

Message from Chair on Cabinet Decision on the Bill for the Act on Promotion of Competition for Specified Smartphone Software (April 26, 2024)

This morning, the Cabinet approved of the “Bill for the Act on Promotion of Competition Related to Specified Smartphone Software,” and the Bill will be submitted to the National Diet (parliament) this afternoon. Today, I would like to introduce the aim and outline of the Bill.

As is well known, smartphones have become pillars of social and economic lives since their diffusion. The Bill aims to create a competitive environment for four types of Specified Software essential to use smartphones (mobile operating systems (OS), application stores, browsers, and search engines), that can offer benefits for consumers through more variety of options in services by fostering innovation, while also ensuring security and privacy.

We want to fulfill that, not only digital platform operators, but also startups and app developers can fairly enjoy the fruits of growth on the digital field even in the oligopolistic market. Considering the big wave of revolutionary technology, Generative AI, is coming and the competition environment of digital market is being changing drastically, I believe the Bill will improve the environment for reinforcing the competitiveness of Japanese digital market, where Japanese players have been seen as “digital serfs” exploited by tech giants.

In the EU, the Digital Market Act (DMA) began full operation in this March. In the US, the Department of Justice sued a digital platform operator for monopolizing smartphone markets at the end of March this year. In light of these developments, we are collaborating with the US and EU to address competition concerns together in the digital sector by the new legal framework.

Now, let’s move on the outline of the Bill.

After the law takes effect, we will firstly designate software service providers whose business reaches a certain scale through a Cabinet Order for each type of Specified Software subject to the new regulation (Businesses that fall under Cabinet Order criteria will be referred to as “Designated Providers”). There are some news reports that Apple and Google would be designated, but they are not mentioned by name in the Bill.

Then, the Bill is so called ex-ante regulations, stipulating what Designated Providers are prohibited from engaging in (“Prohibited Actions”) and what they are required to take (“Compliance Measures”).

Moreover, the law will empower the JFTC to investigate cases and to issue cease and desist orders and surcharge payment order, similarly to the Antimonopoly Act.

On the other hand, I emphasize that the Bill adopts a new framework to maintain competition environment through continuous communication with Designated Providers, app developers and other stakeholders, before issuing orders. The Bill features interactive mechanisms including reporting by Designated Providers regarding their compliance and provision of information by relevant business operators. We will firstly try to prevent violations through these communications, and when the violations occur despite the efforts, we will switch to enforcement measures.

Since I took office as Chair of the JFTC, I have been stating that the way of enforcement should be interactive for restoring competition in the digital field, which is rapidly changing and technologically complicated. From the point of view, the JFTC has been enforcing the Antimonopoly Act with an emphasis on swift restoration of competition, utilizing new methods such as commitment procedure. Likewise, continuous communication is indispensable to improve the effectiveness of this law, which means relevant business operators and other stakeholders actively raise their voice and provide information to us.

Also, I would like to mention the consideration of security, privacy and child protection. As mentioned before, the Bill stipulates various Prohibited Actions; for example, Designated Providers shall not prevent third party providers from offering their own application stores. For some of the Prohibited Actions, there are some justifications stipulated from the view point of security, privacy, or child protection, and where these justifications apply, Designated Providers are allowed to take necessary measures necessary for them. Besides, the Bill stipulates interagency cooperation between the JFTC and the competent authorities for security, privacy and child protection. Within these frameworks, which have been developed taking into account both the DMA and the Digital Services Act in EU, we will operate the law keeping balance between the safety and security of consumers and maintaining competition environment.

[Tentative translation]