

Act on Promotion of Competition for Specified Smartphone Software (Mobile Software Competition Act (MSCA))

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Chapter I General Provisions

(Purpose)

Article 1 Given the role smartphones play as a foundation for daily life and economic activities in Japan, the purpose of this Act is to promote fair and free competition relating to specified software by specifying prohibiting acts of business operators that provide specified software particularly necessary for the use of smartphones from taking advantage of their positions and giving competitive advantages to their own goods or services and causing disadvantages to business activities of business operators that use their specified software, and thereby contributing to the improvement of the lives of the people and the sound development of the national economy.

(Definitions)

Article 2 (1) The term “smartphone” as used in this Act means a device that falls under all of the following items:

- (i) the size of the device is such that it is portable and available for use at all times;
- (ii) software (meaning a collection of programs (a command to a computer that is combined to produce a single result), which is used for information processing by computers for a specific purpose. The same shall apply hereinafter in this Article and Article 8, item (iii)) can be additionally embedded in the device, and such software can be available for use in the device;
- (iii) the device offers telephone and internet accessibility.

(2) The term “basic operation software” as used in this Act means software that is incorporated in a smartphone and is configured to perform information processing for controlling operations in the central processing unit of the smartphone and other operations of the smartphone.

(3) The term “individual software” as used in this Act means software that is incorporated into a smartphone and configured to be used for sending and receiving e-mail, displaying maps, and other individual purposes of the smartphone user through the basic operation software.

(4) The term “application store” as used in this Act means individual software that is provided for the purpose of incorporating other individual software into a smartphone, either for paid or free of charge.

(5) The term “browser” as used in this Act means individual software that is primarily used for browsing web pages (meaning electromagnetic records (meaning a record made by an electronic method, a magnetic method, or any other method not recognizable to human perception, which is used for information processing by a computer. The same shall apply in Article 35 and Article 36(1), item (i)) that are used for browsing information via the internet and are specified by Fair Trade Commission Rules. The same shall apply hereinafter) using the internet.

(6) The term “search engine” as used in this Act means software that outputs domain name (meaning the characters, numbers, symbols, or other codes, or a combination thereof, assigned to identify individual computers on the internet) and other information on the location of an unspecified number of web pages on which search information (meaning information sought through a search) is recorded in response to inputted search.

(7) The term “specified software” as used in this Act means basic operation software, application store, browsers, and search engines collectively.

(8) The term “provision of specified software” as used in this Act means the provision of basic operation software, application store, or browser, or the provision of search services (meaning services that display information sought by a user of a smartphone through search without limiting the information to a specific field, or to a specific format such as images or videos. The same shall apply in Article 9 and Article 12, item (ii), (a)) using a search engine.

(9) The term “individual application developer” as used in this Act means a provider of individual software (meaning a business operator that falls under Article 2(1) of the Antimonopoly Act).

(10) The term “website operator” as used in this Act means a business operator that presents a web page or a collection of web pages to the public through smartphones for the purpose of providing goods or services.

## Chapter II Designations of Specified Software Operators (Designation of Specified Software Operators)

Article 3 (1) The Fair Trade Commission shall designate a business operator (in the following paragraph, “specified software operator”), as an operator to whom the provisions of Chapter 3 shall apply, engaged in the provision of specified software whose scale of business relating to the provision of specified software is not less than that specified by Cabinet Order based on the number of users for each type of specified software or other indicators of the scale of the business as one that may exclude or control the business activities of other business operators.

(2) If the scale of the business relating to the provision of specified software is not less than the scale specified by Cabinet Order set forth in paragraph (1), the specified software provider must, relating to the provisions of Fair Trade Commission Rules, notify the Fair Trade Commission of the matters specified by Fair Trade Commission Rules for each type of the specified software. However, this does not apply to specified software relating to such designation in the case of an operator that has received designation (hereafter in this Chapter and Chapter 2, simply referred to as “designation”) pursuant to the provisions of paragraph (1) (hereinafter “designated provider”).

(3) A designation must be made in writing, and a written designation must indicate the type of specified software

relating to the designation, and the chairperson and the commissioners who attended the meeting under Article 65(1) of the Antimonopoly Act as applied mutatis mutandis by replacing certain terms pursuant to Article 42 must affix their names and seals thereto.

(4) A designation takes effect when a certified copy of a written designation is served to the addressee thereof.

#### (Changes and Revocation of Designation of Specified Software Operators)

Article 4 (1) If any of the events listed in the following items occurs with regard to all or part of the types of specified software relating to its designation of a designated provider, the designated provider may, pursuant to the provisions of Fair Trade Commission Rules, make a request to the Fair Trade Commission to the effect that its designation should be changed or revoked:

(i) when the provision of specified software has ceased;

(ii) If the scale of the business relating to the provision of specified software has fallen below the scale specified by Cabinet Order set forth in Article 3(1), and it is clearly found that the scale will never again meet or exceed the specified scale.

(2) Upon receiving a request under paragraph (1), the Fair Trade Commission shall, when it finds that there are grounds for the request, change or revoke the designation by a decision without delay, pursuant to the provisions of Fair Trade Commission Rules. The same shall apply when, in the absence of the application set forth in paragraph (1), it is found that any of the grounds listed in the items of paragraph (1) have occurred.

(3) If a designated provider's activities related to the provision of specified software, other than the software for which they were originally designated, exceed the scale specified by the Cabinet Order under Article 3(1), the Fair Trade Commission shall modify the designation pursuant to the provisions set forth in the Fair Trade Commission Rules.

(4) The provisions of Article 3(3) and (4) shall apply mutatis mutandis to decisions under the provisions of paragraphs (2) and (3) of this Article. In this case, the term "a written designation" in Article 3(3) and (4) shall be read as "a written decision."

### Chapter III Obligations of Designated Providers

#### Section 1 Prohibited Conducts by Designated Providers

##### (Prohibition of Unjust Use of Acquired Data)

Article 5 (1) A designated provider must not conduct the acts prescribed in the following items with regard to the specified software listed in the respective items relating to its designation:

(i) Basic operation software: to use, or to allow its subsidiaries, etc. (meaning subsidiary, etc. as defined in Article 2-2(2) of the Antimonopoly Act. The same shall apply hereinafter) use, the following data for the provision of goods or services that are in a competitive relation with goods or services provided by other individual application developers: data relating to usage of individual software, data relating to the operation status of the individual software, and other data specified by Fair Trade Commission Rules, which are acquired by the designated provider as a result of the use of the basic operating software relating to the provision of individual software by other individual application developers (excluding data that has already been made publicly available),

(ii) Application store: to use

or to allow its subsidiaries, etc. to use the following data for the provision of goods or services in competition with the goods or services provided by other individual application developers: data relating to sales of individual software obtained by a designated provider as a result of the use of the application store for the provision of the individual software by other individual application developers, data relating to the specifications of the individual software, and other data specified in Fair Trade Commission Rules (excluding data that has already been made publicly available).

(iii) Browser: to use or to allow its subsidiaries, etc. to use the following data for the provision of goods or services that are in competition with the goods or services provided by other website operators: data relating to browsing history (meaning the browsing date, time, and other history recorded in the browser when a smartphone user browses a webpage using the browser. The same shall apply in Article 10(1), item (iii)) of a webpage presented by another website operator, data relating to the operation status of the webpage, or other data specified in the Fair Trade Commission Rules, obtained by the designated provider in connection with the display by the browser of the webpage presented by other website operators (excluding data that has already been made publicly available),.

(Prohibition of Unfair Treatment of Individual Application Developers)

Article 6 A designated provider (limited to those that have received a designation relating to a basic operation software or application store) must not unjustly discriminate against, or otherwise unfairly treat individual application developers in the conditions relating to the method of displaying the specifications, etc. of the individual software displayed during operation of the individual software provided by individual application developers, other conditions relating to the use of the basic operation software or application store and the conduct of transactions based on the conditions with respect to the basic operation software or application store relating to its designation.

(Prohibited Conducts by Designated Provider in Relation to Basic Operation Software)

Article 7 A designated provider must not conduct any of the following acts with respect to basic operating software relating to its designation. However, this shall not apply to cases where it is necessary to perform acts to ensure cybersecurity, etc. (meaning the purpose of ensuring cybersecurity as specified in Article 2 of the Basic Act on Cybersecurity relating to the use of smartphones, protecting the name, gender and other information relating to smartphone users obtained in connection with the use of smartphones, youth protection in connection with the use of smartphones, and other purposes specified in Cabinet Order. The same shall apply in the following Article) for smartphones incorporated with said basic operating software, and it is too difficult to achieve these safety objectives through less competition-restricting measures.

(i) to perform the following acts with regard to the application store provided through the basic operation software:

(a) to limit the application store provided through the basic operating software to that provided by the designated provider (including its subsidiaries, etc. The same shall apply in item ( ii ));

(b) in addition to those listed in (a) above, to prevent other business operators from providing application stores through the basic operating software or smartphone users from using application stores provided by other business operators through the basic operating software;

(ii) with regard to the features relating to the operation of a smartphone, such as sound output features, that are controlled by the basic operation software and used by the designated provider to provide individual software, to prevent other business operators from using the features in equivalent performance to provide individual software.

(Prohibited Conducts by Designated Providers Relating to Application Stores)

Article 8 A designated provider (limited to those that have received a designation relating to application stores) must not conduct the following acts against individual application developers with respect to application stores relating to its designation. However, in the case of acts listed in items (i) to (iii) (except when the individual software under item (i) to (iii) is a browser), this shall not apply to cases when the acts are necessary to ensure cybersecurity, etc. with respect to smartphones in which the application store is incorporated, if it is too difficult to achieve these safety objectives through less competition-restricting measures.

(i) if the individual application developers provides goods or services through individual software provided by the individual application developer, to commit any of the following acts with respect to prepaid payment instruments (meaning prepaid payment instrument prescribed in Article 3(1) of the Payment Services Act) or other payment instruments used by smartphone users to pay for goods or services (hereinafter in this item simply referred to as “payment instruments”).):

(a) to make it a condition for providing individual software through the application store that the individual application developer does not use any payment management service (meaning services that allow smartphone users to use payment instruments while the individual software is executing. The same shall apply in this item) other than the payment management service provided by the designated provider (including subsidiaries, etc., The same shall apply in this Article);

(b) beyond what is set forth in (a), to prevent the individual application developer from using payment management services other than the payment management services provided by the designated provider, or to prevent the individual application developer from allowing smartphone users to use payment methods without using payment management services.

(ii) if the individual application developer provides goods or services through the individual software provided by the individual application developer (hereinafter in this item, “such individual software”) and provides the same goods or services through a web page or individual software other than such individual software (hereinafter referred to as “related web pages, etc.” in this item) (including cases specified by Cabinet Order as equivalent thereto), to commit any of the following acts:

(a) with regard to the price of goods or services or other information provided through the related web pages, etc., to make it a condition for providing such individual software through the application store that such information is not displayed while such individual software is executing (including attaching a condition that refuses or restricts the use of the feature that allows browsing of the related web pages, etc. through such individual software as specified in Fair Trade Commission Rules);

(b) in addition to the acts listed in (a), to prevent the provision of goods or services to users of smartphones that use the individual software through related web pages, etc.

(iii) with respect to a browser engine (meaning software that constitutes a part of a browser and processes

information relating to a web page into a state that enables the user to view the information) that is a component of individual software provided by the individual application developer, to commit any of the following acts:

- (a) to make it a condition for providing individual software through the application store that the browser engine provided by the designated provider is to be a component of the individual software;
- (b) beyond what is set forth in (a), to prevent a browser engine other than the browser engine provided by the designated provider from being a component of the individual software.
- (iv) to make it a condition for providing individual software through the application store that the method of user verification (meaning the identification of smartphone users by distinguishing him / her from other persons by means of codes or other information when the smartphone users use the individual software) for the individual software provided by the individual application developer, which is provided by the designated provider, be displayed during operation of the individual software.

(Prohibited Conducts by designated provider in Relation to search engines)

Article 9 A designated provider (limited to those that have received a designation relating to search engines) must not, without any justifiable reason, favor their own goods or services provided by the designated provider (including its subsidiaries, etc.) over other goods or services in a competitive relationship when displaying information relating to the goods or services sought by smartphone users through a search in the search services provided by using a search engine relating to its designation.

Section 2 Measures to Be Taken by designated providers

(Measures Relating to Disclosure of Conditions for Acquisition of Data, etc.)

Article 10 A designated provider must, pursuant to the provisions of Fair Trade Commission Rules, take the measures specified in the following items with respect to specified software listed in the respective items relating to its designation:

- (i) basic operation software: measures to disclose to other individual application developers the conditions for acquisition or use by the designated provider (including the content of the data to be acquired and its management system. The same shall apply hereinafter in this Article) and the conditions for acquisition by other individual app providers (including the availability and method of acquisition and the content of data that can be acquired. The same shall apply in item (ii)), with respect to data relating to the usage of individual software, data relating to the operating status of the individual software, and other data specified in Fair Trade Commission Rules, which is acquired by the designated provider in connection with the use of the basic operating software in relation to the provision of the individual software by other individual application developers.
- (ii) application store: measures to disclose to other individual application developers the conditions for the acquisition or use of data by the designated provider and the conditions for the acquisition of data by other individual application developers, with regard to data on sales of the individual software, data on the specifications of the individual software, and other data specified by Fair Trade Commission Rules that the designated provider acquires in connection with the use of application store by other individual application developers that provide the individual software;

(iii) browser: measures to disclose to other website operators the conditions regarding the acquisition or use of data by the designated provider and the conditions regarding the acquisition by other website operators of data (including the availability and method of acquisition and the content of data that can be acquired), with respect to data relating to the browsing history of web pages, data relating to the operation status of web pages, and other data specified in Fair Trade Commission Rules that are acquired by the designated provider in connection with the display by the browser of web pages presented by other website operators.

(2) A designated provider must, pursuant to the provisions of Fair Trade Commission Rules, take measures to disclose to smartphone users the conditions for the acquisition or use of by the designated provider of data relating to the status of the use listed in the items of the preceding paragraph and other data specified by Fair Trade Commission Rules that the designated provider acquires in association with the use of the specified software by the smartphone users.

(Measures Relating to Transfer of Acquired Data)

Article 11 (1) With respect to specified software listed in the following items relating to its designation, a designated provider must, pursuant to the provisions of Fair Trade Commission Rules, take necessary measures to ensure the seamless transfer of the data prescribed in the respective items to smartphone users or a person specified by the user at the request of the users of smartphones in which the specified software is installed:

- (i) basic operation software: data concerning the contact information of the smartphone users, which the designated provider has acquired in association with the smartphone user's use of the basic operation software, and other data specified by Fair Trade Commission Rules;
- (ii) application store: information on individual software purchased by the smartphone users, which the designated provider has acquired in association with the smartphone user's use of the application store, and other data specified by Fair Trade Commission Rules;
- (iii) browser: information on the location of web pages recorded in the browser by the user for the convenience of browsing, which the designated provider has acquired in association with the smartphone user's use of the browser, and other data specified by Fair Trade Commission Rules.

(Measures Relating to Default Settings)

Article 12 (1) A designated provider must, pursuant to the provisions of Fair Trade Commission Rules, take the measures specified in the following items with respect to the specified software listed in the respective items relating to its designation:

- (i) basic operation software: measures listed in (a) to (d)
  - (a) with respect to default settings relating to the basic operation software (meaning settings in which specific individual software is automatically selected and activated by the basic operation software. the same shall apply in item (b)), measures necessary to enable smartphone users to change the default settings through simple operations when individual software provided by the designated provider (including its subsidiaries, etc. The same shall apply in this Article) is activated;
  - (b) with regard to individual software specified by Cabinet Order as the individual software that needs to be ensured to give smartphone users an opportunity to select, measures to make available choices of multiple individual software of the same type that can be set as the default for the basic operation software

and other measures that contribute to the selection by the smartphone user;

(c) measures necessary to obtain consent from the smartphone users when additionally incorporating the individual software provided by the designated provider into the smartphones;

(d) measures necessary to enable the user of a smartphone to delete individual software provided by the designated provider from the smartphone via a simple operation (when individual software that operates the settings of a smartphone or other individual software that is indispensable for the operation of a smartphone and that cannot be provided by other business operators technically, the operation equivalent to deletion, such as not displaying an icon to start individual software);

(ii) browser: measures listed in (a) and (b):

(a) with respect to the default settings relating to the browser (meaning settings in which specific search services and other services are automatically selected and provided by the browser. The same shall apply in (b)), measures necessary to enable smartphone users to change the default settings through simple operations when services are provided by the designated provider;

(b) with regard to services specified by Cabinet Order as those for which it is particularly necessary to ensure the opportunity for smartphone users to make choices among the services relating to the default settings relating to the browser, measures to display choices for multiple services of the same type for which the default settings relating to the browser can be made, and other measures to contribute to the choice of smartphone users.

(Measures Relating to Changes, etc. to Specifications, etc. of Specified Software)

Article 13 If a designated provider establishes or modifies the specifications, establishes or modifies the conditions for the use, or refuses to use the specified software listed in the following items relating to its designation, it must, pursuant to the provisions of Fair Trade Commission Rules, offer a time period for business operators prescribed in the respective items to respond seamlessly to the measures, disclose information, establish a necessary system, and take other necessary measures:

(i) basic operation software: individual application developers and website operator that use the basic operation software

(ii) application store: individual application developers that use the application store

(iii) browser: website operators that present a web page displayed by the browser

Section 3 Submissions of Reports by Designated Providers

Article 14 (1) A designated provider must, pursuant to the provisions of Fair Trade Commission Rules, make a report containing the following matters and submit it to the Fair Trade Commission every fiscal year:

(i) matters concerning the summary of the business activities of the designated provider;

(ii) matters concerning measures taken to comply with the provisions of Article 5 to Article 13;

(iii) in addition to what is listed in items (i) and (ii), matters necessary for confirmation of the status of compliance with the provisions of this Act.

(2) The Fair Trade Commission shall make public the report set forth in the preceding paragraph after omitting business secrets.

Chapter IV Measures against Violations



Section 1 Investigations, etc.

(Report to the Fair Trade Commission)

Article 15 Whenever any person believes there to be a violation of the provisions of this Act, the person may report such a violation to the Fair Trade Commission and request that appropriate measures be taken.

(2) A designated provider must not impose disadvantageous treatment, including refusal to offer its specified software, against a person or entity who has made a report or request under paragraph (1) on the grounds that the person or entity has made the report or request.

(3) When the Fair Trade Commission receives a report as provided in the preceding paragraph (1), it must make the necessary investigations into the case.

(4) If a report made pursuant to the provisions of paragraph (1) includes a written allegation with regard to a specific fact pursuant to the provisions of the Fair Trade Commission Rules, when the Fair Trade Commission decides to take appropriate measures or to take no measures with respect to the case connected with the report, the Fair Trade Commission must promptly notify the person who made the report to that effect.

(5) Whenever the Fair Trade Commission believes there to be a violation of the provisions of this Act, the Fair Trade Commission may take appropriate measures *ex officio* on its own authority.

(Administrative Actions for Investigations)

Article 16 (1) In order to conduct the necessary investigation with regard to a case, the Fair Trade Commission may take the following measures:

- (i) order persons concerned with a case or witness to appear for questioning, or solicit their opinions or reports;
- (ii) order expert witnesses to appear to give expert opinions;
- (iii) order persons holding books and documents and other object to submit such objects, or keep such submitted objects at the Fair Trade Commission;
- (iv) enter any business office of the persons concerned with a case or other necessary sites, and inspect conditions of business operation and property, books and documents, and other materials;

(2) If the Fair Trade Commission finds it to be appropriate, it may designate a staff member of the Fair Trade Commission as an investigator pursuant to the Cabinet Order, and have the staff member take the measures set forth in the preceding paragraph.

(3) If the Fair Trade Commission causes a staff member to conduct an on-site inspection pursuant to the provisions of the preceding paragraph, the Fair Trade Commission must instruct the staff member to carry an identification card and to present it to the persons concerned.

(4) The authority to take measures pursuant to the provisions of paragraph (1) must not be construed as being granted for conducting a criminal investigation.

(Preparation of Record)

Article 17 Whenever the Fair Trade Commission conducts the necessary investigations for a case, it is to compile a record of the substance of the investigation, and whenever it takes a measure provided in paragraph (1) of the

preceding Article, it must clearly record the date on which the measure was taken and the results thereof.

Section 2 Cease and Desist Order, etc.

(Cease and Desist Order)

Article 18 Whenever an act in violation of the provisions of Articles 5 to 9 occurs, the Fair Trade Commission may order the designated provider to order the relevant enterprise to cease and desist the relevant act, to transfer a part of the relevant enterprise's business, or to take any other measures necessary to eliminate the act in violation of the provisions.

(2) Whenever the Fair Trade Commission finds it to be particularly necessary, even if an act in violation of the provisions of Article 5 to 9 has already ceased to exist, the Fair Trade Commission may order the following person to take measures to make public that the act has been discontinued and to take any other measures necessary to ensure the elimination of the relevant act; provided, however, that this does not apply if three years have passed since the date of discontinuation of the relevant act.

(i) the designated provider that committed the relevant act;

(ii) if the designated provider that committed the relevant act is a juridical person, the juridical person that survives after the merger or the juridical person established by the merger when the former juridical person ceases to exist due to a merger;

(iii) if the designated provider that committed the relevant act is a juridical person, any juridical person who has acquired all or part of the business involving the relevant act from the enterprise by virtue of a company split;

(iv) any enterprise that has acquired all or part of the business involving the relevant act from the designated provider that committed the relevant act.

(Surcharge Payment Orders)

Article 19 If a designated provider has committed an act in violation of Article 7 or 8 (limited to the parts relating to items (i) and (ii)) (hereinafter referred to simply as "violation" in this Article through Article 21.), the Fair Trade Commission must order the designated provider to pay to the national treasury a surcharge equivalent to the amount obtained by multiplying the amount of sales of goods or services relating to the act supplied by the designated provider and its Specified Non-Violating Supplying Co-Subsidiary, etc., (meaning specified non-violating supplying co-subsidiary, etc., prescribed in Article 2-2(7) of the Antimonopoly Act. The same shall apply in the following paragraph.) calculated pursuant to the provisions of Cabinet Order, during the violation period pertaining (meaning period from the day specified in the following items to the day on which the violation ceases to exist, in accordance with the categories of cases listed in the respective items. The same shall apply in paragraph (2) of this Article and Article 21(5).) to the act by 20 percent.

(i) if the date of such violation is on or after the date ten years prior to the date of commencement of the investigation of the case relating to such violation (meaning the date on which the action pursuant to the provisions of Article 16(1) was first taken (meaning, if the action has not been taken, the date on which the Designated Provider was notified pursuant to the provisions of Article 50 (1) of the Antimonopoly Act as applied mutatis mutandis by replacing the terms and phrases pursuant to Article 62 (4) of the Antimonopoly Act as applied mutatis mutandis pursuant to Article 42.). The same shall apply in item (ii) and Article 20):

the date of such violation

(ii) if other than those listed in item (i): the day ten years prior to the investigation start date for the case relating to the violation

(2) When issuing an order pursuant to the provision of paragraph (1) (hereinafter referred to as an “surcharge payment order”), if the designated provider fails to comply with the request of the Fair Trade Commission or an investigator designated pursuant to the provision of Article 16(2) for the case relating to the violation or other staff members engaged in the investigation of the case relating to the violation to report the facts relating to the violation or to submit materials that should form the basis for the calculation of the surcharge relating to the violation, the Fair Trade Commission may issue a surcharge payment order by estimating the amount of sales prescribed in paragraph (1) during the period when the facts on which the calculation of the surcharge is to be based cannot be ascertained because no report of such facts or submission of materials was made, by a reasonable method prescribed by the Rules of the Fair Trade Commission with data obtained from the designated provider, its specified non-violating supplying co-subsiary, or other business operators supplying goods or services relating to the violation, or other business operators receiving the supply of such goods or services, or other materials.

(Premium Calculation Rate)

Article 20 In the case of issuing a surcharge payment order, if the designated provider falls under any of the following items, the term “20 percent” in paragraph (1) of Article 19 shall be deemed to be replaced with “30 percent.”

(i) a business operator who has received a surcharge payment order within ten years prior to the Investigation Start Date for a case relating to the Violation (limited to cases if the surcharge payment order has become final and binding and the violation was committed on or after the day of the surcharge payment order);

(ii) except for those falling under item (i), any business operator whose wholly owned subsidiary (meaning wholly owned subsidiaries as prescribed in Article 2-2 (3) of the Antimonopoly Act. The same shall apply hereinafter in this item) has received a surcharge payment order within ten years retroactively from the date of commencement of the investigation into the case involving the violation (limited to cases if it is a wholly owned subsidiary of the designated provider as of the date of the surcharge payment order and it has committed the violation after the date of the surcharge payment order);

(iii) except for those business operators who fall under items (i) and (ii), a juridical person who has merged with another juridical person who has received a surcharge payment order within ten years prior to the investigation start date of the case relating to the violation, or a juridical person who has received or succeeded through a company split, the whole or part of the business relating to the violation relating to the surcharge payment order (limited to cases if the juridical person has committed the violation on or after the date of the merger, acquisition or company split).

(Obligation to Pay a Surcharge)

Article 21 (1) A business operator who has received a surcharge payment order must pay a surcharge calculated pursuant to the provisions of Articles 19 and 20.

(2) When the amount of the surcharge calculated pursuant to the provisions of Articles 19 and 20 includes a

fraction of less than ten thousand yen, such fraction shall be rounded down.

(3) When a designated provider that has committed a violation is a juridical person, if the juridical person has ceased to exist as a result of a merger, the violation committed by the juridical person and the surcharge payment order received by the juridical person shall be deemed to be the violation committed by the juridical person surviving or established as a result of the merger and the surcharge payment order received by the juridical person surviving or established as a result of the merger, and the provisions of Article 19 to this Article shall apply.

(4) When a Designated Provider that has committed the violation is a juridical person, if the juridical person (limited to cases when the juridical person is a company) has assigned all of its business relating to the violation to one or more of its subsidiaries, etc., or has caused one or more of its subsidiaries, etc. to succeed to all of its business relating to the violation by a division and then ceases to exist for reasons other than a merger, the provisions of Article 19 to this Article shall apply by deeming the violation committed by the juridical person and the surcharge payment order received by the juridical person to be a violation committed by the subsidiary company, etc. that has taken over all or part of the business concerned or succeeded to all or part of the business concerned through a split (hereinafter referred to as a “subsidiary, etc. that has succeeded to specified business”), and a surcharge payment order received by subsidiary, etc. that has succeeded to specified business. In this case, when there are two or more subsidiary, etc. that has succeeded to specified business, the term “order the designated provider” in Article 19(1) shall be deemed to be replaced with “order subsidiary, etc. that has succeeded to specified business (meaning subsidiary, etc. that has succeeded to specified business prescribed in Article 21(4)). The same shall apply hereinafter in this paragraph and Article 21(1)), jointly and severally with the other subsidiary, etc. that has succeeded to specified business that has received an order pursuant to this paragraph,” and the term “[a] business operator who has received” in paragraph 1 shall be deemed to be replaced with “subsidiary, etc. that has succeeded to specified business who has received, jointly and severally with other subsidiary, etc. that has succeeded to specified business that have received a surcharge payment order”.

(5) When three years have elapsed from the day on which the Violation Period ended, the Fair Trade Commission may not issue a surcharge payment order relating to the violation.

#### (Notice of Commitment Procedures)

Article 22 If the Fair Trade Commission considers that a fact in violation of the provisions of Articles 5 to 9 exists, and finds it necessary for the promotion of fair and free competition with regard to the act that is the grounds for the suspicion, it may notify the business operator engaged in the act of the following matters in writing: however, this shall not apply after a notice under Article 50(1) of the Antimonopoly Act (including when it is applied mutatis mutandis by replacing the terms and phrases in Article 62(4) of the Antimonopoly Act as applied mutatis mutandis by replacing the terms and phrases in Article 42) as applied mutatis mutandis by replacing the terms and phrases in Article 42; in such cases, other conditions or consequences may apply.

- (i) a summary of the act;
- (ii) the provisions of laws and regulations that are suspected to be violated;
- (iii) the fact that an application for approval under the provisions of Article 23(1) can be filed.

#### (Application for Approval of a Commitment Plan)

Article 23 (1) Any person who has received a notice pursuant to the provisions of Article 22 may, when he/she intends to formulate and implement measures necessary to eliminate the acts that have become grounds for suspicion (hereinafter referred to as “commitment measures” in this Article through Article 25), prepare a plan concerning the measures he/she intends to implement pursuant to the provisions of Fair Trade Commission Rules (hereinafter referred to as the “commitment plan” in this Article and Article 25, paragraph (1), item (i)) and submit the plan to the Fair Trade Commission within 60 days from the date of receipt of the notice, and apply for approval.

(2) The following matters must be included in the Commitment Plan:

- (i) the content of Commitment Measures;
- (ii) the deadline for implementing the Commitment Measures;
- (iii) other matters specified in Fair Trade Commission Rules.

(3) If an application for approval under the provisions of paragraph (1) is filed and the Fair Trade Commission finds that a Commitment Plan conforms to all of the following items, the Fair Trade Commission shall approve the Commitment Plan:

- (i) the Commitment Measures are sufficient to eliminate the act that is the grounds for the suspicion;
- (ii) the Commitment Measures are expected to be implemented without fail.

(4) The approval set forth in paragraph (3) must be made in writing, and the chairperson and the commissioners who attended the meeting under Article 65(1) of the Antimonopoly Act as applied mutatis mutandis by replacing certain terms pursuant to Article 42 must affix their names and seals to the written approval.

(5) The approval set forth in paragraph (3) shall become effective when a certified copy of the approval is served to the addressee thereof.

(6) If an application for approval under the provisions of paragraph (1) is filed and the Fair Trade Commission finds that the Commitment Plan does not conform to any of the items of paragraph (3), it must dismiss the application by a decision.

(7) The provisions of paragraphs (4) and (5) shall apply mutatis mutandis to a decision under the provisions of paragraph (6). In this case, the term “written approval” in paragraphs (4) and (5) shall be deemed to be replaced with “written decision.”

(8) When a business operator that has received the approval set forth in paragraph (3) intends to make changes to the Commitment Plan relating to the approval, he / she must receive approval of the Fair Trade Commission pursuant to the provisions of the Fair Trade Commission Rules.

(9) The provisions of paragraphs (3) to (7) shall apply mutatis mutandis to the approval of changes under the preceding paragraph.

(Effect of Approval of a Commitment Plan)

Article 24 The provisions of Article 18 and Article 19(1), shall not apply to acts that were the reason for the suspicion relating to the approval and to acts relating to Commitment Measures, if the Fair Trade Commission has granted approval under Article 23(3) (including approval of changes under Article 23(8)). The same shall apply in Article 25(1) and (3)).

(Revocation of Approval of a Commitment Plan)

Article 25 (1) The Fair Trade Commission must, by a decision, revoke the approval set forth in Article 23(3) if any of the following applies:

- (i) when it is found that the Commitment Measures are not being implemented in accordance with the Commitment Plan that has been approved;
- (ii) when it is found that the business operator that has obtained the approval has obtained the approval based on false or wrongful facts.

(2) The provisions of Article 23(4) and (5) apply mutatis mutandis to a decision under paragraph (1). In this case, the term “written approval” in Article 23(4) and (5) shall be deemed to be replaced with “written decision.”

(3) When the approval set forth in Article 23(3), has been revoked under the provisions of paragraph (1), if the revocation has occurred on or after the date which is one year prior to the expiration of the period prescribed in the proviso of Article 18(2), a cease and desist order under the provisions of Article 18 (2) against the act that was the grounds for suspicion relating to the approval can be issued even within one year from the day of the revocation decision, notwithstanding the proviso to Article 18(2).

(4) The provisions of the preceding paragraph shall apply mutatis mutandis to a surcharge payment order. In this case, the term “the proviso to Article 18(2)” in the paragraph shall be deemed to be replaced with “Article 21 (5)” and the term “notwithstanding the proviso to Article 18(2)” shall be deemed to be replaced with “Article 21(5).”

(Notice of Commitment Procedures for Past Acts)

Article 26 (1) Even if the acts that were the grounds for suspicion of violation of the provisions of Articles 5 to 9 have already ceased to exist, the Fair Trade Commission may, when it finds it particularly necessary for the promotion of fair and free competition, notify the business operator listed in item (i) of the matters listed in item (ii) in writing. However, this shall not apply after a notice under Article 50(1) of the Antimonopoly Act as applied mutatis mutandis by replacing the terms and phrases in Article 42 (including the cases where it is applied mutatis mutandis by replacing certain terms under Article 62(4) of the Antimonopoly Act as applied mutatis mutandis by replacing certain terms under Article 42); in such cases, other conditions or consequences may apply.

(i) the following business operators:

- (a) a business operator that has engaged in conduct that gives grounds for suspicion;
- (b) if the business operator that committed the act that is the grounds for the suspicion is a juridical person, and the juridical person has disappeared as a result of a merger, a juridical person surviving the merger or the juridical person incorporated as a result of the merger;
- (c) if the business operator that committed the act that is the grounds for the suspicion is a juridical person, a juridical person who has succeeded to the whole or part of the business relating to the act from the juridical person through a company split;
- (d) a business operator who has accepted the whole or part of the business relating to the act constituting the grounds for suspicion from the person who conducted said act;

(ii) the following matters:

- (a) the outline of the acts that served as the grounds for the suspicion;
- (b) the provisions of laws and regulations that were suspected to be violated;
- (c) The fact that an application for approval pursuant to the provisions of Article 27(1) can be filed.

(Application for Approval of a Commitment Plan)

Article 27 When a business operator who has received a notice under Article 26 intends to formulate and implement necessary measures for ensuring that the acts that serve as the grounds for the suspicion have been eliminated, pursuant to the provisions of Fair Trade Commission Rules, it may prepare a plan (hereinafter referred to as “Commitment Plan” in this Article and Article 29(1), item (i)) concerning the measures (hereinafter referred to as “Commitment Measures” in this Article to Article 29) it intends to implement and submit it to the Fair Trade Commission within 60 days from the date of receipt of the notice, and apply for approval thereof.

(2) A Commitment Plan must contain the following matters:

- (i) the content of the Commitment Measures;
- (ii) the time limit for implementing the Commitment Measures;
- (iii) other matters specified in Fair Trade Commission Rules.

(3) If an application for approval under the provisions of paragraph (1) is filed and the Fair Trade Commission finds that a Commitment Plan conforms to all of the following items, it shall approve the Commitment Plan:

- (i) the Commitment Measures are sufficient to ensure that the act constituting the grounds for the suspicion has been eliminated;
- (ii) the Commitment Measures are expected to be implemented without fail.

(4) The provisions of Article 23(4) and (5) apply mutatis mutandis to the approval under the preceding paragraph.

(5) If an application for approval under the provisions of paragraph (1) is filed and the Fair Trade Commission finds that the Commitment Plan does not conform to any of the items of paragraph (3), it must dismiss the application by a decision.

(6) The provisions of Article 23(4) and (5) apply mutatis mutandis to a decision under paragraph (5). In this case, the term “written approval” in Article 23(4) and (5) shall be deemed to be replaced with “written decision.”

(7) When a business operator who has received the approval set forth in paragraph (3) intends to make changes to a Commitment Plan relating to the approval, it shall receive the approval of the Fair Trade Commission pursuant to the provisions of Fair Trade Commission Rules.

(8) The provisions of paragraphs (3) to (6) shall apply mutatis mutandis to the approval of changes under paragraph (7).

(Effect of Approval of a Commitment Plan)

Article 28 The provisions of Article 18 and Article 19(1) shall not apply, where the Fair Trade Commission has made an approval under Article 27(3) (including approval of changes pursuant to the provisions of Article 27(7)). The same shall apply in Article 29(1) and (3)) to acts that were the grounds for suspicion relating to the approval and acts relating to Commitment Measures. However, this shall not apply where a decision has been made pursuant to the provisions of Article 29(1); in such cases, other conditions or consequences may apply.

(Commitment Plan Approval Revocation)

Article 29 (1) The Fair Trade Commission must, by a decision, revoke the approval set forth in Article 27(3) in

any of the following cases:

- (i) when it is found that the Commitment Measures are not implemented in accordance with the Commitment Plan that has been approved;
- (ii) when it is found that the business operator who has obtained the approval has obtained the approval based on false or fraudulent information.

(2) The provisions of Article 23(4) and (5) apply mutatis mutandis to a decision under paragraph (1). In this case, the term “written approval” in Article 23(4) and (5) shall be deemed to be replaced with “written decision.”

(3) If the approval set forth in Article 27(3) has been revoked under the provisions of paragraph (1), if the revocation has occurred on or after the day one year before the day on which the period prescribed in the proviso to Article 18(2) expires, an order under the provisions of Article 18(2) against the act that was the grounds for the suspicion relating to the approval can be issued even within one year from the day of the revocation decision, notwithstanding the provisions of the proviso to Article 18(2).

(4) The provisions of paragraph (3) shall apply mutatis mutandis to a surcharge payment order. In this case, the term “the proviso to Article 18(2)” in paragraph (3) shall be deemed to be replaced with “Article 21(5)” and the term “notwithstanding the provisions of the proviso to Article 18(2)” shall be deemed to be replaced with “notwithstanding Article 21(5).”

#### (Recommendations and Orders)

Article 30 (1) When the Fair Trade Commission finds that a designated provider has violated the provisions of Chapter 3, Section 2 or Article 15(2), it can recommend that the designated provider promptly cease the act relating to the violation, take the measures provided for in Chapter 3, Section 2, or take other necessary measures.

(2) If a designated provider that has received a recommendation under paragraph (1) fails to take the measures recommended without justifiable grounds, the Fair Trade Commission may order the designated provider that has received the recommendation to take the measures recommended.

#### Chapter V Demands for Injunctions, Compensations for Damages, etc.

##### (Right to Injunction)

Article 31 A person whose interests have been infringed or are likely to be infringed by an act in violation of the provisions of Articles 5 to 9 may, when such act causes or is likely to cause substantial damage, seek the suspension or prevention of the infringements from the designated provider that infringes or is likely to infringe the interests.

##### (No-Fault Liability for Damages)

Article 32 (1) A designated provider that has violated any of the provisions of Articles 5 to 9 is liable to compensate the victim for damages.

(2) A designated provider may not be exempted from the liability prescribed in paragraph (1) by proving that there was no willful misconduct or negligence.

(3) The right to claim damages under paragraph (1) may not be asserted in a judicial proceeding until after the cease and desist order (meaning an order pursuant to the provisions of Article 18(1) or (2). The same shall apply hereinafter) (if a cease and desist order is not issued, a surcharge payment order) becomes final and binding.

(4) The right to claim set forth in paragraph (1) shall be extinguished by prescription when three years have



elapsed from the day on which the cease and desist order (if cease and desist order is not issued, a surcharge payment order) became final and binding.

(Provision of Security for Filing an Action for Wrongful Purpose)

Article 33 When an action for the suspension or prevention of an infringement under the provisions of Article 31 has been filed, the court can, upon the petition of the defendant, order, by a decision, the plaintiff to provide reasonable security.

(2) In order to file the petition set forth in paragraph (1), a prima facie showing must be made to the effect that the action set forth in paragraph (1) has been filed for the purpose of acquiring an unlawful gain, causing damage to another person, or for any other wrongful purpose.

(Notification to the Fair Trade Commission)

Article 34 (1) When an action for the suspension or prevention of infringements under the provisions of Article 31 has been filed, the court must notify the Fair Trade Commission to that fact.

(2) When an action set forth in paragraph (1) has been filed, the court can seek the opinion of the Fair Trade Commission with regard to the application of this Act and other necessary matters concerning the case.

(3) When an action set forth in paragraph (1) has been filed, the Fair Trade Commission may, with the permission of the court, state its opinions to the court with regard to the application of this Act and other necessary matters concerning the case.

(Submission of Documents)

Article 35 In an action for the suspension or prevention of an infringement under the provisions of Article 31, the court may, upon the petition of a party, order the party to submit documents or electromagnetic records necessary to prove the relevant act of infringement. Provided, however, that this shall not apply if the owner of the documents or the person who has the authority to use the electromagnetic records has justifiable grounds for refusing to submit them; in such cases, other conditions or consequences may apply.

(2) When the court finds it necessary to determine whether or not there are justifiable grounds as prescribed in the proviso to paragraph (1), it can have the person in possession of the documents or the person who has the authority to use the electromagnetic records present the documents. In this case, no person can request the disclosure of the documents or electromagnetic records presented.

(3) In the case set forth in paragraph (2), if the court finds it necessary to disclose the documents or electromagnetic records set forth in the second sentence of paragraph (2) and hear their opinions as to whether or not there are justifiable grounds prescribed in the proviso to paragraph (1), the court may disclose the documents or electromagnetic records to the parties, etc. (meaning a party (in the case of a juridical person, its representative) or an agent (excluding counsel and assistants), employee or other worker of a party. The same shall apply in Article 36(1)), representative or assistant.

(4) The provisions of paragraphs (1) to (3) shall apply mutatis mutandis to the presentation of the purpose of inspection necessary for proving the relevant act of infringement in an action for the suspension or prevention of infringement under the provisions of Article 31.

(Confidentiality Protective Order)

Article 36 In an action concerning the suspension or prevention of infringements under the provisions of Article

31, when a prima facie showing is made that any of the following items apply to a trade secret (meaning trade secrets prescribed in Article 2(6) of the Unfair Competition Prevention Act. The same shall apply hereinafter in this Article and Article 37(5)) held by a party, upon motion of a party, by a decision, the court may order the parties, etc., counsel or assistant not to use the trade secret for any purpose other than the pursuit of the suit or not to disclose the trade secret to any person other than those who have been ordered pursuant to this paragraph. Provided, however, this shall not apply where the parties, etc., counsel or assistant in court have obtained or possessed the trade secrets by any method other than reading the briefs prescribed in item (i) or examining or disclosing the evidence prescribed in the item; in such cases, other conditions or consequences may apply:

- (i) the trade secret held by a party is stated in a brief that has already been submitted or that is to be submitted, or the trade secret is stated in evidence that has already been examined or that is to be examined (including documents or electromagnetic records disclosed pursuant to the provisions of Article 35(3) (including the cases where it is applied mutatis mutandis under Article 35(4)) or including the purpose of inspection);
- (ii) there is a risk that the party's business activities based on the trade secret under item (i) will be hindered by the use of the trade secret for purposes other than pursuing the suit or by the disclosure of the trade secret, and it is necessary to restrict the use or disclosure of the trade secret in order to prevent such hindrance.

(2) A petition for an order pursuant to paragraph (1) (hereinafter referred to as the "confidentiality protective order") must be filed in writing stating the following matters:

- (i) the person to whom the Confidentiality Protective Order is to be issued;
- (ii) a fact sufficient to identify the trade secret to be the subject of the Confidentiality Protective Order;
- (iii) a fact that falls under any of the grounds listed in the items of paragraph (1).

(3) If a Confidentiality Protective Order is issued, the digital written decision (meaning an electromagnetic records prescribed in Article 3-7(3) of the Code of Civil Procedure prepared pursuant to the provision of Article 252(1) of the Code as applied mutatis mutandis pursuant to Article 122 of the Code. The same shall apply in paragraph (4) and Article 37(2).) must be served on the person to whom the Confidentiality Protective Order was issued.

(4) A Confidentiality Protective Order takes effect when the written digital decision is served on the person to whom the protective order was issued.

(5) An immediate appeal can be filed against a judicial decision dismissing a motion requesting a Confidentiality Protective Order.

#### (Revocation of Confidentiality Protective Order)

Article 37 (1) A person who has filed a motion requesting a Confidentiality Protective Order or a person to whom a Confidentiality Protective Order has been issued can file a motion with the court where the case record is kept (if there is no court where the case record is kept, the court that issued the Confidentiality Protective Order) for revocation of the Confidentiality Protective Order on the grounds that the requirement prescribed in paragraph (1) of Article 36 is not met or is no longer met.

(2) If a judicial decision on a motion requesting the revocation of a Confidentiality Protective Order is rendered, the written digital decision must be served upon the person who filed the motion and the adverse party.

(3) An immediate appeal may be filed against a judicial decision on a motion to revoke a Confidentiality Protective Order.

(4) A judicial decision revoking a Confidentiality Protective Order must not take effect until it becomes final and binding.

(5) If the court has rendered a judicial decision to the effect that a Confidentiality Protective Order is to be revoked, and a Confidentiality Protective Order has been issued for the trade secret in the litigation in which the Confidentiality Protective Order was issued against a person other than the person who filed the motion to revoke the Confidentiality Protective Order or the adverse party, the court must immediately notify such person of the fact that the court has rendered the judicial decision to the effect that the Confidentiality Protective Order is to be revoked.

(Notice of Case Record Inspection Request)

Article 38 In any litigation in which a Confidentiality Protective Order has been issued (except in any litigation in which all Confidentiality Protective Orders have been revoked), if a decision under Article 92(1) of the Code of Civil Procedure has been issued, and a party has made a request for inspection, etc. of the confidential part prescribed in the paragraph and the person who has carried out the procedures for such request is a person who has not obtained a Confidentiality Protective Order in the litigation, a court clerk must, immediately after such request, notify the party who has filed the motion(excluding the person who has made such a request. The same shall apply in paragraph (3)) under the paragraph that such a request has been filed.

(2) In the case referred to in paragraph (1), the court clerk must not allow the person who conducted the procedures for the request to inspect, etc. the part of the record that contains the secret under paragraph (1) until two weeks have elapsed from the day on which the request was made (or, if a motion for a Confidentiality Order has been filed against the person who conducted the procedures for the request by that day, until the judicial decision on the motion becomes final and binding).

(3) The provisions of paragraphs (1) and (2) shall not apply when all of the parties who filed a motion under Article 92(1) of the Code of Civil Procedure consent to allow the party who made the request under paragraph (1) to inspect, etc. the part of the record that contains the secret.

(Opinion of the Fair Trade Commission Concerning Litigation for Damages)

Article 39 (1) When an action for damages under the provisions of Article 32(1) has been filed, the court can seek the opinion of the Fair Trade Commission with regard to the amount of damages caused by the violation prescribed in Article 32(1).

(2) The provisions of the preceding paragraph shall apply mutatis mutandis to cases where a claim for damages under the provisions of Article 32(1) is asserted in court for the purpose of set-off.

(Interim Measures)

Article 40 (1) The court can, when it finds it urgently necessary, upon motion by the Fair Trade Commission, order a person engaging in an act that is suspected of violating any of the provisions of Articles 5 to 9 to temporarily suspend the act, and revoke or modify such order.

(2) A judicial decision under the provisions of the preceding paragraph shall be made pursuant to the Non-Contentious Cases Procedures Act.

(Exemption from Execution of Interim Measures by Deposition)

Article 41 A judicial decision under the provisions of Article 40(1) may be exempted from execution by depositing a bond or securities specified by the court (including book-entry transfer bonds prescribed in Article 278(1) of the Act on Book Entry of Corporate Bonds and Shares. The same shall apply in the following paragraph).

(2) When a deposit has been made pursuant to the provisions of paragraph (1), when the judicial decision under the provisions of Article 40(1) has become final and binding, the court can, upon the motion of the Fair Trade Commission, forfeit all or part of the bonds or securities relating to the deposit.

(3) The provisions of Article 40(2) shall apply mutatis mutandis to a judicial decision under the provisions of paragraphs (1) and (2).

Chapter VI Miscellaneous Provisions

(Mutatis Mutandis Application of the Antimonopoly Act)

Article 42 The provisions of Articles 43, 43-2, 49 to 62, 65 (1) and (2), 66, 68 to 70, 70-3 (3) and (4), 70-6 to 70-9, 75 to 77, and 84-2 to 88 of the Antimonopoly Act shall apply mutatis mutandis to the procedures concerning the duties and litigation of the Fair Trade Commission under this Act. In this case, the terms and phrases listed in the middle column of the following table, which are used in the provisions of the Antimonopoly Act listed in the left column of the table, shall be replaced with the terms and phrases listed in the right column of the table.

(The table is omitted from this document)

(Hearing of Opinions of Relevant Government Ministries and Agencies)

Article 43 (1) When the Fair Trade Commission finds it necessary for the application of the proviso to Article 7 or the proviso to Article 8, it can seek the opinions of the Prime Minister, the Minister for Internal Affairs and Communications, the Minister of Education, Culture, Sports, Science and Technology, the Minister of Economy, Trade and Industry, the Commissioner of the Children and Families Agency, or the heads of other relevant government ministries and agencies.

(2) In addition to what is provided for in paragraph (1), the Fair Trade Commission can, when it finds it necessary for the enforcement of this Act, seek the opinions of the heads of the relevant government ministries and agencies.

(3) The Prime Minister, the Minister for Internal Affairs and Communications, the Minister of Education, Culture, Sports, Science and Technology, the Minister of Economy, Trade and Industry, the Commissioner of the Children and Families Agency, and the heads of other relevant government ministries and agencies can state their opinions to the Fair Trade Commission with regard to the application of the provisions of the proviso to Article 7 and the proviso to Article 8.

(4) In addition to what is provided for in paragraph (3), the heads of relevant government ministries and agencies can state their opinions to the Fair Trade Commission with regard to the enforcement of this Act, in order to protect the public interest.

(Administrative Procedure Act Exemptions)

Article 44 The provisions of Chapters 2 and 3 of the Administrative Procedure Act shall not apply to actions

<p>under Article 16(1) (including dispositions made by the investigator pursuant to the provision of Article 16(2)), cease and desist orders, surcharge payment orders, actions relating to an application under Article 23(1), or Article 27(1) and actions under the Antimonopoly Act as applied mutatis mutandis under Article 42 (including dispositions made by the designated staff member (meaning the designated officers prescribed in Article 53(1) of the Antimonopoly Act as applied mutatis mutandis pursuant to Article 42. The same shall apply in Article 45.) pursuant to such provisions) by the Fair Trade Commission.</p>
<p>(Restriction on Request for Review)</p> <p>Article 45 No request for review may be filed with respect to a disposition made by the Fair Trade Commission under this Act (including actions rendered by an investigator under the provisions of Article 16(2) and actions rendered by a designated staff member under the provisions of the Antimonopoly Act as applied mutatis mutandis pursuant to Article 42) or its inaction.</p>
<p>(Publication of Guidelines)</p> <p>Article 46 The Fair Trade Commission must publish the guidelines necessary for designated providers to appropriately handle matters provided for in Chapter III, Sections 1 and 2.</p>
<p>(Delegation to Cabinet Order)</p> <p>Article 47 In addition to what is provided for in this Act, the procedures concerning investigations by the Fair Trade Commission and other necessary matters concerning the handling of cases relating to acts in violation of the provisions of Chapter III and the deposition set forth in Article 41(1) shall be specified by Cabinet Order.</p>
<p>(Transitional Measures in the Revision or Repeal of Cabinet Orders or Rules)</p> <p>Article 48 When Cabinet Order or Fair Trade Commission Rules are established, revised or abolished based on this Act, necessary transitional measures (including transitional measures concerning penal provisions) may be provided for in the Cabinet Order or the Fair Trade Commission Rules to the extent considered reasonably necessary for the establishment, revision, or abolition.</p>
<p>Chapter VII Penal Provisions</p> <p>Article 49 When a Confidential Protective Order is violated, the person who has committed the violation shall be punished by imprisonment for a term not exceeding five years or a fine not exceeding five million yen, or both.</p> <p>(2) The crime set forth in paragraph (1) must not be prosecuted without a complaint.</p> <p>(3) The crime set forth in paragraph (1) shall also apply to a person who has committed the crime set forth in the paragraph outside Japan.</p>
<p>Article 50 When a cease and desist order is violated after it has become final and binding, the individual who committed the violation shall be subject to imprisonment for a period not exceeding two years, or a fine not exceeding three million yen, or both.</p>
<p>Article 51 In any of the following cases, an individual who has committed such violation shall be punished by imprisonment for a term not exceeding one year or a fine not exceeding 3 million yen:</p> <p>(i) failing to appear, failing to make a statement or making a false statement, or failing to make a report or making a false report, in violation of the disposition (including dispositions made by the investigator pursuant to the provision of Article 16(2)) involved in the case or witnesses under the provisions of Article 16(1)</p>

(limited to the part relating to item (i));

(ii) when, in violation of the disposition (including dispositions made by the investigator pursuant to the provision of Article 16(2)) against a third-party expert under Article 16(1) (limited to the part relating to item (ii)), the third-party expert has failed to appear, failed to give an expert opinion, or given a false expert opinion;

(iii) failing to submit materials in violation of the disposition (including dispositions made by the investigator pursuant to the provision of Article 16(2)) against the possessor of the materials pursuant to the provisions of Article 16(1) (limited to the part relating to item (iii));

(iv) refusing, obstructing, or evading inspection (including the inspection conducted by the investigator pursuant to the provision of Article 16(2)) pursuant to the provisions of Article 16(1) (limited to the part relating to item (iv)).

Article 52 When a person has violated an order under the provisions of Article 30(2), the person who has committed the violation shall be punished by a fine not exceeding one million yen.

Article 53 In any of the following cases, a person who has committed the violation shall be punished by a fine not exceeding 500,000 yen:

(i) failure to give notification as prescribed in Article 3(2), or giving a false notification;

(ii) when the person has failed to submit a report under Article 14(1), or has submitted a report without including the matters to be stated in the report or with false statements.

Article 54 (1) When the representative of a juridical person or an agent, employee or other employee of a juridical person or an individual has committed a violation set forth in Article 49(1) with regard to the business of the juridical person or individual, not only shall the offender be punished but also the juridical person shall be punished by a fine not exceeding 300 million yen and the individual shall be punished by the fine set forth in Article 49(1).

(2) When a representative of a juridical person (including an organization that is not a juridical person and for which a representative or administrator has been designated. The same shall apply hereinafter in this paragraph and the following Article) or an agent, employee or other worker of a juridical person or an individual commits an act in violation of any of the provisions listed in the following items with regard to the business or property of such juridical person or individual, not only the offender shall be punished but also such juridical person or individual shall be punished by the fine prescribed in the respective items:

(i) Article 50: a fine not exceeding 300 million yen;

(ii) Article 51: a fine not exceeding 200 million yen;

(iii) Article 52 or Article 53: a fine prescribed in the relevant Article.

(3) The period of prescription in cases where a juridical person or an individual is punished by a fine due to the violation set forth in Article 49(1) pursuant to the provisions of paragraph (1) shall be the period of prescription for the crime set forth in Article 49(1).

(4) When an organization that is not a juridical person is punished pursuant to the provisions of paragraph (2), its representative or administrator shall represent the organization with regard to the procedural act, and the provisions of the Acts concerning criminal procedures concerning procedural acts if a juridical person is the

accused or the suspect shall apply mutatis mutandis.
Article 55 In the case of a violation of Article 50, the fine set forth in Article 50 shall also be imposed on the representative of the juridical person who has failed to take necessary measures to prevent the violation despite having knowledge of the violation, or who has failed to take necessary measures to rectify the violation despite having knowledge of the violation.
Article 56 A person who has violated a cease and desist order shall be punished by a non-penal fine not exceeding 500,000 yen. Provided, however, that this shall not apply when a criminal punishment is to be imposed for such act; in such cases, other conditions or consequences may apply.
Article 57 A person who violates a judicial decision under the provisions of Article 40(1) shall be punished by a non-criminal fine of not more than 300,000 yen.
<p>Article 58 (1) In the case referred to in Article 50, the court can, depending on the circumstances, make the following pronouncements simultaneously with the rendition of punishment: provided, however, that the pronouncement set forth in item (i) shall be made only when the patent right or the exclusive license or non-exclusive license of the patented invention belongs to the criminal:</p> <ul style="list-style-type: none"> <li>(i) a statement to the effect that the patent under the patent right or the exclusive license or non-exclusive license for the patented invention used for the violation is to be revoked;</li> <li>(ii) the fact that the party may not conclude a contract with the government for a period of not less than six months but not more than three years after the judgment becomes final and binding.</li> </ul> <p>(2) When a judgment which has rendered the pronouncement set forth in item (i) of paragraph (1) becomes final and binding, the court must send a certified copy of the judgment to the Commissioner of the Patent Office.</p> <p>(3) When a certified copy of the judgment under paragraph (1) has been sent, the Commissioner of the Patent Office must revoke the patent under the patent right or the exclusive license or non-exclusive license for the patented invention.</p>
<p>Supplementary Provisions</p> <p>(Effective Date)</p> <p>Article 1 This Act shall come into effect as from the day specified by Cabinet Order within a period not exceeding one year and six months from the day of promulgation. However, the provisions listed in the following items shall come into effect as of the date specified in the relevant item:</p> <ul style="list-style-type: none"> <li>(i) the provisions of Articles 5, 6 and 8 of the Supplementary Provisions: the day of promulgation</li> <li>(ii) Article 2 (excluding paragraphs (9) and (10)), Chapter 2, Article 42 (limited to the part relating to Chapter 2), Article 43, Article 45, Article 47, Article 48, Article 53 (limited to the part relating to item (i)) and Article 54(2) (limited to the portion relating to item (iii) (limited to the part relating to Article 53, item (i))) and (4): The day on which six months have elapsed from the day of promulgation.</li> </ul>
<p>(Examination)</p> <p>Article 2 Approximately three years after the enforcement of this Act, the government shall review the provisions of this Act, considering the status of enforcement of the provisions of this Act, and shall take necessary measures based on the results of the review.</p>
(Adjustment Provisions)

Article 3 If the effective date of this Act (referred to as “Effective Date” in Supplementary Provisions Article 6) is before the effective date of the Act Partially Amending the Code of Civil Procedure, etc. (Act No. 48 of 2022) (hereinafter referred to as the “Effective Date of the Partial Amendment Act” in this Article and Supplementary Provisions Article 6), then, for the application of the provisions of Article 35, paragraphs (1) to (3), and Article 36, paragraph (1), item (i), until the day before the Effective Date of the Partial Amendment Act, the terms “documents or electromagnetic records” in Article 35, paragraphs (1) to (3), and “documents or electromagnetic records” in Article 36, paragraph (1), item (i), shall be read as “documents,” and the terms “owner or person authorized to use such electromagnetic records” in Article 35, paragraph (1), and “owner or person authorized to use such electromagnetic records” in Article 35, paragraph (2), shall be read as “owner.” (2) In the case specified in the preceding paragraph, for the application of the provisions of Article 36, paragraphs (3) and (4), Article 37, paragraph (2), and Article 38, paragraph (1), regarding lawsuits for the cessation or prevention of infringement filed before the Effective Date of the Partial Amendment Act pursuant to the provisions of Article 31, the term “electronic decision document (referring to the electromagnetic record specified in Article 3, paragraph (7), of the Code of Civil Procedure (Act No. 109 of 1996), created pursuant to the provisions of Article 252, paragraph (1), of the same law, as applied mutatis mutandis by Article 122 of the same law, and recorded in a file prepared for use by the court’s computer pursuant to the provisions of Article 253, paragraph (2), of the same law, as applied mutatis mutandis by Article 122 of the same law; the same shall apply hereinafter in the next paragraph and Article 2, paragraph (2) of the Supplementary Provisions)” in Article 36, paragraph (3), and the term “electronic decision document” in Article 36, paragraph (4), and Article 37, paragraph (2), shall be read as “decision document,” and the term “Code of Civil Procedure” in Article 38, paragraph (1), shall be read as “Code of Civil Procedure (Act No. 109 of 1996).”

(Partial Revision of the Act on Costs of Civil Proceedings and the Act on the Establishment of Relevant Acts to Promote the Utilization of Information and Communication Technology in Civil-Related Procedures, etc.)

Article 4 In the provisions of the following laws, under “Application pursuant to the provisions of Article 82, paragraph (1),” add “or application pursuant to the provisions of Article 36, paragraph (1), or Article 37, paragraph (1) of the Mobile Software Competition Act (Act No.58 of 2024)”:

- (i) row 17 (e) of Appended Table 1 of the Act on Costs of Civil Procedure (Act No. 40 of 1971);
- (ii) the provisions revising Appended Table 1 of the Act on Costs of Civil Procedure, etc. in Article 88 of the Act on the Development of Laws to Promote the Utilization of Information and Communications Technology in Civil Proceedings (Act No. 53 of 2023).

(Partial Revision of the Act on Partial Revision of the Code of Civil Procedure, etc.)

Article 5 The Act for Partial Revision of the Code of Civil Procedure, etc. shall be partially amended as follows. In the amendment provisions of Article 4, which add a table after Table 1 of the Act on Costs of Civil Procedure, under “Application pursuant to the provisions of Article 82, paragraph (1),” add “or application pursuant to the provisions of Article 36, paragraph (1), or Article 37, paragraph (1) of the Mobile Software Competition Act.”

(Adjustment Provisions for Partial Revision of the Act on Partial Revision of the Code of Civil Procedure, etc.)

Article 6 If the enforcement date of the Act Partially Amending the Code of Civil Procedure, etc., precedes the enforcement date of the Mobile Software Competition Act, then for the application of the provisions of item



(xii) (b) of Table 2 of the Act on Costs of Civil Procedure during the period up to the day before the enforcement date of the Mobile Software Competition Act, the phrase “application pursuant to the provisions of Article 36, paragraph (1) or Article 37, paragraph (1) of the Mobile Software Competition Act” in item (ii) shall be read as “application.”

(Partial Revision to the Basic Act on the Formation of a Digital Society and other laws to promote regulatory reforms for the formation of a digital society)

Article 7 Amendments to The Act Partially Amending the Basic Act on the Formation of a Digital Society and Related Acts in Order to Advance Regulatory Reforms That Are Meant to Help Form a Digital Society (Act No. 63 of 2023) shall be made as follows:

in item (i) of Article 2 of the Supplementary Provisions, after “Article 10,” add “or Article 42 of the Mobile Software Competition Act (Act No.58 of 2024).

(Delegation to Cabinet Order)

Article 8 In addition to what is provided for in these Supplementary Provisions, transitional measures necessary for the enforcement of this Act shall be specified by Cabinet Order.