

Continental's comment to the European Commission's Preliminary Report - Sector Inquiry on Consumer Internet of Things

Introduction

As a company active across different Internet of Things (IoT) industry sectors, Continental welcomes the opportunity to offer comments to the European Commission's Preliminary Report on Consumer Internet of Things Sector Inquiry. We hope our comments will give further insights to the Commission regarding the players in the IoT sectors and their needs to best thrive in this fast-paced and changing environment especially when it comes to overcoming current challenges due to inefficiencies and anticompetitive practices in the licensing of Standard Essential Patents (SEPs).

Founded in 1871, Continental has evolved from tyre manufacturer to a technology company that offers safe, efficient, intelligent, and affordable solutions for vehicles, machines, traffic and transportation. At Continental we are at the forefront of innovation, working intensively on connectivity solutions with IoT applications, even beyond automotive.

Continental generally subscribes to the arguments brought forward by the Fair Standards Alliance (FSA) and encourages the Commission to investigate the current issues which are hindering competition in the internal market at the detriment of European consumers and industry.

Standardisation and Connectivity

The Internet of Things (IoT) will be the next cornerstone of global technological and industrial leadership. Standards will be fundamental to this as they foster interoperability. Equally, standards shared within and across industries are central to promote innovation. The core idea of standards is to maximise spread and uptake of technology.

Especially the broad landscape of consumer IoT applications benefit from standards. Prominent examples are Bluetooth applications but also USB standards which enable consumers to connect different devices with each other.

Continental and Connectivity

Continental develops pioneering technologies and services for sustainable and connected mobility of people and their goods. We are transforming rapidly. For us, one important next step is to focus on the legal framework for connected and sustainable products and applications which will be used across industry sectors. For Continental, this means new products for the Connected Car and in future for many devices with the Internet of Things and energy-saving (drive) technologies. Connectivity is crucial for the competitiveness of the automotive industry. Suppliers and tech-companies in Europe, such as Continental, are in a position not only to drive innovations around holistic mobility solutions of the future, but also to make them applicable outside the automotive industry. The basis for web-enabled products are the mobile networking standards (such as 3G, 4G, 5G). The patents included in these technologies (standard essential patents "SEPs") are subject to licensing requirements under European antitrust laws. The licencing of these SEPs however, currently works as a bottleneck for innovation in Europe, as certain SEP-holders currently refuse to grant licenses to any willing market participant and even if SEP-holders do not engage in such refusal to license, the demands are in most cases unreasonably high.

Companies like Continental have embraced the challenge with connectivity strategies that contribute to fundamental EU policy priorities like sustainability and digitization. Currently, there are only 6 European companies in the top 50 most innovative companies worldwide. 5 of those hail from the automotive sector. Continental is determined to promote an innovative Europe and thus a strong digital economy, which requires a resilient framework for the Internet of things and its innovations.

Automotive and IoT face the same challenges

Technological leadership in the IoT is an essential prerequisite for the future competitiveness of traditional industries on which Europe's prosperity is based. Standards and patents are particularly crucial in the ICT sector, given that the key elements of IoT are both patent and standard heavy, and demand for utilisation, availability and interoperability of the technologies is broad.

IoT innovation hinges upon connectivity and fair licensing of SEPs. Many owners of SEPs, however, abuse their dominant-market position by seeking royalty rates based not on the value of their own inventions, but instead based on the more expensive end-product trying to capture values created by downstream innovation of IoT entrepreneurs and by standardization itself. To invest and compete in IoT markets, European manufacturer and suppliers beyond the ICT sector hence need to be able to obtain licenses on fair, reasonable and non-discriminatory (FRAND) terms for patented and truly essential mobile communication technology.

Bottle neck imposed by SEP and mobile standards

Connectivity is made available by networking standards such as 3G, 4G and 5G to create a uniform technology basis for consumer IoT applications as well as connected products in the automotive industry. Access to these standards is in certain cases protected by SEPs. These SEPs represent an entry barrier for willing market participants regarding the standardised technology itself, and also further downstream products and technologies.

The use of these protected standards is severely restricted by SEP owners in two ways: (1) as a refusal by certain SEP-holders to license these SEP to any level of the value chain other than manufacturers of end products. This is motivated by a desire to maximise licensing income beyond the actual technical value of the SEPs, (2) by basing royalties on the value of the end-product instead of the incremental technical value of SEPs in an attempt to capture values created by downstream innovation of IoT entrepreneurs and by standardization itself. An artificially and unreasonable inflated license fee constitutes a de facto refusal to license market participants in the supply chain. The issue of fair SEP-licensing reaches far beyond the automotive industry as it is the base for all connected devices. Especially, consumer IoT applications will depend on connectivity protected by SEPs and standards to promote interoperability.

Avoiding negative effects on competition through standardisation

The unwillingness to license SEPs at component level and under non-discriminatory and fair terms will have negative effects on the consumer IoT sector just as it has in the automotive sector today.

Only strong and clear IPR guidelines of the SSOs and a concrete regulatory framework for standardized technologies can prevent future competitive distortions by SEP owners in the field of consumer IoT, similar to the practices we are already observing in the automotive sector today. Without a suitable regulatory framework consumer IoT application will contain unnecessary complexity levels in the product landscape as well as in the supply chain.

Just as in the automotive sector small to medium sized suppliers of consumer IoT applications will be at the mercy of SEP owners that can easily abuse their market dominant position. Especially these companies will struggle with the complexity of SEP licensing. Increased product complexity and fragmentation will be the result. This hampers innovation and will lead to the European IoT sector falling behind and missing its chance to be at the fore front of innovation.

Prevent discriminatory licence terms with consumer IoT and automotive standards

A regulatory framework for consumer IoT must introduce a fair and realistic evaluation of SEP portfolios, which allows each potential implementer to use standardized technology in legal certainty and in an economically justifiable way. This will result in preventing further competition barriers with regard to connectivity standards in the consumer IoT sector.