

Bill for Improving Transparency and Fairness of Digital Platforms

February 2020

Authors: [Toshio Dokei](#), [Hideo Nakajima](#), [Takako Onoki](#)

On January 28, 2020, a bill for improving transparency and fairness of digital platforms (“Bill”) ¹ was discussed at the Digital Market Competition Conference (“Digital Conference”) of the Cabinet of Japan in preparation of submission to the Diet. The summary of the Bill is now available to the public.²

Following the lead of authorities in the European Union, Japan has been exploring options for greater regulations of digital platforms in order to ensure transparency and fairness in their dealings with business users and consumers. On June 21, 2019, the Cabinet of Japan made a decision on the growth strategy, which included maintaining rules for the digital market, such as (i) to establish the Headquarters for the Competitive Digital Market (“Digital Competition Headquarters”) and (ii) to make efforts for submitting a bill on improving transparency and fairness of transactions of digital platform operators at the ordinary Diet session in 2020.

In accordance with the Cabinet’s growth strategy decision, it established the Digital Competition Headquarters under the Cabinet’s organization on September 27, 2019 in order to implement competition policies for promoting competition and innovation in the digital market in a timely and effective manner.

The Digital Competition Headquarters hosted three Digital Conferences on the following dates: October 4 2019, December 17, 2019 and January 28, 2020.

At the Conferences, Mr. Suga of the Chief Cabinet Secretary serves as the chair and Mr. Nishimura of the Minister of State for Economic and Fiscal Policy serves as the vice chair. In addition to the chair and vice chair, there are 11 members attending the Conferences including Mr. Sugimoto, the Chairman of the Japan Fair Trade Commission (“JFTC”) and Mr. Kajiyama, the Minister of Economy, Trade and Industry.

The Digital Competition Headquarters issued a proposal on the Bill on December 19, 2019 (“Proposal”) and sought comments from the public until January 20, 2020. They received 502 comments.³

On January 28, 2020, the Digital Competition Headquarters discussed the Bill in preparation of its submission to the Diet. The ordinary Diet session started on January 20, 2020, and continues through June 17, 2020 with the possibility of an extension. It is customary for bills related to the budget to be submitted first and others are submitted by mid-March because the former needs to be approved before the beginning of the upcoming fiscal year (e.g., April). The Bill apparently will be submitted by mid-March 2020.

¹ Working title.

² The summary of the Bill is available only in Japanese as of February 5, 2020 at <https://www.kantei.go.jp/jp/singi/digitalmarket/kyosokaigi/dai3/siryou1.pdf>

³ List of some major comments from the public and responses to those comments by the Digital Competition Headquarters is available in Japanese at <https://www.kantei.go.jp/jp/singi/digitalmarket/kyosokaigi/dai3/sankou1.pdf>

Basic Principle of the Bill

The summary of the Bill recognizes that digital platforms contribute enhancement of benefits to users, and plays an important role for lifting energy and sustainable development of the economic society in Japan. It clarifies that (i) digital platforms should take measures voluntarily and actively to improve transparency and fairness of digital platforms, (ii) therefore, the Government's involvement or any regulations shall be limited at a minimum in order for digital platforms to achieve ingenuity and creativity, and (iii) policies for improving transparency and fairness of digital platforms shall be conducted with perspective on promoting mutual understanding between digital platforms and users.

Regulated Digital Platforms

According to the summary of the Bill, a definition of digital platforms includes (i) a business that provides a multi-sided market(s) with digital technology, (ii) its service is provided via the Internet, and (iii) network effect is used in the service. The summary of the Bill indicates that certain digital platforms, for which the need for improving transparency and fairness of transactions is high, should be regulated. Cabinet ordinance will provide a definition of specified digital platforms ("Specified DP") that will be subject to the regulation. The summary of the Bill mentions that large-size online malls and application stores are likely to be the target for now.

Information Disclosure, Framework and Procedure

The summary of the Bill indicates that the Bill will require (i) disclosure of information on terms and conditions, such as the scope of data for usage, (ii) ensuring fairness in operations, such as appointing an agency in Japan in order to deal with consumers appropriately, and (iii) reporting obligations.

Cooperation among agencies

The Ministry of Economy, Trade and Industry ("METI") will cooperate with the JFTC and the Ministry of Internal Affairs and Communication ("MIAC"). If there is any suspect of violating the Anti-Monopoly Act ("AMA"), the JFTC will use its authority to enforce the AMA on the issue.

Revisiting Clause

The summary of the Bill recommends revisiting the regulation three years after the date the bill becomes effective.

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

In this publication, White & Case means the international legal practice comprising White & Case LLP, a New York State registered limited liability partnership, White & Case LLP, a limited liability partnership incorporated under English law and all other affiliated partnerships, companies and entities.

This publication is prepared for the general information of our clients and other interested persons. It is not, and does not attempt to be, comprehensive in nature. Due to the general nature of its content, it should not be regarded as legal advice.

© 2020 White & Case LLP