

Bill for Improving Transparency and Fairness of the Specified Digital Platforms Submitted to the Diet on February 18, 2020

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On February 18, 2020, the Ministry of Economy, Trade and Industry (“METI”) submitted the bill for “Improving Transparency and fairness of the Specified Digital Platforms” (the “Bill”) to the Diet.¹ More detailed guidance, including concrete definitions of subjected digital platforms will be provided in the near future.

The purpose of the Bill is to improve transparency and fairness of transactions on digital platforms. The Bill recognizes that digital platforms (i) provide enhanced benefits to users and (ii) play an important role in elevating energy and sustainable development of Japan’s economic society. It clarifies that digital platform operators should take proactive measures and improve transparency and fairness of their digital platforms, so that the Government’s involvement or regulations shall be limited in order for digital platforms to achieve ingenuity and creativity. Further, it states that policies for improving transparency and fairness of digital platforms shall be conducted with the perspective of promoting mutual understanding between digital platforms and users.

According to the Bill, the Minister of METI will designate the specified digital platform operators (“Specified DPOs”) among digital platform operators that meet the thresholds of business size (e.g., total sales and/or number of users). Information about the thresholds will be provided based on the type of business in a cabinet order. Digital platform operators that meet the thresholds of business size, but are not designated as the Specified DPOs will be required to notify their digital platform businesses to the Minister of METI in accordance with a ministerial ordinance. Failure to submit the notification is subject to criminal fines.

The Bill will require the Specified DPOs to perform the following steps: (i) disclose certain information, such as terms and conditions of the transactions, (ii) maintain appropriate operations and systems in accordance with the guidelines (“Guidelines”) that will be provided by the Minister of METI, and (iii) report annually the status of (i) and (ii) along with a self-evaluation to the Minister of METI. Failure to comply with such reporting obligations is subject to criminal fines. The Minister of METI will review and evaluate the reports and disclose the evaluation results. If needed, the Minister of METI has the authority to issue a warning notice (“*kankoku*”) to a Specified DPO. If there is any suspicion of violating the Anti-Monopoly Act (“AMA”), the Minister of METI will refer it to the Japan Fair Trade Commission (“JFTC”).

The Minister of METI will issue the Guidelines about the measures that the Specified DPOs should take, including information about (i) basic principles for measures that support mutual understanding between the

¹ The METI issued a press release on February 18, 2020 in Japanese at <https://www.meti.go.jp/press/2019/02/20200218001/20200218001.html>

Special DPOs and the users, (ii) systems and procedures that secure fairness of the services by the Specified DPOs, (iii) systems and procedures to deal with complaints from users, (iv) appointments of an agency in Japan, and (v) any other measures for the Specified DPOs for considering feedback from users. When preparing the Guidelines, the Minister of METI must confer with the JFTC, the Minister of Internal Affairs and Communications and other relevant minister(s).

The Bill will be revisited three years after the date it becomes effective, and, if needed will be amended, considering the circumstances.

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