

Call for contributions on Generative AI

VIVENDI Group Response

Vivendi Group welcomes the call for contribution initiated by the European Commission on Generative AI.

Since 2014, Vivendi has been building a world-class content, media and communications group. Canal+ Group is a major player in the creation and distribution of cinema and audiovisual content on all continents. Lagardère is the world's third-largest book publisher for the general public and educational markets and a leading global player in travel retail. Havas is one of the largest global communications groups with a presence in more than 100 countries. Vivendi is also active in the magazine business (Prisma Media), video games (Gameloft) and live entertainment and ticketing (Vivendi Village). It also owns a global digital content distribution platform (Dailymotion) and a subsidiary dedicated to providing very high-speed Internet access in Africa (GVA). Vivendi's various activities work closely together as an integrated group committed to transforming its businesses to meet the expectations of the public and anticipate constant changes. As a committed group, Vivendi contributes to building more open, inclusive, and responsible societies by supporting diverse and inventive creative works, promoting broader access to culture, education, and its industries, and increasing awareness of 21st century challenges and opportunities.

Vivendi is fully engaged on leveraging AI tools. For instance, Havas announced in June the launch of a single, integrated solution specially suited to improve the influence that content has on brands, companies, and their consumers. Prose on Pixels will work with agencies, their clients, and increasingly direct-to-clients to break through and connect with audiences by creating, scaling, and personalizing impactful, meaningful content that produces the best possible business outcomes. Prose on Pixels will launch with an AI-powered, engagement-centric "Audience First" model.

We understand that the aim of EU competition authorities is to ensure that the development and spread of foundational models (FMs) and language models (LMs) in the context of generative artificial intelligence (AI) and its applications, like conversational chatbots, are done in a way that promotes ethical innovation and preserves the integrity of the EU market.

We fully support this approach as there is growing concern that the rapid speed of innovation in this field could lead to an unequal distribution of market power within a small group of very large companies. These organizations possess significant financial resources and control critical infrastructure elements, such as cloud computing services, which are essential for the start and development of Generative AI projects.

I. General Risks

A. Access to computing resources

Access to computational resources is a major input in generative AI markets. Generative AI systems typically require significant computational resources. This is especially true at the pre-training phase,

when creating a new model. Computing resources allows generative AI companies to process data, train the model, and deploy the AI system. Computing resources generally require dedicated hardware, such as computers with specialized chips like graphical processing units (GPUs) that can be expensive to operate and maintain. New entrants typically access computing resources by turning to cloud computing services, which provide high-performance computing resources on demand. However, cloud services can be expensive and are currently provided by only a handful of firms, raising the risk of anticompetitive practices.

B. Access to data for LLMs training and fine-tuning

At the heart of any generative AI model is a foundation model. Large datasets are required for the construction of such models, especially in the early pre-training stages. This stage establishes the foundation for the model's proficiency in particular fields, such as text or images.

The volume and quality of data required to start a generative AI model may make it more difficult for new competitors to succeed in the market. Compared to more established companies, newcomers face challenges in gathering a complete and diverse data set due to a number of issues. For instance, Gatekeepers may enjoy the benefits of their long history of accumulating user data, especially if they operate platforms that collect large amounts of user data. These well-established companies are also more likely to have sophisticated proprietary data collection techniques, such as cutting-edge scraping technology.

This challenge is accentuated in niche or heavily regulated fields, where deep domain knowledge is essential. In these areas, pre-training or refining a model demands access to substantial, specialized data sets that are not readily accessible, posing a significant barrier for new market entrants.

Although having large data repositories is not intrinsically unlawful, regulatory agencies have frequently taken action against businesses for data activities that are considered to be unfair, unreasonable, or misleading. In addition, according to some experts¹, LLMs could even replace the current operating system, App Store, and even apps could be replaced by LLMs.

In response to these pressing concerns, competition authorities across various global jurisdictions have embarked on proactive measures. In particular, in order to prevent market concentration from becoming stronger, the Federal Trade Commission (FTC) in the United States has argued in favor of regulatory actions.

In February 2024, Chair Khan² previewed how the FTC is using its experience and expertise to establish rules of the road for AI : *"first, we are focused on scrutinizing any existing or emerging bottlenecks across the AI stack. History shows that firms that capture control over key inputs or distribution channels can use their power to exploit those bottlenecks, extort customers, and maintain their monopolies. The role of antitrust is to guard against bottlenecks achieved through illegal tactics*

¹ Mannak, R. (2023, June 22). Goodbye Windows, Hello LLMs: The Future of Operating Systems. Medium. <https://medium.com/@ronaldmannak/goodbye-windows-hello-llms-the-future-of-operating-systems-7ba61ea03e8d>

² A few key principles: An excerpt from Chair Khan's Remarks at the January Tech Summit on AI. (2024, February 8). Federal Trade Commission. <https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2024/02/few-key-principles-excerpt-chair-khans-remarks-january-tech-summit-ai>

and ensure dominant firms aren't unlawfully abusing their monopoly power to block innovation and competition".

Simultaneously, the UK's Competition and Markets Authority (CMA) has begun an analytical examination of AI FMs in order to analyze and understand the operational nuances of the market, with an emphasis on determining entry barriers and the ensuing effects they have on the overall competitive environment.

According to the Autorité de la concurrence (ADLC) in France, the introduction of LLMs has led to a substantial shift in the market dynamics, indicating a possible increase in regulatory monitoring of competitive practices in the industry³. In particular, the ADLC mentions that "AI, (is) a sector in which incumbent digital operators may have a significant competitive advantage".

C. Open-source models

The open-source ecosystem facilitates access to advanced technologies, which has a huge impact on the development of generative AI. After their closed-source equivalents, open-source image creation models have advanced quickly to outperform the initial proprietary models in terms of capabilities. Due to the open-source community's recent growth surge, these models may now be developed and used widely with smaller datasets and less expensive technology. If open-source models reach quality parity with proprietary ones, then openness could level the playing field in AI development.

However, the open-source nature of these models poses risks of misuse, such as the creation of non-consensual content by circumventing built-in safeguards. Additionally, the practice of firms adopting an "open first, closed later" strategy raises concerns about long-term competition and market dynamics.

As highlighted by the US Federal Trade Commission⁴, "Firms that initially use open-source to draw business, establish steady streams of data, and accrue scale advantages can later close off their ecosystem to lock-in customers and lock-out competition".

II. **Specific Risks to Media & Creative Industries**

A. For the press

Artificial Intelligence (AI) could potentially diminish the visibility and audience of online news media. Search engines using AI to generate user query responses may reduce the visibility of third-party information sources, such as the press or media. For example, Google and Microsoft have expressed intentions to incorporate generative AI for direct responses, leveraging updated web ecosystem data. This approach could strengthen these players' competitive positions, thus impacting media providers' traffic redirection. AI could enhance major search engines' situations by maximizing user

³ *Intelligence artificielle générative : l'Autorité s'autosaisit pour avis et lance une consultation publique jusqu'au vendredi 22 mars | Autorité de la concurrence. (2024, February 8). Autorité De La Concurrence. <https://www.autoritedelaconcurrence.fr/fr/communiqués-de-presse/intelligence-artificielle-generative-lautorite-sautosaisit-pour-avis-et-lance>*

⁴ *Generative AI Raises Competition Concerns. (2024, January 19). Federal Trade Commission. <https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2023/06/generative-ai-raises-competition-concerns>*

engagement or time spent on these platforms. Moreover, search engines employing AI could significantly affect the mechanism of neighboring rights for press publishers. If AI is utilized to generate responses rather than displaying external links directing users to news media sites, implementing neighboring rights becomes challenging. This development could jeopardize the online remuneration of magazine and newspaper content, threatening the financial resources for the press industry.

As described by Christophe Carugati⁵, advancement in generative artificial intelligence (AI) chatbots allows search engine activities to move from search engines to answer engines. Unlike search engines, generative AI answer engines generate an answer through a conversation with the end user. Answer engines drastically diminish search costs and increase productivity for end users because they provide what users want directly without the need to click on search results. This major change from search to answer engines impacts the internet ecosystem of content creators and the digital advertising market. Internet actors, including search engines and content creators, rely on links to get traffic and generate revenue.

In addition, Generative AI could adversely affect the online media ecosystem, increasing spam or fake content prevalence, complicating traditional media publishers' access to online advertising funding, and depriving advertisers of high quality advertising space. Current AI models, capable of mass-producing low-value call-to-action content, are particularly beneficial for SEO-optimized sites. The growing prevalence of AI-generated content could undermine public trust and harm the online press economic ecosystem's value.

The second issue relates to the copyright directive (Directive (EU) 2019/790, Art. 15), that allows press publishers to receive compensation from search engine providers for the online use of their works. The French competition authority used the new copyright directive to open a case of abuse of its dominant position against Google in April 2020. The competition authority found that Google did not negotiate with and imposed unfair terms and conditions on press publishers for using their content. The case ended in June 2022 with commitments by Google on a compensation mechanism for press publishers.

Competition authorities should work with stakeholders to ensure that effective compensation mechanisms are put in place through licensing agreements. Therefore, they should preserve the intense competition in the transition from search to answer engines. They should also monitor closely that incumbent search engine providers do not impose entry barriers on new entrants in the answer engine market, in order to protect their business. They should also study the impact of answer engines on the internet ecosystem and how end users behave in relation to content creators. In particular, they should conduct behavioural economic studies on how users interact with blue links⁶, because these are content creators' primary source of traffic and revenue. In case of adverse effects on content creators, competition authorities should monitor the compensation mechanisms offered by answer engines that send traffic back to content creators.

B. For communication & advertising

The development of AI within the products' range offered by several gatekeepers (e.g. Google, Meta), enables them to provide advertisers with a global advertising campaign management service within

⁵ C. Carugati(2023) 'Antitrust issues raised by answer engines', Working Paper 07/2023, Bruegel

⁶ organic search results that appear on a search engine results page (SERP) in response to a user's query

the closed ecosystems of these platforms, risks disintermediating creative and media agencies by competing directly with them in their own sector of activity.

Certain integrated AI players are no longer simple providers of advertising space: AI will enable them to supply both what they find to be the "best" creative content to be distributed within their own advertising spaces, and to define the "best" budget allocation for advertising campaigns. This is however highly debatable whether the service will actually be designed to provide better communication management for advertisers, or rather to serve the interests of the platforms, since they are also the only ones able to measure the effectiveness of their products and services.

In short, these AI integrated players would be able to create ads, to define the allocation of investment and the spaces on which ads should be shown, as well as to serve ads on their spaces and eventually measure their own effectiveness. In other words, capturing the overall value chain.

If the entire advertising communication chain were to be based on these proprietary ecosystems, advertising space that is not linked with these platforms could be excluded from advertisers' campaigns. Such a situation would allow the capture of advertising revenues.

This loss of advertising revenue, particularly for online press websites, would exclude them from the advertising space market and could significantly harm Member States' information sovereignty (see study by PMP Stratégie on behalf of DGMIC and ARCOM in France, a prospective study on advertising and the media, which concludes that by 2030, on the advertising market, the ratio between digital and traditional media will be 70/30 in favor of digital media⁷).

C. For broadcasting

Artificial Intelligence offer multiple opportunities for broadcasters. For instance, AI's ability to process and analyze massive volumes of data in real-time redefines the way advertisers understand their audience. AI enables Broadcasters to better understand and predict individual preferences based on users' behaviors. It also enables real time analysis and optimization. But AI's influence also extends to content creation itself. Automated tools driven by AI play and will play even more in the future an important role in the creativity process.

But, as with any technological evolution, the integration of AI in broadcasting comes with its challenges. Data privacy and algorithmic bias are among these concerns. Striking a balance between innovation and ethical responsibility is crucial for building trust among viewers and stakeholders. Advertisers must also remain vigilant in upholding transparency and ethical standards as they embrace AI's capabilities.

Another challenge that broadcasters and more broadly content providers will face with the development of AI, maybe the most important one, lies in competition. In this regard, AI is an emblematic example of the competition challenges already identified in the digital sector and in part addressed by the DMA. It is worth noting that in the AI ecosystem, prominent players are the same

⁷ *Évolution du marché de la communication et impact sur le financement des médias par la publicité | Arcom. (n.d.).*
<https://www.arcom.fr/nos-ressources/etudes-et-donnees/mediatheque/evolution-du-marche-de-la-communication-et-impact-sur-le-financement-des-medias-par-la-publicite>

ones as the gatekeepers identified by the DMA. Hence, risks exist that AI actors deploy the same unfair or exclusionary practices/strategies as gatekeepers.

AI actors, like gatekeepers, are also often content providers and therefore could be tempted to deploy unfair competition practices (like self-preferencing strategies), unduly distorting competition and jeopardizing the model of pure players and local players which yet play an essential role in cultural diversity.

Considering the deep impact of AI technologies, competition issues raised by digital players could be increased tenfold and therefore shall be addressed urgently and with great care.

III. Gatekeepers' increased Risks

A. Network effects

Companies in generative AI markets may be able to consolidate market power or remain in a leading position using network effects. A first mover could have a substantial competitive edge over its rivals since its models are able to produce more interesting and helpful material than competing products because they have engaged with more users for longer periods of time.

Positive feedback loops have the potential to boost generative AI models' performance, therefore the more people utilize generative AI products, the better they can get. In addition, there may be fewer opportunities for new competitors to thrive in a crowded market. Network effects can greatly increase a company's capacity and desire to participate in unfair competitive practices in the absence of legislative or policy intervention.

Platform effects are another similar effect, where businesses could grow reliant on a specific platform for their generative AI requirements. Similar to network effects, companies may use platform effects to increase their market dominance, particularly if they take particular actions to lock in clients in an exclusive or illegal manner. Cloud services are one particular area where platform impacts could be quite important. Cloud providers may aim to lock in customers by demanding extortionate rates for data egress, for example, in order to take advantage of generative AI businesses' need for computing resources.

B. Appropriation of third parties' IP protected content for the development of Generative AI

The use of (protected) content by AIs to train their models is likely to result in competition with IP rights holders in the exploitation of its work (appropriation).

We acknowledge the emergence of two categories of players :

- A group of respectful of copyright/IP rights and others who develop by exploiting the copyright/IP rights and content of third parties without authorization, remuneration or citation. In this regard, the general terms and conditions of most AIs speak for themselves (between AIs that have managed the rights issue and those that have not), with players that

have integrated eviction guarantees and AIs that in no way guarantee the user against recourse from third parties whose content has been used as input data to train the AI and participate in generating results. For instance, Adobe's model is trained on proprietary content (proprietary database) or content for which they have obtained the rights of use for all their AI's operating needs (Firefly) and provides users with a guarantee of eviction.

- A group that develops LLMs in a non-ethical way, using technologies that do not integrate TDM Opt out for example. This group raises problematic issues in terms of competition, insofar as they develop by using in a non-compliant way. Certain Generative AI have not trained their models on proprietary or royalty-free content, and expose their users to (some) possible claim from third parties.

C. The emergence of Generative AI requires clear ex-ante rules against anti-competitive practices

Current players in the digital ecosystem are the most active funding sources of AI development, which requires substantial investment amounts. These major platforms have achieved an unmatched position in the digital advertising and content distribution market. Such significant consolidation operations have allowed for the solidification of their market positions.

It may be possible for Gatekeepers to adopt unfair competition tactics to consolidate their current dominance or to leverage that power to seize control of a new generative AI industry if they can control significant inputs or adjacent industries, such as the cloud computing sector. Market leaders might, for instance, try to stifle competition by tying and bundling. For instance, it is not impossible for Gatekeepers to distort competition by lowering the value of rivals' independent generative AI services by integrating new generative AI applications with their current core products.

In the context of implementing the Digital Markets Act and applying competition law rules, we urge French and European authorities to remain vigilant towards new behaviors facilitated by AI, which will likely face abuses of dominant positions by certain actors.

Although the DMA doesn't formally address AI concerns, in the field of generative AI applications, gatekeepers are beginning to appear rapidly. Before a few number of powerful companies establish a stable and long-lasting presence, the DMA could offer a chance to preserve a level playing field for AI apps.

Hence, we urge the Commission to specifically address the generative AI industry in the DMA. More precisely, we recommend that the DMA's list of essential platform services should include generative AI services.

The DMA specifically targets "gatekeeper" companies, which are defined in Article 3(1) as an undertaking that: (i) "has a significant impact on the [EU's] internal market", (ii) "provides a core platform service which is an important gateway for business users to reach end-users", and (iii) "enjoys an entrenched and durable position in its operations, or it is foreseeable that it will enjoy such a position in the near future."

The DMA framework is based on core platform services. Operating systems, web browsers, and social networking are among the 10 services that are included in the current list of "core platform services" as stated in Article 2(2). It has failed to address generative AI services, so far.

While some businesses will probably only offer AI as a product, providing generative AI as a platform is another viable option. For instance, a number of large foundation models might serve as the basis for a variety of applications. The companies that developed them have started to generate revenue off of these basic models in a number of ways, such as: (i) by making some of them publicly available and applying a "freemium" business model; and (ii) by providing API access to its models so that apps could be developed on top of them. The latter enables businesses to incorporate third party models into their own goods, which they subsequently offer to the general public.

As we have highlighted it previously, only a handful of businesses are currently driving the generative AI market. The goal of the DMA is to address digital markets where these notable benefits in generating AI services are likely to become entrenched positions in the absence of regulatory oversight.

In fact, again, when gatekeepers incorporate proprietary or third-party generative AI into their main platform services, some generative AI applications may inadvertently come under the DMA's scope. Such an indirect application, though, is not sufficient to intend to address contestability and fairness concerns.

If the generative AI product is offered as a stand-alone platform service, it will be exempt from the gatekeeper requirements. Therefore, it needs to be included per se in the list of core platform services.

D. Vertical integration

In the generative AI field, incumbent companies may also use M&A activities to concentrate market power among a small number of participants. Big companies that are already involved in generative AI, or that already have control over a crucial input, can attempt to acquire vital applications and prevent competitors from accessing fundamental products. Leaders in the market can also attempt to acquire complimentary apps and package them together. Furthermore, established companies could feel pressured to acquire emerging competitors rather than attempting to outperform them by providing superior goods or services.