

PLATFORM POLICY IN JAPAN

Feb 20, 2023

Toshifumi Kuroda

Associate Professor, Tokyo Keizai University

&

Economist, Digital Economy Division/ Digital Market
Policy Office, Commerce and Information Policy Bureau,
Ministry of Economy, Trade and Industry (METI)

Timeline of major platform policies and antitrust cases

	Japan		EU	
	Policy	Antitrust Case	Policy	Antitrust Case
2015			Digital Single Market strategy	
2016				
2017		Amazon's commitments on the MFN for marketplace and e-books	Commission opened investigations on Consumer electronics manufacturers, video games, and Hotel's price discrimination	Commission fined Google on comparison shopping service
				Amazon's commitments on the MFN for marketplace and e-books
				Commission fined Facebook on WhatsApp takeover
2018	Basic principles for the development of rules corresponding to the rise of the platform business. Study Group on the Improvement of the Trading Environment for Digital Platforms	Apple's commitments on iPhone wholesale		Commission fined Google on mobile industry
2019	Digital Market Competition Council established	Rakuten's commitments on MFN on the OTP		Commission fined Google on online advertising
2020	Revision of Antitrust Law and merger guidelines Act on Improving Transparency and Fairness of Digital Platforms adopted	Amazon's commitments on abuse of a superior bargaining position to suppliers Rakuten's commitments on the shipping fee rules Apple's commitments on the prohibition of outlink and forcing the use of in-app purchase on reader apps.	P2B regulation effective	
			DMA and DSA proposed	
			Commission opened investigations on Apple's app store and payment	
2021	Act on the Protection of Consumers Who Use Digital Platforms adopted Act on Improving Transparency and Fairness of Digital Platforms enter into force		Commission opened investigation on the Google online advertising	
2022	Act on the Protection of Consumers Who Use Digital Platforms enter into force		DMA and DSA enter into force	Amazon's commitments on the marketplace seller data and equal access.

■ General Policy ■ New Law ■ commitment ■ fine

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

- TFDPA designates business fields that are **digital** and **platform (network effect)** and specifies platforms of which size exceeds a certain scale as **specified digital platform providers (SDPPs)**.
- METI has designated the following as SDPPs under the TFDPA.
 - Amazon, Rakuten, and Yahoo Japan are designated as SDPPs in the **general online shopping mall** operators on 1 April 2021.
 - Apple and Google are designated as SDPPs in the **mobile app store** operators on 1 April 2021.
 - Google, Meta, and Yahoo Japan are designated as SDPPs in the **digital advertising platform** operators on 3 October 2022.
- TFDPA requires the following to improve transparency and fairness to **only** SDPPs.
 - Mandatory disclosure of information on terms and conditions of trading to improve transparency
 - SDPPs should disclose the main features used to determine search rankings.
 - SDPPs should disclose **the practice and reasons for self-preferencing**.
 - SDPPs should notify the reasons for account suspension in advance.And so on.
 - **Voluntary development** of procedures and systems to improve fairness
 - **Mandatory annual reporting** on the self-assessment and making efforts to improve operations based on Minister's evaluation
- METI will hold monitoring meetings to evaluate the voluntary efforts of SDPPs.
 - Annual reports, market surveys, opinions of stakeholders and academics, and communication with SDPPs are considered.
 - The evaluation will promote the sharing of efforts among SDPPs and mutual understanding between the SDPPs and the firms using the SDPPs.
 - This system is called co-regulation.

Ministerial Evaluation

- METI published the first “Evaluation on Transparency and Fairness of Specified Digital Platforms” in December 2022.
- It points major issues and the expected direction of efforts by SDPPs.
 1. App store fees and billing methods
 - SDPPs should explain the nature of app store fees and ensure that alternative payment instruments are chosen.
 2. Account suspension measures
 - SDPPs should make a careful ex-ante review for the necessity and reasonableness of account suspension and disclose specific reasons sufficient to raise an effective objection.
 3. Preferential treatment of own and affiliated companies
 - SDPPs should disclose objectively verifiable information on the existence and appropriateness of self-preferencing to others and develop a system for verification.
 4. Handling of returns and refunds
 - SDPPs should explain their idea and practice for returns and refunds in an easy-to-understand manner, and enhance the process the objection process.

The movement towards ex ante regulation in mobile ecosystem

- Digital Market Competition Council (DMCC) published “Competition Assessment of the Mobile Ecosystem Interim Report” on 26 April 2022.
 - Smartphones have brought tremendous benefits to both consumers and businesses. It serves as the foundation of the economy and society.
 - Platform firms such as Google and Apple that govern the mobile ecosystem have significant influence in determining what the digital space should be.
 - Market Competition is difficult to solve issues in mobile OSs, app stores, web browsers, and web search services.
 - **Policy options including ex-ante regulation** should be discussed.
 - The competition assessment is being conducted in terms of how the layered structure in the mobile ecosystem affects the competitive environment.
 - The interim report summarizes several issues surrounding the competitive environment in the mobile ecosystem and presents possible options to address them.
- Japan Fair Trade Commission (JFTC) published “Market Study Report on Mobile OS and Mobile App Distribution” on 9 Feb 2023.
 - Using consumer and software developer surveys and interviews with business operators and business associations, JFTC concludes that competitive pressure on the mobile OS and the app stores provided by Google and Apple are not enough.
 - Antitrust enforcement may take time due to the market definition and the proof of competitive harms and require highly specialized knowledge to verify issues.
 - **Both prohibiting self-preferencing and creating a competitive market** on mobile OS and mobile app distributions and ensuring fairness in rulemaking are desirable.
 - It is suggested that it is effective to have Google and Apple follow measures proposed in the report by making a law to the extent necessary to ensure the effectiveness of measures.

References in English

- Ministry of Economy, Trade and Industry
 - https://www.meti.go.jp/english/policy/mono_info_service/information_economy/digital_platforms/index.html
- Japan Fair Trade Commission
 - [Market Study Report on Mobile OS and Mobile App Distribution](https://www.jftc.go.jp/en/pressreleases/yearly-2023/February/230209.html)
<https://www.jftc.go.jp/en/pressreleases/yearly-2023/February/230209.html>
- Headquarters for Digital Market Competition
 - It runs the Digital Market Competition Council.
 - https://www.kantei.go.jp/jp/singi/digitalmarket/index_e.html