<p>(3) Voluntary interview (As of Sept. 30, 2019) </p> <ul style="list-style-type: none"> <li>• Online retail platform operator 5</li> <li>• Seller on online retail platform 42</li> <li>• App store operator 3</li> <li>• App vendor 43</li> <li>Total 93</li> </ul>
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## 1 Outline of online retail platform market



<Contract / Transaction>

- Online retail platform operator creates and provides **a system which enables sellers to open their stores and sell goods on the stores.**
- Online retail platform operator creates and provides **a service which mediates transactions between consumers and sellers buying/selling goods on online retail platform.**

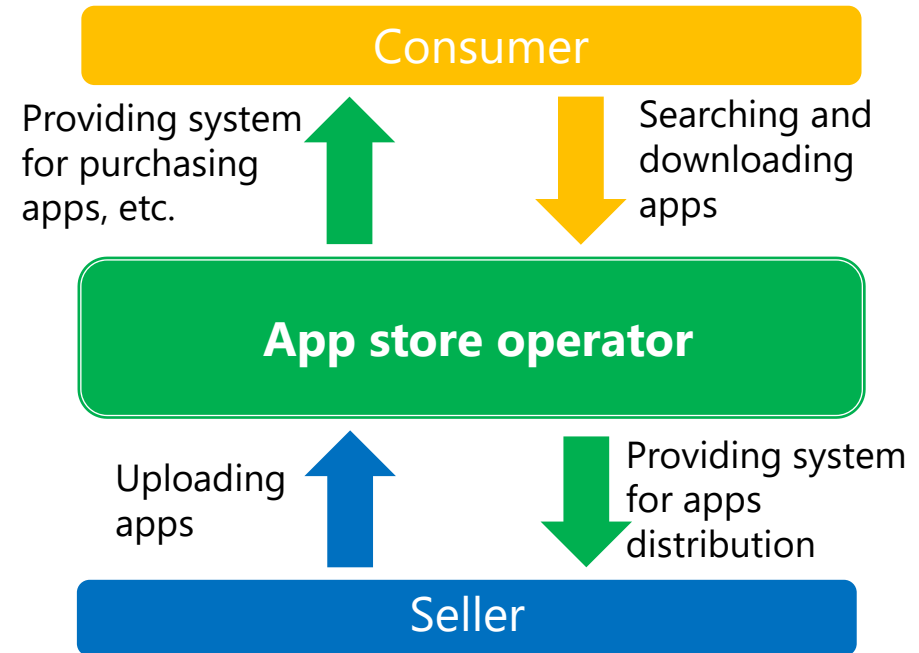


## 2 Outline of app store market



<Contract / Transaction>

- App store operator creates and provides **a system which enables sellers to upload and distribute their apps.**
- App store operator creates and provides **a service which mediates transactions between consumers and sellers buying/selling apps and digital contents provided in their apps.**



## 1 Outline of online retail platform market



### <Market size>

E-commerce market size in Japan

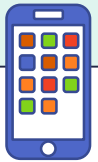
	Revenue
<b>FY2016</b>	15,135,800.0 million JPY
<b>FY2017</b>	16,505,400.0 million JPY
<b>FY2018</b>	17,984,500.0 million JPY

Source: The JFTC made this chart based upon the "Report of FY2018 Survey of Infrastructure Development Status for Data-driven Society in Japan (E-Commerce Market Survey)" by the Ministry of Economic, Trade and Industry

### <Competition environment>

- In addition to **competition among online retail platform operators**, **competition between sellers** can be observed. In case online retail platform operator or its affiliated company provide goods which competes with seller's goods, **competition between online retail platform operators or its affiliated company and seller** will also be taken place.

## 2 Outline of app store market



### <Market size>

App store market size in Japan

	Revenue
<b>FY2016</b>	1,272,672.3 million JPY
<b>FY2017</b>	1,529,980.0 million JPY
<b>FY2018</b>	1,662,711.5 million JPY

Source: Information provided by AppAnnie

### <Competition environment>

- In addition to **competition among app store operators**, **competition between sellers** can be observed. In case app store operator or its affiliated company distribute app which competes with seller's apps, **competition between app store operators or its affiliated company and seller** will also be taken place.

## 1 Influential positions in the market

- Given **an indirect network effect works on digital platforms**, digital platform operators who have a concentration of sellers, app vendors (hereinafter collectively called "sellers") and consumers are **highly likely on an influential position in the current market**. If not, their positions could quickly rise in the market.

## 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, fees and so on**. Moreover, when digital platform operators or their related companies directly sell their products to consumers, **the digital platform operators or related companies compete with sellers for the products**. 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

- Because transaction stop risks sellers' business, they have no choice but to accept whatever a digital platform operator requests even if it takes too much burden on the sellers. If that is the case, **the digital platform operator could have a superior bargaining position against the sellers**.
- Because a 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 How sellers see digital platform operators' bargaining positions


### As for online retail platform operators

 We extremely depend on some online retail platform for our business and cannot switch to others.

 Since online retail platforms are attractive from the viewpoint of customer appeal, we have no choice but to follow their terms whatever.

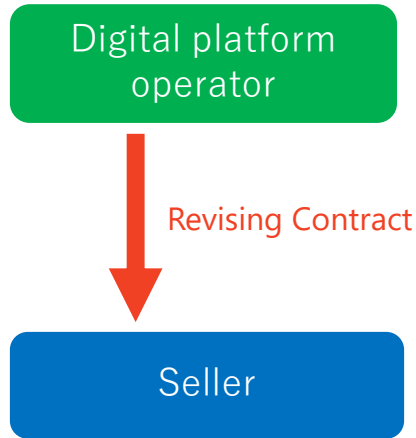
### As for app store operators

 App store market is oligopolistic, and more than half our turnover is generated on a particular app store.

 It is not realistic for us to sell apps to consumers without app stores. So, it cannot be helped to kind of obey app store operators.



## Changing business terms by contract revisions



### Facts (online retail platform)



Without having been asked for agreement on contract revisions, we were forced to accept them that would raise fees or launch a new payment method.



We consider raising fees in light of maintaining and improving our service, cost fluctuations necessary to it, and so on. The new payment method is introduced to expand the lineup of payment methods, reduce the burden of payment, and make the method solid against false orders.

### Facts (app store)



They force us to agree with contract revision. We have no choice but to accept the revision because if we don't, the platform operators would partially restrict our use of the service on the app store.



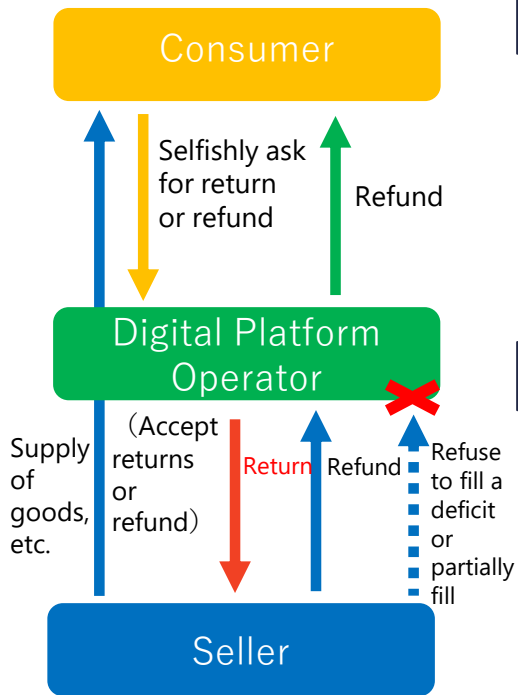
It is impossible to negotiate with all sellers. All of them do business with us on equal terms regardless of their scale.

## Thoughts on the AMA and the Competition Policy

★ **When digital platform operators who have superior bargaining positions unjustly do sellers harm** in light of normal business practices by revising terms to 1) raise fees sellers pay to digital platform operators, 2) make it a duty to use a new service and set fees for it, **they could violate the AMA (Abuse of Superior Bargaining Position).**

■ In order to improve fairness and transparency of trade and ensure fair competitive environment on digital platform, digital platform operators need to 1) let sellers know the revision beforehand and explain contents of the revision well, 2) take sellers' input for the revision into account if it seems sensible, 3) give sellers time enough to consider the revision from the notice of the revision to its effective date.

## Handling consumers return or refund request



### Facts (online retail platform)

- Seller:** We are almost forced to accept a return even if it is malicious. They don't give us enough compensation for a loss coming with the return.
- Operator:** We handle a return following the terms on it. We give sellers equivalent amount of money that the same goods sales makes based on the terms.

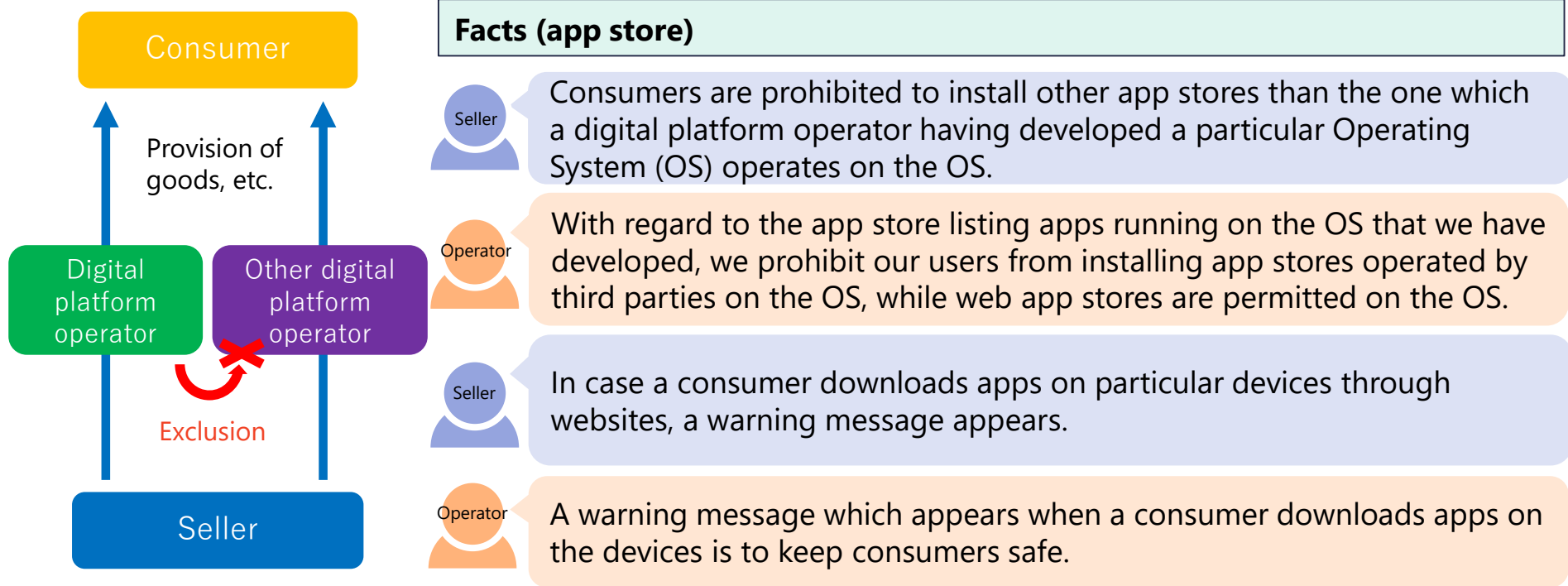
### Facts (app store)

- Seller:** They accept a refund request whatsoever in a certain period of time. They do so when consumers use items and we suffer a loss.
- Operator:** We accept a refund request in a certain period of time in order to protect consumers and sellers. We make a refund following the term.

## Thoughts on the AMA and the Competition Policy

- ★ **When digital platform operators who have superior bargaining positions unjustly do sellers harm** in light of normal business practices by making sellers shoulder a loss coming with a return or refund, **they could violate the AMA (Abuse of Superior Bargaining Position).**
- In order to improve fairness and transparency of trade and ensure fair competitive environment on digital platform, digital platform operators need to clarify in writing particular cases and conditions under which they can accept a return or make a refund. In addition, if it is not appropriate to clarify conditions due to a concern over misuse, the digital platform operators need to consider setting up mediators.

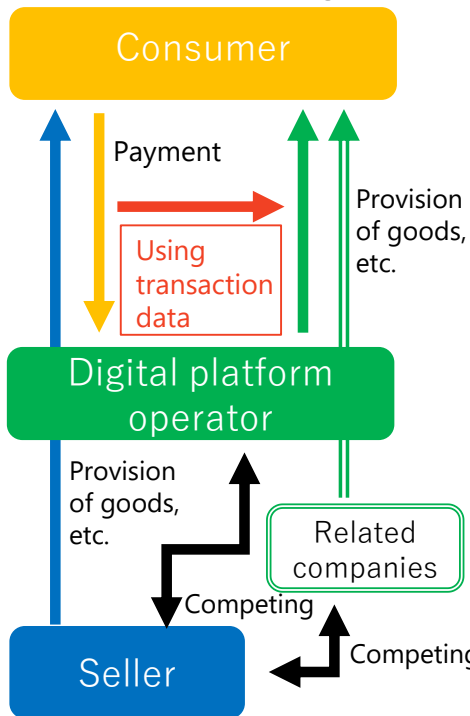
## Restriction of use of other app stores



### Thoughts on the AMA and the Competition Policy

- ★ 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).**
- In order to improve fairness and transparency of trade and ensure 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.

## Direct sale by using transaction data collected by each seller



### Facts (online retail platform)



Online platform operator 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.



We never make use of transaction data collected by each seller for our direct sale.

### Facts (app store)



We assume that app store operator is capable of obtaining the information on consumers who at one time subscribed our paid plan, and may use the information for sales promotion activities for its own app of the same genre.



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.

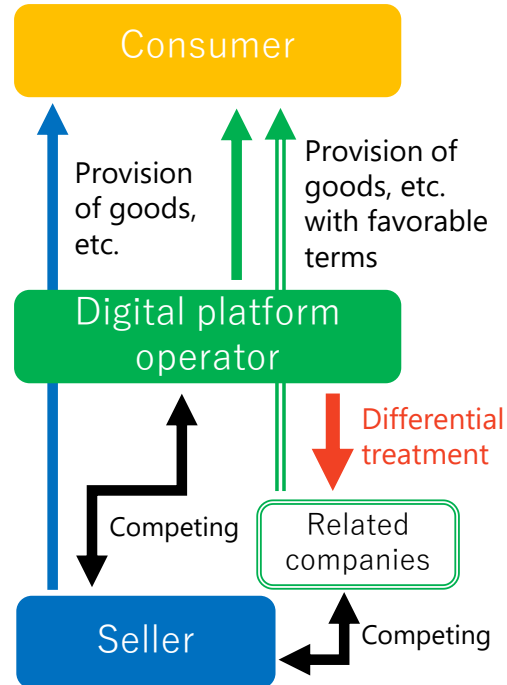
## Thoughts on the AMA and the Competition Policy

★ 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 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
- 2) its purpose, purview and conditions to get access to the data if they or their related companies actually use the data

## Differential treatment between seller and digital platform operator itself or their related companies



### Facts (online retail platform)



Digital platform operator gives themselves or their related companies treatment with preferential conditions in terms of search results display, payment system, commission rate, and so on.



We fairly evaluate the search results. We don't give differential treatment to ourselves or our related companies in terms of payment system. We think it would be inappropriate to criticize us for a commission rate because the cost of marketing for our digital platform has been fully on us.

### Facts (app store)



We feel disadvantaged compared to digital platform operator in terms of search result display and commission rate.

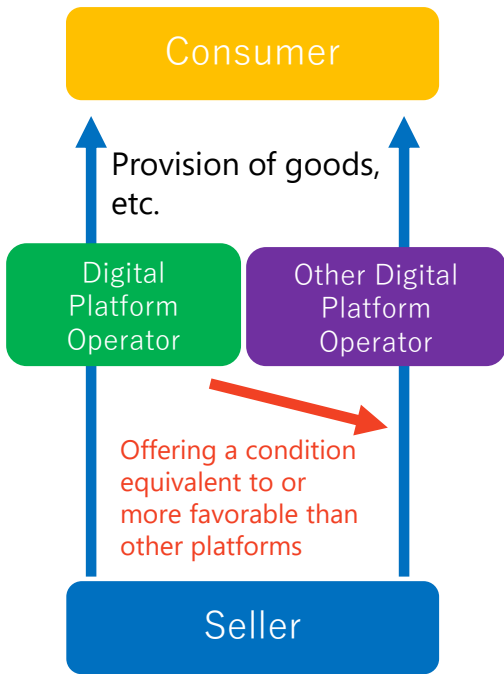


We don't give ourselves preferential treatment on search result. We don't impose the commission to use an app store we operate on ourselves but we have made investments in the development, maintenance and management of the app store.

## Thoughts on the AMA and the Competition Policy

- ★ 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 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.

## Most Favored Nation (MFN) Clause



### Facts (online retail platform)



We are asked that the price, and so on through the online retail platform by a digital platform operator must be equal to or more favorable than those for the other online retail platform, etc.



We never force a retail price or product variety.

### Facts (app store)



We are forced to set a retail price outside of an app store higher than that in an app store.



We never suggest to set any retail price.

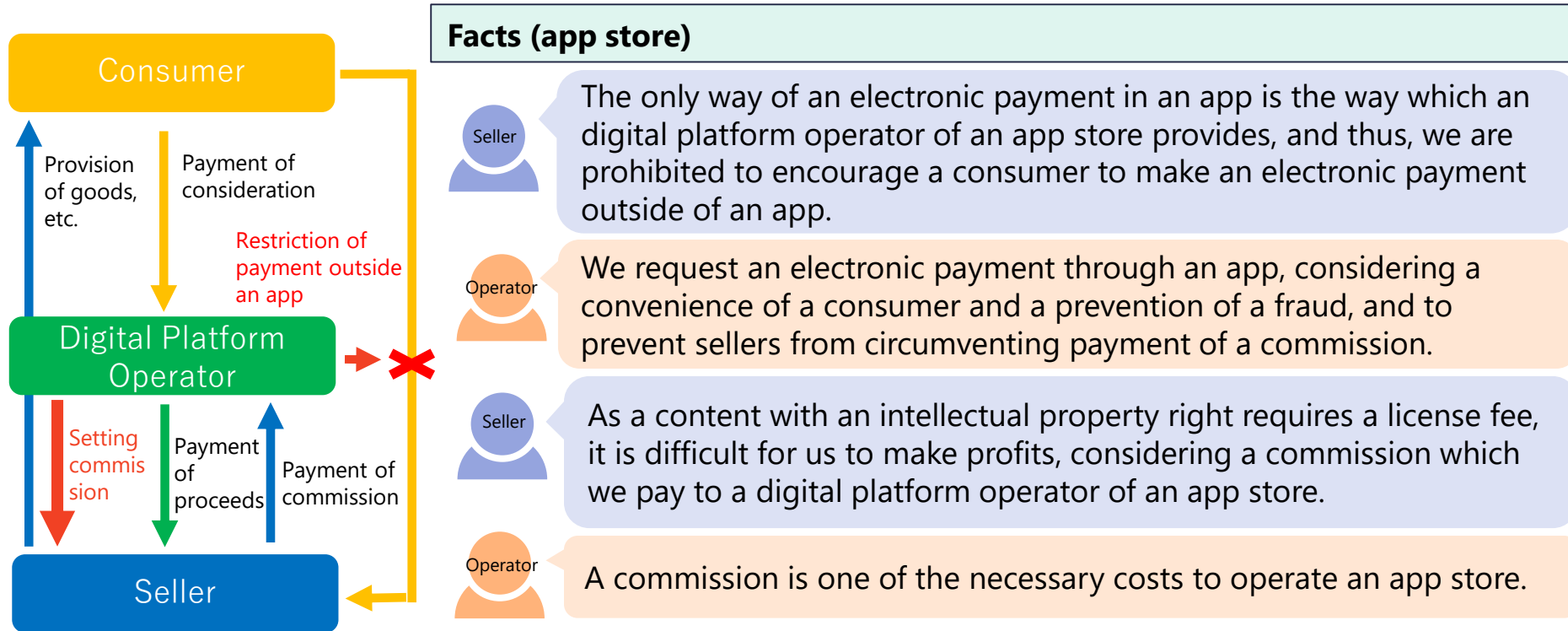
## Thoughts on the AMA and the Competition Policy

★ When digital platform operators offer an MFN clause to sellers, competition among the sellers and that among the digital platforms may be harmed and consumers may not be able to benefit from competition on a price or a good variety. Especially, when a strong digital platform operator in a market offers an MFN clause by itself, or together with other digital platform operators and then price maintenance effects (\*1) or market foreclosure effects (\*2) occur, **they could violate the AMA (Trading on Restrictive Terms).**

(\*1) Guidelines Concerning Distribution systems and Business Practices under the Antimonopoly Act, Part 1, 3 (2)b

(\*2) Guidelines Concerning Distribution systems and Business Practices under the Antimonopoly Act, Part 1, 3 (2)a

## Setting a commission on a electronic payment through an app and restriction on the payment outside of an app



### Thoughts on the AMA and the Competition Policy

- ★ 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)**.
- ★ When app store operators give themselves or their related companies preferential treatment or restrict sellers' promotional effort 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)**.

### ★ Conduct Providing Disadvantage to a Seller

As a digital platform operator may have a superior bargaining position against sellers due to lock-in effect, they may, for example, make a unilateral revision of a contract.



When a digital platform operator with a superior bargaining position provides disadvantage to a seller unreasonably in the light of normal business practice, **this could be a violation of the AMA as an Abuse of Superior Bargaining Position.**

### ★ Conduct Excluding a Competitor

A digital platform operator competes with other digital platform operators in attracting sellers and consumers, and, for example, the digital platform operator may restrict downloading other app stores operated by other digital platform operators.



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.**

As a digital platform operator is in a position where they can operate and manage its platform by itself, they may, for example, make use of a transaction data, etc. to its sales promotion, and arbitrarily manipulate search algorithm.



When a digital platform operator provides a good, etc. directly through its own digital platform and unjustly interferes with a transaction by giving themselves or their related companies preferential treatment, **this could be a violation of the AMA as Interference with a Competitor's Transactions.**

### ★ Conduct Restricting Customer's Business Practices

As a digital platform operator is in a position where they can operate and manage its platform by itself, they may, for example, unreasonably force to use an electronic payment through an app and prohibit a payment outside of an app, restrict a price of a payment outside of an app, or prevent a seller unreasonably from providing information on the payment outside of an app.



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.**



## 1 Strict and proper enforcement of the AMA

- ★ In case recognizing any particular cases which include competitive concern, the JFTC shall apply strict and proper enforcement toward those cases in order to enhance competition in digital platform sector and increase consumer interests.
- ★ The JFTC will continue taking a close look into relevant matters which include issues peculiar to the digital platform economy because of its fast-changing nature.

## 2 Ensuring competitive environment in digital platform sector

- In order to maintain competition environment in digital platform sector, it is necessary to discuss and take actions from varieties of perspectives such as an appropriate control by sector-specific regulations, implementing a scheme to promote data transfers 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.