



EUROPEAN COMMISSION

Hearing Officer for competition proceedings

Brussels, 27 July 2016
JS/XR/bk/2016/073683

European Digital SME Alliance
Attn: Mr Sebastiano Toffaletti
Rue Jacques de Lalaing 4
B-1040 Brussels

By e-mail:
sebastiano.toffaletti@digitalsme.eu

Subject: Case AT.40099 – Google Android – Application by European Digital SME Alliance to be heard as interested third person

Dear Mr Toffaletti,

I refer to your letter dated 3 June 2016 and follow-up e-mail dated 22 July 2016, in which you apply for the European Digital SME Alliance (formally Pan European eBusiness & ICT Network for SMEs, PIN-SME a.i.s.b.l., "**Digital SME**") to be heard as an interested third person in the above referenced proceedings.

In order to be heard as interested third person for the purposes of Article 27(3) of Regulation No 1/2003,¹ Article 13 of Regulation No 773/2004² and Article 5 of Decision 2011/695/EU,³ an applicant must show a "sufficient interest". Article 5(2) of Decision 2011/695/EU states that "*[i]n assessing whether a third person shows a sufficient interest, the hearing officer shall take into account whether and to what extent the applicant is sufficiently affected by the conduct which is the subject of the competition proceedings*".

In your letter, you explain that Digital SME is concerned about the impact of Google's behaviour on the distribution of Android apps. You note that Digital SME represents the interests of the SME community in the ICT sector comprising 28 national and regional associations from 18 Member States and neighbouring countries. You estimate that approximately 30% of Digital SME's 20,000 associated companies develop software, of which approximately 80% are developers of a wide variety of mobile apps or plan to develop such mobile apps. Thus, Digital SME would represent approximately 4,800 companies affected by the conduct which is the subject of Case AT.40099 – Google

¹ Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4.1.2003, p. 1.

² Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, OJ L 1, 27.4.2004, p. 18, as last amended by Commission Regulation (EU) 2015/1348 of 3 August 2015, OJ L 208, 5.8.2015, p. 3.

³ Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings, OJ L 275, 20.10.2011, p. 29.

Android. You mention that associated companies typically develop their apps for multiple operating systems, including Android. You explain that: *"App developers [...] need access to app stores in order to distribute their apps and are therefore particularly concerned that the lack of competition in app distribution has a direct impact on developers' ability effectively to reach consumers. Among other things, reduced competition among app stores negatively affects the terms under which app developers can distribute their apps and generate revenue, and has implications for developers' control over and use of data generated by usage of their apps."* In addition, you state that *"Google's prohibitions on forking of Android substantially weaken potential competitive constraints on Android and thus impede SMEs relying on Android from having access to a more innovative and competitive mobile platform."*

Moreover, you claim that many more associated companies could also be affected, as not only mobile app developers, but also other service providers who are active in other areas of economic activity could be affected by Google's behaviour subject to these proceedings: *"For example, Google's bundling and favourable positioning of "vertical" apps could result in mobile users resorting to Google's services (or services endorsed by it) rather than to on-line and offline alternatives which users will no longer seek to find, or will not find as easily."* However, please note that the Commission indicated in its press release of 20 April 2016 that: *"This investigation is distinct and separate from the Commission's ongoing formal investigation under EU antitrust rules of other aspects of Google's behaviour in the EEA, including on the favourable treatment by Google in its general search results of its own other specialised search services [...]"*.⁴

You refer to your articles of association, which include a clause on representing the interests and stances of Digital SME's members vis-à-vis the institutions of the EU, and you point out that each of the members has consultation processes in place by which it ensures that its positions are representative of the associated companies. You note that Digital SME has previously represented the interests of these companies in other Commission proceedings. As far as you are aware, the companies represented by Digital SME are not yet involved directly and hence their voice is not yet represented in the current proceedings.

Finally, you consider that Digital SME is well placed to contribute to establishing the truth and relevance of the facts and circumstances at issue in Case AT.40099. You claim that given their small size, the affected companies represented by Digital SME are unlikely to be able to arrange for individual involvement in the proceedings, even if the collective harm to them may be very significant. You believe that Digital SME is well positioned to assess and provide the Commission with information about the collective consequences of Google's conduct on this large community of SMEs.

On consideration of the elements mentioned above and after consulting, in accordance with Article 5(2) of Decision 2011/695/EU, the director responsible for Case AT.40099 in the Directorate General for Competition ("DG Competition"), I conclude that Digital SME has shown a sufficient interest to be recognised as interested third persons in that case.

⁴ See "Antitrust: Commission sends Statement of Objections to Google on Android operating system and applications", IP/16/1492, available at http://europa.eu/rapid/press-release_IP-16-1492_en.htm.

In accordance with Article 13(1) of Regulation No 773/2004, DG Competition will inform Digital SME in writing of the nature and subject matter of the procedure, and set a time limit within which it may make known its views in writing.

In accordance with Article 5(4) of Decision 2011/695/EU, I plan to inform Google Inc. and its parent company Alphabet Inc. that Digital SME has been recognised as interested third persons in Case AT.40099.

This decision is based on Article 5 of Decision 2011/695/EU.

Yours sincerely,



Joos STRAGIER

Copy: Mr G. Loriot, Mr N. Banasevic (DG Competition)