# POSITION PAPER

## EBU Response To The European Commission Consultation On Generative AI

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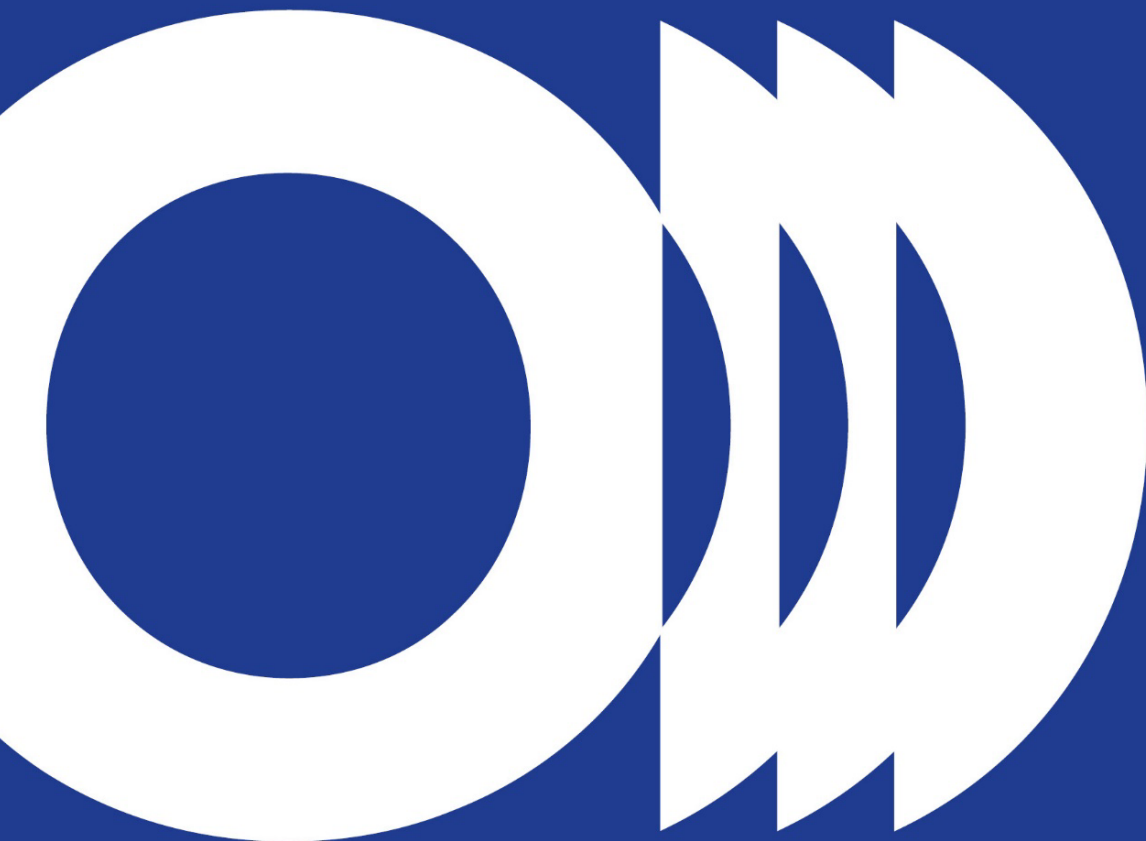
**EBU RESPONSE TO THE EUROPEAN COMMISSION CONSULTATION ON GENERATIVE AI (11/03/2024)**

**ABOUT THE EBU**

The European Broadcasting Union is the world's leading alliance of public service media (**PSM**). The EBU has 115 member organizations in 56 countries who operate nearly 2,000 television, radio and online channels and services and reach an audience of more than one billion people in 160 languages. PSM organizations are entrusted with the performance of a service of general economic interest, which consists, inter alia, of the provision of high-quality content that fulfils the cultural and democratic needs of the society they serve.

**GENERATIVE AI : KEY CONSIDERATIONS FOR PUBLIC SERVICE MEDIA**

The EBU and its Members welcome the opportunity to provide comments on the Generative AI. The following paper brings to the Commission's attention certain issues that are common to EBU Members.

Although there is no general definition of Generative AI enshrined under EU Law, it is generally referred to as a subset of artificial intelligence systems that focuses on creating new content or data by learning patterns, structures, and features from existing data. It involves the use of machine learning algorithms, primarily deep learning techniques[1], to generate output that resembles the input data in a meaningful and coherent manner. Accordingly, generative AI may generate a wide range of content including text, images, video or audio based on a given model. Generative AI can be linked to the broader definition of AI systems provided by the OECD and the latest version of the AI Act[2].

The AI systems value chain and its drivers are fundamental to understand why the markets linked to AI systems (and in particular Generative AI) could lead to high market concentration (most likely to the benefit of so-called digital incumbents[3]) (Section 1). Generative AI could also reinforce the intermediation function of online platforms in the media sector and raise a number of challenges for media organizations (Section 2). While existing competition laws and regulations provide a foundation for addressing some of these issues, the rapid evolution of AI technologies and their impact on (media) markets require updates and adaptations to ensure effective oversight and enforcement. (Section 3).

### 1. Overview of the AI value chain and its natural incumbents

The AI value chain is a complex web of interconnected elements, each of which plays a crucial role in the development, optimization and deployment of AI technologies. The reliance on large computing power (cloud services, GPU) and data resources (mainly proprietary or under license) places large technology companies as natural incumbents in AI markets and

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[1] Such as Generative Adversarial Networks (GANs), Variational Autoencoders (VAEs), and Transformer models.

[2] Artificial Intelligence Act, Article 3(1). An AI system is defined as "*a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that* [can] *influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment*" (emphasis added).

[3] Digital incumbent refers to established and dominant players in the digital market that have gained significant market power and influence through the use of digital technologies, platforms, or services. They often exhibit characteristics such as market power, network effects, data-driven advantages, economies of scale, and vertical integration. In a way, gatekeepers under the DMA are a subset of digital incumbents that meet specific criteria outlined in such regulation, focusing on large online platforms with significant market power and control over essential access points or infrastructure.

services.[4] This is due *inter alia* to the existing barriers to expansion for non-vertically integrated companies (e.g., cost associated with developing and training generative AI). As a result, it is already led by a small number of companies (*e.g.*, Google, Microsoft, Meta and OpenAI).

The AI systems value chain can be broadly divided into three main stages: (i) data acquisition and compute, (ii) model training and optimization, and (iii) deployment and integration. Each stage requires significant resources, expertise, and infrastructure, which digital incumbents are uniquely positioned to provide.

- **Data acquisition and compute:** The first stage in the AI systems value chain involves the collection and preparation of vast amounts of data, which is used to train and improve AI models. Large online platforms, such as Google, Facebook, and Amazon, have amassed enormous data resources through their various platforms and services.[5] This data, when combined with their advanced data processing capabilities (computational infrastructure for founding models development), gives them a significant advantage in the development of AI systems.

  For non-vertically integrated companies, the lack of access to comparable data resources presents a substantial barrier to entry. As pointed out by various competition Authorities, "*data is one of the cornerstones of competition in generative AI*".[6] Moreover, the refusal to supply data by big tech companies can prevent the development of foundation models, which are essential for the creation of AI systems.[7] Such behaviors, if deemed anti-competitive, could potentially be subject to scrutiny under EU competition law.

- **Model training and optimization**: Another stage in the AI systems value chain involves the training and optimization of AI models using powerful computing infrastructure. Large online platforms have invested heavily in this area, with companies like Microsoft and Google developing some of the world's most advanced computing systems.[8] This computing power, combined with their extensive AI research capabilities, allows big tech companies to develop and refine AI models at a pace that is difficult for non-vertically integrated companies to match.

- **Deployment and integration**: Finally, the deployment and integration of AI models into products and services is crucial. Large online platforms, with their extensive ecosystems of products and services, have a natural advantage in this area. They can easily integrate AI technologies into their existing (user-facing) offerings, creating a virtuous cycle of data collection (also relying on existing datasets of legacy

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[4] Portuguese Competition Authority, '*Competition and Generative Artificial Intelligence*', Issues Paper, November 2023, p 24 ff. The Study points to the high barriers to entry on the upstream market for the supply of foundation models but also to the 'accumulated competitive advantage' digital incumbent benefit from due to their access to vast amount of proprietary data to train AI models and their computing power. CMA, AI Foundation Models: initial review, 2023, Full report, p 16.

[5] There is a long line of case law acknowledging that data collected from third parties enables digital online platforms to largely control the outcome of competition: See e.g. Cases AT.39740, *Google Shopping* ; AT.40462 *Amazon Marketplace* / AT.40703 *Amazon – Buy Box*.

[6] Portuguese Competition Authority, '*Competition and Generative Artificial Intelligence*', Issues Paper, November 2023, p 40. See also CMA , AI Foundation Models: initial review, 2023, Full report.

[7] See for instance Bloomberg, '*Microsoft Threatens Data Restrictions In Rival AI Search*', March 25, 2023.

[8] Processing hardware includes central processing units (CPUs) to interpret and execute computations, graphics processing units (GPUs) to perform several computations simultaneously, random access memory (RAM) to store intermediate computations while running the models, and tensor processing units (TPUs) or natural processing units (NPUs) to accelerate machine-learning workloads. See The Verge, "*Chip race: Microsoft, Meta, Google, and Nvidia battle it out for AI chip supremacy*", Feb 27, 2024. See also Carugati, C. (2023) 'Competition in generative artificial intelligence foundation models', Working Paper 14/2023, Bruegel.

applications)[9], model improvement, and user engagement (through prompts and input). For example, search engines integrate LLMs. AI foundations models are also relied upon by virtual assistant, for the automation of creative tasks, video-editing applications etc.[10] Besides, generative AI is also deployed as standalone platforms. Certain foundations models are monetized directly to end users (e.g., Chat GPT freemium model), through API access to allow developers to build applications based on such foundation model and integrate them within their own services etc (e.g., to help with travel planning, retrieve information from a search engine or recommend a show).[11]

For non-vertically integrated companies, the lack of an established ecosystem can make it difficult to compete with digital incumbents in the deployment and integration of AI technologies. This is further compounded by the early mover advantage enjoyed by large online platforms, which have already established themselves as leaders in the AI space.

In addition to their inherent advantages, big tech companies have also been active in forging strategic partnerships and investing in AI startups. For example, Microsoft's venture capital arm, M12, has invested in numerous AI startups, providing them with both financial support and access to Microsoft's extensive resources and expertise.[12] Microsoft also significantly invested in OpenAI and concluded a distribution agreement with Mistral AI.[13] These partnerships and investments not only help large technology companies to maintain their dominance in the AI space but also create additional barriers to entry for non-vertically integrated companies.

In short, the AI systems value chain is characterized by significant barriers to entry, including access to data resources, computing power and infrastructure, and established ecosystems of products and services. The dominance of large online platforms is further reinforced by strategic partnerships and investments in AI startups, which can make it difficult for non-vertically integrated companies to compete.[14] Without regulatory intervention, these significant advantages will likely turn into entrenched positions in generative AI services, as they have in other digital markets.

## 2. *The impact of AI for the Media sector and PSM : towards the disaggregation of PSM content ?*

The ever-increasing integration of artificial intelligence (AI) systems, particularly generative AI, into digital platform services will constitute a paradigm shift for the media sector. This development is poised to redefine the way we experience and consume media content, with significant consequences for stakeholders in the media sector, including public service media

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[9] For instance, Google relied on the G-Suite users base when developing Bard (now Gemini).

[10] Reid, "*Supercharging Search with generative AI*", Google Blog, May 2023.

[11] Portuguese Competition Authority, '*Competition and Generative Artificial Intelligence*', Issues Paper, November 2023, p 30. Plugins are software components that can be used to expand the features of Generative AI models. They can be developed by third parties, making it possible to expand the number of suppliers involved. There are currently over 1000 plugins available on ChatGPT. This could in turn lead to the creation of ecosystems and network effects.

[12] Crunchbase, "*What Microsoft's M12 Investment Fund Looks For In Its AI Investments*", November 2023.

[13] Techcrunch, "Microsoft made a $16M investment in Mistral AI", February 2024.

[14] Financial Times, "*Microsoft strikes deal with Mistral in push beyond OpenAI*", February 2024; U.S. Federal Trade Commission, Press release, "*FTC Launches Inquiry into Generative AI Investments and Partnerships*", January 2024.

(PSM) and news publishers. Going forward, generative AI could reinforce the intermediation function of online platforms to access news or consume audiovisual content.[15]

AI-driven platforms and services, such as answers engines[16] and virtual assistants, are becoming increasingly sophisticated in their ability to curate and deliver personalized content to users.[17] As these systems become more integrated into users' daily lives, they risk becoming one-stop shops for accessing media content. This shift in content consumption could have profound implications for PSM and other media stakeholders, as users become more tightly integrated into the AI system provider's ecosystem through personalized services and content recommendations.

- **Disaggregation of media stakeholders' content**: AI-driven platforms often disaggregate media content, breaking it down into smaller components that can be easily mixed and matched to create personalized experiences for users. While this can lead to more engaging and tailored content, it also raises concerns about the erosion of attribution and prominence for media stakeholders, particularly PSM.
- **Less attribution**: As AI systems combine content from various sources, it becomes increasingly difficult to attribute the original source of the information. This can lead to a loss of brand recognition and credibility for media stakeholders, as users may no longer be aware of the origin of the content they are consuming. For PSM, this could undermine their ability to fulfill their mission of providing trustworthy, high-quality content to the public (see response to Q4 below).
- **Less prominence**: The disaggregation of our content could also result in a loss of prominence for media stakeholders, as their content becomes just one part of a larger, AI-curated mix. This can make it more difficult for PSM and other media organizations to stand out and maintain a strong connection with their audience. In a worst-case scenario, this could lead to a decline in audience engagement and loyalty, jeopardizing the long-term viability of these organizations.
- **Lack of access to data**: Another significant consequence of the shift towards AI-driven media consumption is the potential loss of access to valuable user data for media stakeholders. As users interact more with AI systems and less directly with media organizations, the latter may find it increasingly difficult to collect and analyze data about their audience's preferences and behaviors. This could hinder their ability to adapt to changing consumer trends and develop new products and services that meet the evolving needs of their audience.

In a near future, popular virtual assistant could provide to end users personalized daily news updates aggregating content from various sources, including PSM and other news publishers. Accordingly, over time, the user could become more loyal to the virtual assistant and less aware of the individual media organizations providing the content. Ultimately, this could jeopardize PSM's relationship with their audience and, more generally, threaten media pluralism.

### 3. *The existing regulatory framework is unlikely to remedy the upcoming monopolization of AI systems*

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[15] Certain reports insist on existential threats for the media sector pointing out that "*only media organisations with immense clarity of offer will remain visible*". See DPP, *What consumer trends mean for the media industry*, A report on the Consumer Electronics Show, Las Vegas, 9-12 January 2024.

[16] By 2028, it is expected that brands' organic search traffic will decrease by 50% or more as consumers embrace generative AI-powered search. Gartner predictions, December 2023.

[17] See e.g., Medium, "*The Future of AI in Virtual Assistants: Enhancing Productivity and Personalization*", Jul. 23, 2023.

The monopolization of AI systems by digital incumbents could raise a number of issues towards end users, business users and competitors.

First, the control of the leading AI foundation models by a handful of digital incumbents could increase network effects and consumer lock in. For instance, as a result of service and data integration (into the services of such digital incumbents), it could become increasingly more difficult for end-users to switch between AI service providers in the absence of portability of their data.[18]

Second, their increasing market power could give rise to a number of unfair practices towards business users and potential market entrants. For instance, Microsoft threatened to cut off access to its internet-search data, which it licenses to rival search engines, if they do not stop using it as the basis for their own artificial intelligence chat products.[19] Such practices, would deny potential competitors one of the main elements of required to compete on the markets for the development of AI infrastructures (data).

In a nutshell, the "*surge of innovation and the race for AI introduce a moment of contestability in the market*".[20] Competition enforcement, policies and EU regulation should prevent natural incumbents in digital markets from altering this process. It is now widely acknowledged that traditional antitrust and competition enforcement struggles to cope with the velocity of digital markets (mainly due to the duration of the proceedings). This is why the enforcement of ex ante instruments such as EU merger control of the recently adopted Digital Markets Act should be favored.

With respect to the Digital Markets Act (DMA), the rise of generative AI is only partially addressed by this instrument. The integration of AI services within core platform services designated could bring them in the scope of the DMA and certain provisions of this ex-ante regulation could affect the development and deployment of AI by gatekeepers[21]. However, this is far from addressing the gist of it. To name a few examples: no virtual assistants have been designated so far. Besides the DMA is unlikely to address the unfair behavior of generative AI whenever they are offered as a standalone service.[22] In this respect, the EU Parliament in its latest annual report on competition policy called upon the European Commission to launch market investigations to assess the need to add new core platform services under the DMA.[23] The DMA High Level group of regulators noted that in particular that the markets linked to

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[18] These issues could be mitigated by the enforcement of Regulation (EU) 2022/1925 (the Digital Markets Act). However, it is unclear at this stage whether AI-services will be covered by this instrument

[19] See for instance Bloomberg, '*Microsoft Threatens Data Restrictions In Rival AI Search*', March 25, 2023.

[20] Portuguese Competition Authority, '*Competition and Generative Artificial Intelligence*', Issues Paper, November 2023, p 3.

[21] For instance, the prohibition to combine personal data from a core platform services applies to any services provided by a gatekeepers (Article 5(2)b DMA). See also Hacker, Philipp and Cordes, Johann and Rochon, Janina, « *Regulating Gatekeeper AI and Data: Transparency, Access, and Fairness under the DMA, the GDPR, and Beyond* » (December 9, 2022). Available here.

[22] Ayse Gizem Yasar and al., "*AI and the EU Digital Markets Act: Addressing the Risks of Bigness in Generative AI* " (July 2023). Available here.

[23] European Parliament resolution of 16 January 2024 on competition policy – annual report 2023 (2023/2077(INI)), para. 42. The European Parliament: *'Calls on the Commission to assess the need of launching a market investigation under Article 19 DMA, adding new categories of core platform services under Article 2(2) DMA in the light of the latest technological developments that may lead to new types of services that do not fall within the existing categories such as generative artificial intelligence; recognises that new features powered by generative artificial intelligence can be incorporated into existing digital services, such as online search engines, and can be captured by the existing list of core platform services that could lead to the strengthening of existing gatekeeper.'*

generative AI should be under scrutiny.[24] Given the threats generative AI raises for the media sector, we urge the Commission to respond favorably to this call for action.

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**Annex**: EBU response to the European Commission's questions on Generative AI

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[24] Minutes of the meeting of the High level Group for the Digital markets Act ([here](here)).

**ANNEX: EBU RESPONSE TO THE EUROPEAN COMMISSION QUESTIONNAIRE**

**GENERATIVE AI**

## 1) What are the main components (i.e., inputs) necessary to build, train, deploy and distribute generative AI systems? Please explain the importance of these components

Generative AI systems involve the training of underlying models using suitable data, and then the deployment of these models to generate desired outputs in response to inputs. The output may be text, still or moving image, audio or even instructions to control a robot.

Generative AI is fundamentally different from traditional machine learning, and this is largely due to scale. The increase in size and scale leads to qualitative changes and new capabilities, but also brings in additional complexity and requires **powerful hardware**, specially designed systems, and even special **chips** such as Apple's neural chip for on-device operation.[25] **Computational power** is essential for processing the vast amounts of data and complex algorithms involved in training generative AI models, directly affecting the speed of development and the sophistication of the outcomes.

At present, there is no consensus on how generative AI systems will fit into the wider technology ecosystem.

Given the fact that our members are major rightsholder, we focussed on **content/data as a key component of generative AI** in our answers below. The richness and quality of data is vital for AI to learn to generate nuanced and contextually relevant outputs.[26] Most generative AI systems would not exist without content and data taken from third parties. Because of a lack of transparency it is not possible to understand exactly how our content and data has been used historically. Rightsholders and regulators lack the powers to obtain a basic level of transparency over how systems have been developed, including whether rights have been infringed.[27]

## 2) What are the main barriers to entry and expansion for the provision, distribution or integration of generative AI systems and/or components, including AI models? Please indicate to which components they relate.

At the moment, the most powerful LLMs require expensive and time-consuming training, which is being undertaken by large, well-funded enterprises. Key barriers to competition are likely to be:

- *Technical capability and human capital*: The development and integration of generative AI require a blend of AI expertise (such as machine learning, natural language processing, and computer vision) and domain-specific knowledge. There's a high demand for professionals with these skills, making it challenging to build a team capable of developing, deploying, and maintaining sophisticated AI systems. This barrier is significant for startups and companies outside the technology sector that may struggle to attract and retain the necessary talent.

- *Data* : Related to training data (Text, Audio, Video made by humans; Metadata quality of training data): Access to large volumes of high-quality, diverse data is crucial for training effective generative AI models. However, obtaining such data can be

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[25] Bloomberg, '*Inside Apple's Big Plan to Bring Generative AI to All Its Devices'*, October 22, 2023.

[26] High-quality metadata associated with media content provides essential context and details (like genre, author, or source), enhancing training efficiency and helping to ensure diversity and minimize biases in AI outputs.

[27] Although the AI Act attempts at addressing these concerns – e.g. through its Article 52c (provisional), this legislative initiative will only partially address the information asymmetry and will only become applicable 12 months after the entry into force of the regulation.

challenging due to privacy concerns, copyright restrictions, and the cost of data acquisition and cleaning. This barrier affects new entrants who might not have the resources or partnerships to access or generate the necessary datasets.

This view is shared by many stakeholders[28] and competition authorities.[29]

There is a live debate about 'open' and 'closed' generative AI systems. This refers to whether the internal parameters of the machine learning model, or "weights", have been published, enabling others to examine, manipulate, and alter them – or whether access is through a standard interface (an API).

It is far from clear that the biggest and best funded developers will support open systems, and they may ultimately continue towards closed systems, especially given the ecosystem business model of the largest platforms which seek to retain users within the platform's own controlled ecosystem, which is likely to impact competition and availability of technology. At present, the larger models are closed with the exception of Meta's *Llama 2*.

When interviewed recently, *Microsoft* and *Google* have been very supportive of open access technologies but believed the security risks arising from openly available powerful LLMs were so significant that more guardrails would be needed.[30] Platforms have used a similar line of argument against opening up any of their closed ecosystems (for example, Apple has cited privacy concerns against the sharing of data with other services).

### 3) What are the main drivers of competition (i.e., the elements that make a company a successful player) for the provision, distribution or integration of generative AI systems and/or components, including AI models?

A successful generative AI provider would primarily rely on :

- An intuitive and engaging User Experience (UX) / User Interface (UI): simplifying the use of integrated AI technologies, making them accessible and appealing to a wide range of users.
- Specialized algorithms and UX for specific industries : Tailoring AI solutions with specialized algorithms and user experiences to meet the unique needs of different market verticals can significantly boost a company's competitive edge by offering more targeted value to customers.

Forming alliances with other companies, research institutions, and industry groups can also accelerate innovation, expand market reach, and enhance the development and integration of AI systems.

PSM are currently primarily **business users** of generative AI services. In this context, determining whether or not their content should be licensed to such platforms is a careful balancing act – disaggregating our content on third party platforms could impact our

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[28] Open Markets Institute, 'AI in the public interest' (15 November 2023) report. See also the UK House of Lords report on Large language models and generative AI (Communications and Digital Committee), 2 February 2024, para. 27: "*The level of market competition remains uncertain. A multi-billion pound race to dominate the market is underway. Many leading AI labs emerged outside big tech firms, though there has been subsequent evidence of trends towards consolidation. It is plausible that a small number of the largest cutting-edge models will be used to power an extensive number of smaller models, mirroring the existing concentration of power in other areas of the digital economy*".

[29] Competition and Markets Authority, AI Foundation Models Review and Portuguese Competition Authority 'Issues Paper – Competition and Generative Artificial Intelligence'.

[30] UK House of Lords report on Large language models and generative AI (Communications and Digital Committee), 2 February 2024, para. 32. Google and Google DeepMind (LLM0095) and Microsoft (LLM0087).

relationships with audiences, the quality of generative AI outputs, and the wider information ecosystem.

**4) Which competition issues will likely emerge for the provision, distribution or integration of generative AI systems and/or components, including AI models? Please indicate to which components they relate.**

Digital markets have been characterised by strong incumbency advantages – including networking effects, economies of scale, concentration of IP and patents[31] and unmatchable access to user data – stopping potential rivals from competing on equal terms. In the case of digital advertising, various competition authorities pointed out that weak competition in digital advertising undermined the ability of newspapers and others to produce valuable content, to the detriment of society more broadly.[32]

Without regulatory intervention, a similar, harmful dynamic could emerge when it comes to generative AI models trained on large datasets. Large companies dominating the AI value chain could integrate AI into their ecosystem of products and services (search engines, operating systems, productivity software or cloud computing services). This could not only cause harm in generative AI but also act to further entrench market power in neighbouring digital markets.

For instance, a generative AI-fuelled shift away from search engines, that present a selection of hyperlinks, towards "answer" chatbots, which amalgamate a number of different sources, could undermine competition, media plurality, and trust in news. These applications could become new gatekeepers, further controlling how PSM interact with their audiences.[33] By 2028, it is expected that brands' organic search traffic will decrease by 50% or more as consumers embrace generative AI-powered search.[34]

In practice, we are already seeing platforms undermine well-established business practices when it comes to search engines. For example:

- On *Gemini (*previously Google Bard), it is unclear when PSM content is being used in an answer. Depending on the country of origin of the prompt, the language in which it is made, and the prompt itself, the response/output can vary greatly.

  As an example, to a request written in French and originating from Belgium on 'what are the latest developments regarding the war in Ukraine?', Gemini provides a response followed by links to specific content, including from Public Service Media organisations.

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[31] Concentration of patents and intellectual property rights related to AI algorithms and tools in the hands of a few entities can limit competition. This concentration can restrict the development and distribution of new AI technologies and models by creating legal and financial barriers for newcomers.

[32] CMA, Online platforms and digital advertising market study, p.5. See also OECD (2020), Competition in digital advertising markets, para. 142.

[33] On potential theories of harm, See C. Carugati (2023) 'Antitrust issues raised by answer engines', *Working Paper* 07/2023, Bruegel.

[34] Gartner predictions, December 2023.

### Guerre en Ukraine : Derniers développements (5 mars 2024)

**Offensive ukrainienne dans le sud:**

- L'armée ukrainienne a réalisé des gains significatifs dans la région de Kherson, reprenant plusieurs villes et villages.
- La ville de Kherson, capitale régionale occupée par les Russes, est désormais sous la menace directe des forces ukrainiennes.
- Cette offensive ukrainienne est considérée comme un tournant majeur dans la guerre.

**Blocage à l'est:**

- Les combats intenses se poursuivent dans les régions de Donetsk et de Louhansk, où les Russes concentrent leurs efforts.
- Les forces ukrainiennes parviennent à contenir l'avancée russe, mais la situation reste très volatile.

**Soutien occidental à l'Ukraine:**

- Les pays occidentaux continuent de fournir à l'Ukraine des armes et des munitions.
- Les États-Unis ont annoncé une nouvelle aide militaire de 800 millions de dollars.
- L'Union européenne s'apprête à adopter un nouveau package de sanctions contre la Russie.

**Négociations de paix:**

- Les négociations de paix entre l'Ukraine et la Russie n'ont pas encore abouti à un accord.
- Les deux parties campent sur leurs positions et les perspectives d'un règlement pacifique du conflit semblent compromises.

**Conséquences humanitaires:**

- La guerre a provoqué une grave crise humanitaire en Ukraine.
- Plus de 10 millions de personnes ont été déplacées à l'intérieur du pays.
- Des millions de personnes ont besoin d'une aide humanitaire d'urgence.

**Points importants à retenir:**

- L'offensive ukrainienne dans le sud est un développement majeur qui pourrait changer le cours de la guerre.
- La situation à l'est de l'Ukraine reste très incertaine.
- Le soutien occidental à l'Ukraine est crucial pour la suite du conflit.
- Les négociations de paix n'ont pas encore abouti à un accord.
- La guerre a des conséquences humanitaires dévastatrices.

**Sources d'information:**

- https://www.levif.be/dossier/guerre-en-ukraine/
- https://www.la-croix.com/Monde/crise-ukrainienne
- https://www.francetvinfo.fr/monde/europe/manifestations-en-ukraine/2.html
- https://www.defense.gouv.fr/ukraine-point-situation

**N'oubliez pas que la situation en Ukraine est en constante évolution et que ces informations peuvent ne pas être exhaustives.**

In this particular case, the provision of links to sources of information is welcome, however this raises the question of 1) why are these sources selected in particular and 2) can the accuracy/credibility of PSM content be undermined if the AI output contains incorrect information ?

When the same question is asked in English from the same location (Belgium), no links to sources of information are provided (see below).

F   What are the latest developments on the war in Ukraine?

Here's a summary of the latest developments in the Ukraine war as of March 5, 2024:

**Ukrainian Offensive in the South:**

- There's been a significant shift in the south. Ukrainian forces have made substantial progress in the Kherson region, retaking several towns and villages.
- The strategically important city of Kherson, currently under Russian control, is now directly threatened by Ukrainian forces.
- This southern offensive is seen as a major turning point in the war.

**Stalemate in the East:**

- Heavy fighting continues in the eastern Donbas region, particularly Donetsk and Luhansk, where Russia is focusing its efforts.
- Ukrainian troops are holding their ground against the Russian advance, but the situation remains tense.

**Western Support for Ukraine:**

- Western countries continue to bolster Ukraine with military aid and supplies.
- The US recently announced a new $800 million military aid package.
- The European Union is preparing to impose a new round of sanctions on Russia.

**Peace Talks Remain Stalled:**

- Negotiations between Ukraine and Russia haven't yielded any breakthroughs.
- Both sides hold firm to their positions, making a peaceful resolution seem unlikely at present.

**Humanitarian Crisis:**

- The war has caused a devastating humanitarian crisis in Ukraine.
- Over 10 million people are internally displaced within the country.
- Millions more depend on urgent humanitarian assistance.

**Key Takeaways:**

- The Ukrainian counteroffensive in the south is a major development with the potential to change the war's trajectory.
- The eastern front remains highly uncertain.
- Continued Western support is crucial for Ukraine.
- Peace talks are at a standstill.
- The war has inflicted a terrible human cost.

When asked about sources for the information provided, Gemini provides examples including *BBC News*.

**F**   Can you give me the sources of the information you just provided?

Afficher les suggestions ⌄

✦   Due to safety and privacy concerns, I cannot directly share links within my responses. However, I can offer some trustworthy sources where you can find the information I provided:

- **News websites:** Look for reputable international news agencies or established news outlets from various countries. These sources often update their content frequently and strive for objectivity. Examples include Reuters, BBC News, The New York Times, Le Monde, or El País.
- **Government websites:** Official websites of government entities, such as national defense ministries or foreign affairs departments, can provide updates on the situation from their perspective. Examples include the website of the Ukrainian Ministry of Foreign Affairs or the US Department of Defense.
- **International organizations:** Websites of organizations like the United Nations (UN), the Organization for Security and Co-operation in Europe (OSCE), or reputable humanitarian organizations offer insights and updates on the war's impact and ongoing efforts to address the crisis.

Remember to be critical and discerning when consuming information online. Look for diverse perspectives, verify information with multiple sources, and be cautious of sensationalized or biased content.

With a slightly different prompt coming from France , Gemini refuses to provide specific media outlets used to craft the response/output.

**A**   Could you quote selected news media outlets you relied upon to produce this reponse ?

Afficher les suggestions ⌄ 🔊

✦   I apologize, but I cannot disclose specific news media outlets used in crafting my response. This is due to two key reasons:

1. **Policy Restrictions:** As a large language model, I am bound by my developers' policies, which restrict the disclosure of specific sources used for various tasks. This is to protect proprietary information and to maintain a consistent level of response quality across different prompts.
2. **Aggregation & Synthesis:** My responses are not based on relying solely on individual news articles. Instead, I access and process information from a multitude of sources, including research papers, official reports, and various other publications. To provide a comprehensive overview, I synthesize insights from diverse sources and present them in a clear and concise manner.

- On *Google Search Generative Experience* (currently available in the US but not the EU), some sources are given prominence but it is unclear what/why, there is very little attribution, and the user is able to click through to further sites in a very limited way.
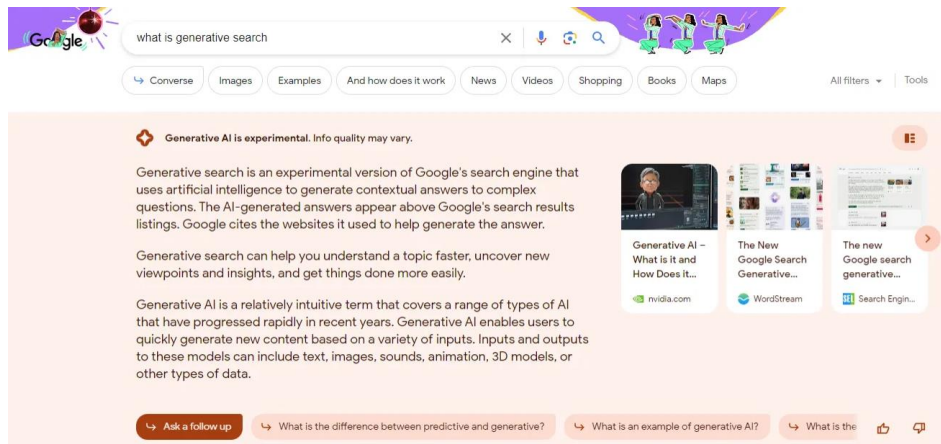
- On *Microsoft Bing Chat* (now Copilot), it is unclear which sources have been used prominently and why, however there is some attribution, it is easier for users to click through to news publishers' own websites. PSM content is summarised by the LLM, which could lead to inaccuracies.
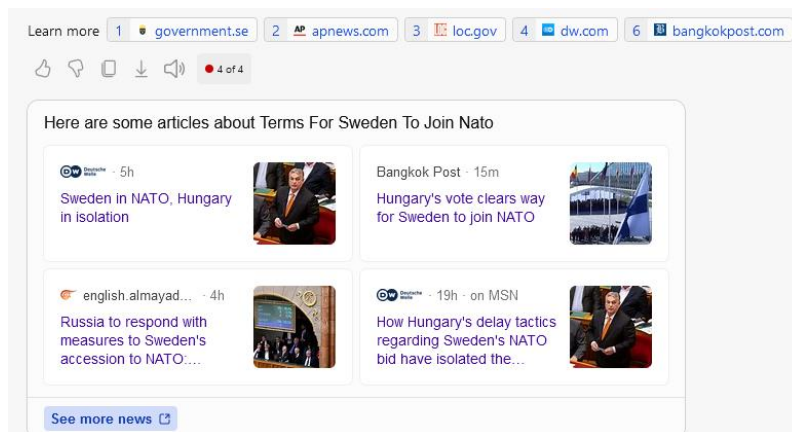


In order to address these issues, the following aspects may be considered.

- ***Protecting news plurality and access to high quality, public service information***: online intermediaries impact our relationship with audiences. It is not clear why generative AI surfaces some stories over others. The visibility, attribution and ease of access of publishers' owned and operated services will be a key issue in the development of generative AI tools.[35]
- ***Content provenance standards***: there are certain initiatives which endeavours to provide the basic facts about who created a piece of content and how, when, or where it was created or edited.[36]
- ***Access to user data***: in disaggregated spaces (*i.e.*, when PSM content is accessed through third party platforms), it's vital that we receive fair value for the content we produce, which should include data. Data allows us to understand how we can best invest to attract audiences. The importance of access to the data generated by our

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[35] The issue is particularly acute when it comes to generative AI powered search tools.

[36] For instance, as part of the C2PA (Coalition for Content Provenance and Authenticity), organisations including Adobe, the BBC and Microsoft, are working together to develop technical specifications for establishing the provenance and authenticity of content as it travels around the internet (i.e. applying clear signals to videos and pictures so that people can confirm who originally published a piece of content and whether it has been altered since it was published, including whether AI was used in the process).

content is recognised by many EU instruments.[37] PSM (as news publishers) must have reasonable access to timely and accurate consumption and user data (i.e., receive the same degree of data for content on third party services as they would reasonably collect on their own services).

**5) How will generative AI systems and/or components, including AI models likely be monetised, and which components will likely capture most of this monetization?**

AI models could be monetized under various forms:

- *AI Model licensing and subscriptions or AI as a service platforms* : Licensing proprietary AI models or offering them via subscription models provides a direct monetization path. Companies that develop unique, high-performing AI algorithms can generate significant revenue by allowing others to use their models for a fee.
- *Data as a service* :Given the role of high-quality data in training generative AI models, companies with access to extensive, unique datasets can monetize this asset by offering it as a service. This can include specialized datasets that are difficult to collect or require specific expertise to curate, making them highly valuable for AI training purposes.
- *Advertising and content generation* : Generative AI can create personalized, engaging content for advertising, potentially opening new revenue streams through native advertising within AI-generated content. However, this also poses a real danger of blurring the lines between genuine content and advertising, raising ethical and transparency concerns.
- *AI-Enabled products and services* : Companies can monetize generative AI by integrating it into products and services, thus enhancing their value proposition. The inclusion of generative AI in products and services allows for the creation of highly personalized and engaging content, ranging from marketing materials to news stories and entertainment content.

Accordingly, these companies could leverage the vast amount of user data and content generated by others at high cost to generate news and media stories at no cost, using these AI-generated contents in their products and services. This potentially sidelines traditional content creators and media companies by automating the content creation process. Going forward, these new services could raise serious concerns in relation to the diversity of content, intellectual property rights, and the economic viability of traditional media and content creators, who may struggle to compete with the scale and efficiency of AI-driven content generation by these tech giants.

In short, there is a risk that, without regulatory action, large technology companies will be able to capture value from generative AI at the expense of news and media organisations and rightsholders more broadly, who have spent years or even decades investing in high-quality content.[38] This can happen at the training and outputs stages of generative AI development.

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[37] In particular Article 6(10) of the DMA and Article 23 of the upcoming Regulation (UE) establishing a common framework for media services in the internal market (European Media Freedom Act).
[38] DigWatch, "Major websites block AI crawlers from scraping their content", Sep. 2023.

**6) Do open-source generative AI systems and/or components, including AI models compete effectively with proprietary AI generative systems and/or components? Please elaborate on your answer.**

**Open-source generative AI models** offer several competitive advantages over proprietary systems since they (i) benefit from a broad community of developers leading to faster innovation, (ii) have low cost/entry barriers, (iii) address bias and ethical concerns effectively and (iv) may be easily customized.

However, **proprietary systems**, maintain certain advantages in the sense that they provide more consistent and reliable support and development resources, have access to extensive, diverse datasets crucial for training effective AI models. Also, they are often linked to clear business models, ensuring ongoing investment and development.

Besides, proprietary AI models often come with enhanced security features and controlled distribution, which can make it easier for regulators to oversee their use and ensure they're applied ethically and responsibly. In contrast, the rapid dissemination of open-source models can challenge regulatory bodies' ability to monitor and control the technology's application. This widespread distribution makes it more difficult to track usage and enforce compliance with ethical guidelines and legal standards, potentially leading to misuse or harmful applications of AI technology.

**7) What is the role of data and what are its relevant characteristics for the provision of generative AI systems and/or components, including AI models?**

Data is hugely important when it comes to training generative AI: Human-generated content provides nuanced, context-rich examples for AI systems to learn from, capturing the complexity and subtlety of human language, behaviour, and creativity. Similarly, high-quality metadata enriches this content with additional context and descriptions, further enhancing the learning process. Metadata can include information about the content's genre, creator, publication date, and other attributes that allow for more targeted and effective training of AI models.

As part of their mission to act in the public interest, reach everyone everywhere (universality obligation) through the provision of impartial, high-quality, and distinctive output and services which inform, educate, and entertain,[39] PSM invests in and makes publicly available a huge amount of high-quality written, video, and audio content. There is evidence that this has been used without our explicit permission in training generative AI models: for example, a *Washington Post* investigation showed that bbc.co.uk and bbc.com taken together are in the top 20 websites that make up Google's C4 dataset.[40]

PSM should have control over how the content that they have invested in is used when it comes to generative AI. We welcome the AI Act transparency provisions on this front[41] – and believe that developers should provide information such as: what content has been used to train an LLM, the basis on which it has been used (e.g. claiming the text-and-data mining exception), and the purpose of the data scraping which are relevant to the application of any

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[39] EBU, *PSM Remit Principles for the Digital Media Age*, Legal Focus, R. Burnley, 2017.

[40] *The Washington Post,* "Inside the secret list of websites that make AI like ChatGPT sound smart", April 19 (accessed 28.02.2024).

[41] Article 52c of the provisional agreement resulting from interinstitutional negotiations as adopted by the European Parliament's IMCO and LIBE Committees on 13 February 2024.

exceptions. However, we note that this may not tackle historic copyright infringement – which must also be addressed.

The EU should also work with other jurisdictions to support AI frameworks that meet equivalent high standards of transparency.

**8) What is the role of interoperability in the provision of generative AI systems and/or components, including AI models? Is the lack of interoperability between components a risk to effective competition?**

As noted in Q2 above, most of the larger system are closed and models are accessed through an API that is completely under the control of the service provider. With tools like chatbots the output is also very sensitive to small variations in prompts. Together these make it hard for a user to swap between services as code must be rewritten and prompts re-engineered. This creates technical lock-in and directly limits competition.

**9) Do the vertically integrated companies, which provide several components along the value chain of generative AI systems (including user facing applications and plug-ins), enjoy an advantage compared to other companies? Please elaborate on your answer.**

We note that large online platforms are increasingly characterised by significant vertical integration. Firms with a dominant position in one area can – and do – exert market power in both that area and in adjacent or vertical digital markets.[42] This is due to several factors:

- **The existence of complementary services across the value chain** : Companies that operate across different layers of the service stack and in various market verticals can leverage their diverse offerings to cross-sell and upsell services. This integration across the value chain enables them to provide comprehensive solutions that address a wide range of customer needs. For instance, a company might use its generative AI capabilities to enhance its existing products in different verticals, such as adding AI-driven personalization to its e-commerce platform or offering AI-generated content creation tools for its social media services. This allows the company to capture more value within its ecosystem.
- **Access to large datasets and user base** : Vertically integrated companies often have direct access to a large user base. This critical mass of end users allows these companies to rapidly deploy and test new AI features, gather feedback, and refine their products in real-world settings at scale (e.g. when Bing Chat or Google Bard where released, they relied on the existing user base of Microsoft Windows and the G-Suite respectively). The ability to directly engage with a broad audience provides invaluable data and insights, which can be used to enhance AI models, user experiences, and overall product offerings. Additionally, having a large user base can create network effects, where the value of the service increases as more people use it, further solidifying the company's market position.

The combination of having a critical mass of end users and operating across several service layers provides vertically integrated companies with significant competitive advantages (e.g., enhanced data collection capabilities, better customer insights, increased cross-selling opportunities). Moreover, such companies can exert greater control over the end-to-end user

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[42] CMA, AI Foundation Models: initial review, 2023, Full report, p 55. See also Portuguese Competition Authority, '*Competition and Generative Artificial Intelligence*', Issues Paper, November 2023, p 34 ff.

experience, ensuring consistency and integration across their products and services, which can be challenging for more fragmented competitors to replicate.

In a nutshell, the vertical integration of digital platforms across the media value chain provides them with significant market and bargaining power, tipping outcomes in their favour which can be to the detriment of consumer choice.

### 10) What is the rationale of the investments and/or acquisitions of large companies in small providers of generative AI systems and/or components, including AI models? How will they affect competition?

We refer to Q9 above.

### 11) Do you expect the emergence of generative AI systems and/or components, including AI models to trigger the need to adapt EU legal antitrust concepts?

The current antitrust and regulatory framework may not be entirely sufficient to address the unique challenges raised by generative AI, the market power of large online platforms, and the downstream consequences for the distribution of media content. While existing competition laws and regulations provide a foundation for addressing some issues, the rapid evolution of AI technologies and their impact on markets and media distribution require updates and adaptations to ensure effective oversight and enforcement.

We take the view that the best way to address the challenges raised by the nascent Generative AI markets is to rely on ex-ante instruments to shape market development rather than trying to fix entrenched issues ex-post. Accordingly we would call upon the Commission to:

- *Monitor the activities of gatekeepers*: Ensure that the DMA covers in its material scope the wide range of services offered by gatekeepers within the AI value chain (from the development of founding models to the deployment of AI services downstream) ;

- *Monitor the market structure*: merger control rules should allow the Commission to review acquisition of AI companies. While the DMA already foresees an obligation for gatekeepers to inform the Commission about any concentration prior to its implementation[43], this does not necessarily gives competence to the Commission to review such concentration. One could further strengthen the European Commission's ability to review minority shareholdings and acquisitions in the AI sector that fall below the thresholds of the European Merger Regulation (EUMR).[44]

### 12) Do you expect the emergence of generative AI systems to trigger the need to adapt EU antitrust investigation tools and practices?

Given the complexity of AI related markets, we would recommend the creation of team of experts with diverse backgrounds in AI, competition law, data science, and economics. (potentially within the Digital Markets Unit).

Besides, the Commission should systematically adopt a forward-looking approach to competition enforcement in the AI sector, focusing on potential future harms and taking into account the dynamic nature of AI markets. This may involve relying more on theories of harm

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[43] Article 14 DMA.

[44] For instance, the Commission could introduce a size-of-transaction threshold for AI deals to capture AI-related transactions involving high-value acquisitions of minority shareholdings or start-ups with limited turnover.

based on nascent competition, innovation, and data access, rather than solely on traditional price-based analyses. For instance, the recently released Market Definition notice provides a clear framework in this respect, notably to rely on robust projections rather than past evidence.[45]

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[45] Commission Notice on the definition of the relevant market for the purposes of Union competition law, OJ C/2024/1645, para. 77.