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## Japan FTC Published Report on Mobile OS and App Distribution Sector Inquiry

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### Summary

The Japan Fair Trade Commission (JFTC) published a 157-page report on 9th February 2023 (see [here](#) the press release), focusing on issues in the market structure and the lack of competitive pressure in the markets of essential software for smartphones (mobile OS) and app distribution services, both of which Apple and Google mainly provide. The report also focuses on whether the impact of competition in these markets would influence the competition in the app and other smartphone-related markets.

The fact that the mobile OS and app distribution service market lack sufficient competition has prompted concerns about Google and Apple's dominance. The report states that the mobile OS market share is 46.6% for Apple's iOS and 53.4% for Google's Android. The shares of the App Store in iOS and Google Play in Android are 100% and 97.4%, respectively, indicating that these markets are dominated by the two companies and making it difficult for other companies to enter. The JFTC reiterated the importance of creating a competitive environment in both markets through competition policy measures that increase opportunities for entry to these markets.

Although Google, Apple, and third-party developers are all producing new apps and products (e.g., apps for healthcare and maps, products and services such as a smartwatch and voice assistant) in the app and smartphone-related markets, competition is still limited. For example, the JFTC states that, in these markets, Apple and Google might exclude their competitors through self-preferencing, which is prohibited under Antimonopoly Act (AMA). The JFTC also suggests that Google and Apple are highly likely to have a superior bargaining position before app developers. If they set a high level of fees in their app stores, they might abuse their superior bargaining position against app developers, which is also prohibited under the AMA.

### Concerns raised by JFTC

#### *Excessive pricing on app store commissions*

The report highlights that the fees charged to app developers in app stores may remain high, causing deep dissatisfaction among them. The high fees lead to the high cost of digital content and in-app payments, which interferes with transactions between the competitors and consumers and/or

reduces the trade opportunities for the competitors. It would be problematic under the AMA (provided the prohibition of private monopolization and interference with a competitor's transactions).

Additionally, given that Google and Apple have a superior bargaining position against app developers, the unilateral setting of excessively high fees can unjustly disadvantage app developers. These would also be problematic under the AMA under the prohibition of abuse of a superior bargaining position.

#### *Foreclosure of competitors from the app market and other smartphone-related markets*

The report also stated that Google and Apple, respectively, can exclude their competitors by favouring their apps or other smartphone-related products and services over those of their competitors by following a myriad of conducts.

#### *Self-preferencing related to the mobile OS*

Using their dominant position as mobile OS providers, Google and Apple may restrict their competitor's access to smartphone functions such as API connections, providing early access to mobile OS updates to their app development staff or constraining competitors' business models through OS updates. If it leads to treating their apps, products and services more favourably than those of competitors and interfering with transactions between the competitors and consumers or reduce in trade opportunities for the competitors, it might be caught under the prohibitions of the AMA.

#### *Self-preferencing related to app store management*

By using their dominant position as app store operators, Google and Apple's conducts by manipulating search algorithms or app store rankings in favour of their apps, collecting fees from their competitors while not charging them for their proprietary services, or disadvantaging competitors' apps through app reviews, could be problematic under the AMA.

#### *Self-preferencing related to the use of data*

By using their position as dominant mobile OS providers/app store operators, Google and Apple have access to a wide range of data generated by other app developers, including location information and payment history. They can also collect information related to new functions by other app providers before the app is newly released. This allows Google and Apple to develop and provide their apps, products and services in a more advantageous way than competitors. This set of practices may also deem problematic under the AMA.

### *Self-preferencing by influencing consumer choice*

Google and Apple's position as mobile OS providers and app store operators may allow them to influence consumer choice in their favour by creating an advantage for their apps or services. For example, when Google disables the uninstallation of pre-installed apps or provides financial incentives to smartphone manufacturers if they do not pre-install apps other than Google's, Google may be creating an advantage in consumer choice that may raise concerns under AMA.

### *Conducts causing unjust disadvantage to the parties of the contracts*

The JFTC also raised concerns as to the disadvantageous treatment of app developers.

Given the lack of competitive pressure between Google and Apple and other companies in the mobile OS and app distribution service markets, Google and Apple are highly likely to have a "superior bargaining position" in service transactions with other app developers. If Google and Apple require app developers to update mobile OS specifications frequently without sufficient preparation time, it incurs high costs for other app developers. It unjustly disadvantages them, which would fall under the prohibition of "abuse of superior bargaining position" under the AMA.

## **Proposal by JFTC**

### *Measures to be taken from the competition policy perspective*

The JFTC reiterated that the mobile OS and app distribution markets need more competition. In general, even in a monopoly or oligopoly market, the market is expected to improve if there is sufficient entry pressure or active competition among incumbent operators. The JFTC suggests that implementing competition policy measures, such as allowing more potential competitors to enter the market, will create a healthy competitive environment and alleviate concerns about the current market situation.

Given these situations, to achieve a healthy competitive environment in the mobile OS and app distribution service markets, the JFTC highlights three key competition policy measures:

- Preventing self-preferencing in the app market and other smartphone-related markets;
- Ensuring a healthy competitive environment in the mobile OS market and the app distribution service market, and;
- Ensuring fairness in rulemaking for the mobile ecosystem.

### *Possibility of Introducing Ex-Ante Regulation*

Although the JFTC mentioned that the enforcement of the AMA against anti-competitive conduct might be effective, it also admitted that it might take time and require highly specialized knowledge and extensive work to capture these practices through sanctioning proceedings. This is

because verifying market definitions and competitive harms can be time-consuming and complex for the competition authority. In this regard, the JFTC argued that new laws might be necessary to better deal with concerns.

Discussions are already underway regarding the introduction of new regulations (see summary [here](#) of the interim report), such as regulations like the EU's DMA (the Digital Market Act). The head of the Digital Market Planning and Research Unit at the JFTC stated in a press conference that he wants to cooperate firmly and contribute to discussions on future rulemaking by the Government (see slide 10 of the summary of the interim report).

The JFTC report provides a highly detailed analysis and is expected to serve as reference material for the Japanese Government's Headquarter for Digital Market Competition in considering whether to introduce new *ex-ante* regulations for Apple and Google. The release of the JFTC report will likely accelerate the Japanese government's discussions, and future developments should therefore be closely monitored.

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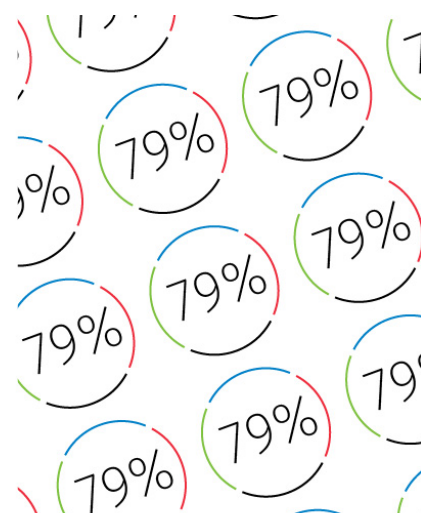
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