

# COMPETITION AND REGULATORY NEWSLETTER

## QUICK LINKS

Main Article

Other Developments

Merger control

Antitrust

General competition

## EUROPEAN COMMISSION PUBLISHES INITIAL FINDINGS IN INTERNET OF THINGS SECTOR INQUIRY

On 9 June 2021 the European Commission published its [preliminary findings](#) in its sector inquiry into the consumer Internet of Things (IoT) - a sector that has grown rapidly in the last decade, and is expected to continue to grow. The Commission has identified four main areas of potential concern put forward by respondents to the inquiry.

### BACKGROUND

The Commission launched the sector inquiry on 16 July 2020, amid concerns that lack of interoperability, restrictions on data access and self-preferencing in this sector could distort competition and lead to gatekeepers emerging in the sector.

In producing the preliminary report, the Commission has relied on input from over 200 stakeholders, including manufacturers of smart home products or wearable devices, providers of voice assistants and consumer IoT services and industry organisations. Over 1,000 contracts were shared as part of the inquiry.

### THE CONSUMER IOT SECTOR

The consumer IoT sector encompasses consumer products (e.g. a smart fridge) and services (e.g. music streaming) that connect to the internet and can be remotely controlled by the user, for example by using a voice assistant device or mobile phone application.

The Commission found that integration with leading voice assistant and smart device operating system providers (namely Amazon, Apple and Google) is seen as essential to compete. It also found that barriers to entry are high, with respondents citing (i) the high costs associated with developing technology, particularly in the market for general-purpose voice assistants, and (ii) a perceived inability to compete with vertically integrated companies like Google, Amazon and Apple as the key barriers.

### MAIN AREAS OF POTENTIAL CONCERN

The Commission has [highlighted](#) four main areas of potential concern.

For further information on any EU or UK Competition related matter, please contact the Competition Group or your usual Slaughter and May contact.

Square de Meeûs 40  
1000 Brussels  
Belgium  
T: +32 (0)2 737 94 00

One Bunhill Row  
London EC1Y 8YY  
United Kingdom  
T: +44 (0)20 7600 1200

**Main Article**

**Other Developments**

**Merger control**

**Antitrust**

**General competition**

## ***RESTRICTIONS ON USING MULTIPLE VOICE ASSISTANTS***

According to the preliminary findings, most smart devices have only one voice assistant built in, despite customer demand for dual assistants. Respondents were concerned about exclusivity and tying practices, as well as other practices limiting users' ability to use multiple voice assistants on the same smart device.

## ***THE ROLE OF VOICE ASSISTANTS AND SMART DEVICE OPERATING SYSTEMS AS INTERMEDIARIES***

Concerns were raised around the scope for owners of voice assistants and smart device operating systems - which operate as intermediaries between users and their smart devices - to influence consumers. For example, concerns were raised that such owners might be in a position to self-promote, or to promote only certain third parties, and conversely limit the visibility and discoverability of other, smaller consumer IoT services.

## ***DATA CONCERNS***

The report provisionally found that voice assistants and smart device operating systems collect huge amounts of data. Concerns were raised that this gives them an advantage in improving their own voice assistant offerings, as well as strengthening their offerings in adjacent markets. Another data-related concern was that data monetisation opportunities were likely to primarily benefit the leading consumer IoT providers, especially those with an existing presence in the digital advertising market.

## ***LACK OF INTEROPERABILITY***

The Commission provisionally found limited interoperability between the products, services and technologies of different providers, due to the lack of common standards and the prevalence of proprietary technology in the sector. Respondents were concerned that large players are therefore able unilaterally to determine the requirements for, and the extent of, interoperability (giving them the opportunity to limit the functionality of third parties' offerings). The Commission pointed to a risk that these limitations could also disincentivise innovation efforts by smart device manufacturers and IoT service providers.

## ***NEXT STEPS***

The Commission is now consulting on these findings until 1 September 2021. The final report is expected in the first half of next year.

## ***CONCLUSION***

The purpose of a sector inquiry is a fact-finding investigation, not intended to target any particular company; the aim of the inquiry is to gain a better understanding of the market for consumer IoT products and services.

Nevertheless, Executive Vice-President Margrethe Vestager has [made clear](#) that, if the initial findings are confirmed, new competition cases could follow. It can also be expected that the findings will contribute to the ongoing debate on the scope of the Digital Markets Act.

[Main Article](#)[Other Developments](#)[Merger control](#)[Antitrust](#)[General competition](#)

## OTHER DEVELOPMENTS

### MERGER CONTROL

#### COMPETITION COMMISSIONER VESTAGER NOTES THAT EU MERGER INVESTIGATIONS REMAINED UNCHANGED IN THE PANDEMIC

At the European Competition Day held on 15 June 2021 EU Competition Commissioner Margrethe Vestager delivered a keynote [speech](#) on the EU's competition law enforcement since the start of 2020. While the speech touched on several competition law topics such as the EU's focus on adapting EU competition rules and guidelines to better tackle digitalisation and climate change, the key remark Vestager made is that the COVID-19 pandemic did not change the European Commission's merger enforcement.

During her speech, Vestager noted that the Commission's intervention rate during the pandemic in 2020 and so far in 2021 "was just above 5%, almost identical to 2019". The Commission intervened in 18 of the 361 mergers notified in 2020, in comparison with the 29 interventions of the 382 notifications in 2019.

The strong merger enforcement was also highlighted by the fact that "a number of" interventions were not taken into account in the above numbers, as the notifications were withdrawn - including two occurring after the Commission had sent a statement of objections. In this context the Commissioner referred to two abandoned Phase II cases (proposed shipbuilding merger *Fincantieri/Chantiers de l'Atlantique* and airline case *Air Canada/Transat*). Vestager said that even though there were "certainly good business reasons" to abandon transactions in sectors affected by the pandemic, the Commission was "still investigating the cases thoroughly, when the parties decided to break off". Furthermore, Vestager emphasized that "When applying merger control during severe shocks, we need to make sure that as companies emerge from the crisis, the competitive foundations are still there for the industry to take off again".

### ANTITRUST

#### APPLE'S CHALLENGE TO APP STORE CASE IN CHINA DISMISSED BY SHANGHAI COURT

Apple is currently subject to a lawsuit in the Shanghai courts alleging that it abused its dominance by requiring users to pay higher fees for some apps on Apple's App Store compared to the fees charged by app stores on Google's rival Android platform. It recently lost a jurisdictional challenge, which may be of interest for foreign companies selling goods or services in China through non-Chinese subsidiaries.

The plaintiff filed a lawsuit against Apple Inc. and Apple Computer Trading (Shanghai) with the Shanghai Intellectual Property Court in February 2021, seeking various remedies including damages, a public apology from Apple and that Apple discontinue charging 30 per cent commission on, and mandating the use of Apple Pay for, in-app purchases.

Apple Shanghai claimed that the Shanghai court did not have jurisdiction since the alleged infringement was implemented by Apple Inc., the operator of the App Store, not Apple Shanghai, which is only the distributor of Apple mobile phones.

The court determined that the place of infringement includes both the place where the infringement takes place and where the result of the infringement occurs. The plaintiff argued that his interests had been damaged by Apple's alleged abusive conduct (Apple Shanghai providing mobile phones and Apple Inc. operating the App Store). The court found the plaintiff's domicile could indeed be regarded as the place where the result of the alleged infringement took place and dismissed Apple's jurisdictional challenge.

[Main Article](#)[Other Developments](#)[Merger control](#)[Antitrust](#)[General competition](#)

## GENERAL COMPETITION

### EU AND US LOOK TO ESTABLISH JOINT TECHNOLOGY COMPETITION POLICY DIALOGUE

Following the US-EU Summit in Brussels on 15 June 2021 the European Union and the United States released a [joint statement](#) titled “Towards a renewed Transatlantic partnership”. In the joint statement Washington and Brussels announced their plans to set up a Joint Technology Competition Policy Dialogue that will focus on developing common approaches and strengthening the cooperation on competition and enforcement in the tech sectors. With a view to setting new common standards, both parties intend to promote a staff exchange programme between their research funding agencies, and will explore the possibility of developing new research initiatives (e.g. on biotechnology). Furthermore, both parties aim to deepen cooperation on cybersecurity information sharing and situational awareness, as well as cybersecurity certification of products and software.

While enabling Transatlantic commerce, both parties further committed themselves to work together to ensure safe, secure, and trusted cross-border data flows that protect consumers and enhance privacy. They further expressed their willingness to continue to work together to strengthen legal certainty in Transatlantic flows of personal data.

The joint statement also highlights that the EU and US have launched the Trade and Technology Council (TTC) as a joint commitment to strengthen technological and industrial leadership and expand bilateral trade and investment. The TTC will set up working groups including on technology standards cooperation, ICT security and competitiveness, and data governance and technology platforms.

In a [press release](#) issued on the launch of the TTC, Vestager said: “*We have common democratic values and we want to translate them into tangible action on both sides of the Atlantic. To work for a human centered digitisation and open and competitive markets. I very much look forward. This is a great step for our renewed partnership*”.

**London**

T +44 (0)20 7600 1200

F +44 (0)20 7090 5000

**Brussels**

T +32 (0)2 737 94 00

F +32 (0)2 737 94 01

**Hong Kong**

T +852 2521 0551

F +852 2845 2125

**Beijing**

T +86 10 5965 0600

F +86 10 5965 0650

Published to provide general information and not as legal advice. © Slaughter and May, 2021.

For further information, please speak to your usual Slaughter and May contact.

[www.slaughterandmay.com](http://www.slaughterandmay.com)

562234434