

## **GSMA response to the public consultation on the Commission Staff working document – Preliminary Report – Sector Inquiry on Consumer Internet of Things**

In 2020, the Commission requested input from several GSMA members during its sector enquiry on consumer Internet of Things. The GSMA and its members welcome DG Competition's findings in its preliminary report. The GSMA shares the concerns raised by the draft report and requests the Commission to intervene promptly in the markets where these competition concerns are present and, where appropriate, impose interim measures.

We appreciate that some competition concerns raised by the report might be tackled by the Proposal for a Digital Markets Act (DMA), and that the proposals contained in the draft DMA provide useful guidance and points of comparison in the IoT sphere. Indeed, to the extent that the DMA is intended to cover voice assistants and Operating Systems (OS) used in IoT applications, we would welcome explicit clarification of this point in the draft text. Special focus should be put on ensuring that OS remain open and interoperable. As pointed out in the preliminary report, all the competition concerns and barriers to enter in the consumer IoT sector are principally the result of or associated with the closed ecosystems created around OS and smart devices.

In addition, DG COMP's intervention is complementary to the DMA proposal and therefore, the Commission should not be precluded from acting *ex post*, opening specific antitrust investigations to address the existing and potential competition concerns on any consumer IoT markets that cannot be tackled by the DMA.

We would use the opportunity to comment on the draft report to express our support for the Commission's efforts and to provide additional requests and information to complement the preliminary findings of DG COMP as well as suggest ways to best tackle them.

With this intention, we would like to highlight the following:

### **Barriers to entry/expansion -Gatekeeper Position-**

- A small number of the largest players in the digital ecosystem have created large, vertically integrated IoT ecosystems which control 3<sup>rd</sup> party access to data and the interoperability of voice assistants and smart devices and services. The control of all of the aspects of such ecosystems creates barriers to entry and puts digital players, once again, in bottleneck positions, impeding other market participants' efforts to compete on the merits. Moreover, the provision of IoT services is characterized by high entry costs due to the significant upfront technology investment.

Through their OS and proprietary App stores, the leading players of IoT consumer devices control access into their vertically integrated ecosystems. OS of voice assistants and smart devices are key gateways to enable the functioning and interoperability of IoT services. In particular, OS enable access to hardware of IoT devices and the software of the functionalities and applications. In addition, market operators fear losing brand recognition and direct relationship with the user, since voice assistants and smart device OS providers usually have the most direct relationship through their user interfaces.

- Leading players are capable of launching innovative services based on their OS scale, while creating barriers to entry and imposing discriminatory conditions to third parties obliged to deal with them for the operation of their own services. In this sense, commercial partners can see their APIs to access OS limited in comparison with those of ecosystem owners. For example, some ecosystem owners allow third parties to develop mobile apps within their OS, providing public APIs for the purpose but reserving private APIs for few players, and retaining non-public APIs for its own use. By unilaterally deciding on the availability of such APIs, the ecosystem owner provides to itself better access to OS capabilities in the detriment of other operators (e.g. possibility to remotely delete an application from a user terminal). This usage of market power significantly increases the provider's advantage in the market, giving it an "administrator" role over mobile apps and IoT services within its OS.
- **On this basis, the GSMA considers that to ensure contestability in IoT markets, it is essential to turn OS into open and accessible platforms and to promote fair and non-discriminatory commercial relationships between ecosystem owners and market participants. The GSMA encourages the Commission to take further action in order to create a level-playing field in the consumer IoT market through the fostering of interoperability to ease entry barriers.**
- The GSMA wishes to highlight that M&A activities in IoT markets creates a risk that IoT ecosystem owners acquire and integrate other providers of IoT services which could potentially compete with them on the market. This not only reduces future contestability, but also increases barriers to entry for the reasons mentioned above.

### **Interoperability and standards**

- Major technology companies impose their technology solutions in devices and when transacting with commercial partners. This reduces general willingness of other, smaller, companies to invest in collaborative innovation. In addition, the complex fragmented standardization landscape, together with a similarly complex landscape of proprietary technologies, negatively impact the growth potential of consumer IoT segments, where a seamless consumer experience is essential.
- IoT markets are characterised by the prevalence of technology fragmentation and the lack of common standards. The fact that consumer IoT markets are led by few providers of proprietary voice assistants and OS, which independently set the requirements to achieve interoperability with their proprietary technology through unilaterally governed terms, creates the risk of setting *de facto* standards. In fact, leading providers impose their technology solutions over their business partners and competitors. **Under these circumstances, GSMA believes that securing fair and non-discriminatory terms and conditions to access proprietary technology in IoT markets is essential to achieve a level playing field, contestability and fairness in the market.**
- As previously stated, the largest IoT players govern almost unilaterally the interoperability and integration processes of IoT voice assistants and smart devices. They may be able to limit the functionalities of third-parties' IoT products and service by imposing technical constraints, such as limited APIs. In this line, the DMA proposal foresees similar situations and establishes that digital gatekeepers may restrict access from third-party providers to some of the key

functionalities of their OS and devices – proposals which can also be considered in the context of OS applied in IoT.

### **Data**

- Leading voice assistant providers can accumulate large amounts of data, enabling them not only to control the data flows and user relationships, but also to leverage into adjacent markets. Data also allows vertically integrated providers, controlling the whole IoT ecosystem to improve their current offer and consumer experience, and to increase the chances of success when developing new products and services. Conversely, not having access to data can raise barriers to new entrants on the voice assistant market and hinder the development of potential competitors on that market.
- In addition, data monetisation opportunities are expected to benefit the leading consumer IoT technology platform providers and the few consumer IoT players that have an existing presence in the digital advertising market. More significantly, sole control over non-rivalrous data gives dominant companies a significant advantage towards market participants. This increases foreclosure risks if access is not granted under fair and reasonable terms.

### **Pre-installation, default settings and prominence**

- Leading voice assistant providers carry out practices regarding pre-installation, default-setting and prominent placement of consumer IoT services on smart devices or in relation to voice assistants that determine the discoverability, visibility and findability of a consumer IoT service.
- **The GSMA believes that the prominent placement and self-preferencing that leading voice assistants put on their own ecosystems should be regulated.**

### **Exclusivity and Bundling**

- Attempts by leading voice assistant providers to secure exclusivity of voice assistant presence on certain smart devices or to prevent the concurrent use of the voice assistants, or otherwise favour their own vertically-integrated providers over third party providers, raise competition concerns among industry players. In fact, the market practice of the leading voice assistant providers shows that they would only licence their voice assistants together with other types of software, technology or applications and not on a stand-alone basis. This prevents competing providers from using other voice assistants on the same device.
- **The GSMA considers essential to tackle the ability of gatekeepers to tip into adjacent markets through tying and bundling practices in the IoT sphere.**

### **Bargaining power of leading players, imbalanced agreements and transparency**

- Leading players include contract clauses enabling: (i) the termination of an agreement at its sole discretion or without informing the other contractual party beforehand; and (ii) the termination of an agreement if the counterparty introduces infringement proceedings against it concerning intellectual property rights. In addition, contract provisions can give some companies broad rights with respect to, for example, data access and usage, which extend beyond the business division concerned by the agreement.

- In addition, the preliminary report points out to the difficulties with app store providers who block, remove or delay updates of their apps, and add that there is little or no communication about the reasons for such blockages or delays.
- In this regard, telecom operators have experienced success with standard adhesion contracts in the form of reference offers approved by the regulators. These contracts impose standard transparency and non-discrimination obligations, which *ex ante* grant an adequate degree of bargaining power between the parties. For example, on copper local loop, reference offers ensure that incumbent operators grant fair and non-discriminatory access to OS capabilities.
- More generally, transparency is necessary to allow consumers exercise their choice in an informed manner, optimise their interoperation with the IoT provider's products, and assess the level and cost of services provided to them by the IoT provider.
- **These concerns could be addressed by, for example, an obligation to include the following clauses in contracts between leading IoT players and counterparties:**
  - **Transparency clauses to enhance interoperability with regard to access to OS, by requiring undertakings to publish specific information, including technical specifications (APIs) and the T&C for the supply and use.**
  - **Non-discrimination clauses ensuring that leading suppliers treat the equivalent situations and partners under equivalent terms, and do not self-preference their own products.**

Finally, the above-mentioned obligations over these leading players might come alongside the obligation to publish a reference offer that could be easily accessible to all market participants. It could contain a description of the relevant technical specifications broken down into components according to market needs, and the associate T&C. The authority in charge could impose changes to reference offers to ensure the effectiveness of such obligations.

### About the GSMA

The GSMA represents the interests of mobile operators worldwide, uniting more than 750 operators and nearly 400 companies in the broader mobile ecosystem, including handset and device makers, software companies, equipment providers and internet companies, as well as organisations in adjacent industry sectors. The GSMA also produces the industry-leading MWC events held annually in Barcelona, Los Angeles and Shanghai, as well as the Mobile 360 Series of regional conferences.

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