

DIGITAL MARKETS ACT: CLOUD SERVICES AND AI IN FOCUS

It's official: cloud services and AI will be a key focus for European digital regulation going forward.

So concluded the European Commission following the first [review](#) of its flagship digital regulation, which overall found that the EU Digital Markets Act (DMA) has contributed effectively to its core objective of making EU digital markets fairer and more contestable and does not - currently - need to be revised.

Cloud services

Given their importance to Europe's digital economy and critical infrastructure, cloud services were a key point of discussion in the feedback to the Commission's consultation, with many respondents disappointed that no cloud service providers have yet been designated as a gatekeeper.

The Commission highlights the importance of improving contestability and fairness in cloud markets, and intends - for now at least - to focus its efforts in this area on the three ongoing cloud services market investigations it opened last November. Two of these assess whether Microsoft Azure and Amazon Web Services should be designated as gatekeepers (under the DMA's qualitative threshold for designation given they don't meet the quantitative thresholds). The third is looking at whether the DMA obligations in their current form can effectively tackle the practices that may limit competitiveness and fairness in cloud services, focusing in particular on issues such as interoperability between cloud services, limited/conditional access to data for business users, tying and bundling practices and imbalanced contractual terms. Depending on the outcome of that investigation, the Commission may yet decide that updates are required to the DMA obligations for cloud services.

The Commission's approach to cloud services under the DMA forms part of the EU's broader strategic drive towards infrastructural sovereignty. In January the European Parliament [recommended](#) that the Commission should ensure cloud users can choose solutions that meet their needs, by urgently removing barriers to users switching and diversifying through multi-cloud strategies,

and by fostering a competitive European cloud market, thereby reducing reliance on single providers and enhancing digital sovereignty.

The Commission's approach also echoes the approach being taken by the Competition and Markets Authority - while in the UK the anticipated SMS investigations into Amazon and Microsoft's cloud services [did not materialise](#), the threat of SMS designation spurred Amazon and Microsoft to lower egress fees and improve interoperability - both concerns the CMA had first identified in its cloud services market investigation last year. An SMS investigation will start this month into Microsoft's business software ecosystem, allowing the CMA to address the remaining major area of concern from its cloud market investigation - Microsoft's use of software licensing to affect competition in cloud.

AI services

Since the DMA came into force, its fitness for purpose in the AI age has been widely questioned, with many arguing that its architects did not anticipate the challenges posed by AI.

The Commission's response was to conduct a dedicated consultation on AI in the context of its DMA review - part of a broader Commission monitoring effort tracking the surge in AI services, which has identified common themes: interoperability, self-preferencing, data-access challenges and cloud dependencies.

The Commission categorises the responses it received to that consultation into three main "schools of thought": (i) those who believe the challenges in AI can be addressed by firm enforcement of the existing rules; (ii) those who advocated for the DMA to be extended to tackle AI-related contestability and fairness issues; and (iii) those who cautioned against intervening in the AI sector, which in their view is characterised by strong competition and does not present the potentially problematic structural characteristics of other digital services.

The Commission's view is that the potential of AI justifies special regulatory vigilance, particularly given several layers of the AI value chain exhibit characteristics that are also present in other digital markets - strong economies of scale and network effects, the ability to connect many business users and end users, and vertical integration. It considers that it has already addressed many of the key issues that have been raised, including through regulatory dialogue with gatekeepers, as well as the specification proceedings it opened in January to help Google comply with its interoperability and search data-sharing obligations (including interoperability with Android for third party AI services and the sharing of data with AI chatbot providers). The Commission has also said it is monitoring whether the integration of AI Overviews in Google search is DMA-compliant. The Commission also notes that where issues cannot be tackled using the DMA, traditional competition law may step in, as it is currently doing in the Commission's ongoing investigations into Google's use of publishers' online content for AI purposes and Meta's policy of excluding rival AI assistants from WhatsApp.

In addition to applying existing DMA obligations, the Commission commits to assessing, as a matter of priority,

what can be learned from the ongoing investigations as to whether further measures are needed to address issues raised in its public consultation - including whether certain AI services should be designated as virtual assistants or whether it should launch a market investigation into whether AI services warrant a new CPS and/or updates to the existing DMA obligations.

The Commission's approach keeps its options open, using existing tools as far as possible without ruling out further changes to the rules if ultimately required. The outcome of the Google specification proceedings will be an early indicator of how effectively the DMA can deal with the demands of the AI era.

Conclusion

Cloud and AI are not simply Commission enforcement priorities - they are the infrastructure on which the EU's digital sovereignty agenda depends. The Commission has sent a clear signal that it will reach into its DMA toolkit to make targeted interventions in both areas.

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