

6th CUTS-CIRC Biennial Conference on Competition, Regulation and Development

MAKING COMPETITION AND REGULATORY REGIMES MATTER IN INCREASINGLY ONLINE DEVELOPING WORLD

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01-02
December, 2019
New Delhi

Inter-ministerial cooperation in Japan to deal with digital platforms

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* Views expressed in this presentation do not represent that of the JFTC. Any errors are my own.



1. Contents

- ▶ **Inter-ministerial study group on improvement of trading environment surrounding digital platforms**
 - ✓ **Discussion paper**
 - ✓ **Policy options**

- ▶ **Market study on digital platforms by JFTC**



2. Inter-Ministerial Study Group

- ▶ In July 2018, three relevant ministries established a study group.
 - ✓ **Inter-ministerial cooperation**
 - JFTC (Japan Fair Trade Commission)
 - METI (Ministry of Economy, Trade and Industry)
 - MIC (Ministry of Internal Affairs and Communications)
 - ✓ **Experts on competition policy, information policy and consumer policy**



3. Discussion Paper by the Study Group

- ▶ In December 2018, the Study Group released a discussion paper.
 - ✓ Discussion points which have to be considered and implemented
 - ✓ Various issues are covered such as
 - Disciplines to ensure transparency and fairness
 - Rules on data transfer and open data
 - Market study to understand trade practices

Fundamental Principles for Improvement of Rules Corresponding to the Rise of Digital Platform Business

(December 18, 2018) METI/ JFTC/ MIC

1. Perspective of Legal Evaluation of Digital Platform Operators

- i. They provide an essential basis for socio-economy
- ii. They design, operate and manage a field itself participated by many consumers (individuals) and businesses
- iii. Such field is essentially highly manipulative and technically non-transparent

2. Promotion of Sound Development of Platform Businesses

3. Ensuring Transparency to Achieve Fairness with respect to Digital Platform Operators

- i. Understanding of the actual state of trade practices through large-scale, comprehensive and thorough surveys
- ii. Considering the establishment of an expert organization with advanced knowledge in a variety of fields including digital technology and businesses
- iii. For example, considering the introduction of disciplines to ensure transparency and fairness, such as obligations to make available and disclose certain rules or trade conditions

4. Ensuring Fair and Free Competition in Digital Markets

- i. the review of business combination that takes into account of data and innovation
- ii. the application of the rules about abuse of superior bargaining position with respect to the relationship with consumers

5. Considering Rules on Data Transfer and Open Data

6. Establishing of Balanced, Flexible and Effective Rules

7. International Application of Laws and Harmonization



4. Policy Options proposed by the WGs of the Study Group

- ▶ **In May 2019, WGs of the Study Group proposed policy options.**
 - ✓ to ensure transparency and fairness (WG1)
 - ✓ on data transfer and open data (WG2)
- ▶ **Each WG comprised of JFTC, METI, MIC, experts and practitioners.**
- ▶ **Based on the proposals, the Japanese Government is implementing further discussion.**



4. Policy Options proposed by the WGs of the Study Group

► Policy options to ensure transparency and fairness

1. **Competition Law**

i.e. guidelines, commitment, market study

2. **Complementary Regulation**

i.e. **ex-ante regulation** which

- **prevents violation** of competition law
- **encourages** users' reasonable **choice**
- **reduces switching costs** for users



4. Policy Options proposed by the WGs of the Study Group

► Policy options on data transfer and open data

i.e. rules which

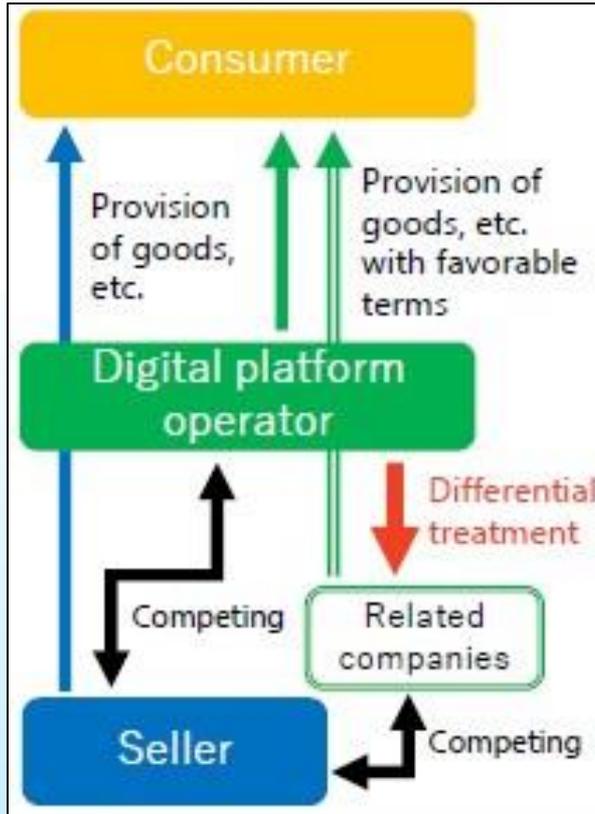
- clarify **terms** for data transfer and open access
- ensure **convenient** data transfer and access
- ensure **safety** of data transfer
- ensure **interoperability** of data transfer and open access



5. Market Study on Trade Practices of Digital Platforms

- ▶ In January 2019, JFTC launched the market study on digital platforms especially on online retail platforms and app stores.
 - Information provided via form at JFTC's website
 - Responses to questionnaire surveys
 - Results of voluntary interviews
- ▶ In October 2019, JFTC published the study report on digital platforms identifying possible anticompetitive conduct in the area.

6. One of the Examples of Possible Anticompetitive Conduct from the Study Report



- ▶ Exclusion of competitors
- ✓ Possible **violation** of the Japanese competition law as one of the **Unfair Trade Practices**.
- ✓ Digital platforms are **required to improve fairness and transparency** of trade and ensure fair competitive environment on digital platform.



7. Conclusion of the Study Report

- ▶ **Strict enforcement of the competition law**
- ▶ **Discussion from varieties of perspectives**
 - ✓ sector-specific regulations
 - ✓ scheme to promote data transfers and openness
 - ✓ protection of personal information

* JFTC participates in the discussion under the **Conference for Digital Market Competition** which was recently established in the Cabinet Secretariat.



8. Conclusion

- ▶ In Japan, Inter-ministerial study group has been dealing with digital platforms.
- ▶ Ex-post case-to-case approach vs ex-ante sectoral regulation? Or both?
- ▶ Difficulties in coordination between the JFTC and other relevant regulators?