



EUROPEAN COMMISSION

DG Competition

Markets and cases II: Information, Communication and Media
Antitrust: Telecoms

Brussels, 27 SEP. 2018
COMP/C1/SG/2018 - 153633



Dear Sir,

Thank you for your letter of 1 September 2018 in which you bring to our attention an alleged infringement of the competition rules of the European Union. We apologize for the delay in replying.

We understand that you are concerned about arrangements between EE Ltd, O2 UK Ltd and possibly Apple UK over the provisioning of visual voicemail services to UK customers, which are only available for customers using Apple devices and not devices based on other platforms such as Android.

The EU competition rules prohibit collusion (Article 101 of the Treaty on the Functioning of the European Union, TFEU) and the abuse of a dominant position (Article 102 of the TFEU) by undertakings where trade between Member States may be affected. Whether or not there is a violation of these rules depends on a range of factual, legal and economic elements. The information you provide does not contain any indication of a potential breach of these rules and DG Competition is therefore unable to take action.

More specifically, on the basis of the elements you provide it does not seem to us that it is likely that an infringement of the EU competition rules would be found, in particular due to the probable absence of a dominant position on the part of any of these undertakings or of an agreement which unduly restricts competition. The arrangements in question would appear to constitute a simple service enhancement to the voicemail service which is bundled with a mobile calling subscription and the failure to offer such an enhancement to users of non-Apple phones, assuming it would be possible to do so, to constitute a commercial decision of the undertakings concerned.

I can confirm that we are not aware of any instance of similar arrangements elsewhere in the EU.

It follows that, at this stage, we do not see sufficient grounds under EU competition law to investigate the practices in question further.

For the avoidance of doubt, we regard your information as market information, rather than as a formal complaint, which would have to comply with certain legal requirements set out in Article 5 of Commission Regulation 773/2004. Market information, such as that which you have given us, is often not in itself sufficient to give rise to an investigation. That being said, information from

various sources may form a pattern which can lead the Commission to initiate a full-scale investigation.

We therefore appreciate that you have chosen to inform us of this issue and we have taken note of your concerns. Your information has been put on file and will be taken into consideration at a later stage should we nevertheless decide to open an investigation.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Rita Wezenbeek', with a large, sweeping flourish underneath.

Rita Wezenbeek
Head of Unit