

# **Navigating the metaverse: A global legal and regulatory guide**

**Part 3: Antitrust/competition law considerations**

The background of the page is a dark blue gradient with several glowing, curved lines in shades of blue and purple, creating a sense of motion and depth, reminiscent of a digital or space-themed environment.

# Introduction

**In the space of a very short time, businesses are focusing on what the metaverse means for them. In addition to commercialising the opportunities available to them, such as new channels to market and enhanced customer engagement, businesses will need to understand and address the associated risks.**

Such matters are extremely important for businesses, consumers, law-makers and lawyers alike. In this seven-part guide we consider the following key legal and regulatory issues in relation to the metaverse:

## Part 1

### What is the metaverse?

- Who are the current big players building it?
- What will the metaverse mean for business?
- What are key technical, operational and governance considerations?

## Part 2

### Intellectual property and the metaverse

- What are virtual reality worlds and virtual items?
- Non-fungible tokens
- How do traditional IP concepts sit with non-fungible tokens and other works in the metaverse?

## Part 3

### Anti-trust/competition law issues

- Developer and participant conduct
- Will the EU Digital Markets Act apply to the metaverse?
- Competitors communicating and co-operating with each other in relation to metaverse offerings



**Part 4**

**Decentralised models and data issues**

Data in the metaverse

Decentralised networks

Who is responsible for data protection law compliance?

Data subject consents

Special categories of data

Children and the metaverse

Data sharing

Data export and localisation

Responsibility for data breaches and cyber attacks

**Part 5**

**Transacting in the metaverse**

Buying “land” in the metaverse

What are the key issues when contracting in the metaverse ecosystem?

Non-fungible tokens, smart contracts and blockchain

Financial crime

Will Metaverse risk and control considerations be similar to those relevant to the Internet?

**Part 6**

**Digital marketing, advertising and social media in the metaverse**

How will businesses be able to advertise in the metaverse?

Social media regulation

Regulating advertising content in the metaverse

Will AI have implications for marketing and the use of avatars in the metaverse?

**Part 7**

**AI and the metaverse**

Why is AI relevant to the metaverse?

How might AI regulation impact upon the metaverse?

How to operationalise AI risk mitigation in the metaverse

Data protection and AI



## Overview of the legal and regulatory issues

The diagram shows the key legal issues and subject areas this guide covers. The breadth of issues means that mitigating risk associated with the Metaverse is going to be a significant challenge for any business, but particularly so for a regulated business.





## Antitrust/competition law considerations

**Because the EU is at the forefront of regulating in relation to digital issues, we focus here on the EU as our example of how regulators might respond to the antitrust and competition law issues raised by the metaverse.**

The metaverse is very much on the EU's radar. The Commission is conducting a consultation on "virtual worlds" in the second quarter of 2023. Although the current Commission is not planning new metaverse-specific regulation, the 2023 consultation may lay the groundwork for regulatory proposals during the next Commission term (2024-2029).

Meanwhile, existing EU antitrust principles and legislation, such as the Digital Markets Act and the Digital Services Act, can apply to conduct in the metaverse. On March 2, 2023, Competition Commissioner Vestager noted in a high-profile speech that "it is already time for us to start asking what healthy competition should look like in the metaverse".

## Developer and participant conduct

How will EU antitrust rules apply? The short answer is that antitrust rules apply to all economic conduct, both online and offline. For a fuller answer, it helps to distinguish between the conduct of participants and conduct of developers in relation to the metaverse.

When participants interact in the metaverse, just as in traditional videogame environments, antitrust rules apply if, and only if, they impinge on the “real world”. When people kill each other in videogames, they are not committing a crime. If they fix prices for purely virtual goods, that does not mean they are creating a cartel caught by Article 101(1) of the EU Treaty. If those virtual goods have a real-world monetary value, however, antitrust rules would apply. So far, this has not been much of an issue in practice, but if the metaverse succeeds in developing a real economy online, then antitrust concerns will arise more frequently.

In the meantime, EU antitrust rules are mainly relevant for developers of metaverse environments. As in other economic areas, developers acting on their own have considerable freedom to design their metaverse environments as they wish – at least unless and until they achieve a dominant position.

However, if two or more developers agree between themselves to restrict access to a metaverse environment and/or fix conditions for participants in those environments, they may infringe the prohibition on anti-competitive agreements.

Multiverse developers may also want, and need, to co-operate to develop technical standards to allow interoperability. Interoperability is encouraged for antitrust purposes, but standard-setting activities must follow antitrust principles, including avoiding discrimination and exclusion.

Similar principles apply to developers of metaverse environments and real-world businesses that may wish to offer virtual goods or services in those environments. Unless and until a metaverse environment achieves a dominant position, metaverse developers can pretty much set their own terms, but two or more developers must observe antitrust rules when they co-operate to set rules on virtual economies in their metaverses.

## Will the EU Digital Markets Act apply to the metaverse?

Broadly speaking, the EU Digital Markets Act (DMA) codifies and expands on a number of well-known antitrust principles applicable to companies holding dominant market positions, and applies those rules in the form of ex ante regulation to companies designated as “gatekeeper platforms.”

The DMA will not restrict all activities of gatekeeper platforms, but only their operation of so-called “core platform services” in which they enjoy a “gatekeeper” position.

“Core platform services” include online intermediation services; online search engines; online social networking services; video-sharing platform services; “number-independent interpersonal communication services” (that is, messaging services not linked to mobile phones); operating systems; cloud computing services; and online advertising services.

So, although the DMA does not target the metaverse specifically, it is easy to see that some activities within the metaverse may include core platform services offered by gatekeeper platforms.

In that context, the DMA may increase the freedom of other real-world companies wishing to offer virtual goods or services in metaverse environments.

## Competitors communicating and co-operating with each other in relation to metaverse offerings

The global and interoperable nature of the metaverse could encourage multiple businesses to communicate and co-operate with each other. Where they are competitors, communications or co-operation in relation to metaverse offerings could potentially give rise to antitrust issues.

How do these issues differ depending on whether a metaverse is established as a “walled garden” or whether participants can interact among multiple metaverses and share information?

As we know, different operators in the online world follow different philosophies – a “walled garden” may offer more limited choices but a more seamless user experience, while greater interoperability may offer greater choice but arguably a less seamless experience.

These differences will likely be mirrored in metaverse environments. As already mentioned, developers enjoy considerable freedom to design their own environments unless and until an environment achieves a dominant position.

However, when different metaverse environments are interoperable, and participants can move between them, metaverse developers will necessarily be co-operating with one another. As with any co-operation among competitors, they will need to be careful to ensure that their activities do not restrict competition.

## **What are the key antitrust developments likely to be in relation to the metaverse?**

The EU Commission and national competition authorities will continue to explore the application of traditional antitrust principles to the digital economy. At the EU level, the task will be complicated by the creation of a new antitrust-inspired regulatory regime - the DMA - alongside traditional antitrust enforcement.

Of course the DMA does not change the scope of EU antitrust rules, but the Commission's antitrust enforcement priorities and activity will likely evolve as the DMA enforcer takes responsibility for enforcing the antitrust principles enshrined in the DMA.

How this affects the metaverse will depend largely on how the metaverse itself evolves - how open and interoperable it will be, and how big a role "gatekeeper platforms" will have in the metaverse.





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