



January 22, 2020

Lisa R. Barton
Secretary to the Commission
U.S. International Trade Commission

Submitted via the ITC's Electronic Document Information System at <https://edis.usitc.gov>

Re: Docket No. 3428

Dear Ms. Barton,

The Center for Democracy & Technology ("CDT") is a nonprofit public interest organization working to ensure that democracy and individual rights are at the center of the digital revolution, and that technology serves as an empowering force for people worldwide. CDT is committed to ensuring that the benefits of technology flow to consumers.

CDT offers no opinion on the merits of the patent claims in this matter. We write to urge the ITC to consider the public interest when resolving this dispute.

This case involves an emerging technology that is being adopted quickly by millions of American families: voice-activated speakers. Many consumers are embracing voice-based means of controlling music, lights, temperature, and other aspects of their homes, and speakers are central to that trend. According to one news source, smart speaker adoption increased by 40% in 2018 alone.¹ We believe that this rapid adoption trend continues today.

Market exclusion almost always has effects on competition. In nascent fields with emerging technologies, exclusion from the market for one producer's products can have significant competitive effects for American consumers in terms of price, quality, and innovation. When a market is fast moving, excluding one company's products from the market has particular competitive relevance. Emerging markets tend to be characterized by vibrant price and quality competition. The challenged products in this matter, made by Google, are often sold at lower prices than those made by the complainant, according to news reports.² Excluding those speakers from the market could affect price competition. Because consumers usually benefit from price competition and low-priced products, the public interest in this matter is relevant and should be considered.

¹ <https://techcrunch.com/2019/03/08/over-a-quarter-of-u-s-adults-now-own-a-smart-speaker-typically-an-amazon-echo/>

² See, e.g., <https://www.businessinsider.com/best-smart-speaker-amazon-echo>

Public reports indicate that one of the largest smart speaker makers, Amazon, may also raise concerns about the patents that underlie this matter.³ The complainant, Sonos, has chosen not to bring a claim against Amazon at this time. An exclusion order in this matter may thus affect one major maker's smart speakers but not another, even though the complainant has legal concerns about both companies' products. An exclusion order could thus inadvertently tip the market toward products made by a potentially-infringing company that is not challenged compared to those made by a competitor that is the target of an ITC matter. When markets tip for legal rather than economic reasons, the competitive market place may be distorted, and consumers may lose the benefits of robust competition.

Furthermore, we urge the Commission to consider the potential lock-in effects of this exclusion order. The complaint describes the speakers at issue as those that play music or other audio content. In addition to that important functionality, many Americans use smart speakers as hubs for their smart homes. Those speakers can respond to voice commands to play music, turn on lights, unlock doors, change thermostat settings, access home security systems, and more. These smart home speakers can be connected to many devices and consumer accounts. But each time a consumer adds a device or service to the speaker, the consumer gets a little more stuck to that speaker. Economists call this the lock-in effect.⁴ Lock-in makes it harder for consumers to switch to new products or services. When faced with the prospect of switching music accounts, lighting systems, door locks, thermostats, home security systems and similar products, some consumers will decide to stay with the default status quo, even though superior or cheaper products may be available.

Lock-in raises particular competitive concerns in nascent markets. The ability of one speaker maker to lock in consumers while another is the subject of an exclusion order may diminish competition for years. This is another area of public interest that may be relevant in this matter.

Finally we note that voice-activated speakers may be of particular importance to the disabled community. Some people who are blind rely on voice-activated speakers to make their homes work efficiently.⁵ Similarly, the elderly⁶, or those with mobility or other accessibility challenges and who depend on voice-activated speakers are particularly sensitive to market exclusion orders that deprive them of the benefits of competition. The ITC's investigation should consider the public interest issues related to the possibility that an exclusion order could affect people with disabilities disproportionately.

Sincerely,
Avery Gardiner
Senior Fellow for Competition, Data & Power

³ See, e.g., <https://www.theverge.com/2020/1/7/21055048/sonos-google-lawsuit-sues-speakers-assistant-amazon> ("Sonos claims that Amazon has also violated its patents with the Echo device family, but the *Times* writes that its executives decided against 'battling two tech giants in court at once.'")

⁴ See Antitrust and Big Tech, September 11, 2019, at 10, available at <https://fas.org/sgp/crs/misc/R45910.pdf>

⁵ <https://www.opb.org/news/article/npr-how-the-blind-are-using-smart-speakers/>

⁶ <https://www.aarp.org/home-family/personal-technology/info-2017/home-assistant-alexa-fd.html>