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For inquiries, questions or comments, please contact us at newsletter_japan@ohebashi.com.
[Website] https://www.ohebashi.com/en/

New Law on Offshore Renewable Energy Projects

Kazato Kawanishi
kawanishi@ohebashi.com

1. Background

The Act to Promote Offshore Use by Offshore Renewable Energy Facilities[1] (the "Act") took effect on April 1, 2019. The Act aims to promote offshore renewable energy projects, and in particular, offshore wind energy projects.

Until the Act was introduced, the general sea areas of Japan were not subject to any national property management related laws. Thus, it was difficult to occupy such areas on a long-term basis and carry out renewable energy projects thereat. The Act now makes it possible to occupy specific zones in the general sea areas for offshore renewable energy projects for up to 30 years. Also, by establishing a council as further discussed below, the Act encourages consensus building among key stakeholders in such zones, such as fishery operators.

This article explains the essence of the Act and the process to obtain the occupation permit, and touches on some pending issues.

2. Process of Obtaining an Occupation Permit

2.1 Outline of the Process

i. Designation of the promotion zone by the government
ii. Preparation of the occupation guidelines by the government and submission by operator candidates of an occupation plan
iii. Selection of the operator by the government
iv. Application by the operator for a feed-in tariff certificate
v. Application by the operator for an occupation permit

2.2 Designation of Promotion Zones

The ministers of the Ministry of Economy, Trade and Industry ("METI") and the Ministry of Land, Infrastructure, Transport and Tourism ("MLITT") designate the promotion zones to carry out offshore renewable energy projects ("Promotion Zones").[2] The Promotion Zones must meet several criteria, such as (i) they are appropriate for offshore renewable energy projects in terms of their natural conditions, and sufficient power output is expected to be generated from such areas, and (ii) the energy projects and their power generation facilities will not interfere with sea routes, ports or fisheries.

1. Kaiyo saiseika no enerugi hatsuden setsubi no seibi ni kakaru kaiiki no riyou no sokushin ni kansuru houritsu [Act to Promote Offshore Use by Offshore Renewable Energy Facilities], Act No. 89 of December 7, 2018.
2. The Act, art. 8, para. 1.

Prior to the designation of a Promotion Zone, the METI and MLITT ministers will consult with the ministers of the Ministry of Agriculture, Forestry and Fisheries ("MAFF"), the Ministry of Environment, etc. The METI and MLITT ministers may also establish a council which consists of ministers of METI, MLITT and MAFF, and the governors of the relevant prefectures, the mayors of the relevant municipalities as well as academic experts, fishery operators and other stakeholders in the contemplated zone ("Council").[3] The Act provides that once consensus is reached on a certain issue through the consultation process of the Council, the members of the Council shall respect it. This is how the Council is expected to promote the coordination of interests of various stakeholders. However, the manner of securing such consensus is still unclear. Moreover, even if such consensus is obtained, it is not legally binding. Thus, members may still take actions that are inconsistent therewith. Also, stakeholders which are not members of the Council may oppose its decisions. Accordingly, it is desirable that the Council consists of as many stakeholders as possible and tries to reach a real consensus.

2.3 Occupation Guidelines and Occupation Plans

The METI and MLITT ministers will prepare guidelines ("Occupation Guidelines") for the conduct of public tender offers for the selection of an operator of an offshore renewable energy project in a Promotion Zone (the "Operator").[4] The Occupation Guidelines shall stipulate, among other things, the project site within the Promotion Zone to be occupied, the range of the power output of the facility, the maximum supply price of the renewable energy generated by the project, the method for deciding the procurement price, the procurement term, and the standards for evaluating the Occupation Plan (as defined below).

The Operator candidates will submit their plans in accordance with the Occupation Guidelines, which should set forth the content and timing of their projects, the method and timing of the construction of the power generation facilities, the power output of such facilities, supply price, funding plan and revenue, expenditure plan, etc. (the "Occupation Plan").[5]

2.4 Selection of the Operator

The Operator is selected in a process that involves the following two steps.[6]

First, each Occupation Plan is examined to determine whether it satisfies certain requirements, such as its appropriateness based on the Occupation Guidelines. The Operator candidate must also not be one that is clearly expected to commit any wrongdoing.

Occupation Plans which satisfy the above requirements are then evaluated based on the standards set forth in the Occupation Guidelines. Such evaluation standards are generally divided into two items, (i) proposed supply price ("Supply Price"), and (ii) elements for completing the project, with the latter being further divided into several elements in accordance with the public tender offer guidelines issued last June 2019.[7] The proposed Supply Price is crucial because it accounts for half of the points for evaluation while the remaining half is allotted among the elements constituting item (ii). Through such evaluation process, the candidate who submits the most appropriate Occupation Plan to carry out a long-term, stable and efficient offshore renewable energy project will be selected as the Operator.

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3. The Act, art. 9.
4. The Act, art. 13.
5. The Act, art. 14.
6. The Act, art. 15.
7. Item (ii) concerning the elements for completing the project is further divided into (a) the ability to operate the project, and (b) the ability to coordinate with stakeholders and the economic effect of the project. *See* Guidelines on Public Tender Offers for Occupation in the General Sea Areas by the Agency for Natural Resources and Energy of METI, and the Ports and Harbours Bureau of MLITT ("Public Tender Offer Guidelines"), June 2019, pp. 9-13.

2.5 Application for a FIT Certificate

Together with the selection of the Operator, the procurement price of the electricity to be generated by the project under the Japanese feed-in tariff ("FIT") system is decided through the same public tender offer. As described in part 2.4 above, Operator candidates must state in their Occupation Plans the Supply Price, which is an important factor in the selection process. Once the Operator is selected, it will apply for a FIT certificate[8] based on the Occupation Plan, which will then be issued by the METI minister.

2.6 Occupation Permit

The Operator applies for a permit to occupy the sea areas ("Occupation Permit") within the Promotion Zone based on the Occupation Plan. The MLITT minister will then issue the Occupation Permit and determine the period of its validity, which may be up to 30 years.[9] This 30-year period takes into consideration the time necessary to conduct an environmental assessment, and construct and eventually remove the power generation facilities in addition to the procurement period under the FIT system, which is normally 20 years.

3. Outstanding Issues

Although the Act plays an important role in encouraging offshore renewable energy projects as described above, several issues are still outstanding.

For example, it is assumed that the Operator will secure the grid connection by itself under the Act. In this regard, it is contemplated that the grid connection agreements of Operator candidates who were not selected would be assigned to the Operator that was selected and which does not have a grid connection. However, the details of such assignment are unclear.[10]

Furthermore, the Act does not allow any concessions with regard to environmental assessments for the proposed project. The Operator is responsible for conducting various environmental assessments which can be time-consuming and burdensome. Such environmental assessments are intended to be simplified, but at the moment, there is no concrete plan yet.

METI and MLITT have recently announced four promising areas for Promotion Zones and are now preparing for the formation of the Council in each of those areas. As a key performance index under the Act, projects in five Promotion Zones are being targeted to commence their operations by 2030.

We should pay close attention to how the government will address these remaining issues and whether the introduction of offshore wind energy projects will become successful in practice.

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8. Denkijigyosha niyoru saiseika no enerugi denki no tyoutatsu ni kansuru tokubetsu sochi ho [Act on Special Measures Concerning Procurement of Electricity from Renewable Energy Sources by Electricity Utilities], Law No. 108 of August 30, 2011, art. 9, as last amended by Law No. 59 of June 3, 2016.
9. The Act, art. 19, para. 2.
10. The Public Tender Offer Guidelines, p. 15.

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Outline of the 2019 Amendments to the Civil Execution Act and the Hague Abduction Convention Implementation Act

Sho Yamamoto[1]
s-yamamoto@ohebashi.com

(I had the opportunity to take part in the drafting of the revisions to the Civil Execution Act during my assignment at the Ministry of Justice. I would thus like to take this opportunity to introduce to you the said revisions.)

The Act Partially Amending the Civil Execution Act and the Act for the Implementation of the Convention on the Civil Aspects of International Child Abduction (as amended, the "Hague Abduction Convention Implementation Act") was passed by the Diet on May 10, 2019, and promulgated on May 17 of the same year (the "2019 Amendments"). Although the date of enforcement of the 2019 Amendments is yet to be determined, it is expected to take place within one year from the promulgation date, except for certain provisions.

The 2019 Amendments will have an impact on corporate practices and civic life, and were made given the changes in the economic and social affairs of Japanese society and recent circumstances surrounding the civil execution system. While each amendment seemingly bears no relationship to the other amendments, all of them relate to the civil execution system, and as a whole, such amendments aim to enhance the enforcement of the rights granted by the courts while ensuring the appropriateness of compulsory execution procedures. In this article, I would like to quickly walk you through the details of the three major changes under the 2019 Amendments.

1. Improvement of the Effectiveness of the System of Debtor Property Disclosure

Under the compulsory execution system in Japan, for a creditor who won a lawsuit on a money claim to file a petition for compulsory execution, such creditor must specify the property that would be subject to an attachment. Due to this requirement, there have been instances where a creditor did not have sufficient information about the specific properties of the debtor, and thus, could not satisfy its claim despite having an award in its favor. To solve this issue and to improve the effectiveness of the system to enforce creditors' claims, a property disclosure procedure was introduced in 2003, whereby the execution court may order a debtor to make a statement of its properties in court. However, because the punishment on non-compliant debtors may not have been severe enough, this procedure was not fully utilized in practice.

In response to the above, the amended Civil Execution Act now provides stricter penal provisions, i.e., if a debtor

1. The author was assigned to the Civil Affairs Bureau of the Ministry of Justice as a public officer with a fixed term from February 2016 to the end of March 2019.

fails to appear before the execution court for its property disclosure or makes a false statement, then the execution court may impose punishment including imprisonment of not more than six months with forced labor.[2] A new procedure was also established, namely, if a complete property statement cannot be readily obtained from the debtor, then the execution court may obtain information about the real estate, labor claims, deposit money claims, etc., of the debtor from third parties.[3]

This amendment is expected to substantially increase the effectiveness of compulsory execution orders petitioned by creditors to satisfy their money claims.

2. Prohibition of Real Estate Purchases by Organized Crime Group Members in Compulsory Executions

In Japan, the government and the private sector have been exerting all efforts to eliminate the involvement of organized crime groups in public work projects, corporate activities, etc. Similar measures have started to be taken in the field of commercial real property transactions. Nevertheless, since there was no provision under the existing Civil Execution Act that prohibited organized crime group members from buying real properties in compulsory executions, there were cases where such real properties ended up being used as offices of organized crime groups.

In response thereto, provisions prohibiting members of organized crime groups from purchasing real property in compulsory executions were introduced in the amended Civil Execution Act. In particular, to make an offer to purchase real property in a compulsory execution, the potential buyer must deliver a statement that he/she does not fall under the category of an organized crime group member and the like. Moreover, if the highest purchase offeror is a member of an organized crime group or for similar reasons, then the sale will not be permitted.[4] In this regard, the execution court can request the police to conduct the necessary investigation[5] to verify such circumstances.

3. New Provision on Compulsory Enforcement of the Handover of Children

The Hague Convention Implementation Act, which addresses international child abduction cases, was already in existence as early as 2013. Nevertheless, prior to the 2019 Amendments, the law did not provide for rules on the compulsory enforcement of the handover of children. In the absence of such rules, the practice then was to apply indirect enforcement measures and compulsory enforcement measures using by analogy provisions on the compulsory enforcement of the delivery of movable property. To effect such delivery, the court enforcement officer would remove the property (child) from the custody of the debtor (one party) and hand it over to the creditor (the other party).

In view of the foregoing, clear rules needed to be established. In response, provisions concerning compulsory enforcement of the handover of children were introduced in the amended Civil Execution Act. The said provisions require the court enforcement officer to carry out the handover of children pursuant to a court order. The requirements for the filing of a petition

2. Shin minji shikkou hou [the Amended Civil Execution Act], Act No. 4 of March 30, 1979, art. 213, items 3 and 5. For the amendments, *see* http://www.moj.go.jp/content/001293954.pdf (no English translation yet).
3. *Ibid.*, arts. 205-207.
4. *Ibid.*, art. 71, item 5.
5. *Ibid.*, art. 68-4.

therefor, the power and authority of the court enforcement officer at the place of execution, etc., are expected to be issued.[6]

Furthermore, together with the above amendment to the Civil Execution Act, the Hague Convention Implementation Act, the effectiveness of which has been questioned, was partially amended. The provisions of the Hague Convention Implementation Act on compulsory enforcement in matters concerning the international return of children have been amended to be consistent with the provisions on compulsory enforcement of the domestic handover of children under the amended Civil Execution Act.

These amendments to the Civil Execution Act and the Hague Convention Implementation Act seek to ensure the effectiveness of the compulsory enforcement of the handover of children both domestically and internationally, taking into account their mental and physical well-being.

6. *Ibid.*, arts. 174-176.

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Recent Movements for New Regulations and Enforcement in Japan: In the Context of Digital Platforms and Competition Law

Takashi Komoguchi
komoguchi@ohebashi.com

1. Global Background

For the last few years, there has been a global trend of digital platformers being targeted by new regulations and enforcement actions of authorities. Underlying this trend are mainly the following concerns: (a) the potential of digital platformers to become monopolists or oligopolists in a market, and later on, giant ecosystems when they expand their businesses into neighboring services; (b) collection of big data by digital platformers from multiple users; (c) the lack of transparency or fairness for users in the transaction practices of digital platformers; and (d) online harm.

Japan is no exception. For example, Amazon and Booking.com recently experienced dawn raids by the Japan Fair Trade Commission ("JFTC") due to the most favored nation ("MFN") clauses in their agreements.[1] Further, the Japanese government has expedited discussions for new regulations and enforcement. This article presents an overview of recent discussions from the standpoint of competition law.

2. Developments in Japan

(1) The Future Investment Strategy 2018

In Japan, digital platform-related issues were not given much attention before the "Future Investment Strategy 2018"[2] was adopted by the Cabinet, where the government declared that it would develop rules in response to the emergence of new platform businesses. Thereafter, the Ministry of Economy, Trade and Industry ("METI"), JFTC, and the Ministry of Internal Affairs and Communications ("MIC") jointly set up a "Study Group on Improvement of Trading Environment surrounding Digital Platforms" (the "Study Group").

(2) Fundamental Principles

Based on a paper prepared by the Study Group,[3] the

1. *See* regarding Amazon, The Nikkei (Nihon Keizai Shinbun), August 8, 2016, https://www.nikkei.com/article/DGXLZO05802850Y6A800C1CC0000/ (in Japanese); and regarding Booking.com, The Nikkei (Nihon Keizai Shinbun), April 10, 2019, https://www.nikkei.com/article/DGXMZO43556830Q9A410C1MM0000/ (in Japanese).
2. Mirai toshi senryaku 2018: 'Society 5.0' 'Deta kudo-gata syakai' eno henkaku [Future Investment Strategy 2018: Changes into 'Society 5.0' 'Data-driven Society'], adopted by the Cabinet on June 15, 2018. *See* https://www.kantei.go.jp/jp/singi/keizaisaisei/pdf/miraitousi2018_zentai.pdf (in Japanese); and https://www.kantei.go.jp/jp/singi/keizaisaisei/pdf/miraitousi2018_en.pdf and https://www.kantei.go.jp/jp/singi/keizaisaisei/pdf/miraitousi2018_en2.pdf (in English).
3. Dejitaru purattofoma wo meguru torihikikankyo seibi ni kansuru tyukanronten seiri [Interim Discussion Paper – Improvement of Trading Environment surrounding Digital Platforms], the Study Group, December 12, 2018. *See* https://www.jftc.go.jp/houdou/pressrelease/h30/dec/kyokusou/181212betten1_1.pdf (in Japanese); and https://www.jftc.go.jp/en/policy_enforcement/survey/index_files/190220.2.pdf (in English).

above three authorities jointly published the "Fundamental Principles for Improvement of Rules Corresponding to the Rise of Digital Platform Businesses"[4] (the "Fundamental Principles") in December 2018.

The Fundamental Principles include the following important points on competition law:

(a) Review and improvement of industry-specific regulations that hinder platform businesses

This would lead to ensuring a level playing field between existing businesses and digital platformers, and between domestic and foreign digital platformers.

(b) Ensuring transparency to achieve fairness with respect to digital platformers

This can be considered a complementary rule to existing competition law. The lack of transparency of rules and systems may create an environment conducive to unfair trade practices and privacy infringement of users, which could amount to a violation of competition law.

The Fundamental Principles also suggest that an expert organization with advanced knowledge in a variety of fields be established. This idea is similar to the expert group of the EU Observatory on the Online Platform Economy.

(c) Ensuring fair and free competition in digital markets

Apart from the general issue of how to apply the Antimonopoly Act[5] to new digital platformers, the following two issues were pointed out: (i) the criteria for the review of a business combination taking into account data and innovation, and (ii) the application of the rule against "abuse of superior bargaining position" to the relationship between a platformer and its consumers, which would mean a new type of enforcement because, so far, in practice, this rule has been applied only to relationships between businesses.

(d) Considering rules on data transfer and open data

This idea aims to achieve a balance in the data-driven society between data protection and the active use of big data collected by digital platformers. In a sense, it would also mean the decentralization of big data, which might lead to broader competition for innovation. Consistent with the global trend, the introduction of data portability and an open application programming interface ("API") is being considered.

(e) Extraterritorial application of Japanese laws

The concern addressed here is that although both domestic and foreign businesses can and do offer similar digital services within Japan, sometimes Japanese laws and regulations do not apply to foreign businesses legally or practically. To promote equal footing, the Fundamental Principles suggest the examination of the extraterritorial application of Japanese laws and the effective enforcement of such laws against foreign businesses. Foreign businesses need to pay more attention to this potential extraterritorial application of Japanese laws.

(f) International harmonization

While international harmonization is important in the context of designing rules, it is also significant in the phase of enforcing the rules. Foreign active enforcement could trigger the same type of enforcement in Japan. Thus, to assess enforcement risks, companies need to follow global trends as well as judicial precedents in Japan.

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4. Purattofoma-gata bijinesu no taito ni taiou shita ruru seibi no kihongensoku ni tsuite [Fundamental Principles for Improvement of Rules Corresponding to the Rise of Digital Platform Businesses], METI, JFTC and MIC, December 18, 2018. *See* https://www.jftc.go.jp/houdou/pressrelease/h30/dec/kyokusou/181218betten1.pdf (in Japanese); and https://www.jftc.go.jp/en/policy_enforcement/survey/index_files/190220.1.pdf (in English).

5. Shiteki dokusen no kinshi oyobi kousei torihiki no kakuho ni kansuru horitsu [Act on Prohibition of Private Monopolization and Maintenance of Fair Trade], Act No. 54 of April 14, 1947, as amended by Act No. 100 of 2013.

(3) Further Discussions by JFTC and Two Working Groups

At the meeting of the Future Investment Council of the Cabinet in February 2019, Prime Minister Shinzo Abe expressed his plan for the government to make a blueprint for the drafting of rules in the Action Plan of the Growth Strategy of 2019 (the "Plan"),[6] which is an annual government policy. Based on this direction and the discussions above, JFTC and two working groups, created under the Study Group, took or will take several steps, including the following.

First, JFTC took surveys of actual transactions between business users and platformers both in the online mall market and the app store market, as well as surveys on the actual situation of consumers as platform users. The results of these surveys were published in the interim report of JFTC in April 2019.[7] Its report also clarified its following concerns: (a) the possible prejudice to business users (i.e., the users on one side of the platform) without any choice but to utilize the platform, (b) the possible exclusion of other business users by the unfair treatment of a platformer in cases where they have a "dual role," where the platformer itself also uses its platform to sell a product/service as a competitor, (c) the possible unreasonable restraints on the operations of business users that run beyond the platform, and (d) the possible prejudice to consumers (i.e., the users on the other side of the platform) by the collection and use by a platformer of their data as in the Facebook case in Germany,[8] which can be an issue under the rule against "abuse of superior bargaining position" mentioned above. JFTC is expected to further study and sort out its view on these issues.

Second, JFTC is expected to elaborate its view concerning the criteria for the review of business combinations by revising its guidelines therefor, taking into account data collection, innovation, and the features of multi-sided platforms.[9]

Third, one of the working groups published a report in May 2019, discussing potential rules for transparency and fairness in the transaction practices of platformers.[10] The report suggested that the key is to actively utilize the ex post facto regulations of the Antimonopoly Act and establish new supplemental regulations for transparency and fairness, instead of using industry-specific regulations or regulations specifically targeting monopolistic businesses. It also mentioned the active use of commitment procedures that were recently introduced, where JFTC and a subject company would resolve the case by concluding an agreement, as a possible solution to the prompt and appropriate enforcement of regulations.

Fourth, the other working group published a report in

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6. Seicho senryaku jikko keikaku [Action Plan of the Growth Strategy], adopted by the Cabinet on June 21, 2019. *See* https://www.kantei.go.jp/jp/singi/keizaisaisei/pdf/ap2019.pdf (in Japanese); and https://www.kantei.go.jp/jp/singi/keizaisaisei/pdf/ap2019en.pdf (in English).
7. Dejitaru purattofoma no torihikikanko to ni kansuru jittaichosa ni tsuite (chukan hokoku) [Interim Report on Surveys on Transaction Practices of Digital Platformers], JFTC, April 17, 2019. *See* https://www.jftc.go.jp/houdou/pressrelease/2019/apr/kyokusou/190417betten.pdf (in Japanese).
8. *See* 6th Decision Division, Bundeskartellamt, Decision, February 6, 2019, Ref: B6-22/16. *See* https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Entscheidungen/Missbrauchsaufsicht/2019/B6-22-16.pdf?__blob=publicationFile&v=5 (in English).
9. *See* Nobuaki Fujii, Purattofoma-gata bijinesu no taito ni taiou shita ruru seibi no torikumi [Commitments to Making Rules in Response to the Emergence of Platform Businesses], No. 1148 NBL 4 (2019) at 8.
10. Torihikikankyo no tomeisei/kouseisei kakuho ni muketa ruru seibi no arikata ni kansuru opushon [Options for Rules for Transparency and Fairness in Transaction Practices], Tomeisei/kouseisei kakuho to ni muketa wahkingu gurupu [Working Group of the Study Group for Transparency, Fairness, etc.], May 21, 2019. *See* https://www.jftc.go.jp/houdou/pressrelease/2019/may/kyokusou/190521betten1-1.pdf (in Japanese).

May 2019, discussing potential rules for data transfers and open data.[11] The report furthered discussions as to possible methods, targets of services and businesses, and the range of subjects with rights to data transfer or open data, but did not yet make any conclusions on any of the issues.

(4) Action Plan of the Growth Strategy of 2019

The developments above were integrated into both the Plan and the Follow Up for the Growth Strategy[12] (the "Follow Up"), which were published on June 21, 2019.

If implemented according to the Plan, an expert organization provisionally named the "Digital Market Competition Headquarters" would be given the authority to promote innovation through responses to a variety of issues related to data usage, obtain survey results and other reports based on the Antimonopoly Act and other related laws and regulations for the purpose of assessing the digital market, plan and handle overall coordination of fundamental policies, and cooperate and collaborate with foreign competition authorities.

As to new regulations to promote transparency and fairness, the government aims to submit a bill provisionally named "the Act on Improving Transparency of Digital Platformer Transactions" to the 2020 ordinary session of the Diet. Issues to be considered further include the clarification and disclosure of contract terms and transaction refusal reasons, clarification of rankings (i.e., order of presentation of product search results), disclosure in cases where digital platformers give preference to their own products/services, disclosure of requests for MFN clauses, and the obligation to provide for a complaint processing system.

The Plan also contemplates the promotion of data transfer and open data. The design of detailed systems in specific areas such as finance and healthcare is expected to be discussed later on.

Further, with respect to the review of business combinations, the Plan suggested an assessment of the value of data to capture the possibility of a subject company having a monopoly of certain data, but with a small market share, hindering competition. The Follow Up also suggested that the criteria for such review would be reexamined within 2019, and the premerger notification requirements based on the scale of sales would be reconsidered.

Moreover, the Follow Up mentioned that JFTC would establish its view on the application of the rule against "abuse of superior bargaining position" to transactions between a platformer and its consumers by the summer of 2019.

(5) Guidelines for the "Abuse of a Superior Bargaining Position" in Transactions between Digital Platformers and Consumers providing their Personal Information, etc.

As part of the above background, on August 29, 2019, JFTC published the draft Guidelines Concerning Abuse of a Superior Bargaining Position in Transactions between Digital Platform Operators and Consumers that Provide Personal Information, etc. (the "Draft Guidelines").[13] JFTC's basic views on this issue are as

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11. Deta no iten/kaiho to no arikata ni kansuru opushon [Options for Rules on Data Transfer, Open Data, etc.], Deta no iten/kaiho to no arikata ni kansuru wahkingu gurupu [Working Group of the Study Group for Rules on Data Transfer, Open Data, etc.], May 21, 2019. *See* https://www.jftc.go.jp/houdou/pressrelease/2019/may/kyokusou/190521betten2-1.pdf (in Japanese).
12. Seicho senryaku foro appu [Follow Up for the Growth Strategy], adopted by the Cabinet on June 21, 2019. *See* https://www.kantei.go.jp/jp/singi/keizaisaisei/pdf/fu2019.pdf (in Japanese).
13. Dejitaru purattofoma to kojin joho to wo teikyo suru syouhisya tono torihiki ni okeru yuetsutekichii no ranyo ni kansuru dokusenkinshiho jo no kangaekata (an) [Guidelines Concerning Abuse of a Superior Bargaining Position in Transactions between Digital Platform Operators and Consumers that Provide Personal Information, etc. (draft)], JFTC, April 29, 2019. *See* https://www.jftc.go.jp/houdou/pressrelease/2019/aug/190829_dpfpc2.pdf (in Japanese); and https://www.jftc.go.jp/en/pressreleases/yearly-2019/August/190829rev.pdf (in English).

follows: (a) the "abuse of superior bargaining position" applies to the relationship between a platformer and its consumers, and it will apply even if the consumers do not pay any money for the service but provide their personal information or other information (collectively, "Consumer Information") in exchange for the service; (b) a digital platformer is deemed to have a superior bargaining position over consumers who provide the platformer with their Consumer Information when they have no choice but to use the service and accept any prejudicial treatment by the platformer (the necessity to trade with the platformer is to be considered here); and (c) if a digital platformer in a superior bargaining position over consumers causes prejudice to such consumers by using its position unjustifiably, taking into account normal business practices, then such conduct would qualify as an "abuse of a superior bargaining position."

JFTC cites four types of abuse: (a) obtaining the personal information of consumers without giving them notice of the purpose of the use thereof; (b) obtaining or using the personal information of customers contrary to their intentions and beyond the scope necessary to achieve the purpose of use; (c) obtaining and using the personal information of consumers without taking the measures necessary and appropriate for the safe management of such information; and (d) causing consumers, who have continued using the services, to provide more economic benefits, such as Consumer Information, than that already provided by them in exchange for the use of the services.

JFTC is supposed to receive public comments on the Draft Guidelines until September 30, 2019, and deepen discussions thereon. It also remains to be seen how JFTC would calculate the fines in cases where the services of the platformers are not free, but customers still provide Consumer Information.[14]

3. Further Developments

The discussions above are still ongoing and will be affected more or less by upcoming global trends. We need to keep a close eye on further developments in Japan and abroad. More importantly, foreign businesses should note that the potential new regulations and enforcement are intended to apply to them as well. Hopefully, this article will help such companies understand the possible risks and protections in doing business involving platforms in Japan.

14. *See* Tadashi Shiraishi, 'Purattofomu to kyosoho' no syoronten wo meguru kizon no giron [Existing Discussions on Issues on Platforms and Competition Law], No. 28 Soft Law Journal, 37 (2018), pp. 46-47.

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