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Bauer Media Audio response to the European Commission's consultation on its Preliminary Report setting out the key findings of the sector inquiry into the consumer Internet of Things ("IoT") in the EU

This submission provides comments from Bauer Media Audio ("Bauer") on the European Commission's Preliminary Report setting out the key findings of the sector inquiry into the Consumer Internet of Things ("IoT") in the EU, published on 9th June 2021 ("Preliminary Report")¹.

Bauer is a leading UK and European digital commercial radio broadcaster and audio operator. Our broadcast radio, online services, and podcasts reach over 57 million weekly listeners across eight countries.² Our radio brands include KISS, Mix Megapol, Absolute Radio, Radio Norge, Radio Expres, Radio Nova, The Voice and RMF. Bauer's radio and audio services are available to listeners on a "free to air" basis (via AM, FM, DAB and satellite/cable transmission) and online via our websites and mobile apps and also connected listening platforms, including via technologies that have seen rapid growth in recent years: smart speakers and voice assistants.

As an operator of both national and local networks, Bauer is a long-term investor in digital audio product innovation and digital distribution of world-class audio content. Bauer Media Audio is a division of Bauer Media Group³, which among other things, is also a leading magazine publisher, with titles including Empire, Car, Closer, Grazia and Take a Break.

Our submission is divided into three sections:

- (i) the relevance of the key findings of the sector inquiry to the digital radio and audio ecosystem;
- (ii) the main issues that require further investigation by the Commission, from a digital radio and audio standpoint;

¹ Commission Staff Working Document, Preliminary Report – Sector Inquiry into Consumer Internet of Things, 9th June 2021, SWD(2021) 144 final. [internet_of_things_preliminary_report.pdf \(europa.eu\)](https://ec.europa.eu/competition/sectors/media/internet_of_things_preliminary_report.pdf)

² Namely: Denmark, Finland, Ireland, Norway, Poland, Slovakia, Sweden, and the United Kingdom.

³ Bauer Media Group's identification number under the EU Transparency Register is 218282321469-11.

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- (iii) the need for complementary legislative action.

1. The relevance of the key findings of the sector inquiry to the digital radio and audio ecosystem

Bauer welcomes the Commission's Preliminary Report, which is an important step towards addressing concerns relating to digital platforms enjoying gatekeeper status, in particular in the four areas identified in the inquiry so far: restrictions on multi-homing⁴, self-preferencing⁵, data accumulation⁶, and limited interoperability between various providers' products, services and technologies⁷.

We also welcome Executive Vice-President Margrethe Vestager's statement on the initial findings of the Consumer IoT sector inquiry, in which she recognises the *"central role that voice assistants play in the interconnection of different smart devices and services"*, and considers that *"it is precisely because the Internet of Things is developing fast that we need to ensure it does so in a competitive way"*, as there are *"indications that some practices that we know too well may lead to tipping and to the emergence of gatekeepers"*.⁸ Her concerns are informed by the key findings of the sector inquiry, which include the following:

- (i) voice assistants are already important to many aspects of the digital sector and their importance will continue to grow as we transition to the Internet of Things⁹;

⁴ The Commission reports that there are concerns about attempts to restrict the number of voice assistants accessible on smart devices.

⁵ The Commission reports that there are concerns that voice assistant providers may use default settings or prominence to promote their own services or the services of third parties of their choice.

⁶ The Commission reports that there are concerns with the *"big advantages"* voice assistants get from being able to collect *"enormous amounts of data from different devices and services"*.

⁷ The Commission explains that this is partly due to the lack of common standards and the prevalence of proprietary technology. The Commission adds that the limited interoperability can lock consumers into using devices and services of mainly one or a few providers. This in turn reduces consumer choice and possibilities for switching, raising further concerns of fair competition.

⁸ Statement by Executive Vice-President Margrethe Vestager's statement on the initial findings of the consumer IoT sector inquiry, 9th June 2021 [EVP Vestager on the initial findings of the Consumer IoT \(europa.eu\)](https://europa.eu/european-council/en/statement-by-executive-vice-president-margrethe-vestager-on-the-initial-findings-of-the-consumer-iot-sector-inquiry)

⁹ See for example paragraph 55 of the Preliminary Report, p.25, *"voice assistants are becoming key gateways to the smart home"*; see also Section 2.7 *"Key findings"* of the Preliminary Report, p.28: *"general-purpose voice assistants play an increasingly important role because they allow for the connection of all the elements, including various brands of smart devices and consumer IoT services, in a single, integrated environment"* and *"only a limited number of general purpose voice assistants is currently available"*, and *"Alexa, Google Assistant and Siri are the most popular general-purpose voice assistants in the consumer IoT sector"*.

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- (ii) in the EU, the leading voice assistant providers¹⁰ are themselves providers of Consumer IoT services, accessible via their own voice assistants, and online creative content services are included in the types of services most frequently offered by voice assistant providers¹¹; and
- (iii) according to the Commission "a large number of respondents consider the main obstacle to developing new products and services to be the inability to compete with Google, Amazon and Apple. This is because these vertically integrated companies have built their own ecosystems within and beyond the Consumer IoT sector by combining their own and integrating third-party products and services into an offering with a large number of users".¹²

Bauer considers that the Preliminary Report provides an accurate account of the challenges that arise from the growing dominance of voice assistant platforms, and we note that, according to Ms Vestager "if some practices are confirmed, this could lead to new competition cases being opened in the future".¹³

The concerns set out in the Preliminary Report are directly relevant to the digital radio and audio ecosystem. As radio consumption continues to migrate from analogue to digital channels, the distribution of radio is increasingly reliant on smart devices empowered by voice assistants. According to OFCOM research, "since their introduction into the UK market in 2016, smart speakers have steadily grown in popularity and are now owned by 50% of UK adults. In 2021, over a quarter of those listening to live radio are using a smart speaker, although take-up is less common among older age groups".¹⁴ [🔊]. Experience in other digital markets

¹⁰ Preliminary Report, p.7: "The leading voice assistants in the EU are Amazon's Alexa, Google's Google Assistant, and Apple's Siri. They are general-purpose voice assistants as they enable users to access a broad range of functionalities such as playing music, listening to the radio, news or podcasts, controlling smart home devices, providing information or helping in planning and executing daily routines".

¹¹ See for example paragraph 67 of the Preliminary Report, p.27: "the leading voice assistant providers are themselves also providers of various consumer IoT services, accessible via the providers' own voice assistants. In some cases, these services can also be accessed via third-party voice assistants. Among the services provided by the voice assistant providers, the most frequently offered are online information and search services, online creative content services, and online shopping services"; and paragraph 69 of the Preliminary Report, on p.27: "smart speakers and smart TVs seem to give access to the widest selection of consumer IoT services, ranging from creative content services, intermediation services, information services, and search services, to shopping services."

¹² Preliminary Report, p.7.

¹³ Ibid footnote 8.

¹⁴ Ofcom, "Media Nations: UK 2021" [Media Nations: UK 2021 \[ofcom.org.uk\]](https://www.ofcom.gov.uk/consult/condocs/mednations/mednations_uk2021/)

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suggests that voice assistant platforms could engage in behaviours such as self-preferencing, restricting access to data, and using data from third party services to develop their own services [REDACTED].

[REDACTED].

The situation is therefore susceptible to the issues of which the Commission is very well aware, from this sector inquiry, and its excellent work in other aspects of the digital sector, for example: network effects, use of defaults, consumer manipulation, hoarding and unfair use of data, lack of transparency, vertical integration, conflicts of interest, self-preferencing, and the leveraging of market power.

[REDACTED].

2. The main issues that require further investigation by the Commission, from a digital radio and audio standpoint

We list below some of the main issues that we submit the Commission should investigate further, in the context of its sector inquiry.

RE-DIRECTING LISTENERS TO OWN RADIO-LIKE SERVICES

Voice assistants play an intermediary role between users and their smart devices as they allow the control of, and access to, the devices. Given that [REDACTED] voice assistants are vertically integrated, offering their own music streaming services [REDACTED] and radio-like stations [REDACTED], there is a risk that voice assistants will seek to preference their own music streaming services and radio-like stations to the detriment of radio broadcasters. [REDACTED].

[REDACTED]. Companies are also re-packaging playlists with or without AI to form 'radio-like' products that have the added advantage of being customised to the preferences and behaviours of their users using the data they exclusively hold.

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There is currently a lack of clarity around how voice assistant providers decide on what result to return to a user, based on their request. [REDACTED]. Unfortunately, a user may be redirected to a competing radio-like or playlist service offered by the connected platform. [REDACTED].

RESTRICTING ACCESS TO AUDIENCE AND COMMERCIAL DATA

Voice assistants collect vast amounts of data from different devices and services. [REDACTED]. Audience and commercial data are important for radio broadcasters, who largely depend on advertising revenues. Currently, broadcasters are already facing disadvantages: as the use of voice enabled devices grows, data insights received from these devices are low [REDACTED].

Data is also valuable for interaction with listeners which is a core component of the radio service. Voice enabled smart devices have the potential to take this interaction to a new dimension in the future, where listeners talk to the studio through their devices, enter competitions, request music and take part in on air-features. Free flow of data between listeners, broadcasters and (in some instances) advertisers is crucial for these direct relationships to exist and grow. Any interruption to this data flow represents a commercial risk for radio broadcasters and a hindrance to innovation.

USING DATA FROM THIRD PARTY SERVICES TO DEVELOP COMPETING SERVICES ("SHERLOCKING")

Voice assistants have access to data they have gathered due to their gatekeeping role which provide them with unparalleled market intelligence, allowing the identification of successful services or products and the development of competing services or products by the gatekeeper. This allows voice assistants to inter alia re-package playlists with or without AI to form 'radio-like' products that have the added advantage of being customised to the preferences and behaviours of their users using the data they exclusively hold. [REDACTED].

LIMITED INTEROPERABILITY BETWEEN DEVICES

As explained by the Commission in its Preliminary Report, there is limited interoperability between the voice assistant software and the products and services of different providers. Voice assistants control interoperability and integration processes in their ecosystems and are capable

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of limiting functionalities of third-party smart devices compared to their own.¹⁵ The limited interoperability could have exclusionary effects by hindering the ability of consumers to switch from one mobile ecosystem to another and reducing consumer choice. For example, when shopping for a smart home device or product, 89% of consumers said they were influenced by its compatibility with their voice assistant.¹⁶

Voice assistants also have the ability to prevent device manufacturers from installing more than one voice assistant on their devices or restrict the concurrent use of different voice assistants. This does not only restrict consumers' choice of voice assistants, but also enables voice assistants to strengthen their position in the related markets for smart speaker devices and voice assistant software by leveraging their market power in other markets.

IN-CAR REPRESENTS A UNIQUE CHALLENGE

[🔊]. With the number of connected cars on the road increasing every year, radio broadcasters are facing growing competition for listeners' share of ear from other sources of digital audio (in the future, this competition may also come from video).

The challenge that connected cars pose to radio broadcasters is multifaceted and touches on many of the issues described above (e.g. the mediation of distribution by voice assistant platforms as listening moves from analogue to digital channels).

However, some issues are particularly pertinent to the connected car – the most important of which relates to ensuring due prominence for 'radio' on in-car infotainment systems. As the number of in-car entertainment and information options continues to increase, radio broadcasters must maintain a front and centre position on drivers' dashboards. [🔊].

[🔊]. Moreover, as most car manufacturers have a global footprint, they may (absent regulated prominence for radio stations licensed in Europe) prefer to deal exclusively with global connected platforms, at the expense of radio stations. As connectivity commitments are placed on car manufacturers (for safety systems primarily) from 2020, it is only a matter of time before all new cars will be able to stream digital content direct via the dashboard.

¹⁵ Ibid footnote 1.

¹⁶ PwC, "Consumer Intelligence Series" (2018) [Consumer Intelligence Series - Prepare for the voice revolution \(pwc.com\)](https://www.pwc.com/consumer-intelligence-series).

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Given the above, we submit that the Commission should include an analysis of connected car platforms (including in-car voice assistant platforms) as an important and distinct workstream in its Consumer Internet of Things sector inquiry. This is an area that risks falling between the gaps of the Commission's work.

3. The need for complementary legislative action

We note Ms Vestager's statements that "a number of the practices reported in the inquiry feature in the Do's and Don'ts of the Commission's proposal for the Digital Markets Act", and "the sector inquiry will certainly contribute to the debate on the scope of the Digital Markets Act"¹⁷. We infer from these statements that she considers that the preliminary findings of the Consumer Internet of Things sector inquiry and any regulatory interventions that may follow in the coming months should inform the debates in the European Parliament and Council of the EU on the extent to which the Digital Markets Act applies, or should be made to apply, to providers of voice assistants and operating systems. As Ms Vestager's explains in her statement, "creating a digital economy that works for everyone requires competition enforcement **and** [emphasis added] complementary legislative action"¹⁸.

From a radio standpoint, it is essential that the Digital Markets Act (DMA) preserves the contestability of the digital radio and audio ecosystem. Absent certain improvements to the DMA, there is a material risk that the growing dominance of voice assistant platforms could result in these platforms adopting anti-competitive behaviours [👁️👁️]. Such behaviours could undermine the role that radio plays in driving growth in the digital economy, and pose a threat to the important democratic, societal and cultural role radio plays in Europe. In Bauer's view, if the DMA does not address the issues raised by voice assistants, it will fail in its objectives.

The case for regulating voice assistants under the Digital Markets Act or otherwise is not just economic; it is also societal and cultural. Radio delivers a broad range of public value to listeners, including through its output of trusted local and national news bulletins that reach an audience of hundreds of millions of listeners on a daily basis, at a time when fake news is rife on social media networks. Radio is consistently found to be among the most trusted sources of

¹⁷ Ibid footnote 8.

¹⁸ Ibid footnote 8 "Through competition enforcement and complementary legislative action, we aim at creating a digital economy that works for everyone. To do so, we must make sure that our digital markets, including the consumer Internet of Things, are open and fair for consumers, with room for businesses of all sizes to innovate and grow".

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news and information, and in so doing plays a key role in supporting media pluralism in the UK. Research commissioned by the Radiocentre in the UK found that 77% of audiences trust radio, more than any other media¹⁹. This is consistent with similar studies by Ofcom and research from the European Commission, which has found radio to be the most trusted medium in Europe for over a decade.

Radio is also a source of companionship (for example supporting people who may be lonely or feel isolated), entertainment and music discovery (providing cultural enrichment), and an amplifier of charitable causes and issues of major importance to society (such as the under-representation of people from minority ethnic backgrounds in the creative industries).

Listener behaviours during the COVID-19 pandemic lockdown are testimony to the significant contribution that radio makes to society. In the UK, for example, radio stations reported an increase in online listening of around 15-20% on average during the first lockdown, in 2020, with some news and information stations seeing even higher increases of over 40%.²⁰

Licensed radio therefore plays an important political and societal role in Europe by supporting media plurality and improving social cohesion through the promotion of shared cultural and democratic values, making it a *force for good* [🗂️].

¹⁹ The Radiocentre, "Commercial Radio, a force for good", July 2020.

²⁰ Ibid, footnote 19.

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