

Japan Fair Trade Commission (JFTC) Preparing for More Proactive Enforcement: Key Things to Be Aware Of

Executive Summary

- The Japan Fair Trade Commission (JFTC) has been actively enhancing its capabilities to investigate the competitive environment in the tech sector of Japan's economy.
- JFTC has proposed significant budget and personnel increases for the next fiscal year, and it intends to strengthen its already-close coordinate with EU and U.S. regulators.
- More specifically, JFTC is considering a fact-finding investigation into competition issues within the generative artificial intelligence (AI) market, and competitive issues related to businesses utilizing generative AI may emerge in society.
- JFTC efforts are also likely to accelerate when the Act on Promotion of Competition for Specified Smartphone Software will come into effect by the end of 2025.
- While big tech firms comprise the primary targets of these laws and of potential JFTC actions, players throughout the generative AI, online service and smartphone software ecosystems can anticipate implications.
- APCO recommends multinational firms monitoring EU and U.S. regulators should also carefully assess their competitive environment in Japan and more closely follow JFTC's movements to avoid the risk of new/expanding regulations and reputational damage.

Recent JFTC's Developments

Considering investigation of the generative AI related market

On 17 July 2024, [during the JFTC's regular press conference](#), the secretary-general revealed that they are considering conducting a fact-finding investigation on the AI-related market. During the conference, the secretary-general specifically mentioned three issues:

1. The possibility that competition in the foundational model sector could be constrained due to artificial limitations on key resources, such as semiconductors, cloud services, specialized personnel and high-quality data, which are concentrated in a small number of providers, including existing big tech companies;
2. The possibility that foundational model providers could develop these models in a way that favors their own products or services; and
3. Concerns about tying, lock-in practices, corporate mergers, alliances and the formation of ecosystems.

Soliciting public input on the smartphone market

On 31 July 2024, the JFTC [announced](#) that it would broadly solicit information to effectively prepare for the enforcement and operation of the Act on Promotion of Competition for Specified Smartphone Software. This includes gathering insights into the business practices between designated provider and app developers, understanding plans for new services spurred by the Act and collecting opinions on how the JFTC should enforce the Act.

Expanding its staff and budget

On 28 August 2024, the media [reported](#) that the JFTC plans to expand the capacity of its Digital Market Comparative Investigation Office, increasing its staff from 14 to approximately 50 members. It is expected that JFTC will increase its staff in security and digital fields to catch up with this fast-paced sectors. The enhancement of the JFTC's capabilities is explicitly outlined in [the government policy document](#) approved by the Cabinet in 2023. In particular, it includes a note on the recruitment of experts in cloud computing, information technology and information security to the JFTC to expedite the assessment of transaction conditions in the digital market field. Additionally, this decision comes in response to concerns raised by Diet members during discussions in the Diet regarding the effectiveness of the JFTC. In the discussion, Minister Hanako Jimi responded by stating the intention to enhance the JFTC's capabilities in quality and quantity.

In addition to personnel expansion, the JFTC has also [requested](#) a significant increase in its budget for the upcoming fiscal year. The proposed budget is expected to rise from this year's 12.1 billion JPY to 17.4 billion JPY. The budget proposal will be reviewed, finalized and approved during the Diet session starting early next year.

Coordinating with EU and U.S. regulators

Additionally, the JFTC has been working closely with competition authorities in EU and the United States, among others, to develop and refine the Act on Promotion of Competition for Specified Smartphone Software. In particular, the JFTC has used the EU's Digital Markets Act (DMA) as a reference.

Implications to Business

Potential expansion of regulatory scope

During the discussions on the Act on Promotion of Competition for Specified Smartphone Software in the Diet, some members questioned whether the regulations should also apply to devices other than smartphones such as tablet devices and pointed out the Act is limited and insufficient. In response, the JFTC explained that the Act is currently limited to smartphone-related software because over 90% of households in Japan own smartphones, making them a foundational aspect of Japanese daily life and economic activity.

Given the trajectory of recent developments and past discussions, we anticipate calls to expand JFTC's regulatory scope, especially in the generative AI market and to address competitive issues in areas considered in the Digital Markets Act but not regulated by the Smartphone Software Act. Services fitting this description include messaging apps, video sharing services, social networking services and cloud services, which are deeply integrated into daily life for both consumers and businesses in Japan.

Increasing reputation risk related to competition investigations

Businesses involved in online platform services and generative AI should be mindful that competitive issues are likely to be scrutinized. Key issues such as anti-competitive practices, and barriers to entry are increasingly drawing the attention of the JFTC. If businesses fail to address these competitive issues proactively, they risk lengthy investigations which impact reputation and will likely be amplified by negative press articles and social media. By proactively engaging in transparent practices, maintaining a

fair competitive environment and complying with emerging regulations, businesses can safeguard their reputations and mitigate risks tied to regulations and public scrutiny.

What to Watch Out for Next

Timing and outcomes of JFTC's fact-finding investigation

The schedule for this investigation that the JFTC is considering is expected to be determined based on the discussions at the G7 summit to be held this fall in Italy. Therefore, businesses should closely watch JFTC for further developments and discussion towards the end of this year.

Announcement of cabinet order and guidelines of the Smartphone Software Act

The detailed criteria of designated provider, operational standards and specific interpretations of this Act will be clarified through future Cabinet order, JFTC's regulation and guidelines. The Cabinet order is expected to be finalized by 19 December 2024, and it will detail the criteria for designating providers, using metrics such as the number of users and the scale of business operations. In the next year, JFTC's regulations and guidelines will be published to clarify detailed operational standards and specific interpretation of the Act.

Public comments about the Smartphone Software Act

It remains unclear when and how the public comments will be published, but they are likely to be reflected in discussions regarding the formulation of guidelines for the implementation of the Act, as well as in discussion aimed at ensuring the effective enforcement of the Act after it comes into effect. Therefore, it will be important to closely monitor the JFTC's discussions related to these matters.

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Appendix

Overview of the Act on Promotion of Competition for Specified Software

- In Japan, the Act on Promotion of Competition for Specified Smartphone Software was passed and promulgated in June 2024. This Act is expected to take effect by the end of 2025.
- Until now, the provision of smartphone software has been dominated by a small number of powerful providers, resulting in an oligopolistic market.
- The existing Antimonopoly Act operates on an ex-post basis, meaning it takes considerable time to prove competitive issues, delaying necessary improvements. In fast-developing technology sectors, this has proven insufficient for addressing competition-related problems effectively. The newly passed Act introduces ex-ante regulations that define prohibited and compliance-related actions in advance, aiming to create a fair and open competitive environment that fosters innovation and offers consumers a broader range of choices.

Who is Subject to this Act?

- The Act focuses on four key categories of “specified software”: operating systems (OS), app stores, browsers and search engines.
- Under the Act, businesses providing “specified software” and operating at scales exceeding certain thresholds will be classified as “designated providers.” The regulations establishing these thresholds will be clarified by 19 December 2024.

- **What Are the Prohibitions and Obligations Under This Act?**

- The Act introduces nine prohibitions and five compliance obligations, establishing a pre-regulation framework as a complement to the existing Antimonopoly Act.

Prohibitions

- i. Unfair use of acquired data
- ii. Unfair treatment of app developers
- iii. Obstructing the provision of other app stores (with justification clauses)
- iv. Obstructing the use of mobile OS features (with justification clauses)
- v. Obstructing the use of other payment systems (with justification clauses)
- vi. Restrictions on outlinks and steering (with justification clauses)
- vii. Obstructing the use of other browser engines (with justification clauses)
- viii. Forcing the use of the company's own social login
- ix. Preferential treatment of the company's own services in search result displays

Obligations

- i. Disclosure of conditions for the use of acquired data
- ii. The transfer of acquired data to users
- iii. Changes in default settings and the display of selection screens
- iv. Consent for additional installations and uninstallation procedures
- v. Disclosure of specification changes and ensuring sufficient time for compliance

Other

- i. Disadvantageous treatment for reporting to the JFTC

What Are the Penalties Under This Act?

- Considering the high profit margins of platform operators, the penalty is set at 20% of the sales amount in Japan for goods or services related to the violation. In cases of repeated violations, the rate increases to 30%. These rates are significantly higher compared to the existing Antimonopoly Act, where the rate for exclusionary private monopolization is set at 6%.

Comparison with EU's DMA

JP Act on Promotion of Competition of Smartphone Software	EU Digital Markets Act
<p>Regulatory scope (Specified Software)</p> <ul style="list-style-type: none"> • Mobile operating system • App stores • Browser • Search engine 	<ul style="list-style-type: none"> • Regulatory scope (Core Platform Service) • Online intermediation services • Online search engines • Online social networking services • Video-sharing platform services • Number-independent interpersonal communications services • Operating system • Web browsers • Virtual assistants • Cloud computing services • Online advertising services
<p>Target players (Designated Provider)</p> <ul style="list-style-type: none"> • Criteria of Designated Provider will be clarified by 19 December 2024 	<p>Target player (Gatekeeper)</p> <ul style="list-style-type: none"> • Alphabet • Amazon • Apple • Booking • ByteDance • Meta • Microsoft

Implications to Business

The formation of a new app store market. The Act on Promotion of Competition for Specified Smartphone Software will open business opportunities for companies by facilitating easier access to the third-party app store business, while allowing app developers to expand their app sales across multiple platforms. For example, Epic Games began operating its app store for both Android and iOS in the EU on 16 August 2024 after the implementation of the DMA and has also launched an app store for Android in Japan. They have announced that an iOS version is expected to be released in the latter half of 2025 in Japan.

As the competitive landscape surrounding app stores changes, it is essential to closely monitor the market developments of who will be in the app store market and which app store is gaining popularity, including announcements from competing companies. Following developments in the EU will be a good first step. For app developers, it is important to closely monitor the emergence of new app stores. While expanding sales channels beyond Apple's App Store and Google's Google Play Store to increase sales opportunities is crucial for business, the potential rise of various new app stores also means developers need to analyze safety, security, and user characteristics of these new app store as more diverse platforms may appear in the future.

Potential reduction of app store fees for app developers. With increased competition amongst app stores, there is a possibility that fees paid by app developers to sell their apps on platforms like the App Store and Google Play Store could decrease. Currently, these fees can be as high as 30%, although most developers pay around 15%. This reduction in fees could lessen the financial burden on app developers, allowing them to reinvest into further app development. Additionally, by lowering the prices of apps, developers may encourage more purchases by users. JFTC Chair Kazuyuki Furuya said during the Diet discussion that he hopes that new entry of app stores will emerge and competition will be promoted, leading to a reduction in fees. However, there is uncertainty that fees will be lower, and the Act on Promotion of Competition for Specified Smartphone Software will help alleviate the burden for app developers. Indeed, Apple reduced the fee for the EU market but introduced a new fee system called core technology fee. Moving forward, app developers should closely work with discussion and development of industry groups such as Mobile Content Forum.

Potential increasing demand for external communication and engagement with stakeholders. With the implementation of the Act on Promotion of Competition for Specified Smartphone Software, the importance of external communication and collaboration with external stakeholders in Japan is expected to increase even further.

- **Educating users:** Since users can install apps from app stores other than those they typically use, there is a heightened risk that apps containing inappropriate content for minors, which have not undergone strict screening, could be distributed. Additionally, there may be an increase in cases where users, especially youth and the elderly, mistakenly download fake apps with identical logos to their smartphones, leading to incidents of personal information leakage. Therefore, it is becoming increasingly necessary for businesses to take preventive measures by notifying users about the correct links to the app stores where their apps are legitimately available. When educating consumers about the safety of downloading apps, app store operators must tread carefully. It is crucial to highlight the importance of using trusted app stores without creating an environment that may be seen as anti-competitive. If influential app stores excessively promote their own platforms as the safest option and redirect users to their stores, this behavior could be interpreted by the JFTC as an attempt to block new or emerging app stores from entering the market. Existing app stores should focus on broad public education about app security and safe downloading practices.
- **Crisis communication:** If fake apps become widespread, it will be crucial for businesses to immediately inform users, explaining the situation and urging them to download the official app from the correct source. This is necessary because users may find it difficult to distinguish between well-crafted fake apps and the genuine ones. Failure to communicate effectively with users could lead to a decline in the corporate reputation.