



Joint submission to the European Commission (Directorate-General for Competition) on the proposed merger of Amazon and iRobot

14 February 2023

The following is a submission to the European Commission on the proposed merger between Amazon and iRobot. It was jointly authored by Foxglove, The Balanced Economy Project, SOMO and the Open Markets Institute.

Summary

We have grave concerns regarding the announced acquisition by Amazon.com, Inc., (**Amazon**) of iRobot Corporation (**iRobot**), the home robotics firm and well-known founder of the robotic vacuum cleaner, the “Roomba” (the **Proposed Merger**). The Proposed Merger would catapult the digital platform giant Amazon straight into another dominant position – this time in the growing market for smart home devices. We know the Commission is aware of the competitive damage possible within the ‘Internet of Things’ (**IoT**) sector, due to its January 2022 Sector Inquiry.¹ Almost every competitive concern highlighted in the Sector Inquiry is likely to result from this buyout.

Combining iRobot’s rich source of consumer data and smart home technology with Amazon’s existing offerings like the Alexa ‘smart speaker’ and Ring ‘smart doorbell’ will create a home robotics juggernaut. Allowing the Proposed Merger risks consolidating Amazon’s chokehold on online retail, entrenching its powers of consumer surveillance, damaging users’ privacy, and draining almost all competitive energy from the home robotics market. As the owner of iRobot, Amazon would no longer have any need to compete against it (for example through its ‘Astro’ device), removing an important source of potential competition in the home robotics market.

The Proposed Merger will also harm the wider competitive landscape by boosting Amazon’s already massive and dominant ecosystem. Amazon maintains its immense market power with cascading, mutually-reinforcing market positions – as the Commission is aware from its recent investigations into Amazon’s marketplace. Amazon Chair Jeff Bezos calls this the “flywheel”, in which Amazon’s entry into new markets theoretically produces efficiency and savings for consumers, while ultimately entrenching its dominance across ever more products and services. However, as a growing body of evidence reveals, concentrated market power – particularly in an ecosystem as colossal as Amazon’s – does not promote innovation but stifles it, by

¹ European Commission Sector Inquiry – the Internet of Things – Final Report published 20 January 2022 - https://competition-policy.ec.europa.eu/system/files/2022-01/internet-of-things_final_report_2022_en.pdf

frustrating innovative market entrants and distorting competition. The end result is higher prices and less choice for consumers.²

In particular, we have identified a number of specific harms associated with the merger, listed below and elaborated later in the submission:

- **Loss of horizontal competition:** The proposed merger would likely lead to iRobot competitor ‘Astro’ being shelved, and also eliminate wider potential competition between Amazon and iRobot in smart home devices.
- **Data collection leveraged for adjacent markets:** The proposed merger would provide Amazon with iRobot’s two decades worth of user data, which – drawing on Amazon’s considerable capabilities in data analytics and AI – it could use to increase its dominance in both new and existing markets.
- **Tying, bundling and predatory pricing:** Amazon is known for predatory pricing and bundling practices that ‘lock in’ consumers, for example through its Prime service and smart home offerings such as the Echo. Introducing another product into the Amazon ecosystem risks aggravating these issues and increasing barriers to entry.
- **Interoperability blocking:** If Amazon is allowed to acquire iRobot, it will be able to harm rivals and startups by limiting their access to iRobot’s data and interoperability with its devices. This would further lock in consumers and pose a serious threat to innovation.
- **Foreclosure harms through intellectual property:** iRobot holds over 1,000 patents worldwide. While iRobot has already faced accusations of using its IP to slow down rivals, Amazon’s vast resources would give it even greater power to aggressively enforce these patents, raising barriers to entry.
- **Privacy and consumer protection concerns:** In addition to the competitive advantage Amazon would gain by acquiring iRobot’s sensitive user data, we are also deeply concerned about the impact this would have on privacy, given both iRobot and Amazon’s poor track records when it comes to data protection.

For all these reasons, we urge DG COMP to meticulously scrutinise the Proposed Merger and – given the ineffectiveness of behavioural remedies – seriously consider blocking the transaction.

We also urge DG COMP to collaborate closely with sister regulators – in particular, with the European Data Protection Board (EDPB) and European Data Protection Supervisor (EDPS) – to assess the risks of this acquisition. Enforcement silos play into the hands of monopoly power. Combining expertise and resource – in a genuine and deep way, not a superficial ‘tick-box’ consultation’ will be required to assess this acquisition properly.

² As highlighted in the Antitrust case brought against Amazon by the Californian Attorney-General – discussed here: <https://www.nytimes.com/2022/09/14/technology/california-files-antitrust-lawsuit-against-amazon.html>

The Merging Parties

iRobot

iRobot has a major European presence. It estimates a 43% market share for high-end vacuum cleaners in Europe, the Middle East and Africa (EMEA) and a 53% market share worldwide, excluding China.³ Its reported EMEA revenue was US\$ 470,475,000 in 2021,⁴ an 8% increase from the previous year.⁵ It has subsidiaries across Europe, located in France, Belgium, Portugal, Austria, Germany, Spain, Italy, and the Netherlands.⁶ In 2020, the company declared a combined revenue of 163.9 million euros in Germany, France and Spain (see below).

	2020	2019
iRobot		EUR
Germany ⁷	EUR 41,553,047	93,976,314
iRobot		EUR
France ⁸	EUR 69,736,000	66,691,000
iRobot Spain ⁹	EUR 52,563,873	50,045,016
Total	EUR 163,854,940	210,712,330

Known for pioneering the home robotic vacuum Roomba, iRobot is a leading technology company that specialises in designing and building consumer robots, holding over 1,000 patents worldwide.¹⁰ In addition to the Roomba, iRobot's range includes robot mops (Braava), and air purifiers (via its acquisition of Aeris Cleantec

³ iRobot, *Introduction to iRobot Corp Presentation*, March 2022: <https://investor.irobot.com/static-files/a6147f70-f50a-43d3-9161-9af57981ea0f>

⁴ Form 10-K of the iRobot Corporation for the year ended January 1, 2022, pp.60 - <https://investor.irobot.com/static-files/48be7d41-49eb-45a6-8de9-cac81d56cbe3>

⁵ *Ibid.*, pp.35

⁶ Namely: iRobot France SAS; iRobot Belgium SPRL; iRobot Portugal, Unipessoal Lda; iRobot Austria GmbH; iRobot Germany GmbH; iRobot Iberia SL; iRobot Italia S.r.l.; and iRobot Netherlands B.V. – see the Form 10-K of the iRobot Corporation for the year ended January 2, 2021 - <https://investor.irobot.com/static-files/3794f765-4c4d-421a-85fb-e20dc5fb0fb6>

⁷ iRobot Germany GmbH, Annual Accounts 2020 <https://www.unternehmensregister.de/ureg/result.html?jsessionid=9AD35A03A02A6E054B2D139A50C95F7F.web03-1>

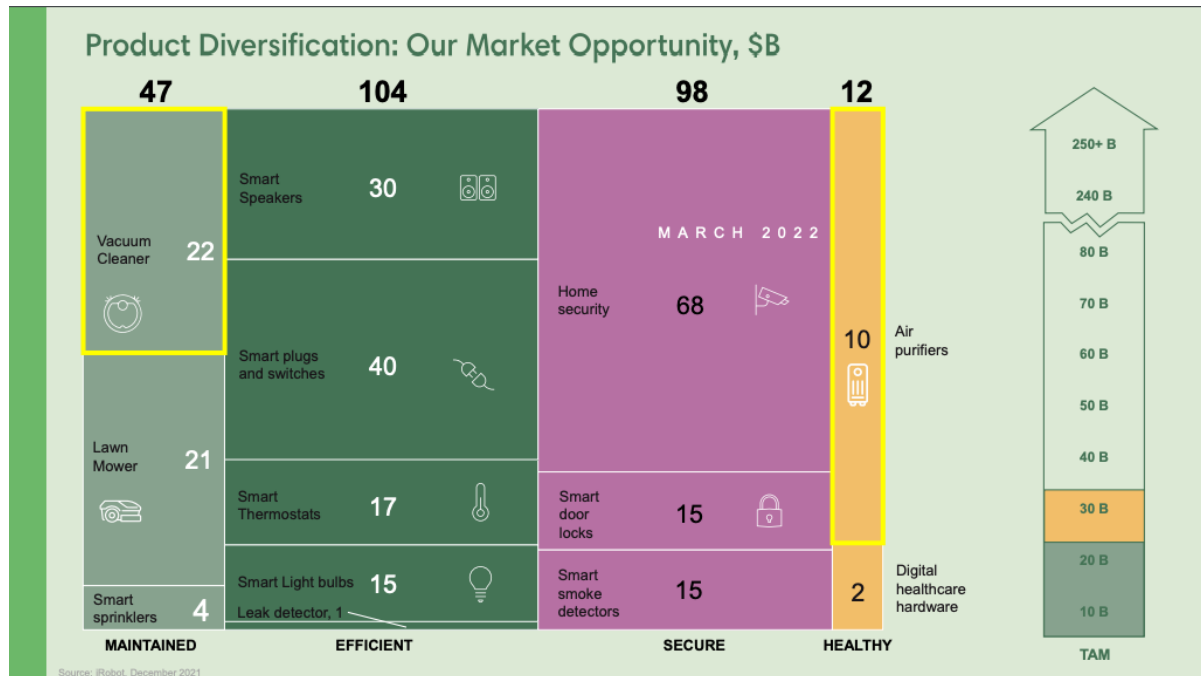
⁸ iRobot France, Annual Accounts 2020 <https://www.infogreffe.fr>

⁹ iRobot Iberia SL, Annual Accounts 2020 <https://sede.registradores.org/site/home>

¹⁰ "iRobot patents, Key Insights and Stats": <https://insights.greyb.com/irobot-patents/> ("iRobot has a total of 2492 patents globally, out of which 1802 have been granted. Of these 2492 patents, more than 71% patents are active.")

AG in 2021).¹¹ Before the proposed Amazon buyout, iRobot was diversifying – for example in March 2022, iRobot was exploring expansion into smart speakers and home security (see *Figure 1* below).

*Figure 1*¹²



iRobot’s technologies are not merely cleaning devices – they collect granular data on users’ homes. This data is fed to other digital platform ‘smart home’ ecosystems, including Amazon. All Roomba and Braava products integrate with Amazon’s Alexa, as well as Google Assistant and Apple’s Siri. Users simply need to download the iRobot ‘Home’ app for Alexa, Siri or Google Assistant to control the Roomba or Braava as it moves around the family home.¹³

Both Roomba and Braava generate maps of users’ homes. Recent Roomba models deploy ‘Smart Mapping’ technology which enables the robots to chart and ‘remember’ a floorplan.¹⁴ They also have in-built cameras, ostensibly to help the robots spot and avoid obstacles. It is this surveillance and data collection technology that we urge the Commission to scrutinise very closely. This company’s value to Amazon is not merely in offering fancy vacuum cleaners – it is a goldmine of domestic data.

¹¹ iRobot, "iRobot acquires air purification company, Aeris Cleantec AC", 18 November 2021: iRobot Acquires Air Purification Company, Aeris Cleantec AG | iRobot Corporation

¹² See slide 21 of iRobot Investor Presentation – *Welcome to iRobot – March 2022* - <https://investor.irobot.com/static-files/a6147f70-f50a-43d3-9161-9af57981ea0f>

¹³ Amazon, *iRobot Home* – <https://www.amazon.com/iRobot-Home/dp/B06Y3PSHQ3>

¹⁴ iRobot, *New iRobot Roomba i7+ Robot Vacuum Learns a Home’s Floor Plan and Empties Itself*, 6 September 2018: <https://www.prnewswire.com/news-releases/new-irobot-roomba-i7-robot-vacuum-learns-a-homes-floor-plan-and-empties-itself-300707662.html>

Amazon

Given DG COMP's multiple investigations into potential breaches of EU competition law on Amazon's marketplace, and the Commission's extensive work on competition in digital markets, the Commission will be highly aware of Amazon's awesome power and size. The company continues to expand rapidly in Europe across multiple markets, including online retail, marketplaces, consumer and home electronics, film and television production, publishing, groceries, cloud computing, and delivery and logistics. This is an ecosystem of a truly staggering scope.

Amazon has been expanding its European presence for the past twenty years. Its retail business alone reported 51.3 billion euros in revenue¹⁵ across Europe in 2021. Amazon's market reach in Europe is immense. In Germany, it is estimated that 1 in every 2 euros spent online was spent on Amazon¹⁶. EU competition authorities (including DG Competition) have found Amazon to be dominant in Italy¹⁷, Germany¹⁸ and France¹⁹. It is expected that it will be designated as a gatekeeper under the Digital Markets Act (**DMA**).

As the Commission knows²⁰, Amazon's Alexa and Echo occupy a huge share of the global 'smart speaker' market, with a 40% recorded global market share in 2021.²¹ And these smart speakers are not the only Amazon 'smart home' offering – it also owns the successful Ring and Blink security cameras, both themselves also controversial acquisitions. Ring is the global market leader in both the video doorbell and smart home surveillance markets.²²

In 2021, Amazon launched its first consumer robot, 'Astro'²³. Astro combines Alexa with technology to navigate and learn the layout of users' homes, with a stated focus on "*innovative monitoring capabilities*".²⁴ In May 2022, Amazon announced the

¹⁵ Amazon EU S.à r.l., Annual Accounts 2021 www.lbr.lu

¹⁶ ¹⁶ Bundeskartellamt, "B2-55/21 – Amazon: paramount significance for competition across markets pursuant to Section 19a(1) of the German Competition Act (GWB) – Convenience Translation" <https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Entscheidungen/Missbrauchsaufsicht/2022/B2-55-21.html>

¹⁷ Italian Competition Authority 's Closing Inquiry into Amazon's abuse of market dominance https://www.agcm.it/dotcmsdoc/allegati-news/A528_chiusura%20istruttoria.pdf

¹⁸ Bundeskartellamt, "B2-55/21 – Amazon: paramount significance for competition across markets pursuant to Section 19a(1) of the German Competition Act (GWB) – Convenience Translation" <https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Entscheidungen/Missbrauchsaufsicht/2022/B2-55-21.html>

¹⁹ https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2077

²⁰ European Commission Sector Inquiry – the Internet of Things – Final Report published 20 January 2022 - https://competition-policy.ec.europa.eu/system/files/2022-01/internet-of-things_final_report_2022_en.pdf

²¹ Skyquest, *Global Smart Speaker Market*, October 2022: <https://skyquestt.com/report/speaker-market>

²² See <https://www.businesswire.com/news/home/20220622005023/en/Strategy-Analytics-Amazons-Ring-Remained-atop-the-Video-Doorbell-Market-in-2021> and <https://www.businesswire.com/news/home/20220621005221/en/Strategy-Analytics-Amazons-Ring-Remained-in-the-Top-Spot-in-Global-Home-Security-Camera-Market-in-2021>

²³ Amazon Robotics is the product of Amazon's acquisition of Kiva Systems in 2012; <https://brandequity.economicstimes.indiatimes.com/news/business-of-brands/amazon-to-develop-software-for-its-consumer-robots-in-india/91892177>

²⁴ <https://www.aboutamazon.com/news/devices/amazon-astro-2022>

opening of a new consumer robotics software development centre in India, intended to support the company's growing consumer robotics division. However, Astro has struggled to gain a foothold in the smart devices market. It remains available by invitation only, and its reception has been described as "*lacklustre*".²⁵

The Proposed Merger

The Proposed Merger was announced on 5 August 2022, with Amazon set to acquire iRobot for US\$61 per share in an all-cash transaction valued at approximately US\$1.7 billion. The parties filed with the Federal Trade Commission (**FTC**) and the Antitrust Division of the Department of Justice on 19 August 2022. On 19 September 2022, the FTC issued a second request²⁶, preventing the merger from completing until 20 days after the parties have 'substantially complied'.

Anti-monopoly and pro-privacy campaigners, Members of Congress and Senators in the US have publicly written to the FTC, voicing concerns about the merger and urging the FTC to block the deal, citing many similar concerns to those outlined here.²⁷ According to DG COMP's public case database, there have so far not been any formal notifications to the EU, or in the UK to the CMA, though we expect these agencies are dealing with the parties during the pre-notification process.

The Proposed Merger Falls within the Commission's remit

Based on publicly available data on Amazon and iRobot's worldwide and EU turnover, we are highly confident that the thresholds for notification to the Commission under the EU Merger Regulation (**EUMR**) (Article 1) will be met. While it is unclear (although certainly possible) that the merger satisfies the second limb of the turnover test under Article 1(2), we believe it is highly likely that it meets the criteria set out in EUMR Article 1(3), thereby giving the transaction a community dimension. The merger is also clearly a concentration as defined by EUMR Article 2, as Amazon will take direct control of iRobot, with the entities ceasing to be distinct.

Even if the thresholds are not met under Article 1 EUMR, we urge the Commission to liaise with national competition agencies regarding Article 22 referrals. As correctly noted by the General Court's judgment in *Illumina/GRAIL* in July 2022, there are deficiencies inherent in a turnover threshold-based system, and the Article 22 mechanism is key to allowing the Commission to examine non-jurisdictional

²⁵ [Amazon is buying Roomba vacuum cleaner maker iRobot for \\$1.7 billion : NPR](#); [Amazon's iRobot Deal Seen Facing Tough US Antitrust Review \(AMZN, IRBT\) - Bloomberg](#)

²⁶ See iRobot Form 8-K dated September 20, 2022, pp.2 - <https://investor.irobot.com/static-files/1d2250a7-dd08-4c69-8a09-dd1bb1ca6322>

²⁷ Letter from Senator Warren and Representatives Porter, Jones, Pocan, Jayapal, and Garcia, 28 September 2022: <https://www.warren.senate.gov/imo/media/doc/Letter%20to%20FTC%20on%20Amazon%20-%20iRobot%20Merger.pdf>

transactions that may have significant effects on EU competition and trade between member states,²⁸ including mergers like this one.

A ‘Reverse’ Killer Acquisition

In hindsight, many leading competition and antitrust experts have reassessed the cost of several major mergers that contributed to the unprecedented concentration we now face in digital markets, including Facebook’s acquisition of Instagram in 2012 and WhatsApp in 2014, and Google’s acquisition of YouTube in 2006 and DoubleClick in 2007. Such mergers – where the acquisition of a potential future threat to the purchaser’s core business snuffs out future competition – have rightly been dubbed ‘killer acquisitions’. Competition authorities now scrutinise these mergers with far greater awareness and scepticism.

This Proposed Merger falls into a related but different category which poses an equal threat to competition – the so-called ‘reverse killer acquisition’.²⁹ In a reverse killer acquisition, a company forgoes its own innovation by taking a short cut of buying something it could have built – or in this case, has begun to build but is failing to significantly compete. Amazon has a long and storied history of precisely these ‘reverse’ killer acquisitions, as perfectly illustrated by its actions on the security side of the ‘smart home’ market.

Amazon launched its home-grown offering – the Cloud Cam – in 2017, before purchasing rivals Blink for US\$90 million in December 2017 and Ring for US\$1.2 billion in February 2018. Internal documents released during the US House Judiciary Committee probe into the tech industry state that Amazon was “*willing to pay for market position as it’s hard to catch the leader*”.³⁰ Amazon then announced in May 2022 that it would discontinue support for Cloud Cam from 2 December 2022, as “*we are focusing efforts on Ring, Blink and other technologies*”. Consumers still using their Cloud Cam were offered a replacement, a Blink Mini.³¹

We believe Amazon is drawing on the same playbook for this merger. There is a real risk that were the Proposed Merger to be completed, Amazon would shelve its struggling Astro as it did with its Cloud Cam, thus eliminating a competitor. Given the vast power and resources of Amazon, it is not a stretch of the imagination to suppose that investment in Astro – and other Amazon home robotics products – could lead to

²⁸ Case T-277/21, *Illumina v Commission*, Judgment of 13 July 2022 – paragraph 142 - <https://curia.europa.eu/juris/document/document.jsf?jsessionid=187C3FAFD0519FB781D17FF9BA1751D8?text=&docid=262846&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=56395>

²⁹ See Caffarra, Crawford and Valletti – ‘How tech rolls’: Potential competition and ‘reverse’ killer acquisitions, CEPR, 11 May 2020 - <https://new.cepr.org/voxeu/blogs-and-reviews/how-tech-rolls-potential-competition-and-reverse-killer-acquisitions>

³⁰ <https://www.theverge.com/2020/7/30/21348483/amazon-jeff-bezos-alexa-ring-market-dominance-antitrust-hearing-congress>

³¹ The Verge, *Amazon is ending Cloud Cam service and offering owners a free Blink Mini*, May 30, 2022 - <https://www.theverge.com/2022/5/30/23147362/amazon-cloud-cam-shutting-down-free-blink-mini-echo-replacement>

significant and innovative competition. To put it more bluntly, if Jeff Bezos can fund sending a rocket to space, and if Amazon can spend \$1.7 billion on this acquisition, it can fund meaningful innovation in the home robotics market.

The Ring and Blink transactions are, unfortunately, not outliers in Amazon's history. The company has repeatedly bought or suppressed rivals and expanded its access to valuable consumer insights and data in adjacent markets.³² Over the past two decades Amazon has bought over 100 companies, in an increasingly aggressive, expansionist manner.³³ These include:

- In 2009, Amazon acquired the online shoe retailer, Zappos, which an Amazon internal planning document had named as a "*primary competitor*" of Amazon's other online retail store, Endless.com.
- In 2010, Amazon bought Quidsi, the parent of online diaper and baby care retailers Diapers.com and Soap.com, which Amazon saw as its "*largest and fastest growing competitor*" in that space. Evidence in the US digital markets investigation revealed that Amazon waged an aggressive price war against Diapers.com, causing the business to struggle within months and enabling Amazon to swoop in.
- In 2012, Amazon purchased warehouse robotics firm Kiva Systems for US\$775 million. Kiva Systems had been supplying rival retailers with a major technology input. Post-merger, Amazon announced it would only supply the input to retailers that used Amazon Services to fulfil orders in Amazon warehouses.
- In 2017, Amazon acquired grocery competitor Whole Foods for US\$13.7 billion – its largest acquisition to date. The Whole Foods acquisition expanded Amazon's brick-and-mortar footprint and online grocery offering, giving it access to a vast trove of consumer grocery shopping data.³⁴

Theories of Harm Likely to Arise from the Proposed Merger

We are deliberately not putting forward proposed market definitions in this submission. Market definitions around the 'smart home' are clearly available but, in our view, miss the point. No matter how the market is defined, the Proposed Merger will hurt competition because it strengthens Amazon's ecosystem. We urge the Commission

³² Report of the Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary, "Investigation of Competition in Digital Markets", 2020, (Investigation of Competition in Digital Markets) at 261-267, available here: https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=4493-519.

³³ Investigation of Competition in Digital Markets, at 261-263.

³⁴ <https://www.cnn.com/2018/06/15/a-year-after-amazon-announced-whole-foods-deal-heres-where-we-stand.html>

to look beyond a traditional market definition approach, and to consider the overall impact of the Proposed Merger on Amazon's power throughout its ecosystem.

Clear horizontal harms on a traditional 'market definition' approach

The loss of dynamic competition is clear. Despite its struggles, Amazon's Astro offering had shown signs of becoming more competitive.³⁵ The Proposed Merger will likely lead to it being shelved, and disincentivise Amazon from launching future home robotics products and services. That is an unequivocal loss of dynamic competition.

iRobot also had the potential, and inclination, to compete with Amazon's core offerings in smart home devices. With Amazon's dominance in these product markets, innovative competition from companies such as iRobot is essential. The Proposed Merger will stifle that potential competition, thereby inflicting harm on consumers, competitors and innovation in the smart home devices market.

Ecosystem harms

The Proposed Merger will cause an array of competition harms by bolstering Amazon's already vast and powerful ecosystem. To borrow an analogy from leading competition expert Cristina Caffarra, digital platform ecosystems should be viewed as a soufflé, with additional acquisitions acting as a 'rising agent' to grow the market power of the overall ecosystem.³⁶ As the ecosystem grows, competition risks arise across every market within that ecosystem.

The Commission itself was explicit on this in the Preliminary Report of its IoT Sector Inquiry:

"Through their ecosystems combining voice assistants with search and/or marketplaces, and/or operating systems and/or app stores Google, Amazon and Apple have a unique position in the consumer IoT sector. As respondents point out, with every new smart device or consumer IoT service added, these three consumer IoT ecosystems can realise growth through network effects and obtain unprecedented access to user (and sometimes competitor) data."³⁷ (emphasis added).

We therefore urge the Commission not to limit its analysis of the Proposed Merger to a traditional market-based approach.

Ecosystem harms – data collection leveraged for adjacent markets

The Proposed Merger provides Amazon with iRobot's two decades of users' data. For a behemoth like Amazon, adding any additional consumer data to its vast data vaults is a serious concern. It will give more momentum to Amazon's 'flywheel', bolstering its

³⁵ iRobot's estimated market share in EMEA has fallen from 50% in 2020 to 43% in 2021: iRobot, *iRobot Corporation Investor Presentation*, August 2021: <https://www.readkong.com/page/irobot-corporation-investor-presentation-august-2021-3810682>

³⁶ See CEPR Competition Policy Talk, *A 'Whack-a-mole monopolization machine? Ecosystem theories in digital platform mergers*, 25 October 2022 - <https://new.cepr.org/multimedia/whack-mole-monopolization-machine-ecosystem-theories-digital-platform-mergers>

³⁷ European Commission Preliminary Report on Internet of Things Sector Inquiry, paragraph 125 - https://competition-policy.ec.europa.eu/system/files/2021-06/internet_of_things_preliminary_report.pdf

upstream dominance in online retail and tipping it further towards monopoly. It will exacerbate the existing network effects in the Amazon ecosystem, ultimately raising the costs to consumers for switching outside the Amazon 'bubble'.

Amazon's unique and colossal access to data about an astounding number of consumers' preferences and shopping habits gifts it a competitive advantage in every market in which it competes. Without access to this data, any potential competitor wanting to challenge Amazon, in any market in the Amazon ecosystem, has a significant and almost debilitating disadvantage. Potential competitors will be virtually unable to attract customers and gain market share – not just in the home robotics or smart devices market, but across many of the markets touched by the Amazon ecosystem.

In the case of the merger at hand, Amazon's purchase of iRobot would give it access to fresh data (including mapping and visual data) on people's homes that it could use to its advantage – particularly in combination with Amazon's advanced capabilities in data analytics and artificial intelligence. For example, Amazon could use information on a customer's home layout to sell products (such as furniture) from its retail range, or to create more individualised profiles for its rapidly growing online advertising business.

The value of such data creates incentives to wall it off from Amazon's rivals, again creating momentum towards concentration. As the CMA's chief economist Mike Walker recently said in a discussion on platform mergers and ecosystem theories, "*I think that in some of these large platforms' ecosystem mergers...the bar to allowing those should be quite high, particularly if they involve data advantages, that those platforms are able to keep themselves and not share.*"³⁸

Ecosystem harms – tying, bundling and predatory pricing

Amazon is known for bundling its products at a steep discount – even a loss – which 'locks in' consumers. It has a history of predatory pricing, for example in its smart home offerings such as the Echo, which is sometimes priced below cost.³⁹

Introducing another product into the Amazon ecosystem risks further predatory pricing, empowered by Amazon's retail power, and giving Amazon new opportunities to anti-competitively bundle its products and services.⁴⁰ This will create major barriers to entry in the smart vacuum market, and even more broadly in the smart home market, competition may be extinguished altogether.

³⁸ CEPR Competition Policy Online Panel, "A 'whack-a-mole monopolization machine'? "Ecosystem" theories in digital platform mergers," 25 October 2022, available at <https://cepr.org/events/cepr-competition-policy-rpn-webinar-whack-mole-monopolization-machine>.

³⁹ Pp. 301 - Report of the Subcommittee on Antitrust, Commercial and Administrative Law of the Committee of the Judiciary, *Investigation of Competition in Digital Markets*, 2020 - https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf

⁴⁰ In its recent investigation into Amazon's marketplace, the Commission found that Amazon was giving preferential treatment to sellers that used its logistics and delivery services – https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7777

Ecosystem harms – interoperability blocking

iRobot devices already provide input data to platforms such as Amazon and Google. iRobot's current privacy policy states that it does not sell customer data to third parties, and that no data will be shared with third parties without the customer's knowledge or control.⁴¹ However, customers can choose to share their data to enable voice control of the robot – for example, sharing with Amazon to direct the robot via Alexa.⁴²

iRobot has not said whether these policies will remain if the Proposed Merger is completed. Either way, if Amazon buys iRobot, it will be able to foreclose this data from rivals and start-ups and create barriers to interoperability between iRobot devices and devices outside the Amazon ecosystem, further 'trapping' consumers and punishing competitors. Potential restrictions on interoperability, and on the ability of rivals to access iRobot data, pose a serious threat to innovation and the emergence of new products and services.

Foreclosure harms through intellectual property

iRobot holds over 1,000 patents worldwide which Colin Angle, iRobot's CEO, has concerningly described as a "*huge part of [iRobot's] competitive moat*" – noting that "*it is getting really hard not to step on our intellectual property.*"⁴³ Indeed, it has been reported that iRobot has successfully enforced patents to slow down rivals, even forcing rivals out of the market.⁴⁴ Following a recent patent dispute, iRobot's rival, SharkNinja, said iRobot's patents in relation to mapping and targeted cleaning threaten to stifle innovation in the robotic cleaner market.⁴⁵

While iRobot's patents reflect its past research and development investment in these areas, they may also, individually or in combination, be essential for competing in the growing smart home device and connected device markets. With Amazon's vast resources, its ability and motivation to aggressively enforce these patents will only increase post-acquisition, which will further reduce the likelihood of new entry and innovation.

A Significant Impediment to Effective Competition

In short, the Proposed Merger throws up an array of competitive concerns that will amount to a significant impediment to effective competition. Consumers risk being further 'locked' into Amazon's powerful ecosystem. Innovation will be stifled.

⁴¹ iRobot, *Privacy and data sharing common questions*, 19 November 2021 - <https://homesupport.irobot.com/s/article/964>

⁴² Reuters, "Roomba vacuum maker iRobot betting big on the 'smart' home", 24 July 2017: <https://www.reuters.com/article/us-irobot-strategy-idUSKBN1A91A5>; iRobot, "Privacy and data sharing common questions", 19 November 2021: <https://homesupport.irobot.com/s/article/964>

⁴³ *Ibid.*

⁴⁴ IP Watchdog, "Robot War at ITC Leads to Preliminary Win for iRobot", 10 October 2022: <https://ipwatchdog.com/2022/10/10/robot-war-itc-leads-preliminary-win-irobot/id=151928/>

⁴⁵ IP Watchdog, "Robot War at ITC Leads to Preliminary Win for iRobot", 10 October 2022: <https://ipwatchdog.com/2022/10/10/robot-war-itc-leads-preliminary-win-irobot/id=151928/>

Competitors will face even higher hurdles to compete, not only in the smart vacuum or home robotic devices market, but in nearly every market which Amazon's newly-bolstered ecosystem will touch. Consumers and competitors will pay the price.

Behavioural Commitments Should not be Entertained

We anticipate Amazon will likely seek behavioural remedies if the Proposed Merger is challenged. But despite the temptation, the Commission should reject these out of hand. Even aside from the serious monitoring and enforcement concerns, behavioural remedies cannot address the core concern here – Amazon's sheer size, bargaining power and control of an ecosystem that relies heavily on the collection and use of consumer data. Moreover, a number of leading competition authorities, including the CMA, Bundeskartellamt and ACCC, have expressed a preference for structural over behavioural remedies in merger control due to the latter's perceived ineffectiveness.⁴⁶

Google's acquisition of wearable device company Fitbit, which was cleared by the Commission subject to behavioural remedies, demonstrates why such measures are insufficient. Google recently announced that starting in 2023, *"some uses of Fitbit will require a Google account, including to sign up for Fitbit or activate newly released Fitbit devices and features"*. From 2025, support for Fitbit accounts will end entirely, and Google accounts will be required to use Fitbit devices.⁴⁷ While these changes do not appear to formally breach the commitments Google made to the Commission, they undoubtedly go against the spirit of the remedies, which were designed to ensure that Google would not use its ownership of Fitbit and its user data to squeeze out competitors and lock in consumers. Yet this is exactly what Google's actions are designed to do.

Privacy and Consumer Protection Concerns

In addition to the likely competitive damage, the Proposed Merger will enhance Amazon's surveillance powers. iRobot's Roomba and Braava use sensors to learn and map the layout of customers' homes. Technology updates include triggers that tell the cleaning to begin only once the user (or their smartphone) has left the house.⁴⁸ More recent releases also have cameras. When it encounters an obstacle, the robot transmits a photo to the user, who can provide instructions to avoid or clean around the object. Images from these cameras are not always secure. It was recently revealed that intimate images taken by iRobot devices in users' homes – including

⁴⁶ See joint 2021 statement from the three agencies on merger control enforcement – <https://www.gov.uk/government/publications/joint-statement-by-the-competition-and-markets-authority-bundeskartellamt-and-australian-competition-and-consumer-commission-on-merger-control/joint-statement-on-merger-control-enforcement>

⁴⁷ The planned changes are explained on Fitbit's website – https://help.fitbit.com/articles/en_US/Help_article/2478.htm

⁴⁸ News Atlas, "Roomba i7 uses a camera to recognise objects –including pet waste", 10 September 2021: <https://newatlas.com/around-the-home/irobot-roomba-j7/>

images of children playing and a woman on the toilet – were shared with artificial intelligence labeller 'Scale AI' and subsequently leaked onto social media.⁴⁹

Amazon's Alexa already collects vast amounts of consumer data, including tracking whether lights are off and the events in users' calendars.⁵⁰ Alexa knows "*what music you listen to, what you put on your shopping list, and what smart-home products you have*", all based on what you ask of it.⁵¹ Blink and Ring both advanced Amazon's "in-home" strategy, as clearly described in an internal email from Jeff Bezos: "*two senses matter – eyes and ears.*"⁵² If allowed, the merger will allow Amazon to add Roomba's eyes to Alexa's ears inside the home.

Through the merger, Amazon would also gain access to detailed maps of users' homes. Data on the layout of rooms, and potentially images of those spaces, is plainly personal and private. Amazon already uses consumer data to feed its online retail business, and its digital advertising business is the third largest in the world, behind Google and Meta.⁵³

Amazon will almost certainly use the data harvested through iRobot to reinforce and expand its reach in these markets. Furthermore, it is doubtful whether Amazon can be trusted to respect and safely handle the data it would acquire through the acquisition. The company has faced numerous investigations and penalties around the world for its lax approach to data privacy, including a record €746 million fine for breaching the EU GDPR from Luxembourg's National Commission for Data Protection, and a lawsuit in the US for allegedly recording private conversations through its Alexa device.⁵⁴ Whether by design or accident, these incidents demonstrate that allowing Amazon to purchase iRobot would put the sensitive data of millions of Europeans at risk.

Conclusion

Amazon already monitors our doorsteps and listens in on our dinner conversations, and the Proposed Merger will put Amazon inside our living rooms. It will deepen

⁴⁹ A Roomba recorded a woman on the toilet. How did screenshots end up on Facebook? MIT Technology Review, 19 December 2022: <https://www.technologyreview.com/2022/12/19/1065306/roomba-irobot-robot-vacuums-artificial-intelligence-training-data-privacy/>

⁵⁰ Pp. 306 - Report of the Subcommittee on Antitrust, Commercial and Administrative Law of the Committee of the Judiciary, *Investigation of Competition in Digital Markets*, 2020 - https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf

⁵¹ The New York Times –Wirecutter Blog, "Amazon's Alexa never stops listening to you. Should you worry?" 8 August 2019: www.nytimes.com/wirecutter/blog/amazons-alexa-never-stops-listening-to-you/

⁵² Pp. 265 and 308 - Report of the Subcommittee on Antitrust, Commercial and Administrative Law of the Committee of the Judiciary, *Investigation of Competition in Digital Markets*, 2020 - https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf

⁵³ Insider, "Here's the latest on Amazon's ad business, which is \$31 billion and growing", 8 August 2022: www.businessinsider.com/inside-amazons-growing-ad-business-everything-we-know-2019-5?r=US&IR=T

⁵⁴ For more information see <https://news.bloomberglaw.com/tech-and-telecom-law/amazon-must-turn-over-extensive-records-in-alexa-privacy-lawsuit>

Amazon’s retail and consumer data moats, bolster its vast ecosystem and market dominance, and cause harm to consumers and competition in ways that cannot necessarily be fully conceived of today.

We recognise the Proposed Merger is not a transaction that neatly fits within the Commission’s traditional frameworks for assessing mergers. But to protect competition and consumers in fast-moving markets, the Commission must be bold. We encourage this boldness – the competitive dangers created by the Proposed Merger are too severe to ignore – and urge the Commission not to limit itself to analytical paradigms inadequate for a merger such as this one.

Ultimately, the Commission must ask itself the question: is it willing to face the consequences from failing prevent an excessively powerful digital platform growing even stronger?

Signatories to this submission

Foxglove is a non-profit community interest company which fights to make the use of technology fair for everyone.⁵⁵ Foxglove investigates and challenges unfair practices by both governments and technology companies that harm citizens, consumers, and workers – including excessive data harvesting, unsafe algorithmic management, and anti-competitive practices.

The Balanced Economy Project is dedicated to protecting democracy by tackling excessive concentrations of economic power and by spurring civil society to engage in competition policy.

SOMO investigates multinationals. We are independent, factual, critical and with a clear goal: a fair and sustainable world, in which public interests outweigh corporate interests.

The Open Markets Institute uses research and journalism to expose the dangers of corporate concentration, identifies changes in policy and law to address them, and engages with policymakers, academics and other stakeholders to establish open, competitive markets that support a strong, just, and inclusive democracy.



⁵⁵ Foxglove Legal Community Interest Company: www.foxglove.org.uk. This joint submission develops and expands on a prior Foxglove submission to the UK Competition and Markets Authority (CMA), through their solicitors at Mishcon de Reya: https://www.foxglove.org.uk/wp-content/uploads/2022/11/2022_11_15-PUB-Submission-to-the-CMA-Amazon_iRobot-merger.pdf