

Brussels, 7 February 2022

Madame Margrethe Vestager
Executive Vice-President for a Europe fit for the Digital Age
European Commission

Open letter: Why the DMA does not (yet) safeguard the EU's cloud market

Dear Executive Vice-President Vestager,

We, the forty-one signatories CEOs and associations leaders, represent leading European enterprises and start-ups in the cloud computing sector – the foundation of the European digital economy.

We are facing an urgent situation. Monopoly software providers are once again using their dominant position to lock in customers, forcing them to use the cloud infrastructure they provide. This abuse of software licences means that other, smaller cloud infrastructure providers cannot compete. That includes innovative European cloud companies which are being shut out of their own market.

We have a fast-closing window of opportunity to preserve an autonomous European cloud infrastructure sector. The Digital Markets Act (DMA) could quickly ensure that the European cloud market is free, open and competitive. Unfortunately, the current version of the DMA requires clarification to ensure that its remedies also apply to unfair software practices by gatekeepers with dominant positions in productivity and enterprise software.

More than 2,500 of Europe's leading CIOs and nearly 700 of the largest businesses and institutions in Europe, numerous MEPs, competition experts and European innovators have proposed amendments and raised concerns about the lack of remedies against the abuse of monopoly software gatekeepers during the parliamentary discussions of the DMA.

Without clarification in the DMA, the result will be the continuation of the unfair practices of monopoly software gatekeepers, identified by the Commission and in the studies by Professors Jenny¹ and Metzger² as including Microsoft, Oracle and SAP. The recent Nextcloud's complaint against Microsoft shows how unfair software bundling and tying practices are hurting European cloud companies. Many other providers are facing similar challenges. The emergence of formal competition complaints serves only to underline the seriousness of this situation and the need for urgent action to prevent these abuses.

But these practices create a systemic market distortion that traditional case-by-case competition law is ill-equipped to tackle. Ex-ante measures are required. We cannot wait for a revision of the DMA in five years, nor for a pyrrhic victory in antitrust litigations in 10 years or more when the competitiveness of the market will not be recoverable.

¹ Cloud Infrastructure Services: An analysis of potentially anti-competitive practices: <https://www.fairsoftwarestudy.com>

² Ausschluss und Beschränkung von Outsourcing in Softwarelizenzverträgen: Grenzen der Vertragsfreiheit nach dem Urheber-, Kartell- und AGB-Recht <https://www.fairsoftware.cloud/wp-content/uploads/2021/12/CISPE-REPORT4.pdf>

Today it is essential that the DMA includes clear remedies to stop the unfair practices by software gatekeepers. Minor clarifications are all that is needed to close this critical loophole.

You are in a unique position to act. You are in your second term as the EU's Competition Commissioner, responsible for ensuring free and fair markets. You are also the Commission's Executive Vice President for A Europe Fit for the Digital Age, which gives you a position to see the challenges Europe faces as it embarks on its ambitious digital transition.

That is why we call on you – even at this late stage in the trialogue process – to intervene and ensure that Europe's market for cloud services remain open and competitive.

Yours sincerely,

Forty-one signatories CEOs and associations leaders

Associations



Alban Schmutz, Chairman
Francisco Mingorance, General Secretary



Jens Erik Thorndahl
Director



Simon Besteman, Managing Director
Ruud Alaerds, Managing Director



Alain Garnier, Spokesperson

European enterprises and start-ups in the cloud computing sector



Stefano Cecconi
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