

JFTC/CPRC extended the public comment period until March 12, 2021: Proposed issues to be discussed at the Study Group on Competition Policy for Data Market

February 2021

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

The Competition Policy Research Center (“CPRC”) of the Japan Fair Trade Commission (“JFTC”) is seeking comments from the public on a list of proposed issues to be discussed at the Study Group on Competition Policy for Data Market (“Study Group”).¹ The due date was originally set on January 15, 2021, but has been extended to March 12, 2021.²

The CPRC is a research center at the JFTC that was established in 2003 to conduct research on competition policies jointly by legal scholars, practitioners and economists.³

The Study Group was established on November 13, 2020 to discuss measures to stimulate competition more active in data driven businesses from the perspective of competition policy. In the rapidly changing digital age, competition is shifting from “cyberspace,” where online platform-type businesses provide services, to “Second Stage” where businesses are expected to compete in the “fusion of cyber and physical,” using data analyzed in cyberspace to enhance businesses in the physical space, such as automated driving, medical and nursing care, and agriculture.⁴

The Study Group held meetings on November 20, 2020, December 21, 2020 and January 19, 2021. On December 24, 2020, it announced a list of proposed issues to be discussed at the Study Group. As mentioned above, it seeks comments from the public. The list of proposed issues includes the following:

-
- ¹ The list of proposed issues is available only in Japanese at https://www.jftc.go.jp/cprc/conference/index_files/201221da1r.pdf
 - ² CPRC’s announcement for seeking comments is available only in Japanese at <https://www.jftc.go.jp/cprc/ikenbosyuu/index.html>
 - ³ The CPRC’s website in English is available at <https://www.jftc.go.jp/en/cprc/index.html>
 - ⁴ The November 13, 2020 JFTC press release is available only in Japanese at https://www.jftc.go.jp/houdou/pressrelease/2020/nov/201113_2.html

1. Significance of discussion

- (1) What would be viewed as positive or negative with regard to promoting the use of data and/or creating platforms from the competition policy perspective?
- (2) Are the perspectives of personal information protection and data protection as well as competition policy incorporated when discussing mechanisms for utilizing data and/or creating platforms?
- (3) With regard to the points above, are there any differences when it comes to industrial data or personal data?

2. Important points from the competition policy perspective

- (1) What are important points from the competition policy perspective when considering mechanisms for utilizing data and/or creating platforms?

(i) To ensure free and easy access to aggregated data.

Currently, efforts are being made to accumulate and utilize data by individual companies or jointly in some fields. Isn't it important for competition policy to ensure access to the accumulated data? What measures are desirable or undesirable from the standpoint of competition policy to ensure access?

(ii) To clarify data ownership, ensure data portability and interoperability.

Does the concept of data attribution (including who the data belongs to and what is allowed) affect competition in the data market? Is it important for competition policy that data portability is ensured? Is ensuring interoperability important for competition policy?

(iii) Government support.

Are government measures currently taken desirable from a competition policy standpoint? What measures shall be taken by the government to stimulate competition?

(iv) Measures from the perspective of competition law enforcement.

What should the JFTC do to promote competition in the data market? What are the situations in which anticompetitive behavior may be concerned so far?

(v) Others.

What are the concerns of digital platforms, which are currently accumulating a lot of data, especially in the cyber world? What measures can be considered from the competition law and policy perspective?

- (2) With regard to the points above, are there any differences when it comes to industrial data or personal data?

In the world, efforts are being made to create places (e.g., data spaces) where secure, high quality and large amounts of data can be easily accessed, keeping in mind the competition in the rapidly changing digital age. In October 2020, the Government of Japan also launched a study to formulate a data strategy for creating a data utilization infrastructure suitable for a digital nation in the 21st century. Under these circumstances, it would be a great significance for the development of the Japanese economy in the digital age to study measures to stimulate competition in data-driven businesses.⁵

⁵ Announcement of "Study Group on Competition Policy for Data Markets" (November 20, 2020) is available only in Japanese at https://www.jftc.go.jp/cprc/conference/index_files/201120deta1.pdf.

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.

© 2021 White & Case LLP