

*Tentative
translation*

Outline of the Act on Promotion of Competition for Specified Smartphone Software

**June 2024
Japan Fair Trade Commission**

- The Act aims to **foster innovation** and **expand options for consumers** through **ensuring a fair and competitive environment in the digital field**, Japan's **engine of economic growth** to be.
 - As application stores, etc., for smartphones – which have become important social infrastructure – are provided in oligopoly markets, the government needs to ensure that startups and other businesses, not only digital platform operators, **can fairly and equitably enjoy the fruits of digital markets' growth as well.**
- The EU has pioneered new regulations in this field, **and in order for the digital markets of the EU, US, and Japan to work in lockstep to set fair competition practices for platform operators, a new legal framework is also needed in the Japanese market to confront digital platform operators.**



【EU】 Digital Markets Act (DMA)'s obligations fully applicable as of March 2024



【USA】 Lawsuits by the Department of Justice against digital platform operators



【UK】 Digital Markets, Competition and Consumers Bill underway※ in the UK Parliament

※ *Passed in May 2024*

Background

- **As smartphones rapidly spread and become the basis of social lives and economic activities, the business operators that provide the specified software, etc., especially necessary for the use of smartphones (mobile operating systems (OS), application stores, browsers, and search engines – hereinafter referred to as “Specified Software” below) are in an oligopoly market with a small number of specific powerful providers.**
- Fair and free competition in Specified Software markets is hindered by these providers’ anticompetitive practices. However, it is **difficult to restore fair and free competition** due to issues in these markets; **self-correction by market mechanisms such as new entries is difficult** and it **takes a remarkably long time to demonstrate anticompetitive activities in response to individual cases under the Antimonopoly Act.**
- In light of this situation, **it is necessary to develop a competitive environment** for Specified Software for smartphones, **while ensuring security, privacy, etc., so that through competition, innovation by various entities will be fostered and then consumers will be able to select the various services that will be created by such innovation and enjoy the benefits of those services.**

Outline of the Act

(1) Designation of Specified Software providers

The Japan Fair Trade Commission (JFTC) designates software service providers that conduct business exceeding a certain scale defined in a Cabinet Order for each type of Specified Software. (Providers that fall under Cabinet Order criteria will be referred to as “Designated Providers.”)

(2) Prohibited conducts and compliance requirements (ex-ante regulations)

To address competition issues surrounding Specified Software, the Act stipulates certain activities in which Designated Providers are prohibited from engaging (“Prohibited Conducts”), and certain measures they are obliged to take (“Compliance Requirements”).

(3) Measures to ensure regulatory effectiveness

The Act includes provisions obliging Designated Providers to submit compliance reports; enabling stakeholders to submit information; enabling relevant ministries and agencies to cooperate; granting the JFTC to investigate, issue cease-and-desist orders, surcharge payment orders, etc.

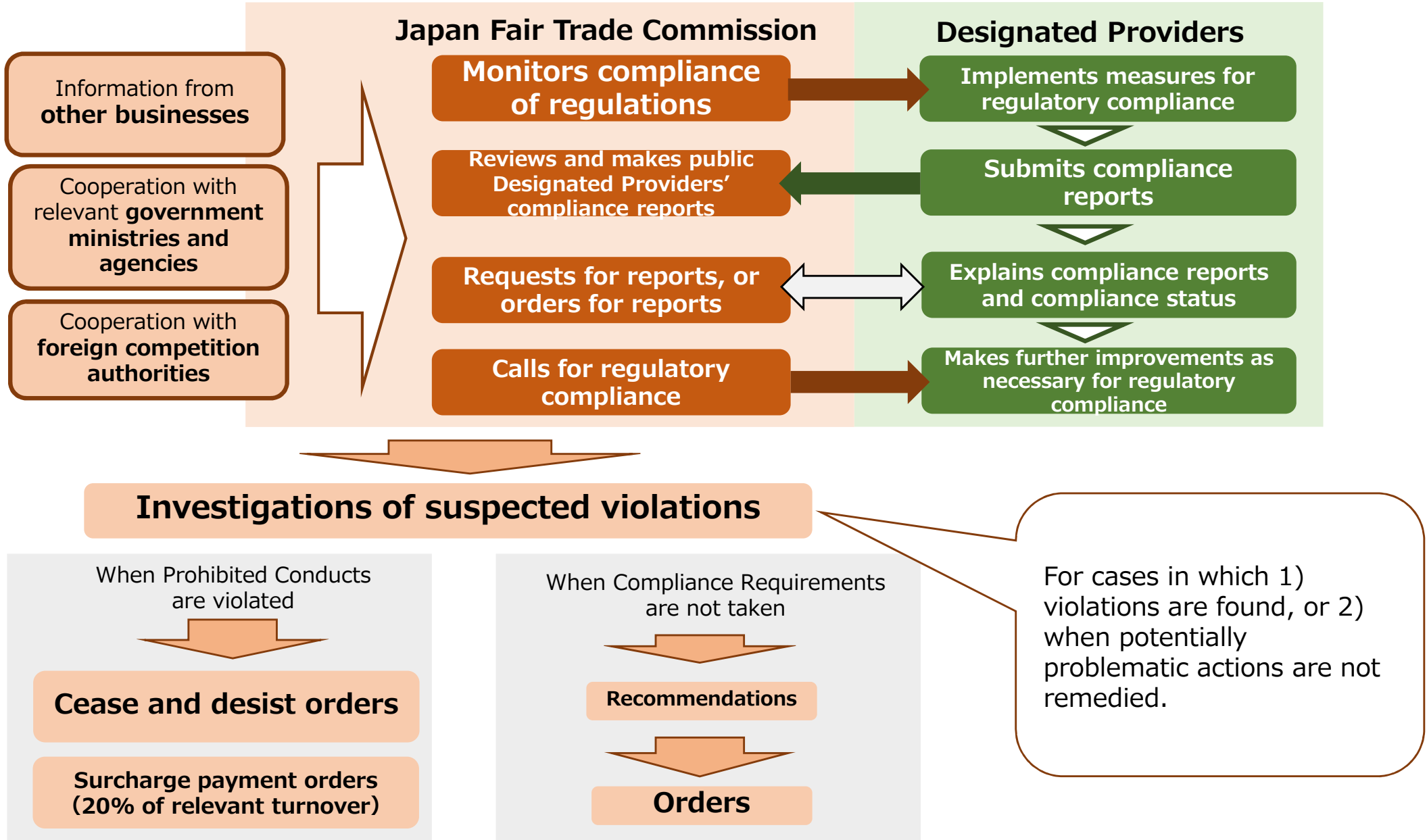
(4) Effective date

The Act shall come into force on the date to be set forth by a Cabinet order within one and a half years after the date of the promulgation of this Act (excluding certain provisions).

<p>(1) Regarding application store competition restriction</p>	<ul style="list-style-type: none"> Designated Providers shall not prevent third party providers from offering their own application stores. (※ <i>The Act does <u>not</u> oblige to allow downloading of applications directly from websites</i>) 【Art.7-1】. ※<i>Measures necessary to achieve the objectives of security, privacy, youth protection, etc., can be taken as long as it is difficult to achieve the objectives through other less competition-restricting measures (“Justifiable measures”).</i>
<p>Regarding usage restrictions of other billing systems</p>	<ul style="list-style-type: none"> Designated Providers shall not prevent other application developers from using third party billing systems, for example, via imposing conditions prohibiting third party billing systems 【Art.8-1】. ※<i>Justifiable measures may be applied.</i>
<p>Regarding in-app restrictions of information to users</p>	<ul style="list-style-type: none"> Designated Providers shall not restrict application developers from showing in-app information such as prices for items on websites or links leading to websites for items. Designated Providers shall not prevent other application developers from providing items, etc. through websites 【Art.8-2】. ※<i>Justifiable measures may be applied</i>
<p>Regarding unfair treatment of application developers</p>	<ul style="list-style-type: none"> In transactions and usage conditions of operating systems and application stores, Designated Providers shall not unjustly discriminate against, or unfairly treat application developers 【Art.6】.
<p>(2) Regarding usage prohibition of browser engines other than those provided by Designated Providers</p>	<ul style="list-style-type: none"> Designated Providers shall not prevent other application developers from using other browser engines, for example, via conditions that only allow the usage of the Designated Provider’s own browser engine 【Art.8-3】. ※<i>Justifiable measures may be applied</i>
<p>(3) Regarding Designated Providers’ default settings of services</p>	<ul style="list-style-type: none"> Designated Providers shall enable users to change default settings with simple procedures 【Art.12- 1 (a), 12-2 (a)] . Designated Providers shall offer choice screens with similar services for browsers, search services, etc. 【Art.12- 1 (b), Art.12-2(b)] .
<p>(4) Regarding self-preferential treatment in search results</p>	<ul style="list-style-type: none"> Designated Providers shall not engage in any form of preferential treatment of their services over those of competitors in the display of search results without justifiable reason 【Art.9】.
<p>(5) Regarding Designated Providers’ unfair usage of data</p>	<ul style="list-style-type: none"> Designated Providers shall not use acquired data, such as usage information and sales numbers, for their own services in competition with third parties 【Art.5】.
<p>(6) Regarding the restriction of OS features to other businesses</p>	<ul style="list-style-type: none"> Designated Providers shall not prevent other application developers from using features controlled by the OS with the same level of performance as the one used by Designated Providers. . 【Art.7-2】. ※<i>Justifiable measures may be applied</i>
<p>Others</p>	<ul style="list-style-type: none"> Disclosure obligations for data governance, etc. 【Art.10】. Obligations to provide data portability tools 【Art.11】. Disclosure obligations for changes in OS and browser specifications, etc. 【Art.13】.

Measures to ensure regulatory effectiveness (Developing a competitive environment through continuous communication)

- Unlike conventional enforcement of the Antimonopoly Act, the new regulatory framework will feature **continued communication with stakeholders including Designated Providers and application developers to pursue improvement in business models.**



① Formulation of guidelines

- The Act stipulates that Designated Providers are permitted to take certain necessary measures to ensure security, etc. Relevant government entities are planned to cooperate in creating guidelines that considers the grounds for such measures.

② Establishing intragovernmental cooperation

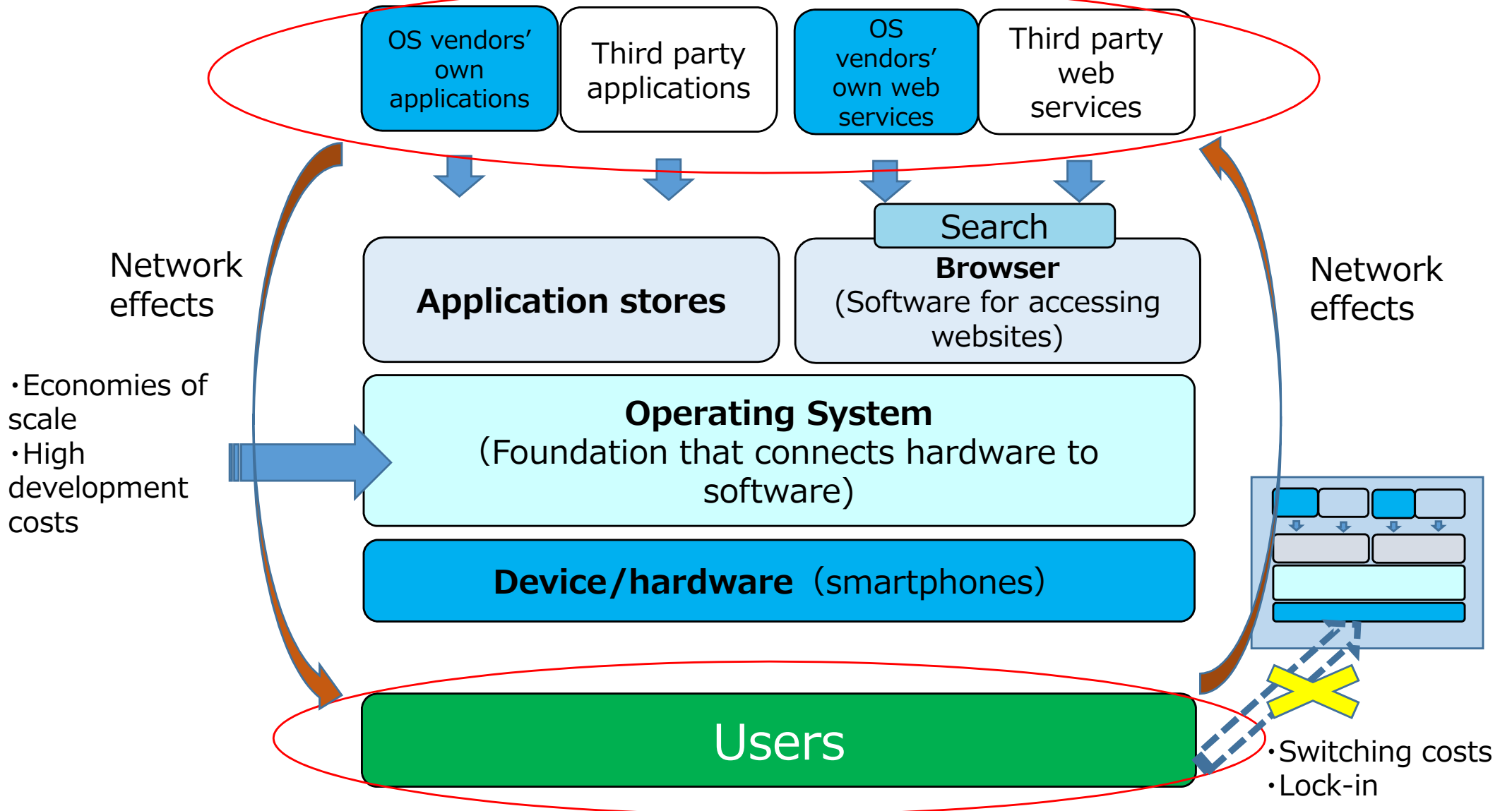
- The Act stipulates that the JFTC can consult relevant ministries and agencies for their expertise on security, privacy, and youth protection, etc. in the implementation of the new law; in turn, these entities can offer their views to the JFTC on such matters.
- An intragovernmental cooperation framework will be established so that the JFTC in cooperation with relevant ministries and agencies, can smoothly handle issues on security, privacy, and youth protection, etc. in the implementation of the new law.

③ Other potential forms of cooperation with relevant ministries and agencies and external organizations

- Establishing guidelines with security expert groups, etc. to provide a certain level of guidance on application reviews, etc. to be performed by application stores.
- Providing information to consumers on measures to ensure security, etc. taken by alternative application store operators, and on security incidents, etc., such as malware infections.

Reference Materials

• **Network effects**, from attractive apps bringing in users, which leads to more application developers participating in the ecosystem, in turn drawing in more users; **difficulty in switching** services due to familiarity, etc.; **economies of scale** resulting from high costs for development.
→ These factors lead to **high barriers to entry** and have **resulted in an oligopoly structure** of only a small number of digital platform operators.



- The finalized version of the Competition Assessment of the Mobile Ecosystem was released in June of 2023 at the Digital Market Competition Council (headed by the Chief Cabinet Secretary of Japan).
- Findings led to the realization of a need to foster innovation through a variety of new business activities in the mobile ecosystem through competition, while also ensuring security and privacy so that consumers can enjoy various choices in services.
- Conclusion: need for a policy mix of ex-ante regulations and co-regulation with relevant businesses to tackle various challenges as necessary.

1. Mobile ecosystem issues

Responding policies

1 Changes in OS, browser specifications, search parameters, etc.	Information disclosure obligations, mandatory establishment of internal procedures for processing inquiries, and government monitoring and review process
2 Mandatory use of payment/billing systems	Prohibition of obligatory use of specific payment/billing systems. Obligations to make terms of use (including fees) fair, reasonable, and non-discriminatory for participating businesses in application stores
3 Creating competition in trusted application stores	Obligations for use of alternative distribution channels for applications that ensure security and privacy (※ excluding obligations to allow direct downloads of apps from websites)
4 Mandatory use of own browser engine	Prohibition of requirements to use own browser engines

2. Pre-installation, default settings, and self-preferencing

1 Pre-installation and default settings	Obligations to make default setting changes simple Display selection screen for browsers, search, and voice assistants
2 Self-preferential treatment in search services	Prohibition of self-preferencing over competitors' services in search ranking results (※ concrete framework to be further considered)

3. Acquiring and using data

- ① Prohibit the use of non-publicly-available data generated or provided by 3rd parties, in competition with those 3rd parties
- ② Disclosure obligations for the acquisition, conditions for use, and management systems of data.
- ③ Mandate provisions of free tools to promote effective data portability

4. Access to OS functions

Obligation to grant access to the same levels of OS functions to third parties.

“Regarding the mobile ecosystem (markets for OS-based apps and other applications on smartphones), based on the Secretariat of the Headquarters for Digital Market Competition’s final report on the competition assessment, we will consider a legal framework necessary to ensure a fair and equitable competition environment in the digital market, while assessing the situation in other countries such as Europe and United States.”

Basic Policy on Economic and Fiscal Management and Reform 2023 (Excerpt)

(Approved by the Cabinet in June 2023)

“...and consider the legal framework necessary to ensure a competitive environment in the market for smartphone apps.”