The Politicisation of the Digital Markets Act

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The DMA aims to ensure contestability and foster innovation. Using it to promote European competitiveness in the cloud sector is legally unfounded and risks weakening competition and Europe's overall competitiveness.

Introduction

The European Commission increasingly uses its flagship digital-competition framework to pursue a broader political objective beyond its original aims.

The Digital Markets Act (Regulation (EU) 2022/1925, DMA) seeks to improve contestability—by lowering entry barriers—and fairness—by rebalancing conditions between market participants—in certain digital markets. It does so by imposing obligations on large online platforms designated gatekeepers providing core platform services (CPSs), including cloud computing services, due to their role as important gateways[1].

Yet the Commission now frames the DMA as a tool to bolster Europe's digital industry and advance European competitiveness[2]. At the *European Digital Sovereignty* Summit—a highly political event aimed at ensuring European tech resilience and independence—organised by France and Germany on 18 November 2025[3], the Commission announced three DMA market investigations in the cloud sector. Two investigations aim to designate Amazon AWS and Microsoft Azure as gatekeepers. At the same time, a third explores whether to add new cloud-

[1] For the list of gatekeepers, *see* European Commission, Gatekeepers (accessed 24 Novembre 2025). Available at: https://digital-markets-act.ec.europa.eu/gatekeepers_en

[2] Mario Draghi, The Future of European Competitiveness, *European Commission*, September 2024 (accessed 25 November 2025). Available at: https://commission.europa.eu/topics/competitiveness/draghi-report_en

[3] Elysée, Summit on European Digital Sovereignty Delivers Landmark Commitments for a More Competitive and Sovereign Europe, 18 November 2024 (accessed 24 November 2025). Available at: https://www.elysee.fr/en/emmanuel-macron/2025/11/18/summit-on-european-digital-sovereignty-delivers-landmark-commitments-for-a-more-competitive-and-sovereign-europe

specific obligations to address practices the Commission views as limiting competitiveness or fairness[4].

Cloud services form the backbone of Europe's digital transformation. They provide on-demand, scalable infrastructure for storing data and for developing and deploying digital services, including artificial intelligence (AI) applications. The European *Digital Compass* sets an ambition for 75 percent of European businesses to use cloud services by 2030[5], up from 52 percent in 2025[6].

Despite this growing adoption, large American cloud providers, such as Amazon AWS, Microsoft Cloud Azure, and Google Cloud—often collectively referred to as hyperscalers due to their scale—dominate the European cloud market. The Commission notes that the largest European cloud provider accounts for only 2 percent of the EU market, and American firms are expected to drive 65 percent of new data centre demand in Europe[7]. Nonetheless, the European cloud market exhibits strong competition dynamics, especially given its role in AI development. As an illustration of this dynamism, several European and American firms have announced substantial investment in the sector. For instance, in 2025, Oracle announced a $2 billion investment in Germany[8], while SAP announced a €20 billion ($23.30 billion) investment to develop a European sovereign cloud[9].

These dynamics make the cloud sector strategically sensitive. France and Germany explicitly seem to view the DMA as a regulatory tool to support European competitiveness and achieve

[4] European Commission, Commission Launches Market Investigations on Cloud Computing Services Under the Digital Markets Act, 18 November 2025 (accessed 24 November 2024). Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2717

[5] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2030 *Digital Compass: The European Way for the Digital Decade* (accessed 24 November 2025). Available at: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52021DC0118

[6] Communication from the Commission *State of Digital Decade 2025: Keep Building the EU's Sovereignty and Digital Future*, 16 June 2025 (accessed 25 November 2025). Available at: https://digital-strategy.ec.europa.eu/en/library/state-digital-decade-2025-report

[7] *Ibid*.

[8] Oracle to Invest U.S. $2 Billion in AI and Cloud Infrastructure in Germany, *Oracle*, 15 July 2025 (accessed 5 December 2025). Available at: https://www.oracle.com/europe/news/announcement/oracle-invests-two-billion-dollars-in-ai-and-cloud-infrastructure-2025-07-15/

[9] SAP Deepens European Cloud Sovereignty Offering to Unlock Regional AI Innovation, *SAP*, 2 September 2025 (accessed 5 December 2025). Available at: https://news.sap.com/2025/09/sap-deepens-european-cloud-sovereignty-offering-unlock-regional-ai-innovation/

"*digital sovereignty*," to strengthen Europe's technological resilience, and reduce dependencies[10].

Against this backdrop, this analysis argues that politicising the DMA is misguided. Contrary to the legislator's intent, it first shows that using the DMA to pursue competitiveness undermines the regulation's core purpose of ensuring contestability. It then explains how applying the DMA to the cloud sector risks weakening the regulation's objective of preserving and fostering innovation.

The DMA is About Contestability

The DMA's goals are clearly defined in the regulation: it aims to ensure contestability and fairness (Article 1). The text never uses or refers to "*competitiveness*."

European legislators adopted the DMA to address practices identified in past and ongoing competition cases by defining a list of positive and negative obligations. This approach allows the Commission to tackle conduct viewed as anticompetitive without launching lengthy, case-by-case investigations that require market definition, proof of anticompetitive effects, and tailored remedies. Instead, the DMA compresses these steps into two simplified phases: designation and compliance.

As Professor Jacques Crémer—co-author of a key report for the Commission on digital competition[11]—has argued, the DMA functions as competition law rather than as a new form of economic regulation[12].

Both the DMA and competition law seek to preserve the competitive process. They aim to address harmful practices, whether before they occur (DMA) or after (competition law). They do not seek to protect inefficient firms or to promote specific competitors.

[10] Elysée, Summit on European Digital Sovereignty Delivers Landmark Commitments for a More Competitive and Sovereign Europe, 18 November 2024 (accessed 24 November 2025).

[11] Jacques Crémer, Yves-Alexandre de Montjoye, Heike Schweitzer, Competition Policy for the Digital Era, *European Commission*, 2019 (accessed 24 November 2025). Available at: https://op.europa.eu/fr/publication-detail/-/publication/21dc175c-7b76-11e9-9f05-01aa75ed71a1/language-en

[12] Jacques Crémer, Why You Should Think of the DMA as Competition Law, *Concurrences*, 3 November 2025 (accessed 24 November 2025). Available at: https://www.concurrences.com/en/review/issues/no-11-2025/libres-propos/why-you-should-think-of-the-dma-as-competition-law

Pursuing European competitiveness through digital sovereignty reverses this logic. It explicitly seeks to promote European firms rather than safeguard the competitive process. The DMA may support European competitiveness by creating opportunities (e.g., enabling new app marketplaces on mobile operating systems)—directly boosting EU companies' ability to do business in Europe—or by imposing regulatory burdens primarily on non-European firms—indirectly benefiting EU firms that do not face similar compliance costs and requirements. However, these effects on competitiveness remain consequential. Contributing to competitiveness is not the same as pursuing it.

Treating competitiveness as an objective transforms the DMA into a tool for industrial policy. Under this interpretation, the Commission could impose obligations not because a practice harms competition, but because it creates challenges for European firms competing with gatekeepers, reducing competition intensity and ultimately harming European cloud customers. This dynamic encourages rent-seeking by European companies and governments seeking to protect their economic and political interests. Imposing new obligations to pursue European competitiveness is misguided from both a policy and legal perspective.

From a policy standpoint, such a shift distorts the DMA's goal and undermines the legislative intent, ultimately harming the democratic process. The regulation exists to foster innovation by ensuring contestability (Recital 32). Imposing obligations that do not address anticompetitive conduct risks distorting competition in favour of certain firms—possibly less efficient ones—and penalising business practices that either pose no harm or even benefit competition, ultimately harming contestability.

From a legal standpoint, the DMA is anchored in competition law (Article 19). The Commission may open market investigations into new practices that restrict contestability or are unfair, not those that limit competitiveness. The Commission must also draw on findings from competition proceedings and relevant market developments before adding new obligations. In its cloud investigation, the Commission will examine issues such as obstacles to interoperability between cloud providers, data access conditions for business users, tying and bundling, and imbalanced contractual terms.

It will likely take into account market studies by the Dutch[13] and French[14] competition authorities, which highlight concerns about cloud credits, restrictive software licensing practices, and switching costs related to interoperability and egress fees. The French Competition Authority (FCA), for instance, concluded that the DMA is not the right instrument to address most cloud-related concerns. The Data Act (Regulation (EU) 2023/2854) already addresses many switching-cost issues, while software licensing issues require case-specific competition analysis under general competition laws. Microsoft's commitments to address competition concerns related to licensing practices for use on third-party cloud providers illustrate this point[15].

The Commission will also likely cooperate with the FCA, following its recent report to the French Parliament on self-preferencing in the cloud sector[16]. While the FCA did not identify harmful self-preferencing, it expressed its possibility in investigating several practices identified during its public consultation by respondents, including:

- Major cloud providers, that also supply software, offering less favourable pricing or functionality when their products run on third-party cloud providers;

- Software publishers favouring hyperscaler partners;

- AI tools available only within hyperscaler environments; and

[13] Autoriteit Consument & Markt, Market Study Cloud Services, 2022 (accessed 25 November 2025). Available at: https://www.acm.nl/system/files/documents/public-market-study-cloud-services.pdf

[14] Autorité de la concurrence, Opinion 23-A-08 of 29 June 2023 on Competition in the Cloud Sector, 23 June 2023 (accessed 24 November 2025). Available at : https://www.autoritedelaconcurrence.fr/sites/default/files/2023-06/Resume_Avis_Cloud%20EN_final_2023_2906.pdf

[15] CIPSE, CISPE Secures Landmark Licensing Reform in Agreement with Microsoft, 18 July 2025 (accessed 24 November 2025). Available at: https://www.cispe.cloud/cispe-secures-landmark-licensing-reform-in-agreement-with-microsoft/

See also, Brad Smith, Microsoft responds to European Cloud Provider feedback with new programs and principles, *Microsoft Blog*, 18 May 2022 (accessed 25 November 2025). Available at: https://blogs.microsoft.com/eupolicy/2022/05/18/microsoft-responds-to-european-cloud-provider-feedback-with-new-programs-and-principles/

[16] Autorité de la concurrence, As Required Under the SREN Law, the Autorité de la Concurrence Has Submitted to the French Parliament and Government a Report on its Work in the Area of Self-Preferencing, 21 November 2025 (accessed 25 November 2025). Available at: https://www.autoritedelaconcurrence.fr/en/press-release/required-under-sren-law-autorite-de-la-concurrence-has-submitted-french-parliament

- Practices requiring firms to use a hyperscaler's infrastructure to access its marketplace.

The Commission could introduce new obligations under the DMA only where there is robust evidence that clearly identified practices restrict contestability. Such obligations cannot be justified merely because certain conduct may slow the expansion of European firms. This is not only a legal requirement; it is also an essential accountability safeguard. The Commission must be able to demonstrate that its decisions are grounded in evidence and aligned with the DMA's objectives, rather than influenced by broader political considerations unrelated to contestability.

For these reasons, framing the DMA as a competitiveness instrument is legally unfounded and risks undermining the competitive process in Europe.

The DMA is About Preserving and Fostering Innovation

Cloud computing services are listed among the DMA's CPSs (Article 2). However, no cloud provider has yet met the quantitative thresholds for designation as a gatekeeper. The Commission has therefore launched a market investigation to assess potential designation (Articles 3(8) and 17). In doing so, its assessment should remain aligned with the DMA's objective of preserving and promoting innovation, ensuring that any designation reflects a firm's actual compliance with the gatekeeper criteria (Recital 25).

A firm qualifies as a gatekeeper only if it meets three cumulative qualitative criteria (Article 3). First, it must have a significant impact on the internal market. Second, it must provide CPS functions as an important gateway for business users to reach end users. Third, it must enjoy, or be expected to enjoy in the near future, an entrenched and durable position in its operations.

Cloud computing services may not meet these criteria. They do not typically act as intermediaries between business users and end users. Cloud providers either serve businesses or end users directly, but they do not position themselves between the two. Even when cloud services serve as a platform for application development and deployment, they operate as intermediaries between two categories of business users—application developers and businesses that use those applications—rather than between businesses and end users.

Moreover, the Commission must take into account the high level of innovation in the cloud sector. As a central input for AI development, cloud computing ranks among the most dynamic areas of the digital economy, generating substantial spillovers. The rapid expansion of Generative AI has fostered the emergence of specialised AI cloud providers such as Nebius and CoreWave. Both large and small providers have made substantial multi-year, multi-billion-dollar investments to develop AI infrastructure and new AI-based services, including Model-as-a-Service (MaaS), which allows developers to access AI models. MaaS did not exist three years ago; the FCA first identified it in its 2024 GenAI sector inquiry. Despite this novelty, the FCA suggested that the Commission consider designating MaaS under the DMA.

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Yet such a designation may be premature. The service is new, competitive conditions remain fluid, and no entrenched or durable position is yet apparent. Nvidia—the dominant provider of chips for AI development, though not a hyperscaler—has launched its own MaaS offering, and providers regularly release new features to support the rapid development and deployment of AI applications[17]. Against this backdrop, the Commission should carefully assess the specific dynamics and characteristics of each service under consideration.

Designating cloud providers as gatekeepers could weaken incentives to innovate. Regulatory obligations increase compliance costs and may inadvertently alter firms' product-development strategies. In some cases, cloud providers may conclude that launching new cloud or AI services in Europe is not worth the regulatory burden—particularly as many are still absorbing the costs of recent investment cycles. Such distortions could undermine service quality in Europe and reduce the benefits of emerging partnerships between cloud providers and European AI developers, such as the Microsoft–Mistral AI collaboration[18], at a pivotal moment for the European AI ecosystem.

These effects would dampen innovation, weaken competitive intensity—the opposite of what the DMA seeks to achieve—and ultimately harm European competitiveness.

[17] For a recent feature, see Amazon Introduces New Frontier Nova Models, A Pioneering Nova Forge Service for Organizations to Build their Own Models, and Nova Act for Building Agents, *Amazon AWS*, 2 December 2025 (accessed 5 December 2025). Available at; https://www.aboutamazon.com/news/aws/aws-agentic-ai-amazon-bedrock-nova-models

[18] Eric Boyd, Microsoft And Mistral AI Announce New Partnership to Accelerate AI Innovation and Introduce Mistral Large First on Azure, *Microsoft Blog*, 26 February 2024 (accessed 5 December 2025). Available at: https://azure.microsoft.com/en-us/blog/microsoft-and-mistral-ai-announce-new-partnership-to-accelerate-ai-innovation-and-introduce-mistral-large-first-on-azure/

About

Digital Competition

Digital Competition (https://www.digital-competition.com/) is a digital and competition expert services for businesses, law firms, and government agencies, dedicated to promoting open digital and competition policies that foster innovation. Led by Dr. Christophe Carugati, a passionate and impartial expert in digital and competition policy, we bring together legal, economic, and policy expertise to deliver cutting-edge research, strategic advice, think tank initiatives, regulatory intelligence, tailored training, and high-impact conferences. Digital Competition is committed to addressing the most pressing challenges in the rapidly evolving digital and competition policy landscape. This analysis was conducted independently and received no funding. It reflects solely the views of its author, not those of its clients, which include Amazon. We received comments from both Amazon and Microsoft, given their implications in the investigations.

This paper is part of our Digital Competition Regime Hub (https://www.digital-competition.com/digitalcompetitionregime). We provide research on the design, implementation, and enforcement of digital competition regimes worldwide.

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