

Summary of the Act on Promotion of Competition for Specified Smartphone Software

1. Background and purpose

- **As smartphones rapidly spread and become the basis of social lives and economic activities, the business operators that provide the specified software, etc., especially necessary for the use of smartphones (mobile operating systems (OS), application stores, browsers, and search engines – hereinafter referred to as “Specified Software” below) are in an oligopoly market with a small number of specific powerful providers.**
- Fair and free competition in Specified Software markets is hindered by these providers’ anticompetitive practices. However, it is **difficult to restore fair and free competition** due to issues in these markets; **self-correction by market mechanisms such as new entries is difficult** and it **takes a remarkably long time to demonstrate anticompetitive activities in response to individual cases under the Antimonopoly Act.**
- In light of this situation, **it is necessary to develop a competitive environment** for Specified Software for smartphones, **while ensuring security, privacy, etc., so that through competition, innovation by various entities will be fostered and then consumers will be able to select the various services that will be created by such innovation and enjoy the benefits of those services.**

2. Outline of the Act

(1) Designation of Specified Software providers

The Japan Fair Trade Commission (JFTC) designates software service providers that conduct business exceeding a certain scale defined in a Cabinet Order for each type of Specified Software. (Providers that fall under Cabinet Order criteria will be referred to as “Designated Providers.”)

(2) Prohibited conducts and compliance requirements (ex-ante regulations)

To address competition issues surrounding Specified Software, the Act stipulates certain activities in which Designated Providers are prohibited from engaging (“Prohibited Conducts”), and certain measures they are obliged to take (“Compliance Requirements”).

<Major prohibited conducts and compliance requirements>

- ① Designated Providers shall not prevent third party providers from offering their own application stores
 - ※ 1 The Act does not oblige to allow downloading of applications directly from websites.
 - ※ 2 Justifiable measures: measures necessary to achieve the objectives of security, privacy, youth protection, etc., can be taken as long as it is difficult to achieve the objectives through other less competition-restricting measures.
 - ※ 3 The JFTC cooperates with relevant government ministries and agencies in the consideration of the grounds for the justification, etc.
- ② Designated Providers shall not prevent other application developers from using third party billing systems (The above ※2 may be applied)
- ③ Designated Providers shall enable users to change default settings with simple procedures, and offer choice screens for browsers, etc.
- ④ Designated Providers shall not engage in any form of preferential treatment of their services over those of competitors in the display of search results without justifiable reason.
- ⑤ Designated Providers shall not use acquired data about competing applications for their own applications.
- ⑥ Designated Providers shall not prevent application developers from using features controlled by the OS with the same level of performance as the one used by Designated Providers. (The above ※2 may be applied))

(3) Enforcement against violation etc. (Development of a competitive environment through continued communication with stakeholders including Designated Providers)

The Act includes provisions obliging designated operators to submit compliance reports; enabling stakeholders to submit information; enabling relevant ministries and agencies to cooperate; granting the JFTC to investigate, issue cease-and-desist orders, surcharge payment orders (20% of relevant turnover), etc.