

February 2021

## Fact-finding Survey Report on Digital Platform Operators' Trade Practices

# Final Report Regarding Digital Advertising



公正取引委員会  
Japan Fair Trade Commission



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## Part 1 Introduction

### Chapter 1 Purpose and outline of the survey

The digitization of the economy is further advancing. With the outbreak of the Covid-19 worldwide in 2020, digital platform operators provide the services needed for people's daily lives, such as shopping and communications, on-line, and their presence is becoming increasingly significant. Digital platform operators continue to be of importance to our country's economy and society.

Regarding business activities of such digital platform operators, the Japan Fair Trade Commission (the JFTC), in accordance with the "Fundamental Principles for Improvement of Rules Corresponding to the Rise of Digital Platform Businesses" (the JFTC, METI, and MIC) published on December 18, 2018, which states "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.", conducted a survey on the transactions in online retail platforms and app stores that may pose problems in terms of Antimonopoly Act (AMA) published the results of the survey on October 31, 2019.

On the other hand, digital platform operators offer a variety of services other than online retail platforms and app stores, often free of charge, including search service, social media, video and music distribution, news distribution, email, and e-payments, and have many points of contact with consumers. For this reason, digital platform operators are able to display advertising in a variety of media in response to consumers' interests by collecting and using various personal data provided by consumers through various services. The digital advertising business, based on this ecosystem, is a major source of their earnings.

With respect to digital advertising, digital platform operators are also key platforms linking both the listing media (publisher) and the advertiser (including advertisers and its agencies). Furthermore, with the growth in digital advertising transactions, there has been an impact on various business fields. In particular, for media (publisher), which had previously earned revenues from the advertising business, there has been no choice but to change its earnings structure, and the way digital platform operators conduct their business related to digital advertising has come to have a major impact on the media business.

In light of these circumstances, the JFTC has decided to conduct a survey on digital advertising transactions in order to clarify the actual status of transactions and the state of competition surrounding digital platform operators in the digital advertising sector, and to present our views on AMA and competition policies in the relevant areas, and to promote efforts to prevent violations of the AMA and to ensure a fair and free competitive environment by interested parties in the relevant areas.

The Fact-finding Survey on the digital advertising sector released by the JFTC on April 28, 2020 (hereinafter referred to as the "Interim Report") compiled survey results. This report summarizes the findings of additional surveys such as this "Interim Report" and subsequent interviews.

This report consists of four parts.

Part 1 explains the purpose, outline, and survey method of the investigation.

Part 2 provides an overview of the digital advertising marketplace.

Part 3 explains digital platform operator's trading position in digital advertising markets (Chapter 1) and then clarifies and evaluates the actual status of businesses trading in digital advertising sector (Chapter 2). In addition, as mentioned above, digital platform operator's digital advertising businesses make use of personal data provided by consumers in exchange for using digital platform operator's services for free. Therefore, the actual status and assessment of data exchanges between digital platform operators and consumers are described in this section (Chapter 3). It continues to discuss the impact of changes in publisher's earnings structure due to growth in digital advertising transactions on the business relationship between digital platform operators and publishers (Chapter 4).

Part 4 summarizes the concepts of the AMA and competition policy, and describes future responses.

## Chapter 2 Survey method

### 1 Businesses and Consumer questionnaire<sup>¶</sup>

#### (1) Questionnaire for businesses

We divided businesses, which have direct or indirect business relations with digital advertising sector's digital platform operators, into three categories: ① advertisers and ad agencies, ② intermediaries, and ③ publishers. Then, the questionnaire was conducted on transactions with digital platform operators. The outline is as follows.

##### ① Questionnaire for advertisers and ad agencies

Survey target: Advertisers and ad agencies who post digital advertising

Survey method: Web survey

Implementation period: February 25 to March 13, 2020

Number of shipping destinations: 790 companies

Number of respondents: 105 companies

Response rate: Approx. 13.3%

##### ② Questionnaire for intermediaries

Survey targets: Intermediaries involved in digital advertising transactions between publishers and advertisers and ad agencies

Survey method: Web survey

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<sup>¶</sup> For details, see the Interim Report.



Implementation period: February 25 to March 13, 2020

Number of shipping destinations: 393 companies

Number of respondents: 38 companies

Response rate: Approx. 9.7%

③ Questionnaire for publishers

Survey targets: Businesses of the media/other organizations that run websites that publish digital advertising

Survey method: Web survey

Implementation period: February 25 to March 13, 2020

Number of shipping destinations: 924 companies

Number of respondents: 177 companies

Response rate: Approx. 19.2%

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(2) Questionnaire for consumers

We surveyed advertising in search advertising and social media and video streaming websites ("social media") in a form of a consumer monitor method conducted by research firms to assess consumers' perceptions of free-of-charge services and displayed advertising, and the degree to which they understand the use of user data. The outline is as follows.

(1) Questionnaires for search service users

Survey targets: Consumers using search services

Survey method: Web survey (commissioned survey)

Implementation period: February 25 to 27, 2020

Number of respondents: 2,000

(2) Questionnaire for social media users

Survey targets: Consumers using social media

Survey method: Web survey (commissioned survey)

Implementation period: February 25 to 27, 2020

Number of respondents: 2,000

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## 2 Hearing investigation

A voluntary interview was made to 78 people from businesses organizations in a wide range of industries, including advertisers, ad agencies, intermediaries, and publishers, that

have direct or indirect business relations with digital advertising sector's digital platform operators, considering their industry and size.

We also conducted interviews for five companies (Google, Yahoo, Facebook, Twitter, and LINE), which are considered to be the main digital platform operators in this field.

In addition, we consulted with six experts in the digital advertising sector.

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### 3 Investigation through the information-offering form on website

As of February 1, 2021, there were 21 comments related to digital advertising through the information-offering form on website.

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### 4 International cooperation

In the field of digital advertising, overseas competition authorities are also conducting market studies. The JFTC has exchanged views and expertise with the Competition and Markets Authority of the United Kingdom (hereinafter referred to as the "UK CMA") and the Australian Competition and Consumer Commission (hereinafter referred to as the "ACCC"), which are engaged in digital advertising sector's survey as the JFTC, in the process of drafting this report, referring to discussions in other countries, the International Competition Network (ICN), and the Organization for Economic Co-operation and Development (OECD).

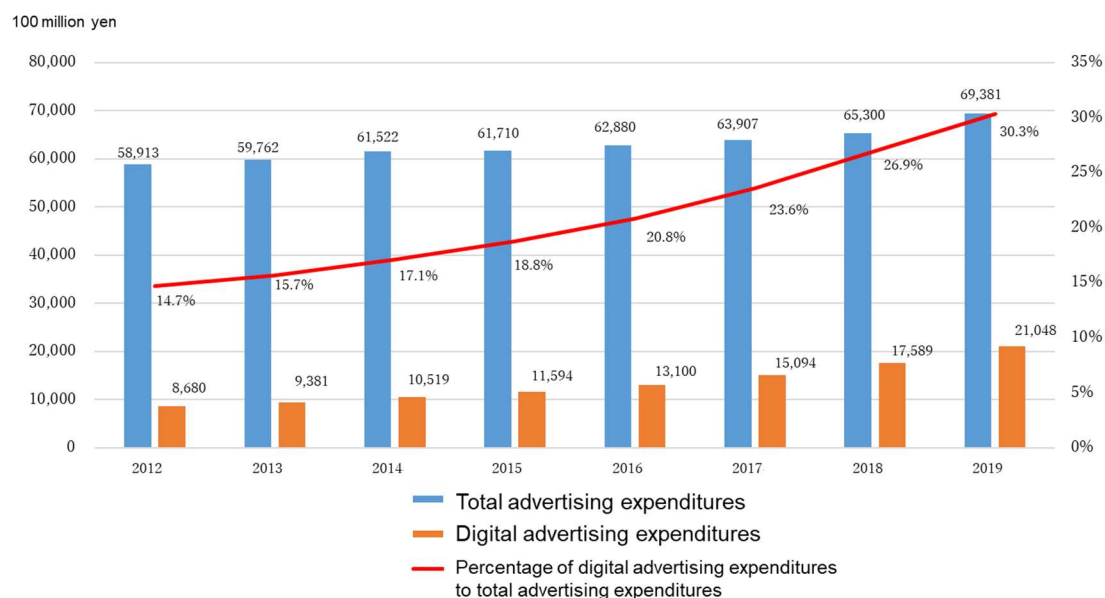
## Part 2 Outline of the Digital Advertising Market

### Chapter 1 Expansion of the digital advertising market

#### 1 Total advertising expenditures and digital advertising expenditures

Advertising expenditures in Japan have been rising every year. The total advertising expenditures in Japan in 2019 increased to about 7 trillion yen, equivalent to about 1.3% of the nominal gross domestic product (GDP) in Japan in 2019. Of these, there is an increasing trend in digital advertising expenditures, as shown in figure 1. Still, the percentage of the digital advertising expenditures to the total advertising expenditures is also increasing<sup>[23]</sup>. The digital advertising expenditures in Japan were 2 trillion yen.

Figure 1: Trends in total advertising expenditures and digital advertising expenditures in Japan



(Note) In 2019, “Advertising expenditures for Merchandise-related EC Platforms” and “events” were added to the estimation of “Advertising expenditures in Japan.” Excluding them, the same total advertising expenditures in the previous year were 6,651.4 billion yen, or 101.9% compared with the year earlier.

Source: The JFTC based on Dentsu Inc. “Advertising expenditures in Japan” knowledge and data

([https://www.dentsu.co.jp/knowledge/ad\\_cost/](https://www.dentsu.co.jp/knowledge/ad_cost/),

EN:[https://www.dentsu.co.jp/en/knowledgeanddata/ad\\_expenditures/](https://www.dentsu.co.jp/en/knowledgeanddata/ad_expenditures/))

<sup>[23]</sup> In this report, the scope of “Internet advertising” and “digital advertising” are identical. Hereafter simply referred to as “digital advertising.”

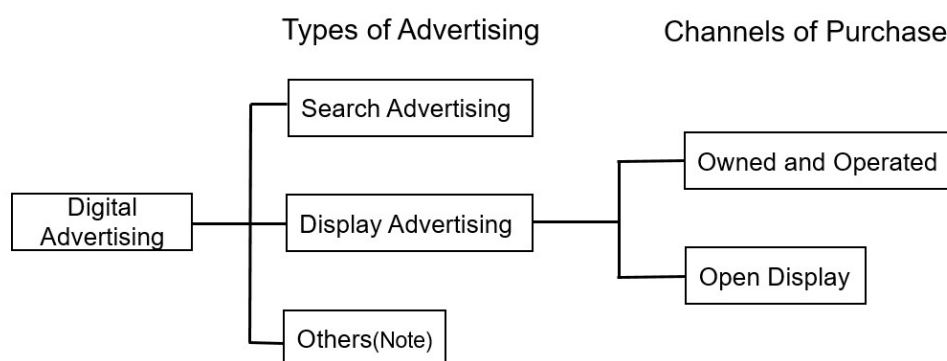
<sup>[24]</sup> Dentsu Inc. “2019 Advertising Expenditures in Japan” March 2020

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## 2 Types of digital advertising and breakdown of digital advertising media expenditures

Digital advertising can be roughly divided into search advertising and display advertising based on the differences in advertising types. Besides, display advertising is classified into owned and operated and open display due to channels of purchase.

Figure 2 : Classification of digital advertising  
by types of advertising and channels of purchase



Note) Others include affiliate advertising and other Internet advertising.

An overview of search advertising and display advertising, respectively, is as follows.

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### (1) Search advertising

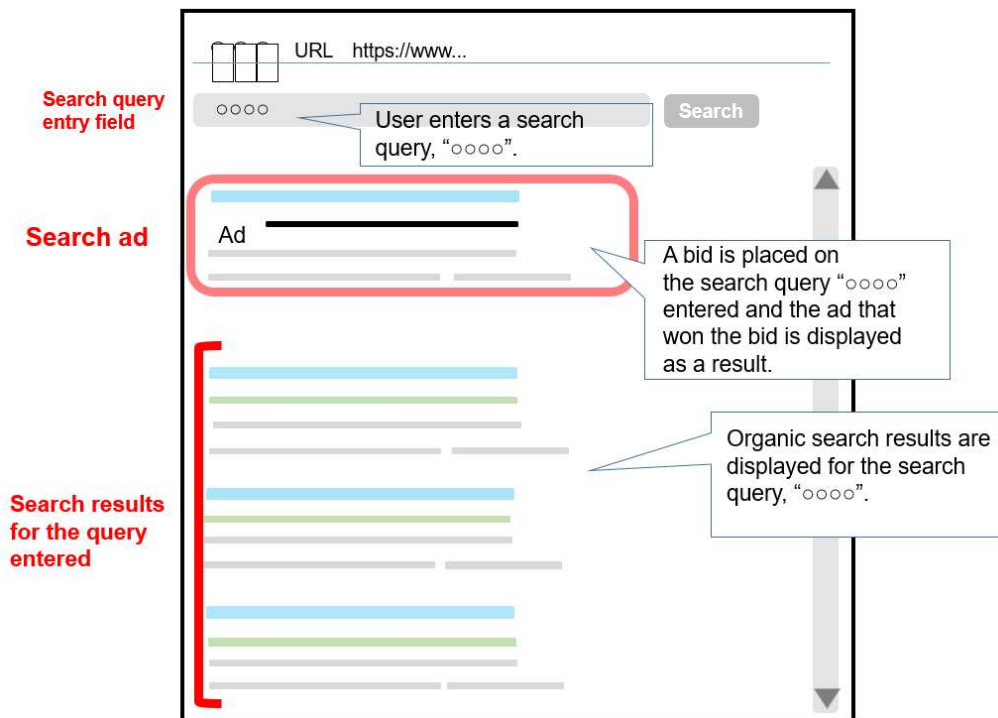
Search advertising is displayed along with search results (usually at the top and bottom of search results) when users search by inputting keywords on search sites such as Google Search or Yahoo! Search and are distributed in conjunction with search queries.<sup>[4]</sup>

Search advertising is also called listing advertising.

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<sup>[4]</sup> A string a user enters when using search services.

Figure 3: Examples of search advertising

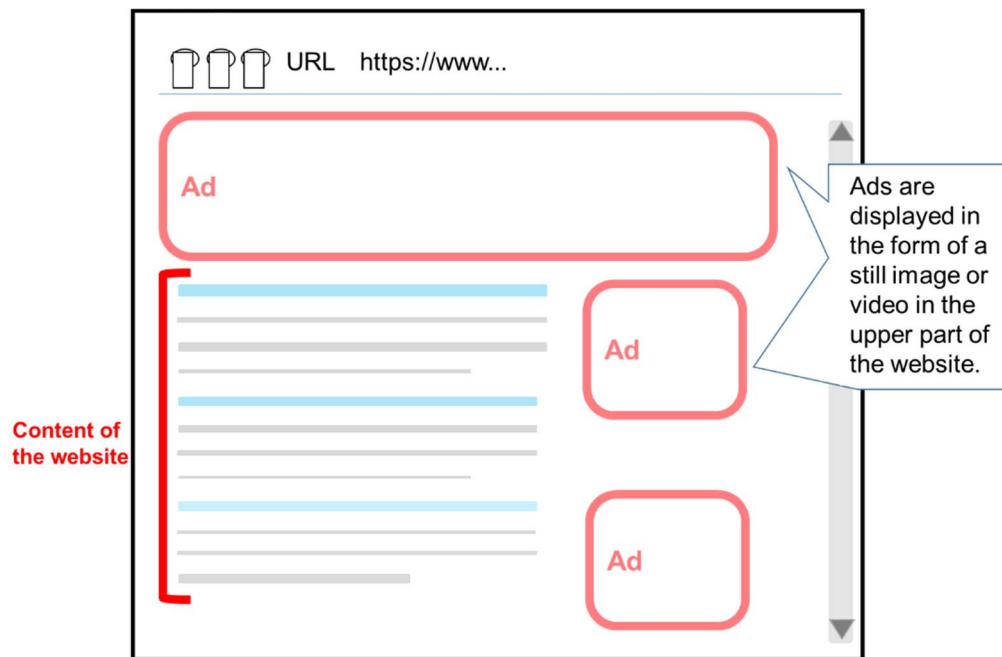


## (2) Display advertising

Display advertising refers to advertisements in still images and videos that appear around the contents of websites or apps when a user browses websites, including social media, news sites, or blogs such as YouTube, Yahoo! Japan, Facebook, Instagram, LINE and Twitter. Display advertising uses data such as location information collected from the IP address of devices, etc., and data collected using technologies such as cookie and web browsing history of users (for details of information collection technology, see Part 3, Chapter 3-1 below) and displays advertisements by users' attribute, etc.

As noted above, transactions in display advertising can be broadly divided into owned and operated and open display, depending on the differences in sales channels. In owned and operated, for example, digital platform operators, which own and operate websites and social media such as YouTube, Yahoo! Japan, Facebook, Instagram, LINE, Twitter, receive requests from advertisers (ad agencies) and places ads directly on their media. On the other hand, in open display, it is common for advertisements to be posted on media via digital platform operators or intermediaries that provide services using various ad tech (hereinafter referred to as "ad tech service") such as "demand-side platform" (see Chapter 2-3 (2) b (c)) and supply-side platform (see Chapter 2-3 (2) b (d)) between advertisers (ad agencies) and publishers.

Figure 4 Example of display advertising

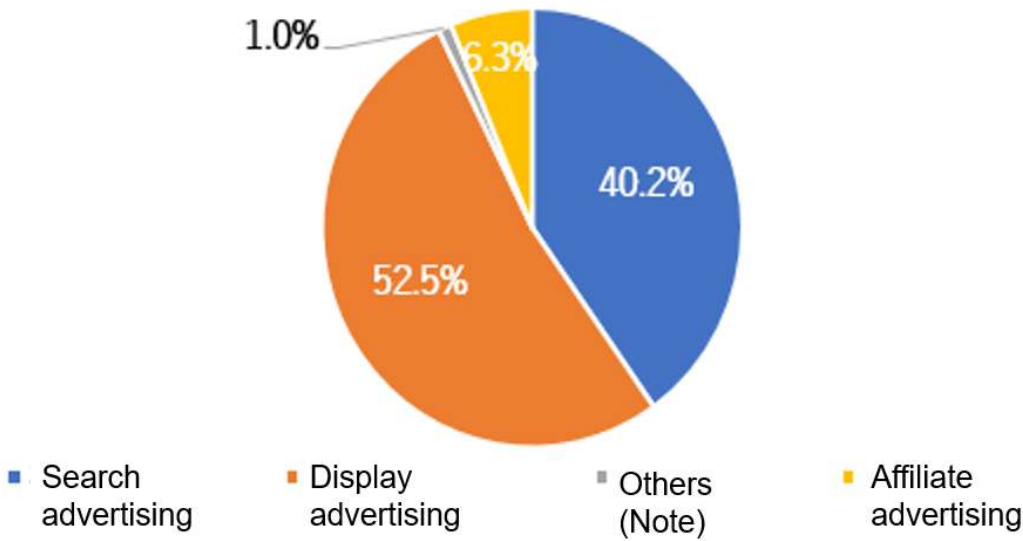


### (3) Breakdown of digital advertising media expenditures

Regarding the composition ratio by advertising type out of the media expenditures excluding production costs (1,663 billion yen) among digital advertising expenditures, search advertising accounted for 40.2% (668.3 billion yen). In comparison, display advertising which includes video advertising, accounted for 52.5% (872.8 billion yen). The total accounted for approximately 90% (1541.1 billion yen) of media expenditures<sup>[5]</sup>.

<sup>[5]</sup> D2C Inc., Cyber Communications, Inc., Dentsu Inc., and Dentsu Digital Inc. "2019 Advertising Expenditures in Japan: Detailed Analysis of Expenditures on Internet Advertising Media" March 2020

Figure 5: Breakdown of digital advertising media expenditures in Japan



(Note)Mail ads, audio ads, etc.

Sources: The JFTC based on D2C Inc., Cyber Communications, Inc., Dentsu Inc., and Dentsu Digital Inc.

“2019 Advertising Expenditures in Japan: Detailed Analysis of Expenditures on Internet Advertising Media”  
March 2020

## Chapter 2 Digital platform businesses and digital advertising market

### 1 Digital platform operators' positions in the digital advertising market

In the digital advertising market, the main providers involved in advertising distribution transactions include advertisers, ad agencies, intermediaries, and publishers (see 2 below for an overview of each provider and details of each provider's services).

Digital platform operators, which provide users with services such as search services and social media, play a publisher that owns and operates such media as search services and social media. In many cases, they also serve as intermediaries to place advertisements in such media upon advertisers' (ad agencies') requests.

For example, in search advertising, Google, which provides Google Search, and Yahoo, which provides Yahoo! Search, receive requests from advertisers (ad agencies) and place advertisements on their media (see [1] in figure 6). These digital platform operators may also provide publishers with search engines under separate contracts with publishers and then place advertisements on inventories of search engine result pages on publisher's media.

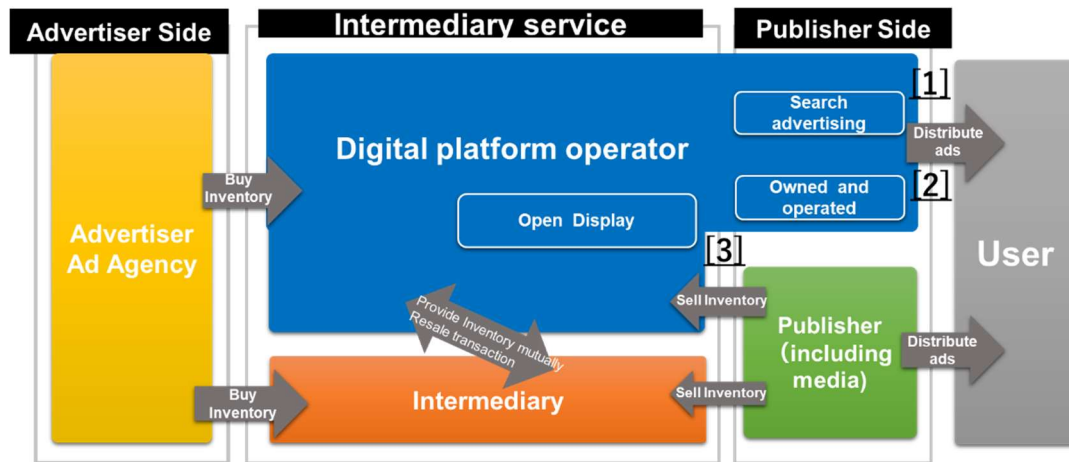
In owned and operated in display advertising, digital platform operators such as Google, which provides YouTube, Yahoo, which provides Yahoo! Japan, Facebook, which provides Facebook and Instagram, and Twitter, which provides Twitter, and LINE, which provides LINE, receive requests from advertisers (ad agencies) and place advertisements in the media owned and operated, such as video sharing websites, portal sites, and social media (see [2] in figure 6).

In open display, as intermediaries, digital platform operators distribute advertisements to publishers (publishers other than those owned and operated by digital platform operators) that connect with ad networks (see 3 (2) b (c) below) and other entities owned by digital platform operators (see [3] in Figure 6).

For example, as publishers, digital platform operators, such as Yahoo, which owns and operates Yahoo! Japan, have placed advertisements through advertising intermediary services provided by other intermediaries.



Figure 6: Image of digital platform operators' positions in the digital advertising market



## 2 Businesses and services involved in digital advertising transactions

As mentioned above, advertisers, ad agencies, intermediaries, and publishers are the main operators involved in advertising distribution transactions. Also, some businesses manage and provide data to deliver advertising and businesses that measure their performance. The following is an overview of each business entity, the details of each business's services, and business relations.

### (1) Advertisers

Advertisers place advertisements either through ad agencies or directly to publishers for recognition of brand or promotion of products. Advertisers pay publishers and intermediaries in the form of advertisement placement fees.

Advertisers place advertisements on digital media and mass media such as conventional newspapers, televisions, and outdoor advertisements. Compared to conventional advertisements, digital advertising has the advantage of being cost-effective since it is possible to place advertisements directed at a particular audience. However, digital advertising often requires time and expert knowledge to operate it, and large advertisers often outsource the operation of digital advertising to ad agencies. Small-and medium-sized advertisers that do not outsource the operation of digital advertising to ad agencies may manage and operate advertising, including advertising productions on their own.

### (2) Ad agencies

Ad agencies propose advertising content to advertisers based on the budget and objectives for advertising and campaign for products or services requested by advertisers. Besides, in digital advertising, in particular, ad agencies operate advertising on behalf of advertisers. Some ad agencies may have departments or separate companies that

specialize in digital advertising operations called trading desks. Ad agencies generally undertake advertising and promotion campaigns from advertisers, including those other than digital advertising, and charge comprehensive fees, including advertising media expenditures and advertising production costs.

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### (3) Intermediaries

Intermediaries are businesses that receive advertisements from advertisers (ad agencies) and place such advertisements in publishers. Digital platform operators may also play a role as intermediaries.

Intermediaries receive fees from advertisers (ad agencies) and publishers. Specifically, from advertisers (ad agencies), intermediaries charge a fee per impression (based on a CPM [Cost Per Mile]<sup>6</sup> basis) or a fee per click (based on a CPC [Cost Per Click]<sup>7</sup> basis). Intermediaries often obtain a portion of the revenue from publishers through revenue share.

Suppose an advertiser uses advertising intermediation services. In that case, the advertiser will use the services after agreeing to the terms of use. In some cases, ad agencies and intermediaries enter into their contracts (called agency contracts).

Some intermediaries provide advertising distribution and services for measuring advertising effectiveness, such as providing and managing data and measuring advertising performance and contribution (attribution)<sup>8</sup>. In digital advertising, some businesses provide services such as demand-side platforms (DSPs) (see 3 (2) b (c) below), which conducts optimization of advertising placement from the standpoint of advertisers (ad agencies), and supply-side platforms (SSPs) (see 3 (2) b (d) below), which seeks to streamline inventory sales and maximize advertising revenue from the standpoint of publishers. Also, some advertising intermediaries provide services developed in-house and provide (resell) services provided by digital platform operators for customers (see Part 3, Chapter 2-3 below). In this way, advertising intermediaries provide various services. They have contracts among intermediaries regarding connections related to advertising distribution, etc.

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### (4) Publishers

Publishers set up advertising spaces (inventories) on their websites, apps, or social media and sell inventories indirectly through intermediaries or directly to advertisers (ad agencies). After that, if publishers receive orders for placing advertisements, they place

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<sup>6</sup> A method of charging fees, depending on the number of distribution of ads (impression).

<sup>7</sup> A method to charging fees, depending on the number of times an ad has been clicked. The unit price per click is set and the fee is incurred for the number of clicks, and no charge is incurred if the ad is displayed but is not clicked.

<sup>8</sup> Some businesses specialize in providing and managing data and measuring the effectiveness of advertising (See (5) and (6) below).

such advertisements. Publishers receive advertising revenue on a CPM or CPC basis. Thus, from publishers' viewpoint, if the number of impressions or clicks increases, the publishers' revenue will increase.

Digital platform operators may play the role of a publisher as described above 1.

Publishers agree to terms of use when they sell advertising space through intermediaries. They also have agreements to define the terms and conditions for placing advertisements.

When publishers place an advertisement, publishers use the system called an ad server<sup>[9]</sup> (see 3 (2) b (a) below) to manage the advertisement. Large-scale publishers include digital platform operators and leading newspaper companies that publish news on their websites and other media. Small-and-medium-sized publishers include web-media businesses.

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#### (5) Data management platform (DMP) provider

Data Management Platform (DMP) is a service that collects data on advertisers' customers and analyzes and processes customers' data so that data can be used for advertising when managing the collected customer data or when using customer data for advertising. By using DMP, advertisers can target the audience or increase the accuracy of targeting when delivering advertisements. There are two main types of DMP services. One is a private DMP service that advertisers use to manage and analyze their data. The other is a public DMP. A public DMP provides data collected by the DMP using cookies and other techniques to advertisers and manages and analyses the data<sup>[10]</sup>.

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#### (6) Measurement service provider, etc.

Some businesses provide services to measure the effects of advertising, such as impression effects (e.g., attitude change and recognition), traffic effects (e.g., clicks), and response effects (e.g., whether a product is purchased [conversion]), as a result of the distribution of advertisements. Furthermore, some businesses provide services to verify media quality such as viewability and ad fraud (see Column digital advertising quality and trade practice) and brand safety<sup>[11]</sup>. Ad verification services are provided directly to advertisers (ad agencies) or digital platform operators, or intermediaries engaged in DSPs

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<sup>[9]</sup> The term "ad server" is generally sometimes used in the sense of "the overall server involved in the distribution of advertising" (In Part 3, Section 3, the term "ad server" is used in this sense). In Part 2, the term "ad server" is used when it refers to an advertiser's ad server and a publisher's ad server, which are described below with specific functions in the distribution of advertising.

<sup>[10]</sup> DMP itself is a service that is used not only in the distribution of ads but also in a broader range of marketing in general. However, this report only describes matters related to the distribution of ads.

<sup>[11]</sup> Efforts to protect and secure advertisers' brand from the risks of illegal and improper websites, improper pages that impair brand value, and distribution to content that are confused in Internet advertising publishers (Japan Interactive Advertising Association (JIAA), "Guidelines for Publishing Internet Advertising/Basic Practices and Glossaries, F Y 2020 Edition," May 2020, p. 218.)

business. In the latter case, advertisers (ad agencies) use ad verification services using the DSP together.

### 3 Major services provided by digital platform operators in the digital advertising

#### (1) Search advertising

In search advertising, search advertising service providers provide search advertising for advertisers (ad agencies). Search advertising service providers also provide publishers with services to maximize their websites' revenue by intermediating search engine results pages' inventories (see figure 7-1).

Figure 7-1 : Major flows of advertising distribution and transactions in search advertising



#### a Services for advertisers (ad agencies) in search advertising

Transactions of search advertising are conducted through bidding. Search advertising service providers such as Google and Yahoo provide bid-related services to advertisers (ad agencies). Advertisers (ad agencies) set keywords related to products or services they want to advertise, the URL to be displayed when users click on an ad, the advertising text to be displayed, the audience to be targeted, and the bidding unit price for each keyword. Subsequently, when a user inputs a search query that matches the advertisers' keyword (ad agencies), a bid is made regarding advertising placement. The advertisement that is displayed based on the bid results is determined. In addition to the bidding unit price, elements such as ad quality<sup>[12]</sup> are considered in ad rank<sup>[13]</sup>.

<sup>[12]</sup> Ad quality is determined by factors such as expected click-through rate (an estimate of the probability that the ad will be clicked), ad relevance (how well the keyword matches the message in the ad), and landing page experience (the page that comes first by clicking on the ad).

<sup>[13]</sup> In this regard, it is said that "Every time someone does a search that triggers an ad that competes in an auction, we calculate an Ad Rank. This calculation incorporates your bid and auction-time measurements of expected CTR, ad relevance, and landing page experience, among other factors."

(<https://support.google.com/google-ads/answer/1722122?hl=ja>).

Note that "ad relevance measures how closely related your keyword is to your ads".

(<https://support.google.com/google-ads/answer/1659752>).

Concerning the advertisement displayed at this time, search advertising is posted at the top and the bottom of the search result screen described in Part1 2 (1). In other parts, organic search results based on the algorithm of the search engine are displayed.

Besides, the amount paid by the advertiser in the auction for search advertising is determined by a second-price auction<sup>[14]</sup> based on an index adjusted by ad quality, in addition to the bid unit price. Advertisers pay on a CPC basis.

Google had a share of [70-80] %, and Yahoo had a share of [20-30] % in sales of services to advertisers (ad agencies) in search advertising, respectively<sup>[15]</sup> <sup>[16]</sup> (see figure 7-2).

The market size of search advertising is 668.3 billion yen on an advertising media expenditures basis as described above<sup>[17]</sup>.

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<sup>[14]</sup> An auction under the rule that the bidder with the highest price wins the bid at the price of the second-highest bidder. In auctions for Internet advertising, a method of winning bids in which the highest-priced bidder adds ¥1 to the next point's bid price has been widely adopted (See "Guidelines for Publishing Internet Advertising: Basic Practices and Glossary, FY2020," p. 212), and this is called "Second Price Auctions" in the digital advertising sector.

<sup>[15]</sup> To calculate the market share of search advertising and display advertising, the JFTC calculated the market share based on data submitted by digital platform operators and intermediaries in FY 2019 (for each company's fiscal year) and the results of surveys conducted by various research companies. The following points should be noted regarding these market shares.

- Data submitted to the JFTC are attributed to Japan on the basis of users' location (however, some data are attributed to Japan based on advertisers' billing address). Data in U.S. dollars are converted into yen (US\$1 = 110.05 yen, based on the average annual TTS (Telegraphic Transfer Selling) rate in 2019).

- Some data from the survey results of various research companies may differ from those of the JFTC in light of the method of estimation.

- Some data for small businesses are omitted in the calculation of market shares.

When making judgments on individual cases under the AMA, it is necessary to define the market under the individual cases. The numbers shown here are for the case where the market holds for each service area. Also, the market share shown in this report is based on the results of past surveys conducted by research companies and data gathered by the JFTC for this fact-finding survey and it should be noted that market conditions continue to change rapidly.

<sup>[16]</sup> The JFTC analysis based on data submitted by digital platform operators.

<sup>[17]</sup> "2019 Advertising Expenditures in Japan: Detailed Analysis of Expenditures on Internet Advertising Media"

Figure 7-2 Market share of sales of services for advertisers (ad agencies) in search advertising via Google and Yahoo (Sales Basis) (FY 2019)

Business	Market share
Google	70—80%
Yahoo	20—30%
Total	100%

#### b Services for publishers in search advertising

For search advertising, as inventories on which advertisements are placed, digital platform operators' inventories on displaying the search results are commonly used. For example, search service providers that operate Google Search and Yahoo! Search provide intermediary services to sell their inventories.

On the other hand, in addition to the services described above, such as Google Search and Yahoo! Search, there are services called portal site, which provide services such as news and search, such as goo and Rakuten Infoseek. The publishers operating such a portal site receive the provision of the search engine from the search advertising service providers such as Google or Yahoo and, at the same time, provide the advertising space on the display screen of the search result from the search engine to the search advertising service providers, and receive the distribution of the sales revenue of the advertising spaces.

Google had a share of [70-80] %, and Yahoo had a share of [20-30] % in sales of services to advertisers (ad agencies) in search advertising, respectively<sup>[18]</sup> <sup>[19]</sup> (see figure 7-3).

Figure 7-3 Market share of Google and Yahoo's Services for publishers in search advertising (Sales Basis) (FY 2019)

Businesses	Market share
Google	70—80%
Yahoo	20—30%
Total	100%

<sup>[18]</sup> The sales include sales from third-party publishers' media and sales derived from permitting the use of search engines.

<sup>[19]</sup> The JFTC analysis based on information submitted by digital platform operators.

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## (2) Display advertising

### a Owned and operated

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In owned and operated, digital platform operators including Yahoo, which owns and operates Yahoo! Japan, Google, which owns and operates YouTube, Facebook, which owns and operates Facebook and Instagram, LINE which owns and operates LINE, and Twitter which owns and operates Twitter, receive requests from advertisers and place ads on their own and operated media (see figure 8-1).

Advertisers (ad agencies) place ads through the advertising platforms offered by digital platform operators. Advertisers (ad agencies) establish and advertises items such as advertising objectives, targeted audience, budgeting, and advertising bidding strategies.

Advertisements appear as videos or still image on a timeline of social media or the front page of portal sites.

The method of ad bidding varies depending on each business. The unit price of ad bids and ad rank, such as ads' relevance, is often considered bidding for ads.

Figure 8-1 Major flows of distribution and transactions related to owned and operated advertising



Next, we show the percentage of display advertising media expenditures in Japan accounted for by owned and operated advertising revenues by the five digital platform operators.

Of the five digital platform operators in display advertising, Facebook, Yahoo, Google had a share of [10-20] % respectively, and LINE and Twitter had a share of [5-10] %, respectively<sup>[20]</sup> (see figure 8-2).

As mentioned above, the display advertising market's size is 872.8 billion yen on an advertising media expenditure basis<sup>[21]</sup>.

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<sup>[20]</sup> The JFTC analysis based on the data submitted by digital platform operators and "2019 Advertising Expenditures in Japan: Detailed Analysis of Expenditures on Internet Advertising Media."

<sup>[21]</sup> "2019 Advertising Expenditures in Japan: Detailed Analysis of Expenditures on Internet Advertising Media"



Figure 8-2 Ratio of owned and operated advertising revenue of digital platform operators in display advertising (FY2019)

Businesses	Market share
Facebook	10-20%
Yahoo	10-20%
Google	10-20%
Twitter	5-10%
LINE	5-10%
Others	30-40%
Total	100%

From the above, it can be seen that 60% to 70% of display advertising media expenditures in Japan were spent on owned and operated advertising services of the five digital platform operators. In other words, the media owned and operated by the five digital platform operators can be said to have a large presence in display advertising in Japan.

The remaining 30% to 40% of display advertising media expenditures are thought to be passed on to digital platform operators, intermediaries, ad agencies and publishers, that provide services through open display, in addition to other operators engaged in owned and operated.

#### b Services in open display

In open display, due to the background of its development (see Column: The process of ad technology development), there is a great variety of transaction entities, and the transaction structure has become too complicated. Open display can be roughly divided into two main categories: (1) when using ad network and (2) when using DSP and SSP/ ad exchange. In the case of (1), when advertisers place an advertisement, the services such as an advertiser's ad server, an ad network, and a publisher's ad server are used. Then the advertisement is ultimately placed in the media (see figure 9-1). On the other hand, in the case of (2), when advertisers place an advertisement, services such as advertiser's ad servers, DSPs, SSPs/ ad exchanges, and publisher's ad servers are used. Then the advertisement is placed in the media (see figure 9-2).

Actual transactions may not be divided into the cases of either (1) or (2) above. For example, ad networks may be involved in transactions where DSPs and SSP/ ad exchange are used. Also, there are transactions in which advertisers (ad agencies) and publishers contract direct advertising distribution (direct transactions).

Figure 9-1 : Major flows of distribution and transactions of advertising when using ad network

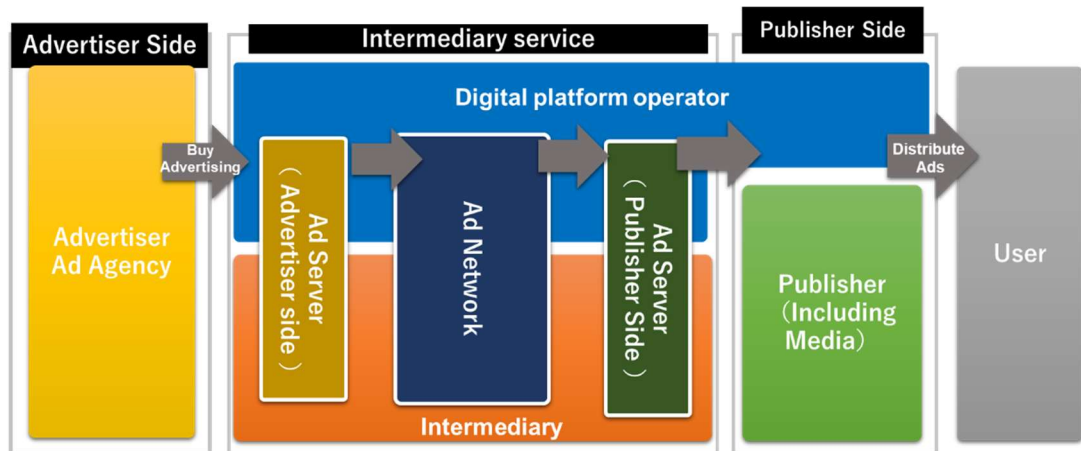
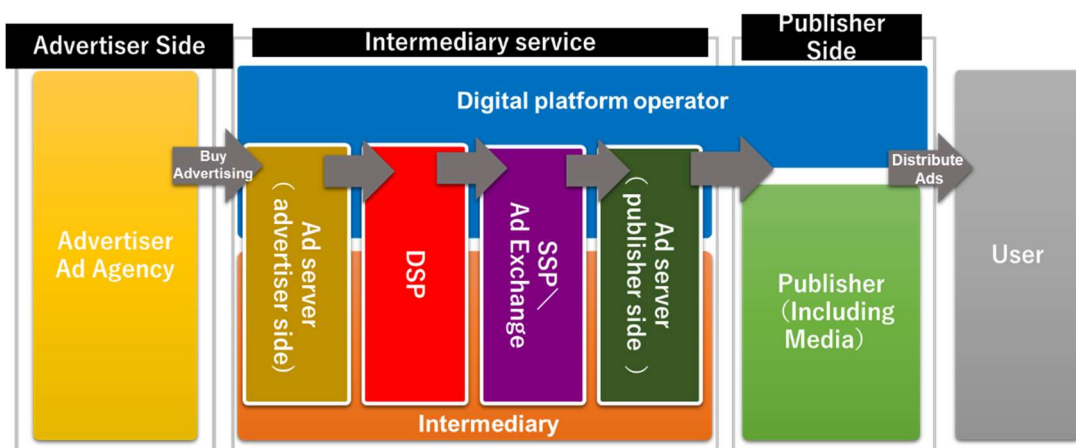


Figure 9-2 : Major flows of distribution and transactions of advertising when using DSP, SSP/ ad exchange



In both cases, fees are incurred when using each service. The revenue publishers receive is advertisers' expenditure minus these fees.

Next, we outline the services provided by digital platform operators in open display.

#### (a) Publisher's ad server and advertiser's ad server

Both a publisher's ad server and an advertiser's ad server are functions that control the placement of ads and the selection of ads. Both digital platform operators and intermediaries provide these services.

A publisher's ad server determines which ads to distribute for each inventory based on publishers' decision logic, such as whether the ads are from direct transactions or not and the duration of ads. It also functions to analyze users and

advertising distribution and to produce reports on advertising. A publisher's ad server is a critical service for publishers' revenue because it can ultimately determine which ads to distribute for each inventory.

An advertiser's ad server manages ads for multiple media in bulk, provides advertising distribution, analyzes and measures the effectiveness of advertising, and reports on results.

Some ad agencies pointed out in interviews that an advertiser's ad server is not as popular in Japan as in other countries.

As mentioned above, there are two methods for linking advertisers and inventory: ad networks and DSPs and SSPs/ ad exchanges.

Both a publisher's ad server and an advertiser's ad server often charge fees based on an impression (CPM) basis.

There are not many publishers' ad server providers, and advertisers' ad server providers in Japan (around 4 to 5 major companies), and a few businesses have large shares.

Google had a share of [80-90] %, and Twitter had a share of [5-10] % in publisher's ad server market (based on impressions served)<sup>[22]</sup> (see figure 10-1).

Figure: 10-1 Market share in publisher's ad servers market  
(Based on the number of impressions served to publishers) (FY2019)

Business	Market share
Google	80-90%
Twitter	5-10%
Others	0-5%
Total	100%

Twitter and Google had a share of [5-10] % in advertiser's ad server market (based on sales)<sup>[23]</sup> (see figure 10-2).

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<sup>[22]</sup> The JFTC analysis based on data submitted by digital platform operators and intermediaries. As there were no data for the publisher's ad server market that comprehensively captured the industry as a whole, the JFTC calculated its share on the number of impressions served basis based on data submitted by the four major businesses (digital platform operators and intermediaries).

<sup>[23]</sup> The JFTC analysis based on the data submitted by digital platform operators and intermediaries and Deloitte Tohmatsu MIC Research Institute Co., Ltd. "Current Status and Outlook of the MarTech Market (3rd Edition)" July 2019

Figure : 10-2 Market share in advertiser's ad servers market  
(Based on sales to advertisers (ad agencies)) (FY2019)

Business	Market share
Intermediary A	30-40%
Twitter	5-10%
Google	5-10%
Others	50-60%
Total	100%

#### (b) Ad network

An ad network is a function in which an ad network provider invites publishers to join the network, forms a network with publishers' sites for ad distribution, and accepts advertisements. Digital platform operators and intermediaries provide this service, receive advertising orders from advertisers (ad agencies), and conduct a bulk distribution of advertising to multiple sites. When advertisements are distributed, the websites and apps to which the advertisements are distributed are determined through bidding, etc., within the ad network. Moreover, networks also provide publishers with inventory sales agency services and services for inventory control, listing, and preparation of reports on ad distribution. Ad networks are used for smaller and medium-sized publishers compared to SSPs/ad exchanges (see (d) below).

Ad networks often charge advertisers on a Cost Per Mille (CPM) or a Cost Per Click (CPC) basis. Besides, an ad network often pays publishers by revenue share.

Among the businesses that provide advertising services through owned-and-operated media, including digital platform providers, some businesses do not sell advertising spaces to other digital platform providers or advertising intermediaries but sell advertising spaces of third-party media companies to only advertisers (advertising agencies) in addition to advertising spaces of their owned-and-operated media. The business of selling the advertising space of third-party publishers operated by such business operators is considered a function of intermediary connecting advertisers (ad agencies) and publishers. Therefore, in this report, such services are also classified as ad networks<sup>[24]</sup>.

Many ad network providers are operating in Japan, and there are several dozens of companies.

<sup>[24]</sup> This business model can be seen in social media operators, such as Facebook and LINE.

Google had a share of [50-60] %, Facebook and Yahoo had a share of [5-10] %, LINE had a share of [0-5] % in ad network market (based on sales)<sup>[25]</sup> (see figure 10-3).

Figure 10-3 : Market share in ad networks market  
(Based on sales of advertising services sold to advertiser [ad agency] and DSPs)  
(FY2019)

Business	Market share
Google	50-60%
Facebook	5-10%
Yahoo	5-10%
LINE	0-5%
Others	20-30%
Total	100%

#### (c) Demand-side platform

A demand-side platform (DSP) is a function to optimize ads' placement for advertisers (ad agencies). DSP providers such as digital platform operators provide services such as setting listing, pricing, targeting, etc., and automatically purchasing matched inventories by trading multiple SSPs and ad exchange's inventories in the bidding method called real-time bidding (RTB) (see Column: (1) The transaction method in digital advertising).

The billing of advertisers (ad agencies) by the use of DSPs is done based on an impression (CPM) or a click (CPC).

There are many DSP providers that do business in Japan.

Google had a share of [50-60] %, Yahoo had a share of [0-5] % in DSP market, including Google Ads<sup>[26]</sup> <sup>[27]</sup> (based on sales), and Google had a share of [5-10] %, and

<sup>[25]</sup> The JFTC analysis based on data submitted by digital platform operators and intermediaries and "Current Status and Outlook of the MarTech Market (3rd Edition)".

<sup>[26]</sup> Some businesses submitted data that include fees and the amount of advertising purchased, not sales. In such cases, the JFTC regarded the sum of fees and the amount of advertising purchased as sales.

<sup>[27]</sup> Google Ads is Google's advertising purchasing service for advertisers (ad agencies). When purchasing ads, major advertisers and ad agencies use DSPs that can set detailed terms for advertising distribution such as targeting, while small-and-medium-sized advertisers and ad agencies use Google Ads. Given this, this report calculates the market share of DSPs, both including and not including Google Ads, which is regarded as an influential advertising purchasing service for small-and-medium-sized advertisers, to better reflect the actual state of services for advertisers (ad agencies).

Yahoo had a share of [0-5] % in DSP market not including Google Ads (based on sales)<sup>28</sup> <sup>29</sup> (see figures 10-4 and 10-5).

Figure 10-4 : Market share in DSP market including Google Ads  
(Based on sales to advertisers [ad agencies])  
(FY2019)

Business	Market share
Google	60-70%
Yahoo	0-5%
Others	30-40%
Total	100%

Figure 10-5 : Market share in DSP market not including Google Ads  
(Based on sales to advertisers [ad agencies])  
(FY2019)

Business	Market share
Intermediary B	40-50%
Google	5-10%
Yahoo	0-5%
Others	40-50%
Total	100%

#### (d) Supply-side platform/ad exchange

A supply-side platform (SSP) is a function that enables publishers to make sales of their inventories more efficient and maximize revenue. SSP providers such as digital platform providers set conditions such as advertisement frame, price, and industry type of the advertiser, compare unit prices of multiple DSPs, ad networks, etc., trade by real-time bidding (RTB) (see Column: Transaction methods in digital advertising (1) ), etc., and offer a service to select advertisements which can maximize revenue automatically.

SSPs often pay publishers for revenue share.

An ad exchange refers to a marketplace for inventories. Ad exchange providers such as digital platform operators provide a venue for businesses to match the

<sup>28</sup> Same as above

<sup>29</sup> The JFTC analysis based on data submitted by digital platform operators and intermediaries and "Current Status and Outlook of the MarTech Market (3rd Edition)".

demand of advertisers or DSPs with the supply of publishers, ad networks, or SSPs.

While ad networks distribute advertisements to publishers participating in a network, ad exchange deals with inventories supplied to the market by publishers and ad networks as a trading market. Ad Exchanges enable advertisers to distribute advertisements on a broader range of media, and publishers can sell remnant inventories at higher prices by real-time bidding (RTB) (see Column: Transaction methods in digital advertising (1)). As mentioned earlier, it is said that ad networks are often used by small-and-medium-sized publishers, while larger publishers use ad exchanges.

Both SSPs and ad exchanges have a function of maximizing publisher revenue in common. Thus, SSPs and ad exchanges' roles seem to have merged in recent years (see Column: The process of ad technology development).

SSP and ad exchange providers develop and provide intermediary services on their own and also provide (resale) the services of digital platform providers to publishers at the same time.

There are several dozen of SSPs and ad exchange provider that do business in Japan.

Google had a share of [50-60] %, Yahoo and Twitter had a share of [0-5] % in DSP market, including Google Ads (based on sales), and Google had a share of [5-10] %, Yahoo had a share of [0-5] % in SSP/ad exchange market (based on sales)<sup>30</sup> (see figure 10-6).

Figure 10-6 : Market share in SSP/ad exchange market  
(Based on sales of advertising services sold to intermediaries) (FY2019)

Businesses	Market share
Google	50-60%
Yahoo	0-5%
Twitter	0-5%
Others	40-50%
Total	100%

Google had a share of [50-60] %, Facebook and Yahoo had a share of [5-10] %, LINE, and Twitter had a share of [0-5] % in all publisher-facing intermediaries market (based on sales)<sup>31</sup> (see figure 10-7).

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<sup>30</sup> Same as above

<sup>31</sup> Same as above

Figure 10-7 : Market share in all publisher-facing intermediaries market  
(Based on sales of advertising services sold to intermediaries) (FY2019)

Businesses	Market share
Google	50-60%
Facebook	5-10%
Yahoo	5-10%
LINE	0-5%
Twitter	0-5%
Others	30-40%
Total	100%

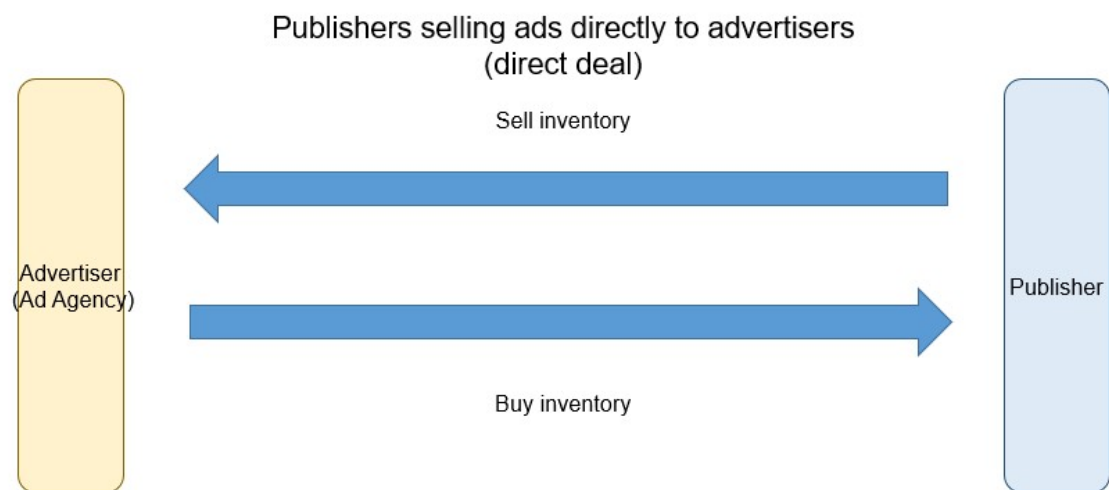


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## Column: The process of ad technology development<sup>32</sup>

Before the development of ad technology, it was common that publishers sold inventories to advertisers directly or through ad agencies. In such transactions, the advertisers (ad agencies) sent ad materials to publishers, and publishers that received the ad materials posted them on the publishers' web pages. In this transaction, publishers had to manually manage the ad materials posted, which was inefficient and laborious. (see figure 11)

Figure 11: Image of direct transactions



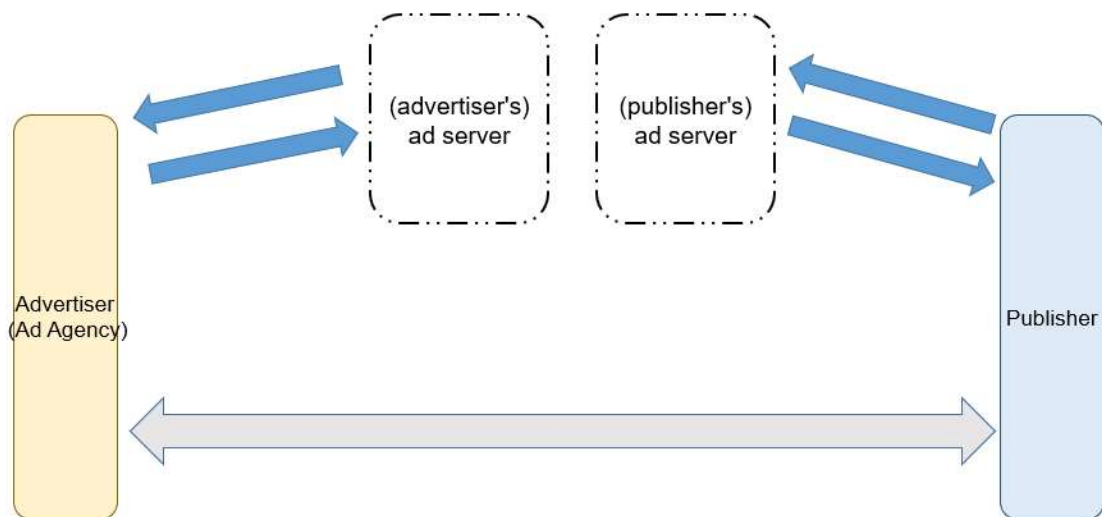
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<sup>32</sup> This column was created with reference to “Ad Technology - From the Basics of Data Marketing to the Concept of Attribution” Kenichi Sugawara, Yuichi Arizono, Yoshihiro Okada and Tsuyoshi Sugihara, February 2014, Shoeisha Co., Ltd., “Introduction to DSP/RTB Audience Targeting - Advertising Revolution from “Frame” to “People” Realized in the Age of Big Data” Ryuji Yokoyama, Kenichi Sugawara and Yoshiteru Umeda, February 2014, Impress Co., Ltd., “Illustrated Introduction to Business - A Comprehensive Guide to the Basics and Mechanisms of the Latest Digital Advertising” Kazuaki Sato, April 2019, Shuwa System Co., Ltd., “A Must-Have for Understanding New Common Sense for Digital Ads Professionals” JIAA, October 2019, Impress Co., Ltd. and UK CMA “Online Platforms and Digital Advertising Market Study final Report” July 2020.

Next, publishers began to use (publisher's) ad servers specialized for ad distribution. Using an ad server allows publishers to manage the ads separately from the content of the web page (see Chapter 2-3 (2) b (a)). With a publisher's ad servers, publishers can check the results of ads' distribution, such as which ads are displayed, how many times ads are displayed, and how many times ads are clicked.

On the other hand, there were some difficulties for advertisers, such as measuring effectiveness because each publisher reported the result of the ads they serve. Therefore, advertisers also began to use (advertiser's) ad servers. (Advertiser's) ad servers allowed advertisers to manage their ads, track the results of the ads served, and integrate these reports across multiple publishers and ad channels. (see figure 12)

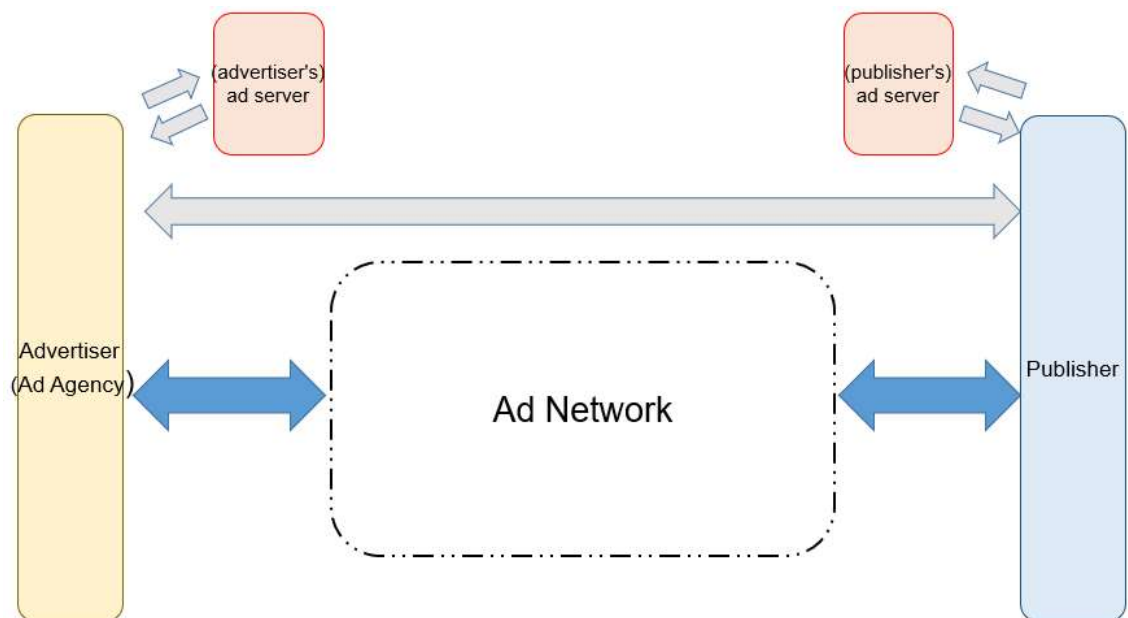
Figure 12: Birth of ad servers



After that, from the advertisers' (ad agencies') viewpoint, it was necessary to select publishers and submit ads. From the publisher's viewpoint, it was necessary to raise revenue from the "remnant inventories." An ad network was born as a network to integrate "remnant inventories" possessed by multiple publishers and sell them. Using an ad network made it possible for advertisers (ad agencies) to distribute advertising to multiple publishers. For publishers, inventories available increased significantly, and the efficiency of ad sales increased significantly (see figure 13).

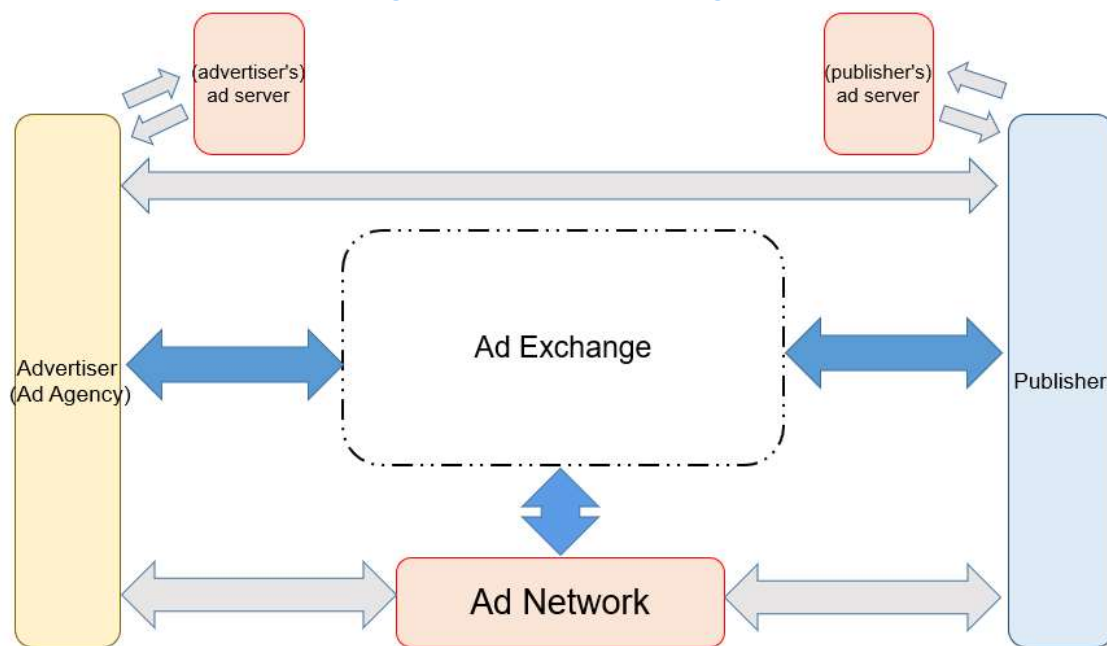
It is also pointed out that ad networks' birth has made it possible to purchase and sell many inventories held by small-sized publishers and personal blogs, which has created opportunities for small-sized businesses to enter the intermediary business.

Figure 13: Birth of ad networks



Even after the birth of ad networks, advertisers were still unable to eliminate the possibility of serving ads to media and targets that did not match the purpose of advertising. Also, publishers faced the problem of sluggish profits due to being bought cheaply. These situations led to an ad exchange's birth, a trading market for ads in which multiple publishers and ad networks participate. This has enabled advertisers to designate targets and bid for the transaction of ads individually per impression. Since bid prices fluctuate depending on the quality of inventories, this also creates an opportunity for publishers to improve earnings (see figure 14).

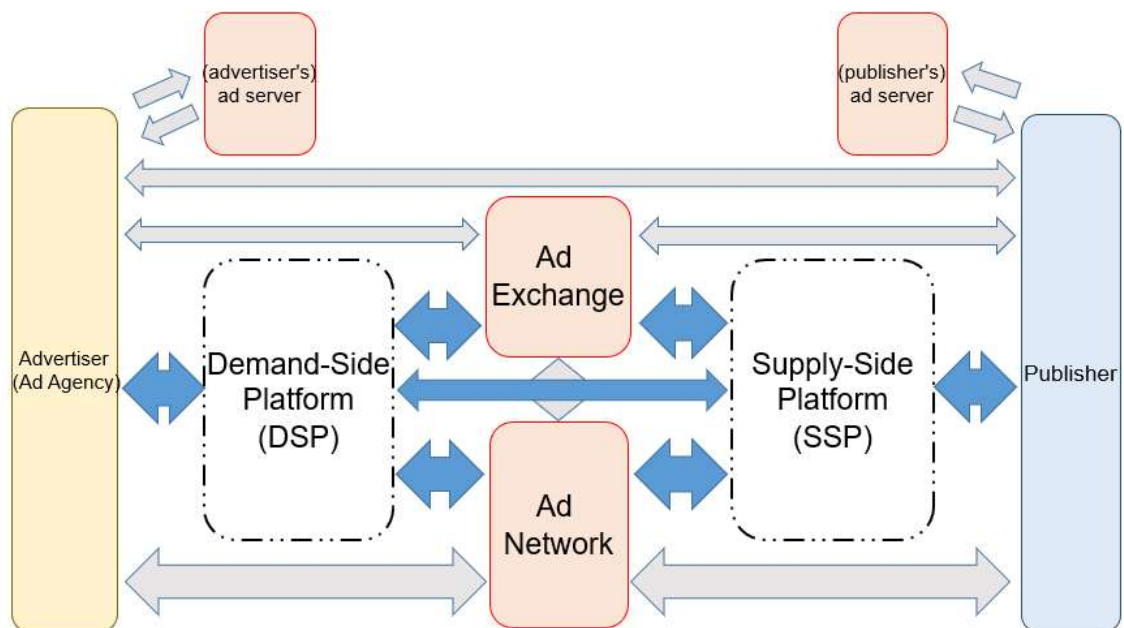
Figure 14: Birth of ad exchanges



From advertisers' perspective, there was a condition that many inventories were supplied for ads with high performance, and few inventories were supplied for other ads with low performance when placing ads on ad networks. Demand-side platforms (DSPs), which are platforms that enhance ad effectiveness, were born. DSPs allow advertisers to submit bids per impression and increasing the flexibility of their ad placement.

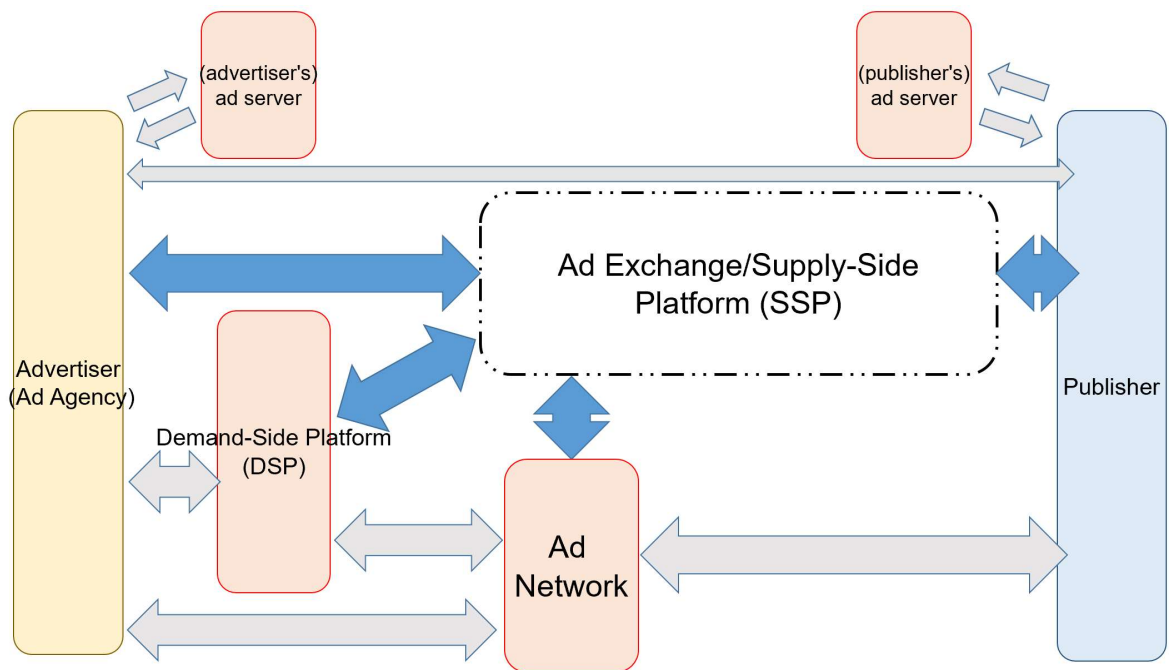
Furthermore, when advertisers began to place ads on ad networks rather than pure ads (Ads bought and placed on a particular inventory on a particular media) from the perspective of ads performance, sales of pure ads began to decrease. Publishers faced the challenge of improving the profitability of their inventories more than ever before. Although publishers used to sell pure ads and remnant inventories on ad networks, by introducing supply-side platforms (SSPs) to help publishers maximize their ads revenue, it became possible to sell ads per impression, creating opportunities to sell inventories that had previously been sold on ad networks at higher unit prices and expanding the possibility of improving the profitability of ad sales. (see figure 15)

Figure 15: Birth of Demand-Side Platforms (DSPs) and Supply-Side Platforms (SSPs)



Currently, it is said that there is a movement to consolidate SSPs' and ad exchanges' function, and SSPs are gradually being integrated into ad exchanges as they also conduct auctions. (see figure 16)

Figure 16: Integration of SSPs and Ad Exchanges



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## Column: Transaction methods in digital advertising

In bidding in open display, for example, a mechanism called Real-Time Bidding (RTB) (see (1) below) is performed between DSPs and SSPs. There is also a waterfall mechanism within a publisher's ad server when publishers place digital advertising (see (2) below). Furthermore, as a counter mechanism to waterfall, there is a mechanism called header bidding. (see (3) below). The outlines of each are as follows.

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### (1) Overview of real-time bidding (RTB)

As in Chapter 2-3 (2), there is a wide variety of players in open display. Despite that, it is said that transactions from the time users view the website to the time ads are displayed will be completed in only 0.1 seconds or less. The transaction is conducted using the mechanism of real-time bidding (RTB). The flow of RTB is as follows.

First, when users view websites etc., websites etc. send the ad request to ad exchange or SSPs. The Ad exchanges or SSPs which received the ad request sends the ad request to the DSPs. The DSPs that receive ad requests list ads that meet such ad requests within the respective DSPs, auction them and return the results to ad exchange and SSPs. In response, the ad exchanges and SSPs further auction and then determine the winners of the auction. An ad for the winner advertiser is then sent to the publisher's ad server, and the ad is distributed to the user. This type of ad technology that instantly conducts transactions between ad tech services on a per-impression basis is called RTB. In RTB, the following information is mainly exchanged:<sup>[33]</sup>

- a unique identifier for the bid request
- the user's IP address
- cookie IDs
- user IDs
- a user-agent string identifying the user's browser and device type
- the user's location
- the user's time zone
- the detected language of the user's system
- the device type (desktop/mobile, brand, model, operating system)
- other information relating to the user
- information relating to the audience segmentation of the user

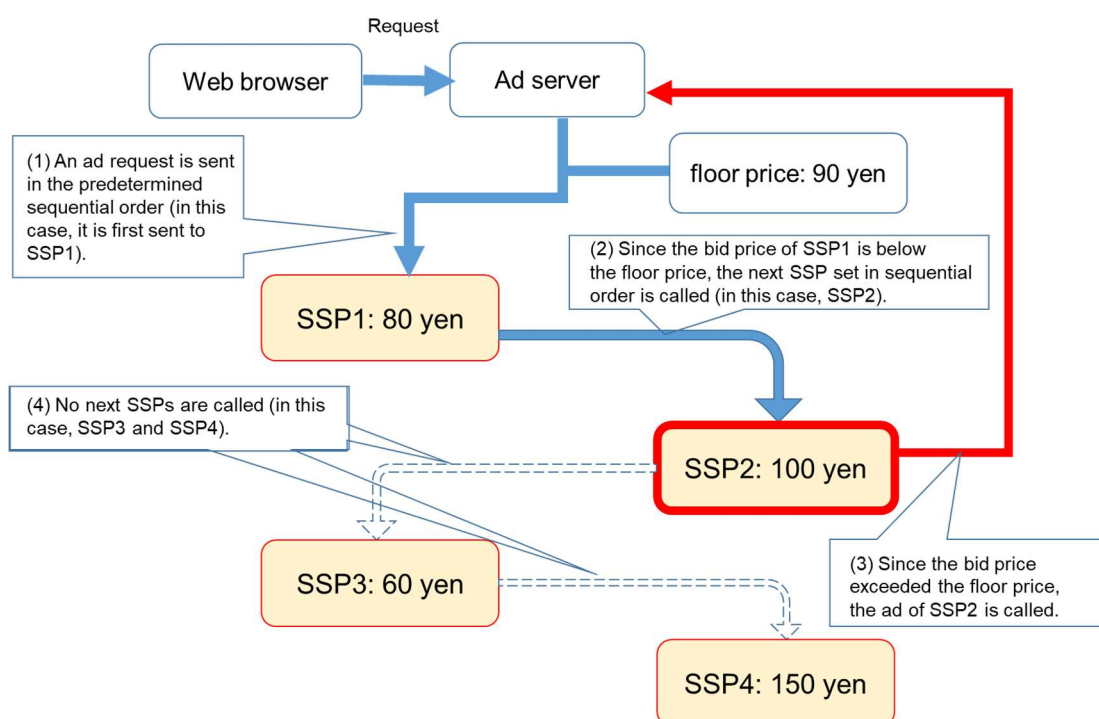
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<sup>[33]</sup> UK Information Commissioner Office (ICO) "Update report into adtech and real time bidding" June 2019 p12

## (2) Overview of waterfall

“Waterfall” is one of the decision-making methods used by publishers to select ad distribution within a publisher’s ad server. In the publisher’s ad server, the publisher makes ad requests to SSPs, ad exchanges, etc., in a predetermined order. The ads delivered are decided when the bidding exceeds floor price<sup>34</sup>. This is called “waterfall” system because the request for ads is made in the order in which a waterfall flows down. For example, suppose the publisher’s ad server connects from SSP1 to SSP4. As shown in figure 17, the publisher anticipates the expected revenue in advance and sets it up to call SSPs in descending order of their revenue. Also, set floor price for each SSP. When the user views websites etc., and the ads are to be displayed, if the advertisement request is first made to SSP1 and exceeds floor price, the bid is established. If it is not, a bid request is sent to SSP2 set in the following order. The auction takes place in this way<sup>35</sup>

Figure 17: Image of “waterfall”



<sup>34</sup> The lowest bid price for inventory.

<sup>35</sup> Using such a mechanism, it is said that when the publisher's ad server requests distribution of the advertisement from ad tech services, the advertisement is preferentially requested by a particular digital platform operator (see Part 3, Chapter 2-2 (1) below).



### (3) Overview of header bidding

Under “waterfall” system described in (2), a request for a bid is sent in descending order of expected revenue based on past results. Therefore, even if one SSP can bid a high price when an impression is generated, another SSP wins the bid. Publishers faced opportunity-loss. Also, since the ads were called per impression, the display was delayed. In addition to these issues, publishers needed to promote competition in the bidding by accepting bids for ads from a broader range of SSPs, etc. other than those connected from Google’s publisher’s ad server DoubleClick for Publishers (DFP, now Google Ad Manager).

Publishers have introduced a function called header bidding. Header bidding is a system in which multiple SSPs and ad exchanges receive ad requests simultaneously. A dedicated tag is embedded in websites. An advertising request is sent to a server for header bidding before an advertising request is made to an ad server customarily used. The ad requests are compared in an ad server normally used, and the high-priced advertisement is distributed.

Using header bidding, as shown in figures 18-1 to 18-3, multiple bids can be compared at the same time, thereby eliminating opportunity loss for publishers, improving publishers’ revenues, as well as reducing the frequency of ads requests at the same time, which improves the issue of slower advertising displays. However, it is pointed out that the ratio of the use of header bidding is not high in Japan compared to other countries, partly because of the enormous costs involved in its implementation and operation.

Figure 18-1 Image of header bidding (1)

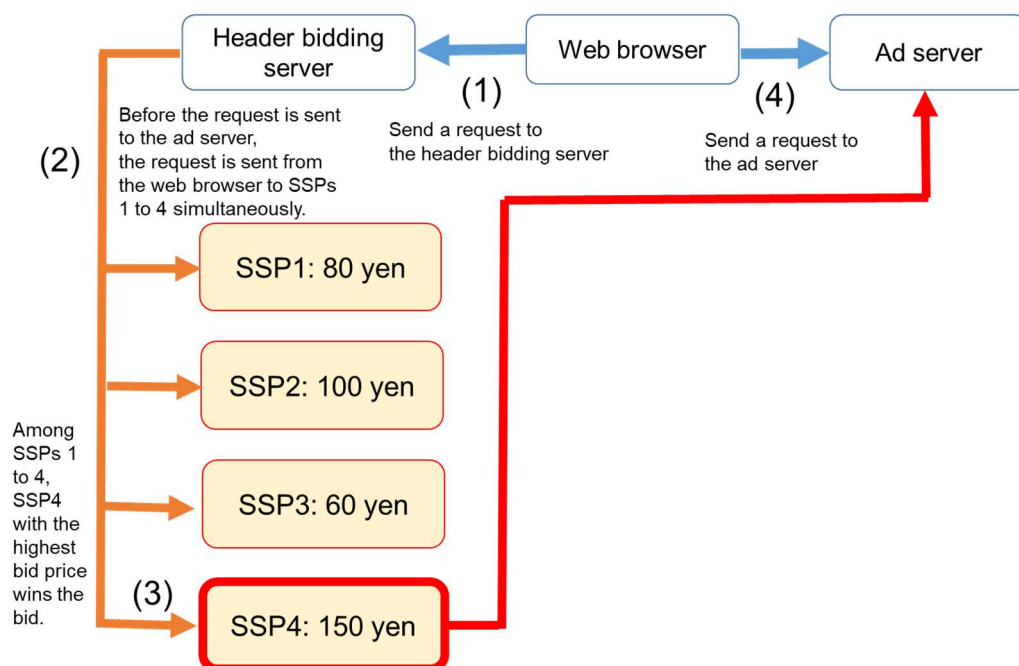


Figure 18-2 Image of header bidding (2)

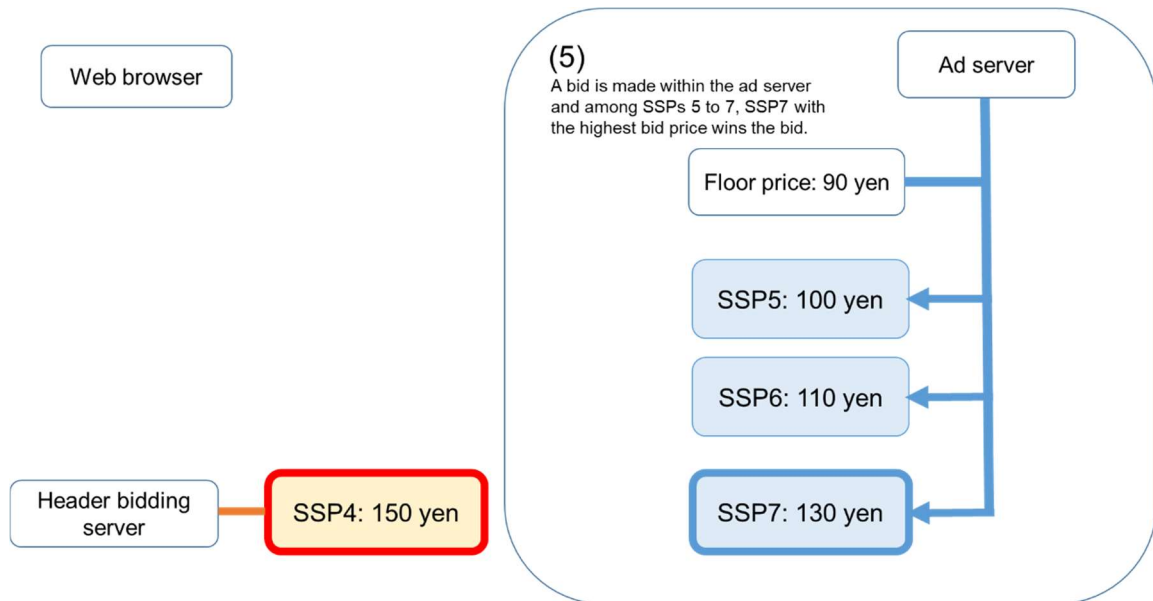
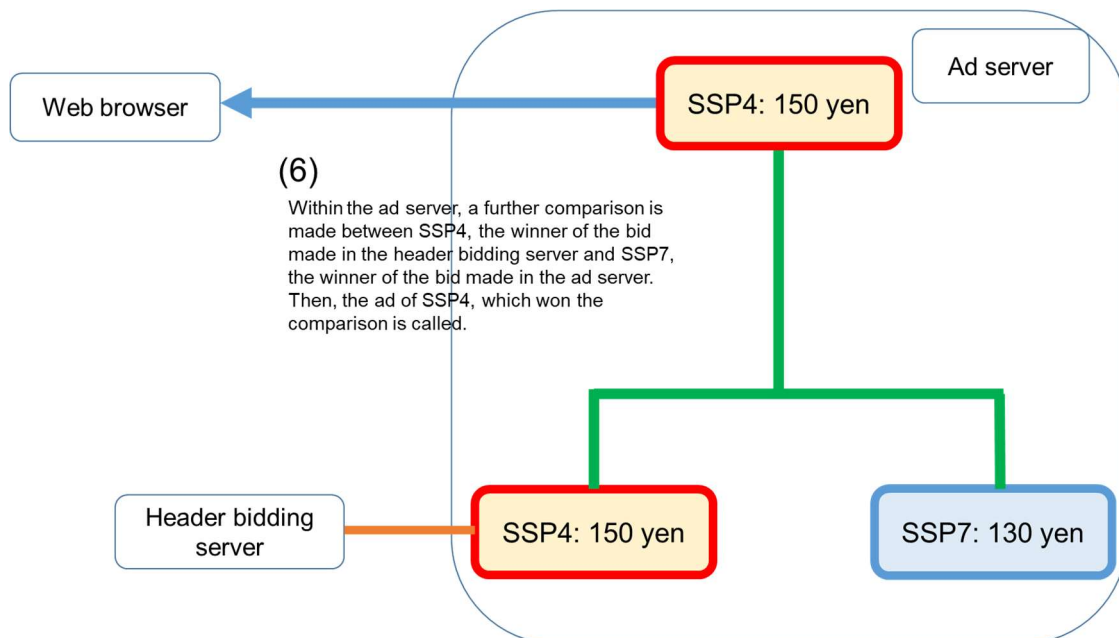


Figure 18-3 Image of header bidding (3)



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(1) Ad fraud

Ad fraud is defined as a malicious way to earn impressions and clicks and illegally generate ad revenue by using automated programs (bots) or by generating large amounts of spam content. Specifically, there are methods in which a program is embedded in a browser, and a large number of impressions or clicks are generated automatically by the program.<sup>[36]</sup>

<sup>[37]</sup>

Ad fraud causes “invalid traffic.” This invalid traffic is not only caused by ad fraud but also by search engine crawlers, etc., which have nothing to do with the purpose of illicit advertising revenue.<sup>[38]</sup>

Some digital platform operators use a system to detect invalid traffic caused by ad fraud, etc., and do not bill advertisers for advertising related to them if invalid traffic is detected.

As a response to ad fraud, some have pointed out the need to verify ad fraud by independent third parties other than digital platform operators, publishers, and intermediaries involved in the transaction<sup>[39]</sup>.

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(2) Visibility of advertisements (Viewability)

Viewability means the visibility of digital advertising. In digital advertising, viewability is one of the critical factors in transactions, as ads do not appear on users without page scrolling.

Specifically, four conditions are required to call advertising displays with viewability (viewable impressions):<sup>[40]</sup>

- ① Advertising is displayed in the viewable space.
- ② A certain amount of the percent of ad pixels is displayed within the viewable space.
- ③ Advertising is viewable for more than a certain amount of time.
- ④ Advertising is accessed by human

Viewability serves as one of the metrics to measure ads’ effectiveness and serves as an indicator of pricing when selling inventories.

To detect and cope with ad fraud and verify viewability, a mechanism called ad verification (see Chapter 2-2 (6)) has begun to be utilized. Ad verification has been initially

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<sup>[36]</sup> "Guidelines for Internet Advertising Placement/Basic Practices and Glossary Fiscal Year 2020 Version," p. 205

<sup>[37]</sup> Japan Interactive Advertising Association (JIAA) "JIAA Statement for ad fraud" August 2017

<sup>[38]</sup> A program that periodically cycles through documents and images on the Web and automatically creates a database. Also called Spider, Robot etc. (See "Guidelines for Internet-based advertising publishing/Basic Practices and Glossaries for FY2020" p. 209).

<sup>[39]</sup> Japan Advertisers Association (JAA) "Advertiser Declaration on digital advertising Challenges: Better Digital Experience for Consumers and Sound Industry Development," November 4, 2019.

<sup>[40]</sup> Japan Interactive Advertising Association (JIAA) "Viewable Impression Measurement Guidance" May 2017

used to highlight the favorable conditions of (1) advertisers' brand safety and (2) intermediaries' display of the ads they mediate.

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### (3) Last look

Last look means that when a business sets and operates a bidding place for a bidding transaction itself, it determines its bidding price from "seeing" the bidding result of the competing businesses after the bidding for the competing bidding businesses is completed. This may give rise to the issue that a particular business is unduly advantageous in a bidding transaction.

About digital advertising, for example, it was pointed out that it was possible to ascertain the bidding price of competing businesses in advance by using the position of operating the publisher's ad server when the digital platform operator that operates both an ad exchange and a publisher's ad server conducts bidding. Therefore, it was possible for the digital platform operator to submit bids through its ad exchange after ascertaining the bidding price of SSPs, etc., that submitted the highest bidding price before the digital platform operator conducts its bidding.

On the other hand, the digital platform operator denied that last look had been conducted and, according to the digital platform operator's explanation, the mechanism of the publisher's ad server was changed to one in which last look as pointed out was not conducted on the publisher's ad server<sup>41</sup>.

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<sup>41</sup> In 2019, for auctions on the publisher's ad server, the system was shifted to one in which all bids are auctioned at the same time.

## Part 3 Survey Results and Evaluation

### Chapter 1 Digital platform operator's trading position

#### 1 Facts upon which the position is based

Digital advertising such as search advertising and display advertising, which are the subjects of this survey, makes use of search query, location information, and social media by analyzing various personal data. Advertising content that is highly relevant for each user is displayed. Such a so-called "targeting" mechanism is said to be typical of data-driven businesses, since the more the total amount of data increases, the more its precision improves.

The main reason digital platform operators have a certain position in digital advertising sector is that they have accumulated a huge amount of data and are effectively using it in digital advertising sector by providing search and social media services at essentially no charge and attracting many users (see Section 3 below).

As mentioned above, digital advertising, which has improved the accuracy of its targeting by using its vast amount of data, will attract more advertisers in order to maximize the effectiveness of its purchasing. While the importance of such data is shared by both search advertising and display advertising, the specifics of the types of data linked to that position vary somewhat between the two.

For each of search advertising and display advertising, the status of digital platform operator's trading position is as follows:

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#### (1) Search advertising

Search advertising is an advertisement that is displayed in response to a search query (search word). In addition to search query, data such as Cookie (such as user's response to search history and previous advertisements [Cookie is described in detail in Section 3-1]), location information, etc.

It is natural that search advertising needs search query, but user's search history and response to previous ads are also critical to improving the quality. In other words, by using Cookie or other means, you see advertisements that are highly relevant to you. This is expected to improve the effectiveness of purchasing and other advertising, subsequently to attract more advertisers.

Google accounted for 77% of search engine's shares in Japan (the sum of PCs, mobile phones, tablets, and other device based on page views) in the year from January to December 2020. The second largest Yahoo! accounted for 18 %, while the third largest bing accounted for only 5 %. For this reason, we can guess Google is virtually aware of the majority of search query and search history data. In this regard, the defaults (default settings) of a search engine on various devices may have a certain effect. According to questionnaire for consumers in the Interim Report, 43% of respondents chose a search

engine that they use on a daily basis because they are "good performance or usability," while 37% chose it because they were "set by default."<sup>42</sup>

Then, location information. For example, if a user searches for a "coffee shop," the coffee shop's advertisement will be displayed in line with the search results. However, even if an advertisement from a distant coffee shop is displayed, it is unlikely that the advertisement will be clicked. Because the user should be looking for a local coffee shop, accurate understanding of location information also increases the relevance of advertising. In terms of this location information, Google also has a variety of methods for gathering such as browsers, smartphones equipped with Android as an operating system, and apps like Google map.

Google has thus captured key data in search advertising, which we believe supports the competitiveness of the company's search advertising.

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## (2) Display advertising

While search advertising where content related to search query is displayed, display advertising is displayed in the form of images or videos on website. In display advertising, user's data is more critical because it displays content related to type and interest/attention in user. Therefore, it is a strength to have contact points for collecting user data on social media such as facebook.

Another competitive advantage in display advertising is that it has a combination of a leading media as well as data. Google, for example, has a video-sharing platform called YouTube, and only uses its DSPs and other ad tech service to place ads on YouTube. The same applies to Facebook's facebook and Instagram. Advertisers (ad agencies) usually use more than one company's ad tech services, but the more powerful the medium, the more likely it is that the ad tech service connected to it will be used as the mainstay.

Google, Facebook, and others thus have many points of contact with users and a strong media, and these factors seem to support each company's competitiveness in display advertising.

Given the facts underlying digital platform operator's trading position described above, we continue to see digital platform operator's market position and superiority, and vertical integration under which digital platform operators provide more than one advertising intermediary services at the same time.

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<sup>42</sup>Calculated using statcounter (<https://gs.statcounter.com/>).

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## 2 Market position<sup>43</sup>

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### (1) Search advertising

The main domestic search advertising servicing businesses are only Google and Yahoo. Of these, Google has a dominant position in search advertising with 70-80 % of its shares, as indicated in Part 2, Chapter 2-3.

If businesses in such a position engage in activities that exclude competing businesses, there is a risk that the activities are seen as a private monopolization as well as unfair trade practices.

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### (2) Display advertising

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#### a Owned and operated

Although the market share is unknown for owned and operated only, Google, Facebook and Yahoo each account for 10-20% of display advertising as a denominator, as shown in Part 2, Chapter 2-3, and these three companies are at least in the dominant position in the owned and operated market.<sup>44</sup>

If businesses in such a position engage in activities that restrict business activities of their partner businesses that could be a violation of AMA as unfair trade practices.

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#### b Open display

Indirect network effects of digital platform operator's digital ad intermediary services are that the more advertisers (ad agencies) it connects to, the more publishers it gathers, and the more publishers, the more advertisers (ad agencies). One of the characteristics of the digital advertising marketplace is that digital platform operators provide advertising intermediary services while they are also a powerful publisher, as in Google and others described above.

In other words, as the companies possess leading media, they have broadened its contact points with advertisers (ad agencies), which in turn has led to the acquisition of publishers in open display. As such, digital platform operators have a large number of advertisers (ad agencies) on one side of two-sided market as a powerful medium.

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<sup>43</sup> In the following, we will discuss the market position of each type of digital advertising and service. Whether or not the market is defined by this item requires consideration at that time in accordance with the individual case.

<sup>44</sup> Part 1-3 of the Guidelines on Distribution and trade practice under the Antimonopoly Act. (4) Whether or not it is recognized as a dominant position in the market is a good indication that the share in the market exceeds 20%.

As a result, they are already well positioned in open display to compete on the other side of publishers.<sup>[45]</sup> <sup>[46]</sup>

In light of these characteristics, businesses which have a dominant position in the market, and businesses which have a monopolistic and oligopolistic position, are likely to emerge in digital advertising's intermediary services. This is because indirect network effects works.

Part 2, Chapter 2 shows the shares of the services (publisher's ad server, DSP, SSP/ ad exchange, and ad network) mediating digital advertising in Japan.

If the market for each service is established, for example, Google has an 80-90% share of publisher's ad server market and a 50-60% share of SSP/ ad exchange market. In other words, Google has a monopolistic and oligopolistic position in several services. If businesses in such a position engage in activities that exclude competing businesses, that could be a violation of the AMA as a private monopolization or unfair trade practices.

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#### c Overall display advertising

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Furthermore, even if we see display advertising as a single marketplace, Google first accounts for 10-20 % as a medium for the owned and operated. In the open display, there are various advertising distribution services. However, when looking at DSPs, which are services normally used by advertisers, the company accounts for 60-70% of the market (when including Google advertising [Google Ads]). The exact proportions of the owned and operated and the open display in display advertising are unknown, so we cannot add them up simply, but can at least think that they are in a dominant position in the display advertising marketplace.

The Chapter 2 discusses "Conducts that could restrict business partners' business activities" and "Conducts that could exclude competitors." If such a conduct is carried out by a businesses with a dominant position in the marketplace, it could be a violation of the AMA as unfair trade practices. Furthermore, if a substantial restraint of competition in a particular field is brought by such a conduct, it could be a violation of the AMA as a private monopolization.

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<sup>[45]</sup> Digital Market Competition Council, "digital advertising Interim Report on Competitive Assessment," June 16, 2020, p. 18

<sup>[46]</sup> The most common reasons for dealing with digital platform operator were 79 percent (advertiser [ad agency]), 82 percent (intermediary) of "the number of advertiser (ad agency) or the number of businesses networks (reach to consumers) to which the advertisements are to be distribution" and 69 percent (publisher) of "the number of social media (video streaming website)" in the questionnaires for publisher (see Appendix 1 (57, 113, 177) of the Interim Report, supra).



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### 3 Superior bargaining position

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 under the AMA as "abuse of superior bargaining position," which constitutes a category of unfair trade practices.<sup>[47]</sup>

In the Chapter 2, we discuss "Conducts that could do trade partners harm." In transactions between digital platform operators and its counterparties, the position of digital platform operators may prevail over the counterparty to the transaction. This is because it is difficult for the counterparty to continue doing business without digital platform operators and therefore the counterparty is forced to accept the request from the digital platform operators even if the request is extremely disadvantageous to the counterparty. In making this determination, we will take into account the degree to which the counterparty is dependent on the digital platform operator, the market position of the digital platform operator, the possibility of changing business partners for the counterparty, and other specific facts indicating the need to deal with the digital platform operator.

For example, in a businesses survey, advertisers which deal with Google more than 40% of their digital advertising spending were more than 30%. In addition, more than 40% of intermediaries deal with Google more than 30% of their digital advertising revenue. Publisher is the same number as the intermediary. As discussed above, given Google's position in search advertising and display advertising marketplaces, the company may have a superior bargaining position in relation to these businesses.<sup>[48] [49] [50]</sup>

Digital platform operators may also dominate consumers who are users of services (see Chapter 3 below).

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### 4 Vertical integration

Chapter 2, Part 2 shows the shares of the advertising intermediary services (publisher's ad server, DSP, SSP/ ad exchange, and ad network) in Japan. As a consequence of acquisitions and other efforts, digital platform operators may simultaneously provide several services at

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<sup>[47]</sup> The JFTC "Guidelines concerning on abuse of superior bargaining position under the Antimonopoly Act "No. 1-1

<sup>[48]</sup> Appendix 1, Pages 17 and 18 of the previous Interim Report

<sup>[49]</sup> 72,73 pages

<sup>[50]</sup> 136,137 pages

different stages of trading ("vertical integration"). Google, for example, acquired DoubleClick, a provider of publisher's ad server, in the 2000s, a period of publisher's ad server penetration, and this seems to have contributed to increasing its market shares in publisher's ad server.

While vertical integration is more technologically efficient, it can also give digital platform operators incentives to favor their own services. For example, while being in a position to represent the interests of media companies as an SSP, it also operates a DSP, so if they give preferential treatment to their own DSP, the advertisement of the advertiser who is not necessarily the best advertiser for the media company could not be selected.<sup>[51]</sup>

Vertical integration may also use market power at one stage of intermediary servicing, undermining competition at other stages. For example, a media company ad server plays a role in deciding which advertisement to deliver to the media company's inventory. Thus, there is concern that it will be technically possible to request advertisements in preference to their own SSP.<sup>[52]</sup>

In addition, we saw in Part 1 that digital platform operators are building a broad ecosystem not only by vertical integration but also by engaging in business combinations across different industries.

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## 5 Main points in interview

### <Transaction dependency>

- In the advertising agency business we are conducting, one digital platform operator is the largest business partner, accounting for around half of net sales. If we stop doing business, it will risk the survival of the company. Therefore, we have no choice but to comply with the demands of digital platform operator. (Intermediary)
- Digital platform operator's presence in the advertising agency business continues to grow, and unless we do business in some way with digital platform operators, it will not be possible to continue business in this industry. (Intermediary)
- The ratio of our business partner media companies to sales is about 50% for digital platform operator A, about 30% for digital platform operator B, and about 15% for the other four major digital platform operators in total. Almost all are transactions with digital platform operators. (Ad agency)

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<sup>[51]</sup> In the survey for businesses, the most common concerns about vertical integration were "ad tech service provided by digital platform operator (advertising distribution)" with 64% (intermediary) and 54% (publisher), and "Not particularly concerned" with 45% (advertiser (ad agency)), respectively (Appendix 1 (p.59,60,115,116,179,180)).

<sup>[52]</sup> UK CMA, Online platforms and digital advertising market study final report, para 52-54 July 2020

<Comprehensiveness of distribution destinations and functions of digital platforms.>

- Some digital platform operators have a large number of advertisers. As a publisher, as many inventory buyers as possible are more profitable, it is essential to do business with digital platform operators. (Intermediary)
- One digital platform operator has a dominant power because of the large number of ads, the large size of inventory, and the enormous amount of visitor data and the precision with which it matches because of its leverage. (Intermediary)

<Concerns about vertical integration>

- With the advancement of vertical integration in the advertising agency business, it is problematic that the interim fees for placement will become unclear. (Publisher)
- As vertical integration progresses and all are completed within the company, such digital platform operator will be in a good position in personal usage of information given the presence of a personal-information-protection rule. In other words, digital platform operators' position may be further strengthened because they can freely use data, including personal information, acquired in-house while blocking the provision of data due to the existence of personal information protection regulations. (Intermediary)

## Chapter 2 Transactions between businesses related to digital platform

In this chapter, we discuss issues related to digital advertising transactions that arise from surveys and interviews in four categories: (1) conducts that could do trade partners harm; (2) conducts that could exclude competitors; (3) conducts that could restrict business partners' business activities; and (4) conducts that could lack fairness or transparency. Basically, subsection (1) is abuse of superior bargaining position, subsection (2) is interference with transactions or private monopolization, and subsection (3) is trading on restrictive terms or private monopolization that can be primarily applicable. On the other hand, while (4) does not fall under the category of violations of the AMA, we summarized what actions are desirable in order to enhance fairness and transparency of transactions and to ensure a fair competition environment. In addition, while (1) is basically applicable regardless of search advertising or display advertising, from (2) to (4) is basically an issue related to open display in particular, and it is partly related to owned and operated and search advertising.

The main items included the voices of advertisers (ad agencies), intermediaries, and publishers. This is an abstract of some of the main interviews conducted by the JFTC and includes explanations by digital platform operators of these findings.

Digital platform operator's business operations vary, and not all digital platform operator are applicable to all items (the same applies to Chapter 3 and 4 below).

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### 1 Conducts that could do trade partners harm

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#### (1) Setting and changes of contracts

Advertisers (ad agencies), intermediaries or publishers have contracted with a digital platform operator to use ad tech services provided by the digital platform operator. The content of the contract varies depending on the type of ad tech services to be used, etc., but it is argued that there may be a unilateral favorable contract for the digital platform operator, such as the ability of the digital platform operator to change the terms of transactions at its discretion.

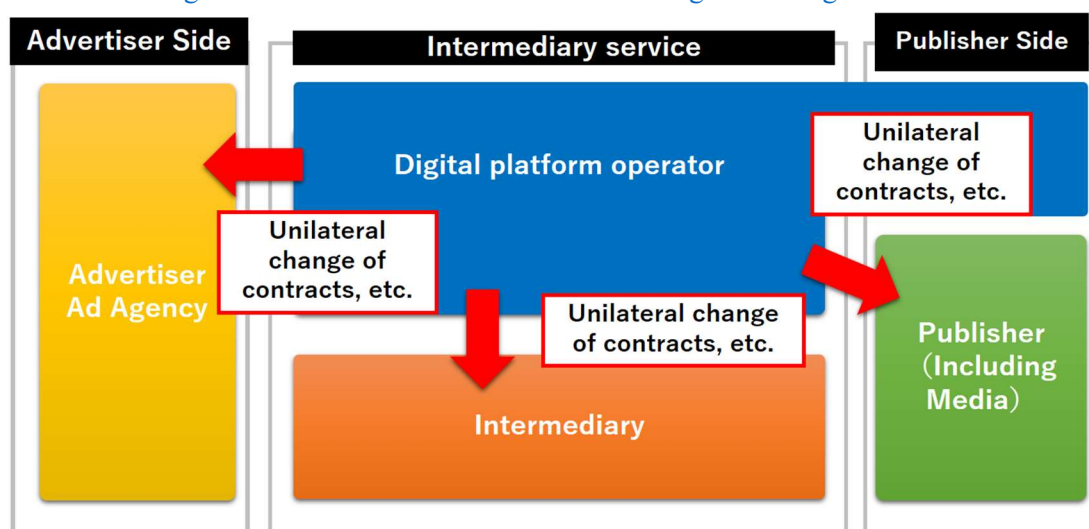
In this regard, as described in the Interim Report, the following table shows the status of responses to the businesses survey answering that the contract with the digital platform operator includes provisions that have some issues in the business survey.<sup>[53]</sup>

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<sup>[53]</sup> See Section 2, Part 1, 1 (2) of the Interim Report, *supra*. The questionnaires were made, based on each businesses (Google, Yahoo!, Facebook, Twitter, LINE, etc.) and the proportions of responses differ for each businesses, so the percentages are broad. The same shall apply hereinafter.

Respondent's type	Percentage of responses answering that contract includes provisions that have some issues
Advertiser and ad agency	35% to less than 50%
Intermediary	More than 40% to 75%
Publisher	25% to 65%

Figure 19 Transaction Flow Related to Setting and Changes of Contracts



## a Major issues and explanations of digital platform operator

### (a) Setting and changing of contracts

#### <Opinion from an intermediary>

- Digital platform operators unilaterally provide the terms and conditions in agreements. There is a principle of private autonomy concerning contracts, and there are cases that parties even accept somewhat disadvantageous conditions based on the consent between the parties. However, under the recent circumstances where the digital economy is being increasingly oligopolized and monopolized, we practically have no other choices, and have no options but to accept them even if they are substantially disadvantageous to us.

#### <Opinion from a publisher>

- In the agreements with digital platform operators, (1) we are unable to negotiate when entering into them, (2) our counterparty [(the digital platform operator)] may change the terms at their discretion, and (3) our counterparty may unilaterally terminate its services.

< Explanation from digital platform operators in response to the above opinions >

- Our company determines the appropriate notice period on a case-by-case basis to ensure that business users have flexibility and sufficient time to adapt to such changes. Individual notice period depends upon the impact, magnitude, complexity, nature of the relevant changes. We do not make changes to our terms and conditions frequently, so the impact on business users stemming from such changes are limited. When making changes to our terms and conditions, we generally explain the reasons, background and context for the change to business users in light of several factors including the magnitude and nature of the relevant change. In order to respond to queries from users in Japan, we would try to address such concerns and questions by communicating with the relevant users individually, either through a point of contact or via emails, calls, blog posts, help center pages or user interfaces of the relevant services. We are not aware of specific instances where a high volume of business users in Japan have considered that they did not receive sufficient notice for changes in terms and conditions.

Some contracts between our company and users allow our company to change the terms and conditions at our discretion. There are some cases where changes of the terms and conditions are required to be made at our company's discretion in order to constantly change or improve our services, for legal reasons or to preserve the security and integrity of its services. Where the contract allows us to change the terms and conditions, it is not possible for a business user to continue on previous terms and conditions as this could no longer be supported by changed functionality, be illegal or could be detrimental to the security and integrity of our services. However, the business users can choose to stop using the service if they do not want to accept the revised terms and conditions.

Some of our contracts with publishers, advertisers and ad tech intermediaries for our core ad tech services do not allow us to unilaterally terminate the contract without cause. Where our contracts contain a unilateral termination right without cause, the other party also has the same right and specified notice must be given of any termination.

- It is worth noting that companies, big and small, have more options than ever when it comes to advertising—from billboards, print, television and broadcast, to newer advertising venues like Facebook, Google, YouTube, Twitter, Microsoft (including LinkedIn), Yahoo! Japan, Amazon or Rakuten, as just a few examples. Unlike forty years ago, when print, TV, radio and billboards were the only options, today there are numerous different advertising channels and venues, and hundreds of companies offering each of them, all competing for people's time and engagement. Advertising

services need to constantly innovate to deliver the best return on investments to advertisers.

Consistent with other companies (whether large or small) that provide online services to large numbers of individuals and/or businesses, we typically rely on standard terms and policies, including retaining the rights to amend or update our products, services and related terms of use and policies. This approach enables us to (i) provide efficient and cost-effective advertising services - especially for small and medium-sized businesses to reach their audiences; (ii) provide valuable experiences to individuals, advertisers and other businesses that use our services in accordance with their needs and the advances in available technology; and (iii) release innovative solutions and products without delay. We nonetheless strive to provide reasonable notice when significant changes to our standard terms and policies are planned. We provide notification using a variety of methods such as (i) notifications on our company website, (ii) e-mails, (iii) notifications in products, (iv) notifications on our official corporate accounts on social media, and (v) explanations by the sales support team. Furthermore, our company endeavors to respond to advertiser feedback and input when changing terms of use or policies. If advertisers or publishers are not satisfied with our terms and policies, advertisers and publishers are able to and do switch in the highly competitive advertising industry.

- In digital advertising marketplace, it is our understanding that various services and options are available for advertisers and publishers. For this reason, we do not believe that the unique situation has arisen in digital advertising business in which there is virtually no other option but to comply even with severe disadvantageous contents. In addition, there is no fact that the options of business partners or details of transactions are compulsory required under extremely disadvantageous conditions, and we are conducting business activities by setting basic terms and conditions commonly seen, while maximizing the interests of both parties. Furthermore, with regard to the period between the notice and the change, we basically give the notices at least three months in advance. In the case of important notices that make significant changes or impacts in the terms and conditions, the considerable period of time is provided in advance, with several months added as a period for making explanations and judgments.

We recognize that the period of time between the notices and the changes is sufficient in light of the dialogue and the achievements to date. If our businesses partners consider it difficult to make changes within the given period, we adjust the schedule as much as possible. We give notices via emails in bulk and information posted on the portal for business partners etc. In the case of major changes, individual sales representative gives explanations at the meetings or by emails, telephones etc. When inquiries are received, we respond them individually.

The reason why we make the provision that allows us to unilaterally change the contents of the contract is that there is a considerable number of advertising agencies, advertisers and publishers as our business partner, and it is a challenge to obtain individual consents from the perspective of providing the optimum service in a timely manner in order to improve the functions and maintain the quality of our services. Therefore, it is our operational policy to conduct business with businesses partners in the form of amendments of the terms and conditions. However, in the case of important changes that have impacts, we explain to targeted partners within the period of time for determination, and if they do not agree with the changes, individual conditions are applied in some cases.

#### (b) Termination of contracts or services/advertising distributions

<Opinion from an intermediary>

- The agreement with one digital platform operator contains a provision that allows the digital platform operator to terminate the agreement unilaterally without prior notice and to terminate the provision of the services at its discretion.

<Opinion from an intermediary>

- Our company is a DSP and is always exposed to the risk that the ads that we handle are deemed not to satisfy the distribution criteria and the distribution gets terminated. Because we do not know when the distribution criteria will be changed, we are concerned about how to handle them.

<Opinion from a publisher>

- Although there are cases where we understand the intent of the terms and conditions, such as criteria for protecting youths, they are difficult to address because large publishers have dedicated persons in charge, and the interpretation of the criteria varies depending on the size of publishers, etc.

<Explanation from digital platform operators in response to the above opinions>

- Generally, some of our contracts with publishers, advertisers and ad tech intermediaries for our core ad tech services do not allow us to unilaterally terminate the contract without cause. Where our contracts contain a unilateral termination right without cause, the other party also has the same right and specified notice must be given of any termination.

Some of our contracts allow us to terminate or suspend the contract without prior notice, such as where there is invalid activity or the customer has not complied with our policies. Our policies are clear and are publicly available on our website. We also



publish change logs for our policies so that customers can easily identify changes to our policies.

For advertisers, if there are any policy violations identified, the account may be suspended. Apart from egregious policy violations, we will give at least 7 days' prior warning to advertisers before a suspension action and any remedial action that can be taken in order to comply. While we will suspend an account without warning for egregious policy violations, we limit these to cases where such action is the only effective method to adequately prevent illegal activity and/or significant user harm. Advertisers whose accounts are suspended will receive a notification identifying all policies the advertiser has been suspended for violating and a link to submit an appeal.

For publishers, while we usually notify publishers and take action for policy violations and invalid traffic at the site level, there may be times when we will need to suspend or disable accounts due to policy violations or invalid traffic. If a publisher's account is suspended, the publisher will receive a notification stating whether this action was due to invalid traffic or another policy violation. If a publisher's account is disabled and they feel this decision was made in error, they can submit an appeal. While we have dedicated points of contact for large publishers, the criteria is generally applied and interpreted uniformly across all publishers.

For ad intermediaries that use our ad exchange, ads that do not meet our publicly available policies will be paused until corrected. We can also suspend accounts for certain violations. Ad intermediaries can contact their account team if they have any questions about violations.

We need to have the power to terminate or suspend an account due to policy violations and invalid traffic to protect the users, publishers and advertisers in the advertising ecosystem. This is important to allow us to combat ad fraud and invalid activity, and to create a safe and positive experience for users and advertisers. We believe our systems strike the appropriate balance of protection for users, publishers and advertisers.

- In our view, in principle, the contract cancellation or the service suspension without prior notice does not take place, except in cases where there is a legal requirement or where the situation is judged to be urgent.

It should be noted that both parties have the general right as a general clause in the terms and conditions of the contract to terminate the contract without prior notice if there is a breach of contract or default. In addition, we have established an internal system in which the person in charge makes a decision and takes action to respond based on the characteristics of individual cases and past business

experiences and communications with business partners to the reasonably possible extent.

### (c) Establishment of provisions pertaining to damages and compensation

#### <Opinion from a publisher/intermediary>

- The agreement with one digital platform operator contains an exemption clause that sets forth that, in cases where ads were not distributed due to some failure, we cannot claim for damages against the digital platform operator. On the other hand, it is provided that the digital platform operator may claim for damages against us, which is unfair.

#### <Explanation from digital platform operators in response to the above opinions>

- It is not clear what (if any) clause in our contracts this is referring to. The limitation of liability clauses in our terms for our publisher-facing advertising intermediary services apply equally to both parties.
- We do not view these issues as applicable to our company. We provide monetary compensation in the form of refunds or ad credits to advertisers in case of certain incidents (or “bugs”) on our end that impact the advertisers’ ad campaign on our service or on a third-party property when the ad is placed through our service. Moreover, we employ a suite of in-house tools to monitor unusual or suspicious activity, such as unusually high rates of app installs or advertising clicks (as such high rates can be evidence of an ad that is placed to prompt accidental clicks or being “clicked on” by bots, not humans). We make efforts to investigate suspicious or potentially invalid activity to identify fraudulent publishers and advertisers, and currently we do not charge advertisers for activities (e.g. clicks, impressions) determined to be invalid.
- It is our understanding that there is no clause of concern in our normal terms and conditions that can be interpreted to allow digital platform operators to immediately seek compensation in the case that some kind of failure occurs on the media side and prevents the delivery of advertisements. Therefore, if there are such concerns, we consider it appropriate to start with a discussion of contract interpretations while looking at the specific contract terms with each other.  
In the case of our company, we recognize that the clause to claim compensation for damages caused by breach of contract is mutually stipulated.

### b Views from the AMA and the competition policy

The terms and conditions under which businesses trade are basically left to the independent judgment of the transacting parties. Given the nature of digital platforms,

which require large volumes of similar transactions to be conducted quickly and efficiently, it is reasonable to establish a detailed and uniform contract to stabilize transactions, and setting such a contract is not an antitrust issue immediately.

However, regarding establishing a new contract or changing a contract with another party with whom a business relationship has already been established, if a digital platform operator in a superior bargaining position over the other party (1) unilaterally establishes or changes a contract, (2) allows the termination of a contract without a reason, (3) unilaterally allows the termination of a service/advertising distribution, or (4) restricts claiming compensation for damage in advance, and unjustly causes disadvantage in light of normal business practices, then such conduct should be a violation of the AMA (abuse of superior bargaining position).

The judgment shall be made on a case-by-case basis by taking into account (1) the content of the disadvantage which fall upon the other party due to the setting or change of the contracts, (2) whether there are reasonable reasons for such setting or change, (3) the time period from the notification of the content of the change until its application, (4) whether consent is virtually enforced in order to continue using the digital platform despite the absence of the benefit of consenting to the setting or change of contract, and (5) the number of parties who are forced to accept the disadvantage of de facto enforcement.

In order to increase fairness and transparency of transactions and to ensure a fair competitive environment, when a digital platform operator sets or changes the contracts, it is desirable (1) to inform in advance and explain sufficiently to the other party about the content of the established contract and the change of the contract, (2) to give the other party an opportunity to express an opinion and take into account as much as possible any reasonable reasons why the other party cannot accept the setting or change in question, and (3) to set sufficient time from a notification of the content of the change until its application, depending on the content of the change. When concluding a contract, it is also desirable to give consideration to fairness of the contract between the parties and to clarify the definition and scope of any restrictions when it is imposed on one of the parties.

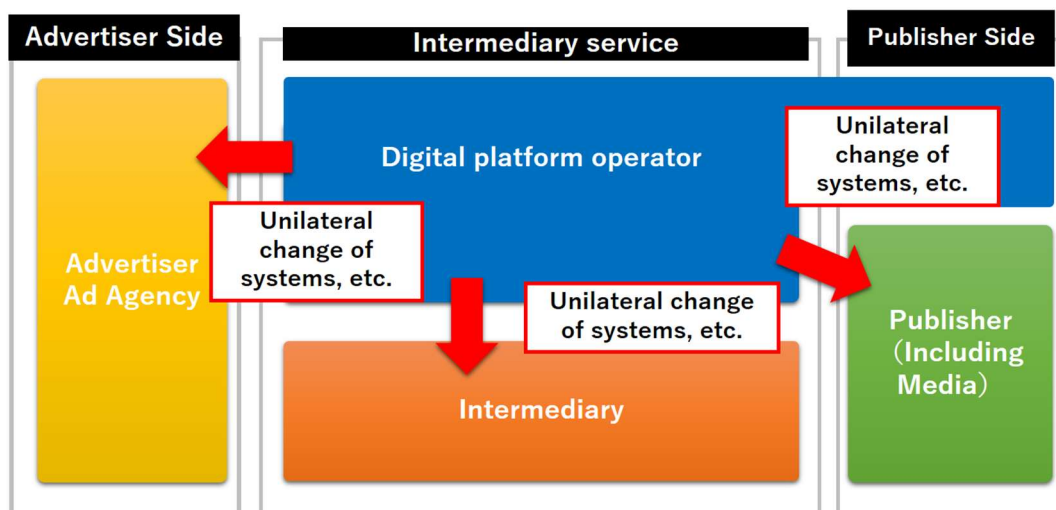
## (2) System changes

Advertisers (ad agencies), intermediaries, or publishers are engaged in advertising distribution, providing inventories, and intermediation of advertising, etc. through the ad tech systems provided by a digital platform operator. Many of these system changes are required for greater convenience and troubleshooting, and the changes to the system themselves are not an issue. However, because advance notifications and explanations, etc. are inadequate, the burden to deal with the system changes on advertisers (ad agencies), intermediaries, or publishers may be excessive.

In this regard, as described in the Interim Report, the following table shows the status of responses answering that there were issues with system changes a digital platform operator in the business survey.<sup>54</sup>

Respondent's type	Percentage of responses answering that there were issues with system changes
Advertiser and ad agency	Less than 30% to more than 45%
Intermediary	30% to less than 60%
Publisher	20% to more than 30%

Figure 20 Transaction Flow Related to System Changes



<sup>54</sup> Interim Report, Chapter 2, Part 1,1 (3), supra

## a Major issues and explanations of digital platform operator

### <Opinion from a publisher>

- When one digital platform operator changed its system for floor prices (the minimum bidding price for inventories), the floor prices for all SSPs that distribute ads through the header bidding<sup>55</sup> were set to be the same price. In other words, prior to that each SSP used to be able to set different floor prices, but when using the said digital platform operator's system, the floor price was unified to the floor price set by the digital platform operator even if [SSPs] set a floor price. As a result, while it became more convenient for managing floor prices of many SSPs at once, we lost the flexibility to individually operate depending on SSPs. Even in cases where we want to make the floor price for the digital platform operator's SSP higher than the floor prices of another SSP, as the floor price was unified, we end up losing the bid that we could have been able to get otherwise (For example, when we want to set the former at 100 yen and the latter at 50 yen, as the bid would be unified to 100 yen, we end up losing the bid at 70 yen that we could have been able to secure otherwise.).

### <Opinion from a publisher>

- If a digital platform operator changes its system, it may interfere with our system and prevent our advertisements from being displayed. In this case, we have to bear refundment or compensation for advertisers. The cost for checking whether there is any problem of ad distribution due to system change is increasing, and any oversight of such a problem may lead to significant losses. It is understandable that it is not realistic to make prior notices of all the minute system changes, in light of the vast number of minor changes being made every day. However, it would be helpful if the loss could be shared according to the cause.

### <Opinion from an intermediary>

- When there is a system change due to a sudden update, in some cases, it is difficult to keep up with the change and we do not have enough time to respond to our clients. For example, there was an update of the management screen with the change of the usage, and it was necessary to reconfigure the settings. In this case, it is necessary to explain the changes to the client, so at least half a day is needed, depending on the scale of the update. The digital platform providers make changes to the management screen without notice once in a while.

### <Explanation from digital platform operators in response to the above opinions>

- When making system changes, we usually decide notice periods on a case-by-case basis, depending on several factors such as the relevant product involved and its

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<sup>55</sup> See Chapter 2, Part 2, Column above: Transaction methods in digital advertising (3).

function, the magnitude, nature and revenue impact of the relevant change. If the relevant system change is likely to have a significant impact on users, then we would adjust the notice period to allow for a longer period of time for business users to migrate/adapt. Since business users may refuse or not be able to migrate to the new system or product if they do not have sufficient notice, we would suffer loss in revenue as a result. Therefore, it is also in our interests to give sufficient notice to business users.

For some changes we have received opinions from business users in Japan that they do not have enough time to adapt to the system changes, and in these cases, our company will hear the opinions from the business users and provide the feedback to the product team. In some cases, we will extend the deadline for the change. On the other hand, with respect to changes to the underlying infrastructure of its products that do not impact business users, we believe that giving notices on such system changes would stifle innovation and continuous improvement without any benefit to business users, and therefore, is not practicable.

When giving notices, we give advance notice by email notifications, blog posts, newsletters and calls or meeting through a point of contact.

When notifying business users of proposed system changes, we provide clear explanations on the reasons and context for such changes. However, on some occasions, we are unable to share detailed and specific information about its system changes due to the risks that disclosure could be used by bad actors to exploit the system.

We do provide contact points for inquiries from publishers. We assign account managers as points of contact for certain larger publishers. Publishers without an assigned point of contact can contact publisher support, search or ask questions on our Help forum or use the troubleshooting tools we provide.

As to our introduction of unified pricing rules, the change was designed to reduce the complexity of the programmatic auction process. The previous rules allowed publishers to put individual buyers at a disadvantage by applying inconsistent price floors across buyers. The new rules now create a level playing-field that improves advertiser trust in programmatic advertising, which in turn leads to higher levels of spend that benefits publishers. Our unified pricing rules have improved the transparency and simplicity of the programmatic auction whilst allowing publishers to retain many of the tools at their disposal to manage the bidding process. For these reasons, the transition to unified pricing has been welcomed by many publishers.

- The period of advance is determined in light of the magnitude of the impact of system changes. To provide a sufficient notice period, we determine it based on the opinions and case studies from business partners to date, and the general guidelines are as follows.

- At least a few months (or longer, depending on the magnitude) in advance if the business partners need to take action (the cases that affect the delivery of the advertisements)
- New functions are announced a few weeks before
- Immediately before or after if no action is required to the business partners (the cases that do not affect the delivery of advertisements)

In addition, although there is the clause that allows us to make system changes unilaterally, we actually try to prevent discrepancies as much as possible through operations such as notices of the changes with a certain period of time (approximately several months), explanations including individual responses. When we change the system, we explain the reason for it by an email or our front team.

#### **b Views from the AMA and the competition policy**

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It is inherently desirable for advertisers (ad agencies), intermediaries, or publishers that a digital platform operator makes changes to the system to improve convenience and troubleshoot.

However, if a digital platform operator in a superior bargaining position over the other party unilaterally modifies the systems such as the bidding process and it unjustly causes disadvantage to the other party in light of normal business practices, it could be a violation of the AMA (abuse of superior bargaining position).

The judgment will be made on a case-by-case basis, taking into account: (1) the content of disadvantage which fall upon the other party due to changes of the system; (2) whether there are reasonable reasons for the changes to the system; (3) the time period from the notification of the changes to the system until their application; and (4) the number of parties who are forced to accept the disadvantages associated with the changes to the system in order to continue using the digital platform despite the absence of benefits from the changes to the system.

In order to increase fairness and transparency of transactions and to ensure a fair competitive environment, when a digital platform operator changes its system, depending on the content of the change and the impact of the system change on businesses using the system, it is desirable (1) to inform in advance and explain sufficiently to the other party about the content of the change and the reasons for the change in the system, (2) to give the other party an opportunity to express an opinion and take into account as much as possible any reasonable reasons why the other party cannot accept the system change, and (3) to set sufficient time from the notification of the system change until its application.

## 2 Conducts that could exclude competitors

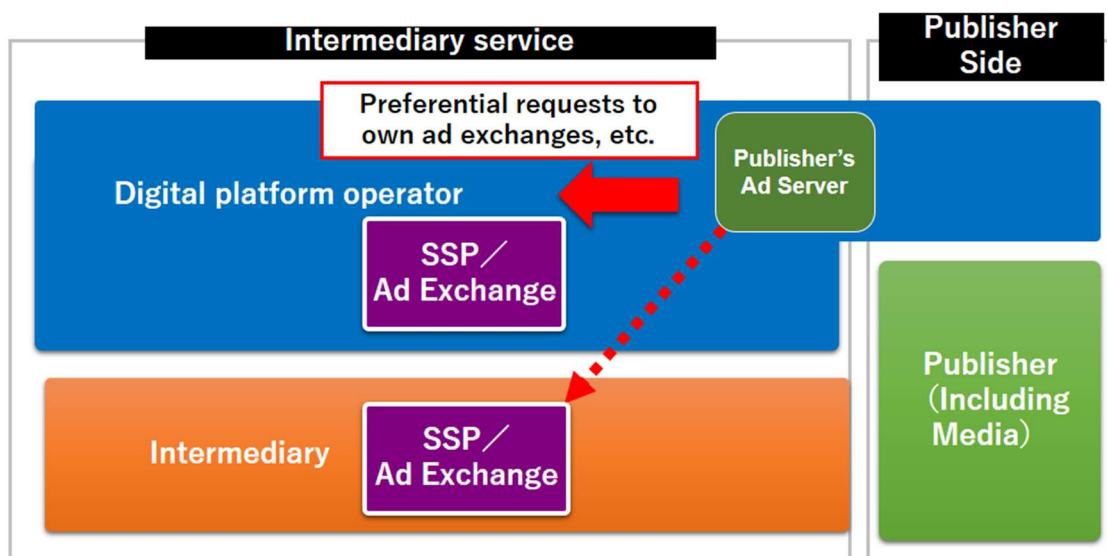
### (1) Preferential request

When a digital platform operator requests an ad distribution from its publisher's ad server to a SSP, there is one of the issues of self-preferencing called "preferential requests", which means that the request may be sent to digital platform operator's own SSP preferentially rather than the SSP of an intermediary.

In this regard, as described in the Interim Report, the following table shows the status of responses related to the preferential request by certain digital platform operator in the businesses survey.<sup>56</sup>

Respondent's type	Status of Responses Related to Preferential Requests
Publisher	"I have felt" the preferential request: More than 3% to less than 25%
	"Have never felt " the preferential request: More than 30% to more than 40%

Figure 21 Transaction Flow Related to Preferential Request



<sup>56</sup> Section 2, Part 1, 3 of the Interim Report, supra



## a Major issues and explanations of digital platform operator

### <Opinion from a publisher>

- We suspect that there might be preferential requests, but we have no means to verify that. If there are unfair bidding logics such as preferential requests, independent ad intermediaries would be in disadvantageous positions. In the long term, that would limit the channels of commercial distribution and may result in even higher dependence on digital platform operators.

### <Explanation from digital platform operators in response to the above opinion>

- It is not true that we make preferential requests. Our ad serving functionality does not make requests to our exchange functionality in preference to other SSPs. In addition, our exchange functionality also does not make requests to our DSP or ad network in preference to other DSPs or ad networks.

## b Views from the AMA and the competition policy

A digital platform operator owns both publisher's ad server and a SSP by vertical integration, etc. and competes with the intermediary as a SSP that receives a request from publisher's ad server.

Digital platform operator's vertical integration can lead to efficiency in digital advertising operations by fastening service-to-service connectivity and lowering connectivity costs.<sup>[57]</sup> Technologies and transactional practices in digital advertising have changed as described in the column of Chapter 2, Part 2 above. Since the preferential requests are basically doubts based on the waterfall, the conditions have changed at this point when the waterfall is no longer mainstream.

However, as the business survey shows, there are still a few publishers who have doubts on self-preferencing, called the preferential requests. If, by designing and operating the bidding system arbitrarily, a digital platform operator causes interference of transactions between competing intermediaries and publishers, etc. and excludes such intermediaries, it could be a violation of the AMA (interference with a competitor's transactions). Furthermore, if the conduct in question excludes the business activities of the intermediaries, it could be a violation of the AMA (private monopolization),

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<sup>[57]</sup> Vertical integration can lead to technological efficiency. For example, by integrating publisher's ad servers and SSPs, reporting functions can be improved and operation costs for publishers can be reduced (see paragraph 5.234 of "Online platforms and digital advertising Market study final report" supra).

It is also said that vertical integration can make the supply chain more efficient. For example, if demand-side platforms and supply-side platforms are provided by the same companies, it may reduce delays between services (see ACCC "Ad Tech Inquiry Issues Paper, March 22, 2020).

depending on the position of the digital platform operator and the situation of its competitors.

In order to increase fairness and transparency of transactions and ensure a fair competitive environment, it is desirable to disclose necessary information to publishers regarding the bidding system and to establish the system in Japan that enables to achieve full accountability so that it will not cause a doubt of self-preferencing.

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## (2) Restrictions of use of third-party services

A digital platform operator owns social media, portal websites, and video distribution websites, etc., and is considered as a major publisher at the same time. The point is that a digital platform operator makes use of its powerful position as a publisher and restricts an advertiser (ad agency) to use the DSPs and ad measurement services provided by third parties.

In this regard, as described in the Interim Report, the following table shows the status of responses regarding the handling of third-party services in the businesses survey.<sup>58</sup>

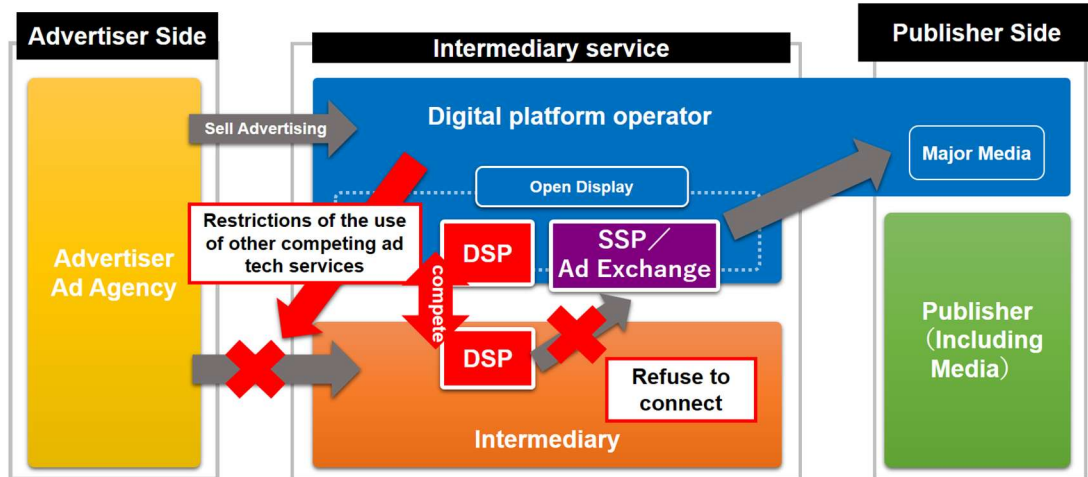
Respondent's type	Status of responses regarding the handling of third-party services
Advertiser and ad agency	Approximately 90% of respondents answered "No particular issues." On the other hand, some respondents indicated that "the use of third-party services other than the services provided by a digital platform operator was prohibited."
Intermediary	More than 90% to 100% of respondents answered "No particularly issues". On the other hand, some respondents answered that "a digital platform operator personnel gave us instructions to prohibit the use of third-party services."
Publisher	Approximately 90% of respondents indicated "No particular issues." On the other hand, some respondents answered that "the use of third-party services other than the services provided by a digital platform operator was prohibited."

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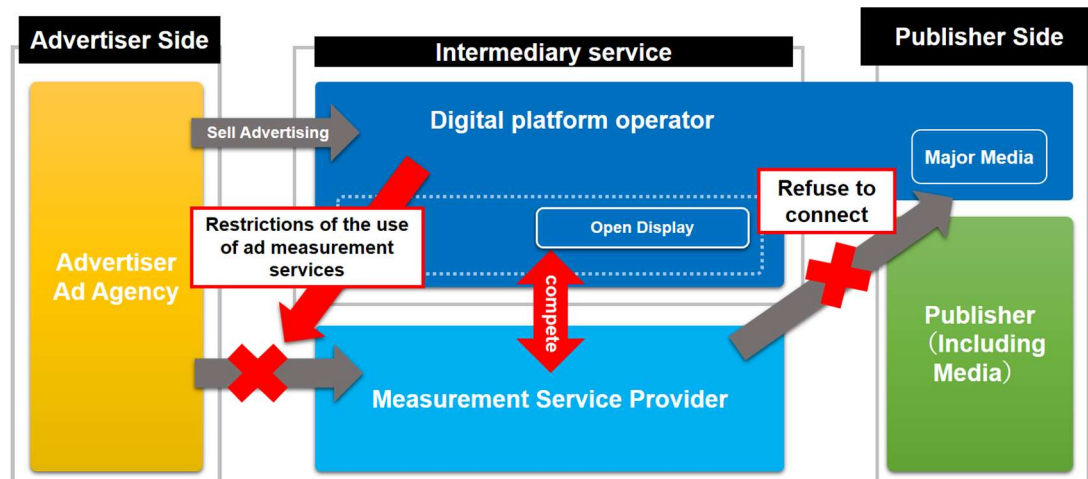
<sup>58</sup> Chapter 2, Part 1, 2, Interim Report, supra. The tables show responses related to the handling of third-party ad tech services and not those related to ad measurement services.

Figure 22 Transactions Flow Related to Restrictions of Use of Restricting Use of Third-Party Services

(1) Restrictions of the use of other ad tech services



(2) Restrictions of the use of ad measurement services



## a Major issues and explanations of digital platform operator

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### (a) Restrictions of the use of other ad tech services

#### <Opinions from an ad agency>

- As digital platform operators also serve as publishers themselves, they tend to exclude third-party ad tech services from the route for distributing ads to their own media. For example, in order to distribute ads on social media, we basically have to use the ad-tech service provided by the digital platform operator of that social media, and for distributing ads on video distribution sites, we can no longer use third-party DSPs as we were able to do in the past.

#### <Explanation from digital platform operators in response to the above opinion>

- Our company does not generally prohibit or restrict business users' use of third party ad intermediary services other than our company's intermediary services. The only exception is the online terms and conditions of our advertiser ad network which contains a clause providing that business users may utilise a third-party ad server only if approved by our company. The use of third party ad servers must be authorized so as to ensure user data is being handled properly and in compliance with industry standards, and that technical specifications are being met to ensure the proper serving of ads.

We do not allow distributing ads on our company's media through third-party DSPs. It is common for vertically integrated platform operators to sell ad inventory on their own properties through their ad tech services. In the past, some of our owned inventory was available to third-party DSPs but this has been removed since January 2016. Nevertheless, competing DSPs have thrived even without access to our owned inventory by competing on other parameters. Advertisers can still access our owned inventory through other routes including third-party and sales teams.

We consider it necessary and reasonable to not allow distribution of ads on our company's media through third-party DSPs for the following reasons: (1) privacy law and data protection risks (third-party DSPs could build profiles of users based on their viewing history, without the user's knowledge or ability to control, which would be a data protection risk.), (2) commercial necessity and reputational risk (Restrictions are also a way to ensure that the ads appearing on our company's pages are of a consistently high quality. Widespread third-party ad serving on our company's properties could increase latency and make it harder for us to scan for 'bad' ads.), and (3) deprecating support due to limited use and resource prioritization.

- Our company strives to provide relevant content (both non-advertising and advertising) to users and to provide value to advertisers. As part of this mission, we

(i) protect and curate, in particular, the user experience, including protecting user privacy in line with users' privacy expectations, and (ii) protect the integrity of our services, including preventing users from experiencing fraud, security problems or other harmful experiences. We believe that this is achieved most effectively by using our own systems to deliver the relevant content on our platform.

- Regarding the advertisements on the space which we operate, we generally use the ad tech services of other parties, and our own DSP and the DSPs of other parties compete fairly. In addition, it is not even possible functionally to assign advertisements via our own DSP preferentially than advertisements via other DSPs. In addition, regarding the inventories of other publishers which we operate, it depends on the publishers which DSP participates in or not, and it is out of our control.

#### (b) Restrictions of the use of ad measurement services

<Opinion from a provider of ad measurement services>

- For ad measurements, it is required to configure tags on the publishers' websites, however, major social media and video distribution sites do not accept third-party's ad measurements, and even if they do, it is limited only to foreign providers, and thus, we cannot conduct ad measurements.

<Explanation from digital platform operators in response to the above opinion>

- Our company accepts third-party ad measurements. As a third-party measurement of ad performance of our company's ad products, advertisers can use the third-party partners that are verified as a member of our measurement partners program. Our company uses objective and transparent criteria for approving third-party measurement partners and ensuring partners meet high standards for quality, technical capability and the ability to safeguard data (including privacy and security). There are more than 20 verified third-party partners that work across our advertising products and cover a range of specialisations.
- Our company partners with numerous third party measurement providers around the world and in Japan who provide independent metrics to our advertisers. We remain open to entering into further measurement partnerships. We carefully select measurement partners to ensure advertisers can be confident that they are receiving accurate and independently calculated metrics, and so users can be confident their data is protected.
- As for the measurement provider, we limit the use of those which have contracts with us only. The necessity and reasonability for the restriction is that since the codes

(JavaScript) can be executed on our media, there is a possibility of security risks to Internet users and our media. Therefore, the use of the measurement providers is restricted to only those companies that have the technology to deal with such risks. We do not distinguish between domestic and foreign companies.

#### b Views from the AMA and the competition policy

A digital platform operator allows access to its own media only through its own DSPs for the purpose of protecting privacy, etc. when it owns the media. For similar purposes, a digital platform operator allows only a part of the ad measurement service providers to connect with its own media.

If, as a means to achieve unjust purposes under the AMA such as excluding the competing intermediaries in open display, a digital platform operator disconnects or refuses a third party DSP to connect from its own major media, and therefore makes the DSP difficult to carry on business activities, such as the DSP cannot easily find alternative media and is forced to exit the market, etc., then it could be a violation of the AMA (individual direct refusal to deal, etc.). In addition, if a digital platform operator allows an advertiser to distribute ads to its own media only through its own DSP, ties the access to its own major media with the access to its own DSP, and therefore, excludes third party DSPs, such as the third party DSPs are forced to exit the market, then it could be a violation of the AMA (tie-in sales, etc.). Furthermore, if the conduct in question excludes the business activities of third party DSPs, it could be a violation of the AMA (private monopolization), depending on the position of the digital platform operator and the situation of its competitors.

A digital platform operator also provides ad measurement services to a certain extent. If, as a means to achieve unjust purposes under the AMA such as excluding the competing providers in the ad measurement business, a digital platform operator disconnects or refuses an ad measurement service provider to connect from its own major media, and therefore makes the ad measurement service provider difficult to carry on business activities, then it could be a violation of the AMA (individual direct refusal to deal, etc.). Furthermore, if the conduct in question excludes the business activities of ad measurement service providers, it could be a violation of the AMA (private monopolization), depending on the position of the digital platform operator and the situation of its competitors.

In order to increase fairness and transparency of transactions and ensure a fair competitive environment, when a digital platform operator disconnects or refuses third party DSPs to connect from its own media, it is desirable (1) to explain the reason, and (2) to provide sufficient time for the third party DSP to respond. In addition, regarding

the ad measurement services, it is desirable (3) to clarify ad measurement standard for connecting to its own media and (4) to identify the reasons if refusing the connection.<sup>59</sup>

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<sup>59</sup> Regarding the ad measurement services, there are calls for ad measurements by a third party and for comparison based on uniform standards, as described in 4(8) c Criteria of viewability below.

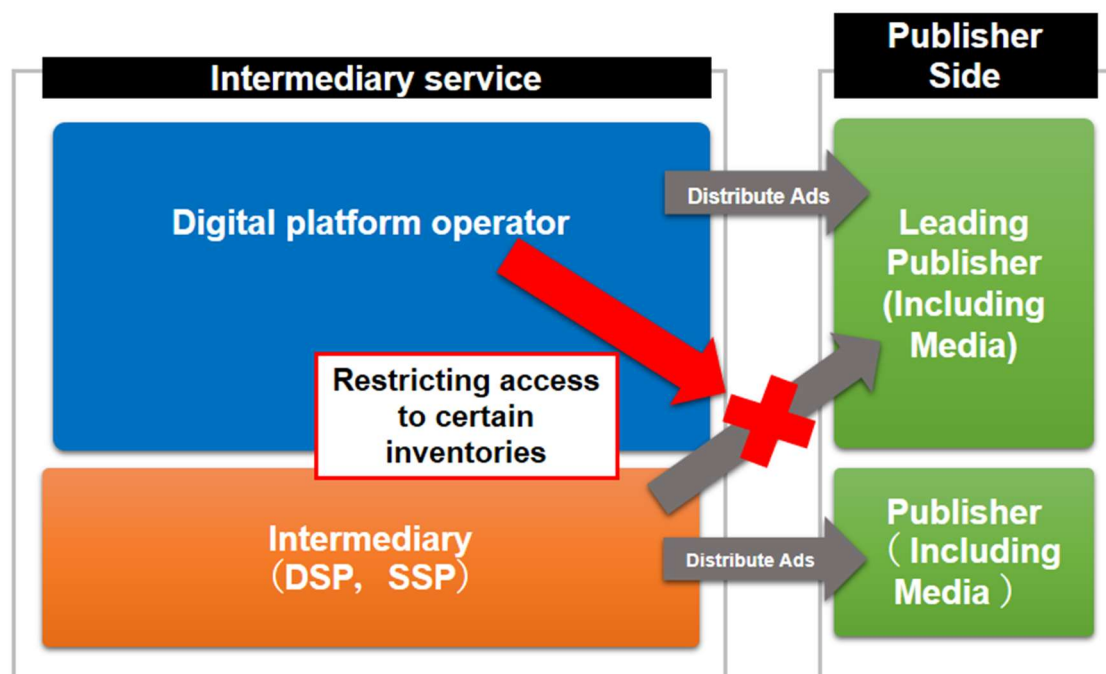
### (3) Restricting access to certain inventories

A digital platform operator has many inventories of leading publishers. The inventories of the leading publishers are considered as the inventories that catch the eyes of many consumers and are crucial in terms of increasing profitability and brand awareness. The issue is that a digital platform operator may not open the good-quality inventories of such leading publishers to third-party DSPs.

In this regard, as stated in the Interim Report, the following table shows the status of responses answering that, despite bidding at or above the appropriate price, the company was unable to distribute inventory it wants to distribute in the businesses survey.<sup>60</sup>

Respondent's type	Percentage of respondents answering that, despite bidding at or above the appropriate price, the company was unable to distribute inventory it wants to distribute as a result of the businesses survey
Advertiser and ad agency	More than 10% to less than 20%
Intermediary	Less than 15% to more than 20%

Figure 23 Transaction Flow Related to Restricting Access to Certain Inventory



<sup>60</sup> Attachment 1, Pages 28 and 82 of the Interim Report, supra



## a Major issues and explanations of digital platform operator

### <Opinion from an ad agency>

- A certain digital platform operator does not make good-quality ad inventory of major publishers available to ads distributed by third-party DSPs, and such ads can only be distributed to the remaining ad inventory of publishers other than major publishers.

### <Opinion from a publisher>

- In a contract with a certain digital platform operator, it is provided that (i) the publisher shall not use third-party services, (ii) in the case the publisher uses [a third-party service], it shall consult with the digital platform operator, and (iii) the publisher shall bear unlimited liability for damages resulting from the use of a third-party service.

### <Explanation from digital platform operators in response to the above opinions>

- Our company only has one product (that is, our ad exchange/SSP) that allows third-party buy-side products (i.e. ad networks, trading desks and/or DSPs) to buy ad inventory managed by our company. We confirm that our ad exchange/SSP's auction does not treat bids from third-party DSPs and our company's DSPs differently. Our ad exchange/SSP's auction provides for equal treatment of all indirect buyers of inventory: a given impression will be sold to the highest bidder at a price equal to the net highest bid. No buyer has access to the bid of any other buyer, including header bidders. Publishers that use our product have granular control over which DSPs have access to their inventory. For example, the publisher can configure the settings such that only third-party DSPs are able to bid.

In response to the second comment above, we are not aware of the alleged clauses in relation to use of third-party advertising intermediary services.

## b Views from the AMA and the competition policy

If, by allowing ad distributions to the specific inventories to be done only through its own ad tech services, a digital platform operator interferes with ad distributions to a publisher by the third party DSP that competes with itself and excludes the third party DSPs, then it could be a violation of the AMA (interference with a competitor's transactions). In addition, if a digital platform operator trades with a publisher on the condition that the publisher will not trade with the third party SSPs that competes with the digital platform operator and excludes the third party SSPs, it could be a violation of the AMA (trading on exclusive terms, trading on restrictive terms). Furthermore, if these conducts in question exclude the business activities of third party DSPs or third party

SSPs, it could be a violation of the AMA (private monopolization), depending on the position of the digital platform operator and the situation of its competitors.

In order to increase fairness and transparency of transactions and to ensure a fair competitive environment, regarding the inventories where a large number of advertisers (ad agencies) wish to post their ads, it is desirable that DSPs and SSPs participating in the bidding be able to participate in the bidding fairly, regardless of whether it is the DSPs and SSPs of the digital platform operator or those of a third party, and that a mechanism be prepared in a way that the bidding participants can verify whether the bidding is being conducted fairly.

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### 3 Conducts that could restrict business partners' business activities

The point is that a digital platform operator requires the intermediary that has become the reseller of the digital platform operator, (1) to restrict transactions with the competing digital platform operator and the leading publisher, (2) to maintain the percentage of its use of digital platform operator's services above a certain level, and (3) to restrict its use of competing functions.

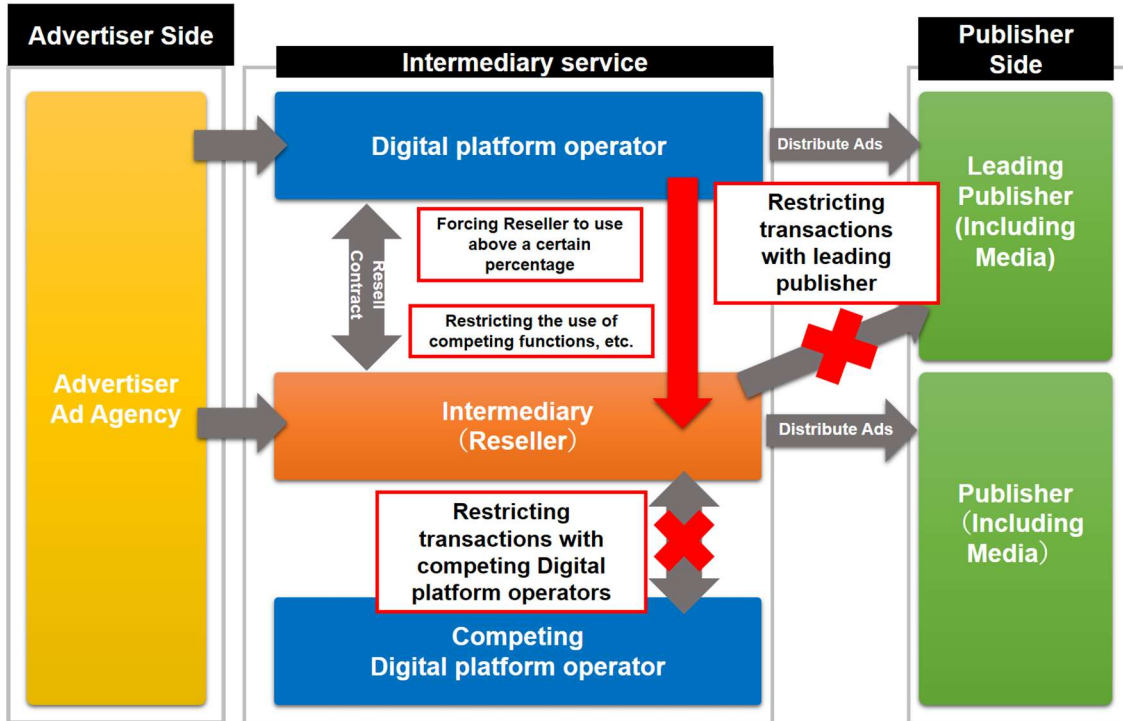
In this regard, as described in the Interim Report, the following table shows the responses regarding the conditions for resale given by a particular digital platform operator in the businesses survey.<sup>[61]</sup>

Respondent's type	Status of responses regarding the conditions for resale given by a particular digital platform operator
Intermediary	"The digital platform operator restricts business activities with some publishers": less than 7%
	"The digital platform operator makes the percentage of the inventory sold as an agent to overall inventory larger than a certain level": less than 7%
	"The digital platform operator restricts implementation of header bidding functions as your original services": less than 7%
	"When you implement new functions as your original services, it is necessary to share information of the new functions to the digital platform operators ": less than 7%
	"You have never been requested any conditions": less than 87%

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<sup>[61]</sup> Attachment 1, Pages 92 and 93 of the Interim Report

Figure 24 Transaction Flow Related to Restrictions against Resellers



(1) Restricting transactions with competing digital platform operator, etc.

○Major issues and Explanation of digital platform operator

<Opinion from a reseller>

- Our company is a sales agency for a digital platform operator, and was planning to develop a new ad tech service in partnership with a competitor of the digital platform operator, however, we were pressured that if we wanted to continue the agency contract with the digital platform operator, we had to cancel the partnership with the competitor, and as a result, we were forced to cancel the partnership.

<Opinion from a reseller>

- A certain digital platform operator prohibits us from selling ad inventory to an ad network provided by another digital platform operator that competes with the digital platform operator.

<Explanation from digital platform operators in response to the above opinions>

- We generally do not impose any restrictions on business users or agencies to use competing ad systems.

Our agreements with partners in relation to our publisher ad server and ad exchange do not contain provisions that prohibit or restrict the business users' use of third party services other than our intermediary services.

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## (2) Restricting transactions with leading publishers

### ○Major issues and Explanation of digital platform operator

<Opinion from a reseller >

- A certain digital platform operator ranks publishers according to their size, and prohibits sales agencies from selling to the publisher that is the largest in scale and has the good quality ad inventory.

<Explanation from digital platform operator in response to the above opinion>

- We do not prohibit our publishing-facing product partners from selling to any specific publisher. Our publishing-facing product partners are free to sell to large-scale publishers that have good-quality ad inventory.

In relation to our publisher ad server and ad exchange, there may be clauses in the terms and conditions that allow us to determine which customer the partner can pursue as a reseller of the product. These clauses are reasonably necessary to allow us to coordinate how to best serve its customers. For some customers it will be better if the partner services the customer, while for other customers it will be better for us to directly service the customer. We may also refer customers to the partner.

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## (3) Requiring resellers to use certain proportion of digital platform operators' services, etc.

### ○Major issues and Explanation of digital platform operator

<Opinion from a reseller >

- Our company is the sales agency for a digital platform operator, however, in some cases, we are required to maintain a certain share with respect to the ad tech services provided by the digital platform operator.

<Explanation from digital platform operators in response to the above opinion>

- We generally do not impose any restrictions on business users or sales agencies to use competing ad systems. We ask our certified partners to achieve a certain level of distribution ratio between programmatic ads and in-house ads so as to protect our publishers' revenue. This is to ensure that publishers do not suffer from reduced revenues. This is consistent with common market practice to set such sales targets for distributors/sales agencies.

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#### (4) Restricting the use of competing functions, etc.

##### ○Major issues and explanation of digital platform operator

<Opinion from a reseller >

- When sales agencies develop new functions or provide new services related to the services provided by digital platform operators, they need to confirm with the digital platform operators in advance that such functions or services do not compete with the services provided by the digital platform operators.

<Opinion from a reseller >

- Distribution agencies are not allowed to provide the so-called header bidding, a system that allows multiple SSPs and ad exchanges to receive ad requests at the same time, and in fact, it is business operators that are not sales agencies that provide header bidding.

<Explanation from digital platform operators in response to the above opinions>

- In response to the first comment above, we are not aware of any restriction or requirement that obliges sales agencies to confirm with us in advance if they develop new functions or provide new services, so as to ensure that they do not compete with us. As to the second comment above, our company does not impose any restrictions on business users using header bidding. Our ad server has always been compatible with header bidding technologies. Publishers can integrate ad server with header bidding partners. Many publishers use our ad server with header bidding.

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#### (5) Views from the AMA and the competition policy

A digital platform operator may impose certain terms on business activities in its resale, contractssuch as imposing its best-efforts obligation to sell its services on the intermediary that has become the reseller of it.

If a digital platform operator (1) restricts transactions with the competing digital platform operator, etc., (2) restricts transactions with leading publishers, (3) requires resellers to use certain portions of its own services, or (4) restricts the use of competing functions, etc. against the intermediaries that have become the reseller of the digital platform operator, and a competitor is excluded or its business activity is restricted such as the competing digital platform operator or the competing intermediary cannot easily find alternative trading partners, then it could be a violation of the AMA (trading on exclusive terms, trading on restrictive terms, etc.). Furthermore, if these conducts in question exclude the business activities of competitors, it could be a violation of the

AMA (private monopolization), depending on the position of the digital platform operator and the situation of its competitors.

In order to increase fairness and transparency of transactions and to ensure a fair competitive environment, it is desirable for a digital platform operator (1) to clearly define in writing the contents of the restrictions imposed on the intermediaries that have become the reseller of a digital platform operator, (2) (i) to inform in advance and explain sufficiently about the content of the change of the contract; (ii) to give the other party an opportunity to express an opinion and take into account as much as possible any reasonable reasons why the other party cannot accept the change in question; and (iii) to set sufficient time from the notification of the content of the change until its application, depending on the content of the change.

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## 4 Conducts that could lack fairness or transparency

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### (1) Summary

There are issues such as unclear review and displaying criteria for advertising, opacity of supply chain and fees, lack of measurement standards of viewability, inadequate information disclosure of ad fraud, and uncertainty in account review criteria.

Regarding these points, as described in the Interim Report, the following table shows the status of responses answering that there are problems and issues with the results of displayed ads in the businesses survey.<sup>62</sup>

Respondent's type	Percentage of responses answering that there are problems and issues with the results of displayed ads
Advertiser and ad agency	More than 15% to more than 30%

The following table shows the status of responses answering that there are problems and issues with transparency of supply chain.<sup>63</sup>

Respondent's type	Percentage of responses answering that there are problems and issues with transparency of supply chain
Advertiser and ad agency	Less than 45% to more than 50%
Publisher	Less than 40% to more than 55%

The following table shows the status of responses answering that there are problems or issues with viewability.<sup>64</sup> <sup>65</sup>

Respondent's type	Percentage of responses answering that there are problems or issues with viewability
Advertiser and ad agency	More than 50% to 55%

The following table shows the status of responses answering that they were dissatisfied with ad fraud's measures.<sup>66</sup> <sup>67</sup>

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<sup>62</sup> Section 2, Part 1, 4(5) of the Interim Report, supra

<sup>63</sup> Section 2, Part 1, 4(3), supra

<sup>64</sup> See Part 2, Chapter 2, Column 2 above: Issues about quality and trade practice in digital advertising (2).

<sup>65</sup> Section 2, Part 1, 4(4) of the Interim Report, supra

<sup>66</sup> See Part 2, Chapter 2, Column 2 above: Issues about quality and trade practice in digital advertising (1).

<sup>67</sup> Section 2, Part 1, 4 (2) of the Interim Report, supra

Respondent's type	Percentage of responses answering that they were dissatisfied with ad fraud's measures
Advertiser and ad agency	More than 40% to less than 60%
Publisher	More than 30% to more than 40%

Finally, the table below shows the status of responses related to review criteria of accounts required for service connections.<sup>68</sup>

Respondent's Type	Status of responses related to review criteria of accounts required for service connections
Advertiser and ad agency	"Although review standards are disclosed, the standards are abstract and lack objectivity": Less than 5% to less than 15%
	"We feel the actual reviews are not done according to the disclosed standards": more than 1% to less than 5%
	"The reviews are prejudiced and lack consistency": less than 3% to less than 5%
	"We do not have complaints": More than 50% to more than 60%
Publisher	"Although review standards are disclosed, the standards are abstract and lack objectivity": less than 5% to less than 10%
	"We feel the actual reviews are not done according to the disclosed standards": more than 1% to 5%
	"The reviews are prejudiced and lack consistency": more than 2%
	"We do not have complaints": around 65%

## (2) Criteria of displaying ads

### ○Major issues and explanation of digital platform operator

<Opinion from an ad agency>

- Although we satisfied the criteria for displaying ads, the display of our ad was stopped. There was no explanation from the digital platform operator of the reason

<sup>68</sup> Attachment 1, page 53, 54, 170, and 171 of the Interim Report, supra



why it was stopped, and it seems that the judgements differ depending on the point of contact.

<Opinion from an ad agency>

- The criteria for the number of ads displayed in search results are unclear. It may be customized according to the user, but the number changes greatly.

<Explanation from digital platform operators in response to the above opinions>

- In response to the first comment above, we widely publicize easy to understand ads policies to advertisers. Advertisers whose ads are suspended will receive a notification identifying all policies the ad has been suspended for violating and a link to submit an appeal. In addition, we have measures such as necessary training for reviewers to ensure uniform application of the policies.

As to how the ad position is determined in our search results, we publish guidance on our Help Centre pages. We rank search ads to ensure that ads appearing on our owned inventory or websites are high quality, relevant to the search query. Generally, the ad with the highest ranking is displayed in the top position and the ad with the second-highest ranking shows in the second position, and so on. Our ranking mechanism incorporates the following factors and provides advertisers with an incentive to improve quality and relevance of their ads: (i) the unit price of the bid, (ii) quality of ads and the linked landing page when clicking on the ad, (iii) the competitiveness of an auction, (iv) the context of the search, (v) the expected impact of ad extensions and other formats, (vi) ranking thresholds (the minimum ranking necessary for an ad to be eligible to show). This minimum ranking is generally the same for all advertisers competing for a particular query. However, because every advertiser is different - and because the quality of their respective ads and landing pages are different - each advertiser will have a different minimum bid necessary to exceed the minimum ranking.

The number of ad positions available to advertisers depends on the ranking thresholds in question. Advertisers are able to place a maximum of eight text ads on search results pages. By setting the minimum ranking required to display an ad on search results (e.g. display ads from advertisers who have achieved a certain ranking or higher), the number of ad positions available to advertisers changes.

- The display ranking of search-linked advertisement is determined based on criteria using the ad quality and the bid amount. The ad quality is evaluated using the criteria based on the relevance of the keywords and the titles. The maximum number of ads is defined based on the criteria that take into account the usability in search. These standards are explained and offered in advance.

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### (3) Opacity of Fee

#### ○Major issues and explanation of digital platform operator

##### <Opinion from a publisher>

- Of the ads fee paid by advertisers, the flow of money is opaque and it is unclear how much fees ad intermediaries charge in each step, and how much is ultimately left for the publisher. The publishers' share may be less than half of the ads fees paid by advertisers.

##### <Explanation from digital platform operators in response to the above opinion>

- We have a clear pricing structure for our publisher-facing services for websites and disclose the fees for these services clearly to publishers, for example, in their contracts with our company. Publishers using these services also receive itemised bills which allow them to identify and quantify revenue flows.

Our clear fee structure has been recognised by the CMA in its Final Report on Online Platforms and Digital Advertising, in which the CMA concluded that they did not find evidence that we are charging higher prices than our competitors in the intermediation chain, or that we were extracting significant 'hidden' fees. In fact, even when ads flow through both our buy-side and sell-side services, publishers receive most of the revenue.

We appreciate the importance of pricing transparency. The ad tech ecosystem is complex and can involve many players in one transaction. Where advertisers use agencies who then use DSPs, the information about prices is provided by the DSP to the agency, which can provide that information to its advertiser customer.

- It is our understanding that the inference that the publisher's share is not even half of the advertising expenditures paid by advertisers is not based on the fact, at least with respect to our platforms. There is also competition in the purchase of advertising spaces of publishers, so distribution platforms cannot get the opportunities to distribute unless profitability for publishers can be increased. The allocation rates of advertising revenue paid by advertisers may differ from publisher to publisher in terms of result, but we think that the publishers see the benefits of using the platform as increasing profitability through effective utilization of advertising spaces as a whole, rather than individually obtaining high rates. Therefore, in our view, there is no actual situation in which only the rate itself is considered important.
- The commissions are based on terms of service and conditions of contracts between the publisher and the SSPs, ad network operators. In addition, since publishers have the option to choose partner with high profitability and good conditions from among multiple service providers or operate the service themselves, it is important to exclude service providers with low profitability and select the right partner for them.

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#### (4) Opacity of advertising unit prices, etc.

##### ○Major issues and explanation of digital platform operator

###### <Opinion from a publisher>

- Although our company is a publisher, the information disclosed by the digital platform operator does not provide the unit prices of ads placed in the media of our company, or what kind of targeting the advertiser conducted, etc. As the disclosure of information is insufficient, it is difficult to maintain brand image.

###### <Explanation from digital platform operators in response to the above opinion>

- We share information to publishers through reporting based on a wide range of metrics, including: ad revenue per thousand ad impressions, total CPM and CPC revenue based on number of ad units served and advertiser click-through rate. For publishers who want more granular data at bid level, we also offer data reports. Our ad server/exchange is a publisher facing product and does not hold any information on what kind of targeting the buyers have conducted, so cannot provide this type of information. We are not aware of having received any further requests from publishers.

Our ad server/exchange also provides tools for publishers to help manage their brand, avoid competing advertisers' ads from appearing together, and determine which inventory (if any) they want to make available to the open auction. Publishers can manage the brand of their websites or apps with ad content targeting rules, opting to block certain types of ads and opting to allow certain categories of ads.

- Our company provides various performance, metrics and analysis tools to third party publisher partners, to enable publisher partners to manage placements, understand performance, enable insights for inventory, and display easy to read dashboards across key metrics such as estimated revenue, clicks, fill rate and ad requests.

We offer publishers tools to provide greater control over the ads that appear on their property, such as block lists, self-serve ad blocking, and the ability to report ads the publisher would like removed.

- We disclose basic information such as the unit prices and the impressions, and we have never been asked to provide further information by the publishers. We respond to inquiries about the individual cases individually. We also have not received any request to provide the data report from advertisers, and we do not prepare to implement them at present. Of course, if there is a request, it is possible to consider it.

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#### (5) Criteria of viewability

##### ○Major issues and explanation of digital platform operator

<Opinion from an advertiser>

- The problem with counting impression is that since the definition of impression varies depending on the media, there are many unclear points such as the fact that even if an ad is placed in a place where the user cannot see it, it is counted as an impression.

<Explanation of Digital Platform Businesses on Points>

- We set the metrics for measuring whether an impression was viewable and how long it was displayed according to the guidelines on measuring viewability of ads developed by the US Media Rating Council. Specifically, display ads with less than 242,500 pixels (970 x 250) are considered viewable when at least 50% of the ad is visible for at least 1 second, and display ads with 242,500 pixels (970 x 250) or greater are considered viewable when at least 30% of the ad is visible for at least 1 second, and video ads are considered viewable when at least 50% of its area is visible while the video is playing for at least 2 consecutive seconds.

Furthermore, our company is a member of the Japan Interactive Advertising Association (JIAA), which has published high level principles on viewability and will likely create a definition of a “view” as part of the certification programme of JICDAQ which is a certification organization soon to be established. Our company is contributing to this. In addition, JIAA is also a national licensee of the IAB, which allows it to adopt the IAB’s published standards of viewability.

- It is generally defined that an advertisement is displayed in visible range when 50% or more range of the advertisement is displayed for more than one second.

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## (6) Measures toward ad fraud

### ○Major issues and explanation of digital platform operator

<Opinion from an intermediary>

- Since a certain digital platform operator will only notify the deducted amount without disclosing which media the ad fraud had been found on, there is no way for us to take any countermeasures. Since the media on which the ad fraud occurred is unknown, it cannot be deducted from our payment to the media, and we have no choice but to bear such expenses. The amount of damages can reach up to several million yen per month.

<Opinion from a publisher>

- The criteria by which the digital platform operator determines ad fraud are unclear. We cannot take countermeasures because only the amount of reduction is notified

and "when," "where" and "how many times" ad frauds have occurred is not disclosed.

<Explanation from digital platform operators in response to the above opinions>

- Our automated real-time (pre-bid) filters are often able to prevent buyers from being charged for invalid traffic. In the event that invalid traffic occurred, our company would disclose the credit/refund amount issued as a result of invalid traffic and the period of time for which such credits/refunds were issued. On the other hand, we do not disclose details of the invalid traffic incident. The reason we do not disclose the details of invalid traffic and internal criteria, etc. is because disclosure could be used by bad actors to reverse engineer ad fraud defences, or create new means for hiding invalid traffic, making it harder for our company to detect it. Providing further information on ad fraud incidents that have occurred creates a risk that bad actors will cause damage, and an increase in the number of ad frauds will lead to harm to publishers and advertisers.

Furthermore, we also do not disclose information about where the invalid traffic incident happened as such information is not particularly helpful for the prevention of invalid traffic. Very often, invalid traffic involves "domain spoofing" techniques which impersonate domain names of the real traffic. The spoofed domain names don't represent the bad publishers where the ads appeared in reality.

However, we offer many resources to help business users take measures to prevent ad fraud. We have a website dedicated to ad fraud, which sets out comprehensive 37 lists of resources for publishers and advertisers respectively. We also publish blog posts, including an annual update on the removal of bad actors from the ecosystem.

- For the advertisers or the advertising agencies, we basically do not disclose detailed information about ad fraud from the viewpoint of ensuring the effectiveness of the security and the ad fraud measures.

On the other hand, even in the cases where detailed information on ad fraud is not disclosed by us, using the effectiveness measurement of the third-party vendors, the advertisers and the advertising agencies can know the target media and time about the traffic suspected of ad fraud as determined by the vendor. Based on this information, the advertisers and the advertising agencies are able to take measures such as refraining from distributing advertisements to the media where a large amount of ad-fraud has been measured. In light of the fact that such effectiveness measurements of the third-party vendors are available, it is our understanding that the contents of our information disclosure is sufficient for the advertisers and the advertising agencies to take measures against ad fraud.

In some cases, it seems that the publishers may factually tolerate ad fraud, and it is undeniable that the publishers themselves, who try to operate their sites properly, may not be willing to take measures against ad fraud. (For example, if the publishers analyze the access log of their website and finds accesses with characteristics that seem to be ad fraud, it may be possible to take measures such as not displaying ads on the pages of the website with accesses that have such characteristics, but in talking with publishers, we have the impression that they does not make much effort to take such action.) However, we sometimes receive comments from publishers that we do not provide enough explanations on what we consider to be ad fraud when we identified a transaction as ad fraud and their transactions are suspended or their sales are reduced.

We think that there is room for improvements, including the way of providing information to the publishers, and considering the opinions of publishers, we prepare to introduce the countermeasures, such as blocking not to be charged for ad-fraud traffic. With regard to the reasons for judging ad fraud traffic, while taking into consideration the opinions of publishers, we plan to expand the range of information we provide the publishers to the extent that our ad fraud measures are not adversely affected.

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## (7) Review criteria of accounts required for service connections

### ○Major issues and explanation of digital platform operator

#### <Opinion from an ad agency>

- Ads that were run by our company as an agency were all suspended due to account suspension. The reason given for the suspension was security and quality maintenance, but there was no further explanation, and our company suffered a loss amounting to one million [yen] per month without knowing which ad violated the criteria.

#### <Opinion from an ad agency>

- When asking the digital platform operator the reason for refusing to open an account or suspending an account, there are times when each contact person points out issues on different items, and there is no sense of unity.

#### <Explanation from digital platform operators in response to the above opinions>

- Advertiser accounts are not subject to an approval process at the time of creation so an application cannot be rejected. We have recently introduced an advertiser identity verification process and advertiser accounts might be paused when there are issues with verification. After an advertiser account is created, an automated and human

evaluation process is used to confirm compliance with our policies. For policy violations that lead to account suspension, advertisers are sent a warning stating the nature of the policy violation and any remedial actions they can take to comply with the policy. The advertiser will be given an opportunity to remedy the violation or explain why they do not believe they are in violation of the policy. This notification will be sent at least 7 days prior to suspension action for non-egregious violations. Non-compliance with warning emails and/or the creation of ads violating the same policy will lead to account suspension. Advertisers whose accounts are suspended will receive an in-account notification, as well as an email notification. The email notification will identify all policies the advertiser has been suspended for violating and a link to submit an appeal. If we detect an egregious policy violation, the account may be suspended immediately and without prior warning.

For publisher accounts, automated and human evaluations are performed at the time of account application and creation, and following approvals, all sites are then subject to automated continuous monitoring to verify both content and behavioural compliance with our programme policies. If the application for the account is rejected, our company will notify the applicant by email that the account has not been approved. As for the reason why the application was rejected, we are unable to provide publishers with the details of the reason due to the risks that bad actors may reverse engineer and bypass our company's ad fraud detection mechanisms.

After a publisher account is created, and if there is suspicion of invalid traffic or a violation of our policies, our company may suspend or disable the account. When an account is suspended, the account holder will receive an email stating the reason for the suspension (policy violation or invalid traffic) and the account will be suspended until the problem is fixed. The decision to disable an account depends on the severity of the violation and other factors, but our company may disable the account immediately if, for example, the publisher is generating an excessive amount of invalid traffic or there is a legal issue associated with the publisher account. Furthermore, repeat offenders and deliberate abusers may have their accounts disabled and find themselves banned from using our company's ad platforms. If an account is disabled, the publisher will receive an email from our company stating that the account has been disabled and whether any action is required and will be informed why the account was disabled. A disabled account holder can appeal the disabling of their account through our company's appeal form.

- When reviewing the accounts, we mainly check whether the manuscript of the advertisement or registration information meets the criteria for fraud, and whether the registration information matches that of a fraudulent advertisers who have engaged in fraudulent activities in the past.

In principle, when refusing to open an account or closing opened account, communication is basically conducted without necessarily providing details from the perspective of maintaining security and quality maintenance. However, depending on the importance of transactions, like the transaction size, and the background of the communication with customers, the detailed explanations of the reasons for account suspension are provided in some cases.

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## (8) Views from the competition policy

### a Criteria of displaying ads

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For an advertiser (ad agency), whether ads are actually displayed or not is directly linked to purchasing and other outcomes, and some advertisers (ad agencies) feel opaque about criteria of displaying ads.

This type of opacity makes it difficult for an advertiser (ad agency) to make optimal choices, and may distort the fair competitive environment for acquiring inventories.

In order to resolve the opacity of criteria of displaying ads and to ensure a fair competitive environment for acquiring inventory, it is desirable for a digital platform operator (1) to clarify the criteria of displaying ads and increase consistency in applications of that criteria, (2) to establish a system for the application and receiving inquiries by advertisers (ad agencies) in Japan and try to provide as fair an operation as possible, and (3) to notify in advance in principle and provide an appropriate time period to respond, depending to on the reason and size of the changes, in case of any changes of the criteria of displaying ads.

### b Opacity of Fee and advertising unit prices

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Due to digital platform operator's vertical integration of various services, opacity in the supply chain, such as opacity in fee and advertising unit prices, has been pointed out. Opacity in the supply chain may lead to a lack of information that is necessary for an advertiser (ad agency) and a publisher, make it difficult to make optimal choices, and distort a fair competitive environment for acquiring an advertiser (ad agency) and a publisher between a digital platform operator and an intermediary.

In order to increase transparency of the supply chain and to ensure a fair competitive environment, concerning fees and advertising unit prices, etc. it is desirable for digital platform operators (1) to voluntarily disclose information (e.g. the results of analyses of the fees incurred when conducting an advertising distribution using their own services) and (2) to establish a system in Japan to achieve adequate accountability.



### c Criteria of viewability

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Advertising visibility, also known as viewability, is a particularly important indicator for digital advertising when the effectiveness of advertising is measured by the number of distribution and when advertising fees are paid based on the number of impression by a contract. Whether a user is actually able to see ads or whether a user actually sees ads among the ads displayed on web pages does not necessarily correspond to an impression count. Thus, information on viewability is necessary for an advertiser (ad agency) to verify the quality of advertising traded s and to make the optimal choices.

On the other hand, an advertiser (ad agency) receives data such as the number of ads displayed and the number of viewable ads, but these data are only reported by DSPs themselves and there are calls for ad measurements by a third party.<sup>[69]</sup> Regarding the ad measurements by a third party, there are also comments that a digital platforms should be comparable with a uniform standard.<sup>[70]</sup>

In order to ensure a fair competitive environment for the acquisition of advertisers (ad agencies) among publishers by enabling the optimal selection by advertisers (ad agencies), it is important to increase transparency by providing information about viewability and using third-party measurement services, and it is desirable to define objective standards for viewability, based on international standards, and to disseminate these standards.

### d Measures toward ad fraud

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Ad fraud is a malicious activity that unreasonably defrauds an advertiser of advertising revenue and when occurrence of the ad fraud is identified, the advertising fee is adjusted because the digital ad is not actually visually recognized. However, because a digital platform operator does not disclose information on ad fraud, there is a situation where the person who should bear the refund is unaware and, consequently, an intermediary that does not conduct ad fraud has to bear the burden. In addition, since this information is not disclosed, it is also problematic that there is no way to take measures such as avoiding distributing ads on media where the ad fraud occurs. In such circumstances, it may become difficult for an advertiser (ad agency) to select

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<sup>[69]</sup> See, Section 2, Part 1, 4(4) of the Interim Report, *supra*, "Interim Report on the Evaluation of Competition in the Digital Advertising Market", p. 35. The aforementioned "Advertiser's Statement on digital advertising Issues: Better Digital Experience for Consumers and Sound Industry Development" (p. 7) states that an advertiser does not accept the assessment made by the media itself, and that the verification of media regarding viewability needs to be conducted fairly by a third party.

<sup>[70]</sup> "Interim Report on the Evaluation of Competition in the Digital Advertising Market" p. 35

optimal choices, and the fair competitive environment for acquiring an advertiser (ad agency) between publishers and intermediaries can be distorted.

Disclosing ad fraud data in detail can be dangerous because it can be misused and stimulate ad fraud. Therefore, it is not appropriate to disclose detailed ad fraud data. In addition, as well as the digital platform operators' initiatives, industry-wide ad fraud measures, including advertisers and publishers, need to be undertaken. On the other hand, in order to ensure a fair competitive environment for the acquisition of advertisers (ad agencies) among publishers and intermediaries, it is desirable for a digital platform operator, at least, (1) to disclose to businesses useful information for addressing ad fraud to the extent that it is not misused, (2) to establish a system for addressing ad fraud in Japan, and (3) to actively participate in industry initiatives for addressing ad fraud.

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#### e Review criteria of accounts required for service connections

Establishing and maintaining accounts for using advertising intermediary services is crucial for conducting business activities related to digital advertising, and the rejection for account applications or suspension of the account will have a major impact on the business. As a result, if the account review criteria is operated arbitrarily, it may prevent an intermediary and an advertiser (ad agency) from freely and independently conducting business activities.

In order to ensure that the free and independent business activities of an intermediary and an advertiser (ad agency) are not hindered, it is desirable for a digital platform operator (1) to clarify the review criteria of accounts and improve the consistency in the review; (2) to disclose the state of operation (the number of applications, the number of rejections and reasons for the rejections, review periods, etc.) and increase predictability; (3) to establish a system for the review and consultation in Japan and ensure that the review results are as fair as possible; and (4) to explain the reasons for rejection in principle as clearly as possible when the account application is rejected in the review.

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## 5 Problem of multiple combinations of conducts

As noted above, we have explained the issues pointed out by advertisers (ad agencies), intermediaries, and publishers concerning the individual conducts of digital platform operators and the views in terms of the AMA and competition policies. In addition, it is conceivable that the effects on competition in the relevant markets will be greater if more than one of these conducts is implemented at the same time. For this reason, even if an individual conduct cannot be regarded as a violation of the AMA, there may be a case in which a combination of multiple conducts could be a violation of the AMA (unfair trade practices) as a result of the simultaneous implementation of such conducts that exclude competitors or impede new entry.

In addition, in a case where an individual conduct constitutes an unfair trade practice, the effect of restraining competition may be enhanced by the simultaneous implementation of multiple conducts, which could be violations as private monopolization. For example, if the restrictions of use of third-party services (see 2(2) above) and restricting access on certain inventory (see 2(3) above) are implemented simultaneously, the effect of eliminating the competing intermediary by these conducts would be stronger. Furthermore, in addition to these conducts, if a digital platform operator requires resellers to use certain proportion of its own services (see 3(3) above) as the conducts that could restrict business partners' business activities, the impact on competition in the relevant market could be even greater. For this reason, when examining transactions between businesses with respect to digital platforms from the viewpoint of the AMA, it is essential to understand not only individual conducts but also the overall transactions.

### Chapter 3 Transaction between digital platform operators and Consumers

Consumers use a variety of digital platforms, including search service to find out what products they want, and social media to find out what their friends do. These digital platform operators' services are often offered to consumers free of charge. In exchange, digital platform operators collect or use personal information, and some are concerned about it.<sup>[71]</sup>

Digital platform operators which provide search services and social media services derive revenues primarily from their advertising business, and their advertising (digital advertising) uses data combining user's type information and behavioral history (e.g., web browsing history, search history, response history to advertising, and purchase history) to distribute ads. On receiving this targeting advertisement, less than 70% of consumers think that it is "bothersome" or "somewhat bothersome,"<sup>[72]</sup> while on the other hand, about 70% of consumers believe that it is unavoidable to display advertisements on free search service or social media, suggesting that there is a certain degree of acceptance of the fact that advertisements are displayed while the service is provided for free.<sup>[73]</sup> However, more than 70% of consumers are unaware of the existence or location of search service's terms of service,<sup>[74]</sup> which shows that it is difficult for consumers to be cognizant of what information is used for targeting advertising.

This chapter first describes the technologies used in the collection and use of data related to digital advertising transactions and provides an overview of the movements for expanding control of data by consumers themselves, as seen in the revision of the Act on the Protection of Personal Information. Next, we summarize what information digital platform operators gather from consumers and how they use it. We then discuss the assessment of transactions between digital platform operators and consumers after clarifying the consumers' perceptions of terms of service.

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#### 1 Technologies for collecting and using data related to digital advertising transactions

Many digital advertising are said to collect data such as locations from device's IP addresses, etc., and web browsing history by using technologies such as Cookie information. Because of these technologies, it is said that advertising may be displayed according to type of user or optimized.

The following sections describe the main data used in such digital advertising and the technologies related to the collection and use of the data.

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<sup>[71]</sup> According to Appendix 2 (page 51, 113) of the Interim Report, 52.2% of consumers answered that they were "concerned" or "somewhat concerned" about the collection and use of user data by search service providers, and 60% answered that they were "concerned" or "somewhat concerned" about the collection and use of user data by social media providers.

<sup>[72]</sup> Consumer Affairs Agency, Survey of Awareness and Behavior of Digital Platform Users, May 20, 2020.

<sup>[73]</sup> page 27, 86, Appendix 2 of the "Interim Report" above.

<sup>[74]</sup> Ibid., page 28.

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## (1) Cookie Information

### a Introduction to Cookie

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Cookie is user data that is issued by the web server of a website and automatically stored in the user's web browser when the user visits the website. Cookie is used to identify user and to record website URLs that user has visited and credentials. There are two types of Cookie: first-party cookie and third-party cookie.

### b Differences Between First-Party Cookie and Third-Party Cookie

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#### (a) First-party cookie

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First-party cookie is Cookie from a web server of website that user is visiting.

First-party cookie, for example, is used when user accesses an online shopping site to store the shopping site's user IDs and product information in the cart. When user accesses the shopping site again using the same browser, it eliminates the need to log in again, and eliminates the need to recreate the product in the cart.

As illustrated in FIG. 25, first-party cookie's functionality is described in the first place when user first visits a shopping site, (1) a request is sent from the user's browser to the web server (000.com) requesting data to display the shopping site, and (2) data is returned from the web server to the browser to display the shopping site. At this time, Cookie information is attached to the data for displaying shopping sites, and (3) the Cookie information is stored in the user's browser. When the user visits the shopping site again, as in (1), a request for displaying the shopping site is sent from the browser to the web server. At this time, Cookie data stored in the browser in (3) is sent together. The web server then references Cookie information and returns data for displaying website, so data such as the ID that the user entered last time and product information in the cart are also returned to the browser, and the user sees the data entered last automatically.

#### (b) Third-party cookie

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Third-party cookie is Cookie that is issued by a web server other than website that user is visiting (for example, ad server of digital advertising on website).<sup>[75]</sup>

First-party cookie can collect user data only within user's visited website (within the same domain), whereas third-party cookie can collect user data through ad servers of digital advertisements posted on multiple websites. Therefore, there is no limit to

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<sup>[75]</sup> In this context, "ad server" refers to "the overall server involved in the advertising distribution" (on the contrary, in Part 2, "ad server" refers to two functions in the advertising distribution: advertiser's ad server and publisher's ad server).

the scope in which user data can be collected. In other words, intermediaries using third-party cookie can collect user data or track web browsing history or other actions across several websites where they distribute digital advertising for themselves.

Referring to the third-party cookie's functionality as shown in FIG. 26, when a user buys a pair of soccer shoes on a shopping site, a request is sent from the browser to the web server (000.com), requiring data for displaying the shopping site. In addition, if the shopping site contains a digital advertising, (1) a request is sent to the ad server (×××.com) for data to display digital advertising. Then, (2) ad server sends Cookie information to the browser along with the data for displaying digital advertising, and (3) the Cookie information is stored in the browser. Next, when the user visits another website (△△△.com), a request is sent from the browser to ad server (×××.com) for data to display digital advertising, as described in (1). At this time, the Cookie information stored in the browser as described in (3) above is also sent. Ad server then distributes digital advertising associated with soccer, referring to the Cookie information and recognizing that it is a user that has a web browsing history for the soccer-related website.

### c Use of Cookie in digital advertising

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In digital advertising, digital platform operators and intermediaries use Cookie to gather user data and display ads according to user's interests and type on their targeting.

In addition, a technique called Cookie Sync<sup>[76]</sup> allows website to combine Cookie issued in different domains into one, allowing them to collect user data or track actions such as web browsing history across a wide range of websites. This method is used for services such as in data management platforms (DMPs) for managing and analyzing data when digital advertising is distributed, and in measuring advertising effectiveness (e.g., whether a user purchased a product after viewing the product's advertisement).

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<sup>[76]</sup> A technique that combines Cookie issued to user with Cookie issued to the user in another domain, and integrates the information in the Cookie issued to that user, when user visits website or ad is distributed (Digital Marketing Laboratory: <https://dmlab.jp/words/e022.html>).

Figure 25: Image Diagram of First-Party Cookie.

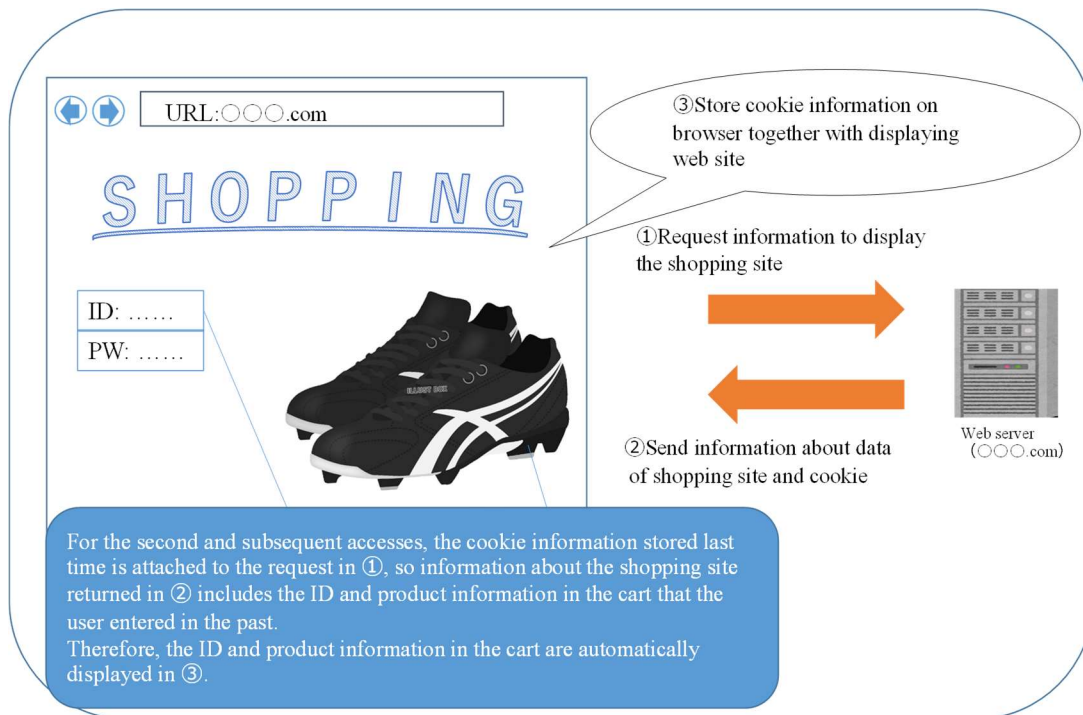
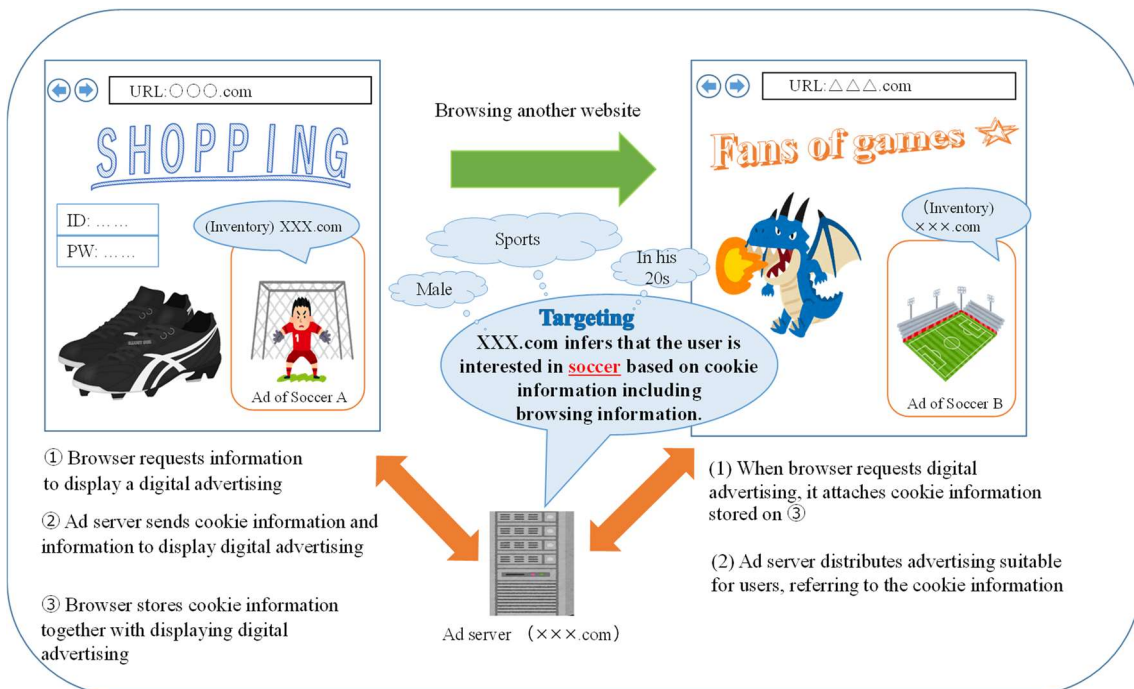


Figure 26: Image Diagram of Third-Party Cookie



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## (2) Recent trends in the use of third-party cookie

### a Recent Developments and Impact on businesses

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Third-party cookie can collect user data across websites and are used for advertising targeting according to user's interests and type, but in recent years, from the perspective of protecting user's privacy, the use of businesses is becoming more restrictive by providers of web browsers.

Apple, for example, introduced ITP (Intelligent Tracking Prevention) in its Safari web browser, which now allows third-party cookies to be deleted immediately. In January 2020, Google also announced its intention to phase out third-party cookie support in the next two years in its Chrome web browser.<sup>[77]</sup> However, Google has announced its policy of introducing an alternative mechanism (Privacy Sandbox) to third-party cookie to take into account the impact of limiting the use of third-party cookie.<sup>[78]</sup>

If third-party cookie is restricted by web browsers, intermediaries (DSPs, SSPs, etc.) that use third-party cookie to distribute advertising may not be able to use Cookie to deliver advertisements suitable for user, which means that high-value (advertising-effective) advertisements cannot be delivered and may impact on their business activities. On the other hand, businesses, which own their portal sites or shopping sites, are said to be able to continue conducting targeting without using third-party cookie, because they can collect user data from first-party cookie and member information on its own sites.

Third-party cookie is also used in addition to digital advertising's targeting. Third-party cookie is used, for example, as a means of tracking the behavior of users after they have viewed an advertisement, in order to measure the effectiveness of the advertisement. Specifically, a user who has viewed an ad for a product may buy the product after visiting multiple websites or leaving time to consider it, rather than purchasing the product immediately after viewing the ad. Third-party cookie can be used to capture this behavior. On the other hand, if third-party cookie is not available, user behavior across multiple sites cannot be tracked, so it is not possible to ascertain the effectiveness of the advertising (whether viewing an advertisement for a product led the user to purchase that product).

### b Comments of intermediary and publisher

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An intermediary survey of impact on business activities by restricted use of third-party cookie found that more than 70% of businesses responded that they were "severely affected" or "somewhat affected."<sup>[79]</sup> Specifically, there are concerns that the existing

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<sup>[77]</sup> <https://blog.chromium.org/2020/01/building-more-private-web-path-towards.html>

<sup>[78]</sup> <https://blog.chromium.org/2021/01/privacy-sandbox-in-2021.html>

<sup>[79]</sup> page 107 of Appendix 1, the above-mentioned Interim Report



business models will become inconsistent. There are also concerns that if a digital platform operator, which is able to collect first-party cookie, develops a new tracking mechanism that does not use third-party cookie, they will be forced to use the mechanism. In other words, it will be forced to trade with the platform operator, and there are concerns that it will become impossible to choose business partner freely.

In addition, some publishers are actively seeking to acquire membership information such as age and gender by increasing the number of registered members on their own websites. In addition, if there is a trend toward limiting the use of third-party cookie, some publishers say that they may change intermediaries they are using from an intermediary that specializes in targeting by using third-party cookie to an intermediary that specializes in targeting by using other means.

Some expect "information bank"<sup>[80]</sup> to act in response to concerns about the concentration of user data by limiting the use of third-party cookie, on certain digital platform operators that can collect first-party cookie.<sup>[81]</sup>

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### (3) Other means

Other than Cookie, there are techniques such as Pixel Tag<sup>[82]</sup> and Browser Finger Printing<sup>[83]</sup> that are used to track user during advertising distribution.

Another means of advertising distribution that does not rely on tracking is contextual advertising. Contextual advertising is a method of automatically analyzing website keywords, text, images, etc. by artificial intelligence (AI) and distributing advertising in line with the contents of the website. Some businesses predict that digital advertising trends will shift from targeting ads, which display ads in response to user's interests and type, to contextual ads, in the future, and are seeking ways to make digital advertising distribution not rely on third-party cookie.

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<sup>[80]</sup> This is a business that manages personal data using a system such as a Personal Data Store (PDS) based on contracts with individuals, and also provides data to third parties (other businesses) based on judging the validity of the data on behalf of individuals based on individual instructions or pre-specified conditions. (Ministry of Internal Affairs and Communications, White Paper on Information and Communications, 2018 edition)

<sup>[81]</sup> Takashi Omamyuda, "Sufferings of Cookie: Cultivating the Road with "CMP" and "Information Bank"", April 2020, Nikkei Computer

<sup>[82]</sup> A small picture that can be embedded in a web page, etc. and that is not visible to user. When user visits a web page, etc., the images are read and you can know who visited the web page, etc. (ACCC "Digital Platforms Inquiry Final Report, July 2019)

<sup>[83]</sup> A technique for gathering informational forms about browsers so that user can be identified. The information gathered includes browser type, font preferences, operating system, battery status, plug-ins, time zone, and so on. ("Digital Platforms Inquiry Final Report" above)

Fingerprinting is said to be completely difficult for user to escape from it because it uses data on devices that user cannot easily remove. Some businesses operating web browsers restrict fingerprinting.

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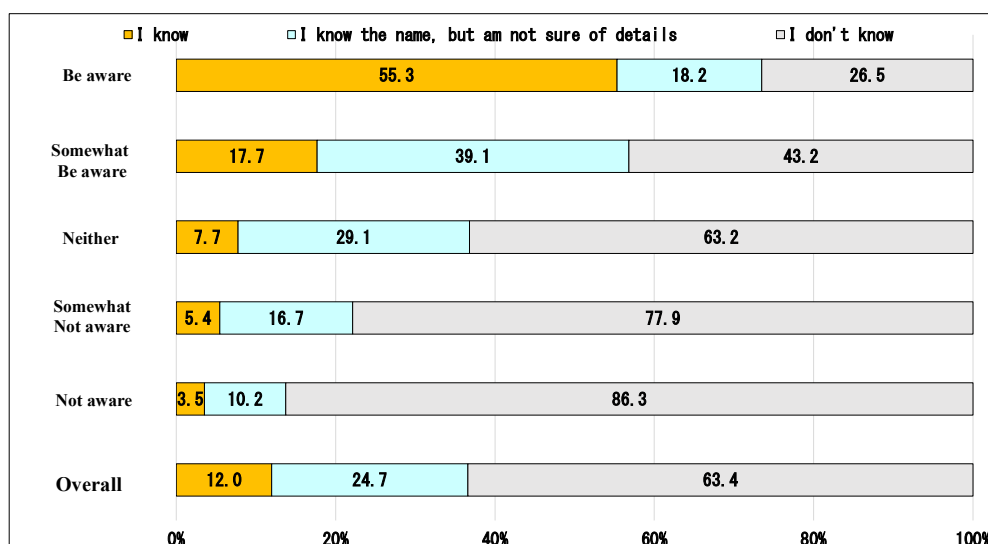
## Column opt-out opt-in

When accessing website, etc., user believes that it is using only the website, etc., and may not be aware that information is gathered for the purpose of advertising display. In fact, a survey found that about 40% of consumers using search service and about 35% of consumers using social media were either "somewhat unaware" or "unaware" of what kind of information was gathered and used for advertising display in the services.<sup>84</sup>

On the other hand, there are options to opt-out and opt-in as a way for user to independently select the extent to which it allows the use of information based on their awareness of the treatment of information about themselves. However, more than 80% of users of search service and social media answered "I know the name (opt-out) but do not know the details" or "I don't know" about opt-out setting, so the awareness of users is quite low.<sup>85</sup> In addition, as shown in the figure below, even among users who recognize what information is collected and used for advertising display when using search service or social media, about 45% answered that "do not know (in detail)" about opt-out setting.

(Head) Q. Some search services offer configurations that do not allow collection and usage of your personal information ("opt out configurations"). Do you know about this function?

(Side) Q. Are you aware of what information is collected or used for displaying advertisements when using search services?



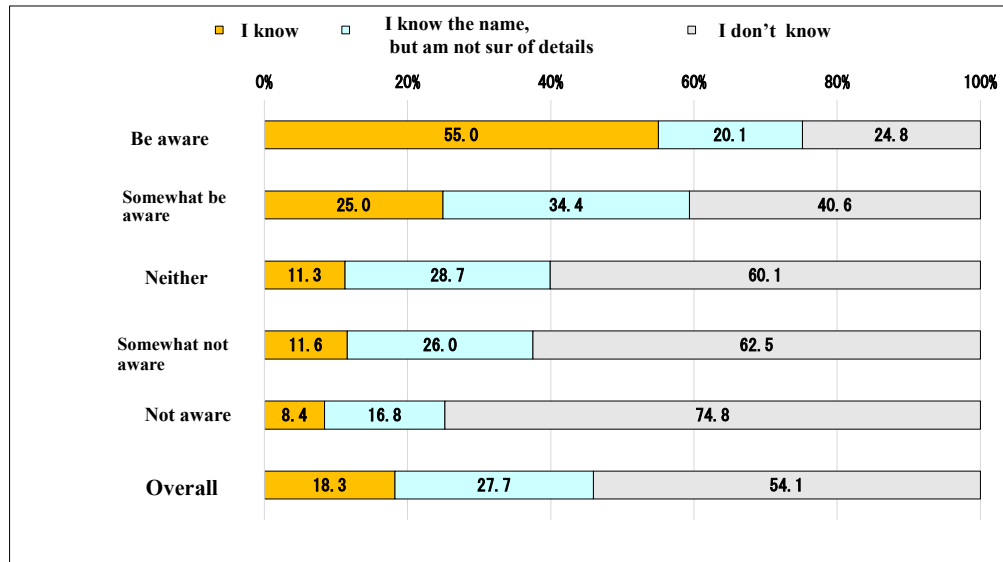
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<sup>84</sup> pages 35 and 94 of Appendix 2 of the Interim Report above

<sup>85</sup> pages 47 and 107 of Appendix 2 of the Interim Report above

(Head) Q. Some social media offer configurations that do not allow collection and usage of your personal information (“opt out configurations”). Do you know about this function?

(Side) Q. Are you aware of what information is collected or used for displaying advertisements when using social media?



### (1) Opt-out

Opt-out is an action by a user that indicates its intention to refuse the use of its information when it is used. This means that, by opting out, you can prevent your own user data from being used when display ads are shown. Sometimes the opt-out of user data usage in digital advertising's distribution is described as "not personalizing advertising."

The "Action Targeting Advertising Guideline"<sup>86</sup> formulated by Japan Interactive Advertising Association (JIAA) also mentions opt-out, and it is required that advertising intermediaries provide a means (opt-out) that allows users themselves to choose whether or not to permit intermediaries to acquire user data and whether or not to permit them to use the acquired information.

<sup>86</sup> It is a guideline ([https://www.jiaa.org/wp-content/uploads/2019/11/JIAA\\_BTAguideline.pdf](https://www.jiaa.org/wp-content/uploads/2019/11/JIAA_BTAguideline.pdf)) that stipulates the basic matters to be observed by Japan Interactive Advertising Association (JIAA) member companies with respect to behavior targeting advertising in which action history information on the Internet such as user's websites and applications browsing history is acquired and advertisements are displayed using that data. In addition, the "Guidelines for Preparation of Privacy Policies" ([http://www.jiaa.org/download/JIAA\\_PPguideline2014\\_02.pdf](http://www.jiaa.org/download/JIAA_PPguideline2014_02.pdf)) have been formulated to present the handling standards and key points when preparing privacy policies for user's personal information and other than personal information acquired for the Internet advertising business.

While opt-out will allow user to manage their own data, the lower user data available for digital advertising's distribution, the less precise targeting can offset the benefits of display advertising for advertiser.

Many digital platform operators allow selective use of opt-out features, and each website provides guidance on how to use them. However, the scope of opt-out varies across digital platform operators, and the use of opt-out does not completely limit digital platform operator's use of user data.

For example, a digital platform operator's service cannot restrict the use of all user data even if the user enables the opt-out feature provided by the operator, and targeting ads continue to appear based on information such as user's approximate location and contents of website that user is visiting. In addition, in the services of a certain social media operator, even if the opt-out function provided by the operator is enabled, the user can only opt-out of targeting based on the information provided by third parties with whom the social media operator collaborates. It is not possible to opt out of targeting based on the user's behavior on the social media (e.g., accounts the user follows, current location, websites clicked on the social media).

Furthermore, digital advertising may be distributed not only through the ad-tech services of the digital platform operators themselves, which provide services such as search services and social media, but may also through the ad-tech services of third parties. In such cases, it is necessary to set up opt-out separately for the third-party ad-tech service. In this regard, DDAI (Data Driven Advertising Initiative)<sup>87</sup> has been established in Japan to promote the appropriate use of data in digital advertising, and DDAI website has a page that allows users to check the use of user data and to opt out of the use of user data by businesses which participate in DDAI.

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## (2) Opt-in

Opt-in is an act in which user agrees in advance on the use of user data, as the opposite notion of opt-out which is an act of denying the use of user data. When user uses the IDs of contents and tool services in social media, portal site and e-commerce, with regard to the use of personal information registered by users for advertising (attribute targeting, etc.), there are many cases in which opt-in setting is used to require prior consent for the use of user data, in addition to consent to the terms of service.

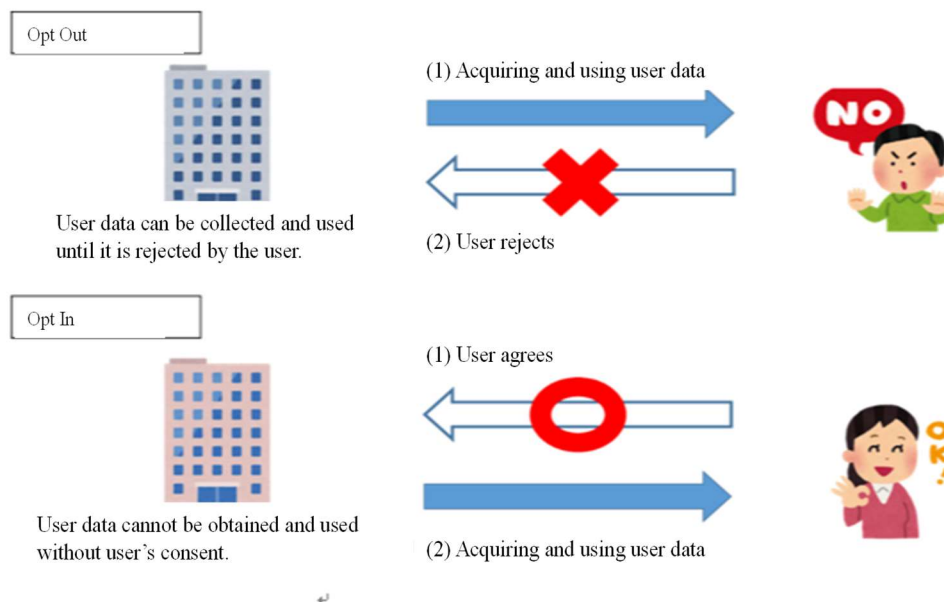
Apple's iOS14 plans to introduce a mechanism for user to opt-in the use of advertising ID (device identification ID for anonymous and individual advertising used in smartphones and tablet device apps). As with Cookie, which is stored in web browsers, advertising ID

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<sup>87</sup> DDAI was formed on March 14, 2013, with more than 25 businesses participating and is operation as a special business of Japan Interactive Advertising Association (JIAA) Technical Commission (<https://www.ddai.info/>).

is used for targeting to show ads according to user's interests, type, etc. In the past, app development businesses were able to obtain advertising ID unless user refused to provide advertising ID (by opt-out), but when Apple's new mechanism is introduced, app development businesses will not be able to obtain advertising ID without the user's consent in each app download. Apple initially planned to introduce this mechanism around autumn 2020, but in response to criticisms from Facebook<sup>[88]</sup> and advertising industry groups, it postponed the introduction of this mechanism to give app developers the time to make necessary changes.<sup>[89]</sup> Subsequently, Apple announced that it would introduce a mechanism for opt-in of advertising ID in conjunction with iOS14 update scheduled for spring 2021.<sup>[90]</sup>

Figure 27: Image Diagram of Opt-out and Opt-in



<sup>[88]</sup> <https://www.facebook.com/audienecnetwork/news-and-insights/preparing-audience-network-for-ios14/?filter=blog>

<sup>[89]</sup> <https://developer.apple.com/news/?id=hx9s63c5>

<sup>[90]</sup> <https://developer.apple.com/news/?id=8rm6injj>

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## 2 Control of data by consumers

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### (1) Regulations under the Act on the Protection of Personal Information

#### a User data that constitutes personal information

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Digital advertising uses a variety of user data to conduct targeting, but if user data falls under the category of "personal information" (Article 2, para.1 of the Act on the Protection of Personal Information), a personal information handling business operator is obliged to specify the purpose of use of personal information as much as possible and not to handle personal information beyond the scope required for the achievement of the purpose of use without obtaining the consent of the person (Article 15, para.1 and Article 16, para.1 of the said law). Provision of personal data<sup>[91]</sup> to a third party without the consent of the person is also prohibited, apart from cases based on laws and regulations. (Article 23, para.1 of the said law).

Therefore, what kind of user data corresponds to "personal information" is important. The term "personal information" refers to information about a living individual that can identify a specific individual by name, date of birth, or other description contained in the information, or that contains a personal identification code (Article 2, para.1 of the Act). User data that cannot identify a particular individual on a stand-alone basis, such as Cookie information, IP addresses, and mobile phone numbers, does not fall under the category of "personal information." However, when a particular individual can be identified by easily reconciling it with other information, it may fall under the category of personal information as a whole in conjunction with such information.<sup>[92]</sup> In addition, user's location information itself generally does not correspond to personal information. However, when location information is accumulated continuously, it can also be used to infer basic type on individuals such as homes and workplaces, and this may constitute personal information.<sup>[93]</sup>

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<sup>[91]</sup> Personal data refers to personal information that constitutes a personal information database, etc. (a collection of information including personal information, which is structured in a systematic manner so that specific personal information can be retrieved by using a computer) (Article 2, paras. 6 and 4 of the Act on the Protection of Personal Information).

<sup>[92]</sup> The Personal Information Protection Commission, "'Guidelines on the Act on the Protection of Personal Information" and "Q&A on Response to Cases Related to the Leak of Personal Data, etc.'", February 16, 2017 (updated on July 20, 2018)

<sup>[93]</sup> Secretariat of the Personal Information Protection Commission, "the Secretariat of the Personal Information Protection Commission's Report: Promoting the Use of Anonymous Processed Information Personal Data and Ensuring Consumer Reliability", February 2017; Yuto Noro, "Legal Considerations for Handling User Data in the Internet Advertising", October 2019 BUSINESS LAW JOURNAL

## b Amendment and Impact of the Act on the Protection of Personal Information

The Act on the Protection of Personal Information was amended and promulgated in June 2020 (enforcement: within two years after promulgation; hereinafter the amended Act shall be referred to as the "amended Act"). From the viewpoint of promoting innovation, "pseudonymous processing information" in which names, etc. have been deleted, has been established, and the obligation to respond to requests for disclosure and suspension of use has been relaxed for information in which personal information has been processed so that a specific individual cannot be identified unless it is cross-checked with other information (Articles 2, para.9 and 35-2, para.9 of the amended Act). In addition, it is newly obligated to confirm that the consent of the individual has been obtained for the provision to a third party of information that does not fall under the category of personal data at the source but is expected to become personal data at the destination (Article 26-2 of the amended Act). With regard to the opt-out provision (a system that allows personal data to be provided to a third party without the consent of the individual, on condition that the categories of personal data to be provided are publicly disclosed, etc., and that the provision of personal data is stopped if requested by the individual; Article 23, para.2 of the Act on the Protection of Personal Information), the scope of personal data that can be provided to a third party is limited, and it is prohibited to provide personal data obtained under the opt-out provisions to third parties under further opt-out provisions (Article 23, para.2 of the amended Act).<sup>94</sup>

In light of the growing awareness of the need to control personal information, the amended Act aims to increase the system for preventing the provision and use of personal information without the consent of individuals, and to promote usage of information based on technological innovations.

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### (2) Data protection regulations in Europe

According to the EU's e-Privacy Directive (Directive 2002/58/EC, as amended in Directive 2009/136/EC), the use of electronic communications networks to store information or to gain access to information stored in the terminal equipment of a user is only allowed on condition that the user is provided with clear and comprehensive information (Article 5, para.3 of the Directive). Therefore, when collecting user data with Cookie and advertising ID (anonymous and individual device identification ID for advertising used in smartphones and tablet device apps that user can opt out of), in principle,

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<sup>94</sup> Article 23, para.2 of the Act on the Protection of Personal Information is a rule that keeps in mind a database business (list traders, etc.) that widely provides large volumes of personal data to the public that is practically difficult to obtain the consent of all individuals (Itsuo Sonobe and Shizuo Fujiwara, "the Second Revision of the Explanation of the Act on the Protection of Personal Information" the Society for the Protection of Personal Information, p.177, 2018). Because digital advertising businesses is basically not subject to this clause, it is unlikely that a revision to this provision will have an impact on digital advertising sector.

it is required to obtain the consent after giving user clear and easy-to-understand information. The actual method of obtaining consent is to display a pop-up window to the user who visits the website and have the user click on the consent button.<sup>[95]</sup>

In the EU's GDPR (General Data Protection Regulation), information including Cookie, IP addresses, mobile phone numbers, etc. also fall into the category of personal data, and the coverage of personal information (personal data) is broader than that of Japan's Act on the Protection of Personal Information.<sup>[96]</sup> In relation to digital advertising, information processing for targeting is considered to be an automatic process of personal data conducted to evaluate the daily behavior of consumers and to analyze and predict personal interests. Therefore, targeting advertising can be interpreted as falling under profiling (Article 4(4) of GDPR), which is the analysis of an individual's behavior and preferences. Consequently, targeting advertising providers are normally required to obtain the data subject's explicit consent prior to the collection and analysis of personal data (Article 22(2) of GDPR).<sup>[97]</sup>

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### (3) Data protection regulations in the U.S.

In recent years, some U.S. states have been pursuing the enactment of comprehensive privacy laws, such as the California CCPA (California Consumer Privacy Act)<sup>[98]</sup>, where consumers have the right (opt-out right) to instruct businesses that sell their personal information to third parties, not to sell the consumer's personal information (Section 1798.120).

In addition, under the guidance of the FTC (Federal Trade Commission), self-regulation is also conducted by industry associations. For example, NAI (Network Advertising Initiative), in which a number of ad network businesses such as Google and Microsoft participate, provides consumers with a mechanism to opt out of tracking on ad network of participating businesses in a lump sum.<sup>[99]</sup>

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## 3 Collection and use of data by digital platform operator

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### (1) Collection and use of personal information from consumers

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<sup>[95]</sup> “Legal Considerations for Handling User Data in the Internet Advertising” above

<sup>[96]</sup> Taro Komukai, Kaori Ishii, "Outline of GDPR - Personal Information Protection System which Shakes the World", September 2019, NTT Publishing Inc., p. 29.

<sup>[97]</sup> Takashi Nakazaki, "Learning about GDPR Risks and Countermeasures through Q&A", April 2018, Shojihome, Inc., p.329, 330.

<sup>[98]</sup> In December 2020, the revised CCPA (CPRA: California Privacy Rights Act) was enacted to further protect the privacy of consumers.

<sup>[99]</sup> “Legal Considerations for Handling User Data in the Internet Advertising” above



#### a Data being collected

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A digital platform operator, which provides search service, matches click data to query data to improve the algorithm, including information about what consumers have searched for the data, web page they chose as a result of the search, and the time spent in web page. It also uses data about the context in which consumers conduct the search, such as the time, date, and location of the consumers' search. On the other hand, a digital platform operator, which operates social media, utilizes consumers' posts and comments, as well as "Like" information. It also improves its services based on contents data (information generated by consumers such as photographs, videos, and posts), profile data (information provided by consumers when setting up an account. For example, when opening an account at a social media, you need to enter your name, email address or telephone number, gender, and date of birth.), and exchange data (such as "Like," "share," and "comment").<sup>[100]</sup> In addition, a digital platform operator, which operates a video service, collects information such as videos viewed by the user and the people with whom content is shared by the user.

#### b Data usage

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Digital platform operators use the data collected in A above, for the various purposes described in 4(2) below (e.g., the purpose of displaying search results and personalizing advertisements).

A digital platform operator combines the data collected across its services and across users' devices for the above purposes. For example, when a user uses a video distribution service, an advertisement corresponding to the content of the video may be displayed on a website, which uses the advertising service of the digital platform operator that provides the video distribution service. On the other hand, according to a digital platform operator's explanation, not all of the collected data is used in the advertising business. For example, a digital platform operator states that user data collected from email services, translation services, online storage services, or photo services, is not used to customize advertising.

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### (2) Collection of transaction information from third parties

Digital platform operators collect consumer information directly through the services they provide as described above, but they also collect consumer information through third party websites. For example, digital platform operators may be provided with data analyzed for personal preferences, from data management platform (DMP) operators either directly, or through advertisers, advertising agencies or publishers. As for the collection of information through third parties, the UK CMA points out the following four main

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<sup>[100]</sup> paragraph 4.29 of "Online platforms and digital advertising Market study final report" above

methods: ① data is actively shared by third parties, ② data is collected directly from third-party websites or apps through technology, ③ data is collected through sign-in functionality on third-party websites or apps, and ④ data is collected through advertising services on publishers' websites or apps.<sup>[101]</sup>

① In cases where data is actively shared, advertiser provides data collected by itself through its own website, etc. to digital platform operators for use in advertising campaigns. For example, advertiser seeks to increase customers by finding similar consumers, by providing its own customer information to digital platform operators. Data broker may also provide digital platform operators with inferred data generated through its own inference processes.<sup>[102]</sup>

② Methods of collecting data directly from third party websites include, for example, collecting information through tools such as Google Analytics or Facebook Analytics that analyze data of visitors to websites. In such cases, digital platform operators collect consumer behavior data (such as device IDs and interactions on website) from third-party website through the analytical tools used by publishers.<sup>[103]</sup>

③ The method of collecting information through sign-in functionality on third-party websites is to collect data when a consumer signs in a third-party website using sign-in function of digital platform operator. For example, digital platform operators collect data such as device information, IP addresses and IDs of consumers when the consumers sign in an account for the operators to third-party websites.<sup>[104]</sup>

④ The method to collect through advertising services on publishers' websites means that digital platform operators collect data in the process of providing advertising services on other websites. In other words, digital platform operators usually collect user data and context data when receiving an advertising distribution request from user's device, and distribute the data to a large number of intermediaries and advertisers when bidding on display advertising. Digital platform operators also collect user data to verify the effectiveness of advertising.<sup>[105]</sup>

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## 4 Terms of service for Data Collection by Digital Platform Operators

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### (1) Terms of service pertaining to data gathered

Digital platform operators publish what kind of information they collect from user of the service. For example, according to its privacy policy, a search service operator collects

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<sup>[101]</sup> UK CMA, "Online platforms and digital advertising Market study final report Appendix F", paragraph 37, July 2020

<sup>[102]</sup> Paragraph 38 above

<sup>[103]</sup> Paragraph 40 above

<sup>[104]</sup> Paragraphs 45-47 above

<sup>[105]</sup> Paragraph 49 above

information from users, such as name and password at the time of account creation, apps, browsers and devices used, keywords searched, videos played, and current location (GPS, IP address, etc.). According to its privacy policy, a social media operator collects information provided by users (including location information of photos), people the user is connected to, how the user uses the service such as the posts the user sees, device information, and information sent from advertisers and publishers about the user's activities outside the social media (such as "Like").

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## (2) Terms of service for the purpose of collection

Regarding the purposes for which digital platform operators collect data, for example, a search service operator indicates in its privacy policy that it collects data for various purposes, such as to process search terms and display results, to improve its services, and to display customized search results. According to its privacy policy, a social media operator collects data for the following purposes: to personalize advertisements; to develop, test, and improve products; to measure the effectiveness of advertisements and service usage; and to deal with malicious activities.

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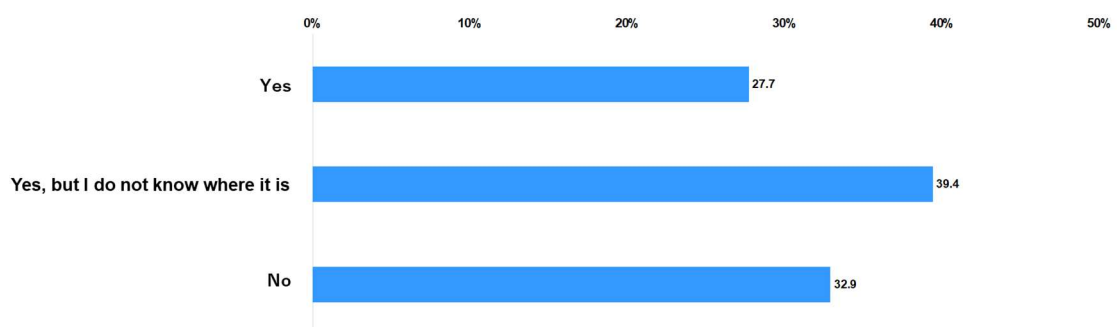
## 5 Awareness, understanding, and agree of consumers to Terms of service

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### (1) Awareness of terms of service

More than 70% of consumers who use search services are either "unaware" or "aware of the existence of terms of service, but do not know where it is. (Figure 28). Among nearly 30% of consumers who responded that they "know" terms of service, only a little over 10% always read terms of service, while less than 90% either do not read the terms of service (less than 20%), or read them depending on the service or read them when they have questions (less than 70% in total). In addition, of the consumers who answered that they read the terms of service (other than those who answered "I do not read"), only about 15% read the entire terms of service, and about 85% read only some parts or headings (Figure 29). To summarize, as for search service, only about 3% of consumers recognize terms of service and have read the entire terms of service.<sup>[106]</sup>

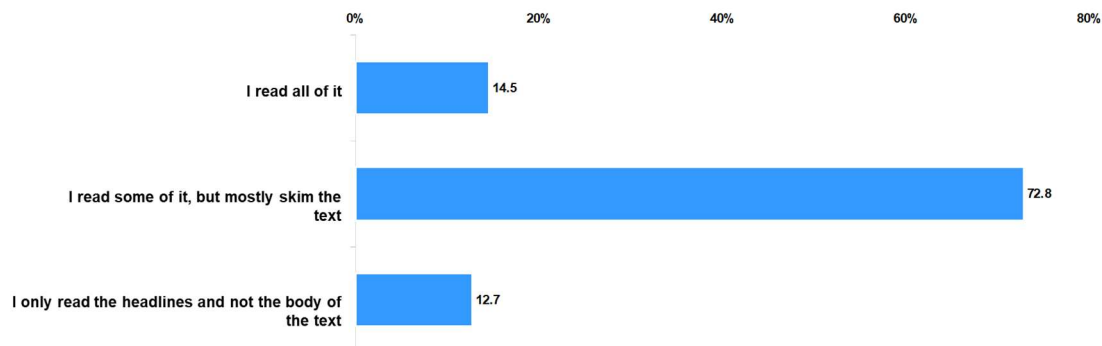
Figure 28: Awareness of search service's terms of service (2000 responses)



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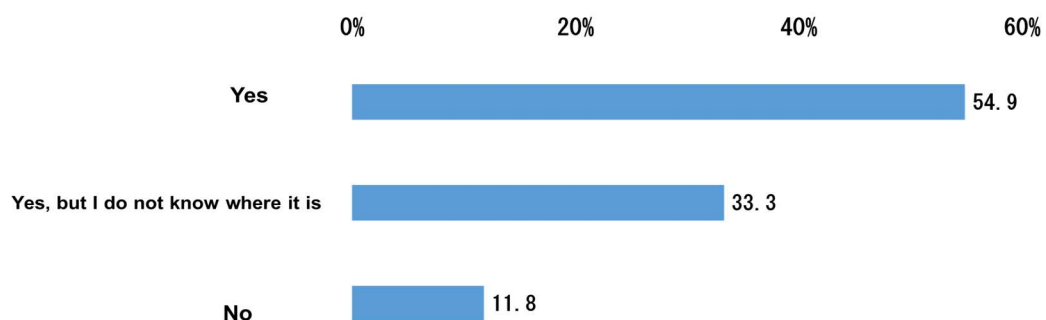
<sup>[106]</sup> page 28-30, Appendix 2 of Interim Report above

Figure 29: How thoroughly do you read terms of service in search service? (448 responses)



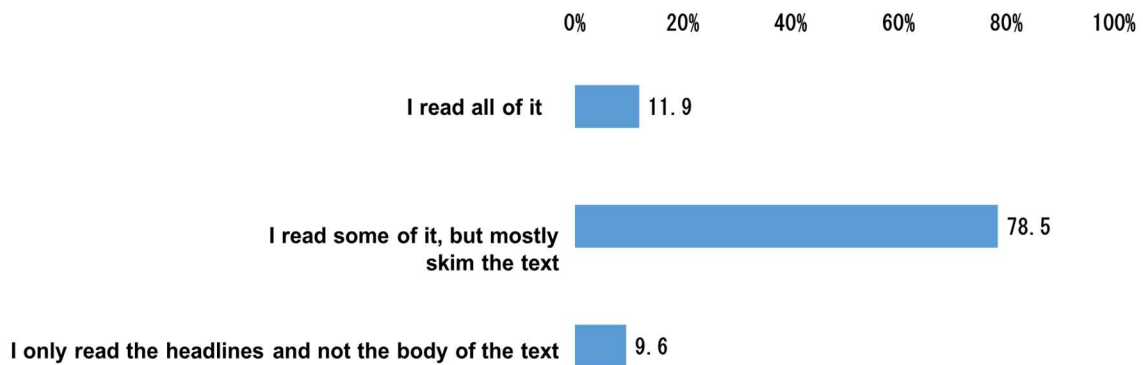
Regarding consumers who use social media, about 45% "do not know" the terms of service or "know the existence but do not know where the terms of service is" (Figure 30). Of the approximately 55% of consumers who responded that they "know" terms of service, only a little over 10% always read terms of service, while just under 90% do not read terms of service (about 15%), or read them depending on the service or read them when they have questions (less than 70% in total). In addition, among consumers who answered that they read the terms of service (other than those who answered "I do not read"), just over 10% read the entire terms of service, and just under 90% read only some parts or headings (Figure 31). To summarize, as for social media, only about 6% of consumers recognize terms of service and have read the entire terms of service.<sup>107</sup>

Figure 30: Awareness of social media's terms of service (2000 responses)



<sup>107</sup> page 87-89, Appendix 2 of Interim Report above

Figure 31: How thoroughly do you read terms of service in social media? (929 responses)



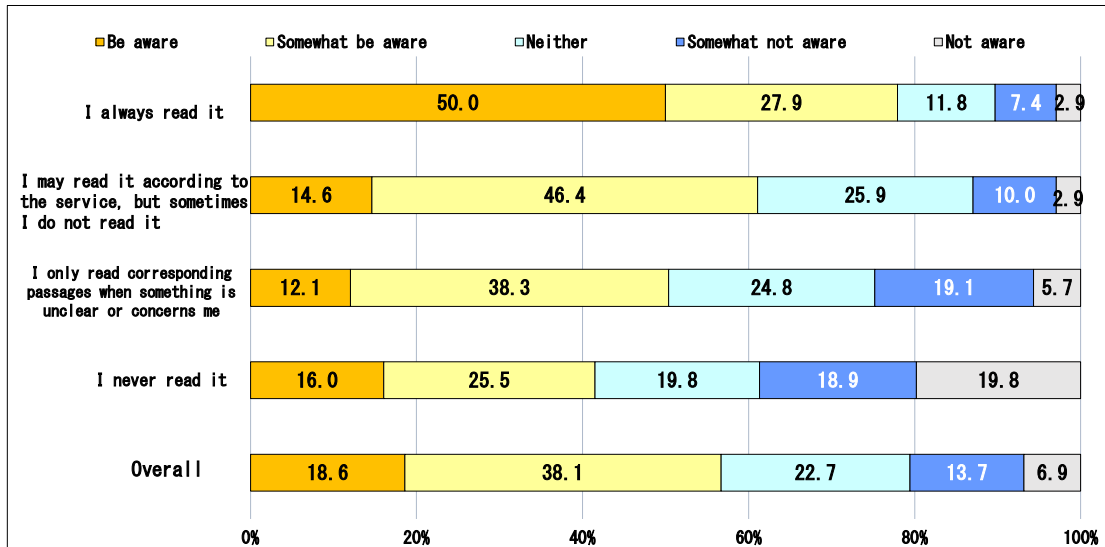
Regarding the relationship between advertising displays and information provided by consumers, approximately 40% of consumers are "unaware" or "somewhat unaware" of what information is collected and used for the purpose of advertising displays when using search services or social media.<sup>[108]</sup> In this regard, according to the results of a cross-analysis of the questionnaire in Appendix 2 of the Interim Report ("Cross-tabulation analysis of consumer questionnaires on digital advertising" (attachment of this report)), more than 50% of consumers who always read the terms of service when using a search service are aware that they are providing their own information when using the service, that the terms of service state that the user's information is collected and used for the purpose of displaying advertisements, that what information is collected and used for the purpose of displaying advertisements, and that the collected information may be shared with third parties. On the other hand, consumers who answered other than "I always read the terms of service" were significantly less aware of the collection and use of the above information than consumers who answered "I always read the terms of service" (the recognition of what information is being collected and used for the purpose of advertising display is shown in the figure below, and the recognition of other matters is shown in the appendix.). Similar trends can be seen among users of social media services. Consumers who always read the terms of service are more aware of what and how their information is used, compared to other consumers.

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<sup>[108]</sup> pages 35 and 94, Appendix 2 of the Interim Report above

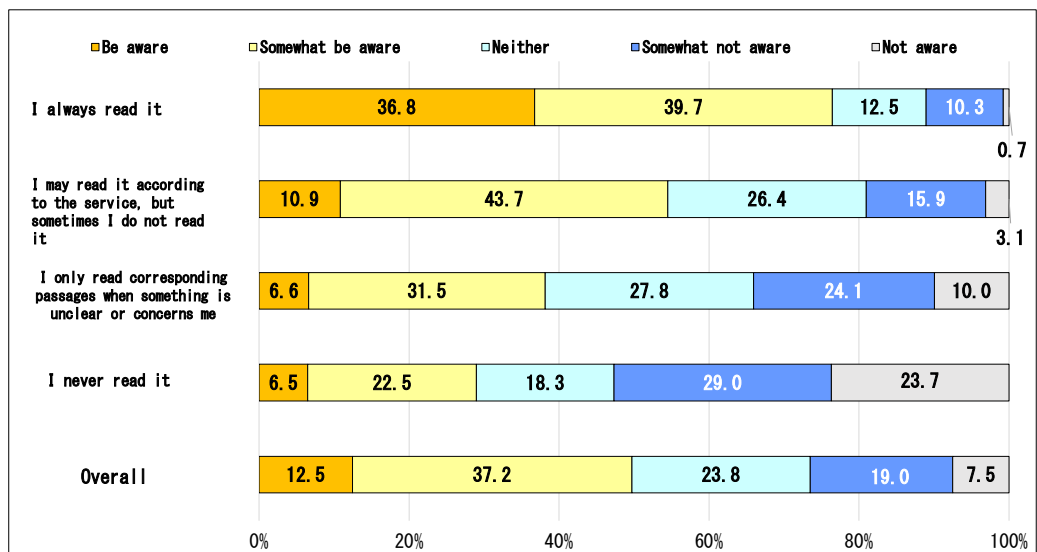
(Head) Q. Are you aware of what information is collected or used for displaying advertisements when using search services?

(Side) Q. Do you read the terms of service when using search services?



(Head) Q. Are you aware of what information is collected or used for displaying advertisements when using social media?

(Side) Q. Do you read the terms of service when using social media?



---

## (2) Ease of understanding terms of service

Among consumers who responded that they were reading (other than "not reading") search service's terms of service in (1) above, approximately 25% of consumers responded that the location of the description of the purpose of collection and use of user information in the terms of service was "difficult to understand" or "rather difficult to understand". In addition, the fact that approximately 30% of consumers responded that the contents of such descriptions is "difficult to understand" or "somewhat difficult to understand" suggests that it is not necessarily easy to find descriptions of purpose of collection and usage of consumers' information from among terms of service, and that even if such descriptions are found, the contents may not be easily understood.<sup>[109]</sup>

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<sup>[109]</sup> pages 33, 34, Appendix 2 of the Interim Report above.

As for terms of service of social media, approximately 40% of consumers responded that the location and content of the description of the purpose of information collection and use were (rather) difficult to understand (See pp. 92 and 93, Appendix 2 of the Interim Report above), which indicates that they are even more difficult to understand than search services'.



Figure 32: Is it easy to understand the description of the purpose of information collection and usage? (Questioned to those who answered other than "I do not read" [search service's](#) terms of service)

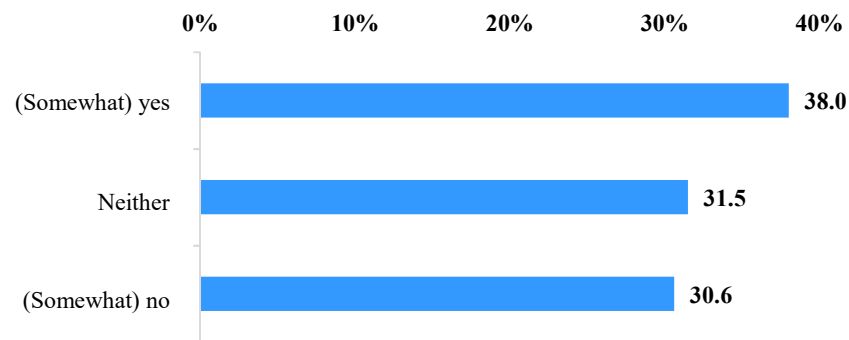
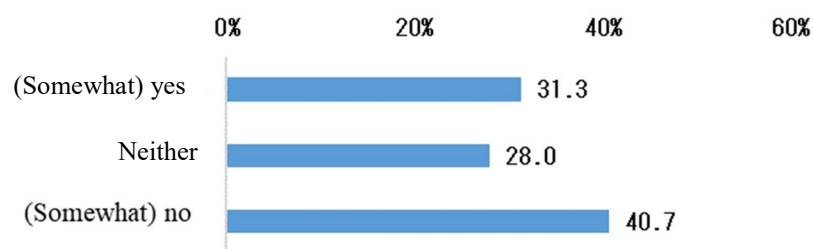


Figure 33: Is it easy to understand the description of the purpose of information collection and usage? (Questioned to those who answered other than "I do not read" [social media's](#) terms of service)



### (3) Consent to Terms of service

A little less than 20% of consumers "do not remember agreeing" to the terms of service of search services, and (even if they remembered agreeing) about 55% of consumers "agreed without really knowing" or "(rather) not knowing" what information would be collected and used for the purpose of displaying advertisements when they agreed.<sup>[110]</sup>

Regarding social media, only less than 10% of consumers "do not remember agreeing" to the terms of service, but when they do agree (even if they remember agreeing), about 57% of consumers "agreed without really knowing" or "(rather) not knowing" what information would be collected and used for the purpose of displaying advertisements. This

<sup>[110]</sup> page 38, Appendix 2 of the Interim Report above

indicates that, as with search services, many consumers do not know what information will be collected and used for the purpose of advertisement.<sup>[11]</sup>

Figure 34: (About search service) Have you agreed to the terms of service after understanding what information will be collected and used to display advertisements?

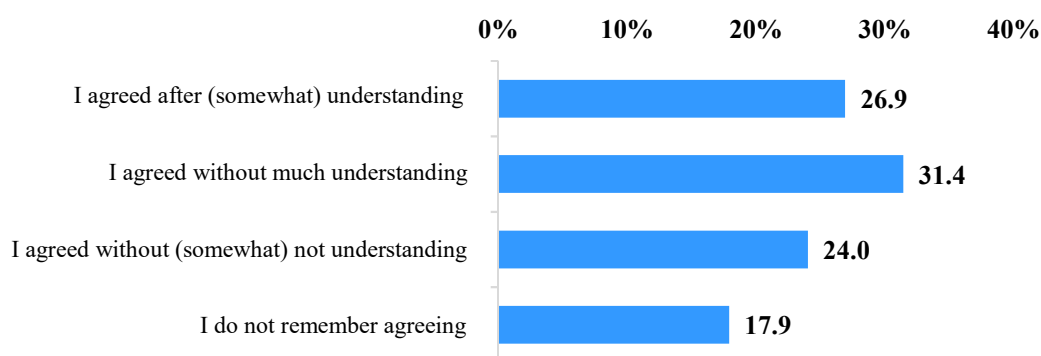
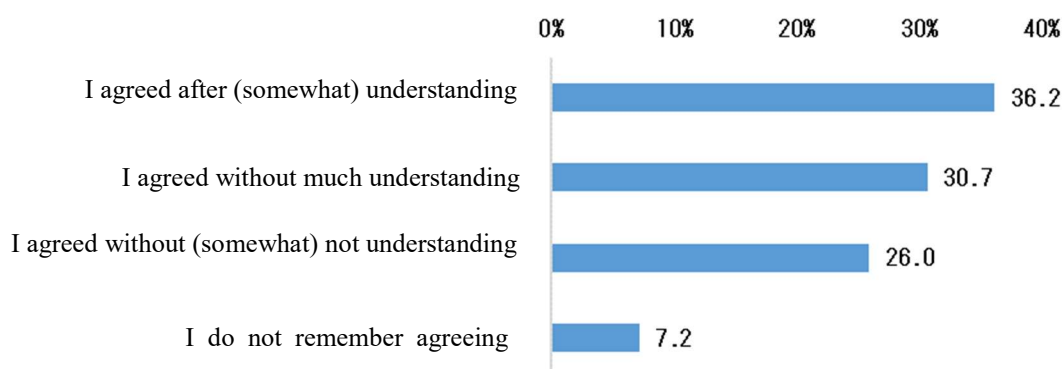


Figure 35: (About social media) Have you agreed to the terms of service after understanding what information will be collected and used to display advertisements?



<Explanation of digital platform operators on collection and use of personal information from consumers>

- A user always has the choice to use the digital platform operator's services without receiving personalised ads. Within the parameters permitted by users, the digital platform operator uses data in ways that are highly beneficial to those users, including providing, maintaining and improving its services, developing new services, providing personalized services, measuring performance, communicating with users and protecting the digital

<sup>[11]</sup> page 97, Appendix 2 of the Interim Report above

platform operator, its users and the public. The digital platform operator will ask for a user's consent before using their information for a purpose that is materially different from the purposes disclosed in its Privacy Policy. Users are also able to use most of the digital platform operator's products and services without signing in.

- Barring exceptional circumstances, such as a court order or to combat fraud or abuse, we do not combine signed-out activity with signed in activity.
- The data collected from users who are logged into the service of the digital platform operator is generally data that can identify a specific individual (i.e. personal information). However each piece of collected information in itself may not necessarily allow a specific individual to be identified.
- If ad personalisation is disabled, we will not use the user's information to personalise ads for that user. The user may still see contextual advertising, which, for example, could be based on information about the device's current approximate location based on GPS or other location - but only if the user allows this via device level settings.
- Competition amongst online service providers for users is fierce, both globally and in Japan. There are numerous alternative choices and substitutes of advertising-supported online services for consumers to choose. It is therefore important for our business to continue to meet the needs of the consumers, who are able to and do switch to other digital platforms.
- Our company's terms and policies explain our data practices in a transparent manner and are appropriately surfaced to ensure such information is accessible to consumers at the time when the consumers seek to register our services as well as at any time during the consumers' use of our services, to ensure that consumers can make an informed decision in choosing to register for and engage with our services. The use purposes of the collected information are clearly set out in our publicly available terms and policies. One of the ways information is used is to develop, maintain and improve our services. We do not sell users' data (as stated in our publicly available policy) and generally only share data in an aggregated manner with third parties who we have required to comply with applicable laws and regulations (in line with our policy).
- Advertising content is an integral part of the personalized user experience of our services, and we constantly strive to ensure that the ads users see are as relevant and useful to them as non-paid content. We offer a suite of tools and features that allow users to customize and control the ads they see, such as to: hide or report ads; adjust ad topics; understand why an ad has been shown to that user. We support the principle of data portability - to build a common way for users to transfer their data between online services platforms in order to make it easier for online services platforms of any size to securely and directly transfer data from one service to another and simpler for the users who use these different online services.

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## 6 Assessment of digital platform operator and Consumer Transactions (abuse of superior bargaining position)

With respect to digital advertising, digital platform operators collect and use information about consumers who are users of their services, either directly from consumers or through third parties, as we have seen above. Collection and use of consumer data by digital platform operators do not in themselves pose a problem under the AMA. However, if a digital platform operator collects or uses personal information by unfair means, thereby disadvantaging consumers and making them competitive advantage in their relations with their competitors and adversely affecting fair and free competition, it would pose a legal issue under the AMA.

In December 2019, the JFTC released the “Guidelines Concerning Abuse of a Superior Bargaining Position in Transactions between Digital Platform Operators and Consumers that Provide Personal Information, etc.” Therefore, in accordance with this approach, we will examine whether there are any problems under the AMA with the manner of collection and use described above.

If concerns about the handling of user data in digital advertising are eliminated and the soundness of the digital market is enhanced, advertisers and other parties involved in the provision of digital advertising will also benefit as a result.

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### (1) Acquisition or Use of "Personal Information"

The term "personal information" as used in the Guidelines refers to "personal information" as provided in Article 2, para.1 of the the Act on the Protection of Personal Information. For example, the access information of website and location information of mobile device are not generally regarded as personal information under the Act on the Protection of Personal Information because they do not have personal identifiers by themselves. However, even such information is considered to be personal information if it can be easily reconciled with other information and thereby identify a specific individual. In addition, when location information is accumulated continuously, it is possible to estimate the basic type of individuals, such as homes and workplaces, and this may be considered personal information as described in Section 2(1) A above.

Digital platform operators offer a variety of services, and the information entered by user when registering for use also varies depending on the service. However, as for services that ask the user to enter names, birth dates, etc. when registering for use, the data basically falls under personal information because a particular individual can be identified according to the name, etc. Also, according to digital platform operators' explanation, the data collected from user logged in to a digital platform operator's service is essentially data that can identify a particular individual, therefore the data falls under personal information.

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### (2) Trading position

A case in which a digital platform operator has a superior position to a consumer who is a user of the service is a case in which the consumer is forced to accept disadvantageous treatment from the digital platform operator in order to use the search service or social networking service provided by the digital platform operator. Specifically, ① when there is no fungible service; ② when it is practically difficult to stop using the said service, even if there are fungible services; or ③ when the digital platform operator providing the said services is in a position to control somewhat freely the trade terms, such as prices, qualities, and quantities, the digital platform operator providing the service is usually in a superior position to the consumer. Regarding ③, the determination shall be made by taking into account the position of the digital platform operator in the marketplace, such as whether or not it is in a position to substantially restrain competition in the field of the services concerned.<sup>[12]</sup>

For example, in social media services, if it is practically difficult to transfer data such as photos or posts, or if it is virtually difficult to substitute the network formed with other consumers using the service with other similar services, it is highly likely to fall under ②, and the digital platform operator providing the services is considered to be in a superior position to the consumer. Also, it is highly likely that a digital platform operator, which has a monopolistic or oligopolistic position in search service or social media in light of the number of users and other factors, will be regarded as having a superior position over consumers on the assumption that it falls under ③.

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### (3) Conducts that raise issues of abuse

Next, conducts that constitute abuse of superior bargaining position include cases in which personal information is obtained without informing consumers of the purpose of use, or cases in which personal information is acquired or used against consumers' will beyond the scope required to achieve the purpose of use.

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#### A Clarity of privacy Policy

As described in 4 above, digital platform operators describe in their privacy policies what kind of information is collected from consumers and for what purposes. However, some digital platform operators have a privacy policy with unclear responses to what information they use. For example, some digital platform operators' privacy policies are unclear about which of the information collected from consumers is used for advertising. Some digital platform operators offer a variety of services, including e-mail and search,

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<sup>[12]</sup> The JFTC "Summary of Opinions and Approach to the Draft (Guidelines under the Antimonopoly Act Concerning Abuse of a Superior Bargaining Position in Transactions between Digital Platform Operators and Consumers that Provide Personal Information, etc.)", 17 December 2019.

but there are cases in which privacy policies are not separated in each service and the correspondence between which information is used for which service is unclear.

In this case, especially for users who use only some of the various services, it is not clear what information is being used for what purpose for the services they are using. In fact, as mentioned in 5 above, nearly half of consumers are not aware of what kinds of information are gathered and used for the purpose of advertising display when using search service or social media, and it is not necessarily easy to find or understand descriptions of purpose of collection and usage of information from among terms of service.

For a digital platform operator, which provides a variety of services, it may be inefficient and unreasonable to set a privacy policy for each service, and the lack of a privacy policy for each service regarding the collection of personal information is not an immediate issue under the AMA.

However, when a digital platform operator collects personal information, depending on the method and content of the privacy policy, the explanation of the purpose of use may be ambiguous or not clearly distinguished from the explanation of the use of other services. This may be the case in which personal information is collected in circumstances where it is difficult for ordinary consumers to understand the purpose of use. Collection of personal information in such a way by a superior digital platform operator can be regarded as abuse of superior bargaining position as obtaining personal information without informing consumers of the purpose of use (improper acquisition of personal information, etc.).

In order to ensure fair and free competition in the digital marketplace, a digital platform operator should clarify, as far as possible, the correspondence between the information it acquires and the purpose of use for each service (if it provides more than one service). In addition, if there is any data that is not used for advertising displays (e.g., data collected from e-mail services, etc.), it is desirable to specify this in the privacy policy.

On the other hand, as mentioned above, consumers who always read terms of service are more aware of what information is being used than other consumers. Therefore, it is desirable for consumers to read terms of service and deepen their understanding of the usage of their information.

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## 1 Opt-Out from targeting Advertising and Clarity of Its Targets

Some digital platform operators allow users who do not wish to receive targeting advertisements to opt out of targeting advertisements (i.e., to disable targeting advertisements on ad settings of web pages). Digital platform operators that offer such opt-out functions are more responsive to consumers' needs (as mentioned above, less

than 70% of consumers find receiving targeting advertisements [rather] annoying) than those that do not. However, even if user opts out of targeting ads, ads based on location information (current location) are displayed, ads using information (age and gender) when registering user IDs are displayed, and ads based on behavior on social media services are displayed. A digital platform operator which provides a social media service does not offer the ability to opt out of targeting advertising all together (although this operator explains that user can adjust advertising display by editing profiled data and user interests used in targeting advertising).

When user opts out of targeting advertising, it is normal for user to think that its information will no longer be used for advertising displays, because it has refused to use its information for advertising displays. In practice, however, advertisements based on location information, etc. may continue to be displayed as mentioned above, so it should be explained in an easy-to-understand manner to user whether the information of user will no longer be used for the advertisement display completely when it is opted out or whether there is information that will continue to be used. Without such an explanation at all, if a user opts out of targeting advertising but the user's information continues to be used to display advertisements, this would normally be considered a breach of contract. On the other hand, even if an explanation is given, if the information of opt-out user is used for advertising in the context of an inadequate explanation such as the ambiguity of the explanation, even if it is difficult to say a clear breach of a contract, the use of personal information may go beyond the scope required for achieving the purpose of use and may be contrary to the intention of the consumer, depending on the status of the explanation. The use of such personal information by a superior digital platform operator can be regarded as abuse of superior bargaining position as an unjust use of personal information, etc.

To ensure fair and free competition in the digital marketplace, digital platform operator should provide user with the ability to opt out of targeting advertising as much as possible. In addition, if there is information used for advertising after opt-out, this should be clearly explained in the opt-out setting.

## Chapter 4 Changes in competition between publishers due to growth in digital advertising transactions and the impact on consumers due to such changes

In Chapter 4, we discuss the impact of the advent of digital platforms and the growth of digital advertising transactions on publishers. With the growth in digital advertising transactions, publishers have been forced to change their earnings structure. For example, instead of the traditional advertising business, publishers have earned revenues from transactions of advertising in which digital platform operators intervened, and they have received so-called "revenue share" from advertising revenues generated by digital platform operators from content distribution. In this sense, digital platform operators' advertising business has a significant impact on publishers' business itself. While content provided by publishers is diverse, this survey focus on the competitive environment of publishers which provide content that is considered to be useful for society and economy, centering on traditional media such as newspapers (hereafter referred to as "existing media").

In order to disseminate accurate and reliable information, publishers incur costs such as interviewing from multiple sources and having the editorial department scrutinizes the content. Advertising revenues and subscription expenses play a significant role as the foundation for these activities of publishers.

In recent years, however, Japanese consumers have tended to get much of content, particularly news content, free-of-charge via the Internet. This has led to significant changes in the business climate of publishers, particularly in existing media. According to the survey conducted by the Ministry of Internal Affairs and Communications, the utilization rate of "newspaper" among "text-based news services" was 62.8% in 2014, but it declined to 49.2% in FY2019. On the other hand, the utilization rate of "news distribution by portal site (Yahoo! News, Google News, etc.)" was rising, from 54.5% in 2014 to 67.1% in FY2019. In recent years, the difference in the use rate between the two has been widening. Furthermore, the rate of use of "social media-based news distribution (LINE NEWS, etc.)" rose from 9.5% in 2014 to 44.1% in FY2019, and the rate of use of "curation service (SmartNews, Gunosy, etc.)" rose from 5.6% in 2014 to 16.9% in FY2019, indicating that digital platform services and news applications are spreading.<sup>[113]</sup> <sup>[114]</sup>

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<sup>[113]</sup> The Ministry of Internal Affairs and Communications, Institute for Information and Communications Policy, "FY2019 Survey Report on Usage Time of Information and Communications Media and Information Behavior," September 2020, and "2014 Survey Report on Usage Time of Information and Communications Media and Information Behavior," May 2015 ([https://www.soumu.go.jp/iicp/research/results/media\\_usage-time.html](https://www.soumu.go.jp/iicp/research/results/media_usage-time.html))

<sup>[114]</sup> In this survey, the types of media are broadly divided into "video", "text", and "communication", and seven types and examples are shown as "text type news services". Specifically, these are "newspaper", "paid news site of newspaper company", "free news site of newspaper company", "news distribution by portal site (Yahoo! News, Google News, etc.)", "news distribution provided by companies that operate social media (LINE NEWS, etc.)", "curation service (SmartNews, Gunosy, etc.)" and "I have not read it in either way". After that, the results of the services used and the services used most are summarized.



This chapter first describes actual state of digital news content distribution and the accompanying digital advertising transactions by these publishers. It then examines the impact of these transaction conditions on publishers, especially the changes in competition among news media, and the resulting impact on consumers.

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## 1 Changes in the positioning of digital advertising income in publishers

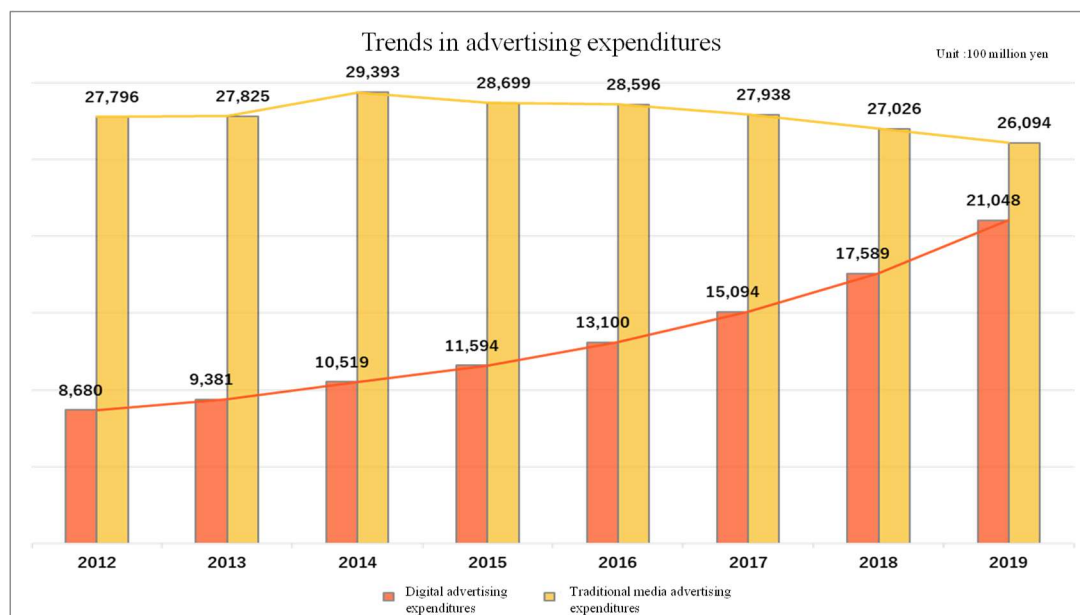
As shown in Part 2, Chapter 1-1 above, the total Japanese advertising expenditures in 2019 were 6,938.1 billion yen. Of this, digital advertising expenditures were 2,104.8 billion yen (119.7% compared to the previous year) in 2019, surpassing TV advertising expenditures for the first time. On the other hand, advertising expenditures of the four traditional media (TV, radio, newspapers, and magazines) called "four mass media" were 2,609.4 billion yen (96.6% from the previous year), and advertising expenditures of each media decreased from the previous year. Looking at the percentage of each media advertising expenditure to total advertising expenditures, digital advertising expenditures have continued to grow at double-digit rates since 2014, and the share is also increasing, while the share of four media advertising expenditures is gradually decreasing. It goes without saying that digital advertising revenue is an important source of revenue for publishers whose main business is the distribution of digital content. However, as a result of the digitalization of society, traditional content (for example, newspaper articles) are now being distributed and viewed on the Internet, and digital advertising revenue is becoming increasingly important for existing media.<sup>[115]</sup><sup>[116]</sup>

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<sup>[115]</sup> Dentsu Inc. "Web Dentsuho 'Overview of Advertising Expenditures in Japan for 2019' – Internet advertising expenditures achieving double-digit growth for the sixth consecutive year, exceeding Television advertising expenditures" March 2020.

<sup>[116]</sup> In questionnaire survey for businesses, when publishers were asked how they expected the percentage of sales from the digital advertising business to change, about 67% of the respondents answered that it would increase.

Chart 36 Trends in "Digital Advertising Expenditures" and "Four Media Advertising



Expenditures"

(NOTE) In 2019, "Advertising expenditures for Merchandise-related EC Platforms" were added as the estimation targets in "Digital Advertising Expenditures".

Source: Created by the JFTC based on "Advertising Expenditures in Japan" published on Knowledge & Data website of Dentsu Inc. ([https://www.dentsu.co.jp/knowledge/ad\\_cost/](https://www.dentsu.co.jp/knowledge/ad_cost/))

## 2 Summary of transactions and issues related to publishers' monetization of digital advertising

Digital advertising monetization in publishers can be roughly divided into two ways: (1) by placing digital advertisements on their own websites and earning advertising revenue; and (2) by providing their own content to portal sites and news applications that aggregate and distribute news, and indirectly earning digital advertising revenue generated on these sites and apps. The following is an overview of each transaction and the issues pointed out by the publishers in the interviews.

### (1) How to earn advertising revenue by placing digital advertisements on publishers' own websites

#### a Outline of the transaction

As a mechanism for the monetization of digital advertising by publishers, the first method is for publishers to place digital advertisements on their websites and earn advertising revenue. In this case, in order to increase advertising revenue, it is necessary to increase the number of impressions and clicks, which are the basis for calculating

advertising revenue. To that end, it is necessary to increase the number of accesses to the website that delivers advertisements in the first place.

The following are possible inflow routes to publishers' websites:

- ① Access directly from bookmarks, etc. (Direct).
- ② Access through natural (organic) search results on search sites or services (Google News, Google Discover, etc.) that aggregate and display links to news content on publishers' websites.<sup>[117]</sup>
- ③ Access from posts on their own accounts opened in social media (e.g. Twitter or Facebook).
- ④ On portal sites or news apps (Yahoo! News, LINE NEWS, SmartNews, etc.) that distribute news, links to content on publishers' websites are displayed as "related article" and accessed from the links.

Although the ratio of each inflow route to the total number of accesses to a publisher's website differs depending on the nature of the website and other factors, the ratio of routes ② and ④ tends to be relatively high for existing media websites in Japan. Of these, the pathway recognized as the most important for existing media in ② is the inflow from the search service provided by Google. For example, when we asked several newspaper companies that publish nationwide newspapers about the percentage of traffic to their websites that came from Google Search in 2019, the results ranged from about 5% to about 15%. Thus, in general, the inflow from digital platforms, which is responsible the function of displaying search results, etc. in ② above, has a considerable impact on the digital business of publishers. If such inflow increases, the access to the publisher's website will increase, which has the merit of leading to advertising revenue and paid membership acquisition for the publisher.<sup>[118]</sup>

On the other hand, in the display of search results, as mentioned in ② above, it may be possible to read the headline and part of the content along with the link to the news content (such short text information that excerpts or summaries a part of the content is called a "snippet"), but it should be noted that, depending on the length of the snippet, consumers may lose the incentive to access the publisher's website.

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<sup>[117]</sup> "Google Discover" is a news feed (a feed is a specific format for distributing website updates) that appears on Google's search page and on the home screen of Android devices. It displays links to content automatically selected from multiple publishers' content, based primarily on what Google's system determines to be relevant to the user's interests and concerns (<https://support.google.com/webmasters/answer/9046777?hl=ja>).

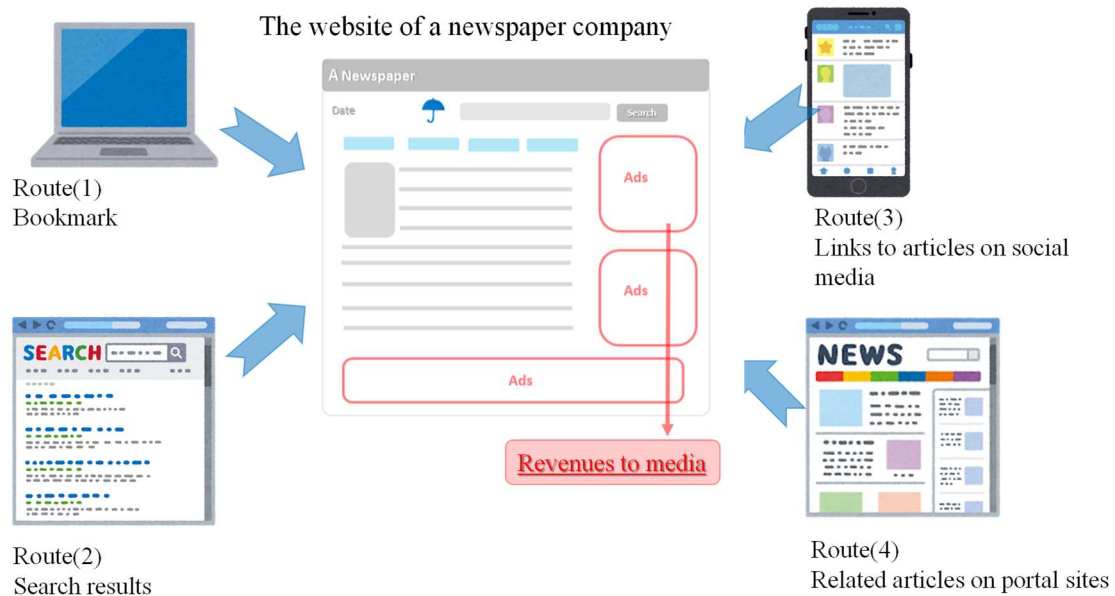
<sup>[118]</sup> According to a questionnaire to several newspaper companies publishing national newspapers, the main news websites (one site for each company was selected by the JFTC) among the websites operated by them were targeted. The inflow routes for desktop and mobile are also tabulated.

In this regard, in Japan, with the enforcement of the Act Partially Amending the Copyright Act enacted in 2009, displaying snippets and thumbnails along with URLs in search services is legal to the extent deemed necessary for the search and the provision of the results.<sup>[119]</sup>

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<sup>[119]</sup> See Article 47-5(1) of the Copyright Act. Refer to the Agency for Cultural Affairs website for details on the revised law ([https://www.bunka.go.jp/seisaku/chosakuken/hokaisei/h21\\_hokaisei/](https://www.bunka.go.jp/seisaku/chosakuken/hokaisei/h21_hokaisei/)).

Figure 37 Image of digital advertising revenue on publisher's website



## b Main points raised by publishers and explanations by digital platform operators regarding these points

### (a) The actual status of digital advertising transactions is unclear, and the value of content is difficult to evaluate.

#### <Points from publishers>

In digital advertising, since various intermediaries intervene between advertisers and publishers, it is difficult to see the actual state of transactions, and it is impossible for publishers to know the advertisements displayed on their content, the advertising expense paid by the advertisers, the amount of commissions paid by the intermediaries, etc. (see Part 3, Chapter 2-4 above for details). For this reason, some publishers say that they have a sense of distrust as to whether they are receiving appropriate revenue from the inventories on their websites.

Furthermore, in digital advertising, the value of an inventory is generally evaluated by the number of impressions and clicks, but under such criteria, it is difficult to differentiate in terms of revenue between content whose accuracy is ensured by spending money and content whose accuracy is questionable because it is created without spending money. It is said that the value of content is not easily reflected in the price of inventory.

Under these circumstances, existing media in particular have voiced that "compared to conventional non-digital advertising (for example, newspaper advertisements), the unit price of display advertising, which is the mainstream of digital advertising, is overwhelmingly low, and furthermore, the market price of

display advertising has become the standard and is affecting the sales of reserved advertising.”

<Explanation from digital platform operators in response to the points>

On the other hand, as described in Part 3, Chapter 2-4 above, the following explanation is given by the digital platform operators for the indication of uncertainty in fees and unit price of advertising.

● We have a clear pricing structure for our publisher-facing services for websites and disclose the fees for these services clearly to publishers, for example, in their contracts with our company. Publishers using these services also receive itemized bills which allow them to identify and quantify revenue flows.

Our clear fee structure has been recognized by the CMA in its Final Report on Online Platforms and Digital Advertising.

Publisher-facing intermediary services would not know the ad expenses paid by advertiser, as their customer is not the advertiser. This means that it is technically impossible to pass this information to the publishers, and will also lead to likely breach of confidentiality.

In addition to pricing information, we also share data and data insights to publishers. There are a wide range of report metrics available to publishers, including ad revenue per thousand ad impressions, advertiser click/view-through rates and more. For publishers who want more granular data at bid level, we also offer data reports.

We appreciate the importance of pricing transparency. The ad tech ecosystem is complex and can involve many players in one transaction. Where advertisers use agencies who then use DSPs, the information about prices is provided by the DSP to the agency, which can provide that information to its advertiser customer. In many cases, we do not have visibility over the prices charged by DSPs to their advertiser clients in our provision of ad exchange/sell-side services so we cannot disclose such information to the publisher. Usually, there are also confidentiality provisions in the contract arrangement between the advertiser and the DSP, such that disclosure by another ad tech service (e.g. the exchange) to its publisher client is prohibited.

We are currently contributing to an industry initiative led by the Incorporated Society of British Advertisers (ISBA) to find solutions to improving transparency in the ad tech ecosystem.

In addition, to the point that the value of content is not easily reflected in the inventory price, the following views have been expressed.

- How the value of the content of the page on which the inventory is displayed is reflected in the value of the inventory in question is an issue that requires continuous study, since there is no relationship in which good content always has a high ad value. For example, some articles about an incident may be good quality content, but may also be content that has no advertising value for advertisers. Another issue is that an advertiser who pays a higher advertising expense for the placement of content is not always a good and desirable advertiser for the inventory (medium) to which the content is placed. Therefore, by evaluating and selecting the quality of the media that will be added to ad network, we hope that high-quality advertisers who have expectations of placing advertisements on media with high-quality content will choose us.
- This opinion appears to suggest that it is difficult for advertisers to ascertain the true value of the inventories that they are paying for. We do not control or determine how advertisers value inventories. This is determined by each advertiser. Advertisers are also able to decide the amount they pay for placing advertisements on certain content. It does not necessarily mean that content with a higher cost has a higher advertisement value. The advertisement value of content would vary according to the advertiser, audience, timing, genre and etc. To the extent we can, we help advertisers to value inventories by providing detailed metrics in our advertiser-facing products. For our advertiser-facing products, we provide a large volume of data regarding campaign performance (including data regarding purchased inventory) to our customers (be it an advertiser or an agency), but we do not have visibility on the extent to which agencies pass such information on to their customers. This is significant because agencies are very important (with around 70% of larger customers using agencies). Generally, advertisers and/or agencies are able to access billing and invoices details and controls on their account interface. We also provide a wide range of reporting metrics which advertisers and agencies can access and adjust, e.g. on our DSP's reporting interface.  
We also provide advertisers with controls over what inventory they bid on, including various brand control resources in our DSP and also partner with two third-party vendors to provide brand safety measurements for advertisers that require their brand safety to be verified.  
We also have publisher policies that we require publishers who monetize their content with us to adhere to. These policies prohibit certain types of content, including illegal content, content that abuses intellectual property, dangerous or

derogatory content, content that enables dishonest behavior, misrepresentative content etc.

(b) Data related to digital advertising transactions are not accumulated in publishers, making it difficult for them to develop their unique sales strategies for inventory.

<Points from publishers>

In digital advertising transactions, the limited information that publishers can obtain about the actual state of transactions is said to have an impact on publishers' strategies for selling inventory. As mentioned above, in digital advertising transactions, publishers do not accumulate the data that form the basis of strategies for selling inventory, such as what kind of advertisers tend to place advertisements in their inventories, what kind of targeting has been done, and how much the advertiser paid for that inventory. For this reason, some have argued that even if publishers try to conduct digital advertising sales, it is becoming difficult to build their own strategies for selling inventory by utilizing the strengths of their content.

From the viewpoint of hindering publishers' strategies for selling inventory, it has been pointed out overseas that not only publishers but also digital platform operators may be able to acquire the browsing data of users on publishers' websites. This is assumed to occur when websites are viewed using browsers provided by digital platform operators or when content is distributed in particular formats provided by digital platform operators, and some Japanese publishers are concerned about the spread of such formats.<sup>[120]</sup>

<Explanation from digital platform operators in response to the points>

On the other hand, the digital platform operators explain the following.

- We have disclosed basic information such as unit price and impressions, and have never been asked to provide further information by publishers.
- The nature of data is a non-exclusive and non-exhaustive resource. The fact that we collect information about consumer interactions with certain online properties does not prevent the owners of those properties from collecting the same

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<sup>[120]</sup> There is the format developed by the digital platform operators and provided for publishers that allows consumers to load web pages faster when they open the browser on their mobile devices. The speed at which a web page is displayed is related to the user's abandonment rate, and it is said that using this format has the advantage of reducing the page abandonment rate. Web page that support this format is designed to reduce read time by temporarily storing (caching) data on the servers of the digital platform operators in advance and displaying the cache when it is clicked (which normally requires loading the data on the servers of each publisher). As a result, it is said that the digital platform operator can also obtain data on the interests of users on the web page, which can be used to improve its own advertising services (see Online platforms and digital advertising Market study final report Appendix S, July 34, 2020, UK CMA).



information. Nor does it reduce the value of that information. And although we understand that many publishers would like to match their proprietary data with our proprietary data in order to create more detailed consumer profiles, we are limited by privacy concerns from sharing anything that is too granular. This is why the reports we provide are generally aggregated and anonymized.

Publishers also receive detailed data and data insights from us through our ad server/exchange's reporting. First, we disclose to publishers which advertisers purchased their inventory. Our reporting also has extensive features that help publishers create and schedule customized reports. The data points made available, particularly relating to view ability, provide useful insights to publishers. There are a wide range of report metrics available to publishers, including ad revenue per thousand ad impressions, advertiser click/view-through rates and more. For publishers who want more granular data at bid level, we also offer data reports. These reports allow publishers to see the specific price a specific advertiser paid to show an ad.

Publisher-facing intermediaries do not have advertisers as clients so they do not know things like what kind of targeting by the buyer brought about the result. It is not possible to pass this information to a publisher as the information is not held by the intermediary.

(c) Since the inflow from search sites accounts for a considerable amount, the impact of changes in search algorithms is large

<Points from publishers>

When publishers place digital advertisements on their websites to earn advertising revenue, it is important that their websites appear at the top of natural (organic) search results in the current situation, where a certain amount of the traffic to publishers' websites is dependent on search sites. In this regard, some say that as digital platform operators change their search algorithms, publishers were burdened with the task of optimizing their websites for the algorithms, and that the websites of publishers who spent a lot of money to research and publish articles with high credibility were displayed relatively low in the search rankings, resulting in a decrease in the number of PVs and advertising revenue. On the other hand, it is understood among publishers that changes in search algorithms by digital platform operators are aimed at improving the user experience, and some people appreciated the recent changes in algorithms.<sup>[121]</sup>

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<sup>[121]</sup> As for the algorithms of digital platform operators, it has been pointed out that the algorithms can identify articles on sumo wrestling and articles on the issue of coercion to appear in adult videos as adult content, and distribution of advertisements to such articles is restricted (Opinion on "The Evaluation of Competition in the Digital Advertising Market" by The Japan Newspaper Publishers & Editors Association, January 31, 2020).

There is no prior explanation from the digital platform operators who operate the search services about these changes in the search algorithm, and some people say that there are insufficient post-event explanations about the changes and consultation services from the digital platform operators. In particular, with regard to the consultation system of digital platform operators, one publisher said, "Although there is a contact point within the foreign digital platform operators for domestic use in Japan, even if we ask about algorithm changes, we are turned away because the decision was made by the head office, and individual requests from the media are not accepted due to the relationship with the head office overseas."

<Explanation from digital platform operators in response to the points>

In response to this point, the following explanation was given by the digital platform operators.

- (Towards changes to algorithm and effects of those changes) Some of our company's algorithmic improvements are designed to address user experience, and if there are multiple web pages that have similar content, sites that take action to improve user experience in alignment with the algorithmic update may appear higher in search results. This necessarily means that other sites may appear lower after we improve our search quality; that that happens is not a problem, but the necessary consequence of making our search better over time. Most of our updates seek to better align the performance of our search ranking algorithms with the guidance we publish or to address recently-discovered types of spam or abuse. Some updates, however, more fundamentally re-balance the ranking algorithms to address a particular new component of a good user experience. In those cases, we typically announces the change so that site operators can understand that any shifts in traffic are due to our quality improvements rather than issues on our side. We are engaged in a constant cat-and-mouse game with bad actors, and our efforts include making algorithmic updates that seek to automatically detect and remediate the effects of these harmful efforts. We do not notify sites about algorithmic safety updates or describe them in detail. Notifying these changes would undermine their purpose.

(Concerning prior notice on changes to algorithm) The notice period is determined based on factors such as the magnitude and nature of the relevant change. We consider that these notices are sufficient for the publishers to prepare for such change. Flexibility on the period of notice is needed to allow us to implement urgent changes that are needed because of an event or issue that is beyond the reasonable control of our company.

(Concerning request for consultation from publisher) When we receive feedback from publishers concerning changes to algorithm, we may assess whether there are any systematic issues and we will try to resolve the issues if any such issues are found. If there are no systematic issues, we will ask the publishers to review the publicly available guidance our company publishes on the measures that could improve ranking.

We maintain public discussion forums where all webmasters can contact us to discuss search issues, and staff these with our employees including Japanese-speaking search experts. In addition, we have also recently established a point of contact in Japan for news publishers to raise questions or report issues, including search algorithm queries.

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## (2) How to provide publishers' content to portal sites and news applications that aggregate and distribute news, and indirectly earn digital advertising revenue generated on such sites and apps

### a Outline of the transaction

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As mentioned in (1) above, in Japan, there are portal sites (Yahoo!News, MSN News, livedoor News, etc.) and news apps (SmartNews, Gunosy, LINE NEWS, etc.) that receive news content through contracts with publishers, aggregate the content of multiple publishers, and distribute it to consumers with more than one publisher of content.<sup>[122]</sup>

The second way for publishers to monetize digital advertising is by contracting with the operators of such portal sites and news apps (hereinafter referred to as "portal sites") to receive a portion of revenue from digital advertising placed on the sites and apps in conjunction with the content they provide.<sup>[123]</sup>

Although the content of contracts between portal sites and publishers varies depending on each contract, it is generally said that the following types exist.

- ( i ) A fixed monthly fee is paid.
- ( ii ) Displaying advertisements in conjunction with the publisher's news content on portal sites, and dividing the resulting advertising revenue for one month

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<sup>[122]</sup> LINE NEWS is a news distribution service developed within LINE's apps, and while the app itself is not specialized in news distribution, this chapter categorizes it as a specific example of a "news app" for the sake of convenience.

<sup>[123]</sup> Google News is a service that aggregates and displays links to publisher websites without a contract with the publishers. It is not included in "portal sites" here.

proportionally according to a predetermined ratio (this method is called "revenue sharing").<sup>[124]</sup>

- (iii) The publisher's news content is posted on portal sites, and distribution fee is paid monthly based on the predetermined unit price per page view (hereinafter referred to as "PVs") and the number of PVs of the content. In some cases, even if the number of PVs is less than, the contract guarantees a minimum amount per month.
- (iv) In each of the above-mentioned contracts, there is a case where the portal sites add the amount calculated by their own standards, apart from the amount calculated respectively. Generally, it is said that this additional remuneration arises or the amount fluctuates when the portal sites evaluate the value of the content in light of some standard.

In addition, individual transactions are sometimes conducted in which the publisher plans and prepares serialized articles on a specific theme different from daily articles, and distributes them exclusively to a specific portal site, thereby obtaining compensation from the portal site for the content concerned.

The display of content on portal sites is generally not in the form of displaying links to the websites of individual publishers and having consumers transition to them, but in the form of displaying the entire content on a page within the domain of the portal site. Therefore, taking a newspaper article as an example, there are two pages on the Internet: an article page that appeared on website operated by the newspaper company (hereafter, such pages of content posted on existing media websites are referred to as "original pages") and an article page that appeared on the portal site. Consumers can read the same article on either page.

In addition, in the pages of the portal sites, there are often links to the original pages and links to other content pages on the website of the same media, which are positioned as "related articles." As mentioned in (1) a above ④ of the inflow path to the publisher's website, one of the characteristics of such agreements is that the inflow to the publisher's website can occur from those links.

Regarding the payment of consideration for content, with respect to the search service discussed as inflow route ② in (1) a above, the necessity of payment of consideration for the display of the content on the search service may be an issue. In this regard, unlike the use of content on portal sites mentioned in this section, there is usually no specific contract between digital platform operators providing search services and publishers, and content is not paid for. Under these circumstances, there is a movement in some

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<sup>[124]</sup> In practice, it is said that the contract is not prorated based on the amount of pure advertising income, but is sometimes prorated after subtracting necessary expenses and other costs incurred by portal sites. The same is applies to the following cases.

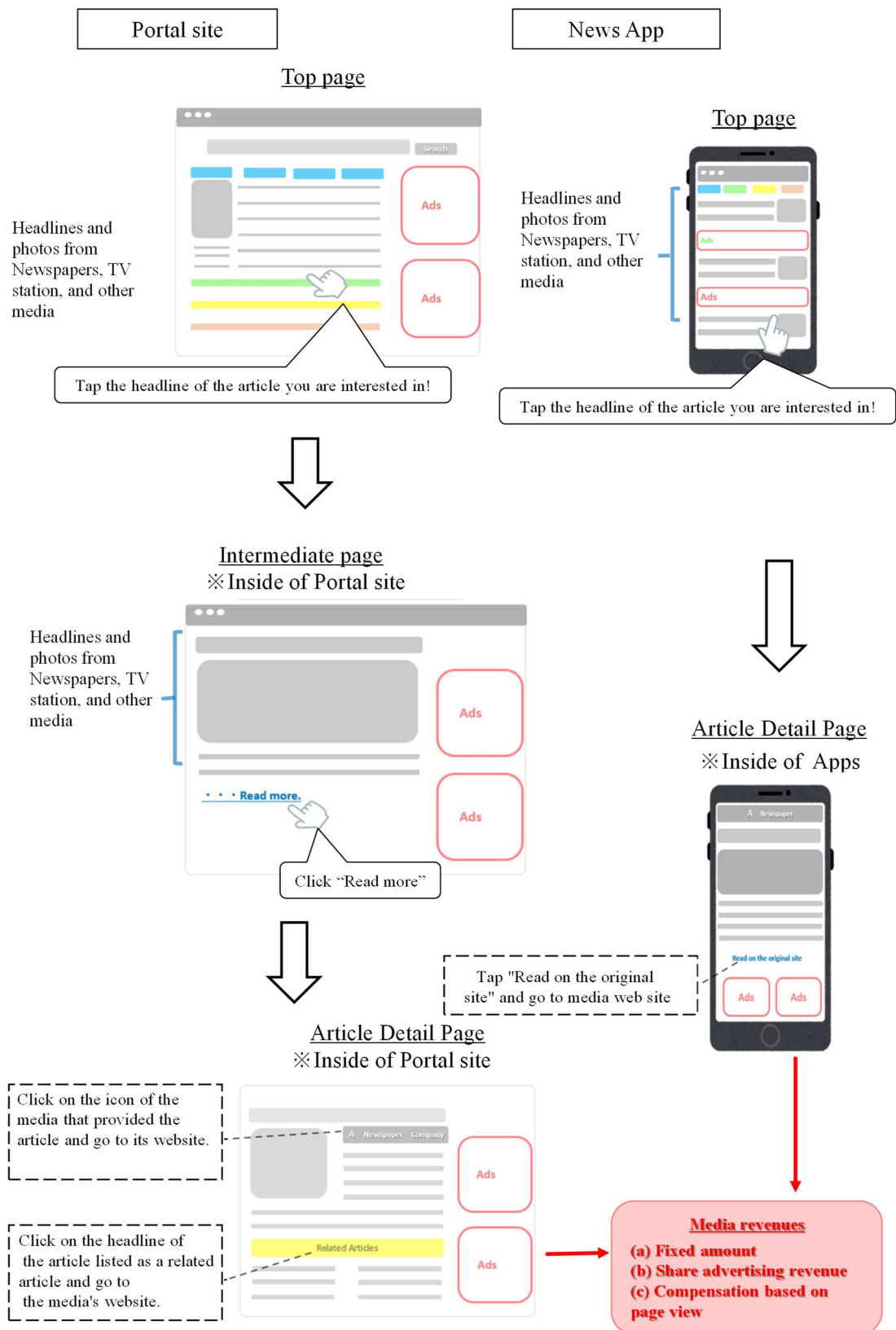
countries to oblige certain digital platform operators to pay content usage fees to the news media businesses. Among the existing domestic media, there are voices such as "Even if we individually ask digital platform providers to pay royalties, if a measure is taken to exclude only our content from display in search results, it will have a serious impact on our business. Therefore, this move to make it legally binding is worthy of attention."<sup>123</sup>

However, it should be noted that there are some differences between Japan and other countries in terms of the relationship between digital platform operators and news media, in addition to the treatment under the Copyright Act as mentioned in (1) a above. What is particularly characteristic of Japan is that the browsing of news through portal sites and news apps covered in this section is widespread among consumers. As mentioned earlier, according to the existing media interviewed, in many cases the proportion of inflow routes to the publisher's website is often the same between ② search results and ④ portal sites and news apps, or the proportion of ④ exceeds that of ②. At this time, the situation is somewhat different from some countries where the influence of digital platform operators offering service ② is overwhelmingly large in terms of the channels of inflow to publishers' websites.

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<sup>123</sup> In Spain, a regulation was introduced in October 2014 that requires news aggregation service providers to pay usage fees for news organizations when they display excerpts of news content. This has had the effect of suspending the Spanish-oriented services of Google News. In Germany, a similar legislation was enacted in 2013 to grant collateral copyrights to news organizations, but it is said that most media outlets wanted to maintain the number of accesses from search service, resulting in allowing free display. In April 2019, the European Union amended the Copyright Directive to require the payment of news royalties. In October of the same year, the French government made this directive into a domestic law, and it is reported that negotiations are taking place between the digital platform operator and news organizations. In Australia, in December 2020, in order to correct the imbalance in bargaining power between certain digital platform operators and the news media, a bill was prepared and submitted to the Parliament, which includes the introduction of mandatory negotiations on news royalties and an arbitration procedure in the event that an agreement cannot be reached. (As of the end of January 2021)

Figure 38 Image of revenue from digital advertising on portal sites and news apps



## b Main points raised by publishers and explanations by digital platform operators regarding these points

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If a publisher provides news content to portal sites and intends to obtain advertising revenue or distribution fees from portal site operators, negotiations arise regarding the proportional sharing of advertising revenue and contracts for content distribution. The monthly fee in ( i ) above, the revenue share ratio in ( ii ), and the unit price per PV of ( iii ) are also determined individually through negotiations between a portal site operator and each publisher. Nevertheless, publishers have voiced the opinion regarding leading portal sites operated by digital platform operators that "Currently, there is a large disparity in bargaining power between them and us, and we have no choice but to conduct uniform and unilateral transactions." Specifically, the following issues have been pointed out by publishers.

### (a) Publisher is not convinced of transparency and fairness of the distribution fee calculation process

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#### <Points from publishers>

Regardless of the form of ( i ) through ( iii ) in (a) above, payments from portal sites are in effect regarded as a compensation for content's distribution. Publishers spend a lot of money on coverage and editing of news content, and distribution fees are recognized as a key contractual factor in terms of cost recovery.

With respect to the process of calculating such distribution fees, many publishers point out that publishers can only obtain information on the number of PVs of their content and the amount received in a month from portal sites. Publishers are not provided with any other important factors that determine the distribution fees (e.g. the amount paid by the advertiser and the overhead deducted from it, each company's revenue sharing ratio, the criteria for determining the unit price per PV, how to calculate additional compensation, etc.). As a result, a sense of distrust arises as to whether they are earning appropriate profits, and there is also the opinion that even if they try to negotiate with portal sites on raising distribution fees, the information required as a precondition is not disclosed in the first place, making individual negotiations by each existing media difficult.

It is also pointed out that, with respect to leading portal sites operated by digital platform operators, while some of content (headlines, header sentences, and photographs of articles) is used on some pages within the domain (usually positioned as an intermediate page before reaching the page where the full text can be read after clicking on the headline of the content), there may be contracts in which the revenue from advertisements attached to those pages is not included in the total amount of the advertising fees to be shared with the publisher, or PVs of those pages is not included in the number of PVs used as the basis for calculating

distribution fee. Some publishers complain that they do not get paid for the advertising revenue generated by these pages, even though it comes from the use of their articles and photos.

As can be seen in the above remarks, the number of PVs of the leading portal sites is overwhelming compared to the news distribution sites operated by each publisher, and the publishers recognize that the total amount of advertising revenue of the portal site operators is huge, so the publishers tend not to be convinced that they are in an equal business relationship with the leading portal sites operated by digital platform operators and that the prices are determined on an equal basis.

<Explanation from digital platform operators in response to the points>

On the other hand, digital platform operators who operate portal sites explained as follows.

- The basis for the calculation of the amount of money received by the publishers is explained at the time of the contract each time, and we believe that information is provided to confirm the basis for the monthly amount received. The intermediate pages that you have pointed out are original pages that our editorial department has edited by mixing elements such as headings, photographs, explanations of key points (illustrative graphics, Q&A, supplementary links, etc.), follow-up modules, and comments. We recognize that these pages do not consist entirely of distribution articles from a single source of information. In the first place, when we use elements of articles distributed by information providers on the intermediate pages, we pay according to such elements. Specifically, if a part of an article distributed by an information provider is used for a photo, graphic, or point explanation displayed on intermediate pages, points will be calculated according to the number of adoptions, and payment will be made according to the number of points earned at the end of the month. This payment will be made not simply in return for the user's viewing, but in return for receiving a high-quality article.
- In our intermediate pages, we publish articles in the way that no one can understand contents of articles. Because we post the same images as the thumbnail images, the headlines of the article, and the first few words of the article text, there is little increase in information from the page where the list of articles is posted, and to check the contents of an article, consumers must move to a page where the full text can be read.  
The role of the intermediate pages is positioned as an aspect in which useful information can be presented to readers who want to know about the events



covered in the news. Due to the nature of news, it is difficult to grasp the whole picture of an event from a single article, and the degree of comprehension of the news also varies among users. Therefore, we have created an intermediate page to present several related news items, which will serve as a place to promote readers' understanding and broaden their choices. In the future, in order to more actively present information for the benefit of readers, we plan to expand not only articles related to the news in question, but also additional content other than news, such as information on terms and characters. As described above, the currently intermediate pages take the form of lists of multiple articles, and we believe that they will be excluded from the view count of specific articles subject to revenue sharing.

<Points from publishers>

In addition, as a point related to transparency and fairness in contracts with leading portal sites operated by digital platform operators, some publishers cite the event that the page of same content on a particular portal site is sometimes displayed higher than the original page of the media that the provider of the content in the search result display of search sites. This event is expected to cause a disadvantage to publishers in that visitors who would have originally accessed the publisher's website directly will flow to the portal site, and publishers will lose the opportunity to obtain a larger revenue compared to the distribution fee (e.g., the opportunity to obtain advertising revenue on their website or to acquire new members). According to some publishers have pointed out that this is not a problem to be handled by digital platform operators which have search algorithms, but rather a problem in the configuration of HTML on the portal site side. In relation to other portal sites that aggregate and distribute news in the same way based on a contracts with publishers, it is said that a tag is set in the HTML of the portal sites to indicate the website of the publisher that is the provider of the content (original page). There are voices that the portal site mentioned as the problem do not accept measures that would make the original pages appear higher.

<Explanation from digital platform operators in response to the points>

In this regard, digital platform operators of search services take the following position.

- In cases where publishers license the portal sites to post articles, we also inform the publishers that they may also request the portal sites not to show the contents in the search result.

When there are multiple websites that present the same content, these compete on user experience. When the publishers have chosen to license their full content to portal sites, the publishers (should) already have received an amount agreed upon price for that article from the portal site.

In addition, the following view was expressed by the portal site operator which was cited as problems.

- We believe that the success of our SEO (Search Engine Optimization) measures may be the cause of the increase in the display order of the contents of our domains that have been subject to these SEO measures in the search results. SEO measures are generally undertaken by all website operators, not only in the news area, and the events pointed out are not necessarily unique in the news media business.<sup>[126]</sup>

In addition, our article pages are our own editorial pages that include not only the text of the article provided by our partners, but also other elements such as comments and timelines. Therefore, we believe that it is not appropriate to tag our editorial page as a duplicate page with the original page of the article provider, since the two are different. Because of the technical issues involved in determining what constitutes "original" and the technical problems involved in operating our website, we believe that it is difficult and unfeasible to take measures such as always displaying original pages above our edited pages in the search results.

#### (b) Insufficient disclosure of information about viewers of news content on portal sites

##### <Points from publishers>

In terms of disclosing information to publishers from leading portal sites operated by digital platform operators, it has been pointed out that information on the audience of the company's content is not shared by portal sites. Usually, the publisher that created the content uses data about the viewers of the content to improve the quality of content itself and digital advertising services. However, there are voices that publishers' efforts will be restricted by the lack of information disclosure from portal sites.

##### <Explanation from digital platform operators in response to the points>

On the other hand, portal site operators explained as follows.

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<sup>[126]</sup> A measure to make your website appear higher in search results.

- These data are disclosed when requested by publishers. It is our policy to continue to respond to such requests in the future.

(c) Since publishers depend on portal sites for a considerable amount of the inflow to their websites, they have no choice but to deal with portal sites even if they are dissatisfied with the contract

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<Points from publishers>

As mentioned above, links to publishers' websites may be displayed as "related articles" or the like in the distribution of content on portal sites. Although the proportions differ for each publisher, many publishers say that access from such links accounts for a certain amount of traffic to their websites. For example, according to several newspaper companies publishing national newspapers, traffic from certain top portals accounted for about 8% to about 13% of the traffic to each newspaper's website in 2019.<sup>[127]</sup>

For this reason, even if they are dissatisfied with the contract with portal sites, the existing media cannot stop providing content to portal sites, and there are also voices saying, "If only our company quits the contract, it will only benefit the competitors who continue the contract."

(d) The criteria for selecting content to be featured at the top of portal sites are unclear

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<Points from publishers>

Similar to search result displays, generally, content displayed on the top pages of portal sites and news apps (hereinafter collectively referred to as "top pages") tends to increase the number of PVs than other content displayed on other pages. It is said that the number of PVs fluctuates greatly depending on whether or not the content is posted on the top page especially for leading portal sites which receive content from many publishers.

Concerning the publication of content on the top pages of portal sites, some have pointed out the uncertainty of the publication standards, stating that the standards for content to be posted on the top pages have not been disclosed, and publishers cannot be involved in the selection process. In order for publishers to continue to provide high-quality content, it is essential to provide a framework in which publishers who provide high-quality content are evaluated fairly and the quality of the content provided by publishers is ensured through fair competition. From this perspective, it is crucial that content posted on the top pages of leading

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<sup>[127]</sup> Based on a questionnaire survey of several newspaper companies that publish so-called national newspapers. Among the main news sites operated by those companies (one site from each company was selected by the JFTC), those that provide content for portal sites were targeted, and the inflow routes for desktop and mobile were combined.

portal sites are determined based on what criteria. On this point, there were some publishers who recognized and appreciated that some portal sites have taken measures such as deciding on a content to be posted on the top page, taking into account factors such as the social significance of content.

<Explanation from digital platform operators in response to the points>

In this regard, the following explanations have been given by the portal site operators.

- We disclose our general approach to the quality of information, not only the top page but also on other media that we manage, and we present guidelines to the information providers so that they can promise a certain level of quality in distribution.  
The policy for selecting content items displayed on the top page, which focus mainly on news articles, is also disclosed to the public. Specifically, the two main pillars of the selection are "public interest" and "social concern." What we call "public interest" is high-priority news that should be communicated to society, such as politics, economics, and disaster prevention, while what we call "social concern" is news that attracts a lot of people, such as sports and entertainment. The idea is to create a place that can be used by many users on a daily basis in response to "social concern" while at the same time delivering news of high "public interest" to a wide audience, and we understand that this is a concept that is widely recognized and shared by media companies
- We have introduced the following system to ensure fairness in posting information on the top page.
  - 1 Publication of articles by editors that emphasize public interest and public welfare  
The selection of articles is selected by the editors while confirming the content of the article, with emphasis on "public interest and public welfare" as a general rule. In accordance with the policies and guidelines formulated by members with experience in news and media, qualitative judgments and selections are made, taking into account factors such as the "richness of the article (e.g., whether there is an excess or deficiency of information, whether there are photographs, and whether it is easy to understand)," as well as the "originality of the report itself (e.g., whether it is a scoop by a single company or not, whether it is a quoted report or not)," and the "speed of the report and article distribution (timing of the

initial report, timing of distribution to the platform). " In addition, articles are checked 24 hours a day and replaced in real time.

#### 2 Posting articles by user using AI

Based on the information provided by the user after obtaining permission, AI derives "information that the user is likely to be interested in" and "content that seems to match the user", and automatically selects and displays articles. By displaying "information tailored to each user," the system has been introduced to provide not only popular information (sensational information, gossip articles, etc.) but also niche information and specialized information to a variety of consumers.

By posting the above 1 (manual posting by editors) and 2 (automatic posting by AI) together, a wide range of information is provided in a form that guarantees public interest and public welfare.

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### 3 Changes in competition among publishers and the impact of these changes on consumers

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#### (1) Impact on consumers by promoting competition among publishers

The changes in the distribution of news content surrounding consumers, as described in 1 above, are affected the competitive environment for publishers, especially existing media. For example, prior to the advent of digitization, it was customary for each household to subscribe to one newspaper. With the spread of personal computers and smartphones, however, portal sites and apps that aggregate and distribute news have emerged, making it possible to view a certain amount of national news for free. It is thought that this has given consumers more opportunities to read articles from various companies, not limited to a specific newspaper. Local newspapers, in particular, used to assume that their subscribers were almost exclusively in-prefecture consumers, but now they can reach out to consumers nationwide via the Internet without having to have exclusive outlets throughout the country. Digitization has expanded the competition among newspapers for readers, allowing each company to compete for accuracy, speed (in the case of breaking news, delivering articles quickly directly leads to an increase in the number of PVs), uniqueness, and comprehensibility in their articles. Such promotion of competition among existing media can be evaluated as a benefit to consumers.

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## (2) Impact on consumers regarding the accuracy and quality of news and other information

In (1) above, we discussed the promotion of competition mainly among existing media, but the distribution of information through digital platforms means that not only existing media, but also all actors can become actors of information dissemination. In fact, some of the traditional media recognize that not only the existing media, but also all publishers of information called news can be competitors, and that the competition will play out in the same arena, on search results displays and on portals.

Nevertheless, while such changes in the nature of the market are progressing, in view of the current situation of the domestic digital advertising sector, where the value of inventory tends to be evaluated based on the number of impressions and clicks, it is pointed out that there are concerns in terms of ensuring a competitive environment due to the high quality of content. If an increase in impressions and clicks leads directly to an increase in digital advertising revenue, some publishers may have incentives to create content that can earn more accesses, for example, something with stimulating headlines or content that is intended to attract consumer access, and something called "fake news."<sup>[128]</sup>

Therefore, if a fair competitive environment is not ensured in which publishers who create high-quality news content are fairly evaluated in the competition among publishers, consumers may not be able to receive high-quality information such as news with guaranteed accuracy and content that is useful to society and economy.

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## 4 Views from competition policy

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### (1) About digital advertising transactions between publishers and digital platform operators

As mentioned in 2 (1) above, while the importance of digital advertising transactions regarding inventories on their websites has increased for many publishers, the actual status of these transactions has been pointed out to be unclear. In order to increase the transparency of digital advertising transactions and ensure a fair competitive environment, it is desirable for digital platform operators to disclose necessary information and fulfill sufficient accountability to publishers so that publishers can make the best choices (see Part 3, Chapter 2-4).

Furthermore, as stated in 2 (1) b (c) above, a considerable proportion of the inflow to the websites of existing media that publish digital advertising into comes from search

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<sup>[128]</sup> Discussions on how to deal with "fake news" in digital platform services are summarized in the final report of the study group on platform services (February 2020) by the Ministry of Internal Affairs and Communications ([https://www.soumu.go.jp/main\\_content/000668595.pdf](https://www.soumu.go.jp/main_content/000668595.pdf))

services operated by digital platform operators. Therefore, changes in search algorithms without prior notice or sufficient explanation may have a significant impact on publishers' digital advertising income. On the other hand, digital platform operators argue that it is sometimes difficult or inappropriate to disclose information on the algorithm changes because, as mentioned in 2(1) b (c) above, algorithms are sometimes updated in order to deal with new types of spam or to correct the effects of attempts to by malicious persons, and if the details of such updates are notified, the purpose of such updates will be forfeited. Under these circumstances, it is desirable for digital platform operators to disclose as much information as possible about algorithm changes that may have a significant impact on publishers' business activities, such as the major factors that determine search rankings, so that publishers can prepare for the changes. It is also desirable to establish an effective consultation system for domestic publishers at digital platform operators as much as possible, as a prerequisite for both parties to reach a common understanding on how far such information disclosure efforts can be deepened.

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### (2) Transactions related to the provision of news content between publishers and portal sites

In relation to leading portal sites operated by digital platform operators as described in 2 (2) above, it is desirable to first clarify the criteria and basis for calculation of the distribution fees from the viewpoint of promoting fair competition in the market for the distribution of news.

Also, with regard to the point raised by publishers, which pages of the same content on portal sites are sometimes displayed higher than original pages of media in search results displays on search results provided by other digital platforms, mentioned in 2(2)(a) above, it is considered that one of reasons is that the handling of the provided content on the portal site side is not always clear in the contract concerning the distribution of the content. For this reason, from the perspective of ensuring transparency and fairness of transactions concerning the distribution of news between leading portal sites operated by digital platform operators and publishers, it is desirable to clarify the handling of such content by, for example, disclosing ideas on the handling of content by portal site side, and to conduct appropriate negotiations between the two sides based on such clarification.

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### (3) The impacts on consumers of changes in competition among publishers

In 3 (2) above, we discussed the possible effects on consumers from the viewpoint of the accuracy and quality of information, as a result of the permeation of information distribution through search services and portal sites operated by digital platform operators. In order to dispel these concerns, it is crucial to provide a framework in which publishers that provide high-quality content are fairly evaluated and the quality of the content provided by publishers is ensured through fair competition.

As one of the mechanisms to encourage such competition, it is desirable to clearly indicate where the primary responsibility lies for ensuring the accuracy and quality of information, i.e., the name of the media that produced the news, even when the news content are viewed through digital platforms. Some existing media say "Content will be viewed by more consumers if articles are provided to portal sites, but many consumers who browse the content through these sites are not conscious of being our content." On the other hand, some existing media, especially those that use social media and post news content from their own accounts, say "Our aim is to increase awareness among consumers toward obtaining paid subscribers." In the case of distribution via digital platforms, the name of the media that created the content should be displayed in an easy-to-understand manner so that consumers can recognize it, and this will encourage consumers to evaluate the quality of the content and the publisher, which is a prerequisite for the competition for readers among publishers. At the same time, it is desirable that a mechanism be considered in which such consumers' evaluations of the quality of content and publishers can be reflected in the competition among publishers, even in the case of through portal sites.

In addition, it is desirable that digital platform operators operating portal sites make continuous efforts to ensure that leading portal sites make judgements based on indicators including the accuracy and reliability of content and the social significance of content as to what content will be posted on the top pages.



## Part 4 Summary

### Chapter 1 Views from the AMA and the competition policy in the digital advertising sector

#### 1 Digital advertising and competition

Prior to the appearance of digital advertising, the advertising media was mainly established media such as TV and newspapers. Inventory in established media is physically and temporarily constrained, so supplies are limited. As a result, advertising expense is generally expensive, and it was not an easy medium for small and medium-sized businesses to advertise in particular. Besides even for large companies with the strength to spend money on advertising expense, traditional media-based advertising was powerful in terms of increasing brand awareness, but it remained a challenge in terms of targeting because it was uniformly displayed to consumers.

With the emergence of digital advertising, advertising is changing dramatically. First of all, digital advertising's inventory has no physical or time constraints, so there are no restrictions on supplies, advertising expense is overwhelmingly cheap, and small-and medium-sized businesses are now able to reach advertisements that could compete with large companies. For large corporations, too, targeting has helped to narrow down consumers and make advertising more accessible than ever before. Thus, digital advertising has the aspect of promoting competition among businesses.

For consumers, on the other hand, advertising along their own interest/attention is usually more valuable than advertising that is entirely unrelated to them. In addition, search service, social media, and the services covered in this report are basically free-of-charge, and it is desirable for consumers to be able to use these services for free to enrich their lives.

Thus, it is true that digital advertising promotes competition among businesses and provides certain benefits to consumers, which should be appreciated. On the other hand, as mentioned above, transactions in digital advertising sector may be problematic under the AMA and competition policies.

#### 2 Digital advertising and digital platform operator

Digital platform operators provide a variety of services to many consumers, including search service, social media, video and music distribution, news distribution, e-mail, e-payments, online malls, and app stores. It forms a massive ecosystem by interlinking and complementing these various services. In addition to operating a variety of different services, there are cases in which digital platform operators hold multiple stages of transactions within the same type of service, such as the intermediary service in digital advertising discussed in this report.

In this context, it is possible to acquire, accumulate, and utilize a variety of consumer personal data through the use of technologies such as Cookie. For this reason, digital platform operators are able to display advertisements in a variety of media that respond to consumer concerns. It has a competitive advantage in digital advertising business, and this business has

become a major source of their revenue. In terms of digital advertising, digital platform operators are not only a key platform that connects the media to the advertisers, but also has a significant impact on the media business that has traditionally been profitable from the advertising business.

Under these circumstances, as mentioned above, there are practices that may pose a problem in digital advertising transactions under the AMA and competition policies. As the issue of opacity, there are not necessarily a problem only for digital platform operators, but also ones that require efforts by the entire digital advertising industry, such as other advertising intermediaries and advertising agencies. However, the digital advertising market will become a healthier market in the future as digital platform operators, which occupy an important position in the digital advertising market, implement initiatives based on the suggestions from the viewpoint of the AMA and competition policy summarized below. It is hoped that they will play a central role in the market development.

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### 3 Views from the AMA and the competition policy

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#### (1) Conducts that could do trade partners harm

In the field of digital advertising, a digital platform operator may have a superior bargaining position in its relations with business partners, such as advertisers, intermediaries, and publishers. If a digital platform operator in a superior bargaining position over the other party unjustly causes disadvantage in light of normal business practices by unilaterally changing a contract, etc., it could be a violation of the AMA (abuse of superior bargaining position).

In order to increase fairness and transparency of transactions and to ensure a fair competitive environment, when a digital platform operator changes the contracts, etc., it is desirable, depending on its impact, (1) to inform in advance and explain sufficiently to the other party about the content of the change of the contract, etc., (2) to give the other party an opportunity to express an opinion and take into account as much as possible any reasonable reasons why the other party cannot accept the change in question, (3) to set sufficient time from a notification of the content of the change until its application, and (4) to give consideration to fairness of the contract.

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#### (2) Conducts that could exclude competitors

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##### a Preferential request

Digital platform operator's vertical integration can lead to efficiency in digital advertising operations by fastening service-to-service connectivity and lowering connectivity costs. Technologies and transactional practices in digital advertising have changed as described in the column of Part 2, Chapter 2 above. Since the preferential

requests are basically doubts based on the waterfall, the conditions have changed at this point when the waterfall is no longer mainstream.

However, as the business survey shows, there are still a few publishers who have doubts about self-preferencing, called the preferential requests. If, by designing and operating the bidding system arbitrarily, a digital platform operator causes interference of transactions between competing intermediaries and publishers, etc. and excludes such intermediaries, it could be a violation of the AMA (interference with a competitor's transactions).

In order to increase fairness and transparency of transactions and ensure a fair competitive environment, it is desirable to disclose necessary information to publishers regarding the bidding system and to establish the system in Japan that enables to achieve full accountability so that it will not cause a doubt of self-preferencing.

#### **b Restrictions of use of third-party services**

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If a digital platform operator disconnects or refuses a third party DSP or an ad measurement service provider to connect from its own major media, etc., it could be a violation of the AMA (individual direct refusal to deal, etc.).

In order to increase fairness and transparency of transactions and ensure a fair competitive environment, when a digital platform operator disconnects or refuses third party DSPs to connect from its own media, it is desirable (1) to explain the reason, and (2) to provide sufficient time for the third party DSP to respond. In addition, regarding the ad measurement services, it is desirable (3) to clarify ad measurement standard for connecting to its own media and (4) to identify the reasons if refusing the connection.

#### **c Restricting access to certain inventories**

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If, by allowing ad distributions to the specific inventories to be done only through its own ad tech services, a digital platform operator interferes with ad distributions to a publisher by the third party DSP that competes with itself and excludes the third party DSPs, then it could be a violation of the AMA (interference with a competitor's transactions). In addition, if a digital platform operator trades with a publisher on the condition that the publisher will not trade with the third party SSPs that competes with the digital platform operator and excludes the third party SSPs, it could be a violation of the AMA (trading on exclusive terms, trading on restrictive terms).

In order to increase fairness and transparency of transactions and ensure a fair competitive environment, regarding the inventories where a large number of advertisers (ad agencies) wish to post their ads, it is desirable that DSPs and SSPs participating in the bidding be able to participate in the bidding fairly, regardless of whether it is the DSPs and SSPs of the digital platform operator or those of a third party, and that a mechanism be prepared in a way that the bidding participants can verify whether the bidding is being conducted fairly.

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### (3) Conducts that could restrict business partners' business activities

If a digital platform operator (1) restricts transactions with the competing digital platform operator, etc., (2) restricts transactions with leading publishers, (3) requires resellers to use certain portions of its own services, or (4) restricts the use of competing functions, etc. against the intermediaries that have become the reseller of the digital platform operator, it could be a violation of the AMA (trading on exclusive terms, trading on restrictive terms, etc.).

In order to increase fairness and transparency of transactions and ensure a fair competitive environment, it is desirable for a digital platform operator (1) to clearly define in writing the contents of the restrictions imposed on the intermediaries that have become the reseller of a digital platform operator, (2) (i) to inform in advance and explain sufficiently about the content of the change of the contract; (ii) to give the other party an opportunity to express an opinion and take into account as much as possible any reasonable reasons why the other party cannot accept the change in question; and (iii) to set sufficient time from the notification of the content of the change until its application, depending on the content of the change.

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### (4) Conducts that could lack fairness or transparency

Among digital advertising transactions, we took up the followings as the conducts that could lack fairness and transparency: (1) criteria of displaying ads; (2) opacity of fee; (3) opacity of advertising unit prices; (4) criteria of viewability; (5) measures toward ad fraud; and (6) review criteria of accounts.

It is inadequate information disclosure that is commonly pointed out for each conduct. Normally, there is no obligation to disclose trade information, especially fees or other trade secrets, to the other party of the transaction. However, as long as a digital platform operator provides a venue for transactions as a digital platform in addition to playing a role as players there, it is desirable to disclose certain information in order to ensure fairness and transparency of the venue for transactions.

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### (5) Problem of multiple combinations of conducts

It is conceivable that the effects on competition in the relevant markets will be greater if more than one of these conducts noted above is implemented at the same time. For this reason, even if an individual conduct cannot be regarded as a violation of the AMA, there may be a case in which a combination of multiple conducts could be a violation of the AMA (unfair trade practices) as a result of the simultaneous implementation of such conducts that exclude competitors or impede new entry.

In addition, in a case where an individual conduct constitutes an unfair trade practice, the effect of restraining competition may be enhanced by the simultaneous implementation of multiple conducts, which could be a violation as private monopolization. For example, if the restrictions of use of third-party services and restricting access on certain inventory

are implemented simultaneously, the effect of eliminating the competing intermediary by these conducts would be stronger. Furthermore, in addition to these conducts, if a digital platform operator requires resellers to use certain proportion of its own services as the conducts that could restrict business partners' business activities, the impact on competition in the relevant market could be even greater.

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#### (6) Transactions with consumers

When a digital platform operator collects personal information, depending on the method and content of the privacy policy, it may be the case that personal information is collected under circumstances where it is difficult for the average consumer to understand the purpose of use due to the fact that the explanation of the purpose of use is vague or not clearly distinguished from the explanation of the use of other services. Collection of such personal information may pose abuse of superior bargaining position under the AMA by obtaining personal information without informing consumers of the purpose of use (improper acquisition of personal information, etc.).

As far as possible, a digital platform operator should clarify the relationship between the information it is obtaining and its purpose of use for each service (if it provides more than one service).

In addition, if a digital platform operator continues to use user information for advertising even after the user has opted out, depending on whether or not it explains what information will be used for advertising after opt-out and the status of explanations, it may fall under cases where personal information is used against the consumer's will, beyond the scope required for achieving the purpose of use. The use of such personal information by a superior digital platform operator can be regarded as abuse of superior bargaining position as an unjust use of personal information, etc..

A digital platform operator should, as far as possible, provide user with the ability to opt-out from targeting ads. In addition, if there is information used for advertising after opt-out, this should be clearly explained in the opt-out setting.

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#### (7) Transactions with publishers

For many publisher, the importance of digital advertising transactions is increasing. In order to increase the transparency of digital advertising transactions and to ensure a fair competitive environment, it is desirable for digital platform operators to disclose necessary information to publishers, such as in the process of calculating the amount paid to publishers and to fulfill sufficient accountability.

Moreover, given the current situation where search services account for a significant proportion of the inflow to websites of publishers that place digital advertisements, it is desirable to disclose sufficient information for publishers to prepare for algorithm changes that may have a significant impact on their business activities, such as the major factors that determine search rankings, whenever possible. In adding this, in order to gain a mutual

understanding among the parties concerned about such efforts to disclose information, it is desirable for digital platform operators to establish an effective consultation system.

Furthermore, the distribution of information through digital platforms allows information transmissions on the same platform by all actors, not limited to existing media. While such changes in the nature of the market for content distribution are progressing, in digital advertising, the value of inventory tends to be evaluated by the number of impressions and clicks. In light of this, it is also important to provide a mechanism that allows publishers who provide high-quality content, especially news with guaranteed accuracy and content that is useful to society and economy, to be evaluated fairly and, as a result, to ensure the quality of the news and other content provided by publishers through fair competition.

As one of the mechanisms for encouraging such competition, it would be desirable to clearly indicate the name of the media that created the news when the news content is viewed through digital platforms. Even through digital platforms, the publisher from which content was created could be easily displayed to consumers, which would encourage consumers to evaluate the quality of the content and the publisher, which is a prerequisite for competition for readers among publishers.

In addition, it is desirable for digital platform operators to make continuous efforts to ensure that decisions on what content will be posted on the top pages of leading portal sites operated by digital platform operators are based on indicators that include the accuracy and reliability of the content and its social significance.

## Chapter 2 Future Efforts

Digital platform operators have created a variety of innovations that have enriched our lives. It is welcome in itself, and there must be no excessive regulation that hinders innovation.

On the other hand, as described in the first section above, digital platform operators form a huge ecosystem by mutually linking and complementing various products and services that are the result of innovation. While the growing size of the ecosystem provides the convenience of completing many of our lives, it also raises a variety of concerns and doubts. One of the issues in this report, for example, is the preferential treatment given by digital platform operators, which has arisen as the ecosystem expands its scope and advances vertical integration of individual services within the ecosystem.

Digital platform operator's preferential treatment would undermine fair competitive conditions and unfairly disadvantage the competitive businesses if it were to have a negative impact on competition. In addition, if a company imposes business activities restrictions on business partners' businesses and excludes competitors from businesses, consumers will suffer a disadvantage, and in the long run, they will wipe out the seeds of innovation. In addition, disadvantages to consumers may arise not only indirectly but also directly in the form of abuse of superior bargaining position for the provision of personal data.

From this perspective, the JFTC will take the following measures in the future in order to promote competition in the digital economy and improve consumer benefits.

- 1 We will continue to deal strictly with specific issues that pose problems under the AMA, including issues related to the actual status of transactions in digital advertising sector as pointed out in this report.
- 2 In order not to pluck the emergence of innovation, prompt and accurate examinations will continue to be conducted on business combinations in the digital field based on the guidelines revised in 2019.
- 3 We will also closely monitor the competitive environment in the changing marketplace affected by the emergence of digital platform operators, such as the changes in competition among publishers pointed out in this report. We will continue to conduct fact-finding surveys on the digital field and identify issues related to AMA and competition policies, taking into account consumer interests.
- 4 In order to create a competitive environment for digital platforms, it is necessary not only to enforce the AMA, but also to consider and respond from various perspectives, including the introduction of appropriate regulations under the Act on Improving Transparency and Fairness of Digital Platforms and other regulations, a mechanism to realize the transfer and opening of data, and the appropriate protection of personal information. We will actively engage in collaboration and cooperation with the Headquarters for Digital Market

Competition established in the Cabinet and related ministries and agencies to improve the competitive environment.<sup>[129]</sup>

- 5 Competition authorities of other countries and regions have also been interested and concerned about digital platform operator's business activities, which is expanding globally. We will continue to exchange views and expertise with competition authorities in various countries and regions at various levels and promote continuous cooperation through such forums as the International Competition Network (ICN).

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<sup>[129]</sup> Act on Improvement of transparency and fairness on Certain Digital Platforms



## Glossary

### A

**Ad agency**

Businesses to plan and run ad campaigns and place ads on behalf of advertisers

**Ad exchange**

A trading market where ad tech services, such as DSPs and SSPs, participate in bids and trade ads.

**Ad fraud**

Malicious methods that use automated programs (Bot) or generate a large amount of spam content in order to earn impressions and clicks and illicitly earn advertising revenue

**Ad network**

Businesses that operate intermediary services between advertisers and publishers

**Ad server**

"Ad server" refers to the system which distributes the advertisement. In this report, there are some cases in which "ad server" refers to the specific services (Part 2, Chapter2) and other cases in which "ad server" refers to the servers which are engaged in the advertisement distribution generally (Part 3, Chapter 3).

**Ad tech**

Technologies that allow ads to be purchased, sold, and distributed automatically

**Ad tech service**

Services using ad tech

**Advertification service**

Services that verify the quality of digital advertising

**Advertiser's ad server**

An ad tech service that manages advertisements in multiple media used by advertisers (ad agencies).

### B

**Brand safety**

Efforts to protect the brand of advertisers from the risk of being delivered to illegal or inappropriate sites or inappropriate pages or contents that damage the brand value, and to ensure the safety of the advertiser's brand.

## C

### **Cookie**

User data that is issued by user's web server when a user visits the website and automatically saved in user's web browser.

### **CPC**

A method to charge fees, depending on the number of times an ad has been clicked

### **CPM**

A method of charging fees, depending on the number of distribution of ads (impression)

## D

### **Data Management Platform (DMP)**

A service that collects and manages data on advertisers' customers and analyzes and processes it for use in ads distribution

### **Demand-side platform (DSP)**

An ad tech service to optimize advertisers' (ad agencies') ad placements

### **Display advertising**

Digital advertising that appears in the form of still image or video, except for search advertising

## H

### **Header bidding**

A technology which allows several SSPs to bid at the same time in publisher's ad server

## I

### **Impression**

The number of ads distributed

### **Intermediary**

Businesses to mediate advertising and provide related services

## L

**Last look**

Generally, "last look" refer to the conduct that businesses who sets and operates the auction venue "look" at bids submitted by competing bidders, after the bidders submitted the bids. In this report, "last look" refers to the practice of bidding from an ad exchange after knowing the bid price of the SSP, etc., that submitted the highest bid price, before bidding by itself as there is a possibility that a digital platform operator that operates both an ad exchange and a publisher's ad server may be able to know in advance the bidding prices of competing businesses on the publisher's ad server.

**M****Measurement**

Measuring the effectiveness of ads as a result of the distribution of ads

**O****Open display**

A sales channel through which advertisers (ad agencies) post display advertising to a third-party publishers via intermediaries

**Opt-in**

An act in which the user agrees in advance to the use of the user's data.

**Opt-out**

An act that indicates the user's intention to refuse the use of the user's data.

**Organic search result**

Search results that search engine returns to search query without advertising

**Owned and operated**

Businesses that own media on which ads are placed and also mediate ads in their owned media

**P****Portal site**

Websites that provide service such as news and search service

**Publisher**

Businesses who place advertisements

**Publisher's ad server**

An ad tech service which operates ad distribution on media used by publishers.

## R

### **Real-time bidding (RTB)**

An ad technology that allows instantaneous transactions between ad tech services on a per-impression basis.

### **Resell**

"Resell" that intermediaries which operates SSPs, etc. sell digital platform operator's intermediary service to publishers on behalf of digital platform operators.

## S

### **Search advertising**

Advertising related to search query

### **Search query**

A string a user enters when using search services

### **Second-price auction**

An auction which has a rule that the winning bidder pays the second-price bid

### **Social media**

Social media and video streaming website

### **Supply-side platform (SSP)**

An ad tech service used by publishers to streamline sales of inventories and maximize revenue.

## T

### **Targeting**

A mechanism that analyzes user attributes and interests, and displays highly relevant ads for users

### **Trading desk**

Businesses specializing in purchase of digital advertising

## V

### **Vertical integration**

In general, "vertical integration" means that the business expands the supply chain of goods and services.

In this report, "vertical integration" means that digital platform operators conducted M&A repeatedly, and came to provide multiple ad tech services and media simultaneously.

### **Viewability**

Visibility of digital advertising

## **W**

### **Waterfall**

One way to determine distribution of ads in publisher's ad server. Advertising requests are made in the order that publisher predetermines, and distribution advertises are determined among bids that exceed floor price.

### **Website, etc.**

Website and apps on which content and ads are provided or posted