

# Summary of the Bill For *The Act on Promotion of Competition for Specified Smartphone Software*

## 1. Background

- Smartphones have become pillars of social and economic lives since their diffusion. **The software that move these tools (mobile operating systems (OS), application stores, browsers, and search engines – referred to as “Specified Software” below) are provided through an oligopoly of powerful providers.**
- Free and fair competition in Specified Software markets is restricted by these providers’ anticompetitive behaviors. **It is difficult to restore free and fair competition because individual reviews of conduct under the Antimonopoly Act would require vast amounts of time, and self-correction in the market is arduous due to difficulties for newcomers to enter.**
- It is therefore necessary to **create a competitive environment for Specified Software markets that can offer benefits for consumers through greater options in services from a variety of new business activities fostering innovation, while also ensuring security and privacy.**

## 2. Outline of the bill

### (1) Designation of providers subject to regulations

The Japan Fair Trade Commission (JFTC) will designate software service providers that conduct business at a certain scale through a Cabinet Order for each type of Specified Software subject to the new regulations. (Businesses that fall under Cabinet Order criteria will be referred to as “Designated Providers”)

### (2) Prohibited actions and compliance mechanisms (ex-ante regulations)

The act will stipulate how Designated Providers are prohibited from engaging in certain activities (“Prohibited Actions”) and are required to take certain measures (“Compliance Measures”).

#### <Main prohibited actions and compliance measures>

- ① Designated Providers shall not prevent third party providers from offering their own application stores.
  - ※ 1 The bill will not mandate allowing direct downloads of apps from websites.
  - ※ 2 Exceptions: exceptions will be allowed for cases in which measures necessary for security, privacy, child protection, etc. cannot be implemented by the Designated Provider otherwise.
  - ※ 3 The JFTC will coordinate with other relevant government entities on reviews and acceptances of exceptions.
- ② Designated Providers shall not prevent its users from using third party billing systems (※ *Exceptions may apply*)
- ③ Designated Providers shall make smartphone default settings simple to change, and offer a selection screen for browsers, etc.
- ④ Designated Providers shall not engage in any form of preferential treatment of their services over those of competitors in search results without justified reason.
- ⑤ Designated Providers shall not use data they acquire about competing apps for their own apps.
- ⑥ Designated Providers shall not prevent app developers from using the same level of functionalities controlled by the OS as the Designated Provider does. (※*Exceptions may apply*)

### (3) Violations and penalty mechanisms (taking into account continued communication with stakeholders including Designated Providers)

The bill will feature mechanisms including: reporting by Designated Providers regarding their compliance, provision of information by relevant business operators, intergovernmental cooperation, and ordering powers to correct behaviors, investigative authorities and order for surcharge (20% of relevant turnover) under the JFTC.