

European Commission Public Consultation on the Preliminary Report on the findings of the Consumer Internet of Things Sector Inquiry

1. Introduction

Vodafone welcomes the opportunity to contribute to the European Commission (“EC”) public consultation on the findings in the EC’s “Commission Staff Working Document: Preliminary Report – Sector Inquiry into Consumer Internet of Things” dated 9 June 2021¹ (“**Preliminary Report**”). To a large extent, Vodafone shares the concerns that have been raised by other respondents to the EC’s Consumer Internet of Things sector inquiry (“**Sector Inquiry**”) in relation to: (i) exclusivity and tying with respect to voice assistants; (ii) practices limiting the possibility to use different voice assistants on the same smart device; (iii) the increasing role of leading providers of voice assistants and smart home device operating systems as intermediaries between the user and smart home devices, enabling them to have greater access to and accumulate significant amounts of data; and (iv) the lack of interoperability.

Vodafone also notes the EC’s focus on voice assistants in the Preliminary Report and related findings therein, which, as explained below, are broadly aligned with Vodafone’s experience and observations in the Consumer Internet of Things (“**CloT**”) space.

[REDACTED].²

Vodafone’s response to the EC’s public consultation is set out below. Vodafone has not sought to provide feedback on every aspect of the Preliminary Report, but rather on the findings most relevant to its current or potential future CloT propositions.

2. Risks related to the Smart Home segment

Vodafone would like to take this opportunity to [REDACTED] the risks related to the smart home segment [REDACTED].³

In summary, Vodafone’s specific concerns in relation to this segment relate to the risk of one or a small number of smart home ecosystem operators becoming gatekeepers to a range of other products and services which are accessed and/ or controlled via smart home devices and operating systems.

In particular, [REDACTED] the importance of the EC assessing, monitoring and, where necessary, taking action in relation to the following potential areas of concern:

- **Digital gatekeepers:** if one or a small number of suppliers is able to establish market power in relation to the supply of smart home devices and voice assistants,⁴ there is a risk that they will become the gatekeepers to a wide range of other products and services which are accessed and/or controlled via smart home devices. This gatekeeper position would in turn enable them to strongly influence (i) customers’ access to and choice of other CloT products and

¹ https://ec.europa.eu/competition-policy/system/files/2021-06/internet_of_things_preliminary_report.pdf

² [REDACTED]

³ [REDACTED]

⁴ As the assistants are typically bundled with the devices.

services, and (ii) other business's access to those customers and insights relating to those customers.

- **Leveraging of market power from “home” markets into other markets:** there is a small number of well-established global digital platform operators, who are already establishing extremely strong positions in relation to smart home devices and the wider ecosystem of CloT services and other devices. These operators have potentially insurmountable advantages linked to their market power as established digital gatekeepers in certain digital markets and which will increasingly make it extremely difficult for third parties to compete with them in relation to smart home devices, voice assistants and/ or the various other CloT segments.⁵
- **Barriers to entry:** Vodafone concurs that in recent years, key barriers to entry for potential entrants to the smart home space include: (i) the cost of the technology investment; (ii) the lack of access to third-party intellectual property rights⁶; (iii) the lack of interoperability with relevant third-party CloT offerings⁷; (iv) as well as competitive pressure and regulatory barriers. Furthermore, Vodafone shares the finding that businesses have difficulties competing with vertically integrated companies that have built their own ecosystems within and beyond the CloT sector, as these companies determine the processes for integrating smart home devices and services in a CloT system.
- **Role of data:** [REDACTED] the role of data in these markets is pivotal and the need to monetise customer data will grow as the industry develops. That said, where digital gatekeepers have already established their market power, competition law concerns could arise unless prompt action is taken to prevent them from (further) cementing their market power.
- **Standardisation:** to the extent the current open standardisation system is preserved and remains effective / fit for purpose, there is an opportunity to ensure that no proprietary developed standards create competition law issues in the market. It is important that CloT technology is developed through *de jure* standardisation (where possible) and there is effective and timely scrutiny of the risk posed by *de facto* standardisation by digital gatekeepers. The proliferation of CloT devices will create opportunities for *de facto* standards to arise where for example the market scale achieved by digital gatekeepers is unrivalled. With an already deeply fragmented smart home devices segment, more protocols and standards do not necessarily equate to better choice for customers if this increases fragmentation and the risk of less interoperability between devices. It is important not lose sight of the competitive and sustainable guiding principles, namely ensuring that: (i) standards reflect best practices and support the growth of a harmonised seamless single market; (ii) standards do not introduce additional non-proportionate layers of compliance/complexity that can suffocate a nascent market; (iii) standards support the creation of a level playing field between technologies; and (iv) standards do not directly/ indirectly put the EU and EU competitors at a disadvantage vs non-EU competitors.

⁵ [REDACTED]

⁶ [REDACTED]

⁷ E.g. smart devices, home automation systems voice assistants, other smart home user interfaces and operating systems.

3. Risks related to the Wearables segment

Vodafone would also like to take the opportunity to highlight the risks related to the Wearable devices segment [REDACTED].⁸

In summary, Vodafone's specific concerns in respect of this segment relate to access to operating systems and app stores and the risk that key operators, who have already established extremely strong positions in the supply of wearables and are already dominating the mobile operating systems as well as data collection and data funded markets, prevent potential new entrants from entering the wearables space.

In particular, [REDACTED] the importance of the EC assessing, monitoring and, where necessary, taking action at an early stage in relation to the following potential areas of concern:

- **Need for access to closed or restricted operating systems:** suppliers of wearables hardware have a realistic choice of a limited number of closed or restricted operating systems (including restrictions on the ability to customise the operating system) which may result in the inability to compete effectively.
- **Reliance on third party app stores:** suppliers of wearable devices (other than of very simple devices, e.g. non connected fitness trackers) need to rely on third-party app stores to allow customers to enable services/ functionality on their devices through downloaded apps which raises a risk that if one or a very small number of operating systems achieve sufficient market power in relation to wearables [REDACTED], and those operating systems only allow the use of their own app stores, then wearable device suppliers whose devices rely on those operating systems will have no option but to use the tied app stores (and may be required to comply with any restrictive terms and conditions that are imposed).
- **Interoperability:** certain suppliers require that connectivity or over-the-top service providers comply with proprietary provisioning technology on CloT devices.⁹ This can be costly for companies and restrict them from providing connectivity on/ services for CloT devices which they resell.
- **Fragmentation:** due to lack of CloT specific standards, interoperability issues and the role of data which is currently collected by a small number of firms which can facilitate economies of scale, network effects and barriers to entry fragmentation becomes an issue.
- **Regulatory uncertainty/ complexity and fragmentation:** [REDACTED], there is no unified interpretation of the electronic communication requirements across EU markets regarding M2M/IoT products development and roll out. The EU is falling behind its competitors and this relates to the adverse regulatory environment faced by EU IoT innovators and investors relative to the conditions faced by IoT players in the USA and China. For example: (i) there is uncertainty in the application of rules designed for interpersonal communications to IoT services; (ii) additional difficulties result from a failure to harmonise the application of rules across the single market; and (iii) there is a lack of technological neutrality, so rules differ

⁸ [REDACTED]

⁹ For example, deviating from open provisioning standards and instead relying on mandatory proprietary provisioning and activation standards.

between cellular and non-cellular applications, even where they operate in the same market and encompass risks that are identical across the two.

In addition, Vodafone would like to highlight the following concerns:

- **Barriers to entry:** competition in Wearables continues to be effectively limited to hardware only, with a small number of existing key players continuing or attempting to drive their own wearable devices operating systems. In this environment, even large organisations would find it extremely challenging to enter and get a foothold in the wearables segment.

4. Risks related to Voice Assistants

[REDACTED]. Currently, voice control is implemented via *push-to-talk* functionality on Vodafone's GigaTV remote control, and customers may activate voice control on their devices on a voluntary basis.

[REDACTED], Vodafone shares the EC's concerns in the Preliminary Report in respect of voice assistants, in particular:

- **Barriers to entry:** The cost of technology investment, in particular in respect of voice assistants, and the current competitive dynamics have been identified by the majority of respondents to the EC's CloT sector inquiry as the main barriers to entry or expansion in the sector.¹⁰ [REDACTED].
- **Exclusivity:** Vodafone would wish to see increased openness of voice assistant eco-systems and the creation of a level playing field in integration. [REDACTED].
- **Bundling/ tying:** [REDACTED].
- **Lack of interoperability:** a few providers seem to unilaterally control interoperability and integration processes and to be capable of limiting functionalities of third-party smart devices and CloT services, compared to their own. The lack of interoperability in the sector and the need for any new entrants to rely heavily on interoperability with the devices, operating systems and voice assistants of well-established operators in order to be sustainable, have been flagged as some of the key obstacles/ entry barriers to the IoT sector. Furthermore, by unilaterally governing the interoperability and integration processes, they may also be able to limit the functionalities of third-party smart devices and CloT services, compared to their own, by imposing technical constraints, such as limited APIs.
- **Disintermediation:** Vodafone shares concerns expressed in the Preliminary Report regarding the role of the leading providers of voice assistants and smart device operating systems as intermediaries between the user and the smart devices or CloT services that are controllable and accessible through the voice assistant and/or operating system. In particular, we understand that concerns have been expressed regarding how these providers (i) control the user relationship and user experience; (ii) control the access to CloT services and related data; and (iii) control technical performance and related processes. [REDACTED].

¹⁰ [REDACTED]

- **Data collection:** the data collected by leading voice assistant providers enable them not only to control the data flows and user relationships but also to leverage into adjacent markets. [REDACTED].
- **Other:** [REDACTED].

Vodafone shares the EC's concerns in the Preliminary Report. Whilst we recognise that there is a trend towards increasing availability and proliferation of voice assistants as user interfaces enabling interaction with different smart devices and CloT services, we believe that there is a continued need to ensure any competition risks in respect of wider IoT sector should not be undermined and should also be given utmost attention.

Vodafone also acknowledges the important developments that have occurred in between the launch of the Sector Inquiry mid-2020 and the publication of the Preliminary Report, namely the EC proposal related to the Digital Services Act package. Indeed, as Commissioner Vestager confirmed in her statement (something with which we agree) the preliminary results indicate that EC's concerns are shared by many players i.e. some practices may lead to tipping and to the emergence of gatekeepers.¹¹

Further, we would expect that the Sector Inquiry will contribute to the debate on the scope of the Digital Markets Act too which recent publication is mostly welcomed. We deem that the legislative package (alongside the Digital Services Act) marks a watershed moment in the regulation of the digital sector, and underlines the clear intent of the EC to reshape the regulatory environment for digital services in Europe to ensure safety, fairness and competition. Once adopted, these new rules will have a significant impact on large digital gatekeepers subjecting them to a host of new obligations designed to ensure safety and contestability in digital markets.

Should the EC wish to discuss any information detailed in Vodafone submission above, Vodafone is happy to assist and remains at the EC's disposal.

¹¹ Available at https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_21_2926.