

Japan likely to seek more transparency from digital platform businesses

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Authors: [Toshio Dokei](#), [Arthur M. Mitchell](#), [Hideo Nakajima](#), [Takako Onoki](#)

On May 21, 2019, the Ministry of Economy, Trade and Industry (“METI”), Japan Fair Trade Commission (“JFTC”) and Ministry of Internal Affairs and Communications (“MIC”) jointly published reports that provide options for regulation of platform businesses¹.

Following the lead of authorities in the European Union, Japan has been exploring options for greater regulation of digital platforms in order to ensure fairness and transparency in their dealings with business users and consumers. The JFTC is also in the process of reviewing and amending its guidelines on unfair trade practices under the Antimonopoly Act (“AMA”).

After months of study by expert groups, lawmakers and government officials, the government recently published two reports which summarize their findings and set forth numerous options. The JFTC is expected to formulate and submit its draft guidelines for public comment sometime before the end of this summer. In addition, new legislation on fairness and transparency may be submitted to the Diet by the end of this year.

The JFTC is expected to use enforcement measures which are supplemental to the provisions of the AMA to regulate certain aspects of digital platform businesses. According to one report, these may include (i) guidelines which extend the abuse of superior bargaining position theory to business-to-consumer transactions, (ii) special designations of certain disfavored practices, (iii) proactive use of the Commitment Procedure, a newly enacted dispute settlement measure², (iv) the formation of business associations of users and (v) greater use of the JFTC’s power to compel cooperation with market studies under Article 40 of the AMA.

Partially inspired by the EU’s Regulation concerning the free flow of non-personal data, Japan is moving toward introducing legislation which will set rules concerning adequate disclosure of platform terms and conditions, ranking on platform websites, contractual changes, ease of access to data and portability and interoperability, among others.

Now that we are living in a global digital era, these changes in regulation bear keeping in mind as all or certain segments of incumbent businesses attempt to move online.

¹ Press Release and the reports are available in Japanese at https://www.jftc.go.jp/houdou/pressrelease/2019/may/190521_1.html

² See our previous ClientAlert at <https://www.whitecase.com/publications/alert/introduction-commitment-procedure-under-japan-anti-monopoly-act-december-30-2018>

White & Case LLP
White & Case Law Offices
(Registered Association)
Marunouchi Trust Tower Main
26th Floor, 1-8-3 Marunouchi
Chiyoda-ku, Tokyo 100-0005
Japan

T +81 3 6384 3300

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