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**ARD Reply to the call of contributions by DG Competition on competition in
Virtual Worlds**

Introduction

ARD welcomes the timely initiative by DG Competition to gather specific information and views in relation to competition aspects of virtual worlds and generative AI.

ARD takes great interest in this process given the fact that the provision of its content and services through intermediary services play an important role in the fulfillment of its public service remit. Virtual Worlds as well as Platforms using Gen AI are very likely to play a key role in whether and how citizens access media content services online which means that they will have a significant impact on opinion-making, free speech and ultimately democracy.

ARD is a German Public Service Broadcaster which produces a diverse range of audio and audiovisual media content services and offer them on their own trusted digital services to their audiences. In addition, ARD has embraced opportunities for additional ways of reaching out to and interacting with audiences online to fulfill its public service remit, responding to audiences needs and preferences.

General Remarks

Virtual worlds are likely to become important and relevant environments for media content production, presentation and consumption. They will boost audience engagement and help to cater better for audiences' preferences and interests (e.g. VR-enhanced services for persons with special needs). For public service media providers, immersive online environments will be important in fulfilling their public service remits. In other words, virtual media will become a gateway for public service media and existing competition concerns in the current digital markets will be replicated in the markets of virtual worlds as the most significant investments in immersive online technologies and markets are being made by global big tech companies. Aggravating, those competition concerns also have a direct impact on media pluralism and prominence of public service broadcasters in virtual worlds.

Virtual worlds will shape entertainment, business, societal interaction and communication, ultimately the well-being of our democracies. It is interesting to see that, despite its nascent development, promoters e.g. of illegal and extremist, also anti-democratic and populist/propagandistic content are very present and active in virtual worlds trying to gain and extend positions there¹. This is to say: there will be the need to protect and promote our values and democracy in virtual worlds as well, also by the means of diverse and pluralistic media becoming active in those environments. All this has an effect on individual and collective opinion forming in our societies, on the creation of standpoints, values and beliefs which form conduct in view of social cohesion and integration and democracy.

Virtual worlds will be places for new forms of journalism, as well as for new content creation and presentation. There will be the “spacious presentation” of news and current affairs, where consumers are enabled to access ‘places’ and ‘times’ where the news, the incident itself, happens/happened; there will be fictional story telling where the consumer becomes an actor in the plot. All this and much more can boost the usage of quality media content and thus informed citizenship as much as of consumer experience in fictional film, documentary, culture, science and sports.

These positive developments will not come by virtue of an ‘invisible hand process’. They need to be intended, anticipated, actively shaped and supported by regulation – of markets and market behavior as well as by the means of dedicated regulation of media/content/services providers in virtual worlds.

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?

Big tech companies are using their dominance which they already enjoy in current digital markets (from social media to video sharing platforms, search engines, virtual assistants, operating systems, hardware, etc.) to leverage this power into virtual world markets.

We believe that public service media and other European content providers will face similar competition challenges as they currently do in digital markets.

Public and commercial media providers are currently facing the challenge of getting access to data related to media providers’ own content. Not for all relevant online platforms for media providers apply the rules of the DMA. This poses a huge and growing competition problem for media service providers. It is to be expected that access to these data generated by their own services will be even more crucial for media service providers in the virtual world to stay relevant and able to compete in the relevant market.

¹ Online-Radicalisation and Online-Propaganda | Reflect Your Past | bpb.de; Projektumriss Propaganda, Mobilisierung und Radikalisierung zur Gewalt in der virtuellen und realen Welt (PANDORA) (sifo.de); Pandora | PANDORA (pandora-projekt.de).

We already observe that in digital markets relevant for media, online tech companies prefer their own services and/or pre-install them on their services. The same we expect to happen in virtual worlds.

Consequently, it will become even harder for public service broadcasters to be visible, findable, placed in due prominence and ultimately staying relevant in virtual worlds, giving users trusted and reliable information and valuable content which reflects national and European values.

The developments anticipated come with ‘societal costs’: Apart from a deficit in economic competition and the hampering of technological and service innovation there will be less plurality in content/service offered by less pluralistic and diverse providers than possible. It can be expected under those circumstances that virtual worlds will adhere to global tastes (content better to be purchased on global markets) than to tastes shaped by local cultures.

So far, the development of virtual worlds, is not yet modelled by openness, interoperability and standardization. Currently, virtual worlds are not, or only partially connected and connectable. Moving from one to another including transferring e.g. ‘characters’ or ‘things’ or data is yet not a generally possible way of acting in those worlds. The reality is the presence of proprietary solutions driven by players with significant market power. Those switching costs for users is another important entry barrier for market entrance. By this, large firms will be able to maintain their market power because users cannot easily switch away from the incumbent’s technology. Switching costs may include user data, default settings, anticompetitive contracting terms and product design in favor of the dominant technology.

Large data accumulation can serve as another entry barrier to Virtual World markets. Data accumulation – just like network effects – is a self-reinforcing cycle: Companies with access to a large amount of data are able to perfectly target its users or improve their product quality, which subsequently can lead to more users to generate and capture more data.

Foreclosure of market development and other important evolution of virtual worlds should not be allowed by leaving these processes mainly up to be shaped by a few strong and even dominant market players. Early intervention in the market development based on EU competition law, an adapted DMA and other well-tailored legislation is legitimate and necessary.

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?

Our overall understanding is that mainly big tech firms with big economic abilities supported by strong, even dominant market positions drive market development. Their disposal over hardware/software, data, IP rights and the like shape the evolution of virtual worlds markets. This development left alone and not met by the application and

enforcement of competition law as well as other means of specific regulation will lead to ever more oligopolistic structures in the markets of virtual worlds².

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?

Key players for virtual world platforms will include Meta, Alphabet, Microsoft and Amazon. Their respective expertise and market power in social networks, virtual working, data monetization and the necessary infrastructure have and will have a significant influence on the competitive dynamics in virtual worlds. Especially those tech companies like Apple or Amazon, being a media provider in its own right, will play a decisive role in influencing the competitive dynamics in these virtual world markets for media.

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

Definitely. The transfer of existing market power into virtual worlds and back exists already. For example with respect to hardware, Apple and Meta are good examples for using their existing market power with the rollout of the Apple Vision Pro Headset for MR, which Apple calls the visionOS as the first operating system entirely for spatial computing and Meta's Quest 3.

Another example is gaming which is also connected to audiovisual markets by the adaptation of Video Game Intellectual Property (IP) into movies and TV series. Content companies can build multi-media franchises around this IP as Apple's "Tetris" movie or Warner Bros' "Hogwarts Legacy". This connection runs in both directions: many games are based on TV programs or books as "Narcos", "Stranger Things" or "The walking dead".

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?

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?

For the time being, we understand that the development mainly takes place on the basis of proprietary technological solutions leading to 'closed platforms'. This should be

² See also:

https://www.bundeskartellamt.de/SharedDocs/Interviews/DE/2022/220209_Handelsblatt.html

reversed by development, if necessary underpinned by regulation, fostering open standards and/or protocols, interoperability, and standardization. This will help to sustain and foster competition and innovation.

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?

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

Potential competition concerns for public service media are likely to include:

- Unfair bundling and tying of services
- Self-preferencing of own services or preferencing of big commercial services without prominence rules for public service content in virtual worlds
- Default-settings do not contain any public service content
- No access to meaningful data related to public service broadcasters' own content and services that appear in virtual worlds
- No FRAND conditions of access to virtual worlds

For public service broadcasters and media providers, relevant smaller gatekeepers (and virtual worlds are likely to become one of those in the next years before getting the quantitative numbers) not falling under the DMA rules currently cause/ will cause significant competition and public interest concerns with an impact on media pluralism, cultural diversity and hindering the fight against disinformation.

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

We believe that the European Commission should reconsider the very high thresholds of the DMA by lowering them in order to tackle virtual worlds early on in order to avoid market harms and foreclosure of the market.

Currently in the case of Radio and TV, voice assistants, virtual assistants in automotive as well as connected TVs and operating systems for TV play already today an extremely important role in the online media platform landscape and pose specific challenges due to the nature of their service (e.g. regarding the presentation of content, ranking decisions, default settings or brand attribution). As we have feared, the thresholds of the DMA Gatekeeper designation is so high that 'smaller' core platform services of online platforms are not covered by the DMA despite their strategic market status across Member States.

However, especially when it comes to media and the importance of media pluralism for societies and functioning democracies, they should also be regarded as important gateways for accessing content even though their user base or their annual EEA turnover/average market capitalization/equivalent fair market value are not on the same scale as some of the current tech giants core platform services. These smaller online platforms/core platform services can be important to reach demographic target groups or market segments and are necessary or even indispensable for playing out content to fulfill the public service remit of public service media.

ARD believes that this will be even more true in virtual worlds due to the powerful nature of these virtual environments and how users will consume media content there. Therefore, it seems desirable that DG Competition re-evaluates as soon as possible the thresholds for the presumption of satisfying the requirements for the designation of a gatekeeper in Article 3(2) DMA to take into account their suitability for all types of different digital sectors.

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