

June 10, 2019

VIA EDIS AND HAND DELIVERY

The Honorable Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street S.W., Room 112-A
Washington, DC 20436

Re: *Certain Touch-Controlled Mobile Devices, Computers, and Components Thereof, ITC
Docket No. 337-3389*

Dear Secretary Barton:

Pursuant to the Commission's Amended Notice of Receipt of Complaint and Solicitation of Comments Relating to the Public Interest (84 Fed. Reg. 25,308 (May 31, 2019)) I submit the following comments on behalf of proposed Respondents Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, "Samsung"). The Complaint filed by Neodron Ltd. ("Neodron") requests relief that could harm U.S. consumers and competitive conditions in the United States. Accordingly, Samsung submits the Commission would benefit by having the Administrative Law Judge develop an evidentiary record on the public interest, particularly with respect to tablets and computers. With regard to mobile phones, although there are potentially significant public interest issues, Samsung suggests that the Commission address those in the first instance at the conclusion of the investigation.

As the Commission is aware from the 1065 and 1093 investigations, the United States is currently rolling out the 5G network and 5G is expected to come online more broadly in 2020 and 2021. At present, proposed Respondent Samsung has the only 5G phone commercially available in the U.S. and proposed Respondent Lenovo/Motorola has the only modular accessory to enable 5G compatibility commercially available in the U.S. A public interest record with respect to mobile phones that is developed over the next 6 months or so is unlikely to reflect the mobile phone situation at the conclusion of the investigation when any potential exclusion order may take effect. Accordingly, Samsung suggests that the Commission address public interest issues regarding mobile phones at the conclusion of the investigation when the potential impact to the nation's 5G infrastructure and consumer use thereof has become more clear.

With regard to tablets and computers, despite Neodron's glib assurance that its alleged licensees would be able to supply touch-controlled devices to the U.S. marketplace, its failure to identify its alleged licensees makes it difficult to assess such a claim. The proposed Respondents¹ cannot assess the manufacturing capacity of Neodron's alleged licensees, nor can they determine whether these licensees offer competing products across the broad range of consumer electronic devices implicated by this investigation. However, we can determine that the proposed Respondents in Q1 2019 provided over 78% of the Android OS tablets and over 86% of the Windows OS tablets to the U.S. marketplace.² The

¹ In addition to Samsung, the proposed Respondents include Amazon.com, Inc. Dell Technologies Inc., Hewlett Packard Inc., Lenovo Group Ltd., Lenovo (United States) Inc., Microsoft Corp., and Motorola Mobility LLC.

² It is noted that these figures are derived from proprietary industry tracking data, which does not separately track touchscreen products from non-touchscreen products. A more detailed analysis will need to await further

relief requested would effectively reduce the number of operating systems from three to one (iOS) implicating a significant effect on competitive conditions. Likewise, the proposed Respondents in Q1 2019 provided over 74% of the Chrome OS PCs and over 85% of the Windows OS PCs to the U.S. market and the requested relief would create similar detrimental effects on competitive conditions. Putting aside the 5G issue with respect to mobile phones, the proposed Respondents in Q1 2019 provided over 53% of all Android phones and over 57% of all mid-range and higher end Android smartphones in the U.S. marketplace. In the premium and ultra-premium sectors, the requested relief would bar over 97% of the Android smartphones leaving effectively no competition for approximately 42% of Apple's iOS smartphone sales. These figures clearly indicate that exclusion of the diverse range of products at issue in this investigation presents significant public interest issues and the potential for significant harm.

This investigation also threatens harm to U.S. public interest because Neodron is a patent-holding and assertion entity offering no like or directly competitive articles of its own in the United States or anywhere else. Likewise, its alleged domestic industry licensee does not offer any like or directly competitive articles of its own in the United States or anywhere else. Nor have Neodron or its alleged domestic industry licensee alleged that they were driven out of the marketplace based on the proposed Respondents' alleged infringement of the asserted patents. Thus, rather than present an actual trade dispute for the Commission to resolve, Neodron seeks to use the threat of an ITC exclusion order to force a licensing arrangement on more favorable terms than it expects to receive in compensatory patent damages in its co-pending District Court lawsuit.³ In so doing, this foreign patent holding company asks the Commission to exclude the products of proposed Respondents from Seattle, Washington; Round Rock, Texas; San Jose, California; Morrisville, North Carolina; Redmond, Washington; Chicago, Illinois; and Ridgefield Park, New Jersey under the guise of protecting the public interest of the United States. Moreover, to achieve a more lucrative settlement, Neodron threatens to injure U.S. consumers by depriving them of products that were developed with tens of millions of dollars in research, development, and innovation by tens of thousands of U.S. employees. Accordingly, Samsung respectfully submits that a fully developed evidentiary record on public interest issues will show the requested relief is not warranted.

Respectfully submitted,

/s/ Karin J. Norton

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development during the investigation. However, for tablets and mobile phones, it is clear that the vast majority, if not all, are touchscreen products. For PCs, at least a significant portion will be touchscreen products.

³ This is not a unique situation. R Street Institute, a non-profit, non-partisan, public policy research organization has found that 24% of all ITC complaints filed after January 1, 2017 do not ask the ITC "to protect a domestic industry from unfair competition but [rather] to intervene in a legal dispute between potential licensing partners." See: <https://www.itcpolicy.com/blog/2019/5/24/itcs-data-on-npe-litigation-undercounts-persistent-misuse-of-trade-law>

United States International Trade Commission
Investigation No. 337-TA-3389
Certain Touch-Controlled Mobile Devices, Computers, and Components Thereof

CERTIFICATE OF SERVICE

THE UNDERSIGNED CERTIFIES THAT ON JUNE 10, 2019, A TRUE AND CORRECT COPY OF THE FOREGOING DOCUMENT WAS SERVED UPON THE FOLLOWING PARTIES AS INDICATED BELOW:

<p>The Honorable Lisa R. Barton Secretary to the Commission U.S. International Trade Commission 500 E Street, SW Washington, DC 20436</p>	<p><input checked="" type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Delivery <input type="checkbox"/> Via First Class Mail <input checked="" type="checkbox"/> Via Electronic Filing (EDIS) <input type="checkbox"/> Via Electronic Mail</p>
<p><i>Counsel for Complainant Neodron Ltd.</i> Reza Mirzaie (rmirzaie@raklaw.com) Marc A. Fenster (mfenster@raklaw.com) Kent N. Shum (kshum@raklaw.com) Philip X. Wang (pwang@raklaw.com) Christian W. Conkle (cconkle@raklaw.com) Amy E. Hayden (ahayden@raklaw.com) Shani Williams (swilliams@raklaw.com) RUSS AUGUST & KABAT 12424 Wilshire Boulevard, 12th Floor Los Angeles, CA 90025 Matthew D. Aichele (maichele@raklaw.com) RUSS AUGUST & KABAT 915 E Street NW, Suite 405 Washington, DC 20004 Tom M. Schaumberg Asha Allam Evan H. Langdon David H. Hollander Paulina Starostka ADDUCI, MASTRIANI & SCHAUMBERG, LLP 1133 Connecticut Avenue, NW 12th Floor Washington, DC 20036 NEO-001@adduci.com</p>	<p><input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Delivery <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Electronic Filing (EDIS) <input type="checkbox"/> Via Electronic Mail</p>
<p><i>Proposed Respondents</i> Amazon.com, Inc. 410 Terry Avenue North Seattle, WA 98109</p>	<p><input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Delivery <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Electronic Filing (EDIS) <input type="checkbox"/> Via Electronic Mail</p>

<p>Dell Technologies Inc. One Dell Way Round Rock, TX 78682</p>	<p><input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Delivery <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Electronic Filing (EDIS) <input type="checkbox"/> Via Electronic Mail</p>
<p>HP Inc. 1501 Page Mill Road Palo Alto, CA 94304</p>	<p><input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Delivery <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Electronic Filing (EDIS) <input type="checkbox"/> Via Electronic Mail</p>
<p>Lenovo Group Ltd. 6 Chuang ye Road, Haidian District Beijing 100085, China</p>	<p><input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Delivery <input checked="" type="checkbox"/> Via Air Mail <input type="checkbox"/> Via Electronic Filing (EDIS) <input type="checkbox"/> Via Electronic Mail</p>
<p>Lenovo (United States) Inc. 1009 Think Place, Building One Morrisville, NC 27560</p>	<p><input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Delivery <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Electronic Filing (EDIS) <input type="checkbox"/> Via Electronic Mail</p>
<p>Microsoft Corporation One Microsoft Way Redmond, WA 98052</p>	<p><input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Delivery <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Electronic Filing (EDIS) <input type="checkbox"/> Via Electronic Mail</p>
<p>Motorola Mobility LLC 222 W. Merchandise Mart Plaza Suite 1800 Chicago, IL 60654</p>	<p><input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Delivery <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Electronic Filing (EDIS) <input type="checkbox"/> Via Electronic Mail</p>

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