

## **Appendix 1:**

### **Handling Status of Individual Cases Related to the TFDPA<sup>1</sup>**

The TFDPA stipulates that if the Minister of METI makes a recommendation to a specified digital platform provider based on said Act, it shall make a public announcement to that effect (Article 6, Paragraph 3 and Article 8, Paragraph 2 of the Act). Although no case has resulted in a recommendation at this time, the following is a summary of the individual cases that did not result in a recommendation but may have violated the TFDPA, the status of the Ministry's handling of the cases,<sup>2</sup> and the reasons for the handling.

The purpose and intent of announcing such information is to increase the transparency of the operation of the TFDPA and to deter similar cases from occurring by further deepening the understanding of specified digital platform providers of the TFDPA.

In the event that a specified digital platform provider is found to be in possible violation of the TFDPA, we expect the provider to voluntarily report to the Ministry, cooperate with investigations, and take remedial measures as necessary to recover damages and make improvements. Such efforts may be taken into account when determining whether to implement recommendations or other measures.

#### **Case (1): Notice of reasons for refusal of renewal based on expiration of contract term**

In one specified digital platform, the provider of the specified digital platform refused to renew the contract to a certain number of business users based on the expiration of the contract term.<sup>3</sup> At that time, the notice of refusal of renewal (hereinafter referred to as the "Notice") sent in advance by the specified digital platform provider to the business user only stated that the contract was non-renewable due to expiration of the contract term and the provisions of the grounds for the contract. and there were no reasons for the refusal in the Notice. Since the contractual basis provision cited in the Notice stipulated that renewal could be refused for any reason, the business users were unable to recognize the reason for the refusal of renewal from the Notice alone.

When a specified digital platform provider refuses a transaction in its entirety to a business user, it is obliged, in principle, to state to that effect and the "reason" in clear and plain language at least 30 days prior to such refusal and disclose such information to the relevant user (Article 5, Paragraph 4, Item 2 of the Act, Article 7, Paragraph 1<sup>4</sup> of the Ministerial Ordinance). In the above specified digital platforms, automatic renewal clauses are set in the usage contracts, and the contracts are renewed as long as there are no particular problems, so it is expected that the business users will have an expectation that the usage contract will be renewed unless there is a reasonable reason for refusal of renewal. Considering these circumstances, it cannot be evaluated that the "reason" for refusing renewal (refusing the entire transaction) was clearly disclosed to the business user by the Notice.

The above case is in a critical situation of total rejection of the transaction, and its impact is not small. On the other hand, the above-mentioned specified digital platform provider voluntarily reported to the Ministry before the

---

<sup>1</sup>Handling period: April 1, 2021 - October 31, 2022

<sup>2</sup>This is the handling based on the facts recognized by the Ministry at this time based on reports from specified digital platform providers, etc., and the handling policy may be revised if the Ministry recognizes new facts in the future.

<sup>3</sup>In the specified digital platform in question, the usage contract with the business user sets a fixed-term contract period and stipulates that the contract will be automatically renewed at the expiration of that period unless both parties make a special request. In accordance with such provisions, the specified digital platform provider may notify the business user that it will not renew the contract at the expiration of the contract term, and may refuse to renew the subscription contract with the business user.

<sup>4</sup>Refers to the Ordinance for Enforcement of the TFDPA (METI Ordinance No. 1 of 2021) (prior to revision on August 1, 2022). The same applies hereinafter.

Ministry became aware of the matter, fully cooperated with the Ministry's investigation, promptly corrected the problem by reviewing the notification format for refusal of renewal, and voluntarily took measures to prevent recurrence. In addition, the above-mentioned specified digital platform provider notified the business users who refused renewal by this Notice of the reasons for refusal of renewal once again. It was reported that no objections were filed against the above-mentioned specified digital platform providers by the business users after the initial notification and after the renewed notification of the reasons, and it was inferred that there is a high possibility that there are no business users who were substantially disadvantaged by the initial response.

Considering the above circumstances, the Ministry has only instructed the above-mentioned specified digital platform providers to take sufficient precautions to prevent similar problems from occurring in the future and to thoroughly implement the reported measures to prevent recurrence.

### **Case (2): Prior notice of change in terms and conditions of provision**

In a certain specified specified digital platform, the specified digital platform provider has decided to make it mandatory to accept certain measures as a condition for allowing a business user to change the type of contract for using the said digital platform, and to change such response without prior notice.

When changing the terms and conditions to provide a specified digital platform (hereinafter referred to as "terms and conditions of provision"), the specified digital platform provider shall, in principle, disclose to the business user in advance to that effect and the reason for the change, setting a period of time for the business user to respond to the change (Article 5, Paragraph 4, Item 1 of the Act). The above change in response constitutes a change in the terms and conditions of provision, and the above specified digital platform provider has failed to make the prior disclosure required under the TFDPA.

The above case is one in which, without prior notice, conditions are attached as a condition for changing the type of contract, at the expense of the business user, and this could have a significant impact on the business user. However, by announcing the postponement of the change of the above-mentioned terms and conditions of provision, and by individually contacting the business users who had applied for the change of the contract type by then and providing them with the opportunity to change the contract type without accepting the above measures, the above-mentioned specified digital platform provider has largely eliminated the disadvantages of the business users due to the lack of prior notice. In addition, the above-mentioned specified digital platform providers have fully cooperated with the Ministry's investigation by voluntarily providing information that the Ministry requested them to provide, including information to confirm the implementation of the above-mentioned measures to eliminate disadvantages. The above-mentioned specified digital platform providers eventually withdrew the changes to the above terms and conditions of provision.

Considering the above-mentioned circumstances and others, the Ministry only instructed the above-mentioned specified digital platform providers to be careful in their future operations.

### **Case (3): Disclosure of data use conditions prior to the start of use of digital platforms**

Regarding the contents and conditions for the acquisition and use of data pertaining to products, etc. provided by a business user on a certain specified digital platform (hereinafter referred to as "data on the provision of products, etc."), a portion of the contents to be disclosed (hereinafter referred to as the "undisclosed portion") was not disclosed to the business users prior to the start of use. Disclosure was made to the business users after the start of use, including the undisclosed portion, on the web page displayed after logging in with the account to be granted.

Specified digital platform providers are obligated to disclose to the business users the contents of the data on the provision of products, etc. to be acquired and used by said specified digital platform providers and the conditions of acquisition and use as the terms and conditions of provision, which must be disclosed not only during use but also "before the start of use" in a form that can be easily referenced at any time (Article 5, Paragraph 1, Paragraph 2, Item 1(d) of the Act, and Article 5, Paragraph 1, Item 2 of the Ministerial Ordinance). Therefore, the above-mentioned specified digital platform provider lacked some of the disclosures required under the TFDPA.

It is undeniable that the above case may have affected the decision of the business users on whether or not to use the above specified digital platform. However, the contents of the undisclosed portion were those that could be inferred from the disclosed information, and were not unexpected for the business users. In addition, the business users were able to view the entire contents of the disclosure, including the undisclosed portion, immediately after the start of use. The Ministry did not receive any specific comments from the business users regarding this matter. Furthermore, it was not found that the above-mentioned specified digital platform providers intentionally failed to disclose the undisclosed portion of the information to the business users prior to the start of use. In addition, the above-mentioned specified digital platform provider has fully cooperated with the Ministry's investigation of this matter by voluntarily providing information requested by the Ministry, and has promptly corrected the problem by posting additional undisclosed portions on a publicly available web page that can be viewed by business users and others before the start of use.

Considering the above-mentioned circumstances and other factors, the Ministry has only instructed the above-mentioned specified digital platform providers to consider taking action as necessary, such as contacting the relevant business users, and to be careful in their future operations.

#### **Case (4): Immediate suspension of the accounts related to offender's accounts**

In order to respond to infringement by a business user who has committed an infringement on a specified digital platform (hereinafter referred to as "Offending Party"), immediate account suspension measures were taken against a number of accounts determined to be associated with the Offending Party's account (hereinafter referred to as the "Offending Account") based on certain criteria. Subsequently, upon being pointed out by a business user that it had no recollection of the account suspension action, the above-mentioned specified digital platform provider conducted a thorough investigation and found that it had suspended numerous accounts that were not actually associated with the Offending Account. Therefore, the above-mentioned specified digital platform provider has lifted the said measures for the accounts that were mistakenly suspended. The period from the account suspension to the removal of the measure was approximately 20 days.

When a specified digital platform provider refuses all transactions (account suspension measures, etc.), it is obliged, in principle, to disclose this fact and the reason at least 30 days in advance (Article 5, Paragraph 4, Item 2 of the Act, Article 10, Paragraph 1, Item 3 of the Ministerial Ordinance), but as an exception, prior notice is not required if the reasons specified in each item of Article 11, Paragraph 2 of the Ministerial Ordinance apply. The issue in this case is whether or not the case falls under "a case in which it is deemed necessary to promptly take the action set forth in Item 2 in order to ensure cybersecurity or to respond to an act of infringement by fraud or other wrongful means or an act clearly contrary to public order or good morals," as set forth in Article 11, Paragraph 2, Item 5 of the Ministerial Ordinance.

In this case, the acts committed by the Offending Party constituted an act of infringement through fraud or other wrongful means, and the action of immediately suspending accounts that were determined to be related to the Offending Account was a measure to respond to the infringement. On the other hand, the criteria used by the

above-mentioned specified digital platform provider to determine the relevance of the Offending Account are judgment criteria that can be typologically erroneous, and in fact a large number of erroneous judgments have occurred. In light of these circumstances and others, even considering the necessity and urgency of responding to the infringement, it can be evaluated that the measures were more than necessary from the viewpoint that the specified digital platform provider should have taken measures such as using more precise judgment criteria. Therefore, it is possible that the requirement for an exceptional circumstance where account suspension measures without prior notice are permissible may not be met.

In the above case, a large number of business users were inadvertently subjected to immediate account suspension, and were unable to conduct business activities on the digital platform for approximately 20 days, which had a very significant impact. However, this case was an unintentional misjudgment for the purpose of responding to an infringement, and in that sense, it was not malicious. In addition, the above-mentioned specified digital platform providers voluntarily conducted a close examination in response to the suggestions from the business users and the Ministry, and took appropriate measures to lift the account suspension measures due to misjudgment and minimize the damage, and reported the status of their responses to the Ministry. In addition, the specified digital platform provider reported to the Ministry that it would implement a wide range of improvement measures, such as reviewing its execution process and systems, based on this case, and the contents of such improvement measures were expected to make effective improvements.

Considering the above circumstances, the Ministry has only instructed the above-mentioned specified digital platform providers to take sufficient precautions to prevent similar problems from occurring in the future and to thoroughly implement the reported measures to prevent recurrence.

In addition to the above case (4), there have been many cases in which specified digital platform providers have taken measures such as suspending accounts of business users because they have determined that there is a connection with the Offending Account. In this regard, business users have commented that they do not know how to prove that they are not associated with an account that they do not remember and do not know. We will continue to closely monitor the degree of information disclosure to business users in such cases, as this could be a problem common to specified digital platforms.

For example, it may be possible to simply notify that the account is associated with the Offending Account, and not disclose any other additional information (e.g., the name of the Offending Account, the content or type of the violating activity, the basis for determining that the account is associated, etc.) due to concerns about security risks associated with the disclosure of such information, etc. In this regard, the purpose of the TFDPA's requirement for specified digital platform providers to disclose the reasons for refusal of all transactions and to disclose such reasons in advance is to make it easier for business users to review their business and offer consultations as necessary, thereby guaranteeing the opportunity for objections and explanations through objections and other means, and thereby protecting the interests of business users, and it is difficult for a business user to make an effective rebuttal or explanation if only the reason that the business user was found to be related to the Offending Account is disclosed. Therefore, even when taking measures such as suspending an account on the grounds of association with an Offending Account, the specified digital platform provider is required to disclose the reason for the decision in advance to the extent that the business user can substantially file an objection, while taking into consideration the security and other circumstances of information disclosure.