Coalition for APP FAIRNESS

May 27, 2026

Mr. Kenta Suzuki
Chief Green Officer (CGO)
Counselor for Digital Affairs
Japan Fair Trade Commission

Subject: Concerns regarding Apple under the Smartphone Software Competition Promotion Act

Dear Mr. Suzuki:

The Coalition for App Fairness (**CAF**) is an independent nonprofit organisation, representing over 80 companies including startups, independent and small developers, indie studios and popular apps that run on mobile devices.

CAF works around the world to support legislation and enforcement to bring fair competitive conditions to the mobile app marketplace, stop the abusive and extractive conduct of the dominant mobile app platforms and enable independent developers to compete on a level playing field with the dominant providers.

CAF was and is supportive of the Mobile Software Competition Act and the leadership it represents for Japan as well as the opportunity it presents for Japanese consumers and businesses. Properly enforced, the MSCA promises to usher in a new era of competition on and with today's dominant mobile platforms owned by Apple and Google. One of the two platforms are used by almost every Japanese consumer nearly every day as the primary means of obtaining access to internet services and information. Not unlike the situation the world faced in the late 1990s and early 2000s when Microsoft Windows was the primary platform from which consumers could access the internet, today, these two mobile platforms occupy a similar gatekeeping position, and have increasingly resorted to unfair and exploitative conduct and terms to thwart competition and extract monopoly rents from developers and consumers. The MSCA is a landmark piece of legislation, intended to solve this problem and unleash competition, much like competition law enforcement against Microsoft 25 years ago unleashed competition on PC computers and enabled the growth and success of companies like Apple and Google.

Around the world the competition problem on mobile devices has been studied and universally found to be problematic. The MSCA was enacted as similar legislation is considered and passed by other jurisdictions around the world. A few examples include the DMA in Europe and the DMCC in the UK. In addition, private and public enforcement actions (including, significantly, the Epic v. Apple suit in the US) are gradually addressing the competitive abuses by these two dominant companies.

However, just as in other jurisdictions around the world, Apple has defiantly refused to comply with the MSCA. Apple announced new terms applicable in Japan in response to the MSCA, but as we have seen in response to legislation in other jurisdictions such as Europe and in response to court orders in the United States, Apple would rather defy the authority of legislatures and enforcers around the world rather than enable real competition and give up the highly profitable extractive supracompetitive fees it takes from developers for services those developers neither want nor need. And the new terms impose discriminatory fees on developers for declining to use Apple services.

CAF believes that Apple's new terms in Japan violate Articles 6, 7 and 8 of the MSCA, and the JFTC should conclude that Apple is in violation of the MSCA and impose appropriate fines and conduct remedies to bring Apple into compliance. If the JFTC does not do so, it risks "blessing" a set of terms that not only are clearly violative of both the MSCA as well as traditional competition laws, it also risks leaving Japanese consumers and businesses at the mercy of these two giant American firms and leave Japan behind other jurisdictions like the United States, Europe and the UK as attractive places to build digital mobile businesses. In addition, the JFTC should dispel publicly the false impression that Apple is attempting to push around the world that its terms in Japan have been approved by the JFTC and should be a model for the rest of the world. Apple is attempting to get illegal and anticompetitive terms approved before US courts finalize their decision on fees.

The situation in the US is instructive and is perhaps the closest to reaching an end point for Apple's desire to drag out compliance as long as possible through litigation. In the US, the Epic Games lawsuit against Apple resulted in a judgment in which the Court found that Apple's prohibition on "steering" users outside of an app to process payments to avoid Apple's oppressive and mandatory 30% commission on in-app payments was an illegal unfair method of competition. That finding was upheld by the Ninth Circuit (and cert denied by the Supreme Court). However following that decision, Apple was found in contempt of court by the District Court when, unable to prohibit steering, it simply imposed an equally oppressive and effective new fee of 27% for the privilege of steering. The District Court was not impressed with Apple's cleverness. It found Apple in contempt, and prohibited the collection of any commission.

Apple appealed that finding to the Ninth Circuit and that Courts' recent decision largely upheld the District Court's contempt order and offered clarity that Apple's days of being free to unfairly exploit its market power and extract rents were over.

First, the Ninth Circuit noted

> "Apple is not the first litigant to try burdening what it could not prohibit. Two hundred years ago, Congress created the Bank of the United States, and the state of Maryland tried to tax it. See M'Culloch v. Maryland, 17 U.S. 316, 317–18 (1819). The

> Supreme Court saw through this ploy: Maryland could not tax the bank because "the power to tax involves the power to destroy[.]" Id. at 431. In the same way, Apple has demonstrated that charging commissions on linked-out purchases gives it the power to prohibit them. "An unlimited power to tax involves, necessarily, a power to destroy; because there is a limit beyond which no institution and no property can bear taxation." Id. at 327. Once Apple's commission on those transactions was large enough, no rational developer would offer them. The Injunction prohibits that kind of conduct. "Apple is not the first litigant to try burdening what it could not prohibit." (pg. 27)

There, as it has done in Japan, Apple seeks to avoid the consequences of competition by simply taxing the competitive alternatives it can no longer prohibit.
Then the Ninth Circuit noted that while declaring that the court may have gone too far in ordering Apple to allow steering at no charge, it outlined what charges might be allowable for Apple:

> "Apple should be able to charge a commission on linked-out purchases based on the costs that are genuinely and reasonably necessary for its coordination of external links for linked-out purchases, but no more." (pg. 41, emphasis added)

While this seems reasonable, for Apple, it signals the end of the ability to discriminatorily and unfairly extract rents from developers as it opens a competitive door free of Apple's extractive and discriminatory fees. The costs for coordination of external links is essentially zero. The only thing Apple needs to do to coordinate linked out purchases is to remove the contractual prohibition. The rest, programming, processing, etc are all done by the app developer choosing to steer its customers. (Apple understands this well as it also asked the Ninth Circuit to stay its decision and leave the commission at zero pending the cert petition, rather than have to present evidence that finally proves that zero is the right number. They'd rather get nothing during the pendency of its cert petition than be forced to try to prove non-existent costs). Further, Apple has never cited any patents or intellectual property that suggests it "invented" the previously prohibited practice of "steering". It has always just been a blatant contractual prohibition, illegally imposed by Apple.

This development in the US and the nearing finality of the decision comes at a time where other jurisdictions, including Japan are also considering how to address this fundamentally unfair business practice. Finality in the US gives them less leverage to try to negotiate more with other countries. (Notably, the European Parliament reached a similar conclusion about what the appropriate commission might be for "steering" when in Article 5(4) of the Digital Markets Act, it determined that steering must be allowed "free of charge". Apple has thus far refused to comply with this provision.)

Apple has objected that this extraction of rents from developers has been their business model since the beginning, and whines that developers "just want access to the Apple platform for free". Neither is true.

Apple only introduced the in-app payment requirement and the extractive commission in 2011, years after the introduction of the iPhone, after it had built market share on the marketing promise of "There's an App For That" (acknowledging the then indispensable value that developers brought to the platform), and only when alternative platforms like Blackberry were fading from the scene as viable alternatives for developers and consumers.

And the complaint that developers want access "for free" is disingenuous at best. Apple itself has established what "fee" is reasonable for access to their platform, and that fee is in fact zero.

First, Apple grants this access "for free" to every developer that doesn't sell so-called "digital goods" from their app. This includes some of the largest and richest companies in the world, including companies that make billions from generating revenue through advertising like Meta and Google, companies that make billions from the sale of physical goods, like Amazon, and companies that sell things that might fall somewhere in between, like airlines that sell electronic tickets, or like Uber that sells ride sharing services. All of these companies initiate and process payments from within their apps on the iPhone and all are doing so "for free" with respect to Apple.

It also includes Apple's own directly-competing apps like Apple Music, Apple News, Apple Arcade, AppleTV, etc, all of which get access to the platform "for free" and which, as a result, enjoy an unearned 30% cost advantage over their rivals in music streaming, news, games, video streaming, etc. This has also resulted in preposterous competitive comparisons, where, for example, you can subscribe to Apple Music directly in the app, but you cannot do so from a Spotify app. Not because Spotify engineers cannot figure out how to enable it, but because if they did so, Apple would take 30% of their revenue. That's a competitive advantage not earned, but simply imposed by a monopolist.

Second, as noted above, this platform access was "free" for developers when Apple was in a more competitive market and needed developers to power its phone's usefulness and attractiveness to consumers. Only in 2011 did Apple pull its bait and switch on a select subset of the developer community to effectively take a vig from others' digital sales on iPhones.

Finally, there is longstanding precedent for "free access" to a dominant operating system platform like iOS. In the early 2000's, Microsoft was required to grant equal access to its platform for programs like browsers and media players, against which Microsoft was directly competing. Notably, they were not permitted to charge for that access (for the same reasons outlined by the Ninth Circuit in Apple's case). Among the companies taking most advantage of this were Apple itself, who was able to launch iTunes for Windows and market iPods, and later iPhones, to the huge market of PC owners, all without having to pay 30% of their PC-generated revenues to Microsoft. Indeed, absent that "free" access requirement, it's not clear that Apple even exists today.

Japan has an opportunity to be a leader in creating similar pro-competitive circumstances on mobile devices as the United States and later the European Union did in the early 2000s on PCs. The JFTC should reject Apple's cynical and defiant "new" terms and enforce the MSCA to realize the promise that this landmark legislation represents.

Respectfully submitted,

/s/ Gene Burrus

Gene Burrus
Global Policy Counsel for the Coalition for App Fairness (CAF)