

# Japan's *agile* responses to big tech?:

One year of experience with the Transparency Act

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# Perceived concerns

## (Unilateral changes to terms and conditions)

- Increase of fees, introduction of a new payment system, being forced to accept unjustifiable return, etc.
- Accepting changes as a condition for continuing to use the service.

## (Self-preferences)

- Preference given to own or affiliated companies in ranking, payment methods, fees, etc.

## (Direct selling using third parties' data)

- The platform uses third parties' transaction data to sell its products.
- The platform can obtain user information from a third party and use it to promote its own app.

## (MFN clause)

- Requested to make the prices in the mall equal to or higher than those in other malls.

(From METI, Outline of TFDP Bill (18 Feb 2020)<<https://www.meti.go.jp/press/2019/02/20200218001/20200218001-1.pdf> >

# Challenges

## Contestability/competition

- Keep remaining competition free from distortion.
- Restore competition wherever possible.
- Regulate exclusionary practices *in a timely manner*.

The Antimonopoly Act (AMA) does not require market power, yet faces difficulties in determining anticompetitive effects (incl. market definition). Also lacks predictability.

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# Challenges

Fairness:

- Transparency.
- Fair trading terms and conditions.

In theory, the Japan Fair Trade Commission (JFTC) can regulate unfair terms and conditions, but in practice...

In any case, the AMA does not impose a positive duty to be transparent. At best, it only regulates misrepresentation.

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# Challenges

Overregulation concern:

- Stifle innovation.
- Overload start-ups and small and medium-sized companies.
- Administrative resources.

# EU P2B REGULATION (EU) 2019/1150



## European Commission - Press release



### Digital Single Market: EU negotiators agree to set up new European rules to improve fairness of online platforms' trading practices

Strasbourg, 14 February 2019

Traders selling online via marketplaces, hotels using booking platforms, or app developers are amongst those who will benefit from the new rules agreed today. The new Regulation will create a more predictable and transparent trading environment online, and will offer new possibilities for resolving disputes and complaints.

As part of the [Digital Single Market strategy](#), the new rules will apply to the entire online platform economy - approximately 7000 online platforms or market places operating in the EU, –which include world giants as well as very small start-ups, but having often an important bargaining power vis a vis business users. Certain provisions will also apply to search engines, notably the ones concerning ranking transparency.

Vice-President for the Digital Single Market Andrus **Ansip** said: *"Today's agreement marks an important milestone of the Digital Single Market that will benefit millions of European companies relying on digital platforms to reach their customers. Our target is to outlaw some of the most unfair practices and create a benchmark for transparency, at the same time safeguarding the great advantages of online platforms both for consumers and for businesses."*

Commissioner for Internal Market, Industry, Entrepreneurship, and SMEs, Elżbieta **Bieńkowska**, stated: *"Our new rules are especially designed with the millions of SMEs in mind, which constitute*

# Act on Improving Transparency and Fairness of Digital Platforms (Transparency Act)\*

Japan's first special legislation to curtail the power of big tech.

\* Act on Improving Transparency and Fairness of Digital Platforms (TFDPA).

English translation

<[https://www.meti.go.jp/english/policy/mono\\_info\\_service/information\\_economy/digital\\_platforms/pdf/1012\\_001a.pdf](https://www.meti.go.jp/english/policy/mono_info_service/information_economy/digital_platforms/pdf/1012_001a.pdf)>

Website:

<[https://www.meti.go.jp/english/policy/mono\\_info\\_service/information\\_economy/digital\\_platforms/index.html](https://www.meti.go.jp/english/policy/mono_info_service/information_economy/digital_platforms/index.html)>

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## Transparency Act: principles

- Targeted: **only designated services and platforms** are covered.
- **Co-regulation** approaches: neither the law nor the government specifies (in detail) what the platform must do.
- Yet, **public enforcements** are the key.
- **Report and assessment** rather than punishment.



# \* In their own words...

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## “Basic Philosophy”:

- The “**minimally-necessary** commitments from, and enforce regulations on, digital platform providers”
- “**Co-regulation**” approach that **stipulates the general framework under laws and leaves details to businesses’ voluntary efforts.**

Targets subject to the regulations: **specified digital platform providers**

“**The Act requires specified platform providers to disclose terms and conditions of trading and other information**, develop procedures and systems in a voluntary manner and submit a report every fiscal year on the overview of measures and businesses that they have conducted, to which self-assessment results are attached.”

# Cont'd

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## **“Roles that administrative authorities should play”**

The Act requires administrative authorities (**METI Minister**) to **review** the current situation of platform operation in accordance with the submitted **yearly report** and publicize the assessment results together with the overview of the report. In such reviews, administrative authorities are expected to hold interviews with academic experts, customers and consumers ... and encourage stakeholders to share challenges and facilitate mutual understanding.”

**“The Act authorizes the METI Minister to request that the JFTC take appropriate measures under the AMA...” .**

# EU P2B REGULATION (EU) 2019/1150

## 1. WHO IS SUBJECT TO THE P2B REGULATION? WHO SHOULD COMPLY WITH IT? THE RIGHT QUESTIONS TO ASK.

The P2B Regulation applies to providers of online intermediation services and search engines (the P2B Regulation uses the terms “online intermediation services” and “online search engines”, as defined in Article 2(2) and (5) of the P2B Regulation respectively). However, not all rules are applicable both to online intermediation services and search engines. Moreover, search engines and online intermediation services are only covered, simply put, in as far as they provide their services within the EU (see Article 1(2); see also *1.3 below*). In addition, some rules for online intermediation services only apply to larger online intermediation services.

The set of rules you need to comply with depends on:

- whether the service you provide is a search engine or an online intermediation service;
- whether any business users established in the EU are active on your online intermediation service or whether any corporate website users established in the EU are findable through your search engine;
- whether any consumers are physically present in the EU that can be reached via or have access to use your online intermediation service or search engine; and
- for some rules on online intermediation services only, the size of your online intermediation service i.e. whether you are a small enterprise<sup>13</sup> or not.

As a provider of online intermediation services that falls in principle within the scope of the P2B Regulation you need to comply with all the rules in the P2B regulation unless you qualify as a small enterprise, in which case you will be exempted from the obligations to set up a complaint

# EU P2B REGULATION (EU) 2019/1150

## Art. 14

Organisations and associations that have a legitimate interest in representing business users or in representing corporate website users, as well as public bodies set up in Member States, shall have the right to take action before competent national courts in the Union, in accordance with the rules of the law of the Member State where the action is brought, to stop or prohibit any non-compliance by providers of online intermediation services or by providers of online search engines, with the relevant requirements laid down in this Regulation.

# Transparency Act

The competent authority:

The Ministry of Economy, Trade and Industry (METI).

Implications.

Why not the competition authority (Japan Fair Trade Commission, JFTC)? Why not the Consumer Affairs Agency? Why not the Ministry of Internal Affairs and Communications (MIC)?

# The Cabinet Office, Headquarters for Digital Market Competition

‘Cross-sectional  
approach’

## Establishment of “Headquarters for Digital Market Competition”

### 【Background】

- June 2019 - Japanese Government decided to **create the organization comprised of experts** with diverse and high-level knowledge in order to **address the issues in the digital markets**, including the ones caused by digital platforms.
  - Since the issues run across ministries and agencies, the organization is required to tackle the challenge in **cross-sectional approach** among the policies.
- September 27, 2019 **Established “Headquarters for Digital Market Competition”**

Headquarters  
for Digital Market Competition

- Related ministers, led by Chief Cabinet Secretary
- Established in Cabinet Secretariat

Digital Market Competition  
Council

- Related ministers and Experts

Digital Market Competition  
Working Group

- Experts from legal, economics, technology, business and others

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# Schedule

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27 May 2020 Enacted.

1 Feb 2021 Came into force.

1 Apr 2021 Designations: 2 types (online shopping malls & app stores), 3 & 2 platforms respectively?

21 Dec 2021 Monitoring meeting established.

3 Oct 2022 Second designation (2 types of digital advertisements): 4 platforms.

22 Dec 2021 METI, Evaluation of transparency and fairness of specified digital platforms.

# Transparency Act Outline 1

Adopted principles:

- Targeted: only designated areas and platforms are covered.
- Co-regulation approaches: neither the law nor the government specify what the platform must do (in details).
- Yet, public enforcements are the key.
- Report and assessment rather than punishments.



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# Designations

## **Cabinet Order for Stipulating the Business Category and Scale under in Article 4, Paragraph 1 of the Act**

English translation:

[https://www.meti.go.jp/english/policy/mono\\_info\\_service/information\\_economy/digital\\_platforms/pdf/1012\\_001b.pdf](https://www.meti.go.jp/english/policy/mono_info_service/information_economy/digital_platforms/pdf/1012_001b.pdf)

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Designation  
April 2021:

Online shopping  
malls

**Criteria:**

The aggregate turnover in Japan is 300 billion yen or more.

**Designated platforms:**

Amazon.co.jp

Rakuten Ichiba

Yahoo! Shopping

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Designation  
April 2021:

**App stores**

**Criteria:**

The aggregate turnover in Japan is 200 billion yen or more.

**Designated platforms:**

App Store (Apple)

Google Play Store

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**Criteria:**

i) Media-integrated digital ad platforms

The aggregate turnover in Japan is 100 billion yen or more.

**\*Designation**

October 2022:

**Designated platforms:**

Google LLC

(Business that displays advertisements on "Google Search" or "YouTube" through "Google Ads", "Display & Video360", etc..)

Digital advertisements.

Meta Platforms, Inc

(Business that displays advertisements on "Facebook (including Messenger)" or "Instagram" through "Facebook Ads".)

Yahoo Japan Corporation

(Business that displays advertisements on Yahoo! JAPAN (including Yahoo! Search) through Yahoo! Ads.)

\*Designation

October 2022:

## Digital advertisements

### Criteria:

ii) Ad intermediary digital platforms

The aggregate turnover in Japan is 50 billion yen or more.

### Designated platform:

Google LLC

(A business that displays advertisements in media owners' advertising space using "AdMob", "Adsense", etc. through "Google Ads", "Display & Video360", etc..)

**NOTE: The following slides explain rules and practices relating to online shopping malls and app stores.**

# Transparency Act Outline 2

Adopted principles:

- Targeted: only designated areas and platforms are covered.
- Co-regulation approaches: neither the law nor the government specify what the platform must do (in details).
- Yet, public enforcements are the key.
- Report and assessment rather than punishments.

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# TRANSPARENCY

## Article 5 (1)

**When a SDPP discloses the conditions** for provision of SDPP in this article and the following article to users, the **SDPP must do so in accordance with the method prescribed by an Order** of the METI in order to promote understanding of those Provision Conditions by users.

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# MUTUAL UNDERSTANDING

Article 7 (1)

A SDPP **must take measures necessary to promote mutual understanding** in transactional relationships between the SDPP and *User Providers of Goods*, etc



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## \*DEFINITION

### Article 2 (3)

*“User Provider of Goods, etc.”* in this Act means a person who uses a Digital Platform for the purpose of providing Goods, etc.

\*\* In the following, simply *“Business User”*.

# COMPLAINT HANDLING SYSTEM

## Article 7

(2) The **METI shall establish Guidelines** necessary to contribute the appropriate and effective implementation of measures to be taken by SDPPs pursuant to the provisions of the preceding paragraph.

(3) In the Guidelines, the following particulars shall be prescribed:

(iii) matters relating to the establishment of systems and procedures necessary for **handling complaints from Business Users** regarding SDPPs and the **resolution of disputes** between SDPPs and Business Users.

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# FAIRNESS

Cont'd

(ii) matters relating to the establishment of systems and procedures necessary to ensure that the provision of SDPPs to Business Users is performed **fairly**;

# WHAT TO DISCLOSE: TO BUSINESS USERS

Article 5 (2) (i)

a. **Criteria to refuse deal or delisting.**

b. In case when the SDPP **requires Business Users to purchase particular goods or rights**, the details of such requests and the reasons.

c. Main factors to determine **rankings** incl. payment of advertising and other payments to the SDPP if relevant.

d. In cases where the SDPP **acquires or uses provided data** on Goods, etc., the particulars of such data and the conditions of such acquisition and use.

e. Whether the **SDPP provides** the Business User, or its designated party, **with data** on Goods, etc. and the conditions to do so.

f. Methods for Business Users to **submit complaints or request discussions** with the SDPP.

# WHAT TO DISCLOSE: TO BUSINESS USERS

Article 5 (2) (i)

**f. Criteria to refuse deal or delisting.**

b. In case when the SDPP requires Business Users to purchase particular goods or rights, the details of such requests and the reasons [**tying and forced purchase**]

c. Main factors to determine **rankings** incl. payment of advertising and other payments to the SDPP if relevant.

d. In cases where the SDPP acquires or uses provided **data** on Goods, etc., the particulars of such data and the conditions of such acquisition and use.

e. Whether the SDPP provides the Business User, or its designated party, with **data** on Goods, etc. and the conditions to do so.

f. Methods for Business Users to submit complaints or request discussions with the SDPP.

g. Other information designated by METI.

**METI Ordinance, No. 1 of 2021** Article 6

WHAT TO  
DISCLOSE:

TO BUSINESS  
USERS

i) **MFN** (parity clause), if relevant.

ii) If the SDPP employs the means of settlement with the Business User differ from those used for general users, the details of the methods and the reason to employ such methods.

iii) When a related company is a Business User and the conditions of provision to the relevant related company differ from those offered to other Business Users , the details and reasons thereof [**self-preferencing**].

iv) When Goods, etc. provided by a Business User are **returned** or all or part of the price of Goods, etc. is **refunded** or other compensation is provided at the expense of the relevant Business User, the details and conditions thereof.


v) In the case where payment of all or part of the **amount payable** by the SDPP to a Business User as consideration for Goods, etc. is **withheld**, the details and conditions thereof.

## WHAT TO DISCLOSE: To Consumers

### Article 5 (2) (ii)

a. [The same as above Art. 5 (2) (ii) (c).

b. In cases where the relevant SDPP acquires or uses purchase data concerning Goods, etc., the particulars of the relevant purchase data concerning Goods, etc. and the conditions relating to the acquisition or use thereof.



**'leaves details to  
businesses' voluntary  
efforts'?**



# Transparency Act Outline 3

Adopted principles:

- Targeted: only designated areas and platforms are covered.
- Co-regulation approaches: neither the law nor the government specify what the platform must do (in details).
- Yet, the public enforcement is the key.
- Report and assessment rather than punishments.



# Reporting obligations and rules



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# REPORTING

## Article 9 (1)

A SDPP **must submit a report** stating the following information to the METI once annually as provided by Order of the METI;

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## METI REVIEW

### Article 9 (2)

When the METI receives a report submitted pursuant to the preceding paragraph, the **METI shall perform an evaluation** concerning the transparency and *fairness* of the SDPP, taking into consideration the Guidelines, based on the content of the report, facts reported pursuant to the provisions of paragraph (1) of the following article, and other facts known to the METI.

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# METI REVIEW

## Article 9 (5)

The METI must give public notice of the results of the evaluation performed pursuant to the provisions of paragraph (2) along with a summary of the report referenced in paragraph (1).

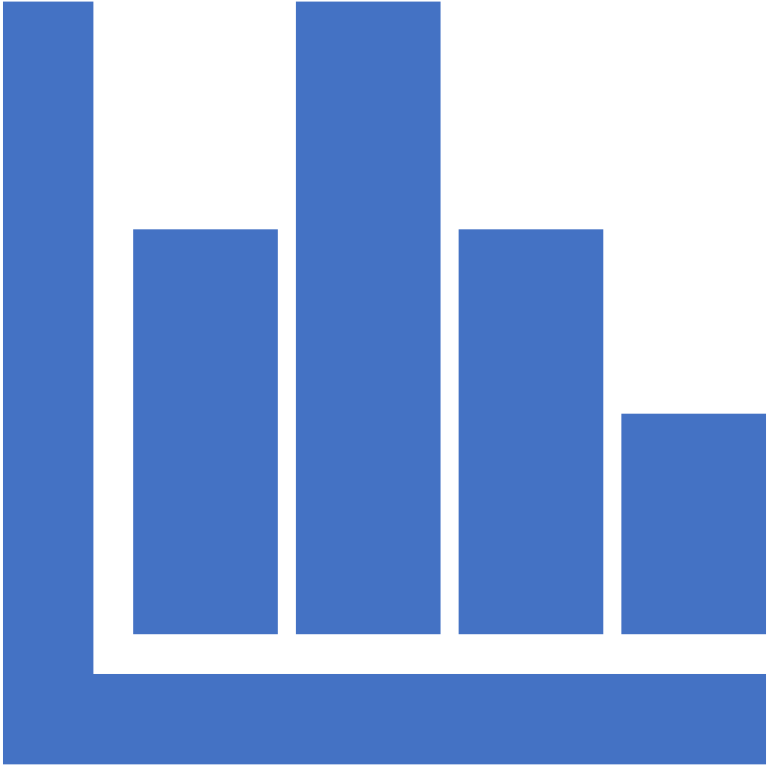
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## FURTHER EFFORT

### Article 9 (6)

A SDPP must endeavour under its own initiative to improve the transparency and fairness of its SDPP based on the results of the evaluation public announced pursuant to the provisions of the preceding paragraph.

# Reporting and monitoring in practice



# *‘Consultation desk’ (outsourced)*

‘Specialized counsellors provide free consultation and advice to businesses that use digital platforms regarding their business problems. If necessary, you can consult a lawyer.’

[https://www.meti.go.jp/policy/mono\\_info\\_service/digitalplatform/business.html](https://www.meti.go.jp/policy/mono_info_service/digitalplatform/business.html)

Translated by Bing.

Online shopping malls: Japan Direct Marketing Association

App stores: Mobile Content Forum (MCF)

Digital ads: Deloitte Touche Tohmatsu LLC

Activity report FY2021 (Japanese):

[https://www.meti.go.jp/policy/mono\\_info\\_service/digitalplatform/pdf/20230203.pdf](https://www.meti.go.jp/policy/mono_info_service/digitalplatform/pdf/20230203.pdf)



# *‘Consultation desk’ (METI)*

デジタルプラットフォーム  
取引相談窓口  
(経済産業省窓口)

※公正取引委員会でも、デジタル・プラットフォームに関する情報の提供を受け付けております。

▶ [デジタル・プラットフォームに関する取引実態や利用状況についての情報提供窓口（公正取引委員会）](#)

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## *‘Monitoring meeting’*

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The aim: "promoting the sharing of challenges and mutual understanding among the specified digital platform providers and their stakeholders" / "in order to hear opinions from stakeholders, such as academic experts, business users, consumers, and others."

“... participants will discuss matters based on the reports submitted by the specified digital platform providers and information brought to the consultation desk for business users of digital platforms (shop owners on online shopping malls, app developers, etc.). They will also do so while listening to the opinions of business users and consumers of digital platforms, digital platform providers, and so on.”

# *'Monitoring meeting'*

<Chair>

Okada Yosuke, Professor, Graduate School of Economics, Hitotsubashi University

<Members>

- Ikegai Naoto, Associate Professor, Graduate School of Law, Hitotsubashi University
- Kuroda Toshifumi, Associate Professor, Faculty of Economics, Tokyo Keizai University
- Korenaga Daisuke, Professor, Graduate School of Law and Politics, Tokyo Metropolitan University
- Takakura Hiroki, Professor, Information Systems Architecture Science Research Division, National Institute of Informatics
- Takeda Kuninobu, Professor, Graduate School of Law and Politics, Osaka University
- Hyakubu Michiko, Senior Manager, PricewaterhouseCoopers Aarata LLC
- Hirayama Kentaro, Founding Partner, Hirayama Law Offices / Associate Professor, Graduate School of Law, Kyushu University
- Masujima Masakazu, Partner, Mori Hamada & Matsumoto
- Wakae Masako, Senior Writer, The Yomiuri Shimbun

## デジタルプラットフォームの透明性・公正性に関するモニタリング会合

▶ [2022年11月11日 意見とりまとめ](#)

▶ [2022年11月8日 第8回](#)

▶ [2022年10月27日 第7回](#)

▶ [2022年9月22日 第6回](#)

▶ [2022年9月21日 第5回](#)

▶ [2022年9月13日 第4回](#)

▶ [2022年8月25日 第3回](#)

▶ [2022年3月14日 第2回](#)

▶ [2021年12月24日 第1回](#)

### お問合せ先

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商務情報政策局 情報経済課 デジタル取引環境整備室

電話：03-3501-0397

FAX：030-3501-6639

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# *Platform economics study meeting*

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“With the aim of building an intellectual foundation for the sound development of the market surrounding digital platforms, this study group will share trends in digital platform research, market and policy trends at home and abroad, and discuss the direction of research required in the future and the expected policy responses, with a focus on researchers in the field of economics.”

<<https://www.meti.go.jp/press/2021/06/20210629001/20210629001.html>> translated by bing

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# *Platform economics study meeting*

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## Members:

- Takanori Ida, Professor, Graduate School of Economics, Kyoto University
- Shota Ichihashi, Principal Researcher, Bank of Canada
- Ryoko Oki, Professor, Faculty of Business Administration, Hosei University
- Toshifumi Kuroda, Associate Professor, Faculty of Economics, Tokyo Keizai University
- Yusuke Zenyo, Associate Professor, Graduate School of Business Administration, Kobe University
- Naofumi Doi, Associate Professor, Department of Economics, Faculty of Commerce, Otaru University of Commerce

<<https://www.meti.go.jp/press/2021/06/20210629001/20210629001.html>> translated by bing

## 2022年度

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▶ [2023年1月24日 第8回](#)

▶ [2022年10月11日 第5回](#)

▶ [2022年7月28日 第2回](#)

▶ [2022年12月14日 第7回](#)

▶ [2022年9月29日 第4回](#)

▶ [2022年6月24日 第1回](#)

▶ [2022年11月29日 第6回](#)

▶ [2022年8月19日 第3回](#)

## 2021年度

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▶ [2021年度とりまとめ](#)

▶ [2022年2月1日 第8回](#)

▶ [2021年11月16日 第5回](#)

▶ [2021年7月20日 第2回](#)

▶ [2022年3月15日 第10回](#)

▶ [2022年1月18日 第7回](#)

▶ [2021年10月26日 第4回](#)

▶ [2021年6月29日 第1回](#)

▶ [2022年2月18日 第9回](#)

▶ [2021年12月15日 第6回](#)

▶ [2021年9月21日 第3回](#)

## お問合せ先

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商務情報政策局 情報経済課 デジタル取引環境整備室

電話：03-3501-0397

*Outsourced study on  
policies and news  
relating to digital  
platforms in Japan  
and abroad*

iw | Read aloud | 1 of 149




## 国内外におけるデジタルプラットフォーム関係動向 四半期レポート（2022年1～3月）

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2022年 7月

〒100-0004 東京都千代田区大手町1-9-2  
大手町フィナンシャルシティ グランキューブ  
株式会社野村総合研究所

ICTメディアコンサルティング部









# 四半期レポート

## 国内外におけるデジタルプラットフォーム関係動向 四半期レポート

### 令和3年度調査

- ▶ [四半期レポート（令和3年4月 - 6月）（PDF形式：2,685KB）](#) 
- ▶ [四半期レポート（令和3年7月 - 9月）（PDF形式：3,432KB）](#) 
- ▶ [四半期レポート（令和3年10月 - 12月）（PDF形式：2,624KB）](#) 
- ▶ [四半期レポート（令和4年1月 - 3月）（PDF形式：2,485KB）](#) 

### お問合せ先

商務情報政策局 情報経済課 デジタル取引環境整備室

電話：(03)3501-0397



# Assessments



# Overview

- Exceeded expectations. Sense of satisfaction among sellers and app developers.
- Transparency and consultation system established (to a substantial extent).
- Yet, remaining issues in relation to fairness and contestability (competition).
- Anticipated challenges for FY2023 (second year of online shopping malls and app stores) and digital ads.
- Questions raised in terms of legitimacy of the regulatory regime.
- ‘Competition vs consumer’, ‘Protection of sellers /app developers vs consumers’ debates.

# Assessments 1

- Exceeded expectations. Sense of satisfaction among sellers and app developers.
- Transparency and consultation system established (to a substantial extent).
- Yet, remaining issues in relation to fairness and contestability (competition).
- Anticipated challenges for FY2023 (second year of online shopping malls and app stores) and digital ads.
- Questions raised in terms of legitimacy of the regulatory regime.
- 'Competition vs consumer', 'Protection of sellers /app developers vs consumers' debates.

## METI, Evaluation on Transparency and Fairness of Specified Digital Platforms


(22 Dec 2022)

[https://www.meti.go.jp/english/press/2022/1222\\_003.html](https://www.meti.go.jp/english/press/2022/1222_003.html)

‘... the disclosure of information such as terms and conditions of provision by specified digital platform providers has generally improved as a result of the implementation of the TFDPA. The specified digital platform providers also showed a positive attitude toward the development of a system for handling complaints and resolving disputes. In fact, according to the **results of a survey of business users, about 70-80% of the business users indicated that the information disclosure and consultation services provided by the specified digital platform providers have become more understandable and courteous.**’ (emphasis added)

## Assessments 2

- Exceeded expectations. Sense of satisfaction among sellers and app developers.
- Transparency and consultation system established (to a substantial extent).
- Yet, remaining issues in relation to fairness and contestability (competition).
- Anticipated challenges for FY2023 (second year of online shopping malls and app stores) and digital ads.
- Questions raised in terms of legitimacy of the regulatory regime.
- 'Competition vs consumer', 'Protection of sellers /app developers vs consumers' debates.



Remaining issues:  
From METI's  
evaluation

- Self-preferencing
- Acquisition and use of data
- Recovery of damages



Remaining issues:  
Missing from METI's  
activities

- Bundling
- Exclusivity
- Setting default and dark patterns



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# Transparency Act: Goals

## Art. 1

“to **improve the transparency and fairness** of specified digital platforms ... and contribute to the enhancement of the lives of the public and the sound development of the national economy by promoting **fair and free competition** in relation to specified digital platforms.”

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Need for  
more  
stringent  
measures?

Assessing powers and resources to enforce the  
transparency act.

# METI'S AUTHORITY

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## Article 6 (1)

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If the METI finds that a SDPP is not in compliance with the provisions of paragraph (1) to paragraph (4) of the preceding Article, the METI may recommend to the relevant SDPP that it promptly disclose the provision conditions pursuant to the provisions of paragraph (1) of that article, disclose the matters specified in each item of paragraph (2), each item of paragraph (3), or each item of paragraph (4) of that article, or take other necessary measures.

# METI'S AUTHORITY

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## Article 6 (4)

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If a SDPP that has received a recommendation prescribed in paragraph (1) has failed to take the recommended measure without any justifiable grounds, the METI may order the relevant SDPP to take the recommended measure.

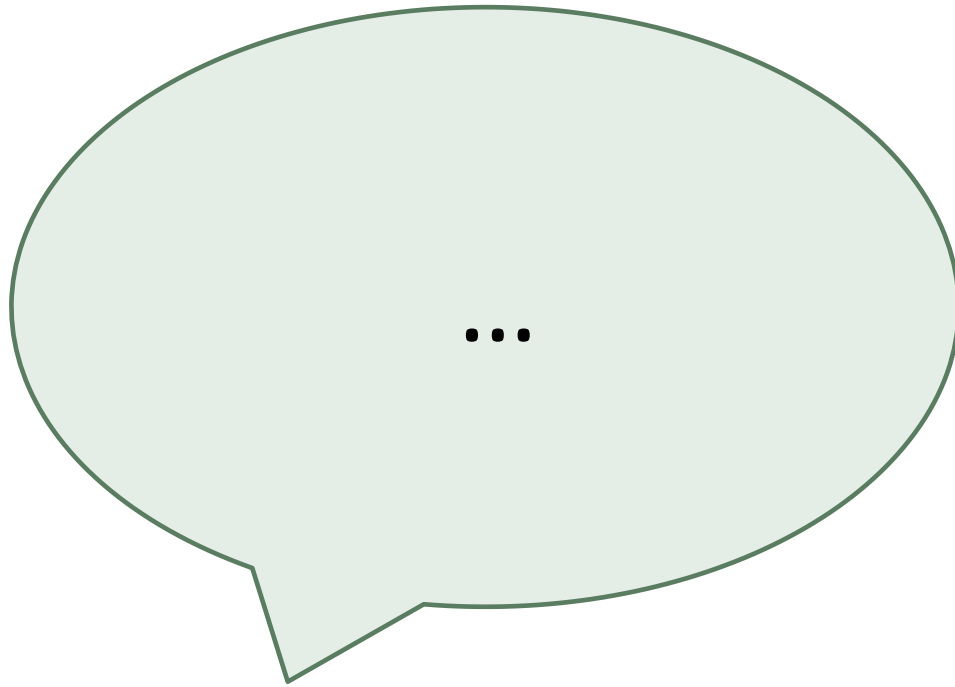
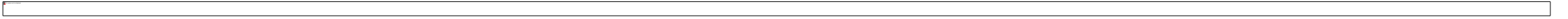
# METI'S AUTHORITY

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## Article 8 (1)

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If the METI finds it particularly necessary for appropriate and effective implementation in relation to the measures to be taken by SDPPs pursuant to the provisions of paragraph (1) of the preceding article, the minister may recommend to the relevant Specified Digital Platform Provider that it take necessary measures.



JFTC's AMA  
enforcement as  
the last resort?

### Art. 13

The METI may, when a SDPP is found to have engaged in conduct impeding the transparency and fairness of SDPPs and that fact is in violation of the provisions of *Article 19 of the AMA* request that the JFTC take appropriate measures in accordance with the provisions of that Act.

# AMA ART. 19

- Prohibition of Unfair Trade Practices, which covers variety of vertical restraint and tying, single firm's exclusionary conducts, unfair interference to rival's trade and abuse of superior bargaining position (ASBP).
- **Penalties and JFTC's decisional practices**
  - Cease and desist order
  - Administrative fine in case of ASBP
  - JFTC's *soft* approaches



# Extraterritorial issues

‘Domestic Managers’

(国内管理人)

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METI, Guidelines on Measures to be Taken by Specified Digital Platform Providers to Promote Mutual Understanding in Transactional Relationships with User Providers of Goods, etc.

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2.3 ... it is important that SDPP take appropriate measures in line with the following directions.

...

(ii) Creation of mechanisms that enable Domestic Managers to perform appropriate coordination as necessary in relation to management of communications with Concerned Parties and improvement of operations relating to the provision of SDPP through such communications.

## Assessments 3

- Exceeded expectations. Sense of satisfaction among sellers and app developers.
- Transparency and consultation system established (to a substantial extent).
- Yet, remaining issues in relation to fairness and contestability (competition).
- Anticipated challenges for FY2023 (second year of online shopping malls and app stores) and digital ads.
- Questions raised in terms of legitimacy of the regulatory regime.
- 'Competition vs consumer', 'Protection of sellers /app developers vs consumers' debates.

‘Co-regulation’  
‘Government as a facilitator of dialogues amongst the stake holder – rather than rule setter’...

**‘Agile governance’**  
advocated by the METI, now by the JP Cabinet.

<<https://www.meti.go.jp/press/2022/08/20220808001/20220808001-b.pdf>>

# Agile Governance Update

How Government, Business and Civil Society Can Create a Better World  
By Promoting Governance



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## Agile Governance

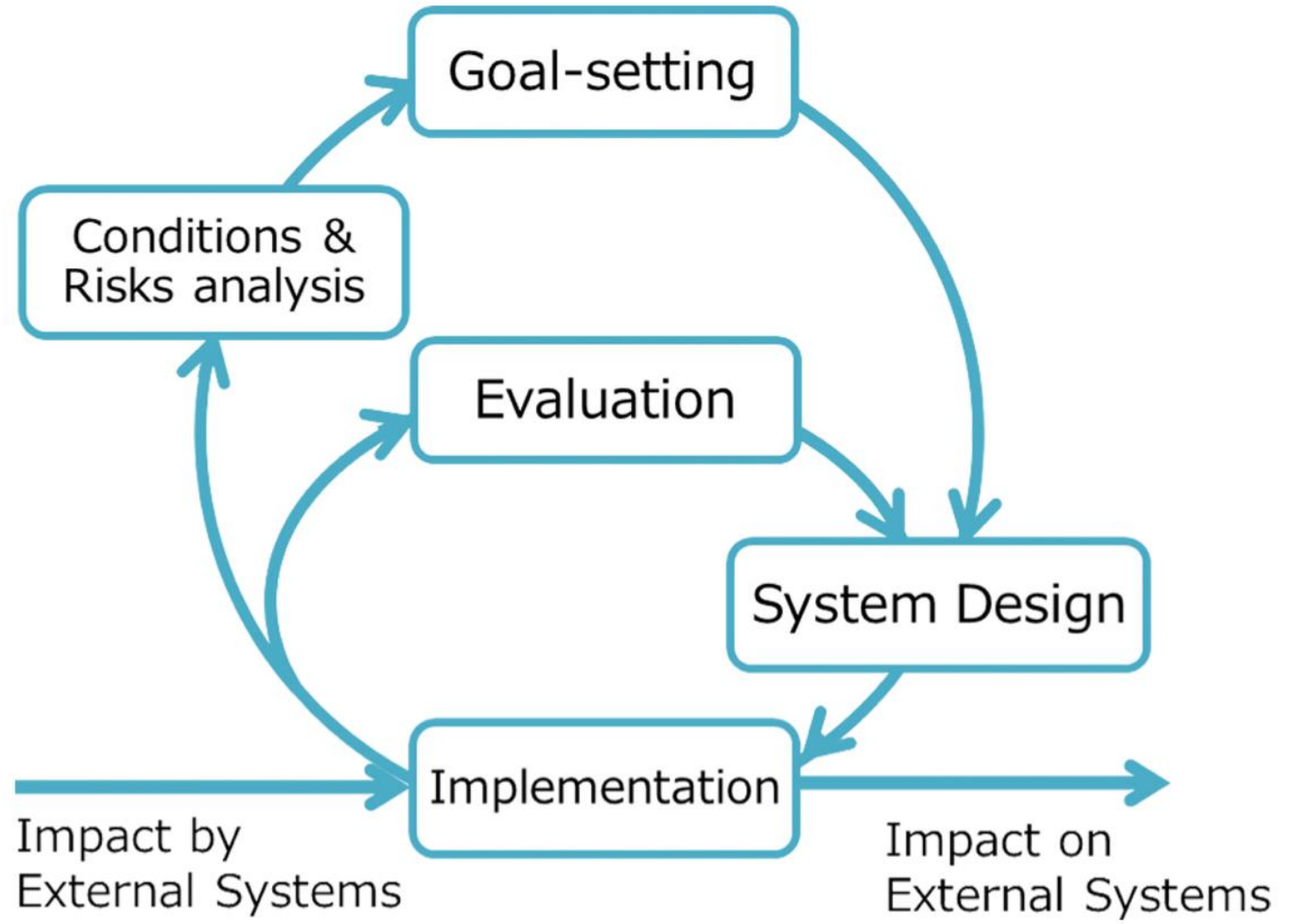
68

### Publications

A digital revolution for Japan... and the world (Agenda blog, 12 January, 2023)

Trust is fraying in the digital age - How

# Agile governance



# Agile governance



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## Who are the 'stakeholders'?

- Do the experts sitting at, e.g., the monitoring meeting represent citizens' interest?
- Were their opinions heard?
- Lack of transparency. No procedural fairness.
- Accountability?

## Assessments 4

- Exceeded expectations. Sense of satisfaction among sellers and app developers.
- Transparency and consultation system established (to a substantial extent).
- Yet, remaining issues in relation to fairness and contestability (competition).
- Anticipated challenges for FY2023 (second year of online shopping malls and app stores) and digital ads.
- Questions raised in terms of legitimacy of the regulatory regime.
- 'Competition vs consumer', 'Protection of sellers /app developers vs consumers' debates.





## Further legislation

- Another ex-ante legislation focusing on ‘mobile ecosystem’, or the varieties of products and services provided by Google and Apple?
- Inspired by the **EU Digital Markets Act**.
- Initiatives led by the Headquarters for Digital Market Competition, The Cabinet Office.

< [https://www.kantei.go.jp/jp/singi/digitalmarket/index\\_e.html](https://www.kantei.go.jp/jp/singi/digitalmarket/index_e.html) >