Request for Public Comments on Draft Subordinate Legislations and Guidelines For The Mobile Software Competition Act

Japan Fair Trade Commission

Response of the Coalition for App Fairness

Submitted June 13, 2025

I. Introduction

The Coalition for App Fairness (CAF) welcomes the opportunity to provide comments to the Japan Fair Trade Commission (JFTC) in response to its Request for Public Comments on its draft subordinate legislations and guidelines (the "Draft Guidelines") for the Mobile Software Competition Act (MSCA or the "Act").

CAF commends the JFTC for its thoughtful approach in proposing a set of rules that seek to ensure fair and open competition in the mobile app ecosystem. The Draft Guidelines' strong alignment with several other jurisdictions' approaches to promoting competition in digital markets is particularly helpful. As such, the Coalition broadly supports the JFTC proposal, but, nonetheless, believes they would benefit from several improvements. These improvements should include greater specificity in describing the prohibited conduct, additional safeguards to block the use of sham justifications, and enhanced tools to deter circumvention and malicious compliance.

CAF is an independent non-profit organization, comprising more than eighty members who represent mobile app developers of all sizes. It was founded to advocate for freedom of choice and fair competition across the mobile app ecosystem.[1] CAF's vision is to ensure a level playing field for businesses relying on platforms like the Apple App Store and Google Play Store to reach consumers and a consistent standard of conduct across the app ecosystem. Its members operate in many countries across the globe, including Japan.[2]

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[1] Coalition for App Fairness, https://appfairness.org/ (last visited June 6, 2025).

[2] Coalition for App Fairness, Coalition Members, https://appfairness.org/members/ (last visited June 5, 2025).

Japan is playing an important role, along with many other jurisdictions,[3] in advancing evidence-led, pro-competitive rules to ensure consumers are well served in the modern global economy, and the JFTC's Draft Guidelines represent a vital step forward in that process. As Gene Burrus, Global Policy Counsel for CAF, said at a December 2024 event hosted by the Coalition in Tokyo, "This is an exciting time to open competition moving forwards, and Japan is at the forefront of those efforts . . . the opportunity is immense for countries that get it right."[4] Burrus added that the Act will "enable[] businesses to invest in new technologies without facing regulatory uncertainty and overcome past barriers that hindered growth."[5] Consistent with this, the Draft Guidelines strike a good balance between providing certainty for market participants as well as flexibility to adapt to changes in market conditions.

As the JFTC moves forward with its vital work of finalizing the Guidelines, CAF urges it to prioritize three key principles that will determine their efficacy: (1) the speed in which the new regime can be adopted and operational is of the utmost importance; (2) a high degree of specificity is necessary to prevent malicious compliance and circumvention; and (3) the provision of robust investigation and enforcement tools is required to ensure compliance and foreclose the gatekeeper platforms' proclivity to obstruct and delay.

II. Draft Subordinate Legislations and Guidelines

Below, we provide additional detail on our recommended improvements to the Draft Guidelines in the context of specific prohibitions and obligations.

A. Article 8, Item 2: Prohibition of Hindering the Provision of Goods or Services Outside of the Designated Provider's App Store

[3] *See, e.g.*, CAF Welcomes CMA Decision to Close competition Act Cases and Focus on DMCC Implementation, Coalition for App Fairness (Aug. 21, 2024), https://appfairness.org/caf-statement-on-cma-decision/; Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), EUR-Lex (Sept. 14, 2022), https://eur-lex.europa.eu/eli/reg/2022/1925/oj/eng; Coalition for App Fairness Statement on World's First National Law Opening App Store Payments to Competition (Aug. 31, 2021), https://appfairness.org/south-korea-worlds-first-national-law-opening-app-store-payments-to-competition/.

[4] *Tech Leaders Agree: Effective Enforcement of the Smartphone Software Competition Promotion Act Key to Local Economic Growth*, Coalition for App Fairness (Dec. 16, 2024), https://appfairness.org/tech-leaders-agree-japan-sscpa/.

[5] *Id.*

CAF agrees with the Draft Guidelines' basic approach, enforcement rules, and explanation regarding this prohibition. It is critical, however, that the final guidelines explicitly prohibit the conduct listed below. This specificity is a necessary response to Apple's and Google's use of these tactics in other jurisdictions to render the display of external promotional information and link-outs an unattractive and, ultimately, non-viable option.

In Apple's latest act of non-compliance, a U.S. District Court Judge issued a contempt order on April 30, finding Apple in "willful violation" of the court's 2021 injunction.[6] In its injunction, the court barred Apple "from prohibiting developers from . . . including in their apps and their metadata buttons, external links, or other calls to action that direct customers to purchasing mechanisms, in addition to In-App Purchasing."[7] Despite this directive, according to the contempt order, "In the end, Apple sought to maintain a revenue stream worth billions in direct defiance of this Court's Injunction."[8] In her order, Judge Gonzalez Rogers recapped Apple's unlawful conduct:

> To summarize: *One*, after trial, the Court found that Apple's 30 percent commission "allowed it to reap supracompetitive operating margins" and was not tied to the value of its intellectual property, and thus, was anticompetitive. Apple's response: charge a *27 percent commission* (again tied to nothing) on off-app purchases, where it had previously charged nothing, and extend the commission for a period of seven days after the consumer linked-out of the app. Apple's goal: maintain its anticompetitive revenue stream. *Two*, the Court had prohibited Apple from denying developers the ability to communicate with, and direct consumers to, other purchasing mechanisms. Apple's response: impose *new* barriers and *new* requirements to increase friction and increase breakage rates with full page "scare" screens, static URLs, and generic statements. Apple's goal: to dissuade customer usage of alternative purchase opportunities and maintain its anticompetitive revenue stream.[9]

In light of these tactics, it is necessary to expressly prohibit the following conduct as a violation of Article 8 of the MSCA. Using Judge Gonzalez Rogers' April 30 order as a model, CAF strongly recommends that the final guidelines expressly prohibit the following:

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[6] Epic Games, Inc. v. Apple Inc., No. 4:20-CV-05640-YGR, 2025 WL 1260190 (N.D. Cal. Apr. 30, 2025).

[7] Epic Games, Inc. v. Apple Inc., 559 F. Supp. 3d 898, 1058 (N.D. Cal. 2021), *aff'd in part, rev'd in part and remanded,* 67 F.4th 946 (9th Cir. 2023).

[8] Epic Games, Inc. v. Apple Inc., No. 4:20-CV-05640-YGR, 2025 WL 1260190, at *1 (N.D. Cal. Apr. 30, 2025).

[9] *Id.* at *1.

- "Restricting or conditioning developers' style, language, formatting, quantity, flow or placement of links for purchases outside an app;"
- "Prohibiting or limiting the use of buttons or other calls to action, or otherwise conditioning the content, style, language, formatting, flow or placement of these devices for purchases outside an app;"
- "Excluding certain categories of apps and developers from obtaining link access;"
- "Interfering with consumers' choice to proceed in or out of an app by using anything other than a neutral message apprising users that they are going to a third-party site;" and
- "Restricting a developer's use of dynamic links that bring consumers to a specific product page in a logged-in state rather than to a statically defined page, including restricting apps from passing on product details, user details or other information that refers to the user intending to make a purchase."[10]

B. Article 6: Prohibition of Unjust Discrimination or Otherwise Unfair Treatment and Article 7, Item 1: Prohibition on Hindering the Provision of Alternative Application Stores

CAF agrees with the Draft Guidelines' basic approach, enforcement rules, and explanation regarding these prohibitions. It is critical, however, that the final guidelines provide more specificity as to when a designated provider can and cannot reject alternative app stores. As currently written, the Draft Guidelines provide that it is generally permissible for a designated provider to reject, or hold up approval for, an app or alternative app store on the basis of somewhat broad and vague criteria. The use of amorphous terms such as "public order" may invite abuse. Without greater specificity, a designated provider may use such concerns as a pretext for engaging in anticompetitive or unfair review conduct. Similarly, the Draft Guidelines allow a designated provider to restrict access to alternative app stores for minors via parental controls, but this is only justifiable if an alternative app store lacks safeguards that are comparable to the designated provider's own app store.

Apple and Google have time and again used security and privacy as justifications for anticompetitive conduct. Apple, for example, has condemned alternative app stores on security grounds, while, at the same time, the App Store does not conform to strict security standards. In fact, it seems that how apps and developers are treated by Apple is heavily dependent on whether they pose a threat to Apple, with Apple having been accused of approving and distributing "scam

[10] *Id.* at 46.

apps" that target and deceive consumers so long as they do not compete with Apple's own apps.[11] Notably, a U.S. District Court Judge recently called out Apple's proffered security justifications as "pretextual," stating that Apple's "proffered rationales are nothing more than after-the-fact litigation posturing or outright misrepresentations to the court."[12]

It is, therefore, necessary that sufficient safeguards are put in place to ensure the final guidelines do not provide a loophole for designated providers to invoke sham justifications for anticompetitive, unfair, or discriminatory conduct. Consistent with this, a designated provider should, at a minimum, have to provide a set of objective criteria that governs its review processes for apps and alternative app stores. This standard of review should consist of (1) criteria that the designated provider's own app store demonstrably meets; and (2) criteria that are, in fact, feasible for an alternative app store to meet.

III. Developments in Other Jurisdictions Underscore the Need for Robust Enforcement and Anti-Circumvention Tools

Given Apple's and Google's long history of flouting laws and court orders, CAF recommends that the final guidelines pay particular attention to the issue of non-compliance enforcement. Lessons from Apple's and Google's malicious compliance in other jurisdictions are instructive on this point, particularly as to the imposition of fees on alternative payments services (the subject of Article 8, Item 1). Below, are several prime examples:

- U.S. District Court Injunction: After years of breaking the law, a federal judge issued a contempt order against Apple for ignoring an injunction issued in 2021. Following the court's injunction, Apple allowed external links but still charged a 27% tax and discouraged users by using "scare screens." On April 30, Judge Gonzalez Rogers ruled that Apple violated the court's order—knowingly and deliberately—to protect billions in revenue. The court barred Apple from collecting a commission on out-of-app purchases

[11] *See, e.g.*, Filipe Esposito, *Researcher reports fraudulent Chinese apps on the Mac App Store,* 9To5Mac (Aug. 4, 2022), https://9to5mac.com/2022/08/04/fraudulent-chinese-apps-mac-app-store/; Reed Albergotti & Chris Alcantara, *Apple's Tightly Controlled App Store is teeming with scams,* The Washington Post (June 6, 2021), https://www.washingtonpost.com/technology/2021/06/06/apple-app-store-scams-fraud/; Nick Statt, *Apple's App Store is hosting multimillion-dollar scams, says this iOS developer*, The Verge (Feb. 8, 2021), https://www.theverge.com/2021/2/8/22272849/apple-app-store-scams-ios-fraud-reviews-ratings-flicktype; *see also* Cheyenne Macdonald, *Inappropriate apps rated as safe for young children are prevalent in the App Store, report warns,* Engadget (Dec. 22, 2024), https://www.engadget.com/big-tech/inappropriate-apps-rated-as-safe-for-young-children-are-prevalent-in-the-app-store-report-warns-213727965.html.

[12] Epic Games, Inc. v. Apple Inc., No. 4:20-CV-05640-YGR, 2025 WL 1260190, at *20 (N.D. Cal. Apr. 30, 2025).

and from restricting links or buy buttons. The ruling took immediate effect and included a referral to the U.S. Department of Justice for possible criminal prosecution and sanctions.[13] According to the order:

> Apple willfully chose not to comply with this Court's Injunction. It did so with the express intent to create new anticompetitive barriers which would, by design and in effect, maintain a valued revenue stream; a revenue stream previously found to be anticompetitive. That it thought this Court would tolerate such insubordination was a gross miscalculation. As always, the coverup made it worse. For this Court, there is no second bite at the apple.[14]

- The South Korea Telecommunication Business Act: While Apple and Google claim to comply with the law intended to give developers choice in payment processing services, the companies found workarounds and introduced a new 26% fee for using third-party payment systems, which completely undermines the spirit of the law. In the case of Apple, in particular, this means that when an app developer in South Korea provides consumers with the choice of paying through a third-party payment service, that app developer must pay both a significant fee to the app store operator, as well as an additional fee to the third-party payment provider. The result is that offering an alternative payment system could end up costing the developer either the same or more than what it would be charged to use the app store operators' in-app payment systems. This malicious compliance makes the economic conditions of leaving Apple's App Store untenable, particularly for small businesses, and as a result they continue to stifle competition in the marketplace.[15]

- The Dutch Authority for Consumers and Markets: Apple was largely able to circumvent the impact of an order by the Netherlands Authority for Consumers and Markets (ACM) after the ACM found that Apple infringed Dutch and EU competition law by abusing its economic dominance in the market for app store services on the iOS mobile operating system (for the benefit of dating app providers). To address its anticompetitive conduct, the ACM ordered Apple to amend its terms and conditions to: (a) allow dating app providers to permit users to pay for in-app purchases using an alternative payment system

[13] *See generally* Coalition for App Fairness, LinkedIn, https://www.linkedin.com/pulse/more-apple-tax-us-app-store-revolution-should-du85e/?trackingId=gH41duTiBxIQPoJ2pJoJuA%3D%3D (last visited June 6, 2025).

[14] Epic Games, Inc. v. Apple Inc., No. 4:20-CV-05640-YGR, 2025 WL 1260190, at *47 (N.D. Cal. Apr. 30, 2025).

[15] Apple, *Distributing apps using a third-party payment provider in South Korea*, Apple Developer Support, https://developer.apple.com/support/storekit-external-entitlement-kr/#:~:text=The%20Telecommunications%20Business%20Act%20in,the%20StoreKit%20External%20Purchase%20Entitlement (last visited June 5, 2025).

chosen by the dating app provider; (b) refer customers to payment options outside of the app by linking out of the app; and (c) end the commission payable on app sales of digital content.

This has failed as an effective remedy, however, because under Apple's amended Guidelines, developers who choose an alternative payment system are still required to pay Apple a 27% commission for all in-app purchases. Once the fee charged by the alternative payment system chosen by the user is considered (e.g., credit card), the total fee payable by the app developer is likely to be the same if not higher than the 30% commission payable if the app developer continued to exclusively use Apple's in-app payment system.

IV. Conclusion

CAF appreciates the opportunity to provide its views on the Draft Guidelines. If the MSCA is properly implemented and enforced, the Act has the potential to deliver enormous benefits for Japanese businesses, consumers, and the overall growth of the economy. As such, the Coalition strongly urges the JFTC to incorporate the suggested improvements and move forward expediently with finalizing and issuing this important set of Guidelines.