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Japan Association of New Economy

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Response to the CMA Consultation: Proposed NFC Access Conduct Requirement for Apple's Mobile Platform

Introduction

Japan Association of New Economy ("JANE") welcomes the opportunity to respond to the consultation "NFC Access Conduct Requirement – Apple's Mobile Platform" published by the Competition and Markets Authority ("CMA") on 20 October 2026 (the "Consultation Document").

JANE has been engaged in the legislative process of Japan's Mobile Software Competition Act (the "MSCA") and in the development of the Guidelines issued by the Japan Fair Trade Commission ("JFTC"), and, since the MSCA came into full effect, has also commented on the compliance reports submitted by designated providers, setting out its views on how access to operating-system (OS) functionality should be provided. JANE has also responded to the CMA's consultations in February and August 2025 and in April 2026, and to the Call for Evidence on NFC access published on 30 June 2026. JANE's response of 21 July 2026 to that Call for Evidence is referred to below as the "July Response".

JANE highly values the fact that the proposed conduct requirement (the "Proposed CR") sets out, as a single package, access through both HCE and SE, a broad range of payment and non-payment use cases, and disciplines on both fees and non-fee terms. These are consistent with the direction JANE called for in the July Response. At the same time, as the CMA itself points out, two years after the NFC & SE Platform became available in the UK there is still no evidence of apps launching using it (paragraph 1.13), and developers identify high fees as the main reason (paragraph 4.143).

The key points of this response are as follows:

- Framework: JANE supports the framework of the dual-technology approach and of non-fee terms, and asks for it to be strengthened in respect of the scope of standards, eligibility criteria and the time taken to process requests (sections 2 and 4).
- Fees: JANE maintains its position that free-of-charge access is appropriate. That said, given that the CMA has adopted a principles-based approach, the Proposed CR should set out expressly the approach to HCE and SE fees, limits on the scope of recoverable costs, a cap on the value-based principle, and an assessment of the total burden, including burdens imposed through third parties, so that the principles actually deliver low fees and entry (section 3).
- Ex post review: There should be ex post review using actual entry as the metric, together with a procedure for review where entry does not materialise (section 5).

In this response, numbers in parentheses (e.g. paragraph 4.163) refer to paragraphs of the Consultation Document; “CR paragraph” refers to paragraphs of the text of the Proposed CR set out in Chapter 3 of the Consultation Document; “Interpretative Note” refers to the interpretative notes in the same chapter; “footnote” refers to footnotes of the Consultation Document; and “section” refers to sections of this response.

1. Lessons from Japan’s experience

The MSCA prohibits a designated provider of an OS from preventing other businesses from using, with equivalent performance, the OS functionality that the designated provider itself uses to provide individual software (Article 7(ii)). The JFTC Guidelines take the NFC functionality used to provide payment apps as a specific example. They state that allowing use of the OS functionality free of charge, without restriction and with equivalent performance does not constitute “preventing”, while giving, as illustrative examples of “preventing”, imposing a financial burden such as usage fees that is likely to make use with equivalent performance difficult, and failing for a long period to complete the necessary measures despite a qualifying request having been made (Guidelines, Part 3, 3(2)).

However, in its first compliance report, published by the JFTC on 17 February 2026, Apple stated that whether to build and provide a functionality requested by another business is left to Apple’s discretion in line with its commercial strategy and priorities, and that Apple also has commercial discretion over whether to provide a functionality so built under additional conditions, including fees. Apple’s second compliance report, published on 27 July 2026, maintains the statement of discretion over conditions including fees (paragraph (61) of that report). In its comments submitted to the JFTC in April and October 2026 (both published), JANE has called for these statements to be deleted and for it to be made explicit that the use of OS functionality should in principle be free of charge.

This experience shows that, even after access to OS functionality has become a legal obligation, a designated provider may reserve discretion to charge fees. The CMA also states that the effectiveness of NFC access depends not only on the availability of interoperable access, but on whether this access would enable developers to compete and innovate in practice (paragraph 4.83). This is why JANE seeks explicit disciplines on fees (section 3) and ex post review based on outcomes (section 5) in the Proposed CR.

2. The framework of the Proposed CR

2.1 Elements JANE supports

JANE supports the following elements of the Proposed CR, which it called for in the July Response: the obligation to grant access through HCE or SE at the developer’s request (CR paragraph 3; paragraphs 4.12, 4.13 and 4.67); the definition of NFC Transaction, which covers both payment and non-payment use cases (CR paragraph 2(y)); the obligation to keep pace with the evolution of industry standards (CR paragraph 4(b)); and functional parity and default settings (CR paragraphs 5 and 23; Interpretative Note 9).

2.2 Elements that should be strengthened

(a) Scope of standards

In the July Response, JANE asked that the standards the UK market actually needs (including standards in transport, identification and keys, in addition to payments) be covered, and stated that the scope of standards covered determines the effectiveness of the opening. The proportionality assessment in the Consultation Document treats the HCE solution already offered in the EEA as the starting point for provision in the UK (paragraphs 5.6(a) and 5.15(b)). JANE asks the CMA to confirm that access under the Proposed CR will not limit the standards covered solely by reference to the specifications of the solution offered in the EEA (CR paragraph 4(b); Interpretative Note 7).

(b) Eligibility criteria

In the July Response, JANE stated that eligibility criteria should be fair, objective, transparent and non-discriminatory (FOTND). JANE asks the CMA to confirm that eligibility criteria set by Apple on its own initiative beyond legal requirements (for example, conditions limiting the eligible use cases; footnote 14) cannot be maintained as grounds for refusal under CR paragraph 3.

3. Fees

3.1 JANE's position

As stated in the July Response, JANE maintains its position that NFC access should be provided free of charge. The CMA states that it would not be appropriate to require free provision where this would prevent Apple from recovering relevant costs and earning an appropriate return on relevant investments (paragraph 4.163), and that it would not be appropriate to require free access at this stage (footnote 229). However, the CMA's own assessment points to a level close to zero: (i) the additional cost of offering HCE in the UK is low (paragraphs 5.28 to 5.34), and Apple would face no technical implementation costs to continue to make SE available (paragraph 5.36); (ii) other major mobile device manufacturers provide access for minimal or no fees (paragraphs 4.118, 4.140 and 4.165); (iii) Apple's incentives to invest are also driven by the incentive to increase the attractiveness of its devices (paragraph 4.142); and (iv) fees are expected to be low and substantially lower than Apple's current fees (paragraph 4.187).

Given that the CMA has adopted a principles-based approach, what matters is that the principles actually deliver low fees and entry. In Japan, even after access to OS functionality became mandatory, the designated provider has stated in its compliance reports that it reserves discretion to charge fees (section 1). In line with the views set out in the July Response, JANE asks that the following four points be made explicit in the Proposed CR or the Interpretative Notes, so that the pricing principles of the Proposed CR work as intended.

3.2 Requests to make the pricing principles work

(a) HCE and SE fees

The CMA considers that the additional cost of offering HCE in the UK is low because Apple can leverage the solution it has built for the EEA (paragraphs 5.28 to 5.34). The vast majority

of respondents to the Call for Evidence that commented on pricing also supported free HCE access in the UK (paragraph 4.158). Apple has explained that it incurs ongoing costs in operating its HCE solution, and the CMA considers that these can be recovered through fees (paragraph 5.35). However, neither the amount of those costs nor their causal link to UK access has been shown. JANE asks that the Interpretative Notes make clear that no fee is expected to arise for HCE unless Apple demonstrates, with objective and verifiable evidence, incremental costs causally linked to UK access.

According to Apple's public developer documentation at the time of writing, SE involves steps such as the verification, signing and hosting of applets by Apple. As stated in the July Response, the SE fee should be limited to what corresponds to long-run incremental cost (LRIC), and should be set at a level that does not impede entry for use cases that require SE (for example, digital keys; paragraph 4.33). This approach is consistent both with the approach of the Proposed CR, which applies the same principles to both technologies and requires any fee differences to be justified by reference to those principles (paragraphs 4.188 and 4.211), and with the July Response (section 4.2(h)), which called for fee differences not to distort developers' choice of technology artificially.

(b) Scope of costs and level of return

CR paragraph 12 prohibits double counting and excludes costs relating to Apple's own downstream products and services, but does not address the basis for allocating common costs or the treatment of costs incurred in other jurisdictions. The CMA states that a cost-based fee would allow Apple to recoup the costs of establishing and maintaining the NFC & SE Platform and the HCE solution (paragraph 4.163). Since HCE access is provided free of charge in the EEA (paragraphs 1.14 and 4.263(a)), if the development costs of the HCE solution built to implement the commitments in the EEA were included in the cost base for UK fees, the costs of access made free in one jurisdiction would be recovered in another. JANE has raised this concern in the July Response and in its comments in Japan.

JANE asks that the exclusions in CR paragraph 12 be extended to cover (i) costs already incurred in implementing commitments or similar obligations in other jurisdictions, and (ii) common costs (such as global research and development costs) whose causal link to UK access has not been demonstrated. Broad allocation of common costs should not be permitted. Even where allocation is exceptionally allowed, the allocation basis and the share borne by the UK must be disclosed. The rate of return (CR paragraph 11(a)) should be commensurate with the risk of a limited service added on top of an established device and OS, and Apple's company-wide cost of capital should not be used.

(c) A cap on the value-based principle

As stated in the July Response, JANE opposes the adoption of the value-based principle (CR paragraph 11(b)). Most of the value of NFC access on iOS to developers is likely to derive from the market power underlying the SMS designation (the CMA itself considers that the current access fees are likely to reflect Apple's SEMP; paragraph 4.182(a)), and the Consultation Document acknowledges the potential difficulties in identifying an appropriate value (paragraph 4.184). Should the value-based principle be retained, JANE asks that it be made explicit that value assessment may not be used to raise fees above the level resulting

from the cost-based principle. CR paragraph 11 is not structured so that the result of the cost-based principle operates as a cap, and the method for combining and weighting the two principles is not specified (paragraphs 4.186 and 4.210(a); Interpretative Notes 12 and 14). Value attributable to Apple's own specific investments (paragraph 4.182(b)) should be limited to what Apple has demonstrated with objective and verifiable evidence.

(d) Total burden and burdens imposed through third parties

The definition of NFC Access Fee is broad and applies regardless of label (CR paragraph 2(u)), but the assessment under CR paragraph 11 is made fee by fee, and an assessment of the aggregate burden is not made explicit. As called for in the July Response, JANE asks that the Interpretative Notes make clear that all fees are to be aggregated per developer and per use case and assessed against the principles, so that the same overall burden cannot be recreated by stacking multiple fees under different names. Furthermore, since NFC Access Fees are limited to charges imposed by Apple (CR paragraph 2(u)), fees paid to third-party labs whose review Apple requires may fall outside that definition. JANE asks the CMA to make clear that the Proposed CR also extends to charges and conditions imposed through third parties that Apple requires, designates or effectively controls, such as those labs and businesses to which Apple outsources the development or operation of NFC or SE, and that Apple bears responsibility for them (see CR paragraph 5(c)).

4. Request processing times and technical service providers

In the July Response, JANE called for time limits for processing qualifying requests, and for white-label development by technical service providers to be permitted.

Under the Proposed CR, Apple itself sets and publishes the timelines for each stage of the authorisation process (CR paragraphs 16 and 17). Because a "decision" under CR paragraph 17 includes a requirement for further information, repeated requests for further information within the published timelines could delay a final decision. The JFTC Guidelines also give, as an illustrative example of prohibited conduct, failing for a long period to complete the necessary measures in response to a qualifying request (section 1). JANE asks that an upper limit be set on the period from receipt of a request to a final decision, and that rules be set on pausing and restarting that period when further information is requested.

In addition, the definition of Developer in the Proposed CR includes those who outsource the coding of their apps (CR paragraph 2(i)). JANE asks the CMA to make clear that white-label development by technical service providers offering a common platform to multiple banks and other businesses is possible.

5. Ex post review

The CMA would monitor compliance and effectiveness through quarterly compliance reports (paragraph 4.259), and states that it has the power to impose more detailed requirements if, for example, Apple fails to comply effectively with the Proposed CR (paragraph 4.122). However, the reporting items (paragraph 4.261) focus on requests, rejections, processing times, the approach to pricing and complaints, and do not include indicators of actual entry. The CMA itself notes that in the EEA, where access conditions better supported entry, the first

developer launched six months after the commitments were accepted, followed by further entry (paragraph 1.14). As stated in the July Response, the benchmark of success should be "the realisation of entry", not "the existence of an access route". JANE asks that:

- outcome indicators, such as the number of apps launched (by technology and by use case) and the number of users, be added to the reporting items; and
- a period be set in advance, taking into account the development and deployment timeframes indicated to the CMA by stakeholders (paragraph 4.23) and the pace of entry in the EEA (paragraph 1.14), and that a procedure be made explicit whereby, if entry does not progress within that period, the CMA investigates the causes and considers setting a specific fee cap (including free-of-charge access).

In addition, the CMA gives, as an example of how Apple may demonstrate that its fees do not disadvantage third parties downstream, a sufficient number of developers expressing interest in entry (paragraph 4.196(b)). This should be verified not by interest in entry but by actual entry and usage.

6. Responses to the consultation questions

JANE responds to those questions that relate to matters on which it has previously expressed views.

Questions 6.2 and 6.3 (demand for both HCE and SE; incentives to switch)

As stated in the July Response, the appropriate technology differs by use case, and it is important that developers can choose between them. JANE therefore considers that demand for both HCE and SE would remain even with fees set in accordance with the principles of the Proposed CR (paragraphs 4.33, 4.53 and 4.59). Whether developers switch technology will depend on the standards concerned, total costs and existing development assets. It is important that fee differences do not artificially distort this decision (section 3.2(a)).

Question 6.9 (launch plans and break-even)

As in the July Response, JANE, as a business association, refrains from submitting information on member companies' launch plans, profitability or other individual business matters. The CMA's own break-even analysis shows that, at Apple's current fee levels, entry would be commercially viable only under specific and limited circumstances (paragraph 4.144).

Question 6.10 (non-discrimination and choice of tariffs)

In the July Response, JANE supported fees that do not distort downstream competition and a choice among multiple fee structures. The non-discrimination and flexibility principles of the Proposed CR (CR paragraphs 9(b) and 11(c)) point in the same direction, and JANE supports them. JANE also asks for an assessment of the aggregate burden (section 3.2(d)).

Question 6.13 (whether benefits of free access would arise at a fair, reasonable and non-discriminatory price)

Some benefits may arise even if access is charged for, but they will not necessarily materialise to the same extent, at the same scale and at the same speed as with free access. The realisation of benefits depends on the scope and speed of entry, and entry depends on the level of fees (paragraphs 4.143 and 4.144). The CMA's own analysis also shows that business

models without interchange fee revenue would require even lower fees (paragraph 4.144). JANE therefore maintains its position that free-of-charge access is appropriate (section 3.1).

Conclusion

The Proposed CR is an important step towards restoring competition and innovation in the UK digital economy. JANE supports the framework of the dual-technology approach and of non-fee terms. On fees, while maintaining its position that free-of-charge access is appropriate, JANE asks for specific reinforcement so that the pricing principles of the Proposed CR actually deliver low fees and entry. JANE also asks for ex post review based on “the realisation of entry”. JANE stands ready to continue contributing to the CMA’s further process.

About Japan Association of New Economy

Japan Association of New Economy (JANE) is a business association, dedicated to creating an environment where individuals and private companies can fully realize their potential in order to drive digital-centered economic and social reform. Guided by the fundamental principle of “Give more autonomy to private sector,” the Association issues numerous policy proposals and statements each year aimed at regulatory reform and market creation. Its membership spans a diverse range of companies—from startups to large corporations, and from IT firms to the construction and manufacturing industries— transcending barriers of size and sector. Furthermore, with founders accounting for more than half of its approximately 50 Directors and Executive Officers, the Association also serves as a “Business Association where entrepreneurs come together.” Since 2022, the year it celebrated its 10th anniversary, the organization has embraced “Japan Transformation (JX)” as a new guiding principle that encompasses the core of its activities—promoting “innovation, entrepreneurship, and globalization”—and is further revitalizing its efforts.

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