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Response to Invitation to comment on Strategic Market Status Investigations into Apple's and Google's mobile ecosystems

The Japan Association of New Economy (JANE) welcomes the opportunity to provide comments on the Strategic Market Status Investigations into Apple's and Google's mobile ecosystems. As a business association dedicated to fostering innovation, entrepreneurship, and market competition, JANE recognizes the critical importance of addressing the challenges posed by the dominance of major players in the mobile ecosystem. Apple and Google's significant influence over mobile operating systems, app stores, and related digital activities has far-reaching implications for competition, innovation, and consumer welfare.

This response aims to provide insights into the scope of the investigation, highlight key concerns regarding Apple's and Google's practices, and offer recommendations for potential interventions. Drawing on observations from the Japanese market and international regulatory developments, JANE emphasizes the need for effective enforcement mechanisms and cross-jurisdictional collaboration to ensure fair competition and protect the interests of businesses and consumers alike.

Q1: Do you have any views on the scope of our investigations and descriptions of Apple's and Google's mobile ecosystem digital activities?

The scope of the investigation is deemed appropriate. It is particularly important to focus on the following key areas:

- The oligopolistic state of the mobile OS market
- Dominance in app stores
- Access and functionality restrictions in mobile OS

Similar issues are evident in the Japanese market, where Apple and Google dominate, significantly impacting both consumers and app developers.

Q2: Do you have any submissions or evidence related to the avenues of investigation set out in paragraph 70-72? Are there other issues we should take into account, and if so why?

The proposed avenues for the investigation are considered appropriate. By examining the entry barriers related to mobile OS provision, the competitive constraints between major OS providers, and the competitive constraints related to app stores and browsers, as outlined in Paragraph 70, the substantial and entrenched market power of the two companies can be effectively assessed.

Q4: Which potential interventions should the CMA focus on in mobile ecosystems? Please identify any concerns relating to Apple's or Google's mobile ecosystems, together with evidence of the scale and/or likelihood of the harms to your business; or to consumers.

The following concerns have been identified:

1. App Stores

- Unfair treatment of app developers, such as sudden app removals without warning, forces developers to make updates and causes inconvenience to app users who lose access to the app.
- App developers are required to pay up to a 30% commission to app store operators. Additionally, the mandatory use of IAP (In-App Purchases) and the prohibition of directing users to external websites outside the app store reduce developers' revenue.
- The mandatory use of IAP prevents app developers from using more flexible and lower-cost external payment systems.
- The prohibition of directing users to external websites forces consumers to purchase through the app store instead of cheaper options on websites, increasing their financial burden.
- Payment information is exclusively controlled by the app store operator's system, leaving app developers without access to it. This complicates customer support tasks, such as processing cancellations.

2. OS

- Restrictions on access to specific features, like NFC chips, prevent app developers from offering services equivalent to those of OS providers. This

hinders competition and limits consumer choices.

Q5: Are the potential interventions set out above likely to be effective, proportionate and/or have benefits for businesses and consumers?

Yes. The potential interventions are expected to benefit businesses and consumers.

1. App Stores

- The potential interventions listed, particularly those in Paragraphs 85-a-i, 85-a-ii, 85-a-iii, 85-a-v, 85-b-i, 85-b-ii, 85-c-i, 85-c-ii, and 85-c-iii, are expected to address the concerns outlined in Q4 and bring benefits to businesses and consumers.

2. OS

- The potential interventions, particularly those in Paragraphs 83-b-i, 83-b-ii, and 83-b-iii, are expected to address the concerns listed in Q4 and bring benefits to businesses and consumers.

3. Enforcement of Conduct Requirements (CR) and Countervailing Benefits Exemption (CBE)

- To effectively enforce the Potential Interventions, it is crucial to evaluate the Countervailing Benefits Exemption (CBE) as stipulated in Article 29 of the DMCCA. This is because SMS operators may disguise actions that conflict with the purpose of the law by invoking reasons such as security.
- This issue arises in Conduct Investigations where CR violations are suspected. To correct the behavior of SMS operators through the strict enforcement of CR, it is crucial for the CMA to strictly assess the five conditions outlined in the Guidance on the Digital Markets Competition Regime set out in the Digital Markets, Competition and Consumers Act 2024 (December 2024):
 - ✓ Condition 1: Benefits to users or potential users
 - ✓ Condition 2: Benefits must outweigh the detrimental impact on competition
 - ✓ Condition 3: Benefits could not be realized without the conduct
 - ✓ Condition 4: Proportionality
 - ✓ Condition 5: No elimination or prevention of effective

competition

Q6: What key lessons should the CMA draw from interventions being considered, imposed and/or implemented in relation to mobile ecosystems in other jurisdictions?

As highlighted in Q5, the effectiveness of this legislation relies on ensuring that SMS operators do not easily justify their existing practices by invoking grounds such as security.

1. Japan

- In Japan, the Act on Promotion of Competition for Specified Smartphone Software (APCSSS) has been passed and is set to be enforced in 2025. The APCSSS stipulates the potential application of "Justifiable Measures" (measures required to achieve goals like security, privacy, and youth protection, as long as these goals cannot be achieved through less restrictive alternatives).

2. EU

- The Digital Markets Act in the EU imposes regulations on gatekeepers. Gatekeepers may implement measures that might conflict with DMA regulations, provided that such measures are duly justified by the gatekeeper as "strictly necessary and proportionate" for reasons such as security or integrity.

While these laws are still relatively new in both jurisdictions, the CMA should establish close cooperation with enforcement authorities in the EU and Japan to ensure effective implementation. By sharing knowledge and experiences from each jurisdiction through this collaboration, the effectiveness of enforcement efforts is expected to improve.



About Japan Association of New Economy

Japan's newest business association dedicated to creating an environment in which individuals and private companies can maximize their potential for economic and social reform centered on digital. With the basic principle of “Give more authority to private sector”, JANE publishes numerous policy proposals and statements of both regulatory reform and market creation type every year.

It has a diverse membership that transcends the boundaries of size and industry, ranging from start-ups to large corporations, and from IT companies to construction and manufacturing companies. In addition, more than half of the approximately 50 board members and executives are founders of the company, which distinguishes JANE as an "economic organization where entrepreneurs gather".

In 2022, the year of its 10th anniversary, JANE is further revitalizing its activities under the new slogan "Japan Transformation" as a guideline that encompasses the origin of its activities: the promotion of “innovation, entrepreneurship, and globalization”.