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Dear Sir/Madam

Ju2023/01196

Response to the Request for Consultation on the draft SEP Regulation

Doro AB is an innovative Swedish company based in Malmö. Doro achievements, innovations, market and R&D spend can be further explored on <https://www.doro.com/en-gb/corporate>. Doro is Sweden's largest manufacturer of handsets.

Thank you for your invitation to respond to the consultation on the draft SEP regulation.

As a Swedish company that has been subject to multiple SEP assertion claims, and that has been discriminated against as a smaller company, Doro welcomes further SEP regulation. Doro considers the current SEP licensing system to be unfair, unreasonable and discriminatory.

The current system of SEP licensing has caused Doro to make decisions which restrict expansion and innovation. As an example, Doro has stopped selling products in America, partly because of the uncertainty in the SEP licensing environment.

We welcome greater regulation to ensure that there are proper and fair licensing practices and to ensure that there is no discrimination against Swedish companies like Doro. Companies like Doro are the companies that drive Swedish and European innovation and Doro urges the Swedish government to support regulation which ensures that Doro and other Swedish companies can compete on a level playing field on a global basis.

We would therefore urge and encourage the Swedish Government to support the draft SEP Regulation.

The draft SEP regulation goes some way to ensuring that the system is fairer and more transparent. However, we would welcome additional clarification and regulation, in the following primary respects:

1 Non-discrimination

The SEP Regulation should provide that the licensing of SEPs must be non-discriminatory. In our view, all companies should pay the same, irrespective of the size of the company. We think this should be made clearer in the regulation. There should be a level playing field for all companies, not just Swedish and European companies. One way to achieve this in the phone market is to regulate so that SEPs are available for license to chipset suppliers, so that all chipsets can come fully licensed for the standards and features that are included within the chipset.

2 Transparency on pricing

The SEP regulation should provide that there should be full transparency on pricing of SEPs. It should also expressly provide that SEP holders must not enable or participate in practices which constitute “double dipping” or “triple dipping”. There should be a duty in licensing negotiations to disclose licenses or other arrangements with chipset suppliers and customers, to seek to avoid double dipping.

The regulation should provide for SEP holders to be fully transparent on how licensing rates change (or not) when portfolios are broken up and fragmented by SEP holders.

3 Transparency on ownership

The SEP regulation should make clear that any company that licenses SEP should be required to disclose who the ultimate actual and beneficial owners of the SEPs are, and whether the original patent owner, or any third-party, has any secret or beneficial interests in the amounts payable by prospective licensees.

4 Honesty

Doro has been misled, and been misrepresented to, in connection with the licensing of SEPs. Whilst this may be a breach of contract and/or competition law, the Regulation should make clear that the FRAND obligation comes with a duty of honesty prior to, during and after any SEP agreement.

5 Injunctions

SEP holders should not threaten injunctions and there should be no injunctions for SEPs as FRAND license fees are always an adequate remedy.

6 Aggregate Royalty Rate

Doro welcomes the fact that the proposal seeks to provide a mechanism for creating the aggregate royalty rate as companies need to know the potential SEP costs when developing products and estimating future pricing. The total aggregate royalty rate must be FRAND for all market entrants, and innovators and implementers should be able to participate in the aggregate royalty rate setting process to ensure that the rate is FRAND.

Doro therefore urges the Swedish Government to support the SEP Regulation and to seek additional clarifications and amendments as set out above.

Yours

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