

Response to the Public Consultation on the Preliminary Report on the Sector Inquiry into Consumer IoT Services

September 1, 2021

Introduction and general remarks

We welcome the European Commission's will to better understand the consumer Internet of Things (IoT) sector and to assess whether there might be structural competition problems in consumer IoT markets to the detriment of market participants and potential competitors. We believe that the sector inquiry on consumer IoT services, carried out by the Commission in July 2020, has provided a broad picture of the competition concerns arisen in such markets and their likely impact on innovation and consumer choice.

As consumer IoT services providers, we agree with the preliminary findings gathered in the report and hope that they give to the Commission enough information to assess how competition problems could be best tackled, both in ex-ante and ex-post interventions. Overall, **we believe that some of the problems identified can be easily tackled under the Digital Markets Act (DMA)**. To this end, and considering that the legislative tool is currently under discussion within the European Parliament and the Council, we ask the co-legislators **to extend the scope of intervention in the proposed list of obligations, in order to address more effectively the concerns raised in the preliminary report, as well as to clarify that voice assistants are explicitly covered in the scope of the DMA¹**.

As the dynamics of the consumer IoT sector change rapidly, we believe that DG COMP's role in addressing the identified competition problems in the preliminary report is key and should be complementary to the DMA or other regulations. Therefore, **we encourage DG COMP to act ex-officio with the opening of specific antitrust investigations** in order to create a level playing field and to ensure competition in the consumer IoT sector.

The preliminary findings of the Commission are especially paramount for us. It has been clearly stated that Operating Systems (OS) remain the key gateways to hardware (IoT devices) and software (Apps). The leading players of consumer IoT services (Google, Apple and Amazon) are capable to launch better and more innovative services based on scale, as well as to create barriers to enter and to impose unilateral terms & conditions to third parties due to their vertically integrated ecosystems. Therefore, rather than focusing on voice assistants, **we truly believe that the core competitive constraint remains on the accessibility of leading players' OS, where openness and access under fair and non-discriminatory conditions are key to ensure an effective competition in the whole consumer IoT sector**.

To assist the Commission in the information gathering task, our response builds on the competition concerns identified in the preliminary report, adding further information about the

¹ In principle, we understand the voice assistants are included in the scope of the DMA under the meaning of online intermediation services of the Platform to Business Regulation, which explicitly considers voice assistants as an online intermediation service. However, clarification in this sense would be welcomed.

market, and proposing specific solutions on how to best address competition problems. We hope that the Commission acts swiftly to ensure competition in consumer IoT markets:

a) Barriers to entry/ and or expansion

The preliminary report highlights that there are barriers to enter in the consumer IoT sector due to the existing large vertically integrated ecosystems, the high cost of the technology investment, the limited interoperability (especially due to the absence of general availability of APIs), and the limited access to data. Most of respondents consider that leading technology platforms (Google, Amazon and Apple) hold bottleneck positions in the consumer IoT sector, which impede market participants to effectively compete on the merits.

In addition, the expansion through vertical integration, and the acquisition of new targeted IoT service providers allow the aforementioned players to cement their position in the consumer IoT consumer sector, creating hurdles for market entrants to compete on the merits.

We therefore ask the Commission to take further action to solve competition concerns around the inability of market participants to compete with leading players. In particular, **by fostering interoperability with their vertically integrated ecosystems, and by promoting transparent and non-discriminatory commercial relationships among players in the consumer IoT sector.**

b) Interoperability

The prevalence of proprietary technology providers of OS create significant barriers to entry and allow the main agents to expand their dominant position to the whole IoT ecosystem. Market participants are obliged to comply with all technical requirements imposed by leading consumer IoT players to develop their services within those ecosystems. The fulfillment of these requirements usually come along with the imposition of unfair terms & conditions that limit the functionalities of third-party smart devices and consumer IoT services through technical constraints, such limiting the availability of APIs.

These hurdles on interoperability can be well tackled by the DMA, as the proposal already foresees several obligations to impede the restriction of access from third-party providers to some of the key functionalities in their devices and OS (Art. 6 (1) f)). Therefore, **the proposed regulation shall oblige gatekeepers to grant alternative providers access to, and interoperability with hardware and software features of gatekeeper's OS to provide similar services** (in connection with Art. 6 (1) d) expanding the self-preferencing ban to all core platform services). This regulation should also include the publication of a reference offer that could be easily accessible to all IoT market participants. Fine-tuning the proposed measures in a timely manner through the DMA will help fostering interoperability and fairness for business users in the customization of consumer IoT services, especially focused on large voice assistants, OS providers and App Stores.

To promote a fair competition, **all APIs of the OS shall be accessible to third-party market participants.** When Google allows third parties to develop their mobile apps within Android,

Google provides a set of public APIs that any developer can use. In addition, there are private APIs only available to a few players and, finally, there are non-public APIs to which only Google have access, giving it a significant advantage. The APIs that Google reserves for its own allow it to have deeper access to the OS capabilities (e.g. Google could remotely delete an application from an Android terminal). This ability gives Google an “administrator” role over all mobile apps that operate in Android.

In our view, the most effective way to eliminate the barriers to entry in the market is to grant access to the above-mentioned operating systems because they are at the core of the ecosystem. In our view, artificially promoting the existence of many operating systems that compete with each other would negatively affect innovation in services and devices and, as a consequence, will not be in the end-user’s interests.

c) Data

The preliminary report clearly sets out that leading voice assistants are prone to accumulate large amounts of data that allow them to cement their position in the market, and to potentially leverage their position to expand swiftly in neighboring consumer IoT markets. In addition, the combination of data allows them to offer better and more innovative services. This market power reinforces the position of leading consumer IoT players in their closed ecosystems.

The DMA introduces data access obligations for gatekeepers. In particular, to provide business users the data generated through the use of the platform of the gatekeeper (Art. 6 (1) i)), the prohibition for gatekeepers to use the data generated by its business users in competition with them (Art. 6 (1) a)), alongside data portability rights in line with GDPR (Art. 6 (1) h)). Nevertheless, to really stimulate fair competition in consumer IoT markets, **the DMA obligations should address a gatekeeper’s unfair practices against all competitors, even if they are not necessarily business users of the gatekeeper’s service.**

Thus, **it is key to ensure fair data access in those cases where data can be hardly contestable by competing on the merits.** To this end, **focus should be put on the future DMA to avoid a myriad of regulatory instruments partially covering data access obligations.** For the sake of simplicity and legal certainty, it is of outmost importance to avoid overlaps between different set of rules (DMA, Data Act, Cloud Rulebook, etc.).

d) Pre-installation, default settings and prominence

The preliminary report identifies that pre-installation, default-setting and prominent placement of consumer IoT services on smart devices, or in relation to voice assistants, can give a competitive advantage for leading providers. As stated previously, **these practices raise competition problems when exerted by leading providers of IoT services**, which tend to set-up all their services together around their vertically integrated ecosystems, cementing their dominant position along the value chain.

Therefore, we support the DMA's proposed obligation in Art. 6 (1) b) allowing users to un-install any pre-installed software applications on a gatekeeper's core platform service (e.g. OS). Users would also be able to download and install alternative applications offered by smaller players. Furthermore, **the DMA would ban gatekeepers from restricting the ability of business users to switch and subscribe to different software applications and services over the OS of the gatekeeper** (Art. 6 (1) c)). We believe these obligations would solve concerns over pre-installed applications or default services by gatekeepers.

In addition, we are of the view that **the DMA could tackle the issue of self-preferencing more vehemently, looking beyond search engines to also cover OS and voice-assistant ecosystems**. We therefore ask the European Parliament and the Council to extend the scope of application of Art. 6 (1)d) to OS and voice-assistant ecosystems.

e) Exclusivity, concurrency and tying

Leading voice assistant providers tend to secure exclusivity of their voice assistants on smart devices and prevent switching between voice assistants. The findings of the Commission in the preliminary report point out that exclusivity, concurrency and tying in relation to leading voice assistants could raise potential competition concerns when they preclude other competing voice assistants from being used on the same device.

As stated before, we support the DMA obligations that allow user mobility. We particularly welcome the measure tackling strategic tying of services to lock-in users into a gatekeeper's ecosystem. **We would further reinforce the prohibition of tying of Art. 5 f), extending it to any unconnected service or product offered by the gatekeeper, not only limiting it to other 'core platform services. This would have the effect of avoiding market tipping, also in concordance with Art. 102 TFUE** that explicitly bans the tying of any unconnected service. Hence, the same approach should apply *ex ante* under the DMA.

f) Bargaining power of leading OS players

Last but not least, we see that the aforementioned concerns over interoperability capabilities when accessing a core resources like the OS, is used by gatekeepers in order to exert an excessive bargaining power in negotiations with third parties. In this respect and similar to the experience in the Telecoms sector when regulators imposed access to copper local loop unbundling, **granting access to SO capabilities in equal terms as those enjoyed by gatekeepers is vital. Potential problems that might arise by a lack of competition could be tackled through some type of obligations and finally helping to achieve a fairer ecosystem:**

- Obligation of **transparency** in relation to access to OS, requiring undertakings to make public specific information, including technical specifications (APIs) as well as terms and conditions for supply and use.
- Obligation of **non-discrimination**, ensuring that the undertaking applies equivalent conditions in equivalent circumstances to other providers, and provides services and information to others under the same conditions and of the same quality as it provides for its own services, or those of its subsidiaries or partners.

Finally, **the obligations of transparency and non-discrimination over undertakings might end up with the obligation to publish a reference offer that could be easily accessible to all IoT market participants.** The reference offer, in the form of an adhesion contract, should contain a description of the relevant technical specifications broken down into components according to market needs, and the associated terms and conditions. Regulatory authorities may impose changes to reference offers to give effect to these obligations.