



ETNO response to the Public Consultation on the Preliminary Report on the Sector Inquiry into Consumer Internet Of Things

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Introduction

ETNO welcomes the European Commission's (EC) aim to get a comprehensive understanding of the consumer Internet of Things (IoT) sector, and to assess whether competition in this sector may be restricted or distorted within the internal market.

As markets and technologies converge, European telecommunications providers have become increasingly entwined with wider consumer propositions and larger ecosystems. In the consumer IoT sector, our members typically provide the connectivity layer for smart devices. Additionally, several telecom service providers have their own IoT offerings – such as cloud-based platforms for the analysis of IoT data – and voice assistants.

The sector inquiry fits into the broader context of the EC's Communication on Shaping Europe's Digital Future and the current review of competition law instruments in light of digital economy developments. The European Digital Strategy noted that *"Some platforms have acquired significant scale, which effectively allows them to act as private gatekeepers to markets, customers and information"*. This is exactly the picture that emerges from the preliminary report with regards to the consumer IoT sector.

Furthermore, the inquiry is particularly timely as the findings and competition concerns raised by the respondents could not only improve competition law enforcement in the digital sector, but also feed into the work on the proposed Digital Markets Act (DMA). For instance, co-legislators should clarify that voice assistants are explicitly covered in the scope of the DMA, next to other 'core platform services' such as Operating Systems (OS) that are crucial nodes in the consumer IoT ecosystem.

Although voice assistants and smart devices (smart homes, wearable devices, mobile devices) are an emergent way to access consumer IoT services, it is necessary to highlight the crucial role of OS as key gateways for access to hardware (IoT devices) and to software (applications). The leading players of consumer IoT services (Google, Apple and Amazon), are capable to launch innovative services based on scale, as well as to create entry barriers and impose discriminatory conditions to third parties due to their vertical integrated ecosystems. Therefore, it is paramount to make the OS open and accessible for all third parties in a fair and non-discriminatory conditions to ensure competitiveness in consumer IoT services markets.



We appreciate the opportunity to comment on the preliminary report and its findings from the sector inquiry. More specifically, our response will mainly focus on the practices listed in Chapter 8, which might have a negative impact on competition, innovation and consumer choice in the consumer IoT sector in the EU, as well as on the recommendation for several actions that could be taken according to the tools the EC has at its disposal.

Concerns Raised During The Sector Inquiry

First, ETNO encourages an increased use of the EC's current investigation powers set out by Article 17 of the Regulation 1/2003. This 'information gathering exercise' has been historically helpful to draw attention to potential sector-wide competition issues that could lead to the opening of antitrust proceedings according to the competition concerns gathered from the sector inquiry, as well as to feed into regulatory initiatives affecting IoT to impose further sector-specific legislation.

Regarding ex-post intervention, ETNO encourages the EC to take further steps if any of the identified competition concerns are deemed to result from the leading undertakings' conduct in their respective vertically-integrated ecosystems.

Fostering the execution of sector inquiries will enable a better understanding of the functioning of digital markets and will allow swifter individual investigations where anti-competitive behaviour has been identified. In the context of the dynamic digital economy, this will also allow for the much-required widening and strengthening of the applicability of interim measures in urgent cases of serious and irreparable damage.

ETNO concurs with the concerns raised in the report, including a lack of interoperability and standardisation, the accumulation of data, pre-installation/default-settings/prominence and presence of exclusivity clauses and tying.

a) Barriers to entry and/or expansion

The preliminary report points out to barriers to entry in the consumer IoT sector due to existing large vertically integrated ecosystems and high cost of the technology investment, as well as interoperability issues and the lack of access to data. The majority 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.

Besides, the expansion through vertical integration and the acquisition of new targeted IoT service providers allow the leading platforms to create barriers to enter into the consumer IoT sector.

ETNO encourages the EC's Directorate General for Competition (DG COMP) to take further actions to address the inability for market participants and new entrants to compete with leading players, by



fostering interoperability within their vertically integrated ecosystems and by promoting a transparent and non-discriminatory commercial relationship among actors in the consumer IoT sector.

b) Interoperability and standardisation

As indicated in the report, the prevalence of proprietary technology providers of voice assistants and operating systems (Amazon, Google and Apple) can lead to the creation of “de facto standards”, together with technology fragmentation and lack of common standards.

Even though European and international standardisation bodies are striving to introduce open standards for digital products and services, we see that leading players in the consumer IoT sector are also involved in these initiatives and may impose their technology solutions over their business partners and competitors. This may hamper the willingness of other competitors to invest in IoT solutions.

The creation of a closed IoT ecosystems, centred on their proprietary technology, lead to unfair terms and conditions and limit, for example, the functionalities of third-party smart devices and consumer IoT services through technical constraints, such as limited APIs.

As has also been noted in the DMA proposal, ‘digital gatekeepers’ that provide smart devices and operating systems (OS) may restrict access from third-party providers to some of the key functionalities in their devices and OS. Therefore, gatekeepers should be obliged to grant alternative providers access to, and interoperability with, the same OS, hardware or software features that are used by the gatekeeper to provide similar services. We encourage DG COMP to take appropriate measures to address this in a timely manner and ensure interoperability and fairness for business users in the integration process of consumer IoT services, by focusing on large voice assistant and OS providers.

In particular, it is key to ensure that all the APIs of the OS are accessible to all market participants to promote fair competition. When Google allows third parties to develop their mobile apps within Android, Google provides a set of public APIs that any developer can use for that purpose. However, Google makes some private APIs available to only a few players and reserves some non-public APIs for its own use and significant advantage. The non-public APIs allow Google to have deeper access to the OS capabilities that others do not have (e.g. the power to remotely delete an application from an Android terminal). This ability gives Google an “administrator” role over all mobile apps that work on Android.

Some problematic behaviours related to standardisation and intellectual property remain to be addressed. In our views, gatekeepers should be prevented from imposing *de facto* standards on third-party providers of similar services or products that do not result from established open



standardisation processes, or from imposing abusive and disproportionate conditions related to the intellectual property policy of third-party providers as a condition to access the gatekeeper's OS or voice assistant, for instance by forcing them to renounce their intellectual property rights.

c) Data

In light of the rapidly growing consumer IoT market, ETNO agrees that leading voice assistant providers are prone to accumulate large amounts of data and potentially leverage these advantages into adjacent markets. This leveraged market position creates and reinforces the IoT ecosystems, which are increasingly "closed" and vertically integrated in nature, especially because the leading voice assistants control the whole ecosystem by both the smart device end (for example, mobile handsets in the case of Apple and Google, and Amazon with a smart home device) and the OS end.

The accumulation of large amounts of third-party data would not only allow leading voice assistant providers to leverage more easily into adjacent markets, but it will give them also advantages in relation to the improvement in the offers of new products and services thanks to exclusive access to IoT-generated data.

Where a company having a gatekeeper position in an IoT environment enjoys sole control over non-rivalrous data with competitive relevance and refuses to grant access to existing or potential competitors, foreclosure is very likely to result. Competition law enforcement needs to safeguard fair data access since it is the key to ensuring healthy competition in those cases where data is not contestable.

Tackling data hoarding by gatekeepers would also be prudent, for instance by preventing a gatekeeper provider from using data generated by its business users through its platform (e.g., IoT device or service provider) to directly compete with said users, as well as to give them access to the data generated through its core service platform, and data portability rights.

Additionally, mandating data access under EU competition law could be attained based on Article 102 TFEU: imposed access could be the right tool to remedy abusive behaviour based on control of data. Guidance and clarification is still needed on how to effectively impose data access obligations as a remedy in complex sectors like consumer IoT. Where justified in a given case, authorities should be encouraged to use data access obligations as an effective remedy.

d) Pre-installation, default-settings and prominence

As also stated in the preliminary report, practices regarding 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 to leading providers of a service that is pre-installed or set as default or



is otherwise given a prominent placement. Users should be given the flexibility to choose and install third-party applications.

e) Exclusivity, concurrency and tying

Exclusivity, concurrency and tying in relation to voice assistants could raise potential competition concerns when they preclude other competing voice assistants from being used on the same device.

Leading voice assistant providers tend to secure exclusivity of voice assistant presence on certain smart devices or to prevent switching between voice assistants.

In fact, competition law (Article 102(d) TFEU) recognises that abuse of dominance may result from tying of any unconnected service. Measures tackling strategic tying of services to lock users into a gatekeeper's voice assistant would have the effect of removing the ability of gatekeepers to tip adjacent markets in their favour.

f) Bargaining power of leading OS players

The above-mentioned problems in relation to interoperability when accessing a core resource for the IoT ecosystem sustainability like the OS, might be used by gatekeepers to exert an excessive bargaining power in negotiations with 3rd parties when agreeing the terms of such access. Similarly as it has happened in the telecom sector with regulators imposing non-discriminatory access to copper local loop, granting access to OS capabilities on equal terms as those enjoyed by the gatekeepers is vital. The potential problems that might arise by a lack of competition could be tackled through some type of obligations to help achieve a fairer ecosystem:

- Obligation of **transparency** in relation to access to OS, requiring undertakings to make specific information public, 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 could also result into the obligation to publish a reference offer that could be easily accessible to all IoT participants. This could 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.



Conclusions

The preliminary findings of the EC's consumer IoT sector inquiry can contribute efficiently to improving competition law enforcement in the digital sector and helping inform the current drafting of the DMA proposal. The preliminary findings have identified some of the most critical behaviours of gatekeepers, such as for example data accumulation, default-settings, barriers to switching and interoperability, the possibility to un-install default apps and services and the key role of the operating systems in the provision of consumer IoT services.

As stated in our recent paper¹, we share the EC's concerns about unfair and anticompetitive conducts by a few large digital platforms, which stifle opportunities for competitors and ultimately have a chilling effect on innovation and diminish consumer choice.

Given the dynamics of the consumer IoT sector, it is important that DG COMP act swiftly on the findings of the preliminary report. The EC cannot solely rely on the DMA or other regulation, which will always be complementary to the application of EU competition rules. Even more so as not all the competition concerns arisen from the preliminary report can be specifically tackled by the DMA, and the legislative process leading to the DMA enactment is still long and uncertain. Therefore, we encourage DG COMP to take own-initiative with the opening of specific antitrust investigations based on the conclusions of its inquiry, in order to restore fair competition in the consumer IoT markets.

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¹ A telecoms industry view on the digital markets act joint position paper by ETNO and GSMA available [here](#)