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News Media and Digital Platforms – Note by Japan

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More documents related to this discussion can be found at
<https://www.oecd.org/daf/competition/competition-issues-in-news-media-and-digital-platforms.htm>.

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1. Introduction

1. In Japan, the proportion of the digital advertising sales in the total advertising sales and the proportion of the digital advertising cost in the total advertising cost are increasing year by year. Digital platform operators provide a wide range of services, such as search engine and social media with consumers for free. Using digital technologies, digital platform operators accumulate and analyze various data including personal information and location data obtained from users through these services, and expand their digital advertising business, which is their major source of revenue.

2. In digital advertising markets, in many cases, digital platform operators play not only the role of publishers that own and operate media such as search engine and social media, but also play the role of intermediaries that distribute ads to publishers, responding to the requests from advertisers (including their agencies. The same shall apply hereinafter.). Digital platform operators have been an important platform that connect publishers and advertisers.

3. The way digital platform operators conduct digital advertising business has a significant impact on their business partners. In particular, for traditional news media such as newspapers (hereinafter referred to as "news media") which have been traditionally earning revenue from the advertising business as publishers, are being forced to change their revenue structure with the growth of digital advertising transactions. Under these circumstances, whether fair competition environment is ensured between digital platform operators and news media has become a great issue in terms of competition policy.

4. In the "Final Report Regarding Digital Advertising"¹ (hereinafter referred to as the "final report") published by the Japan Fair Trade Commission (hereinafter referred to as the "JFTC") in February 2021, the JFTC examined issues concerning transactions between news media and digital platform operators from the view point of competition policy.²

5. In this contribution paper, we would like to share our experiences and consideration based on the final report regarding the suggested questions proposed by the Secretariat as follows:

- Chapter 2 "Features of Digital Platform Operators in Digital Advertising Markets" outlines the background that has made it possible for digital platform operators to strengthen their power over their various business partners including news media in the digital advertising sector;
- Chapter 3 "Strengthening of the Position of Digital Platform Operators and Competition Law Perspectives" shows general competition law perspectives on competition concerns and issues which the strengthened position of digital platform operators could raise;

¹ <https://www.jftc.go.jp/en/pressreleases/yearly-2021/February/210217.html>

² While the final report comprehensively researches the actual status of transactions between digital platform operators and advertisers, intermediaries, publishers including news media, and users (consumers) in digital advertising market as a whole and suggests views from competition law and policy, this contribution paper focuses on transactions between digital platform operators and news media as much as possible.

- Chapter 4 "Outline of Transactions between News Media and Digital Platform Operators and Competition Issues" explains what issues the strengthened position of digital platform operators has raised especially in transactions between news media and digital platform operators and shows views of competition policy on such issues; and
- Chapter 5 "Impact on Consumers Regarding the Accuracy and Quality of News" outlines how to ensure an environment in which competition takes place in terms of the quality of content that is important for news media and consumers.

2. Features of Digital Platform Operators in Digital Advertising Market

6. The main reason digital platform operators have a certain position in the digital advertising sector is that they accumulate a huge amount of data from users by providing search engine and social media with basically no charge, and effectively utilize those data in the digital advertising sector. Digital platform operators, having both roles of an intermediary and a publisher, have established a business model in which they charge advertising fees using "targeting advertising" technology that displays advertisements with a content highly relevant to each user through analysis of the vast amount of data they have accumulated. In addition, users often access digital advertisements in news media from search engines provided by dominant digital platform operators or from links of articles of news media on their portal sites. Therefore, digital platform operators have great influence on news media concerning their digital advertising business. (Details in chapter 4 below.)

7. The digital advertising intermediary services provided by digital platform operators have indirect network effect: the more advertisers connect to them, the more publishers gather at them, and the more publishers connect to them, the more advertisers gather at them. One of the features of the digital advertising market is that the digital platform operators themselves are also powerful publishers, while providing advertising intermediary services.

8. As consumers browse news on the Internet, digital advertising revenue is becoming more and more important not only for digital platform operators but also for news media. They are in competitive relationship as publishers, while digital platform operators are often in a superior bargaining position in transactions with news media as advertising intermediaries, backed by the vast amount of data they have accumulated.

3. Strengthening of the Position of Digital Platform Operators and Competition Law Perspectives

9. As described in chapter 2 above, digital platform operators tend to have dominant positions in several service fields in the digital advertising business, or a superior bargaining position over business partners in transactions. In addition, as a business strategy, digital platform operators often vertically integrate different stages in digital intermediary business backed up by sufficient financial resources. This chapter describes what kind of concerns and problems have been raised in the relationship between digital platform operators and their business partners including news media regarding digital

advertising from the viewpoint of Antimonopoly Act in Japan (Hereinafter referred as the "AMA")³.

3.1. Dominant Position

10. Digital advertising is roughly categorized into search advertising⁴ and display advertising⁵. Google has a 77% market share for search engine in Japan, and has accumulated key data for search advertising, such as search query (search word), Cookie (user's search history and past reaction to advertisement, etc.) and location data, which supports the competitiveness of the company's search advertising. Consequently, Google has a dominant position in search advertising market with a 70-80 % share. If businesses in such a position engage in activities that exclude competing businesses including news media in digital advertising transactions, there would be an increasing risk that the activities were seen as a private monopolization as well as unfair trade practices under the AMA.

11. In contrast to search advertising, which displays content related to search queries, display advertising displays advertisements in the form of images or videos on websites. In display advertising, having a powerful medium leads to enhanced competitiveness. Google, Facebook and Yahoo own and operate influential media and have a dominant position⁶ in the display advertising market with at least a 10-20% share. If businesses in such a position engage in activities that restrict activities of their business partners, it could be a violation of AMA as unfair trade practices.

3.2. Superior Bargaining Position

12. As mentioned above, in the field of digital advertising, there are cases where a digital platform operator, as an advertising intermediary, has a superior bargaining power over its business partners, including news media. This is when the business partner has no choice but to accept a request from the digital platform operators even if the request is extremely disadvantageous for the business partner, because discontinuation of doing business with the digital platform operators would bring huge damage to the business partner's operation. In making a judgement of the existence of a superior bargaining power, the JFTC will take into account the degree to which the business partner is dependent on the digital platform operator, the market position of the digital platform operator, the possibility of changing business partners⁷, and other specific facts indicating the need to deal with the digital platform operator.

³ The Act concerning Prohibition of Private Monopoly and Maintenance of Fair Trade

⁴ Search advertising displays an advertisement in response to a search query (search word). In search advertising, search query, data such as Cookie and location information are considered important to improve the quality of targeted advertising.

⁵ Display advertising displays an advertisement in the form of images or videos on website. Display advertising uses data such as location information collected from the IP address of devices and data such as web browsing history of users collected using technologies such as cookie and displays advertisements in accordance with users' attribute. Therefore, the competitiveness of display advertising lies in the fact that a business has contact with a variety of users and influential media.

⁶ Part 1-3 of the Guidelines on Distribution and trade practice under the Antimonopoly Act. (4) Whether or not it is recognized as a dominant position in the market is a good indication that the share in the market exceeds 20%.

⁷ See also 4. (1) (ii) c) of this contribution paper.

13. In digital advertising transactions, if a digital platform operator who has a superior bargaining position over its business partners makes use of such position to impose disadvantage (ex. unilaterally changes terms and conditions) on the partners, unjustly in light of normal business practices, such act would hamper free and independent decision making of the partner, which is the basis of fair competition, and is regulated under the AMA as "abuse of superior bargaining position," which constitutes a category of unfair trade practices.

4. Outline of Transactions between News Media and Digital Platform Operators and Competition Issues

4.1. Outline of Transactions and Issues related to News Media's Revenue from Digital Advertising

14. In recent years, with the digitalization of society, Japanese consumers tend to obtain news content, in many cases, for free via the internet. This has led to significant changes in the business climate of publishers, particularly of existing/traditional news media.

15. In order to deliver accurate and reliable information, news media spend a great deal of money in the creation of their content, interviewing multiple sources and having their editorial departments scrutinize the content. With the growth in digital advertising, digital advertising revenue is becoming increasingly important for news media which have been relying on advertising revenue as a significant part of their business foundation.

16. There are roughly two ways for news media to earn digital advertising revenue: (i) Earning by placing digital advertisements on their own websites; and (ii) Receiving news content fees by providing their own content to the portal sites and news apps that aggregate and distribute news (hereinafter referred to as the "portal sites"). The following is an overview of each transaction and the issues pointed out by news media in the interviews.

4.1.1. Earning Advertising Revenue Directly by Placing Digital Advertisements on News Media's Own Websites

17. The first method for news media to earn revenue from digital advertising is to place digital advertisements on their own websites. In this case, in order to increase advertising revenue, it is necessary to increase the number of impressions and clicks which is the basis for calculating digital advertising fee for advertisers. To that end, it is necessary to increase the number of accesses to the news media's own websites that deliver advertisements in the first place.

18. In terms of the ways for users to access to news media's websites, the proportion of number of accesses by the following two ways in the total number of accesses is relatively high in Japan: [1] access through natural (organic) search results on search sites or services (Google News, Google Discover⁸, etc.) that aggregate and display links to the news content on news media's own websites and [2] access via news portal sites which have the links to the news media's websites displayed as "related articles".

⁸ "Google Discover" is a news feed (a feed is a specific format for distributing website updates) that appears on Google's search page and on the home screen of Android devices. It displays links to content automatically selected from multiple publishers' content, based primarily on what Google's system determines to be relevant to the user's interests and concerns (<https://support.google.com/webmasters/answer/9046777?hl=ja>).

19. Of the above mentioned ways of access, the pathway recognized as the most important for existing/traditional media is the inflow from the search service provided by Google. In this regard, several newspaper companies that publish nationwide newspapers mentioned in the final report that a considerable number of access (ranging from 5 to 15% of the total accesses), to their websites came from Google Search in 2019. If this way of inflow increases, the access to the news media's websites will increase, which leads to an increase of digital advertising revenue and paid subscribers.

20. With regard to the method of earning advertising revenue by placing digital advertisements on news media's own websites, news media mentioned in the final report that there were following issues in the transactions with intermediaries including digital platform operators:

The actual status of digital advertising transactions is unclear, and the structure of the transaction makes it difficult to evaluate the value of content.

21. In digital advertising, since various intermediaries including digital platform operators stand between advertisers and publishers, it is difficult to see the actual state of the transactions. And, it is impossible for news media as publishers to know information such as the advertisements displayed on their websites, the attributes of the advertisers, the advertising expenses paid by the advertisers and the amount of commissions paid to the intermediaries, because these information are not provided to news media by intermediaries. For this reason, some publishers said in the final report that they had a sense of distrust as to whether they were receiving an appropriate revenue for the ad space on their websites.

22. Furthermore, in digital advertising, the price of an ad space is generally evaluated by the number of impressions and clicks. Under such criteria, it is difficult to differentiate, in terms of earning revenue, the content whose accuracy is ensured by paying cost from the content whose accuracy is questionable because it is created without cost, and therefore, it is difficult to reflect the value of the content on the price of an ad space.

Data related to digital advertising transactions are not accumulated in publishers, which makes it difficult for them to develop their unique sales strategies for the ad spaces.

23. As mentioned above, news media cannot obtain information such as the attributes of the advertisers to place advertisements, what kind of targeting has been done, and the amount of money paid by the advertisers, which makes it difficult for news media to develop their unique sales strategies for ad space by utilizing the value of their content.

Since the inflow from search sites accounts for a considerable amount, the impact of changes in search algorithms is large.

24. Given that a certain amount of the traffic to news media's own websites is dependent on an operation of search sites, it is important that their websites appear at the top of natural (organic) search results when news media place digital advertisements on their websites to earn advertising revenue. In this regard, the changes in the search algorithm will have a great impact on the inflow routes to the news media's own websites unless the digital platform operators offer sufficient prior explanation, post-event explanations or consultation services to news media. Furthermore, in the final report, some news media mentioned that they were burdened with the task of optimizing their websites in accordance with the changed algorithms, and that their websites, which contained articles with high credibility as a result of careful research spending a lot of money, were displayed

relatively low in the search rankings, which resulted in decrease in the number of page views (hereinafter referred to as "PVs") and advertising revenue.

4.1.2. Receiving News Content Fees by Providing News Content to the Portal Sites and News Apps

25. In Japan, there are portal sites and new apps that receive news content through contracts with multiple news media, and distribute it to consumers. The second way for news media to earn revenue from digital advertising is by contracting with the operators of such portal sites as publisher to receive a portion of revenue from digital advertisement placed on these portal sites in conjunction with the content news media provided. With regard to such way to earn revenue from digital advertising, news media mentioned in the final report that there were following issues in the transaction with the operators of portal sites:

News media are not convinced of transparency and fairness of the distribution fee calculation process.

26. Payments from portal sites are in effect regarded as a fee for content's distribution. News media spend a lot of money on coverage and editing of news content, and distribution fees paid by the portal sites are recognized as a key contractual factor in terms of cost recovery.

27. With respect to the process of calculating such distribution fees, many news media pointed out that they could only obtain information on the number of PVs of their content and the amount of fee received in a month from portal sites. News media are not provided with any other important information that determine the distribution fees (e.g. the amount paid by the advertiser and the overhead deducted from it, revenue dividing ratio with the portal sites, the criteria for determining the unit price per PV, how to calculate additional fees, etc.). As a result, a sense of distrust arises among news media as to whether they are earning appropriate profits, and lack of such information makes it difficult for news media to negotiate with portal sites for raising distribution fees.

Insufficient disclosure of information about viewers of news content on portal sites.

28. Usually, the news media that created the content use data about the viewers of the content to improve the quality of content itself and digital advertising services. However, there are voices that these efforts by news media are restricted by the lack of information disclosure from portal sites operated by digital platform operators.

Because news media depend on portal sites for a considerable amount of inflow to their websites, they have no choice but to deal with portal sites even if they are dissatisfied with the contract.

29. As mentioned above, many news media say that accesses to their websites from the links on portal sites account for a certain degree of the total accesses. For this reason, even if they are dissatisfied with the contract with portal sites, the existing media cannot stop providing content to portal sites, and there are also voices saying, "If our company quits the contract, it will only benefit the competitors who continue the contract."

4.2. Views from Competition Policy

30. For many news media, the importance of digital advertising transactions is increasing. In order to increase the transparency of digital advertising transactions and to ensure a fair competitive environment, it is desirable for digital platform operators to disclose necessary information to news media as publisher, such as information on the process of calculating the amount paid to news media, and to fulfill sufficient accountability when they serve as both intermediaries and publishers operating portal sites. In general, there is no obligation for a company to disclose transaction information, especially trade secrets such as prices, to the other party of the transaction. However, as long as a digital platform operator provides a digital platform as a venue for transactions other than its role as a play, it is desirable to disclose certain information in order to ensure fairness and transparency of the venue for transactions.

31. Moreover, given the current situation where the inflow from search services by digital platform operators accounts for a significant proportion of the total inflow to the websites of news media where they place their digital advertisements, it is desirable for digital platform operators to disclose as much information as possible to news media in preparation for changes that may have a significant impact on their business activities, such as changes in algorithm which determine search rankings. In addition, in order to gain a mutual understanding among the parties concerned about such efforts to disclose information, it is desirable for digital platform operators to establish an effective consultation system.

5. Impact on Consumers Regarding the Accuracy and Quality of News

5.1. Competition in News Quality and Benefits to Consumers

32. In view of the current situation of the domestic digital advertising sector, in which the value of the advertisement space tends to be evaluated by the number of impressions and clicks, there are concerns in terms of ensuring and encouraging the competition in quality of news content.

33. If an increase in impressions and clicks leads directly to an increase in digital advertising revenue, some publishers may have incentives to create content that can earn more accesses, for example, something with stimulating headlines or something called "fake news."⁹

34. Therefore, if a fair competitive environment is not ensured in which publishers who create high-quality news content are fairly evaluated in the competition, consumers may not be able to receive high-quality information such as news with guaranteed accuracy and content that is useful to society and economy.

35. In order to dispel the above concerns, it is important to provide a mechanism in which news media that provide high-quality content are fairly evaluated and the quality of content provided by news media is ensured through a fair competition. This also leads to enlargement of consumers' welfare.

⁹ Discussions on how to deal with "fake news" in digital platform services are summarized in the final report of the study group on platform services (February 2020) of the Ministry of Internal Affairs and Communications (https://www.soumu.go.jp/main_content/000668595.pdf)

5.2. Views from competition policy

36. As one of the mechanisms to encourage such competition, it is desirable to clearly indicate where the primary responsibility lies for ensuring the accuracy and quality of information, i.e., the name of the news media that produced the news, even when the news content are viewed through digital platforms. Some existing news media say "Content will be viewed by more consumers if articles are provided to portal sites, but many consumers who browse the content through these sites are not conscious of the producer of the content." On the other hand, some existing media, especially those that use social media and post news content from their own accounts, say "Our aim is to increase awareness among consumers toward obtaining paid subscribers."

37. Although distributing news content via digital platforms, the name of the news media that created the content should be displayed in an easy-to-understand manner so that consumers can recognize it and evaluate the quality of the content and the news media, which is a prerequisite for the competition for readers among news media. At the same time, it is desirable to consider a mechanism in which the evaluation of the quality of contents and news media by consumers is reflected in the competition among news media even if it is through portal sites.

38. In addition, it is desirable that digital platform operators that are leading portal sites make continuous efforts to make a decision on what content to be posted on the top pages based on indicators including the accuracy and reliability of content as well as the social significance of content.

6. JFTC's Future Efforts

39. Digital platform operators have created a variety of innovations that have enriched our lives. This in itself is a welcome development, and there must be no excessive regulation that hinders innovation.

40. On the other hand, digital platform operators have created a huge ecosystem by mutually linking and complementing various products and services that are the result of innovation. If there is a negative impact on competition due to digital platform operators' self-preferential treatment, it would undermine fair competitive conditions and impose unfairly disadvantage on the competitors. In addition, also in the digital advertising area, if a company imposes restrictions on business partners' activities and excludes competitors from businesses, consumers will suffer a disadvantage, which, in the long run, will wipe out the seeds of innovation. As mentioned above, transactions in the digital advertising sector may become problematic under the AMA and competition policies.

41. From this perspective, the JFTC will take the following measures in the future in order to promote competition in the digital economy and improve consumer benefits:

1. Enforcing the AMA strictly and properly with actual status of transactions in the digital advertising sector in mind.
2. Conducting prompt and appropriate reviews on business combinations in digital markets based on the guidelines revised in 2019
3. Conducting fact finding surveys on digital markets and identifying issues related to the AMA and competition policies.

4. Working actively in association with the Headquarters for Digital Market Competition and other relevant ministries to develop sound competitive environment.
5. Exchanging views with authorities in other jurisdictions and promoting continuous cooperation through international forums such as the International Competition Network (ICN).