

## 유럽 DMA 시행 초기성과의 평가와 각국 대응상황

■ 일시 : 2024년 6월 11일(화) 14:00~18:00

■ 장소 : 대한상공회의소 중회의실 A



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혁신|경쟁|규제법 센터

## 유럽 DMA 시행 초기성과의 평가와 각국 대응상황

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- 주 최 : 고려대학교 ICR센터

EU 가 제정한 DMA(Digital Markets Act)가 금년 3 월 본격 시행되었습니다. 2018 년 GDPR(General Data Protection Regulation)과 2024 년초 본격 적용된 DSA(Digital Services Act)을 비롯한 일련의 디지털시장 규제법 패키지의 완성판이라 할 수 있습니다. 이에 따라 구글과 애플이 모바일 앱스토어를 개방하고 메타가 인스타그램과 페이스북 계정 간 연동을 중단하는 한편, 메시징앱들 간 호환성이 보장되는 등 상당한 변화가 진행되고 있습니다. 이러한 일련의 변화는 앞으로 세계 각국의 법제도는 물론 디지털 경제의 혁신과 발전에 상당한 영향을 미칠 것으로 예상됩니다.

우리나라에서는 지난 정부에서 추진했던 수직적 의미의 온라인 플랫폼법과 현 정부가 추진 중인 수평적 의미의 플랫폼 경쟁촉진법이 오랫동안 논란되어 왔습니다. DMA 의 진정한 의미, 국내 온라인 플랫폼 시장의 현실, 현행 공정거래법을 뛰어넘는 새로운 사전규제의 필요성, 예상되는 법 적용대상 및 규제방식, 내용과 기대효과, 역차별 문제, 세계적인 플랫폼 규제입법 추세 등에 대하여 의견이 모아지지 않고 있습니다.

이러한 배경에서 EU 의 DMA 시행 후 3 개월여가 경과된 지금, 그 효과와 각국의 관련규제 추세를 다시한번 점검하는 것은 큰 의미가 있다고 생각합니다. 특히 이번 세미나는 입법에 대하여 상반된 시각을 균형 있게 청취하고 고민하는 기회를 마련하기 위해 노력했습니다. 국내는 물론 세계 각국의 전문가를 초청하여 다양한 이슈를 듣고 심도 있게 토론하는 이 행사가 우리나라의 정책방향을 정하는데 도움되기 바랍니다.

ICR센터 소장 이항 배상

(02841) 서울시 성북구 안암동 고려대학교 CJ법학관 403호 Tel 02-3290-2915 Fax 02-3290-2919

● 프로그램

13:30~14:00	접수 및 등록	
14:00~14:10	인사말씀	이황(고려대학교 법학전문대학원 원장, ICR센터 소장)
14:10~14:20	축사	조홍선(공정거래위원회 부위원장)
14:20~15:40	제1부 유럽 디지털시장법(DMA) 시행 초기성과와 평가 [사회: 조성국 교수(중앙대)]	
주제발표 1	최요섭 교수(한국외국어대) 「The DMA & Its Implications for Korea」	
주제발표 2	조혜신 교수(한동대) 「EU DMA 도입의 의의와 시사점」	
토론	김윤정 박사(한국법제연구원 연구위원) 윤경수 교수(가천대)	
15:40~16:00	Coffee Break	
16:00~17:50	제2부 유럽 디지털시장법(DMA) 시행에 따른 국제적 대응동향 [사회: 이황 교수(고려대)]	
주제발표 3	Ke Rong 교수(Tsinghua University) (Digital Market Regulation: Global Insights)	
주제발표 4	Allen P. Grunes 변호사(Brownstein Hyatt Farber Schreck, LLP) 「US Competition Law in Digital Markets: Congress Fails to Enact Big Tech Legislation But Public and Private Enforcement Move Ahead」	
주제발표 5	Shuya Hayashi 교수(Nagoya University) 「Japan's Smartphone Software Competition Promotion Act 2024: Balancing Competition and Security over Sideloaded Legislation - Issues for the Japanese version of the DMA」	
토론	박설민 과장(공정거래위원회)	

- 동시통역이 제공됩니다.
- 주차권은 제공되지 않습니다.
- 문의사항: 고려대 ICR센터 사무국 icr@icr.re.kr (02-3290-2915)

## Assessment on the Initial Impact of the European DMA and Reactions by Other Countries

- **Date:** June 11, 2024 (Tuesday) 14:00 ~ 18:00
- **Venue:** Grand Conference Room A, Korea Chamber of Commerce and Industry
- **Host:** Korea University ICR Law Center

The EU's Digital Markets Act (DMA) entered into force in March of this year. This Act, the final piece of a series of digital market regulation laws that began with the GDPR (General Data Protection Regulation) in 2018 and the recently applied DSA (Digital Services Act) in early 2024, has already led to significant changes. For instance, Google and Apple have made their mobile app stores more accessible, Meta now offers the option to unlink Instagram and Facebook accounts, and compatibility between messaging apps is now under enforcement. These changes may not be confined to the EU, as the Act could influence the legal systems as well as the innovation and development of digital economy of other countries worldwide.

In Korea, ongoing discussions have revolved around the Online Platform Act and Act on the Promotion of Fair Competition in Platforms pursued by the government. Despite extensive discussions, there remains a lack of consensus on key issues including the competitive situation of the domestic online platform market, the necessity of *ex-ante* regulation beyond existing competition laws, the scope and methods of regulation, anticipated outcomes, concerns about reverse discrimination, and the current regulatory legislation trend of the globe.

In light of these challenges, and with the DMA having been in effect for three months in the EU, it is important to assess its impact and monitor global regulatory trends. This conference aims to provide a platform for sharing and discussing diverse perspectives on the legislation. We anticipate that our in-depth discussions with experts from multiple jurisdictions as well as Korea will shed light on and guide our nation's policy strategy.

Hwang Lee  
Director at ICR Law Center

(02841) CJ Law Hall #403, Korea University Anam-dong Sungbuk-gu Seoul Tel 02-3290-2915 Fax 02-3290-2919

## ● Program

13:30~14:00	Registration and Sign-up	
14:00~14:10	Opening remarks	Hwang Lee (Dean of the Korea University School of Law, Director at the ICR Law Center)
14:10~14:20	Congratulatory message	Hong-sun Cho (Vice Chair of the Korea Fair Trade Commission)
14:20~15:40	Part 1: Assessment on the Initial Impact of the European DMA [Moderator: Professor Sung kuk Cho (Chung-Ang University)]	
Presentation 1	Professor Yo Sop Choi (Hankuk University of Foreign Studies) 「The DMA & Its Implications for Korea」	
Presentation 2	Professor Hye-shin Cho (Handong Global University) 「The Significance and Implications of the DMA Enforcement」	
Discussion	Dr. Yun Jeong Kim (Korea Legislation Research Institute) Professor Kyung-soo Yoon (Gachon University)	
15:40~16:00	Coffee Break	
16:00~17:50	Part 2: International Reactions to the Implementation of the European DMA [Moderator: Professor Hwang Lee (Korea University)]	
Presentation 3	Professor Ke Rong (Tsinghua University) (Digital Market Regulation: Global Insights)	
Presentation 4	Attorney Allen P. Grunes (Brownstein Hyatt Farber Schreck, LLP) 「US Competition Law in Digital Markets: Congress Fails to Enact Big Tech Legislation But Public and Private Enforcement Move Ahead」	
Presentation 5	Professor Shuya Hayashi (Nagoya University) 「Japan's Smartphone Software Competition Promotion Act 2024: Balancing Competition and Security over Sideloaded Legislation - Issues for the Japanese version of the DMA」	
Discussion	Director Sul-min Park (Korea Fair Trade Commission)	

- Simultaneous interpretation service will be provided
- Parking validation will not be available
- Inquiries: Korea University ICR Center Office    [icr@icr.re.kr](mailto:icr@icr.re.kr) (02-3290-2915)

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(한국외국어대학교 법학전문대학원 교수)
- | 주제 2: EU DMA 도입의 의의와 시사점 ..... **조 혜 신** / 9  
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## 제2부 유럽 디지털시장법(DMA) 시행에 따른 국제적 대응동향

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사회: 이 황 교수 (고려대학교 법학전문대학원 교수)

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(Brownstein Hyatt Farber Schreck, LLP)
  
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Balancing Competition and Security ..... **Shuya HAYASHI** / 55  
(Professor of Law Nagoya University Law School)
  
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# Japan's Smartphone Software Competition Promotion Act 2024: Balancing Competition and Security

## – Issues for the Japanese version of the DMA.

Shuya HAYASHI (林 秀弥)

Professor of Law

Nagoya University Law School

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@ Korea University ICR Law Center, June 11 2024

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## Final Report on the Mobile Ecosystem ①

- The fact that app stores other than Apple's directly operated App Store are not allowed to enter the iPhone market, and that **App Store fees (e.g., 30%)** are putting significant pressure on app providers' profits, have become major issues also in Japan.
- In light of this situation, the Japanese government, in its "**Final Report on the Mobile Ecosystem**" released in June 2023, recommended that the Japanese government, referring to trends such as the European DMA (Digital Markets Act), should introduce regulations requiring OS providers above a certain size to make other app stores effectively available.

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## Some Reactions to the Final Report

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- In response to this, concerns were raised in public comments, etc., from the following perspectives
- ① However, if new stores are allowed to enter the market, there is a **risk that the distribution of fraudulent apps will increase** through those stores.
- ② Majority of users hope the new law should not deprive those **users' of freedom** to purchase a **safe** and **secure** iPhone.

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## 3. Timeline up to Enactment of the New Law ①.

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- **June 2023: Japanese Government Final Report on Mobile Ecosystem**

<https://public-comment.e-gov.go.jp/servlet/Public?CLASSNAME=PCMMSTDETAIL&id=060230619&Mode=0>

- **October 2023: Japanese government releases public comment results of the final report.**

[https://www.kantei.go.jp/jp/singi/digitalmarket/kyosokaigi\\_wg/dai52/index.html](https://www.kantei.go.jp/jp/singi/digitalmarket/kyosokaigi_wg/dai52/index.html)

- **January 2024: Europe: Apple's public document (1/25)**

Subject "Apple Announces Changes to iOS, Safari, and App Store in the EU."

<https://www.apple.com/jp/newsroom/2024/01/apple-announces-changes-to-ios-safari-and-the-app-store-in-the-european-union/>

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### 3. Timeline up to the Passage of the New Law ②.

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○ March 2024: Europe: Apple's public document (March 1, 2024)

Subject: Complying with the Digital Markets Act

Subtitle: Apple's Efforts to Protect User Security and Privacy in the European Union

<https://developer.apple.com/jp/security/Complying-with-the-DMA-Japanese.pdf>

○ March 2024: Full-scale enforcement of DMA in Europe (March 7, 2024)

○ March 2024: European Commission announces that it is gathering information on Apple's new fee structure (March 25, 2024).

○ April 2024: The Japanese government approved the draft "Act on the Promotion of Competition in Relation to Specified Software Used in Smartphones" (commonly known as the Smartphone Software Competition Promotion Act) at a Cabinet meeting (April 26, 2024):

[https://www.jftc.go.jp/houdou/pressrelease/2024/apr/240426\\_digitaloffice.html](https://www.jftc.go.jp/houdou/pressrelease/2024/apr/240426_digitaloffice.html)

○ May 2024: The bill passed the House of Representatives (May 23, 2024).

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### 4. Security Measures in the Final Report ①

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- In light of the fact that the issue of ensuring security, etc., had already been widely discussed by the Japanese government at the stage of compiling the final report, the following security measures were already recommended in the final report.

(1) Have nothing to do with on downloads not via the app store

- The proposed regulation prohibits OS providers from obstructing the entry of other app stores, and does not prohibit OS providers from rejecting "app distribution by downloading the app itself via a browser without going through any app store" by other providers.

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## 4. Security Measures in the Final Report ②

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### (2) Permit for app store review by OS providers

- The proposed regulation does not state that OS providers may not deny entry to any “app store, but allows OS providers to refuse entry to any app store that does not ensure security.
- Guidelines, etc., will be provided by security expert groups, etc., regarding application screening, etc., that new store operators should be responsible for.

### (3) Ex-post monitoring

- It is important for consumers to know the measures taken by new store operators to ensure security after their entry, in order to secure consumer interests. The framework should be introduced.

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## 5. Criticisms of the Security Measures in the Final Report①

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- The security measures in the Final Report as above mentioned, were criticized in public comments as “**lacking in effectiveness**” as follows.

### (1) General remarks

- **The incentive structure is fundamentally different between Apple**, which wants to maintain the safety of its iPhone product as a brand, **and non-Apple app store operators**. While we do not necessarily deny the possibility that app stores with the same willingness and ability to brand safety as Apple will emerge, it is also quite possible that app stores that cut corners in screening will emerge in order to reduce the app screening costs on developers under their umbrella and keep screening fees low. In addition, there may be security screening that only Apple, as an OS provider, can perform.
- In the Final Report, only the principle of taking security into consideration is stated throughout, but the specific measures proposed are all ineffective, so it appears that they **are only “pretending” to be addressing the issue**.

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## 5. Criticisms of the Security Measures in the Final Report ②

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### (2) Criticisms of "allowing app store review by OS providers"

- (2-1) It would be difficult for Apple to determine whether or not a new store has the willingness and ability to ensure safety when it enters the market. In fact, Apple itself has asserted as much.
- (2-2) Even if a store has the willingness and ability to ensure safety at the beginning of its entry, it is expected that such willingness and ability may be reduced after the fact as the business deteriorates after entry.

### (3) Criticisms of "ex post facto monitoring"

- (3-1) As long as the information is only provided to consumers, it is questionable how effective it will be. Unless Apple is forced to eliminate inappropriate new stores based on that information.
- (3-2) Even if Apple were to forcefully remove inappropriate new stores after the fact based on the information provided, it would be too late if the inappropriate apps were already widely distributed by that time.
- (3-3) Realistically, it would be difficult for Apple to forcibly remove an app store that has already been attached to developers and users after the fact unless the damage is so extensive that it continues to be repeated.

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## 6. Summary of Apple's Jan, 25 2024 document on DMA in EU

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- On Jan. 25, 2024 Apple released a document titled "Apple Announces Changes to iOS, Safari, and App Store within the EU" in preparation for the full-scale operation of the European DMA on March 7. Here, Apple announced that it will take the following measures only within the European internal market.

(1) Allow the entry of stores other than Apple's directly operated app store (alternative stores).

(2) Apply new cross-sectional user protection measures, including a notarization process, to all apps from the perspective of security, privacy, etc., whether through a directly managed store or an alternative store.

✓ For example, ATT (App Tracking Transparency) is included in the notarization process.

(3) For apps above a certain size, whether through a directly managed store or an alternative store, Apple will charge a "core technology fee" (CTF) of €0.5 per download.

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## 7. Summary of Apple's claims in March 1 document regarding the DMA

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- In the implementation policy announced by Apple on Jan. 25, Apple itself states that "risks have not been fully eliminated," and their March 1 document explains in more detail what exactly the problem is. **Their concerns can be summarized in the following three points.**

**(1) Continuous Monitoring**

**(2) Contents**

**(3) Settlement and Billing systems**

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### (1) Continuous monitoring

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- Whether it is Android or iPhone, there are often cases, to varying degrees, where an app that has passed the pre-screening by the store is later found to be a rogue app, or is changed to a rogue app after the fact.
- Therefore, in general, it cannot be said that a disinfection mechanism after an app is installed is unnecessary as long as the screening process "before" the app is installed is thorough. Such a concept is called "**perimeter protection**" and is considered a **dangerous idea in the security expert society**.
- Therefore, in addition to pre-screening by the store, it is necessary to ensure a post-installation disinfection mechanism as well (**multilayer defense**).

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## (2) Contents

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- Apple has decided to prohibit so far
  - ① apps that distribute pornography“,
  - ② apps that encourage the consumption of tobacco, e-cigarettes,
  - ③ illegal drugs or excessive alcohol“,
  - ④ apps that contain user-generated content and do not have a content moderation policy“,
  - ⑤ and “apps that contain pirated content”.
  - ⑥ Apps that contain user-generated content that do not have a content moderation policy in place,
  - ⑦ apps that contain pirated content,
  - ⑧ or apps that steal ideas or intellectual property from other app developers.

But Apple’s new cross-sectional user protection measures, through the Notarization process, **do not include “content”**, they claim that it will no longer be able to prevent apps as above listed that should not be allowed in its own store from becoming available through alternative stores.

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## (3) Settlement and Billing systems

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- Where the application of the DMA allows for the selection of payment and billing systems other than Apple’s payment and billing system, including in-app purchase (IAP),
- Apple claims that the new system will not provide the same level of protection as the Apple’s system, such as “a total overview **of purchase history**,” “**parental control** with ‘request authorization and purchase’, “**easy one-touch cancellation of subscriptions**,” and “**protection against predatory practices such as misleading designs** that lead users to purchase digital goods for amounts different from those advertised,” etc. Apple argues that the level of protection it provides for users will no longer be the same as when using its rival’s payment and billing system, and that **users will be responsible for deciding on an app-by-app basis who to seek help from if a transaction goes wrong**.
- They also claim that analyzing payment data, such as unusual purchase behavior, the new system will no longer protect app developers from unauthorized users (e.g., use of stolen credit cards).

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## 8. Japan's Smartphone Software Competition Promotion Act: 15

### Overview

- The following is a summary of the regulations for allowing other app stores (Article 7, Item 1) in the Japanese government's Smartphone Software Competition Promotion Law, which was approved by the Cabinet and submitted to the Diet on April 26, 2024.

(1) OS providers shall not prevent other providers from offering app stores.

(2) However, when measures are necessary for (i) "security," (ii) "privacy," (iii) "juvenile protection," or (iv) "other purposes specified by a Cabinet Order," and when it is difficult to achieve such purposes by other actions, such necessary measures may be taken.

(Justification)

(3) As stated in (1) above, this rule allows apps to be provided via app stores operated by entities other than OS providers (new entrant app stores), but does not allow apps to be provided directly from a website without going through any app store. It is not a rule that allows apps to be provided directly from a website without going through any app store.

- \*The details of the articles in the relevant sections are excerpted at the end of this slides.

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## 9. Comparison of DMA and Japanese Legislation on Justification ① 16

- The DMA also allows apps to be offered directly from websites, while OS providers are only allowed to take cross-sectional user protection measures within the scope of "preventing damage to the device and OS (integrity)" and "ensuring that end users can be effectively protected by security. OS providers are only allowed to take cross-sectional user protection measures within the scope of "integrity" and "ensuring that end-users are effectively protected.
- In contrast, Japanese law, as described above, allows any and all cross-sectional user protection measures as long as they are necessary for (1) "security" (\*), (2) "privacy" (\*), (3) "juvenile protection" (4) "other purposes specified by government ordinance" and it is difficult to achieve those purposes by other actions.

The Japanese law stipulates (1) "security" as broadly defined, including prevention of damage to operating systems and hardware, and (2) "privacy" as broadly defined, not limited to the legal compliance and guideline level. In addition, the system allows for the incorporation of anti-piracy measures and other measures that may not fall under either "security," "privacy," or "juvenile protection" to be incorporated into the cross-sectional user protection measures by stipulating them in the "Cabinet Order" in (4). (Details of the relevant articles are excerpted at the end of this slides.)

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## 9. Comparison of DMA and Japanese Legislation on Justification ②

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- As mentioned above, the three issues Apple cites as “risks that have yet to be eliminated” are **only risk assertions based on the European DMA system, and are not points against the Japanese legislation**. The Japanese law has been carefully studied by paying close attention to the trends in Europe and sincerely considering the opinions of users in public comments, etc. The policy of the Final Report has been partially changed, and as mentioned above, the provisions are more tolerant and flexible with regard to security, privacy, juvenile protection, etc.
- However, even if the first-part purpose requirement ((1) “security,” (2) “privacy,” (3) “protection of juveniles,” and (4) “other purposes specified by Cabinet Order”) is met, if the second-part non-substitutability requirement (ie., “it is difficult to achieve the purpose by other actions”) is not met, it is not recognized as a justification

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## 9. Comparison of DMA and Japanese Legislation on Justification ③

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- It is assumed that the legal judgment (application) for each individual measure regarding this non-substitutability requirement will be clarified in the guidelines to ensure foreseeability, so the **contents of the guidelines as well as the Cabinet Order are** important.
- The specific details of the development of government ordinances, guidelines, etc. are expected to be designed in the 18-month period between the enactment of the bill and its implementation, while continuing to closely monitor trends in Europe, which is ahead of Japan.

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## 10. Who will consider Security problem in law enforcement? ①

- The Japan Fair Trade Commission is an expert in fair competition, but not in security and privacy, in other words, (even if it hires staff with expertise) JFTC has administrative responsibility for ensuring fair competition, but no administrative responsibility to the public for ensuring security and privacy. During the process of considering the bill, **concerns** were often raised about the **possibility that**, if law enforcement is left to the JFTC, they will not be able to make **neutral judgments on the two protected legal interests of fair competition and security and safety**, and will inevitably make judgments that place undue emphasis on fair competition.
- On the other hand, there is **a concern that the "independence" and "speed" of the JFTC's enforcement may not be ensured** if the JFTC, as an independent regulatory agency, has to "ask" the competent authorities every time it wants to enforce the law in an individual case.

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## 10. Who will consider Security problem in law enforcement? ②

- Is the philosophy of "independence" that has long been maintained in the operation of the Antimonopoly Law, which is an **ex post** regulation, still valid as a concept in the operation of the new law, which is an **ex ante** regulation ?
- Furthermore, Article 40 of the DMA provides an explicit statutory framework under which a "High Level Group" consisting of authorities in five areas – "Telecommunications Regulatory Authority", "Data Protection Authority", "Competition Authority", "Consumer Protection Authority" and "Audiovisual Communications Regulatory Authority" – may give recommendations and advice on the enforcement of the DMA's laws. The framework is explicitly statutory.

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## 10. Who will consider Security problem in law enforcement? ③

- In light of these points, the Japanese law has a provision regarding cooperation with relevant administrative agencies from the perspective of security, privacy, youth protection, etc., which states that (1) the Fair Trade Commission may request opinions from relevant administrative agencies, and (2) relevant administrative agencies may express their opinions to the JFTC (Article 43 of the new law). (※Article 43 of the new law, details of which are excerpted at the end of this slides).
- In response to this, a **liaison meeting of relevant ministries and agencies is expected to be held to ensure smooth cooperation between the Fair Trade Commission and relevant administrative agencies** regarding security, privacy, youth protection, and other issues related to the implementation of the new law.
- **In addition, guidelines are expected to be developed in** cooperation with the JFTC and these related administrative agencies in order to clarify the aforementioned concept regarding justifiable grounds.

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### 【Reference】 Smartphone Software Competition Promotion law: Article 7 (i)

※translation is very tentative

(Prohibited acts of designated operators pertaining to basic operating software)

Article 7 A designated business operator shall not conduct any of the following acts with regard to the basic operating software pertaining to its designation. However, this shall not apply to the case where the designated business operator conducts acts necessary for ensuring cyber security, etc. with respect to smartphones in which the relevant basic operating software is incorporated, and where it is difficult to achieve the purpose by other acts.

(i) Conducting any of the following acts with respect to the app store provided through the relevant basic operating software

(a) The app store provided through the basic operating software shall be limited to those provided by the relevant designated business operator .

(b) In addition to what is listed in (a) above, preventing other operators from providing app stores through above-mentioned basic operating software or preventing smartphone users from using app stores provided by other operators through above-mentioned basic operating software.

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**【Reference】 Smartphone Software Competition Promotion Bill: Article 43**

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✕translation is very tentative

(Hearing of opinions of relevant administrative agencies)

Article 43 The Fair Trade Commission may, when it finds it necessary with respect to the application of the proviso of Article 7 or the proviso of Article 8, request the Prime Minister, the Minister of Internal Affairs and Communications, the Minister of Education, Culture, Sports, Science and Technology, the Minister of Economy, Trade and Industry, the Commissioner of the Children and Family Affairs Agency or the heads of other relevant administrative organs for their opinions.

(2) In addition to what is provided for in the preceding paragraph, the Fair Trade Commission may, when it finds it necessary for the enforcement of this Act, request the heads of relevant administrative organs for their opinions.

3 The Prime Minister, the Minister of Internal Affairs and Communications, the Minister of Education, Culture, Sports, Science and Technology, the Minister of Economy, Trade and Industry, the Commissioner of the Children and Families Agency, and the heads of other relevant administrative organs may state their opinions to the Fair Trade Commission regarding the application of the proviso in Article 7 and the proviso in Article 8.

4 In addition to what is provided for in the preceding paragraph, the heads of relevant administrative organs may state their opinions to the Fair Trade Commission with respect to the enforcement of this Act in order to protect the public interest.

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Thank you for your attention.

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