

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

In the Matter of

**CERTAIN CAPACITIVE TOUCH-
CONTROLLED MOBILE DEVICES,
COMPUTERS, AND COMPONENTS
THEREOF**

Investigation No. 337-TA-_____

Docket No. 3435

**STATEMENT OF THIRD PARTY
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION
IN RESPONSE TO THE COMMISSION'S
FEBRUARY 21, 2020,
NOTICE OF REQUEST FOR STATEMENTS ON THE PUBLIC INTEREST**

The Computer & Communications Industry Association (“CCIA”) submits the following comments in response to the Commission’s Federal Register Notice of February 21, 2020, inviting comments on the investigation proposed by Neodron’s complaint of February 14, 2020. CCIA represents over two dozen companies of all sizes providing high technology products and services.¹ CCIA works to promote open markets, open systems, open networks and full, fair and open competition in the computer, telecommunications and Internet industries. Amazon and Samsung—two of the numerous proposed respondents—are CCIA member companies who manufacture touch-screen products like those at issue in the proposed investigation, including smartphones and tablets.

Neodron’s requested remedy raises significant public interest concerns. Neodron has requested an exclusion order that would exclude phones representing over 90% of the U.S. smartphone market. Exclusion of these devices would harm U.S. consumers, implicating serious questions regarding public welfare, as well as posing a serious threat to competitive conditions in the United States.

I. USE OF ARTICLES SUBJECT TO REQUESTED ORDER

The identified articles are personal mobile electronic devices, such as smartphones and tablets, as well as computers. These devices are used directly by individual consumers in the United States as well as by businesses. The smartphones identified in the complaint have myriad uses, including in association with personal health and welfare.

II. PUBLIC HEALTH, SAFETY, AND WELFARE CONCERNS

The proposed exclusion order raises significant public health, safety, and welfare concerns. A majority of American households rely solely on wireless devices for voice telephony.² More than 80% of American adults own a smartphone and approximately 17% of American adults rely on their smartphones

¹ A list of CCIA’s members is available online at <https://www.ccianet.org/about/members>. Two of the eight proposed respondents—Amazon and Samsung—are CCIA members.

² Centers for Disease Control, National Center for Health Statistics, *Wireless Substitution: State-Level Estimates from the National Health Interview Survey, 2018* (Dec. 17, 2019), https://www.cdc.gov/nchs/data/nhis/earlyrelease/Wireless_state_201912-508.pdf.

as their sole Internet connection.³ Excluding personal mobile electronic devices such as those identified in the complaint risks depriving American consumers of basic modern communication tools. Many of these devices also provide health and safety benefits to consumers. In addition to health services such as access to electronic health records and health tools such as fitness tracking, there are FDA approved medical devices that rely on a smartphone to provide an interface or connectivity to the device.⁴ More broadly, these devices support public safety via their support for services such as mHealth, Emergency Alerts, and 911 Location Accuracy.⁵

Further, given that lower income, non-white, and younger Americans are more likely to rely solely on their smartphone for online access, exclusion of the vast majority of the smartphone market places additional burdens on populations already recognized as facing additional burdens in access to public health and safety.

Excluding personal mobile electronic devices such as the identified articles should receive additional scrutiny given the potential effects on the health and welfare of the American public as a whole and on particular disadvantaged sectors.

III. SUBSTITUTE ARTICLES MADE BY COMPLAINANT OR ITS LICENSEES

Neodron does not itself make devices of any kind. Neodron's sole identified licensee, Microchip, also does not make devices that could replace the subject articles. Instead, Microchip makes touch controllers that Neodron alleges could replace the touch controllers in respondents' products. Neodron does not identify any smartphone vendors who are licensed and CCIA is not aware of any such possible substitute. Further, Neodron does not seek to exclude infringing touch controllers. They seek to exclude smartphones and tablets. A touch controller is not a substitute for a smartphone.

³ See Pew Research Center on Internet & Technology, *Internet/Broadband Fact Sheet* (last visited Feb. 26, 2020), <http://www.pewinternet.org/fact-sheet/internet-broadband/>.

⁴ See, e.g., KardiaMobile (FDA-approved medical EKG), *available at* <https://www.alivecor.com/kardiamobile> (last visited Feb. 26, 2020); Nerivio (FDA-approved migraine treatment device), *available at* <https://theranica.com/nerivio/> (last visited Feb. 26, 2020).

⁵ See, e.g., FCC, *Wireless Emergency Alerts* (Dec. 19, 2019), <https://www.fcc.gov/consumers/guides/wireless-emergency-alerts-wea>.

Further, with respect to proposed respondent Apple, a unique issue arises. A smartphone vendor intending to provide a direct substitute for Apple products would face significant issues in creating an interoperable product in a reasonable timeframe. And a smartphone device using a different operating system is at best an imperfect substitute, potentially devaluing a consumer's investment in their existing library of applications and peripherals, from apps to charging cords.

Given the non-availability of substitutes for the devices sought to be excluded, the public interest does not favor exclusion.

IV. ABILITY OF COMPLAINANT AND LICENSEES TO REPLACE EXCLUDED ARTICLES IN A COMMERCIALY REASONABLE TIME

The notice requests that commenters "indicate whether the complainant, its licensees, and/or third parties have the capacity to replace the volume of articles subject to the requested remedial orders in a commercially reasonable time in the United States."

As discussed above, Neodron's sole identified licensee makes touch controllers. These touch controllers could not substitute within a commercially reasonable time for the allegedly infringing touch controllers.

As just one example, Neodron accuses the Samsung Galaxy S9+ of infringing. This product utilizes a Samsung S6SY761X touch controller,⁶ which is a 740 node controller with a force channel, packaged in a 90 pin FBGA package.⁷ Microchip does not appear to offer any touch controllers in a 90 pin FBGA package.⁸ All Microchip controllers with a comparable level of touch nodes are either in larger packages, or are part of multichip systems. In either case, significant circuit board redesigns would be required in order to incorporate a different touch controller, requiring significant lead times and potential rippling changes due to different space constraints in the tight confines of a smartphone.

⁶ iFixit, *Samsung Galaxy S9+ Teardown* (Mar. 16, 2018), available at <https://www.ifixit.com/Teardown/Samsung+Galaxy+S9++Teardown/104308>.

⁷ Samsung, *Y761 Product Site* (last visited), available at <https://www.samsung.com/semiconductor/display-ic/touch-controller/Y761/>.

⁸ Microchip, *Touch Solutions Touchscreen Controllers Products* (last visited Feb. 27, 2020), available at <https://www.microchip.com/ParamChartSearch/Chart.aspx?branchID=30029>.

In addition to significant hardware compatibility concerns, there are also software compatibility considerations. A touch controller is useless without software support on the application processor side. Microchip does not appear to offer such software for the relevant application processors, including the Qualcomm Snapdragon SoCs used by many of the respondents' products or the custom Apple SoCs used in iPhones. Without such software, any replacement of touch controllers would not just require modifying the operating code of the accused product to include a standard code library but would in fact require developing entirely new code, a time-consuming operation.

In either instance, neither Neodron nor its sole identified licensee would have replaced “the volume of articles subject to the requested remedial orders”—smartphones and tablets. Instead, they would have offered to provide a component for such products.

To the extent that Neodron has licensed additional manufacturers who do make smartphones, the statement that their licensee(s) could supply the market is not credible. The proposed respondents represent more than 90% of the smartphone market.⁹ No U.S. smartphone manufacturer unnamed in this case represents more than 3% of the U.S. smartphone market. More than 75 million smartphones are sold in the U.S. each year.¹⁰ The evidenceless suggestion that a manufacturer currently selling no more than 2 million smartphones could suddenly increase its output by 3250% in order to sell an additional 65 million smartphones should not be given any weight. The complex supply chains used by manufacturers such as Apple and Samsung to supply their respective portions of the market are world-renowned and have been built up over a period of many years. Manufacturers do not have similar capacity simply lying unused. It is not appropriate to, absent evidence, consider an assertion that such unused capacity exists to be plausible. There is no such evidence provided in at least the public portions of Neodron's complaint.

Given the severe doubt that this factor can be met based on the facts alleged in Neodron's public interest statement, the appropriate procedure would be to conduct a separate and prior proceeding to

⁹ See StatCounter, *Mobile Vendor Market Share United States Of America* (last visited Feb. 27, 2020), available at <https://gs.statcounter.com/vendor-market-share/mobile/united-states-of-america>.

¹⁰ Statista, *Smartphone sales in the United States from 2005 to 2019* (last visited Feb. 27, 2020), available at <https://www.statista.com/statistics/191985/sales-of-smartphones-in-the-us-since-2005/>.

determine if the public interest factors are consistent with further action on this complaint. Only if that proceeding determines that the public interest permits further action should a full investigation be instituted, assuming it is otherwise appropriate. In the alternative, the Commission should consider delegating the public interest inquiry to the assigned ALJ and specifying that the ALJ should hold a separate hearing on the public interest. A separate hearing will ensure that no party feels they have shortchanged their case-in-chief in order to develop the public interest record.

V. EXCLUSION OF THE REQUESTED ARTICLES WOULD HARM CONSUMERS

As stated above, neither Neodron nor its sole identified licensee, Microchip, can replace the subject articles. And to the extent that Neodron relies on licensees who manufacture smartphones or third parties who do so, no such party plausibly has the capacity to replace 90% of the American smartphone market. Given this, an exclusion would result in a significant supply constraint on smartphones and other excluded devices, leading to price shocks and limited device availability. In addition, given the increasing relevance of smartphones and other personal mobile electronics to public health and welfare, consumers would experience negative impacts on public health and welfare.

The ITC should carefully develop and consider the public interest considerations prior to instituting a complaint that has the potential to exclude more than 90% of a product market from the United States, such as the instant complaint. This is particularly true where an adequate remedy at law exists in the U.S. district courts—again, as in the instant complaint. Because of this, additional proceedings on the public interest, either prior to institution or in parallel with the patent aspect of the case, are appropriate in order to fully develop the record on the severe negative economic impacts and consumer harms that exclusion would entail.

VI. CONCLUSION

Given the significant consumer and public harms that would arise from the requested exclusion order, the ITC should determine not to institute the above-referenced investigation.

Dated: March 2, 2020

Respectfully submitted,

_____/Joshua Landau/____

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