

# Regulatory Trends for Digital Platforms

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## Abstract

With the advancement of digitalization across society, digital platforms have become an indispensable infrastructure for everyday life. However, by their nature, digital platforms tend to lead to oligopolies and monopolies, raising concerns about their potential to harm competition. Indeed, investigations by the relevant authorities concerned with competition in various countries have confirmed these issues, leading to the development of new legal systems in recent years. This paper is a review of the trend of legal developments in Japan and other major countries. In regard to Japan, it focuses on the background to and provides an overview of the enactment of the Transparency Act and the Mobile Software Competition Promotion Act. For other countries, it provides an overview of the EU's P2B Regulation and Digital Markets Act, the amendment to Germany's Act against Restraints of Competition, and the UK's Digital Markets, Competition, and Consumers Act of 2024, and summarizes the trends in the strengthening of antitrust enforcement in the United States.

## Introduction

With the increasing digitalization of society, transactions over the Internet are becoming popular, and the essential services of daily life are being provided on digital platforms.<sup>(1)</sup> Further, a variety of new services have been created on digital platforms,

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\*The last date of access of the online information in this paper is October 17, 2024.

<sup>(1)</sup> These are "spaces" constructed using information and communication technology, with services provided over the internet. Each "space" connects a large number of users and consumers to trade diverse goods and services. Specific examples of digital platforms include online malls (platforms aggregating multiple online shops) and digital platform providers of app stores (platforms that distribute smartphone apps). GAFAM (Google, Apple, Facebook (now Meta), Amazon, and Microsoft) are representative of digital platform operators.

with these platforms also playing an important role as sites for innovation.

However, digital platforms possess special characteristics such as economies of scale,<sup>(2)</sup> network effects,<sup>(3)</sup> and economies of scope,<sup>(4)</sup> which tend to lead to oligopolies and monopolies.<sup>(5)</sup> Competition policy requires oligopolies and monopolies to refrain from the unjust monopolizing of consumers and businesses, as well as any acts obstructing the activities of other companies. However, investigations by competition authorities have revealed that such actions are indeed occurring in the digital market. The ex-post approach adopted in regulating digital markets under competition law has also been recognized as being questionable since it takes time to enforce the law and address the problems, and such delays can lead to significant harm.<sup>(6)</sup> Various countries are developing rules to address these issues.

From the perspective of competition policy, this paper provides an overview of the institutional framework related to digital platforms in Japan and other major countries (the European Union, Germany, the United Kingdom, and the United States), as well as recent trends in the development of rules.<sup>(7)</sup>

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<sup>(2)</sup> The larger the business scale, the lower the average cost, and therefore the larger the competitive advantage. Digital platforms have a cost structure characterized by high fixed costs to build a service delivery infrastructure, but low additional costs (marginal costs) of replicating services. Such a cost structure has economies of scale (大橋弘『競争政策の経済学—人口減少・デジタル化・産業政策—』日経 BP 日本経済新聞出版本部, 2021, pp. 276-281 (OHASHI Hiroshi *Economics of Competition Policy: Population Decline, Digitalization, and Industrial Policy* Nikkei BP Nihon Keizai Shimbun Publishing Office, 2021, pp.276-281).

<sup>(3)</sup> Network effects include both direct and indirect effects. Direct network effect refers to the phenomenon whereby participants' utility increases as the number of participants in the same network grows. Indirect network effect refers to when there are multiple groups of participants belonging to the same network, and as the number of participants in one group increases, the utility of participants in the other groups also increases (公正取引委員会「デジタル・プラットフォームフォーマーの取引慣行等に関する実態調査報告書—オンラインモール・アプリストアにおける事業者間取引—」2019.10, p.6 (Japan Fair Trade Commission, “Report regarding trade practices on digital platforms (Business-to-Business transactions on online retail platform and app store),” 2019.10, p.6)).

<sup>(4)</sup> It is cheaper for one company to produce multiple goods and services together than for different companies to produce each one separately (金森久雄ほか編『有斐閣経済辞典 第5版』有斐閣, 2013, p.1039 (KANAMORI Hisao et al. Eds., *Yuhikaku Dictionary of Economic Terms*, 5th Edition, Yuhikaku, 2013, p.1039). Digital platforms can take advantage of the economies of scope to expand into various sectors to form one ecosystem (an economy in which many operators and individuals participate and conduct transactions) (OHASHI, *op.cit.*(2)).

<sup>(5)</sup> OHASHI, *Ibid.*

<sup>(6)</sup> デジタル・プラットフォームを巡る取引環境整備に関する検討会 透明性・公正性確保等に向けたワーキング・グループ「取引環境の透明性・公正性確保に向けたルール整備の在り方に関するオプション」2019.5.21, pp.10-11. 公正取引委員会ウェブサイト (Study Group on Improvement of the Trading Environment Surrounding Digital Platform Businesses Working Group for Securing Transparency and Fairness, “Options for Ideal Approaches to Rulemaking for Securing Transparency and Fairness in Trading Environments,” 2019.5.21, pp.10-11. Japan Fair Trade Commission Website)

<sup>(7)</sup> For trends in other countries and competition issues related to digital platforms up to the end of

## I Trends in Japan

In Japan, measures related to digital platforms have been taken according to the provisions of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947; hereafter the “Antimonopoly Act”), with two new laws enacted in recent years. The first is the Act on Improving Transparency and Fairness of Digital Platforms (Act No. 38 of 2020; hereafter the “Transparency Act”). It was promulgated in June 2020 and came into force in February 2021. The other is the Act on Promotion of Competition for Specified Smartphone Software (Act No. 58 of 2023; hereafter the “Mobile Software Competition Act”). This was promulgated in June 2024 and is expected to come into effect within one year and six months from the date of promulgation.

### 1 *Transparency Act*

#### (1) Details of Enactment

In Japan, there have been complaints from operators providing goods and services to digital platforms that the contents of their contracts can be changed without prior notice and that the screening criteria used by app stores for app approval<sup>(8)</sup> are unclear.<sup>(9)</sup>

In response to such issues, the Ministry of Economy, Trade and Industry (METI), the Japan Fair Trade Commission (JFTC), and the Ministry of Internal Affairs and Communications (MIC) established the Study Group on Improvement of the Trading Environment Surrounding Digital Platform Businesses (hereafter the “Study Group”) in July 2018 and began an inquiry into developing rules. The Study Group recognized that, from a basic rule development perspective, it was important to establish rules that strike a balance between the realization of a fair trading environment and the maintenance and promotion of innovation.<sup>(10)</sup> In addition, while expressing the view that the basic response to issues related to digital platforms was based on the Antimonopoly Act, they also noted that strict enforcement would require a considerable amount of time.<sup>(11)</sup> They also

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2019, see 鈴木絢子「デジタル・プラットフォーマーと競争政策」『調査と情報—ISSUE BRIEF—』No.1088, 2020.2.25 (SUZUKI Ayako, “Digital Platforms and Competition Policy,” *Issue Brief*, No.1088, 2020.2.25).

<sup>(8)</sup> Indicates operators of app stores. Examples of app store operators are Apple (App Store) and Google (Google Play).

<sup>(9)</sup> OHASHI, *op.cit.* (2), p.292; 「第四次産業革命に向けた横断的制度改革研究会報告書」2016, pp.8-11. 経済産業省ウェブサイト (“Report of the Cross-sectional System Study Group for the Fourth Industrial Revolution,” 2016, pp.8-11. Ministry of Economy, Trade and Industry Website)

<sup>(10)</sup> デジタル・プラットフォーマーを巡る取引環境整備に関する検討会 透明性・公正性確保等に向けたワーキング・グループ 前掲注(6), pp.4-6 (Study Group on Improvement of the Trading Environment Surrounding Digital Platform Businesses Working Group for Securing Transparency and Fairness, *op.cit.* (6), pp.4-6).

<sup>(11)</sup> *Ibid.*, pp.10-11.

highlighted the need to consider regulations that complement the Antimonopoly Act to promote transparency and fairness in digital markets.<sup>(12)</sup> In September 2019, the Headquarters for Digital Market Competition<sup>(13)</sup> was established in the Cabinet, and, under it, the Digital Market Competition Council.<sup>(14)</sup> This Council fleshed out the details of the system based on the Study Group’s discussions and outlined the direction of new laws, including disclosure of information such as terms and conditions.<sup>(15)</sup> This is the background to the enactment of the Transparency Act in the 201st session of the Diet.

## (2) Overview

This law regulates specified digital platform providers that are designated by the Minister of Economy, Trade and Industry on the basis of business category and business scale (Article 4(1)). Cabinet Order<sup>(16)</sup> determines the business category and business scale.<sup>(17)</sup>

<sup>(12)</sup> *Ibid.*, pp. 15-16. The inquiry also considered the EU's P2B Regulation (II 1 (1)) (*Ibid.*, pp.18, 21, 24).

<sup>(13)</sup> 「デジタル市場競争本部の設置について」(令和元年9月27日閣議決定) 首相官邸ウェブサイト (“Establishment of the Headquarters for Digital Market Competition.” (Cabinet Decision, September 27, 2019) Prime Minister’s Office Website)

<sup>(14)</sup> 「デジタル市場競争会議の開催について」(令和元年9月27日デジタル市場競争本部決定) 首相官邸ウェブサイト (“Regarding the Meeting of the Digital Market Competition Council.” (Headquarters for Digital Market Competition Decision of September 27, 2019) Prime Minister's Office Website)

<sup>(15)</sup> 内閣官房デジタル市場競争本部事務局「デジタル市場のルール整備」(第2回デジタル市場競争会議 資料 1) 2019.12.17, pp.1-2. 首相官邸ウェブサイト (Cabinet Secretariat, Headquarters for Digital Market Competition Secretariat, “Development of Digital Market Rules,” (Second Digital Market Competition Council Document 1) 2019.12.17, pp.1-2. Prime Minister’s Office Website)

<sup>(16)</sup> 特定デジタルプラットフォームの透明性及び公正性の向上に関する法律第四条第一項の事業の区分及び規模を定める政令(令和3年政令第17号)(Cabinet Order for Specifying the Business Category and Scale Under Article 4, Paragraph (1) of the Act on Improving Transparency and Fairness of Specified Digital Platforms (Cabinet Order No. 17 of 2021).

<sup>(17)</sup> For example, if the business category consists of digital platform providers of general online shopping malls selling goods, a business operator with a total annual domestic distribution value of at least 300 billion yen qualifies as a specified platform provider (安平武彦「デジタルプラットフォームをめぐる規制の到達点と実務(2) デジタルプラットフォーム取引透明化法の施行を踏まえて」『NBL』1196号, 2021.6.15, p.59 (YASUHIRA Takehiko, “The Goal and Practical State of Digital Platform Regulation (2): Based on the Enforcement of the Transparency Act,” *NBL*, No. 1196, 2021.6.15, p.59)). Other business categories specified by Cabinet Order include other digital platform providers of app stores, media-integrated digital ad platforms, and ad intermediary digital platforms. Initially, the Transparency Act was applied only to digital platform providers of general online shopping malls selling goods and app stores, but in July 2022, providers of media-integrated digital ad platforms and ad intermediary digital platforms were added under the digital advertising sector (「特定デジタルプラットフォームの透明性及び公正性の向上に関する法律第四条第一項の事業の区分及び規模を定める政令の一部を改正する政令」が閣議決定されました」2022.7.5. 経済産業省ウェブサイト (Cabinet Decision on “Cabinet Order to Partially Amend Cabinet Order for Specifying the Business Category and Scale Under Article 4, Paragraph (1) of the Act on Improving Transparency and

When conducting transactions with those providing commodities on digital platforms (such as users providing goods), specified digital platform providers must disclose (1) in case of refusal, the criteria for refusal, (2) the main factors used to determine search rankings, (3) when acquiring or using data on changes in the sale of goods and other items, the particulars and conditions of use of such data, and (4) the methods by which users providing products can submit complaints or request consultations (Article 5(2)(i)). Further, when dealing with consumers (general users), the main factors used to determine search rankings must be disclosed (Article 5(2)(ii)).<sup>(18)</sup>

Another feature of the Act is its adoption of co-regulation. Co-regulation is a regulatory framework that combines legal regulation with self-regulation by business operators. Such a framework imposes the minimum of legal obligations and aims to address problems by encouraging regulated business operators to take voluntary and proactive efforts while engaging in continuous dialogue with stakeholders such as user businesses, consumers, experts, and other relevant parties.<sup>(19)</sup> While imposing the above obligations on the specified digital platform providers, the Act also requires them to submit a report with an overview of their business, their handling of complaints, and other issues to the Minister of Economy, Trade and Industry (Article 9(1)). Using this submitted report, the Minister of Economy, Trade and Industry shall evaluate the specified digital platform's transparency and fairness (hereafter "Ministerial Evaluation") based on the opinions of user businesses and other relevant parties (Article 9(2) and (4)). Upon receiving the Ministerial Evaluation, the specified digital platform providers are obliged to make efforts to make any necessary improvements to their platform (Article 9(6)). This series of initiatives, known as Monitoring and Review, is at the heart of co-regulation under this Act.<sup>(20)</sup>

### (3) State of Implementation

In April 2021, the Minister of Economy, Trade and Industry designated three digital platform providers of general online shopping malls selling goods and two app stores as specified digital platform providers.<sup>(21)</sup> In October 2022, three providers of media-

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Fairness of Specified Digital Platforms," 2022.7.5. Ministry of Economy, Trade and Industry Website).

<sup>(18)</sup> 山田真由葉ほか「特定デジタルプラットフォームの透明性及び公正性の向上に関する法律に関する政省令・指針の解説(1)制度の概要」『NBL』1192号, 2021.4.15, p.8 (YAMADA Mayuha et al., "Explanation of Government Ordinance and Policy Concerning the Act on Improving Transparency and Fairness of Digital Platforms (1) Overview of the System," *NBL*, No.1192, 2021.4.15, p.8).

<sup>(19)</sup> 角田美咲「特定デジタルプラットフォーム取引透明化法の運用を経て—共同規制アプローチの成果と展望—」『NBL』1235号, 2023.2.1, p.42 (SUMIDA Misaki, "Through the Application of the Act on Improving Transparency and Fairness of Digital Platforms: Results and Outlook of the Co-Regulation Approach," *NBL*, No.1235, 2023.2.1, p.42).

<sup>(20)</sup> *Ibid.*, pp.44-47.

<sup>(21)</sup> 「特定デジタルプラットフォームの透明性及び公正性の向上に関する法律」の規制対

integrated digital ad platforms and one provider of ad intermediary digital platforms were so designated.<sup>(22)</sup>

Based on the reports submitted by these specified digital platform providers, Monitoring and Review took place, and two Ministerial Evaluations have so far been carried out.<sup>(23)</sup> Although the specified digital platform providers were commended in the second Ministerial Evaluation of 2023 for their positive and cooperative attitude toward the Monitoring And Review process, progress and improvement on the issues highlighted in the Ministerial Evaluation of 2022<sup>(24)</sup> was deemed insufficient.<sup>(25)</sup> Given this, requests have been made that, for the next Monitoring and Review process, verifiable details of the initiatives and their effectiveness should be included in the report, along with supporting evidence and other relevant materials.<sup>(26)</sup>

Recommendations were also made on the basis of the provisions of this Act (Article 6(1)). The Ministry of Economy, Trade and Industry issued recommendations to two specified digital platform providers in August 2024 regarding their failure to comply with their obligations.<sup>(27)</sup>

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象となる事業者を指定しました」2021.4.1. 経済産業省ウェブサイト (“Businesses subject to the ‘Act on Improving Transparency and Fairness of Digital Platforms’ have been designated.” Ministry of Economy, Trade and Industry Website)

<sup>(22)</sup> 「特定デジタルプラットフォームの透明性及び公正性の向上に関する法律」の規制対象となる事業者を指定しました」2022.10.3. 経済産業省ウェブサイト (“We have designated businesses subject to the ‘Act on Improving Transparency and Fairness of Digital Platforms’,” 2022.10.3. Ministry of Economy, Trade and Industry Website)

<sup>(23)</sup> 「特定デジタルプラットフォームの透明性及び公正性についての評価」経済産業省ウェブサイト (“Evaluation of Transparency and Fairness of Specified Digital Platforms.” Ministry of Economy, Trade and Industry Website) The 2022 Ministerial Evaluation targeted digital platform providers of general online shopping malls selling goods and app stores, and the 2023 Ministerial Evaluation added providers of media-integrated digital ad platforms and ad intermediary digital platforms.

<sup>(24)</sup> The 2022 Ministerial Evaluation, for example, noted that more effort was required to explain the suspension of digital platform users’ accounts (経済産業省「特定デジタルプラットフォームの透明性及び公正性についての評価 (総合物販オンラインモール及びアプリストア分野)」2022.12.22, pp.7-8 (Ministry of Economy Trade and Industry, “Evaluation of Transparency and Fairness of Specified Digital Platforms (Digital platform providers of general online shopping malls selling goods and digital platform providers of application store sectors),” 2022.12.22, pp.7-8).

<sup>(25)</sup> 経済産業省「特定デジタルプラットフォームの透明性及び公正性についての評価 (総合物販オンラインモール、アプリストア及びデジタル広告分野)」2024.2.2, pp.38-40 (Ministry of Economy, Trade and Industry, “Evaluation of Transparency and Fairness of Specified Digital Platforms (Digital Platform Providers of General Online Shopping Malls Selling Goods, Digital Platform Providers of Application Stores, and Digital Advertising Sector),” 2024.2.2, pp.38-40).

<sup>(26)</sup> *Ibid.*, p.95.

<sup>(27)</sup> 「アマゾンジャパン合同会社、Apple Inc.及び iTunes 株式会社に対する勧告を行いました」2024.8.2. 経済産業省ウェブサイト (“Recommendations issued to Amazon Japan LLC, Apple Inc. and iTunes K.K.,” 2024.8.2. Ministry of Economy, Trade and Industry Website) Amazon Japan LLC was advised of its failure to comply with its obligation to disclose its terms and conditions and to disclose changes to the terms in advance. Apple Inc. and iTunes K.K. were advised of insufficient compliance with the obligations regarding disclosure of Terms of Service.

It is important to note that the law has been in force only for a relatively short period of time, but due to these efforts, there are already signs of improvement in digital platforms' transparency and fairness.<sup>(28)</sup> For instance, in a METI survey of business operators conducted in December 2021, approximately 70–80% of operators responded that their information disclosure and consultation services are easier to understand and more thorough than they had been before the law came into effect.<sup>(29)</sup>

However, some challenges have been identified. The Act does not prohibit conduct that can adversely affect competition, meaning that there are limitations to the extent that digital platforms can be regulated.<sup>(30)</sup> Further, concerns have been raised about the effectiveness of enforcement because of the shortage of METI staff who are responsible for carrying out the Monitoring and Review process.<sup>(31)</sup>

## 2 *Mobile Software Competition Act (MSCA)*

### (1) Details of Enactment

In addition to the Transparency Act, the Digital Market Competition Council also considered rules for markets related to smartphones.

Today, smartphones are widely used in society, and people use them to access various services. The market surrounding smartphones is characterized by the formation of an ecosystem (hereafter a “mobile ecosystem”), which is based on the mobile’s operating system, and the marketing of devices, app stores, apps, etc., against the background of a strong network effect.<sup>(32)</sup>

The Digital Market Competition Council has focused on addressing issues of

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<sup>(28)</sup> 角田 前掲注(19), pp.47-48 ( SUMIDA, *op.cit.* (19), pp.47-48).

<sup>(29)</sup> 「デジタルプラットフォーム利用事業者向けアンケート調査結果」(第2回デジタルプラットフォームの透明性・公正性に関するモニタリング会合 資料1) 2022.3.14, pp.15-17. 経済産業省ウェブサイト (“Digital Platform Users’ Survey Results,” (2nd Monitoring Meeting on Transparency and Fairness of Platform Document 1) 2022.3.14, pp.15-17. Ministry of Economy, Trade and Industry Website)

<sup>(30)</sup> 土田和博 「デジタルプラットフォームが競争法に投げかけた問題とそれへの法的対応—総論的検討—」 同編著『デジタル・エコシステムをめぐる法的視座—独占禁止法・競争政策を中心に—』日本評論社, 2024, p.106 (TSUCHIDA Kazuhiro, “Issues posed by digital platforms to competition law and legal responses to them: A comprehensive review,” Tsuchida Kazuhiro, ed., *Legal perspectives on digital ecosystems - focusing on antitrust law and competition policy*, Nihon Hyoronsha, 2024, p.106).

<sup>(31)</sup> 村井七緒子 「日本版 PF 規制法、米 IT に改善要求 実効性に課題「職員少なすぎ」」 『朝日新聞デジタル』 2023.12.6 (MURAI Naoko, “Japan’s PF Regulation Law Demands Improvements from US IT Companies: Effectiveness Under Question, ‘Too few staff,’” *Asahi Shimbun Digital*, 2023.12.6).

<sup>(32)</sup> デジタル市場競争会議 「モバイル・エコシステムに関する競争評価最終報告」(第7回デジタル市場競争会議 資料2) 2023.6.16, pp.6-7. 首相官邸ウェブサイト (Digital Market Competition Council, “Competition Assessment Report of the Mobile Ecosystem Final Report,” (7th Digital Market Competition Council Document 2) 2023.6.16, pp.6-7. Prime Minister’s Office Website)

competition in individual markets, such as in online malls and app stores. However, a competition assessment of the mobile ecosystem was also conducted since targeting only individual markets might not fully capture the structural problems of the digital market.<sup>(33)</sup> The Competition Assessment of the Mobile Ecosystem Final Report, published in June 2023, identified concerns that an oligopoly of a small number of digital platform operators has become entrenched and strengthened within the mobile ecosystem, raising concerns that a fair and equitable competition environment cannot be fostered between these operators and other businesses.<sup>(34)</sup> It recognized that the nature of mobile ecosystems allowed a company to dominate the market upon gaining a competitive advantage, making market-based correction difficult, and concluded by advocating for an approach that proactively prohibited certain types of conduct likely to adversely affect competition.<sup>(35)</sup> The system was designed on the basis of this understanding, and the Mobile Software Competition Act (MSCA) was enacted in the 213th Session of the Diet.

## (2) Overview

This Act regulates Specified Software providers (hereafter “specified providers”) that are designated by the Japan Fair Trade Commission (Article 3(1)). “Specified software” collectively refers to mobile operating systems, app stores, browsers, and search engines (Article 2(7)), and “specified software providers” represent the operators providing these services. The criteria for designation include business scale, such as the number of users (Article 3(1)).<sup>(36)</sup>

This Act adopts ex-ante regulations and specifies prohibited conduct and stipulates compliance requirements. Ex-ante regulations refer to a framework that regulates certain types of acts in advance (before the conduct occurs), without requiring proof of competitive harm.<sup>(37)</sup> Prohibited conduct for specified providers includes (1) preventing other operators from providing app stores (Article 7(1)), (2) preventing the use of other payment systems (Article 8(1)), and (3) self-preferential treatment in searches without justifiable reason (Article 9). Under compliance requirements, it lists (1) smooth user data portability (Article 11) and (2) allowing users to change default settings and delete pre-installed apps (Article 12).<sup>(38)</sup>

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<sup>(33)</sup> *Ibid.*, p.1. Results of the factual survey on mobile operating system and related matters conducted by the JFTC (公正取引委員会「モバイル OS 等に関する実態調査報告書」2023.2 (Japan Fair Trade Commission, “Fact-finding Survey Report on Mobile OS and Related Matters,” 2023.2) were also considered when conducting the competition evaluation (*Ibid.*).

<sup>(34)</sup> *Ibid.*, pp.24-25.

<sup>(35)</sup> *Ibid.*, pp.28, 31. In considering the regulatory framework, trends of other countries were referenced, including the EU’s Digital Markets Act (DMA) (II 1 (2)) (*Ibid.*, pp.34-40).

<sup>(36)</sup> The criteria for business scale subject to designation are determined by Cabinet Order.

<sup>(37)</sup> 土田 前掲注(30), p.113 (TSUCHIDA, *op.cit.*(30), p.113); デジタル市場競争会議 前掲注(32), p.31 (Digital Market Competition Council, *op.cit.* (32), p.31).

<sup>(38)</sup> 公正取引委員会「スマートフォンにおいて利用される特定ソフトウェアに係る競争

Further, the specified providers are required to submit annual reports to the Japan Fair Trade Commission on the status of their compliance with the act (Article 14). The Act adopts an ex-ante regulatory approach while also incorporating a co-regulation framework.

If these provisions are violated, a surcharge equivalent to 20% of the sales revenue in the sector of violation is imposed on the specified provider (Article 19). For repeat violations, the rate is increased to 30% (Article 20).

This law is yet to come into force, but when it does, the shortage of personnel in the relevant departments of the Japan Fair Trade Commission has been identified as an issue. The JFTC intends to strengthen its capability by increasing the number of staff and establishing a new department.<sup>(39)</sup> Some also question the fact that this Act does not include online malls or the field of digital advertising within its ambit, remaining limited to matters related to mobile phones. Future developments need to be closely monitored and the sectors to which the regulations apply reviewed.<sup>(40)</sup>

## II Trends in Major Countries

There have been moves to establish rules related to digital platforms in various countries. This article focuses on the EU, Germany, and the United Kingdom, where new rules have been developed, and provides an overview of the systems introduced. Although no new systems have been introduced in the United States, there have been developments related to digital platforms, and this article focuses on those trends.

### 1 *The European Union*

Two new systems have been introduced in recent years in the EU. The first is the Regulation on Promoting Fairness and Transparency for Business Users of Online Intermediation Services (hereafter “P2B Regulation”),<sup>(41)</sup> which requires operators of

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の促進に関する法律の概要」2024.6, p.3 (Japan Fair Trade Commission, “Overview of the Act on Promotion of Competition for Specified Smartphone Software,” 2024.6, p.3).

<sup>(39)</sup> 「公取「対GAF A」新部署 来年4月にも 人員3倍超に 法執行や調査強化」『読売新聞』2024.8.28 (“JFTC establishes new Anti-GAF A Department, Staff to Triple by Next April, Strengthens Law Enforcement and Investigation,” *Yomimuri Shimbun*, 2024.8.28); 「令和6年9月4日付け 事務総長定例会見記録」公正取引委員会ウェブサイト (“September 4, 2024 Minutes of the Secretary General’s Regular Meeting,” Japan Fair Trade Commission Website)

<sup>(40)</sup> 「新展開の巨大IT規制(上)日本の新法、狭い対象範囲 土田和博・早稲田大学教授(経済教室)」『日本経済新聞』2024.7.31 (“New developments in regulation of large IT companies (part 1), Narrow scope of Japan’s new law: TSUCHIDA Kazuhiro, Waseda University Professor (Economics Classroom),” *Nihon Keizai Shimbun*, 2024.7.31).

<sup>(41)</sup> Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services, OJ L

digital platforms to ensure transparency and fairness in transactions. This Regulation was enacted in June 2019 and came into force in July 2020.<sup>(42)</sup> The second is the Digital Markets Act (DMA),<sup>(43)</sup> which imposes various obligations on digital platform operators operating over a certain scale. This was enacted in September 2022 and came into force in May 2023.<sup>(44)</sup>

### (1) P2B Regulation

The P2B Regulation targets, among the digital platform operators, the providers of online intermediation services<sup>(45)</sup> and providers of online search engines (Article 1(2)). There are no provisions limiting the scope of regulation based on the size of the operator.<sup>(46)</sup>

The Regulation targets primarily providers of online intermediation services and regulates their relationship with business users who use the platform for commercial

186, 2019.7.11, pp.57-79; カライスコス アントニオスほか訳「ビジネス・ユーザーのためのオンライン仲介サービスの公正性及び透明性の促進に関する欧州議会及び理事会規則 (Regulation (EU) 2019/1150) —概説および条文訳—」『NBL』1163号, 2020.2.1, pp.34-46 (Translated by KARAISKOS Antonios et al., “Regulation (EU) 2019/1150 of the European Parliament and of the Council on promoting fairness and transparency for business users of online intermediation services: Overview and Translation of Text,” *NBL*, No.1163, 2020.2.1, pp.34-46).

<sup>(42)</sup> 鈴木 前掲注(7), pp. 9-10 (SUZUKI, *op.cit.*(7), pp.9-10); 濱野恵 「【EU】オンラインプラットフォームの公平性・透明性向上に関する規則」『外国の立法』No.281-1, 2019.10, p.4 (HAMANO Megumi, “[EU] Regulation on Improving Fairness and Transparency of Online Platforms,” *Foreign Legislation*, No.281-1, 2019.10, p.4).

<sup>(43)</sup> Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), OJ L 265, 2022.10.12, pp.1-66; 岡田直己 「EU デジタル市場法〔上〕—Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act)」『青山法学論集』65(1), 2023.6.25, pp.257-341 (OKADA Naoki, “EU Digital Markets Act (I) — Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act),” *The Aoyama Law Review*, 65(1), 2023.6.25, pp.257-341); 同 「EU デジタル市場法〔下〕— Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act)」『青山法学論集』65(2), 2023.9.25, pp.125-197 (OKADA Naoki, “EU Digital Markets Act (II) — Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act),” *The Aoyama Law Review*, 65(2), 2023.9.25, pp.125-197). The P2B Regulation and DMA mentioned above are both “Regulations” under EU law, and their contents are applied directly to the member states without going through the ratification process.

<sup>(44)</sup> 田村祐子 「【EU】デジタル市場法の制定」『外国の立法』No.294-2, 2023.2, pp.10-11 (TAMURA Yuko, “[EU] Enactment of the Digital Markets Act,” *Foreign Legislation*, No.294-2, 2023.2, pp.10-11).

<sup>(45)</sup> Refers to providers of online malls and app stores.

<sup>(46)</sup> The number of digital platform operators subject to regulation is estimated to be more than 7,000 (土田 前掲注(30), p.105 (TSUCHIDA, *op.cit.*(30), p.105).

purposes.<sup>(47)</sup> Key obligations imposed by this Regulation on providers of online intermediation services include (1) clarification of terms and conditions of service (Article 3(1)), (2) prior notification of reasons for service restriction (Article 4(1)), and (3) disclosure of key parameters used to determine search ranking (Article 5(1)). In addition, providers of online search engines are required to disclose key factors used to determine search rankings (Article 5(2)).

While imposing these obligations, it also provides for continuous monitoring by the European Commission of the application of this Regulation (Article 16), and adopts a co-regulation approach.<sup>(48)</sup>

## (2) Digital Markets Act

### (i) Overview

The Digital Markets Act regulates operators designated as “gatekeepers” by the European Commission. Among providers of core platform services,<sup>(49)</sup> gatekeepers are businesses that meet all three of the following requirements: (1) having a significant impact on the internal market, (2) being an important gateway for business users to contact end users, and (3) enjoying a durable position (Article 3(1)). Quantitative criteria such as turnover and number of users are used to determine the gatekeepers (Article 3(2)).<sup>(50)</sup>

The Act adopts ex-ante regulations and imposes prohibited conduct and compliance requirements on gatekeepers. Prohibited conduct includes (1) combining personal data with other services without the consent of the end users<sup>(51)</sup> (Article 5(2)), (2) requiring the end users to make use of the gatekeeper’s browsers or payment systems (Article 5(7)), and (3) self-preferential treatment in search rankings (Article 6(5)). Compliance requirements include (1) providing data on prices and fees paid by an advertiser upon request (Article 5(9)), (2) enabling end users to uninstall applications on the gatekeeper’s OS (Article 6(3)),

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<sup>(47)</sup> The P2B Regulation is a system that governs the platform-to-business relationship. The relationship between digital platforms and consumers is not subject to regulation (佐々木勉「欧米におけるオンライン・プラットフォーム市場の規制—支配的プラットフォーム規制アプローチ」『情報通信政策研究』5(1), 2021, p.169 (SASAKI Tsutomu, “Regulation of the Online Platform Market in Europe and the United States: Dominant Platform Regulation Approaches,” *Journal of Information and Communications Policy*, 5(1), 2021, p.169).

<sup>(48)</sup> 多田英明「ビジネス・ユーザーを対象とする公平性・透明性の促進—EU プラットフォーム規制を手がかりとして—」『ジュリスト』1545号, 2020.5, p.24 (TADA Hideaki, “Promoting Fairness and Transparency for Business Users of Online Platforms—with Reference to the EU Platform to Business Regulation,” *Jurist*, No.1545, 2020.5, p.24).

<sup>(49)</sup> It refers to services across 10 sectors, including online intermediation, search engines, and online social networking services (伊永大輔「EUにおけるデジタル市場法〈DMA〉」土田編著 前掲注(30), p.269 (KORENAGA Daisuke, “The EU’s Digital Markets Act (DMA),” TSUCHIDA, ed., *op.cit.*(30), p.269).

<sup>(50)</sup> 田村 前掲注(44) (TAMURA, *op.cit.*(44); 同上, pp.269-271 (*Ibid.*, pp.269-271).

<sup>(51)</sup> Refers to a natural or legal person other than a business who uses core platform services.

and (3) effective data portability<sup>(52)</sup> of the end user's data generated through use of the core platform services (Article 6(9)). These provisions are based on the experience of the enforcement of competition law in the EU, such as administrative sanctions and market research.<sup>(53)</sup>

Gatekeepers violating these provisions are subject to fines of up to 10% of their worldwide turnover (Article 30(1)). In cases of repeated violation, the upper limit for the penalty is raised to 20% (Article 30(2)).

Further, a dialogue process has been introduced between competition authorities and operators. The law requires gatekeepers to submit reports to the European Commission detailing measures taken toward compliance with the above obligations (hereafter "Compliance Report"), and update them at least once a year (Article 11).<sup>(54)</sup>

## (ii) State of Implementation

In September 2023, the European Commission designated six large IT companies as gatekeepers. At the time, a six-month grace period was established for the gatekeepers to comply with this law and submit their Compliance Reports.<sup>(55)</sup> After evaluating their compliance reports and consulting with the stakeholders, the European Commission launched an investigation into three of the companies in March 2024 based on suspicions of having violated this law. These investigations are expected to be completed within a year, after which the companies will be informed of the measures to be taken.<sup>(56)</sup>

## 2 Germany

In Germany, an objective of the ninth and subsequent amendments to the Act against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen*)<sup>( 57 )</sup> was

<sup>(52)</sup> The ability to transfer or migrate data.

<sup>(53)</sup> 伊永 前掲注(49), pp.272-278 (KORENAGA, *op.cit.*(49), pp.272-278).

<sup>(54)</sup> 平山賢太郎「EU デジタル市場法 (the Digital Markets Act) —規制の概要とわが国への示唆—」『現代消費者法』58号, 2023.3, pp.113-114 (HIRAYAMA Kentaro, "The EU's Digital Markets Act: An Overview of Regulations and Implications for Japan," *Current Consumer Law*, No. 58, 2023.3, pp.113-114).

<sup>(55)</sup> "Digital Markets Act: Commission designates six gatekeepers," 2023.9.6. European Commission Website. Six companies designated as gatekeepers: Alphabet (Google's parent company), Amazon, Apple, ByteDance (operator of TikTok, etc.), Meta, and Microsoft. In May 2024, Booking (the operator of Booking.com) was also designated a gatekeeper ("Commission designates Booking as a gatekeeper," 2024.5.13. European Commission website).

<sup>(56)</sup> "Commission opens non-compliance investigations against Alphabet, Apple and Meta under the Digital Markets Act," 2024.3.25. The European Commission website surveyed three companies: Alphabet, Apple, and Meta. Apple and Meta have been notified of preliminary findings ("Commission sends preliminary findings to Apple and opens additional non-compliance investigation against Apple under the Digital Markets Act," June 24, 2024. European Commission website; "Commission sends preliminary findings to Meta over its "Pay or Consent" model for breach of the Digital Markets Act," 2024.7.1. *ibid.*).

<sup>(57)</sup> *Gesetz gegen Wettbewerbsbeschränkungen* (GWB) in der Fassung der Bekanntmachung vom 26. Juni 2013 (BGBl. IS. 1750, 3245)

strengthening regulations on digital platforms.<sup>(58)</sup>

Various revisions were made in the 10th Amendment<sup>(59)</sup> in January 2021, the key point being the establishment of Section 19a. This adopts ex-ante regulations and allows the prohibition of anti-competitive conduct to be placed on “undertakings of paramount significance for competition across markets” (Unternehmen mit überragender marktübergreifender Bedeutung für den Wettbewerb (hereafter “ÜMÜB Undertaking”).<sup>(60)</sup> ÜMÜB Undertakings are determined by the Federal Cartel Office (Bundeskartellamt) on the basis of their financial strength and whether they have a dominant position in one or more markets. The Federal Cartel Office may prohibit the following acts as uncompetitive: (1) self-preferential treatment in providing access to sale and purchase markets, (2) obstructing other operators by pre-installing its own services on devices or setting them as default, and (3) obstructing product interoperability and data portability, thereby restricting competition.<sup>(61)</sup> Which of these prohibitions actually applies is determined individually on the basis of an investigation of each ÜMÜB Undertaking.<sup>(62)</sup>

The Federal Cartel Office has thus far designated five entities as ÜMÜB Undertakings<sup>(63)</sup> and is investigating their anti-competitive practices.

In October 2023, the 11th Amendment was enacted,<sup>(64)</sup> and Section 32g was newly added to strengthen the enforcement of the EU's Digital Markets Act.<sup>(65)</sup> While the DMA is enforced by the European Commission, investigations into gatekeepers require cooperation with the competition authorities of member states. Section 32g expressly designates the Federal Cartel Office as a competition authority cooperating with the

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<sup>(58)</sup> 泉眞樹子「【ドイツ】デジタル経済の進展に対応した競争制限禁止法の第9次改正」『外国の立法』No. 275-1, 2018.4 (IZUMI Makiko, “[Germany] Ninth Amendment to the Act against Restraints of Competition in Response to the Advancement of the Digital Economy,” *Foreign Legislation*, No. 275-1, 2018.4); 鈴木 前掲注(7), pp.10-11. (SUZUKI, *op.cit.*(7), pp.10-11.)

<sup>(59)</sup> Gesetz zur Änderung des Gesetzes gegen Wettbewerbsbeschränkungen für ein fokussiertes, proaktives und digitales Wettbewerbsrecht 4.0 und anderer Bestimmungen (GWB-Digitalisierungsgesetz) vom 18. Januar 2021 (BGBl. I S. 2)

<sup>(60)</sup> 柴田潤子「デジタルプラットフォームに対する濫用規制の展開」土田編著 前掲注(30), pp.116-117 (SHIBATA Junko, “Development of Abuse Regulations for Digital Platforms,” TSUCHIDA, ed., *op.cit.*(30), pp.116-117).

<sup>(61)</sup> 泉眞樹子「【ドイツ】GWB (競争制限禁止法) デジタル化法—デジタル・プラットフォーム企業への競争法上の規制強化等—」『外国の立法』No. 287-1, 2021.4, p.21 (IZUMI Makiko, “[Germany] GWB (Competition Restriction Act) Digitization Law: Strengthening Competition Law Regulations for Digital Platform Companies, etc.,” *Foreign Legislation*, No.287-1, 2021.4, p.21); “ドイツ(Germany)” 2022.2. 公正取引委員会ウェブサイト (Japan Fair Trade Commission (JFTC) Website)

<sup>(62)</sup> デジタル市場競争会議 前掲注(32), pp.36-37 (Digital Market Competition Council, *op.cit.*(32), pp.36-37).

<sup>(63)</sup> “Proceedings against large digital companies - on the basis of Sec. 19a GWB -” 2024.9. Bundeskartellamt website Alphabet was designated as an ÜMÜB Undertaking in 2021, Meta and Amazon in 2022, Apple in 2023 and Microsoft in 2024.

<sup>(64)</sup> Gesetz zur Änderung des Gesetzes gegen Wettbewerbsbeschränkungen und anderer Gesetze vom 25. Oktober 2023 (BGBl. I Nr. 294)

<sup>(65)</sup> “Amendment to the German Competition Act (Gesetz gegen Wettbewerbsbeschränkungen – GWB; 11th amendment to the GWB),” 2023.11.7. Bundeskartellamt website

European Commission and grants it investigative power.<sup>(66)</sup>

### 3 The United Kingdom

The Competition and Markets Authority (CMA) published its final report “Online Platforms and Digital Advertising Market Study”<sup>(67)</sup> in July 2020.<sup>(68)</sup> The report identified the overwhelming market power of Google and Facebook in the search and digital advertising sectors as a concern, as well as the detrimental effects on competition caused by these companies exercising their market power. It recommended that an effective code of conduct be introduced alongside the creation of a Digital Markets Unit (DMU) as an enforcement body to address these issues.<sup>(69)</sup>

On the basis of these recommendations, the DMU was established within the CMA in April 2021. Following its establishment, the DMU started conducting market research for digital services and merger reviews involving digital platforms.<sup>(70)</sup>

In May 2024, the Digital Markets, Competition, and Consumers Act 2024<sup>(71)</sup> was enacted.<sup>(72)</sup> This Act adopts ex-ante regulations and allows the imposition of various obligations on undertakings with Strategic Market Status (SMS) (hereafter “SMS Undertakings”). SMS Undertakings are those with substantial and entrenched market power and a position of strategic significance, designated by the CMA based on certain criteria, such as turnover in the UK (Section 2). SMS Undertakings are prohibited from certain conduct, such as (1) applying discriminatory conditions to certain users (Section 20(3)(a)) and (2) using their position to favor their own products (Section 20(3)(b)). Further, compliance requirements such as (1) trading on fair and reasonable terms (Section 20(2)(a)) and (2) establishing effective processes for handling user complaints and disputes (Section 20(2)(b)) are also imposed. This Act sets out these obligations in abstract terms, and the specific contents of each are to be determined through negotiations between the CMA and the SMS Undertaking.<sup>(73)</sup>

<sup>(66)</sup> *Ibid.*; 田中裕明「ドイツ競争制限禁止法第11次改正について」『神戸学院法学』51(3), 2023.12, pp.211-212 (TANAKA Hiroaki, “11th Amendment of the German Act against Restraints of Competition,” *Kobe Gakuin Law and Politics Review*, 51(3), 2023.12, pp.211-212).

<sup>(67)</sup> “Online platforms and digital advertising market study,” 2020.7.1. GOV.UK website

<sup>(68)</sup> Similar reports include “Regulating in a Digital World” by the House of Lords, Select Committee on Communications and the final Report from the Digital Competition Expert Panel (known as the “Furman Report”). These reports also recommend the establishment of a DMU (鈴木 前掲注(7), pp.11-12 (SUZUKI, *op.cit.*(7), pp.11-12).

<sup>(69)</sup> “Online platforms and digital advertising market study,” *op.cit.*(67), p.34.

<sup>(70)</sup> 宮丸栄介「英国における競争政策の動向」『公正取引』868号, 2023.2, p.33 (MIYAMARU Eisuke, “Trends in Competition Policy in the UK,” *Fair Trade*, No.868, 2023.2, p.33).

<sup>(71)</sup> Digital Markets, Competition and Consumers Act 2024 (c.13), 24th May 2024. Legislation.gov.uk website

<sup>(72)</sup> “Digital Markets, Competition and Consumers Act receives Royal Assent,” 2024.5.24. GOV.UK website

<sup>(73)</sup> For literature examined at the bill stage, see 土田和博「デジタル・プラットフォームをめ

The Digital Markets, Competition, and Consumers Act is scheduled for enforcement sequentially from December 2024 or January 2025, starting with the chapters that are ready.<sup>(74)</sup>

#### 4 *United States*

Multiple bills aimed at strengthening regulations on digital platforms were introduced in the 117th Congress (2021–2022) of the United States. A representative example is the American Innovation and Choice Online Act, which targeted digital platforms above a certain scale and prohibited self-preferential treatment and discriminatory treatment among user businesses.<sup>(75)</sup> These bills ultimately failed to pass, owing to strong lobbying by digital platform operators, and did not lead to the introduction of new frameworks.<sup>(76)</sup> On the other hand, a proactive approach toward the enforcement of antitrust legislation<sup>(77)</sup> is evident.

##### (1) Government Trends

President Joe Biden signed the “Executive Order on Promoting Competition in the American Economy”<sup>(78)</sup> in July 2021. The executive order states that it is the policy of the administration to enforce antitrust laws to combat excessive concentration of industry, abuses of market power, and monopolies, and lists the Internet platform industry as one requiring specific attention, in addition to the labor and agricultural markets. It also directed relevant ministers to take concrete actions and instructed the U.S. Department of Justice and the Federal Trade Commission (FTC) to actively enforce antitrust laws and consider revising merger guidelines.<sup>(79)</sup> The President also directed the FTC to coordinate with other regulatory agencies to address unfair data collection activities that could harm competition

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ぐる新規制の動向—EU、英国の立法とわが国の進むべき方向—『ビジネス法務』23(10), 2023.10, pp.119-120 (TSUCHIDA Kazuhiro, “Trends in New Regulations Concerning Digital Platforms - EU and UK Legislation and Japan's Direction,” *Business Law Review*, 23(10), 2023.10, pp.119-120).

<sup>(74)</sup> House of Commons, *Hansard*, Volume 753, 2024.9.9, col.28WS.

<sup>(75)</sup> A bill to that effect was submitted to both houses of Congress. “H.R.3816 - 117th Congress (2021-2022): American Innovation and Choice Online Act,” Congress.gov website; “S.2992 - 117th Congress (2021-2022): American Innovation and Choice Online Act,” *ibid*. Both bills were passed by the Judiciary Committees of both houses, but were rejected without discussion.

<sup>(76)</sup> 若林亜理砂「米国におけるデジタルプラットフォーム規制」土田編著 前掲注(30), pp.305-306 (WAKABAYASHI Arisa, “Regulation of Digital Platforms in the United States,” TSUCHIDA, ed., *op.cit.*(30), pp.305-306); 池澤大輔「近時の米国競争政策の動向」『公正取引』868号, 2023.2, pp.6-7 (IKEZAWA Daisuke, “Recent Trends in US Competition Policy,” *Fair Trade*, No.868, 2023.2, pp.6-7).

<sup>(77)</sup> This is not a single law but a collective term for multiple laws. Primarily it consists of the Sherman Antitrust Act of 1890, the Clayton Antitrust Act of 1914, and the Federal Trade Commission Act of 1914.

<sup>(78)</sup> Executive Order 14036 of July 9, 2021: Promoting Competition in the American Economy, *Federal Register*, Vol.86 No.132, 2021.7.14, pp.36987-36999.

<sup>(79)</sup> Guidelines for the review of mergers.

and lead to unfair competition in the internet marketplaces.<sup>(80)</sup>

Following this executive order, in December 2023, the Department of Justice and the FTC issued new guidelines on mergers.<sup>(81)</sup> These new guidelines made changes to strengthen the enforcement of merger regulations, addressing concerns that large IT companies were increasing their market power through mergers and acquisitions. While the merger guidelines only outline the competition authorities' enforcement policy and are not legally binding, judicial rulings and their impact on other countries are noted.<sup>(82)</sup>

## (2) Trends in Litigation

Since October 2020, late in the Trump administration, competition authorities have filed multiple lawsuits against platform operators.<sup>(83)</sup> Even since 2023, there have been cases such as the Department of Justice et al. bringing a case against Google for anti-competitive conduct in the internet advertising market,<sup>(84)</sup> the FTC et al. suing Amazon for anti-competitive conduct in the online marketplace,<sup>(85)</sup> and the Department of Justice et al. suing Apple over anti-competitive conduct in the smartphone market.<sup>(86)</sup>

## Conclusion

The systems of each country introduced in this article are summarized in the table at the end of this section. While the sectors targeted for regulation and the details of regulatory content differ, they share common features: targeting businesses above a certain scale and adopting co-regulation frameworks and ex-ante regulations.<sup>(87)</sup> This is against a background of an awareness of the issues in traditional competition policy. Traditional competition policy has sought to improve the transactional environment by enforcing competition law ex post facto. However, as previously noted, enforcement of competition

<sup>(80)</sup> 若林 前掲注(76), pp.302-304 (WAKABAYASHI, *op.cit.*(76), pp.302-304).

<sup>(81)</sup> “[2023 Merger Guidelines](#).” United States Department of Justice website

<sup>(82)</sup> 「競争政策のいま (中) 司法が規制強化の壁にも 川浜昇・京都大学教授 (経済教室)」『日本経済新聞』2023.9.20 (“Current Status of Competition Policy (Part II) Judicial branch may hinder tightening of regulation: KAWAHAMA Noboru, Kyoto University Professor (Economics Classroom),” *Nihon Keizai Shimbun*, 2023.9.20); 田平恵 「2023 年米国企業結合ガイドライン案について」『公正取引』876 号, 2023.10, pp.23-27 (TAHIRA Megumi, “2023 US Proposed Merger Guidelines,” *Fair Trade*, No.876, 2023.10, pp.23-27).

<sup>(83)</sup> 若林 前掲注(76), pp.306-309 (WAKABAYASHI, *op.cit.* (76), pp.306-309).

<sup>(84)</sup> “[Justice Department Sues Google for Monopolizing Digital Advertising Technologies](#),” 2023.1.24. United States Department of Justice website

<sup>(85)</sup> “[Amazon.com, Inc. \(Amazon eCommerce\)](#),” 2024.3.15 (Last Updated). Federal Trade Commission website

<sup>(86)</sup> “[Justice Department Sues Apple for Monopolizing Smartphone Markets](#),” 2024.3.21. United States Department of Justice website

<sup>(87)</sup> デジタル市場競争会議 前掲注(32), p.34 (Digital Market Competition Council, *op.cit.*(32), p.34).

law takes a significant amount of time, which limits and constrains its ability to regulate the rapidly changing digital market.<sup>(88)</sup> With the establishment of rules, the adoption of co-regulation and ex-ante frameworks can be seen as a response to this challenge. Further, an overview of regulatory trends in various countries shows that, following co-regulation, ex-ante regulations are increasingly being adopted.<sup>(89)</sup>

Finally, many of the systems introduced here have only just begun full-scale implementation, and their effectiveness and efficiency will be evaluated on the basis of future developments. If there are no changes in the competitive environment surrounding digital platforms, rule revisions may be considered. The new laws in Japan are also expected to undergo revision based on their operational status,<sup>(90)</sup> and future developments will be closely monitored.

MURAMATSU Katsuhiko, *Regulatory Trends for Digital Platforms* (Research Materials), 2026e-2, Tokyo: Research and Legislative Reference Bureau, National Diet Library, 2026.

ISBN: 978-4-87582-958-4

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<sup>(88)</sup> デジタル・プラットフォームを巡る取引環境整備に関する検討会 透明性・公正性確保等に向けたワーキング・グループ 前掲注(6), pp. 10-11 (Study Group on Improvement of the Trading Environment Surrounding Digital Platform Businesses Working Group for Securing Transparency and Fairness, *op.cit.*(6), pp.10-11).

<sup>(89)</sup> デジタル市場競争会議 前掲注(32), p.34 (Digital Market Competition Council, *op.cit.*(32), p.34).

<sup>(90)</sup> The supplementary resolution of the Mobile Software Competition Act (MSCA) stipulates that consideration for review shall be carried out as required through verification of operation status, etc. (第 213 回国会衆議院経済産業委員会議録第 16 号 令和 6 年 5 月 22 日 p.31 (Minutes of the Proceedings of the 213th Meeting of the Committee on Economy, Trade and Industry in the Diet House of Representatives, No.16, May 22, 2024, p.31); 第 213 回国会参議院経済産業委員会議録第 16 号 令和 6 年 6 月 11 日 p.22 (Minutes of the Proceedings of the 213th Meeting of the Committee on Economy, Trade and Industry in the Diet House of Councilors, No.16, June 11, 2024, p.22)).

**Table: Regulation of Digital Platforms in Major Countries**

Country	Japan		EU		Germany	United Kingdom
Title	Transparency Act	Mobile Software Competition Promotion Act	P2B Regulation	Digital Markets Act	Act against Restraints of Competition (Article 19a)	Digital Markets, Competition and Consumers Act 2024
Enacted	June 2020 (in force February 2021)	June 2024 (In force by December 2025)	June 2019 (In application from July 2020)	June 2022 (in application from July 2023)	June 2021 (in force same month of the same year)	June 2024 (scheduled to be in force from December 2024 or January 2025)
Features	<ul style="list-style-type: none"> <li>• Co-regulation</li> <li>• Quantitative criteria for determining regulation targets</li> </ul>	<ul style="list-style-type: none"> <li>• Ex-ante regulations</li> <li>• Quantitative criteria for determining regulation targets</li> <li>• Prohibited conduct and compliance requirements clearly indicated by law</li> </ul>	<ul style="list-style-type: none"> <li>• Co-regulation</li> <li>• No criteria for determining regulation targets</li> </ul>	<ul style="list-style-type: none"> <li>• Ex-ante regulations</li> <li>• Quantitative criteria for determining regulation targets</li> <li>• Prohibited conduct and compliance requirements clearly indicated by law</li> </ul>	<ul style="list-style-type: none"> <li>• Ex-ante regulations</li> <li>• Qualitative criteria for determining regulation targets (determined after individual investigation by competition authorities)</li> <li>• Specific regulatory content determined after investigation by the authorities</li> </ul>	<ul style="list-style-type: none"> <li>• Ex-ante regulations</li> <li>• Quantitative criteria for determining regulation targets</li> <li>• Specific regulatory content determined after investigation by the authorities</li> </ul>
Target Sector	Online malls, app stores, digital advertising platforms	Mobile OS, app stores, browsers, search engines (limited to smartphone-related areas)	Online malls, app stores, online social networking services, search engines	Online malls, application stores, search engines, online social networking services, video-sharing platform services, OS, browsers, etc. (10 sectors)	(No rules)	(No rules)
Regulation Target	Specified digital platform providers	Specified software providers	Provider of online intermediation services, providers of online search engines	Gatekeeper	Undertakings of Paramount Significance for Competition Across Markets (ÜMÜB Undertakings)	Operators with strategic market positions (SMS Undertakings)
Key Regulatory Provisions	<ul style="list-style-type: none"> <li>○ Disclosure of information such as terms and conditions</li> <li>• Evaluation criteria for refusing transactions</li> <li>• Main factors used to determine search ranking</li> <li>• Data content and conditions of use when acquiring data such as sales trends for products</li> <li>• Methods for filing complaints</li> </ul>	<ul style="list-style-type: none"> <li>○ Prohibited Conduct                             <ul style="list-style-type: none"> <li>• Obstructing availability of other app stores</li> <li>• Obstructing the use of other payment systems</li> <li>• Self-preferential treatment in searches</li> </ul> </li> <li>○ Compliance Requirements                             <ul style="list-style-type: none"> <li>• Smooth user data portability</li> <li>• Enabling changes to default settings and deletion of pre-installed apps</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>○ Disclosure of information such as terms and conditions</li> <li>• Clarification of terms and conditions of service</li> <li>• Advance notice of reasons for restrictions in service provision</li> <li>• Disclosure of main parameters used to determine search ranking</li> </ul>	<ul style="list-style-type: none"> <li>○ Prohibited Conduct                             <ul style="list-style-type: none"> <li>• Combining data with other services without user consent</li> <li>• Requiring the use of services offered by the company</li> <li>• Self-preferential treatment in searches</li> </ul> </li> <li>○ Compliance Requirements                             <ul style="list-style-type: none"> <li>• Providing data in response to requests from advertisers, etc.</li> <li>• Ease of uninstallation of apps</li> <li>• Ensuring data portability (data transfer)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>○ Prohibited Conduct                             <ul style="list-style-type: none"> <li>• Self-preferential treatment</li> <li>• Obstructing competitor activities by pre-installing own services</li> <li>• Obstructing product interoperability and data portability</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>○ Prohibited Conduct                             <ul style="list-style-type: none"> <li>• Application of discriminatory terms</li> <li>• Self-preferential treatment using own position</li> </ul> </li> <li>○ Compliance Requirements                             <ul style="list-style-type: none"> <li>• Transactions under fair and reasonable terms</li> <li>• Establishment of dispute resolution process</li> </ul> </li> </ul>

(Source) Created by the author based on デジタル市場競争会議「モバイル・エコシステムに関する競争評価最終報告」(第7回デジタル市場競争会議 資料2) 2023.6.16, pp.34-40. 首相官邸ウェブサイト (Digital Market Competition Conference “Competition Assessment Report on the Mobile Ecosystem Final Report,” (7th Digital Market Competition Council Document 2) 2023.6.16, pp.34-40. Prime Minister's Office Website)