Gatekeeper Acquisitions Under the DMA: Market Trends and Implications for Merger Policy

Dr Christophe Carugati

Gatekeeper acquisitions increasingly target Artificial Intelligence (AI). Existing merger control tools are sufficient to review these transactions. However, the Commission should remove the proposed unjustified exception for gatekeepers from its draft merger guidelines.

Introduction

The European Digital Markets Act (Regulation (EU) 2022/1925, DMA) imposes a reporting obligation for acquisitions. Under Article 14, designated gatekeepers—large online platforms that enable business users to reach end users—must inform the European Commission of all intended acquisitions in the digital sector.

The obligation applies from the date of designation. Alphabet, Amazon, Apple, ByteDance, Meta, and Microsoft have reported acquisitions since 6 September 2023, while Booking has done so since 13 May 2024[1].

The Commission must publish a non-confidential summary of each reported acquisition[2]. This list of reported acquisitions provides valuable information on market trends and the relationship between the DMA and merger control policy.

This analysis examines the published acquisitions in two steps. First, it identifies key market trends, showing that a significant share of reported transactions involves Artificial Intelligence (AI). Second, it assesses their implications for EU merger control, focusing on both merger review and merger analysis. It argues that the Commission already has effective tools to review acquisitions by gatekeepers, but that the draft merger guidelines

[1] Gatekeepers Portal, *European Commission* (accessed 24 July 2026). Available at: https://digital-markets-act.ec.europa.eu/gatekeepers-portal_en.

[2] List of Acquisitions, *European Commission* (accessed 27 July 2026). Available at: https://digital-markets-act-cases.ec.europa.eu/acquisitions

unjustifiably restrict their ability to benefit from the innovation shield, a mechanism designed to facilitate the approval of innovation-driven mergers. The analysis concludes with policy recommendations to the Commission, arguing that no additional tools are needed to review acquisitions by gatekeepers and that the draft merger guidelines should remove the proposed gatekeeper exception.

Market Trends

As of July 2026, designated gatekeepers have collectively reported 68 acquisitions to the European Commission. Apple (22) has reported the largest number of acquisitions, followed by Alphabet (18), Amazon (9), Microsoft (9), Meta (8), ByteDance (2), and Booking (0).

By sector, reported acquisitions involve targets active in Artificial Intelligence (AI) technology (32), software and cloud services (9), computer vision (7), semiconductors and hardware (5), commerce, payments and retail (4), robotics and automation (3), media, gaming and content (3), creative and productivity software (3), consumer devices and extended reality (XR) (1), and professional services (1). The predominance of AI targets suggests that AI is currently the main driver of market dynamism and that gatekeepers are using acquisitions to expand rapidly amid significant technological change.

By transaction type, many reported acquisitions involve hiring employees (26) and acquiring intellectual property rights (17), with substantial overlap between the two. These transactions, often referred to as acqui-hires, frequently include non-exclusive intellectual property licences that enable the recruited employees to continue developing the technology they created at their previous firm.

Implications for Merger Policy

Merger Review

In the European Union, acquisitions are subject to merger control when they meet the qualitative and quantitative thresholds set out in Articles 1 and 3 of the European Merger Regulation (Regulation (EC) No 139/2004, EUMR). Of the 68 reported acquisitions, only three have been notified to the European Commission, and all have been approved. These include the *Microsoft/Activision Blizzard* merger, the *Alphabet/Hon Chi International Investments Co., Ltd* joint venture, and the *Alphabet/Wiz* merger.

The low number of notified transactions is unsurprising, as acquisitions in the digital sector often fall below the EUMR's jurisdictional thresholds.

Nevertheless, the Commission may review below-threshold acquisitions through the EUMR's referral mechanisms. Under Article 22, national competition authorities may refer transactions to the Commission. Article 14 of the DMA complements this mechanism by requiring gatekeepers to report all intended acquisitions in the digital sector, giving Member States the information needed to assess whether a referral is appropriate[3].

However, the ability to rely on Article 22 has narrowed following the Court of Justice's judgment in *Illumina v Commission*. The Court ruled that a Member State may refer a transaction only if it has jurisdiction to review it under its national merger control law[4]. Following the judgment, Member States withdrew their referral of the *Microsoft/InflectionAI* partnership because none of the referring authorities had jurisdiction over the transaction[5].

Some Member States nevertheless can review below-threshold acquisitions through call-in powers, which allow national competition authorities to require notification in specified circumstances. The Commission's review of the *NVIDIA/Run:ai* acquisition followed a referral from Italy based on its call-in powers. Although the Commission approved the transaction, the parties have challenged the referral's legality before the Court of Justice. Pending that judgment, the Commission has not accepted further referrals of below-threshold acquisitions[6].

Overall, the Commission already possesses effective mechanisms to review acquisitions by gatekeepers, including transactions that fall below the EUMR's notification thresholds.

[3] Christophe Carugati, Which Mergers Should the European Commission Review Under the Digital Markets Act?, *Bruegel*, 9 December 2022 (accessed 27 July 2026). Available at: https://www.bruegel.org/policy-brief/which-mergers-should-european-commission-review-under-digital-markets-act

[4] C-611/22 P, *Illumina/Commission*, ECLI:EU:C:2024:677, 3 September 2024.

[5] Commission Takes Note of the Withdrawal of Referral Requests by Member States Concerning the Acquisition of Certain Assets of Inflection by Microsoft, *European Commission*, 18 September 2024 (accessed 27 July 2026). Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_4727

[6] Christophe Carugati, How Should Member States and the Commission Use Call-in Power Mechanisms, *Digital Competition*, 15 April 2025 (accessed 27 July 2026). Available at: https://www.digital-competition.com/articles/how-should-member-states-and-the-commission-use-call-in-power-mechanisms

Merger Analysis

Once a transaction falls within the Commission's jurisdiction, it is assessed under the merger guidelines. In April 2026, the Commission published draft revised merger guidelines for public consultation[7]. Among the proposed changes is an innovation shield (Section 4.3), which specifically addresses acquisitions by gatekeepers.

The innovation shield creates a presumption that certain innovation-driven transactions are unlikely to raise competition concerns. It applies to transactions involving small innovative companies, including startups, or Research and Development (R&D) projects with dynamic competitive potential, provided that additional conditions are satisfied. Two of these conditions expressly distinguish gatekeepers from other acquirers.

The first (paragraph 192(b)) concerns overlaps between one party's R&D project and the other party's existing activities. Ordinarily, the shield requires that the parties hold no more than 40% of the relevant market and that at least three independent firms retain comparable R&D projects. However, where an established firm acquires a start-up with an R&D project, the shield remains available even if these conditions are not met, unless the acquirer is either the largest firm in the relevant market or a gatekeeper.

The second (paragraph 192(e)) concerns the combination of one party's R&D project with the other party's activities in an upstream, downstream or otherwise closely related market. Here, the shield ordinarily requires only that the parties hold no more than 40% of the related market. Again, the shield remains available where an established firm in a vertically or related market acquires a start-up with an R&D project, even if that threshold is not met, unless the acquirer is the largest firm in the relevant market or a gatekeeper.

The draft guidelines do not explain why gatekeepers should be excluded from these exceptions.

This omission is significant because gatekeeper status is conceptually distinct from market power in merger analysis. A firm is designated as a gatekeeper because it provides core platform services (CPSs) that satisfy the criteria set out in Article 3 of the DMA. Those criteria deliberately avoid market definition. As Recital 23 states, "*any justification on*

[7] Draft Communication from the Commission Guidelines on the Assessment of Mergers Under Council Regulation (EC) No 139/2004 on the Control of Concentrations Between Undertakings.

economic grounds seeking to enter into market definition (…) should be discarded" when determining gatekeeper status.

By contrast, merger analysis begins by defining the relevant market and assessing the transaction's competitive effects within it. Consequently, any justification for excluding an acquirer from the innovation shield should relate to its position in the relevant market.

This rationale may explain why the draft guidelines exclude the largest firm in the relevant market. It does not, however, explain the exclusion of gatekeepers. A gatekeeper may acquire a company operating in a market entirely unrelated to any of its CPSs. Even where a CPS overlaps with the relevant market, gatekeeper status does not necessarily imply that the firm is the market leader.

The Commission could argue that gatekeepers warrant different treatment because they enable business users to reach end users, regardless of their position in the relevant market. However, such a rationale would depart from the logic of merger control, which assesses whether a transaction may harm competition in a specific relevant market. Moreover, if the Commission considers market position relevant, as reflected in the separate exclusion of the largest firm in the relevant market, it remains unclear why gatekeeper status should serve as an additional exclusion criterion.

The list of acquisitions under the DMA does not indicate whether any of the reported transactions would qualify for the innovation shield. They do, however, show that gatekeepers regularly acquire businesses operating outside their CPSs. This observation reinforces the view that excluding gatekeepers solely because of their DMA status is difficult to justify.

Policy Recommendations

The Commission already has effective tools to review gatekeeper acquisitions, including transactions that fall below the relevant thresholds. It should therefore continue to rely on existing merger control instruments.

The Commission should also reconsider excluding gatekeepers from the innovation shield in its draft merger guidelines. As gatekeeper status does not establish a firm's position in the relevant market concerned by a transaction, it should not, by itself, prevent an acquisition from benefiting from the shield. At a minimum, the Commission should clearly justify treating gatekeepers differently from other firms under merger control.

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Dr. Christophe Carugati

Dr. Christophe Carugati (christophe.carugati@digital-competition.com) is the founder of Digital Competition. He is a leading expert on digital and competition issues with a strong reputation for impartial, high-quality research. After his PhD in law and economics on Big Data and Competition Law, he is an ex-affiliate fellow at the economic think tank Bruegel and an ex-lecturer in competition law and economics at Lille University.