
Telefonica's contribution to the consult on Competition in Virtual Worlds

Telefonica welcomes the opportunity to share its views on the development of virtual worlds and the competition concerns that we believe the European Commission must consider in its current policies and regulations, given the experience accrued with regards to the evolution of Internet ecosystem.

In general terms, virtual worlds are at the early stages of development. We don't know yet what new services and players will thrive in this new ecosystem, not even are able to anticipate the value chain. Therefore, it is too early to assess what kind of barriers will arise or materialise in the evolution of virtual worlds, and, for the same reason, it would be desirable to let the market discovery process run unhindered.

Our only concern would be the possible extension of market power in the current business models over internet to the new environment. In fact, we have identified one such practice, that could potentially become a barrier for competition; the business models that app stores and XR device manufactures are trying to impose to those service providers that build their immersive experiences onto their devices. This does not only apply to immersive experiences but to any kind of apps that run in a XR device.

Currently, some XR device manufacturers are taking a share of 30 % of any commercial transaction. This happens no matter whether the app is downloaded from the app store or whether such app is not even listed in the app store. Further, this even applies when the app uses a third-party payment system, resulting in a double fee for the seller (the app owner). This reality is already forcing providers of virtual worlds and other kind of apps to merely use these environments to showcase their goods or services. However, pursuing commercial transactions is not economically feasible through XR devices.

The above practice is a heritage of the Internet app business model. Such abusive practice is only recently being addressed by the Digital Markets Act to potentially prevent or remedy that gatekeepers engage into such conducts. This example illustrates quite well why it is fundamental that the dominant position that gatekeepers have gained in the development of Internet is not transmitted into the virtual worlds in a manner that threatens the advent of new business models.

Further, the European Commission must bear in mind the history of acquisitions of competitors by dominant firms (i.e. WhatsApp by Meta) that result in concentrations that has led to create gatekeepers by exploiting network effects and creating entry barriers for smaller companies. This approach contrasts against the rules applied to other parts of the Internet value chain, such as the telecom market, where there is a tendency to approve such acquisitions under strong remedies with the aim of keeping the number of competitors in a

given market. As a result of the different approaches taken through diverse elements of the digital value chain, scale of the different agents has evolved differently. In addition to European competition policies limiting telecom operators capability to gain scale, and therefore negotiate with gatekeepers on equal grounds, Open Internet Regulation has further leveled the playing field by limiting commercial innovation and bargaining power of European network operators. Actually, the Open Internet Regulation has exacerbated the dominant position of gatekeepers or hyperscalers, with very few results in promoting the open innovation intended (protecting “the man in a garage”).

The European Commission has already identified the relevance of virtual worlds for the European industry in the *Communication on Virtual Worlds and Web 4.0*¹. The industrial virtual world is an emerging area mainly driven by innovation of new SME companies where openness and interoperability are important characteristics. Therefore, in addition to previous concerns for mass markets of retail users, Europe must assure that the industrial application of the virtual worlds is subject to a level playing field. That a dominant position in an adjacent market is not used to also become dominant in industrial virtual worlds, to allow that European companies could succeed and compete in equal conditions.

Finally, virtual worlds both for customers and for industry, will require of a connectivity infrastructure capable of providing best in class services. Cloud and edge computing services will be an essential pillar for the European virtual worlds along with real time and predictability of telecommunication services. For the industrial virtual worlds, where digital twins appear as the killer application, it will be needed a deeper collaboration between (i) network operators, (ii) the company entering virtual worlds and (iii) developers to provide tailored solutions for a specific industry/company. It is fundamental that these emerging collaborations are fostered, refraining to apply Internet digital regulations that were designed for a completely different purpose and addressees.

All in all, Telefonica considers that, in general, it is too early to take any regulatory action on the development of virtual worlds as we don't know how they will develop. We believe Europe should have a vigilant approach (wait and see) to understand the competition dynamics in a new playing field, and finally refrain to apply regulations that were defined long time ago for different purposes. It is also very important that the same rules are applied to all players, not matter what part of the value chain they belong to, avoiding the creation of artificial unlevel playing fields.

Questions:

1. What entry barriers or obstacles to growth do you observe or expect to materialise in Virtual World markets? Do they differ based on the maturity of the various markets?

¹ [EUR-Lex - 52023DC0442 - EN - EUR-Lex \(europa.eu\)](#)

Telefonica considers that virtual worlds are the next wave in digital services. Despite the promises of exciting experiences, the grounds of virtual worlds will still be platforms, devices, operating systems and services that are accessible through them.

Therefore, it is foreseeable that hyperscalers, which currently are the most successful agents in the Internet ecosystem, will be in the best starting place to succeed in virtual worlds. Consequently, Telefonica considers that the experience in the development of Internet provides a good example of how new players could be prevented from participating in a competitive market.

In addition, we believe that in order to foster the competitiveness of the virtual worlds field, a review of the EU Merger Control Regulation (EUMR) should be considered by the EC. In this regard, according to the current merger control rules, the EC may not be legally entitled to assess some transactions to the extent the jurisdictional thresholds would not be met due to the low turnover of the targets. It could be understood that this issue is partially solved by the obligation imposed by the DMA on gatekeepers to inform the EC of any intended transaction irrespective of whether they are notifiable under EU merger laws². However, Telefónica believes there should be a change in the EUMR thresholds precisely to adapt them to new market realities and to the globalized world. In Telefónica's opinion, Art. 22 of the EUMR has proved to exert a huge legal uncertainty for companies to understand if their transactions might be requested for review by the EC. A more reliable and predictable threshold such as the value-transaction threshold should be reconsidered in substitution of Art. 22 of the EUMR to capture "killer acquisitions" in nascent markets like the virtual worlds sector.

2. What are the main drivers of competition for Virtual World platforms, enabling technologies of Virtual Worlds and/or services based on Virtual Worlds (e.g. access to data, own hardware or infrastructure, IP rights, control over connectivity, vertical integration, platform and payment fees)? Do you expect that to change and, if so, how?

Interoperability of devices with different platforms and the openness of devices to run services developed by third parties may be desirable for some business models.

Furthermore, some services running over a virtual world platform may require some specific conditions for their traffic. Therefore, it is necessary that platforms don't prevent developers from introducing code that use network API such as those listed in the OpenGateway of GSMA³.

² Article 14 paragr. 1 DMA states that a "gatekeeper shall inform the Commission of any intended concentration [involving] core platform services or any other services in the digital sector or enable the collection of data, [...]" To this, Article 14 paragr. 4 DMA adds that "[t]he Commission shall inform the competent authorities of the Member States of any information received pursuant to paragraph 1 and publish annually the list of acquisitions [...]"

³ <https://www.gsma.com/solutions-and-impact/gsma-open-gateway/gsma-open-gateway-api-descriptions/>

Some platforms and device manufacturers may require exclusivity to service and content developers/providers preventing their services and content from being visualised or used in other platforms or devices.

Finally, payment policies in a Virtual World platform or in a XR device-- as it happens as a common practice in apps marketplaces for end user devices-- is a matter of concern. Some XR device manufacturers are taking a share of 30 % of any commercial transaction. This happens no matter whether the app is downloaded from the app store or whether such app is not even listed in the app store. Further, this even applies when the app uses a third-party payment system, resulting in a double fee for the sellers (the app owners). As a result, providers of virtual worlds services or apps have no other option than merely use these environments to showcase their goods or services.

3. What are the current key players for Virtual World platforms, enabling technologies of Virtual Worlds and/or services based on Virtual Worlds, which you consider or expect to have significant influence on the competitive dynamics of these markets?

Current social networks, device manufactures and software developers that dominate the retail market are at the forefront of providing the immersive experiences that virtual worlds for mass market requires. The main reason is because they have the vast resources needed to develop those technologies by their own. Only few decentralised initiatives such a Roblox or Decentraland are trying to provide alternative platforms for retail.

Different panorama exists in Industrial Virtual Worlds, where hyperspecialized companies are developing customised services for specific use cases that require flexibility and close relationship with the customer and with networks providers.

4. Do you expect existing market power to be translated into market power in Virtual World markets?

The current landscape suggests that platforms of social media and gaming are at the forefront of virtual worlds, with few new entrants, most of them building on a decentralized solutions such a Roblox or Decentraland, but with few portability capabilities envisaged so far.

It should be avoided that users are locked-in into a specific virtual world because they use a specific access device (glasses or any other access device). In addition, it should also be avoided that such device or platform imposes a toll on all commercial transactions running through it by abusing the termination monopoly they enjoy in the digital value chain of virtual worlds. At least, it must be possible that OEM devices can connect and interoperate with a specific Virtual World similarly as currently users have the freedom of using any kind of mobile devices or PC when accessing social media platforms.

Despite industrial virtual worlds have a vibrant ecosystem that is innovating in tailored services in Europe (and all around the world), the necessity of having the cloud and edge computing solutions put current big tech companies in an advantageous position, becoming an unavoidable partner for industry solutions and thus, a potential gatekeeper.

In line with the above, in the reply to Question 8 we explain why we believe that companies having a dominant position in a given market could have the ability and incentives to engage into leveraging practices by translating such dominance to adjacent markets.

5. Do you expect potential new entrants in any Virtual World platforms, enabling technologies of Virtual Worlds and/or services based on Virtual Worlds in the next five to ten years and if yes, what products and services do you expect to be launched?

For mass market solutions, it will be very difficult that a new entrant could beat the current Internet leaders in social media platforms because the network effect they have influence users' decisions and preferences. Additionally, the vast majority of resources to be devoted for creating virtual worlds are a barrier in itself for new entrants.

Differently, in the industrial virtual worlds seems to be a vibrant sector where many companies are innovating in solutions that apply for specific sectors/fabrics or specific uses cases. Digital twins is a generic name that encompasses a set of technologies and services to provide trust in the intersection between the Operational Technologies (OT) and the Information Technologies (IT). Real time communications, networks slicing, cybersecurity, edge computing and IoT are part of the services that will evolve in these industrial virtual worlds.

6. Do you expect the technology incorporated into Virtual World platforms, enabling technologies of Virtual Worlds and services based on Virtual Worlds to be based mostly on open standards and/or protocols agreed through standard-setting organisations, industry associations or groups of companies, or rather the use of proprietary technology?

Despite there are some initiatives in international SDOs (i.e. ITU FG-METaverse) and in other industry-driven forum (i.e. Metaverse Standards Forum) that analyses the standards that might apply to Metaverses (not all of them call their activity as Virtual Worlds yet) they are yet identifying topics and defining high level principles. 3GPP SA1 has also released a technical specification (TS 22.156) with requirements on "Mobile metaverse Services".

It is worth noting that many of the standards that apply to virtual words will be inherited from current Internet standards already developed in industry-driven organisations such as W3C, 3GPP, IETF, etc. But the implementation of such standards doesn't guarantee interoperability nor portability by design because it will depend on how such standards are enriched or

modified by the service or platform provider. In other words, using open standards doesn't ensure the open interfaces needed to provide interoperability and/or portability.

Existing standards set a path, but more need to come. In the meantime, new products and developments go to market, filling the existing gaps before the missing standards come to life. History tells us that new technology is first commercialized by a few companies and later, standards allow more companies join that technology field. It is a usual practice that the early comers try to stop others from competing in the same field in different ways.

7. Which data monetisation models do you expect to be most relevant for the development of Virtual World markets in the next five to ten years?

The data monetisation models will be very similar to how Internet works today. There will be an extraordinary amount of data that will be in the hands of platform providers that can be used to provide insights of user preferences, hopes, reactions, behaviours, etc. to create experiences customized for them and targeted advertisements. Also, as previously mentioned in his document, the revenue share of any commercial transaction will be an important monetisation model.

8. What potential competition issues are most likely to emerge in Virtual World markets?

Telefonica considers that the business models that some XR device manufacturers are using by taking a share of 30 % of any commercial transaction is an area of concern. This happens no matter whether the app is downloaded from the app store or whether such app is not even listed in the app store, resulting in a double fee for the seller (the app owner). Further, it applies no matter if the app uses a third-party payment system, so the seller must pay twice for any single commercial transaction.

In addition, having access to a number of resources and elements is essential for being able to provide services related to the emerging virtual worlds. Companies who might be in a position to offer them might be "tempted" to, due to their potential high market power, impose commercial conditions and obligations on their clients which could be contrary to competition law. For instance, having access to digital platforms could be considered an essential input in order to provide such services. Instead of creating them from scratch, companies need to access them or integrate them into their product. Since these platforms or the access to them could be considered an essential facility, if companies who control them (big techs) refuse to grant such access to third parties, competition could be substantially lessened. As a result, in order for third parties to be able to compete in the market, access to the mentioned resources should be granted—at a reasonable price and non-discriminatory conditions—.

In relation to the above, considering the platforms are owned by a small number of companies with market power, it could be argued that due to their very high market shares (potentially

exceeding 70%), such companies might have a so-called “super dominant” position⁴ in markets of great relevance— or even essential— for the downstream or upstream provision of virtual world markets. As we’ll explain throughout this contribution, such market power or quasi-monopoly positions of some companies serve as a facilitator to distort competition by engaging into a number of conducts which clearly are in breach of antitrust rules.

Such companies might leverage their dominant position from one market to an adjacent market (upstream or downstream) or might prevent the development of a new market. In particular, they may try to foreclose its competitors by **tying**, this is, by requiring customers that purchase one product (the tying product) to also purchase another product or service (the tied product)⁵. This could prevent the client from purchasing such second product from alternative competitors. Considering these companies might be **vertically integrated**, they may intentionally design their platforms (tying product) that need to be integrated with other products, in a way that they only work properly with the tied product/services (and not with the alternatives offered by competitors). Looking to previous EC decisions about abuses of dominant position in the digital sector, it is not difficult to conclude that the Virtual Worlds sector might be another example where certain **dominant firms** might try to **favor their own products and services to the detriment of smaller players (self-preferencing practices)**, and ultimately, of consumers and competition. In this regard, dominant undertakings could impose technical conditions in order to be able to integrate third-party’s services with their owns, make payments subject to the condition that their customers exclusively install/use such dominant undertaking’s services and carry out self-preferencing conducts benefitting its own services. In other words, competition concerns may arise if such companies engage into any conduct that could impair genuine competition by leveraging their market power on a market to an adjacent one.

These last points are particularly illustrative as regards the **access to data and to platforms** that could be in the hands of companies offering Virtual World-related services to the extent such “inputs” could be indispensable for the provision of these services in a downstream market. If such companies are vertically integrated, they could have the incentive and ability to benefit their own services in a downstream market by giving preferential access to data. Similarly, since platforms are an **essential input** for the development of virtual world’s services, the companies owning such “capabilities” could engage into self-preferencing conducts. These potential anticompetitive practices could be replicated in the next level of the value chain by, for instance, what happened in the Internet advertising market where providers of these services could benefit their own services hindering the development of other alternative players.

9. Do you expect the emergence of new business models and technologies to trigger the need to adapt certain EU legal antitrust concepts?

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Overall, Telefonica does not expect the need to adapt EU legal antitrust concepts. In our opinion, the existing antitrust framework is fit for purpose as regards the new services and competition interactions that would be created in relation to technologies related to virtual world markets. We believe that in order to face new market realities, the current concepts are sufficiently solid and wide enough as to capture any issue that might emerge.

Closely related to the above, there are, however, some general antitrust issues which, in Telefonica's opinion, have not been adequately addressed so far. In fact, Telefonica believes that some of the antitrust concerns related to the digital world should be alleviated by the DMA which sets out that companies that qualify as gatekeepers (mostly big tech companies) are to be subject to ex ante obligations, concerning transparency rules, rights and duties, consumer protection and etc.

Considering the dynamic nature of digital markets as well as the interconnection between competition law and other areas such as IP rights and data protection (amongst others). There are still several challenges which merit the attention of antitrust authorities in order to ensure a level playing field for all companies. For instance, there are still difficulties related to the analysis of relevant markets, to the matter of proving dominance of companies as well as abuses of dominant position under art. 102 TFEU and to the acknowledgements of efficiencies by antitrust authorities not only in merger transactions but also in antitrust cases.

10. Do you expect the emergence of new business models and technologies to trigger the need to adapt EU antitrust investigation tools and practices?

As part of the digitisation of the economy and the EC's priority of creating a Europe that is fit for the current technological and geopolitical framework, it is key that antitrust authorities remain vigilant *vis a vis* the emerging virtual worlds ecosystem. In line with the point of the question above, even if it may be too early to claim any specific regulatory change, Telefonica believes the existing EU antitrust investigation tools and practices are appropriate to face the challenges new business models and technologies will create.

Telefonica cannot think of any changes to the current tools neither of any new instruments that could be put in place to identify potential infringement of competition rules. Telefonica believes that, irrespective of the fact that new services to be offered would be brand-new, the "old" investigative tools are suitable to address the potential breaches and to identify the issues that could create competition concerns or require the attention of the authorities.

Finally, Telefonica also thinks that virtual worlds is an opportunity to leave the competition forces in the value chain to self-discipline and only intervene when a real unbalance in the negotiation power or in the competitive conditions of a market is identified.