

Title	Chapter 4-I : Calls for transparency by the French Digital Republic Act : the Behemoths as leaders
Sub Title	
Author	Ishio, Tomohisa
Publisher	Keio University Global Research Institute
Publication year	2025
Jtitle	Monsterizing Platform Power and Law ; Volume 2. Platforms and Power: How to Tame the Monsters ,p.109- 119
JaLC DOI	10.14991/KO11003002.00000002-0109
Abstract	
Notes	Chapter 4 : The disenchantment of the Behemoth
Genre	Book
URL	https://koara.lib.keio.ac.jp/xoonips/modules/xoonips/detail.php?koara_id=KO11003002-00000002-0109

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CALLS FOR TRANSPARENCY BY THE FRENCH DIGITAL REPUBLIC ACT

: The Behemoths as Leaders

Tomohisa Ishio^{*}

Certain digital platforms (DPFs) have developed into gargantuan entities deserving of the metaphorical name ‘Behemoth’ while also providing us with great convenience. Purchasing products on Amazon and searching for the information we need via Google have now become an integral part of many people’s daily lives, and there is no doubt about the advantages they bring.

Many people may think that they use DPF services based on their own free decision-making. But a closer look reveals that some decisions made by users within a DPF are heavily influenced by the information that the DPF displays on its website. When purchasing a product through Amazon, for example, the user’s choice is influenced not only by the product information but also by the order in which the search results are displayed. In fact, users are prone to purchase products that appear near the top of search results—they almost never make their selection after viewing all search results, so the order in which products are listed is an important factor in their decision-making. And since users are greatly influenced by product reviews, it is necessary to consider how the reliability of reviews can be ensured, i.e., whether they are really posted by people who have used the products and whether low-rated reviews are rejected.¹

In other words, if a DPF does not display sufficient information or manipulates the order in which information is displayed, then it ends up forcibly guiding its users. Establishing information-disclosure obligations as well as rules defining what information DPF operators may display on their websites and how it must be presented is therefore an important issue directly linked to preventing the decision-making of users from being unfairly influenced.²

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This paper is based on the situation at the time the Japanese manuscript was completed (2023). In 2024, the provisions of the French Consumer Code concerning the disclosure obligations of platforms were amended, but the content of these amendments is not included in this paper. As a result, the numbering of provisions in this text differs from the current Consumer Code.

1 Kunihiro Nakata, “Digital Platform Transactions and Consumer Protection: Consumer Law’s Response to Digitalization” Law Seminar No. 827 (2023), p. 3, points out that although reviews have become one of the determining factors in transactions, the laws and regulations governing them are insufficient.

2 Emiko Chiba, “Roles and Responsibilities of Platform Operators in the Digital Platform Business” NBL No. 1248 (2023), p. 27, states that DPF operators are subject to a net-specific duty of loyalty, and that improperly manipulating search and display rankings is a violation of the duty of loyalty imposed on DPF operators. Progressing the discussion in this direction will require further study

To address some of these issues, the Act on Improving Transparency and Fairness of Specified Digital Platforms (hereinafter referred to as the “Transparency Act”) was implemented by the Japanese government in 2021. While the Transparency Act established provisions regarding the obligation of DPFs to disclose information, only a tiny fraction of large DPF operators is subject to them. And since the law regulates a wide variety of DPFs more generally, there are no rules tailored to the characteristics of each DPF. The Act on Protection of the Interests of Consumers Using Trading Digital Platforms subsequently established provisions that cover requests for disclosure of information from sellers etc., but it did not spell out the obligations of DPFs regarding the provision of information.

By contrast, in 2016 the French Digital Republic Act³ modified France’s Consumer Code to include more detailed disclosure obligations than the Japanese version.⁴ It is not an exaggeration to call this one of the milestone achievements of DPF regulations in Europe.⁵ A distinctive feature of the French regulations is that they regulate DPF operators regardless of their size while also treating giant DPF operators as participants in the state’s legal regulations.

In Section 1, we will review the information-related obligations imposed on DPF operators in France. Section 2 will discuss the fact that giant DPF operators are also subject to state regulation. Then, in Section 3, we will examine the information-provision obligations of DPF operators in Japan.⁶

1 Subject to State Regulation: The Behemoth’s Obligation for Transparency

Although some DPF operators are massive to the point of being termed “behemoths,” they are still private companies comprised of private individuals. Nevertheless, unlike ordinary private enterprises, French DPF operators are strongly required to improve their transparency. In this section, we will first review the history of DPF regulation in France (1), followed by an overview of the disclosure obligations that are imposed on DPF operators (2). Finally, we will examine the possible ways of regarding DPF operators as entities (3).

into the basis for imposing disclosure regulations on DPF operators and on the specifics of those regulations.

3 Loi no 2016-1321 du 7 octobre 2016 pour une République numérique, JO, 8 octobre 2016, no 235. On the same law, see Masahiro Sogabe, “On the French Digital Republic Act” *Legal Times* vol. 91, no. 6 (2019) pp. 71-72, see also Hiroaki Murakami, “Digital Republic Act: For the Digital Republic Act No. 2 016-321 of October 7, 2016 (Legislative Introduction)” *Nichifutsu* no. 30 (2019), pp. 127-130.

4 For more on DPF regulation in the French Consumer Code, see Sogabe, *supra* note (3), pp. 72-75; Antonios Karaikos, “Rule Formation for Digital Platform Transactions in the EU” *Journal of Consumer Law* No. 8 (2020), pp. 22-23; Tomohisa Ishio, “Information Disclosure Obligations of Digital Platform Operators under the French Consumer Code” *Journal of Consumer Law* No. 10 (2021), pp. 139 et seq.; Aya Ohsawa, “‘Exploration’ and ‘Challenge’ of French Law to Digital Platforms” *Houki* Vol. 94 No. 8 (2022), p. 64 et seq.; Claire-Marie Péglion-Zika [translated by Tomohisa Ishio], “Digital Platforms and Consumer Law” *Comparative Legal Studies*, vol. 57, no. 2 (2023), pp. 92 et seq.

5 As Osawa points out in *supra* note (4), p. 69, even when the Omnibus Directive was asked to establish information-disclosure regulations at the European level, the consensus seems to have been that the obligations established by the French Consumer Code were sufficient, so there was no need to strengthen them. Therefore, we can say that France has taken the lead with regard to DPF regulations in Europe.

6 This article relies on Ishio, *supra* note (4) for part of the analysis of French law, then examines the disclosure obligations of DPF operators in more detail in line with the proposal.

(1) History of DPF Regulations

Prior to the enactment of the Digital Republic Act in 2016, there was much debate in France over DPF transactions.⁷ Of particular importance were the 2014 report by the Council of State (Conseil d'État) entitled “Digital and Fundamental Rights” (Le numérique et les droits fondamentaux)⁸ and the 2015 report by the National Digital Council (Conseil National du Numérique (CNNum)).⁹ Both reports stated that, due to the rapid development of DPF operators, information-provision obligations should be imposed on them based on the “principle of loyalty” (principée de loyauté), rather than relying on the “principle of neutrality” (principe de neutralité).

The Hamon Law (Loi Hamon) of 2014 opened the door to DPF regulation in France.¹⁰ This created requirements for operators that provide price information and product comparisons online. The law applies to not only DPF operators but also other DPF entities that supply price information and other comparisons. Next, in 2015, the Macron Law (Loi Macron) established detailed disclosure obligations for transactional DPF operators. This early interest in the rules governing how DPF operators provide information in France is probably due to an awareness of the importance of providing information to users in the digital market.

Following that, the Digital Republic Act of 2016 created Articles L. 111-7 (via Article 49 of said Act), L. 111-7-1 (via Article 50 of said Act), and L. 111-7-2 (via Article 52 of said Act) in the Consumer Code. The contents of these new provisions were supplemented by three decrees¹¹ enacted in 2017. As a result, the Hamon Act and Macron Act were repealed and their provisions integrated into the Digital Republic Act.

(2) DPF Operator Obligations to Provide Information

The French Consumer Code defines DPF operators through an article, prescribing the general information-disclosure obligations imposed on all DPF operators as well as special disclosure obligations according to the functions of the DPF. DPF operators are not subject to these disclosure obligations selectively, but rather are assigned overlapping obligations according to the nature of their intermediary services.¹² In order to clarify who is obligated to provide information, the following section will review the definition of a DPF operator then provide an overview of the distinctive rules regarding information disclosure.¹³

⁷ For details, see Ishio, *supra* note (4), pp. 142-146.

⁸ Conseil d'État, *Le numérique et les droits fondamentaux*, La documentation française, 2014, p. 224.

⁹ Conseil national du numérique, *Ambition numérique : pour une politique française et européenne de la transition numérique*, juin 2015, pp. 59-60.

¹⁰ Loi no 2014-344 du 17 mars 2014 relative à la consommation (1), JO, 18 mars 2014, no 65. The law is commonly known as the Hamon Act or Hamon Law.

¹¹ Décret no 2017-1434, 29 sept. 2017 relatif aux obligations d'information des opérateurs de plateformes numériques, JO 5 oct., no 22 : Décret no 2017-1435, 29 sept. 2017 relatif à la fixation d'un seuil de connexions à partir duquel les opérateurs de plateformes en ligne élaborent et diffusent des bonnes pratiques pour renforcer la loyauté, la clarté et la transparence des informations transmises aux consommateurs, JO 5 oct., no 23 : Décret no 2017-1436, 29 sept. 2017, relatif aux obligations d'information relatives aux avis en ligne de consommateurs, JO 5 oct., no 24.

¹² For violations of information-disclosure requirements, the DGCCRF stipulates not only civil liability but also heavy administrative penalties. According to Article L. 131-4 of the Consumer Code, the DGCCRF states that DPF operators who violate their disclosure obligations are subject to administrative penalties of up to EUR 75,000 for individuals and EUR 375,000 for corporations.

¹³ For details, see Ishio, *supra* note (4), pp. 146-157.

① Definition of DPF Operator

The definition of a DPF operator¹⁴ is provided in the Consumer Code as an inclusive concept that includes both DPFs who act as intermediaries for transactions (“transactional” DPFs such as Amazon) and DPFs who organize and display information (“non-transactional” DPFs such as Google).¹⁵ Note that content includes things like videos, music, photos, and documents, so video-sharing sites such as YouTube also fall under Article L.111-7I, Item 1.¹⁶

Article L.111-7, Item I: An online platform operator is any person or corporation who, as a business, provides online communication services to the public on any of the following grounds, whether or not remunerated:

- 1° The classification (classement)¹⁷ or ranking by means of a digital algorithm or reference of content, goods or services proposed or uploaded by third parties
- 2° The matching of multiple parties for the purpose of buying and selling goods, providing services, or exchanging or sharing content, goods, or services

Under this definition, it is irrelevant whether the DPF operator receives remuneration such as brokerage commissions. It is also unique in that the size of the DPF is not relevant, resulting in a broad definition of a DPF operator (Article L.111-7, Item I). Therefore, the obligation to provide information applies not only to giant DPF operators such as Big Tech, but also to small DPF operators. The reason for this definition is that Article L.111-7 of the Consumer Code is understood to be a general provision, with special provisions being established for specific DPF operators. Some scholars view Article L.111-7 as a general provision that sets out minimum obligations with an awareness of the diversity of DPFs,¹⁸ while others interpret the regulations in the Consumer Code as general law for DPFs, which therefore apply across fields.¹⁹ DPF operators are thus required to provide information by the Consumer Code and by each legal field, such as the Tourism Code,

14 In translating the articles, see Sogabe, *supra* note (3), p. 73; Ishio, *supra* note (4), p. 147; and Osawa, *supra* note (4), p. 66.

15 This point is captured in the view that the definition of PF in the Consumer Code states that it is a “meta-concept” (Judith Rochfeld, Célia Zolynski, « La « loyauté » des « plateformes ». Quelles plateformes ? Quelle loyauté ? », *Dalloz IP/IT*, Dalloz, 2016, p. 522), and a view that states that it is a “generic definition” (définition générique) (Manuella PERI, « Loi pour une République numérique et plateformes en ligne : approche (s) sectorielle (s) ou approche transversale ? Approche préventive ou approche curative ? », *IRJS*, 2018, p.9).

16 Carole Aubert de Vincelles, Geoffray Brunaux, Natacha Sauphanor-Brouillaud, Laurence Usunier, *Les contrats de consommation, Règles communes*, LGDJ, 2e éd, 2018, no 561, pp. 539-540.

17 Classification (classement) means the display of information according to some criteria, such as search results, rather than so-called ranking displays on the Internet.

18 Grégoire LOISEAU, « La loi du 7 octobre 2016 et l’obligation d’information des opérateurs de plateformes », *CCE*, no 11, novembre 2016, comm. 91, explains that there should not be a uniform legal treatment for all online platforms; instead, individual rules should be established. Specifically, it is necessary to distinguish whether the services are provided by a business or a non-professional (non-professionnel).

19 Juliette SÉNÉCHAL, « L’opérateur de plateforme en ligne, régulateur économique par fourniture de prestations de services interpersonnelles. Un phénomène complexe à saisir selon trois approches de droit économique transversales et complémentaires », *Rôle et responsabilité des opérateurs de plateforme en ligne : approche(s) transversale(s) ou approches sectorielles ?*, *IRJS*, 2018, p. 6 : Grégoire LOISEAU, « Vers un droit des plateformes numériques », *CCE*, 2016, comm. 51.

the Transport Code, the Labor Code, and the General Tax Code.

② General Obligation to Provide Information

All DPF operators, whether transactional or non-transactional, must provide details about the criteria used to display the products available for purchase and other information available for viewing through their websites, as well as the criteria used when they will no longer be displayed (Article L.111-7, Section II, Item 1). Furthermore, the order of display on a website can significantly influence user decision-making. Therefore, if there is a contractual or capital relationship between the seller and the DPF operator, or if the seller pays compensation to the DPF operator to influence the order of display, this must also be indicated on the website (Article L.111-7, Section II, Item 2).

As for the specific method of displaying information on a website, such information must be displayed on a page that is easily accessible from all pages (Article D.111-7, Section I). Thus, the article stipulates not only the information that must be provided, but also how it is to be provided.

③ Obligation to Provide Special Information According to Type of Intermediary Service

In addition to the general obligation to provide information, the regulations also stipulate special requirements according to the type of intermediary service provided. The most distinctive of these are ① DPFs that are transactional, ② DPFs that function as comparison sites, and ③ DPFs that provide online reviews.

① Transactional DPF Operators:

Must provide information regarding the contracting entity, such as whether the other party to the contract is a business or a consumer. If the transaction is between a consumer and a business, the consumer is entitled to protection under the Consumer Code. Such information is therefore important if consumers are to use DPFs with peace of mind. In addition, information must be provided on the amount of brokerage fees, if any, required to use the DPF, and on any guarantees offered by the DPF with respect to the goods. This information must be displayed in a form that can be viewed by Internet users even if they are not logged in (Article D.111-8, Section I).

Furthermore, when a consumer and a business enter into a sales or service contract through the DPF, the DPF operator must provide the business with a display space (Article D.111-9) for informing the consumer of its disclosure obligations prior to the conclusion of the contract in a consumer transaction (Articles L.221-5 and L.221-6).

② DPF Operators that provide comparisons of prices, quality, etc.:

Must indicate the order in which products are listed, whether they receive compensation from the businesses for listing their products, whether the products being compared are comprehensive, and how often the information is updated. If paying compensation allows a product to appear at the top of the comparison site, the display must indicate this fact as well (Articles D.111-11 and D.111-12).

Regulations also specify how information is to be displayed on websites, requiring a dedicated display section with details about price and other comparisons. In addition, important matters such as the criteria for ordering displayed lists, comprehensiveness, and whether compensation is involved must be indicated on each page of search results (Article D.111-12). This is because only a limited number of people will visit the dedicated display section, so such important information must be displayed more generally.

③ DPF Operators providing online reviews:

A review is defined as an expression of an opinion based on a consumer's own experience using some rating factor (Article D.111-16, Item 1). When providing reviews, DPF operators must clearly and conspicuously indicate to users whether there is a procedure for screening the content of the review, the date on which each review was published, the date of the user's experience as conveyed by the review, and the criteria for determining the order in which reviews are displayed (Article D.111-17, Paragraph 1). Additionally, the website must indicate if compensation has been offered to the reviewer, and if the submission of an online review is rejected, the reason must be disclosed to the reviewer. One of the features of French law is it ensures the transparency of reviews by imposing certain information-disclosure obligations on review administrators.²⁰

Thus, DPF operators are required to provide detailed information based on fairness and transparency. It is important to note that the disclosure obligations imposed on DPF operators focus on clarity, ease of understanding, and accessibility of information, but they do not involve reducing the amount of information provided. It has therefore been pointed out that too much information may hinder any improvement in consumer understanding.²¹ Still, if DPF operators display information on their websites in an appropriate manner, users will have more information available to them, and the risk of them being deceived will be reduced. This has led some to suggest that providing users with adequate information would be beneficial as the digital economy develops further²² due to the increased usage of DPFs.

(3) Understanding DPF Operators

Despite being private entities, DPF operators are required to provide detailed information. What is the premise for this perspective? Sénéchal provides a distinctive analysis on this issue.

Sénéchal proposes that regulation of DPF operators should adopt three different approaches: ① the public law approach, which regulates the monopolistic tendencies of DPF operators within the market; ② the coordination approach, which regards DPF operators as an intermediate regulating body (*régulateur*)²³ situated between the state and the public; and ③ the private law approach, which regulates the services provided by

20 In a case concerning the posting of reviews, Paris Commercial Court Ruling 20 handed down on December 22, 2021, found that Y (HERETIC: operator of a website that receives reports from consumers about having been the victim of a scam, etc., then posts the facts and methods of the scam), without specifying a date for the consumption experience, did post on its website a review criticizing X (MAC ASSISTANCE: a company that provides troubleshooting services for Apple products) for the failure of its assistants etc. in violation of Articles L.111-7-2 and D.111-17 of the Consumer Code; the court thus authorized the removal of said web page. Here, heavy responsibility was placed on the review administrator because reviews can significantly damage a company's reputation, even if it is questionable whether they reflect the true experiences of the poster. Tribunal de commerce de Paris, ordonnance de référé du 22 décembre 2021. For more information on the same ruling, see LEGALIS (<https://www.legalis.net/jurisprudences/tribunal-de-commerce-de-paris-ordonnance-de-refere-du-22-decembre-2021/>).

21 Élise POILLOT, « Plateformes en ligne : portée de l'obligation de loyauté », D., 2016, p. 2056.

22 Claire-Marie Pégion-Zika, *supra* note (4), p. 102.

23 The term "régulation" is translated as "coordination" because it does not mean direct regulation by a national authority, as is the case with the English word "regulation." For the translation "coordination," see Koichi Nakamura et al. (eds.), "Dictionary of French Legal Terms" (Sanseido, 3rd ed., 2012), pp. 366-367; Toshio Yamaguchi (ed.), "Dictionary of French Law" (University of Tokyo Press, 2002), p. 502; Maya Ohashi, "Independent Administrative Organ and French Administrative Law" Waseda Law vol. 94, no. 4 (2019) pp. 127-129.

DPFs as well as contracts entered into through DPFs.

One particularly interesting aspect of Sénéchal's analysis is how DPF operators are viewed as a premise for deriving ① and ②. The analysis by Sénéchal is so wide-ranging that it is impossible to introduce all of it, so we will focus solely on the most characteristic parts.

According to Sénéchal, DPF operators not only serve as intermediaries between consumers, operators, and other users, but also as market administrators and as a coordinating body delegated by the state under the Digital Republic Act. And it is precisely because they are seen as entities responsible for the proper functioning of the digital market that DPF operators are obliged to provide detailed information. Therefore, DPF operators are positioned not only as intermediaries between users, but also as intermediaries between the state and the public. Here, in view of their market power, DPF operators serve as entities that bear responsibility for the formation of a healthy market. Therefore, DPF operators are subject to discipline as market coordinators, so they are said to blur the line between public law and private law.²⁴ This view is important because it suggests the need for a complex consideration of DPF regulations, rather than treating them as confined to a single legal field.

2 Giant DPFs as Partners in State Regulation: Behemoths and Their Collaboration with the State

In France, giant DPF operators exceeding a certain scale²⁵ are not only obligated to provide the information we have seen thus far—they are expected to play a leading role for other DPF operators (1), while self-regulation and joint regulation amongst themselves are also encouraged (2).

(1) Leadership Role of Giant DPF Operators

Each giant DPF operator is responsible for preparing and publishing a document on best practices detailing how they are fulfilling their information-provision obligations (Article L.111-7-1, Paragraph 1). This is because there is a lack of precedent for how to fulfill such obligations within the digital market, and the need to have certain giant DPFs assume a leadership role is taken into account. This would have the giant DPF operators act as “leaders”²⁶ that play a role in state regulation by setting an example for other DPF operators. The specific initiatives that need to be taken as best practices are not stipulated in the Consumer Code but are left to the discretion of giant DPF operators.²⁷

24 Juliette SÉNÉCHAL, *supra* note 19, pp. 32-35.

25 For transactional platform operators, this is 5 million transactions per month based on the previous calendar year; for the operators of non-transactional platforms, it is 5 million visitors per month based on the previous calendar year.

26 Célia ZOLYNSKI, « Ubérisation et plateformes : l'émergence d'un droit des plateformes en ligne », in Martine BEHARTOUCHE (sous la dir.), *Les conséquences juridiques de l'ubérisation de l'économie*, IRJS Editions, 2017, no 9, p. 49.

27 Article 23 of the draft of the Digital Republic Act supplied a definition of best-practice indicators (indicateurs) and stipulated the publication of evaluation results based on these indicators, but this provision was not included in the final version of Digital Republic Act.

(2) Regulations for Giant DPF Operators

Giant DPF operators are not subject to administrative penalties (Article L. 131-4) for violating their best-practice obligations. Instead, to ensure compliance, an administrative agency called the Directorate General for Consumer Affairs, Consumption and Fraud Prevention (DGCCRF)²⁸ can investigate how giant DPFs display information then publish a list of those who violate their information-disclosure requirements (Consumer Code Article L.111-7-1). This is sometimes referred to as the Reputation Regulation,²⁹ as it seeks to ensure the viability of best practices in exchange for maintaining the reputation of giant DPF operators in the market. Under this framework, DPF operators are encouraged to implement self-regulation in accordance with the principles of soft law.³⁰ The giant DPF operators are also required to conduct cybersecurity audits and display the results of those audits on their platforms in the form of a “cyberscore” using a color-coded indicator (Article L.111-7-3).

3 Implications for Japanese Law

DPFs are characterized by the ease with which users can be guided by the design of their websites. Therefore, increasing the information available to users by imposing disclosure obligations on DPF operators is an important step in reducing the risk of distorted decision-making among users. In light of this, and in consideration of French law, we will discuss (1) the justification for requiring DPF operators to provide information and (2) what kind of requirements should be imposed, then (3) briefly touch on the collaboration between giant DPF operators and the state.

(1) Why is Transparency Required for Behemoths?

In France, the principles of transparency and fairness have been cited as the basis for requiring DPF operators to provide information. Furthermore, some are of the opinion that DPF operators are subject to administrative regulation, since they are national entities acting as a coordinating body within a monopolized market. With this in mind, let us examine the grounds for information-provision requirements on DPF operators, based on the discussions in France.

28 The DGCCRF, an agency under the jurisdiction of the Ministry of Economy, is responsible for maintaining orderly competition, consumer protection, and the safety of products and services. The DGCCRF is also charged with ensuring the effectiveness of DPF disclosure obligations in terms of protecting consumers in e-commerce (https://www.economie.gouv.fr/files/files/directions_services/dgccrf/dgccrf/pne/2020/pne-2020.pdf).

29 Judith ROCHFELD, Célia ZOLYNSKI, « La « loyauté » des « plateformes ». Quelles plateformes ? Quelle loyauté ? », *Dalloz IP/IT*, 2016, p. 524.

30 In Japan, monitoring and review are also covered by the Transparency Act, whereby specified DPF operators must report their voluntary efforts to the Minister of Economy, Trade and Industry (METI), and METI must publish an evaluation of their efforts then strive for further improvement based on the results (Article 9, Transparency Act). Thus, Japan and France are similar in that they incorporate co-regulation through monitoring and review.

① Limitations of Information-Disclosure Requirements Under Private Law

There is no doubt that DPF operators are merely private entities bound by private-law obligations. We should therefore review the discussions around general information-disclosure requirements. Such requirements are often imposed by special laws such as the Financial Instruments and Exchange Act or the Consumer Contract Act, but they may also be guided by general legal principles through the rule of faith under civil law. The reason for imposing disclosure requirements based on general legal principles is to correct disparities in information and bargaining power among contracting parties while substantially ensuring the principle of freedom of contract through the development of a decision-making infrastructure based on the concept of self-determination.³¹ Considering that DPF operators can significantly influence the decision-making of users through the design of their websites, it may be argued that they should be required to provide some information. However, it is not easy to impose such obligations on DPF operators simply because they serve as intermediaries, since the collection of information should in principle be grounded in self-responsibility. For example, if someone visits a restaurant based on its high ratings, but the restaurant turns out to be not very good, it would be difficult to hold the DPF operator responsible for breaching its duty to provide information, as the failure to collect information is the customer's own responsibility. Thus, we must consider this issue from other perspectives rather than standing solely on the private-law theory regarding the duty to provide information.

② Obligation to Provide Information as a Public-Law Regulation

To start, it may be necessary to consider this issue from the perspective of network industries and public utilities.³² In Japan, infrastructure industries essential for daily life, such as electricity, gas, water, and railroads, have been subject to administrative regulations that restrict the free economic activity of network industries. Discussions on network industries have always emphasized the fact that an increase in the number of users will increase user convenience and create a monopoly of supply; to this point, when we look at giant DPF operators such as Amazon, it is clear that an increase in the number of users (merchants) is likely to increase user (consumer) convenience and create a market monopoly. Therefore, DPF regulations should consider the rules applied to network industries. As market administrators, DPF operators should not be allowed to engage in completely free competition—rather, they should be required to maintain and build a healthy DPF market, which includes requirements for the provision of information.

Second, we must consider the national characteristics of DPFs. Regardless of its size, a DPF is an entity that constructs and governs the digital space through the nonlegal means of digital technology. In other words, it is not only a private entity, but also one with the characteristics of a nation-state. DPF operators can ① freely design websites (equivalent to the state) using digital technology, ② create terms of use (equivalent to law), and ③ make users (equivalent to citizens) abide by rules (equivalent to governance). If we take this view to its logical conclusion, the state should impose information-disclosure obligations on DPF operators

31 Hiroyasu Nakata, "Contract Law [New Edition]" (Yuhikaku, 2021), p. 132. For a detailed discussion of the conventional arguments, see Yoshio Shiomi, "General Theory of Claims I" (Shinzansha Publisher, 2nd ed., 2003), pp. 565-581.

32 Fumito Tomooka, "Summary of Economic and Administrative Law" (Koubundou, 2015), pp. 137-138. Ibid, "Public Utilities and Competition Law" (Koyo Shobo, 2009), pp. 1 et seq.

in much the same way as the state is required to provide a certain level of transparency to the public.

As discussed before, when considering disclosure regulations for DPF operators, it is necessary to approach the issue not only from the perspective of regulation under private law, but also from that of regulation under public law. In other words, DPF operators should be positioned as entities that blur the line between public and private law, as we saw in France. It should be noted, however, that DPF operators not only offer diverse intermediary services but also exhibit varying degrees of market administration and state power, which makes it difficult to analyze their nature in a uniform manner. We must therefore consider the diversity of DPF operators and impose obligations according to their functions and size. If we take this approach, the interpretation could change from requiring only certain DPF operators to provide information, as is the case under the current law, to requiring the provision of information based on the size and function of each DPF.

(2) Transparency Required of Behemoths

On their websites, DPF operators should display the information needed to protect their users from being involved in fraudulent transactions, which will ultimately lead to the formation of a fair market. Although the Transparency Act requires DPF operators to disclose information (Article 5 of the Transparency Act), it does not stipulate specific disclosure obligations based on the nature of the intermediary services offered. Conversely, France assigns individual obligations according to the nature of intermediary services provided by DPF operators, and the contents of those regulations are extremely detailed. This makes the French legislation a valuable reference when considering the specific content of disclosure obligations that should be imposed on DPF operators. Especially noteworthy is that the French requirements are imposed in light of the tremendous influence that reviews have on users. Given the importance of reviews in user decision-making, Japan should also consider making such disclosures about reviews mandatory, including whether the review content was screened and whether compensation was provided for posting reviews.

Moreover, when DPF operators display information on their websites to fulfill their disclosure obligations, that information should be presented a way that is easily understood by users with an average level of comprehension. In doing so, it is necessary to consider where the information is displayed on the website (for example, information about reviews should be displayed in close proximity to the reviews themselves). At first glance, the issue of how DPF operators are required to display information may seem like a mere formality. But considering that some DPF users may not be familiar with the Internet—and that few users bother to browse the fine print of a website—simply listing the information on a dedicated page is not enough. This is an important measure for ensuring the effectiveness of disclosure obligations.

(3) Collaboration Between Behemoth and Leviathan

In France, the Consumer Code requires even small DPF operators to provide information. Due to the lack of precedent on how such information should be displayed on websites, however, giant DPF operators are required to specifically demonstrate how they will fulfill their disclosure obligations. This is based on the view that giant DPF operators should serve as a model for other DPF operators, and it means that DPF

operators should work to optimize the DPF market in cooperation with the state. In Japan, if disclosure requirements not limited to specific entities, the giant DPF operators should be aware that they are expected to play a leadership role in creating a healthy DPF market overall.³³

Conclusion

Given that we anticipate the continued and accelerated development of DPF operators, their monopolistic tendencies and nation-like aspects will become even stronger. In addition, the content of intermediary services provided by DPFs will further diversify as digital technology advances. In short, the multiple Behemoths are not homogenous—they are rather diverse and evolving rapidly. We cannot return to a world where there are no Behemoths. Even if there are occasions where the Leviathan should use the reins of legal regulation to deter the excesses of the Behemoth, it is also important to properly control the gargantuan power of the Behemoth in order to support the development of both sides. The DPF regulations in France, which impose detailed disclosure requirements on DPF operators while allowing giant DPF operators to assume a leadership role, can be seen as one model for such an approach.

Addendum

This research was supported through a Kurata Grant of the Hitachi Global Foundation.

³³ In Japan, monitoring and review are also covered by the Transparency Act, whereby specified DPF operators must report their voluntary efforts to the Minister of Economy, Trade and Industry (METI), and METI must publish an evaluation of their efforts then strive for further improvement based on the results (Article 9, Transparency Act). The monitoring and review process has actually produced some results, and the provision of information etc. by specified DPF operators seems to be improving (Saki Sumida, “After the Operation of the Transparency Law for Specified Digital Platform Transactions: Results and Prospects of the Joint Regulatory Approach” NBL No. 1325 (2023), pp. 42-48). It should be emphasized that this type of monitoring and review is significant not only in terms of regulating DPF operators, but also for providing practical examples to other DPF operators.