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Submission from the Japan Association of New Economy (JANE) on the CMA's Strategic Market Status (SMS) Investigation

The Japan Association of New Economy (JANE) welcomes the Competition and Markets Authority's (CMA) publication of its proposed decision to designate Apple with Strategic Market Status (SMS) for its mobile platform under the Digital Markets, Competition and Consumers Act 2024 (the Act). As a business association dedicated to promoting innovation, entrepreneurship, and fair market competition, JANE recognizes the critical importance of addressing the challenges that the dominant position of major players in the mobile ecosystem poses to competition, innovation, and consumer welfare.

JANE hereby submits its views on the proposed decision, structured according to the consultation questions.

1. Do you have any views on our proposed descriptions of the relevant digital activities, namely (i) the smartphone operating system, (ii) the tablet operating system, (iii) native app distribution, and (iv) mobile browser and browser engine?

JANE considers the scope of the investigation and the CMA's description of the digital activities within Apple's mobile ecosystem to be appropriate. The proposed focus on the key areas of "smartphone operating system, tablet operating system, native app distribution, and mobile browser and browser engine" is essential for a comprehensive assessment of Apple's dominant influence across the mobile ecosystem.

2. Do you have any views on our provisional conclusion that it would be appropriate to treat those activities as a single digital activity, referred to as a mobile platform, whose purpose is to facilitate interactions between

users and providers of digital content and services on Apple's mobile devices in order to allow users to access, view and engage with such content and services on their mobile devices?

JANE strongly supports the CMA's provisional conclusion to treat these activities as a single "mobile platform." As stated in our submission this past February, these activities function as a tightly integrated ecosystem, making a holistic approach essential to evaluate their collective impact. The proposed decision's conclusion that these activities are carried out in combination to fulfill the specific purpose of "facilitating interactions between users and providers of digital content and services on Apple's mobile devices" (Proposed Decision, paras 4.70-4.71) is perfectly aligned with our understanding.

3. Do you have views on our provisional finding that the competitive constraint on Apple's mobile platform from Google's and other rival mobile ecosystems is limited? This relates specifically to the competitive constraint in attracting i) end users and ii) content providers.

JANE fully agrees with this provisional finding by the CMA. The CMA's analysis clearly demonstrates that Apple's mobile platform faces only limited constraint from other mobile platforms in acquiring end-users. This is attributed to the limited switching between Apple's and Google's platforms and the negligible market share of other mobile platforms (Proposed Decision, para 6.66). This finding corroborates JANE's long-held view that Apple and Google operate as a duopoly in the mobile ecosystem, where a lack of alternatives—particularly in app distribution and browser services—stifles competition and severely limits consumer choice.

4. Do you have views on our provisional finding that there are high barriers to entry and expansion for mobile platforms?

JANE agrees with the CMA's provisional finding. As the CMA points out, indirect network effects, significant fixed costs, and the incumbents' established positions create extremely high barriers for new mobile platform providers to

enter, compete, and expand (Proposed Decision, para 6.142). Furthermore, as the CMA itself notes with concern in its proposed decision (para 1.11(e)), "restrictions on third-party access to features and functionality within the operating systems" serve as a serious barrier to entry for new innovators in fields such as digital wallets and connected devices. Given the dominant influence of the major players in the mobile ecosystem, it is clear that these barriers to entry are substantial, aligning with the concerns JANE has expressed for many years.

5. Do you have views on our provisional finding that the competitive constraint on Apple's mobile platform from i) alternatives to content distribution within Apple's mobile ecosystem and ii) alternatives on non-mobile devices is limited?

JANE agrees with this provisional finding. The CMA's analysis concludes that alternatives such as web apps, super-apps, AI tools, and content distribution on non-mobile devices currently exert only limited competitive constraint (Proposed Decision, paras 7.82-7.86). The fundamental reason that alternatives like web apps provide only limited constraint is precisely because Apple unfairly restricts access to key OS-level functions and APIs. This prevents alternatives from offering an experience equivalent to native apps and stifles innovation. This point is clearly highlighted in the CMA's proposed decision (para 1.11(e)) and strongly supports JANE's view on the "lack of alternatives to core services."

6. Do you have views on our provisional conclusion that there are no expected or foreseeable developments that are likely (whether individually or in combination to be sufficient in scope, timeliness and impact to eliminate Apple's substantial market power in the provision of its mobile platform over the next five years?

JANE agrees with the CMA's provisional conclusion. The CMA's analysis concludes that no market, technological (AI, connected devices, edge computing, network advancements, cross-platform gaming), or regulatory developments will be sufficiently impactful to eliminate Apple's market power

within the next five years (Proposed Decision, para 8.75). The CMA's assessment that AI, in particular, may actually strengthen Apple's market position is significant. JANE has long expressed concerns about existing market power, and we believe that natural market evolution alone is insufficient to correct this situation. Therefore, we emphasize that decisive intervention by the CMA and the effective implementation of subsequent measures are essential to ensure effective competition.

7. Do you have views on our provisional conclusion that Apple has substantial and entrenched market power (SEMP) and a position of strategic significance (POSS) in respect of its mobile platform?

JANE strongly supports the CMA's provisional conclusion that Apple has substantial and entrenched market power (SEMP) and a position of strategic significance (POSS) in its mobile platform. As shown in the CMA's profitability analysis (Proposed Decision, Annex B), Apple's return on capital employed (ROCE) has been consistently and extremely high over the past decade, significantly exceeding its weighted average cost of capital (WACC), which is a strong indicator of entrenched market power (Proposed Decision, para 8.69). Furthermore, the CMA's rationale for POSS—that Apple's mobile platform is used by a vast number of UK users and serves as essential infrastructure for numerous UK businesses—is appropriate. This SMS designation is a critical first step toward achieving the goals of promoting fair competition and protecting consumer welfare.

8. Do you have any other views in relation to the assessment/evidence set out in the proposed decision?

JANE highly commends the CMA's comprehensive and detailed analysis in the proposed decision. Building on our previous submissions, we wish to emphasize the following points, which we consider critical for the consideration of future measures.

a) Ensuring the Effectiveness of Conduct Requirements and the Risk of

Circumvention

SMS undertakings have a strong incentive to use legitimate-sounding reasons, such as security and privacy protection, as a shield for conduct that undermines the spirit and purpose of the law.

As the CMA itself notes in the proposed decision, the European Commission is already conducting multiple investigations into Apple's compliance with the Digital Markets Act (DMA). This indicates a real risk that SMS undertakings will seek loopholes to circumvent their obligations. Therefore, any future Conduct Requirements must include specific and detailed provisions to prevent circumvention and ensure that the measures achieve their intended purpose.

b) Lessons from International Experience and Creating Fair Revenue Opportunities

The CMA should actively draw lessons from similar regulatory interventions in other jurisdictions, such as the EU's DMA and Japan's "Act on Promotion of Competition for Specified Smartphone Software." The inclusion of alternative app stores, sideloading, and alternative payment methods as priority areas in the CMA's published roadmap is commendable and aligns with international trends. Close collaboration with international regulators in these areas is crucial to prevent circumvention by globally operating SMS undertakings.

In particular, "steering", which the CMA is prioritizing, is vital for reducing the "excessive fees" Apple imposes on developers. This point is further substantiated by the U.S. court ruling in the Epic Games lawsuit, which found Apple's anti-steering provisions to be illegal (Proposed Decision, para 8.5(c)). The supernormal profits shown in the proposed decision's profitability analysis are evidence that these fees are far from a competitive level. JANE strongly supports the introduction of measures regarding steering and urges that they be implemented swiftly and effectively to ensure they are not merely nominal, but substantively reduce the fee burden on developers and, in turn, deliver benefits to consumers.

c) Ensuring Fair Access to OS Functions as the Core of Innovation

JANE believes it is essential that future Conduct Requirements ensure fair, reasonable, and non-discriminatory (FRAND) access to OS functions (APIs, hardware integration, etc.). As the CMA points out in its proposed decision (para 1.11(e)), Apple restricts third-party access to OS functions, thereby favoring its own services and stifling innovation in key areas such as digital wallets, connected devices, and innovative apps that integrate with deep OS features. This access restriction is one of the core problems that allows Apple to maintain and strengthen its dominant position. Therefore, future remedies must impose specific and effective obligations on this point.

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”.