

Client Alert

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Regulatory Developments Affecting Digital Markets in Japan (update)

Introduction

A direction of a bill that would require greater transparency in transactions involving operators of digital platforms (tentatively named the Digital Platformer Transaction Transparency Bill) was disclosed during the Digital Market Competition Convention meeting held on 17 December 2019 and submitted for one month of public consultation. Based on the results, a bill for the Act on Enhancement of Transparency and Fairness of Specified Digital Platforms ("Bill for the Act on Enhancing the Transparency of Specified DPFs") was approved by the Cabinet on 18 February 2020 and is scheduled to be submitted to the ongoing ordinary session of the Diet.

This Alert is an update to the 8 January 2020 Client Alert entitled "[Regulatory Developments Affecting Digital Markets in Japan](#)".

Bill for the Act on Enhancing the Transparency of Specified DPFs

What will be regulated?

Due to the heightened necessity of ensuring that these platforms operate with transparency and fairness, only a limited number of digital platforms will be defined as "Specified DPFs" under a government ordinance. Platform operators that provide Specified DPFs ("Specified DPF Providers") will be subject to regulation. This will include both Japanese and foreign companies. While the term Specified DPF will be defined in detail by government ordinance at a later time, it can be expected that certain criteria will be set for each business segment serviced by a digital platform (e.g., total sales and number of users) and that businesses that exceed certain thresholds will be targeted. The regulations are expected to apply only to large-scale online mall operators and app stores for the time being.

Overview of the regulations

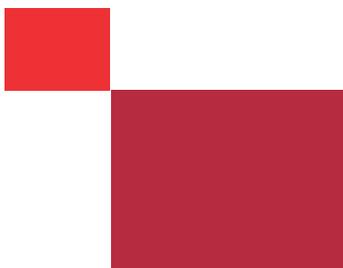
The Bill imposes the following major obligations on Specified DPF Providers.

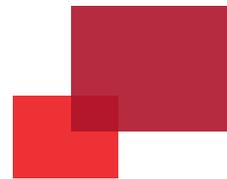
1) Disclosure of terms and conditions, etc.

Specified DPF Providers will be required to disclose the terms and conditions of their contracts with users and to provide prior notice of revisions to these terms and conditions.

2) Establishment of procedures and systems

Specified DPF Providers will be required to take other measures, including the establishment of procedures and administrative organs to ensure the fairness of transactions and dispute-settlement





procedures in accordance with the guidelines promulgated by the Minister of Economy, Trade and Industry.

3) Submission of reports and assessment of operations

Specified DPF Providers will be required to submit annual reports and self-assessments on the status of their implementation of measures under 1) and 2). The Minister of Economy, Trade and Industry will review and assess their conduct based on these reports and publish the results.

Administrative measures (recommendations, public announcements and orders to take action) will be taken against Specified DPF Providers who fail to disclose information on the terms and conditions of transactions or to voluntarily develop the required procedures and systems. Fines may be imposed for failure to comply with these administrative measures or to submit the reports. In addition, if the Minister of Economy, Trade and Industry finds any conduct that is deemed likely to violate Japanese antitrust law (i.e., the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade), the Ministry will request that the Japan Fair Trade Commission take measures under antitrust law.

Changes from the Direction of the Digital Platformer Transaction Transparency Bill

After the announcement of the Direction of the Digital Platformer Transaction Transparency Bill on 17 December 2019, further consideration was given to the question of whether specific types of unjustifiable digital platform operator behavior would be set out in the bill (eg, refusal by an operator to sell products that compete with the operator's products, compelling platform users to use the operator's services, discriminatory and advantageous exhibition of the operator's products in search results, unilateral disadvantageous changes in the terms and conditions of a contract with a user to the significant detriment of the user's business operations). However, due to worries that this could hinder technological innovation, the Bill does not contain provisions of this type. This limits the requirements imposed on Specified DPF Providers under the Bill to some extent.

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