Computer & Communications Industry Association

Tech Advocacy Since 1972

August 18, 2016

Via Electronic Mail

Mrs. Margrethe Vestager
Commissioner for Competition
European Commission
200 Rue de la Loi
1049 Brussels

Re: Ensuring Choice, Innovation, and Competition in the Mobile Ecosystem

Dear Commissioner Vestager,

For more than 40 years our trade association, the Computer & Communications Industry Association[1] (CCIA), has advocated for open markets, open networks and full, fair, and open competition. Our membership includes companies in the Internet and technology industries that compete fiercely in the digital economy. We have taken an interest in the dynamics of competition in high technology markets as well as competition policy for decades and it is in this context that we are writing to you.

We fully support the Commission's important role in ensuring that the competitive process is not hampered by undertakings. While a lot of debates focus on whether competition law needs an update, we remain broadly convinced that competition rules are flexible enough to deal with new market realities and conduct. However, competition enforcement will have to pay increased attention to the broader context of a given conduct as well as to new economic dynamics. We would like to stress this point since the outcome of certain investigations will have important consequences for the functioning of the digital economy, innovators, and ultimately for consumers.

We feel that the broader economic context is particularly important as regards the Commission's ongoing investigation into the Android mobile operating system (OS). Since its release in 2007, the year Apple unveiled its first iPhone, Android has been a boon for original equipment manufacturers (OEMs), app developers, and consumers. Statistics show

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[1] The Computer & Communications Industry Association (CCIA) is a non-profit membership organisation that represents the interests of a wide range of companies in the Internet, technology and telecoms industries. We advocate for open markets, open networks and full, fair, and open competition. Our full membership can be viewed here: http://www.ccianet.org/about/members/

that in 2015 alone, total app store revenues for European apps amounted to EUR 8.75 billion.[2] The total number of app downloads since 2008 is 250 billion. European developer revenues were more than EUR 6 billion in 2015 and today we have 1.64 million Europeans working in app development.[3] It goes without saying that the Android ecosystem has been central to this positive development.

The Android open source code means OEMs do not need to develop their own mobile OS, allowing them to focus more resources on hardware innovation. Widespread adoption of the Android OS has enabled app developers to easily develop for millions of customers. Consumers benefit from a significant supply of new apps, smartphones at various price points, and the flexibility that Android-running devices leave them. Last but not least, smartphones running on Android have established themselves as the main competitor to Apple's iPhone which is by far the most profitable mobile device.

Importantly, the innovation in the mobile ecosystem has not occurred despite the alleged anti-competitive agreements Google has signed with OEMs and telecom providers, but precisely *because* of such agreements, which we view as pro-competitive. First, agreements obliging OEMs to pre-install the full suite of Google apps, if they opt for the Google experience, are necessary to provide an attractive out-of-the box user experience. That is particularly important when faced with tremendous competition from Apple operating a vertically-integrated system that comes with many pre-installed apps. In a situation where an OEM wishes to license Google apps, it seems logical for the licensing agreement to include terms aimed at ensuring that devices with the Google experience carry a consistent set of apps. On a more granular level, this suite of apps is also important for app developers. Very often they rely on it for the functionality of their own apps. Whenever an app would like to e.g. show a map or open a website, it's in the interest of the user for that functionality to seamlessly communicate with a pre-installed map or browser app.

Users are of course *always* free to download alternative apps with the same functionality and remove pre-loaded ones. European companies like Spotify and BlaBlaCar offer some of the most popular apps that do not come pre-installed on smartphones. OEMs and telecom providers are equally free to ship their handsets with additional apps leaving unparalleled choice to consumers. All Samsung phones are offered with the manufacturer's own browser and app store. Orange and Deutsche Telekom, for example, are adding their own suite of apps on all Android-run devices they offer.

The fundamental question relates to the interplay between competition law enforcement and the economic incentives of firms: how can we be sure there is sufficient incentive to create a valuable platform like a mobile OS while not impeding competition? Google has decided to offset the costs associated with developing and running Android with revenue generated through Google apps. These costs should by no means be underestimated. They range from developing and improving the OS, to keeping it secure and to defending it against litigation.

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[2] Williamson, B. et al. (2016). A policy toolkit for the app economy - where online meets offline. Available at: http://www.lisboncouncil.net/news-a-events/689-app-economy-revolution-all-day-everywhere.html
[3] Mandel, M. (2016). App Economy Jobs in Europe. Available at: http://www.progressivepolicy.org/blog/app-economy-jobs-in-europe-part-1/

Limiting the possibility to offset these costs means limiting the incentive to invest into Android -- a platform that continues to drive innovation and competition in the mobile ecosystem.

Second, anti-fragmentation agreements (AFAs) are key to the stability of the Android ecosystem and to its attractiveness for developers, the powerhouse behind all mobile OSs. Because Android is open source software there is a significant risk of fragmentation. Any user can create his or her own version (fork) of Android and there are established companies that do precisely that. This flexibility is of course laudable, but it has its risks. Apps written for one version of Android do not necessarily run on other versions. Consumers have no guarantee that their apps continue working and that they can access their data on each new phone they buy. AFAs try to prevent this by ensuring compatibility between different versions of Android. In essence, they allow consumers to seamlessly port their mobile experience from one device to another. At the same time, developers do not need to spend resources on writing software for multiple devices running on different versions of the OS. Lastly, OEMs are able to offer the most up-to-date and secure version of the OS powering their hardware.

This makes the whole ecosystem more competitive and shields it from the fate of open source mobile OSs that were too fragmented to appeal to developers and consumers. A good example we should be mindful of is Symbian.[4] Nokia smartphones used to run on the Symbian OS. However, they ran on different 'forks' of the same Symbian system. This meant that an app written for one phone would not necessarily work on another one sold by the same manufacturer. This deterred developers who ultimately preferred writing apps for iOS and Android. Within the space of a few years, Nokia's handset business went from predominant to niche, while iOS and Android became the most dynamic mobile ecosystems.

We thank you for your attention and remain at your disposal for any further questions.

Yours sincerely,

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[4] For more details see Waterworth, J. (2016). *Lessons from Nokia's Demise - The Cost of a Fragmented Developer Experience.* Available at:
http://www.project-disco.org/competition/080316-lessons-nokias-demise-cost-fragmented-developer-experience/ #.V6n5diN95FQ