

AER Comments on the Preliminary Report of the European Commission on the Consumer IoT Sector Inquiry

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About Us

The Association of European Radios (AER) is the Europe-wide trade body for commercial radio, representing the interests of companies operating over 5,000 commercial radio stations to the EU Institutions. AER promotes the development of commercially-funded radio broadcasting in Europe, by ensuring a fair and sustainable economic framework for radio so it can continue to thrive.

Introduction

On 16th July 2020, AER fully supported the European Commission's Decision initiating a sector inquiry into the Consumer Internet of Things (IoT) in the EU, and submitted views to the Commission in relation to this inquiry¹.

AER now welcomes the European Commission's Preliminary Report² setting out the key findings of the sector inquiry, published on 9th June 2021. AER agrees with its findings as it provides an accurate account of the challenges that arise from the growing market power of voice assistant platforms, including restrictions on multi-homing, self-preferencing, data accumulation and limited interoperability between various providers' products, services and technologies. Such challenges are directly relevant to the digital radio and audio ecosystem, as we explain in more detail below.

We note from Executive Vice-President Margrethe Vestager's statement on the initial findings of the Consumer IoT sector inquiry, that "*if some practices are confirmed, this could lead to new competition cases being opened in the future*".³ But this is not sufficient. Ms. Vestager is right to point out that "*complementary legislative action*" is required, and to invite the European Parliament and Council of the EU to use the preliminary findings of the Consumer Internet of Things ("IoT") sector inquiry to inform their debates on the Digital Act Package. Of particular importance to

¹ [AER comments on the European Commission's consumer IoT sector inquiry, 16th October 2020](#)

² 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 \(europa.eu\)](#)

³ 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 \(europa.eu\)](#)

commercial radio is that the EU co-legislators consider clarifying that the Digital Markets Act (DMA) applies to providers of voice assistants.⁴

We list below some of the main issues that we submit the Commission should investigate further.

Risks posed by Digital Voice Assistants (DVAs)

1) Self-preferencing by Digital Voice Assistants (DVAs) may reduce the discoverability and visibility of commercial radio

In its Preliminary Report, the Commission highlights that there are concerns that voice assistant providers may use default settings, pre-installation or prominence to promote their own services or the services of third parties of their choice.

AER members share these concerns. From a radio stand point, there is a risk that the most popular general purpose voice assistants identified in the sector inquiry⁵, who are vertically integrated and play an intermediary role between users, their smart devices and radio stations, will **seek to preference their own** music streaming services and radio-like stations to the detriment of radio broadcasters.

As the sector inquiry indicates, voice assistant providers play a central role in the Consumer IoT sector, and *“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”*⁶.

The inquiry also reveals that online creative content services are included *“among the services most frequently offered by the voice assistant providers”*.⁷ However, there is currently a lack of clarity around how virtual assistant providers decide on what search result to return to a user, based on their request. Unfortunately, a user may be redirected to a competing radio-like or playlist service offered by the voice assistant platform.

These services may very well be comparable services to commercial radio, e.g. radio or music services, or podcast applications, and are direct competitors. As platform owners, Google, Amazon and Apple are therefore able, as the main proprietors of IoT technology, to prioritise their own services over those offered by third parties, such as commercial radio.

If a certain music or radio service is set as default by the DVA provider, this requires additional effort from the user to access a different radio service, while the default service benefits from high

⁴ Ibid footnote 2

⁵ See for example 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”.

⁶ Paragraph 67 of the Preliminary Report, p.27

⁷ Ibid footnote 5.

discoverability. The inquiry confirms that default-setting makes it harder for listeners to find the radio station of their choice, and has a sticky effect on consumers, who will then listen to the default service for a longer period of time, as accessing another radio station will require more effort. It becomes not only extremely difficult for radio stations that are not in a prominent position to be discovered by new users, but their visibility is also considerably reduced for users which may be very well acquainted with them. This could lead to de facto exclusion from the market.

In addition to any competition law proceedings that may arise as a result of this Sector Inquiry, the AER considers that the DMA represents a golden opportunity for the EU legislator to prevent voice assistant platforms from adopting anti-competitive behaviors, such as self-preferencing, favorable ranking, locking consumers into their own music streaming services and radio-like stations to the detriment of radio broadcasters, and to enhance consumer choice.

2) The highly concentrated market of dominant DVA providers reduces the ability of commercial radio providers to negotiate fair terms

AER notes one of the key findings, in the Preliminary Report, that “*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*”⁸. This, coupled with high – up front - technology investment costs and considerable competitive pressure, raises significant barriers to entry for other players. New competitors are not expected in the near future.

These DVAs are provided from companies which hold a unique position in the sector, as they typically provide an ecosystem of core platform services, such as voice assistants, search engines, app stores and marketplaces⁹. New services developed by these companies benefit from an automatic advantage of being part of an integrated ecosystem with a large user network and extensive data.

Furthermore, the sector inquiry crucially addresses the fact that business users are faced with terms and conditions which they cannot object to if they want to provide their services via the digital ecosystems of the afore mentioned vertically integrated companies. Leading digital voice assistant platforms provide the de facto interface for many products and services in the IoT realm, and third parties, in turn, have no other option but to accept contractual terms imposed by the DVA providers, on a “take it or leave it” basis.

The vertical integration and key intermediary role played by the limited number of general-purpose voice assistants referenced above means that third-party service providers may

⁸ Ibid footnote 4.

⁹ Preliminary Report, p.7; This leads the Commission to conclude that “*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*”.

not be able to negotiate fair commercial terms for the distribution of their services via these platforms.

3) Limited interoperability reduces consumer choice and has lock-in effects

Interoperability is imperative for consumer choice, and the lack thereof prevents consumers from enjoying many products and services, either because they are not available, or because they do not perform well on a technology platform. In its Preliminary Report, the Commission explains that **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.

The Commission also highlights that 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 of limiting functionalities of third-party smart devices compared to their own.**

In addition to any competition law proceedings that may arise as a result of this sector inquiry, the AER considers that the Digital Markets Act has an important role to play, by obliging gatekeepers to make their platforms interoperable.

4) Risk of undue interference into listeners' ability to directly access content from radio broadcasters: how DVAs affect the relation of commercial radio with consumers

As radio listening continues to migrate from analogue to digital channels, the distribution of commercial radio is increasingly mediated through DVAs. A subsequent concern of commercial radio is losing its ability to directly interact with their listeners, collect listener data, and protect brand recognition. This is key for radios in order to gain an audience and extend their brand.

When listening to commercial radio on a voice assistant, the user's experience is controlled by that interface, and brand recognition as well as the direct relationship with the user, may be lost.

AER is pleased to see the preliminary report reflects this issue¹⁰, which needs to be addressed by ensuring that radio broadcasters can maintain a direct relationship with their listeners via DVA platforms and that any data generated by radio broadcasters via these platforms is shared with said broadcasters.

¹⁰ Preliminary Report, p.117 and 122.

5) DVA monetisation strategies will directly affect commercial radio

Leading technology companies have invested large sums to create and develop the software and hardware of their voice assistants. The monetisation strategy for DVAs will directly affect commercial radio. Risks include:

- **Only agreeing to carry the services from broadcasters who are willing to pay.** For radio broadcasters willing to pay, reach could be maintained – but profitability would inevitably fall, dampening investment in content. If fees were to be charged, the level of those fees would likely be a contentious issue. **The discoverability and/or findability of smaller radio stations will be at risk** or worst radio broadcasters unable to pay could be prevented from competing altogether.
- **inserting sponsorship or advertising around third party content services without the express consent of the content provider.** There is a risk that DVA providers could monetise commercial radio's content *directly*, by placing their own advertisements over radio content, without any benefits to the radio station, if done without permission. By way of example, the DVA provider could advertise its own podcast over a radio programme, without the radio broadcaster being aware of this. Advertising still is the most important source of revenue for commercial radio broadcasters. If advertisements played on commercial radio are replaced by ads of the DVA provider, commercial radio stations risk losing their means to survive. We regret this crucial point was not addressed in the inquiry.
- **interfering in the free flow of data between listeners, broadcasters and (in some instances) advertisers.** It is crucial for the direct relationships between radio broadcasters and advertisers to exist and grow. Any interruption to this data flow represents a commercial risk for radio broadcasters and a hindrance to innovation

Furthermore, AER is pleased to see that the findings of the sector IoT inquiry reveal a discrepancy in the **access to data from the use of IoT services**, between IoT technology providers, such as voice assistants, and the service providers. This discrepancy, in turn, creates a competitive disadvantage.

The sector inquiry also reveals that digital voice assistants, as a user interface, intermediate between the user and the IoT service. Consequently, the IoT technology platform collects data from users which is able to monetise in various ways, including through advertising or user profiling. This also provides voice assistant platforms with unparalleled market intelligence, allowing the identification of successful services or products and the development of competing services or products. It is important to highlight here that radio generally needs access to user data for measurement purposes either of the programmes either towards reporting to the advertising clients.

With the increasing relevance of digital voice assistants, as confirmed by the inquiry, and their role as an intermediary to access a variety of services, including radio, this access to data is very much of concern to AER. By using data generated through commercial radio content, the owners of IoT technology, such as digital voice assistants, are able to monetise radio content – while keeping this data for themselves and not sharing it with radio broadcasters.

Conclusion

We, at AER, are both pleased and concerned about the findings of this European Commission's Preliminary Report on the sector inquiry into the Consumer Internet of Things ("IoT") in the EU.

The Preliminary Report comes at a key moment in the EU debate as lawmakers are discussing the Digital Services Act package that looks at the wider online economy and its potential impact on EU competition law.

By combining the findings of all these initiatives, the Commission, the European Parliament and the Council would, in our view, enhance its understanding of the significant interconnection in this work and develop a more coherent set of proposals to address the potential negative impact for consumers and businesses.