# AI, Market Power and EU Competition Law——Familiar Approaches and New Challenges

Christian Steinle, Saskia Kirchgessner*


## 摘要

少數大型事業掌控人工智慧（AI）產業鏈中的重要環節，涵蓋雲端基礎設施、資料訓練、基礎模型及下游應用服務。此種高度集中現象可能對市場競爭秩序造成危害，相關風險包括市場封鎖、生態系統之鎖入，具市場支配地位之事業將其市場力量延伸至不同技術層級等。本文旨在討論歐盟競爭法，特別是《歐盟運作條約》第102條及《數位市場法》（Digital Markets Act, DMA）如何因應前述市場競爭風險。分析範圍包括自我偏好、搭售行為、拒絕提供存取權限或互通性，以及榨取性濫用等議題。本文並援引近期案例，包括歐盟執委會針對Meta/WhatsApp採取的暫時處分、對Google「AI Overviews」功能所進行的調查，以及關於Android系統互通性的決定，藉以說明既有競爭傷害理論（theories of harm）如何適用於AI市場，以及適用上可能面臨的限制。此外，本文亦指出，有效執法與創新誘因間存在緊張關係。若競爭法干預的範圍過於廣泛或強度過高，可能抑制歐盟境內AI技術能力的發展。最後，本文亦概述歐盟競爭法於AI領域之私人執法。


## 本文

### I. Introduction

In recent years, AI has developed into a general-purpose technology. The companies operating in this field frequently hold significant power across various markets. In fact, the value chain relating to generative AI is shaped by a small number of established Big Tech companies operating at various layers of the stack. As a result of this market concentration, several competitive risks can arise. These may result, for example, in market foreclosure, leveraging, or ecosystem lock-in.

This article examines which instruments are available in the European Union (EU) for mitigating competitive risks arising from

*Christian Steinle and Saskia Kirchgessner are partners at German law firm Gleiss Lutz, specialized in European and German antitrust and competition law with a particular focus on the digital economy. The authors would like to thank Maximilian Kenntner for his valuable support. The article reflects solely the authors' personal views.

dominant market positions in connection with artificial intelligence. Article 102 TFEU, building on a rich body of case law, remains indispensable as a general clause for abuse of dominance including novel conduct. The Digital Markets Act (DMA) contains enumerated ex-ante obligations which apply to designated gatekeepers. Taking into account its updating mechanism, the ongoing designation of new gatekeepers and public and private enforcement, the DMA is suitable also for AI markets and business models. Both instruments apply to competition risks and challenges arising at various layers of the AI value chain. While established theories of harm can be applied, specific challenges exist.

The urgency and practical relevance of competition risks related to AI and market power were recently demonstrated again by the European Commission's proceedings against WhatsApp/Meta. Meta had changed the terms of use for its messenger service WhatsApp, thereby excluding competing AI assistants from the platform. The European Commission intervened swiftly and exceptionally by way of interim measures under Art. 102 TFEU, a tool which has been rarely used in the past. The European Commission, in its preliminary view, considered Meta's conduct to constitute an infringement of Article 102 TFEU. It obliged Meta to grant free and unrestricted access for other providers, aiming to preserve the competitive *status quo* pending a final decision.[1] Meta has appealed the decision.[2]

## II. Analytical Framework: The EU Instruments

### 1. Article 102 TFEU

Article 102 TFEU prohibits the abuse of a dominant position within the EU's internal market or a substantial part of it, so far as it may affect trade between EU Member States. It operates as a general clause, applicable also to novel conduct without the need for prior legislative amendment, making it inherently flexible for AI-related scenarios.[3] The abuse of a dominant market position can occur in two ways: On the one hand, this can take the form of an exclusionary abuse, which includes, among others, refusal to deal/grant access, self-preferencing, tying and bundling, and leveraging. On the other hand, exploitative abuse is also possible, that means making use of the dominant position to obtain unjustified advantages that would not have been obtainable under sufficiently effective competition. So far,

註1 : Commission Decision, Case AT.41034-Exclusion of AI Competitors from WhatsApp (June 9, 2026).
註2 : Case T-521/26 – Meta Platforms v. Commission.
註3 : Such as self-preferencing, refusal to deal/to grant access to essential facilities, exploitative data practices, and tying and bundling, see Rupprecht Podszun, Kuenstliche Intelligenz und Wettbewerb: Kartellrecht in der Krise, ZHR 229, 245, 257 (2025) (Ger.); Wolfgang Bosch & Ingo Brinker AEUV Art. 102, mn. 6, in EU-KARTELLRECHT (Rainer Bechtold, Wolfgang Bosch & Ingo Brinker, 4th ed. 2023) (Ger.);

there have been few relevant cases closely related to AI. Nevertheless, common categories of abuse-of-dominance law can become relevant, each with their established theory of harm. Of course, there have been various digital-economy cases in a broader sense (Google Shopping, Facebook/Meta, Android Auto) where theories of harm were developed and refined that can also be applied to AI markets.[4] Article 102 TFEU does not require a minimum duration of dominance and can therefore apply to recently acquired dominant positions, which is particularly relevant in fast-moving AI markets, where market power can emerge rapidly through network effects and data advantages but may also prove transient.[5]

Nonetheless, there are key challenges in relation to AI-markets as regards the dominance criterion.

Primarily, there are difficulties regarding market definition in multi-sided AI ecosystems. In such cases, the relevant product market could for example be defined as a single market for all products offered by a platform covering all user groups or, alternatively, separate (albeit related) relevant product markets could be defined for the products offered on each side of the platform.[6] One example for such multi-sided AI ecosystems are Google's AI Overviews. In the general search market, Google holds an undisputed dominant position. Therefore, it must be assessed whether the AI Overview constitutes a distinct product or merely an add-on to traditional search.[7] This raises the question whether it is even possible to differentiate between a market for "general search" and a market for "generative information".

Also, one of the key challenges is the timely enforcement of Article 102 TFEU. Due to the difficulty of proving a dominant market position as well as its abuse and the increasing complexity of the "more economic approach", the proceedings often take a long time.[8] For example, the Google Search (Shopping) case took 77 months and only became final following a ruling by the European Court of Justice (CJEU) in 2024.[9] From a complainant's point of view, this

註4：Podszun, *supra* note 3, at 241-42; European Commission, DG Competition Policy Brief No. 3/2024, at 7, 12; G7 Competition Authorities and Policymakers' Summit Digital Competition Communiqué, at 2 (Rome, Oct. 4, 2024).

註5：Podszun, *supra* note 3, at 241-42; Case 85/76, Hoffmann-La Roche & Co. AG v. Comm'n, 1979 E. C.R. 461, 70-79.

註6：Caroline-Sophie Lehmkuehler & Sarah Steinseifer, *When Innovation Turns Anti-Competitive: A Comparative Legal Analysis of Google's AI Overviews From a Competition Law Perspective*, ZWeR 1, 5 (2026) (Ger.); European Commission, Commission Notice on the Definition of the Relevant Market for the Purposes of Union Competition Law, C/2024/1645, 30 (2024).

註7：Lehmueühler & Steinseifer, *supra* note 6, at 6-12.

註8：Podszun, *supra* note 3, at 245-46; Philipp Hacker, *KI und DMA – Zugang, Transparenz und Fairness fuer KI-Modelle in der digitalen Wirtschaft*, GRUR 1278, 1282 (2022) (Ger.).

註9：European Commission, Case AT.39740-Google Search (Shopping), https://competition-cases.ec.europa.eu/cases/AT.39740; Podszun, *supra* note 3, at 245.

appears to be too long.[10] The duration of proceedings stands in contrast to the business model of most digital companies, which is based on high scalability and rapid expansion.[11] At the same time, lengthy proceedings are also a consequence of the indispensable procedural guarantees owed to investigated undertakings, including the right to be heard, access to file, and the economic analysis which is required. In particular, the complexity of effects-based assessments under the more economic approach serves the function of reducing the risk of false positives (Type I errors) that could chill pro-competitive conduct and innovation.

### 2. The Digital Markets Act (DMA)

In addition to Article 102 TFEU, the DMA (Regulation (EU) 2022/1925) represents another EU instrument addressing competition risks in AI markets. This regulation is intended to complement traditional antitrust rules and ensure the contestability and fairness of digital markets.[12] Therefore, it establishes *ex ante* obligations for designated "gatekeepers" that provide "core platform services". These are services which meet quantitative or qualitative thresholds (Article 3 DMA) and can thus be designated by the European Commission.[13]

Compared to Article 102 TFEU, the threshold for an infringement of the DMA is significantly lower. The DMA does not require proof of dominance or a case-by-case effects analysis.[14] Rather, the DMA contains obligations which, automatically upon designation, apply to gatekeepers, creating a compliance-based model.[15] Furthermore, the DMA neither provides for an effects-based analysis of competitive harm, nor contains a general efficiency defense comparable to the objective justification doctrine under Article 102 TFEU. However, Article 9 DMA allows the European Commission to suspend obligations in exceptional circumstances; Article 10 DMA provides for exemptions on grounds of public health or public security; and

註10 : Hacker, *supra* note 8, at 1282; Podszun, *supra* note 3, at 245.

註11 : Podszun, *supra* note 3, at 245; Dan Wielsch, Wettbewer*bsrecht zweiter Ordnung: Der DMA als Teil einer digitalen Medienverfassung*, ZUM 153, 154 (2023) (Ger.).

註12 : Christian Karbaum, Max Schulz & Yannick Morath, *LG Mainz setzt DMA durch: Zum aktuellen Urteil gegen Alphabet Google*, NZKart 515, 515 (2025) (Ger.); Ines Bodenstein & Sarah Zinndorf, *Digitales Selbstbevorzugungsverbot im Missbrauchsrecht: Muessen Plattformen den Wettbewerb doch zum eigenen Nachteil foerdern?*, ZWeR 2, 18 (2024) (Ger.); European Commission, *supra* note 4, at 9.

註13 : Karbaum, Schulz & Morath, *supra* note 12, at 515; Thorsten Kaeseberg & Sophie Gappa, DMA Art. 3, in HANDKOMMENTAR DIGITAL MARKETS ACT (HK-DMA) mn. 1-4 (1st ed. 2023); Jan-Frederick Goehsl & Daniel Zimmer, VO (EU) 2022/1925 Art. 3, in WETTBEWERBSRECHT (Ulrich Immenga & Ernst-Joachim Mestmaecker eds., 7th ed. 2025) (Ger.).

註14 : Karbaum, Schulz & Morath, *supra* note 12, at 515; Ann-Christin Richter & René Galle, *Ein Jahr DMA – Bestandsaufnahme und Ausblick*, WRP 842, 848-49 (2025) (Ger.).

註15 : Karbaum, Schulz & Morath, *supra* note 12, at 515; Bodenstein & Zinndorf, *supra* note 12, at 18.

Article 6(7) subpara. 4 DMA permits gatekeepers to take proportionate measures to ensure the integrity and security of their operating system when providing interoperability. The scope of these exceptions, particularly the security exception, is currently contested in practice, as illustrated by Apple's reliance on security concerns to justify withholding AI features from the EU market.

The DMA does not contain any rules that explicitly relate to AI. In fact, AI is not mentioned in the DMA at all. The reason for this is that the DMA was adopted in September 2022, shortly before generative AI entered the scene (ChatGPT launch, November 2022). Nevertheless, the DMA contains certain sets of rules that can shape the legal framework for AI in the EU to a significant extent. This includes information obligations, the regulation of training data, access rights, and requirements for fair rankings.[16]

There are two main ways in which the DMA can become relevant in the field of AI. One is that an AI provider itself becomes a gatekeeper by designation of the European Commission for a certain core platform service. The European Commission just recently, in its communication of its preliminary view dated 25 June 2026, indicated that Amazon's cloud services (AWS) and Microsoft's cloud services (Azure) could be classified as gatekeepers. The other is for AI-based functions to be integrated into already designated core platform services and therefore be covered by the DMA obligations.[17]

When it comes to its specific obligations, the DMA does not contain a general clause that would need to be specified by authorities or courts but rather formulates concrete obligations for gatekeepers in Articles 5, 6 DMA. That also means that these provisions cannot readily be extended to artificial intelligence, meaning that they can reach their limits.[18] Therefore, to be able to react to new developments and to prevent the listed obligations from becoming outdated, Article 12 DMA contains an updating competence. It is possible to carry out self-revision on the basis of market investigations (Article 16, 17, 19 DMA).[19] This means that, following a corresponding investigation, the conduct rules listed in Articles 5 and 6 DMA can be updated, thereby turning the DMA into a learning form of regulation.[20] This possibility of updating applies to the seven matters listed in Article 12 (2) DMA and allows, in one case, for an expansion, and in the six others, for a specification of the obligations contained in

註16：Hacker, *supra* note 8, at 1278.
註17：European Commission, *supra* note 4, at 9.
註18：Podszun, *supra* note 3, at 242-43; Wielsch, *supra* note 11, at 160.
註19：Wielsch, *supra* note 11, at 160; Niklas Brueggemann, *Private Enforcement of the Digital Markets Act*, WuW 183, 188 (2025) (Ger.).
註20：Wielsch, *supra* note 11, at 160; Brueggemann, *supra* note 19, at 188.

Articles 5 and 6 DMA. In this respect, there are also limits to the possibility of updating.[21]

In its first formal evaluation of the DMA, published in April 2026 pursuant to Article 53 DMA, the European Commission concluded that, from its own point of view, the DMA is achieving its objectives and does not require revision at this stage. However, the evaluation also highlighted that AI-related services remain an area where the DMA's application requires further clarification. A significant number of stakeholders responding to the prior public consultation advocated for the inclusion of AI foundation models and AI chatbots as additional core platform service categories, while others argued that new AI functionalities can already be caught through existing core platform service definitions. This debate will be decisive for the DMA's future scope in AI markets.

### 3. Conclusion and Relationship to Other EU Regulatory Instruments

The DMA and Article 102 TFEU are complementary and, in the digital and AI world, equally important.[22] The DMA does not preclude the application of Article 102 TFEU and v*ice versa*. Compared to Article 102 TFEU, the DMA is intended to provide the European Commission with a tool for faster intervention.[23]

In public enforcement under Article 102 TFEU, both the European Commission and the national competition authorities are active and, in principle, competent pursuant to Regulation 1/2003.[24] For the DMA, the European Commission alone is responsible for designating gatekeepers, monitoring their compliance with the obligations and imposing sanctions for infringements.[25] Nevertheless, the European Commission and EU Member States "*shall work in close cooperation and coordinate their enforcement actions to ensure coherent, effective and complementary enforcement of available legal instruments applied to gatekeepers*" (Article 37 (1) DMA). Such cooperation is already evident in the pre-investigation initiated by the Italian competition authority (AGCM) against Apple in June 2026 regarding the alleged disadvantaging of competing cloud providers through the denial

註21 : Daniela Seeliger, DMA Art. 12, in HANDKOMMENTAR DIGITAL MARKETS ACT (HK-DMA) mn. 33 (1st ed. 2023); Carsten Bueren & Thomas Weck, DMA Art. 12, in MUENCHENER KOMMENTAR ZUM WETTBEWERBSRECHT mn. 9-10 (4th ed. 2023) (Ger.); Michael Dietrich & Nelson Jung, DMA Art. 12, in KARTELLRECHT (Christian Kersting, Hans Juergen Meyer-Lindemann & Rupprecht Podszun eds., 5th ed. 2025) mn. 9-10 (Ger.).

註22 : European Commission, *supra* note 4, at 9; Karbaum, Schulz & Morath, *supra* note 12, at 515.

註23 : Annika Witte Paz & Natalie Seitz, *Kuenstliche Uebersicht, echter Missbrauch? - Google AI Overviews als Missbrauch von Suchmaschinenmarktmacht*, NZKart 576, 583 (2025) (Ger.).

註24 : Wolfgang Bosch & Ingo Brinker AEUV Art. 102, mn. 93-94, in EU-KARTELLRECHT (Bechtold, Bosch & Brinker, 4th ed. 2023) (Ger.); Florian Bien, AEUV Art. 102, in MUENCHENER KOMMENTAR ZUM WETTBEWERBSRECHT mn. 65 (4th ed. 2023) (Ger.).

註25 : Sascha Schubert, DMA Art. 37, in MUENCHENER KOMMENTAR ZUM WETTBEWERBSRECHT mn. 1 (4th ed. 2023) (Ger.).

of full access. In these proceedings, the AGCM is examining whether a violation of the DMA may exist.[26] Such violation could then be prosecuted and sanctioned by the European Commission only.

Private enforcement of both rules takes place before national courts.[27] While the European Damages Directive (2014/104/EU) applies to Article 102 TFEU, private enforcement of the DMA is only rudimentarily regulated by Article 39 DMA, which sets out a framework of cooperation between national courts and the European Commission.[28] National courts may not take decisions that run counter to those of the European Commission.[29]

Article 102 TFEU and the DMA are not the only rules which apply to companies active in the AI sector in the EU. Their business models are covered by other rules as well, like for example the AI Act, the Digital Services Act (DSA) and the Data Act. These rules, however, do not primarily focus on issues related to competition.[30]

## III. The AI Value Chain and Competition Risks

Many big tech firms, like Alphabet, Apple, Amazon, Meta and Microsoft, are active across several or even all layers of the GenAI technology

註26：See MACERKOPF (June 17, 2026), https://www.macerkopf.de/2026/06/17/italien-prueft-ob-apple-konkurrierende-cloud-dienste-benachteiligt/; HEISE ONLINE (June 17, 2026), https://www.heise.de/news/Neuer-Regulierungsaerger-fuer-Apple-Italien-leitet-DMA-Untersuchung-ein-11336120.html.

註27：Bien, *supra* note 24, at mn. 872; Wolfgang Bosch & Ingo Brinker AEUV Art. 102, mn. 66, in EU-KARTELLRECHT (Rainer Bechtold, Wolfgang Bosch & Ingo Brinker, 4th ed. 2023) (Ger.); Anna Blume Huttenlauch, AEUV Art. 102, in KARTELLRECHT (Christian Kersting, Hans Juergen Meyer-Lindemann & Rupprecht Podszun eds., 5th ed. 2025) mn. 357 (Ger.).

註28：Ruediger Lahme & Andreas Ruster, DMA Art. 39, in HANDKOMMENTAR DIGITAL MARKETS ACT (HK-DMA) mn. 1 (1st ed. 2023); Schubert, DMA Art. 39, *supra* note 25, at mn. 1.

註29：Joerg Biermann, VO (EU) 2022/1925 Art. 39, in WETTBEWERBSRECHT (Ulrich Immenga & Ernst-Joachim Mestmaecker eds., 6th ed. 2025) mn. 1-2 (Ger.); Sascha Schubert, DMA Art. 37, in MUENCHENER KOMMENTAR ZUM WETTBEWERBSRECHT mn. 1 (4th ed. 2023) (Ger.).

註30：The AI Act constitutes a risk-based product safety regulation that classifies AI systems into risk categories and provides for corresponding prohibitions as well as safety and transparency obligations. It has a competition law connection only through Art. 74 (2) AI Act, which provides for an exchange of information between market surveillance and competition authorities. The DSA pursues the goal of a safe environment with transparency and fundamental rights protection and thus complements the DMA as a parallel instrument of the digital market or communications order. Nevertheless, its competition-related provisions, such as Art. 24 et seq. DSA, are aimed more at unfair commercial practices and are less complementary to abuse law. The Data Act addresses the harmonisation of data access and contains in this regard some competition-relevant overlaps in Chapters II, VI and VIII, whereby the data access rights apply primarily B2C and only to a limited extent B2B.

stack.[31] The stack can be divided into the following four layers: The infrastructure layer, which concerns electricity, internet access, chips, cloud computing, and storage capacity; the data layer, which comprises data required for AI training; the model layer, which encompasses the AI programming of individual models and their tooling; and the application layer, which relates to the completion through app development and integration with operating systems and app stores.[32]

Vertical integration across the layers can on the one hand create efficiencies, allowing access to funding, talent and computing, and making use of synergies.[33] On the one hand, especially for small and innovative players, vertical integration can be beneficial when it allows them to enter and grow in the market by securing access to important inputs.[34] On the other hand, risks of concentration of key inputs in the hands of few players and creation of dependencies between players can also raise concerns, leading to foreclosure incentives.[35] Furthermore, incentives for so-called ecosystem formation can be increased.[36] A digital ecosystem refers to a multitude of digital services that interact with one another both technically and functionally, whereby this interaction may be complementary or substitutive in nature.[37] The provision of market-ready AI incurs high costs (training, interface integration), while output generation, though cheaper by unit than physical goods, still incurs non-negligible marginal costs that increase with the volume of tokens generated per query. Economies of scale and scope can nonetheless arise from distributing high fixed costs across a large user base, albeit their extent is constrained by these usage-dependent inference costs.[38] Ecosystem formation can have both positive and negative effects on competition.[39] Possible positive effects include innovation and the efficient use of scarce AI resources.[40] However,

註31 : Podszun, *supra* note 3, at 235.
註32 : Podszun, *supra* note 3, at 232-34; Autorité de la concurrence, Avis n° 24-A-05 du 28.6.2024 relatif au fonctionnement concurrentiel du secteur de l'intelligence artificielle générative, 42 (Fr.); IBM, What Is an AI Stack? (Dec. 10, 2024), https://www.ibm.com/think/topics/ai-stack.
註33 : Autorité de la concurrence, *supra* note 32, at 212; European Commission, *supra* note 4, at 11; Autoridade da Concorrência, Issues Paper: Competition and Generative Artificial Intelligence, at 26 (2023) (Port.).
註34 : European Commission, *supra* note 4, at 3; Autoridade da Concorrência, *supra* note 33, at 27.
註35 : European Commission, *supra* note 4, at 3; Autoridade da Concorrência, *supra* note 33, at 27.
註36 : Peter Georg Picht, *Gullivers eTravelis-KI-Oekosystembildung und kartellrechtliche Schadenstheorie*, NZKart 4, 6-7 (2025) (Ger.).
註37 : Picht, *supra* note 36, at 4.
註38 : Picht, *supra* note 36, at 6.
註39 : Picht, *supra* note 36, at 7-8.
註40 : Picht, *supra* note 36, at 7-8.

there is also a risk of leveraging, lock-in effects and self-preferencing by hosts.[41]

### 1.Exploitative abuses

According to the case law of the European Court of Justice (ECJ) and other European courts, exploitative abuse occurs when a dominant undertaking uses its market power to obtain commercial advantages which it would not have been able to obtain under normal and sufficiently effective competition.[42]

A potential competition risk related to AI in particular on the data layer exists in the form of exploitative abuse. A reasoning that may become relevant in the context of exploitative abuse also for AI cases is contained in the decision of the German Federal Court of Justice (FCJ) concerning Facebook/Meta.[43] Facebook had used terms of service that also provided for the processing and use of user data collected during general internet usage beyond the Facebook platform, without valid consent having been obtained.[44] According to the FCJ, Facebook's terms of service did not give users any real choice as to whether they wanted to provide their data.[45] In a functioning competitive market, a corresponding alternative and less data-intensive offer from Facebook would have been expected.[46]

A similar type of infringement is subject to the investigations initiated by the European Commission in December 2025 regarding Google's AI Overviews, assessing exploitation within the meaning of Article 102 (2) (a) TFEU. The European Commission investigates whether Google distorts competition by imposing unfair business terms on web publishers and content creators.[47] Google's AI Overviews provide AI-generated summaries in response to user queries, which are displayed above the organic search results. According to the European Commission, the AI Overviews make use of data and content obtained from web publishers and content creators without providing them with adequate compensation. In practice, according to the European Commission, web publishers and content creators cannot refuse to be included in

註41：Picht, *supra* note 36, at 7-8.
註42：Case 27/76, United Brands Co. v. Comm'n, 1978 E.C.R. 207, 249; Wolfgang Bosch & Ingo Brinker AEUV Art. 102, mn. 44, in EU-KARTELLRECHT (Rainer Bechtold, Wolfgang Bosch & Ingo Brinker, 4th ed. 2023) (Ger.);
註43：FCJ, June 23, 2020, Case KVR 69/19 (Ger.).
註44：FCJ, Case KVR 69/19, GRUR 1318, 1319 (2020) (Ger.).
註45：*Id.* at 1323.
註46：*Id.* at 1326.
註47：Lehmkuehler & Steinseifer, *supra* note 6, at 16; European Commission, Commission Opens Investigation into Possible Anticompetitive Conduct by Google in the Use of Online Content for AI, IP/25/2964 (Dec. 9, 2025), https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2964.

AI Overviews without losing access to Google Search altogether.[48]

These cases indicate a framework for exploitative abuse cases under Article 102 TFEU for the data layer in AI. AI providers with market power are in particular subject to the following requirements: On the user side, the FCJ's logic demands effective choices regarding data use, for example for AI training and operation; on the content side, the European Commission's logic requires fair compensation and a meaningful opt-out that does not entail other disadvantages. The increasing reliance of AI systems on large volumes of data, whether user data, third-party content, or data generated by connected products, demonstrates the significance of this framework.

**2.Refusal to deal / grant access**

Another significant competitive risk arising in connection with AI is refusal to deal/to grant access, in particular access to data or (digital) infrastructure.

Data access is essential in the context of AI development and training of AI models. While it is often possible to use freely available data on the internet, such data is frequently contaminated with misinformation or, increasingly, is itself AI-generated. In addition, the development of specialized AI applications also requires access to very specific data sets.[49] Large and specific data sets thus can become relevant as an essential input product, amounting to a barrier to market entry when access is refused.[50] Refusal can occur directly or indirectly, for example through an obligation to contractual partners not to share data with competing AI developers.[51]

For some of these types of cases, the DMA also provides a special provision applicable to search engines. To deliver good results, via optimization through machine learning systems, search engines require data that provides insight into users' search and click behavior. Article 6 (11) DMA contains the obligation for gatekeepers to grant third-party search engines access to ranking, query, click, and view data on fair, reasonable, and non-discriminatory terms.[52] Notably, the scope of this provision was doubtful, as to whether AI chatbot providers and AI-powered search services should also benefit from access, or whether the provision is limited to traditional search engines. The European

註48 : European Commission, Commission Opens Investigation into Possible Anticompetitive Conduct by Google in the Use of Online Content for AI, IP/25/2964 (Dec. 9, 2025), https://ec.europa.eu/commission/presscorner/detail/de/ip_25_2964.

註49 : Podszun, *supra* note 3, at 243.

註50 : Autorité de la concurrence, *supra* note 32, at 255; European Commission, *supra* note 4, at 4, 7.

註51 : Autorité de la concurrence, *supra* note 32, at 255; France Digitale, Des puces aux applications, l'Europe peut-elle être une puissance de l'IA générative?, at 13 (Apr. 2024).

註52 : Hacker, *supra* note 8, at 1280; Anna Wolf-Posch, DMA Art. 6, in HANDKOMMENTAR DIGITAL MARKETS ACT (HK-DMA) mn. 256-57 (1st ed. 2023).

Commission's specification decision against Google, rendered binding on 16 July 2026, applies an expansive reading that extends data access rights to AI-based services.[53]

Besides data, also cloud services, pertaining to the infrastructure layer, can be viewed as an essential input for the development of foundation models. Providers without their own cloud infrastructure are therefore dependent on access to these services.[54] Refusal to grant access by providers of such services can be viewed as abusive. Competition concerns have been raised in this context by various interest groups regarding agreements between cloud providers and model developers, especially when an exclusivity clause is contained.[55] Such agreements are said to create an exclusive dependency of developers on cloud service providers,[56] strengthening the provider's market power and at the same time foreclosing competitors from an upstream input product, and thus be considered as an abuse of a dominant position.[57]

The aforementioned Meta/WhatsApp case is also assessed against this legal standard: Meta changed the terms of use for its messenger service WhatsApp, excluding AI assistants from third-party providers. Consequently, services such as ChatGPT, Copilot and Gemini no longer had access. The European Commission opened proceedings against Meta in December 2025, alleging that Meta has a structural competitive advantage through its close connection to the platform and expecting serious and irreversible damage to competition in the growing AI assistant market. By way of interim measures, it ordered Meta to restore free and unrestricted access in favor of the other providers.[58] Thereby it aims to secure the *status quo* until the proceeding has been concluded.

In the digital and AI sectors, granting access often means providing interoperability. In its judgment of 25 February 2025 in the *Google Android Auto* case,[59] the ECJ held that a dominant undertaking's refusal to ensure the

註53：Press Release, European Commission, Commission Provides Guidance to Google for AI Interoperability on Android and Sharing of Google Search Data Under the Digital Markets Act (July 16, 2026), https://digital-markets-act.ec.europa.eu/commission-provides-guidance-google-ai-interoperability-android-and-sharing-google-search-data-under-2026-07-16_en.

註54：Autoridade da Concorrência, *supra* note 33, at 26; Podszun, *supra* note 3, at 243.

註55：Autorité de la concurrence, *supra* note 32, at 293.

註56：Autorité de la concurrence, *supra* note 32, at 286, 293; Autoridade da Concorrência, *supra* note 33, at 26.

註57：Autorité de la concurrence, *supra* note 32, at 293.

註58：Press Release, European Commission, Commission Notifies Meta of Possible Interim Measures to Reverse Exclusion of Third-Party AI Assistants from WhatsApp, IP/26/310 (Jan. 28, 2026), https://ec.europa.eu/commission/presscorner/detail/en/ip_26_310.

註59：Case C-233/23, Alphabet & Others v. JuicePass S.r.l. (Google Android Auto), ECLI:EU:C:2025:145 (Feb. 25, 2025).

interoperability of its digital platform with a third-party app may constitute an abuse under Article 102 TFEU, even where the platform is not indispensable for the app's commercial operation. It is sufficient that access would make the app more attractive to consumers and that the platform was not developed solely for the dominant undertaking's own business needs as a "walled garden".

Beyond Article 102 TFEU, Article 6 (7) DMA obliges designated gatekeepers to provide free and effective interoperability, meaning that third-party providers must be granted the same technical access to hard- and software functions as the gatekeeper uses for its own services. This provision also recently played a role in the proceedings by the European Commission concerning Alphabet. For this purpose, it conducted a public consultation on proposed interoperability measures for Google Android (Article 6 (7) DMA).[60] The proceedings related to interoperability with core Android functions, which were used by Google's own AI services like Gemini. For example, these are: the ability for users to activate AI-powered services via wake words, to interact effectively with users' applications, to understand context and perform tasks on their behalf, and gain access to the necessary hardware and software resources so that AI-powered services are reliable and responsive.[61] In its preliminary assessment, which was published in April 2026 and rendered binding on 16 July 2026, the European Commission determined that Alphabet must grant third-party AI providers interoperability with respect to thirteen functions across four categories.[62] The procedure's duration remained just below the statutorily prescribed period of six months (Article 8 (2) DMA).

However, when it comes to innovation, interoperability requirements can be a double-edged sword, as they may incentivize gatekeepers to withhold innovative features from the EU market rather than to open their ecosystems to competitors. The tension between DMA interoperability obligations and the integration of AI into devices is illustrated by Apple's decision in June 2026 to withhold its new Siri AI assistant from iPhone and iPad in the EU, while making it available in other markets. Apple cited the DMA's interoperability requirements under Article 6 (7) as the reason, arguing that compliance would require granting third-party AI services nearly unlimited access to

註60 : European Commission, Consultation on Interoperability Measures for Google Android Under the DMA, https://digital-markets-act.ec.europa.eu/consultation-interoperability-measures-google-android-under-dma-2026-01-24_en.

註61 : European Commission, Case Summary DMA.100220-Alphabet-OS-Google Android – Article 6(7) Features for AI or AI-Related Services, at 1-2.

註62 : European Commission, Case Summary DMA.100220-Alphabet-OS-Google Android – Article 6(7) Features for AI or AI-Related Services, at 9; Press Release, European Commission, *supra* note 53.

sensitive device functions, creating security and privacy risks. The European Commission disputed this characterization, stating that Apple had not developed proposals for DMA-compliant interoperability solutions.

### 3. Self-preferencing

If undertakings reserve certain functions for themselves or give priority to their own services, such conduct can also be assessed as self-preferencing which is an established abuse category under Article 102 TFEU, covered by Article 6 (5) DMA, and also present in the AI value chain. For example, at the model layer, self-preferencing can materialize in the form of vertically integrated companies preferring their own AI model over those of third-party providers in downstream products, affecting the ability of developers of non-vertically integrated models to compete.[63]

The theory of harm from the Google Shopping case, in which the ECJ identified self-preferencing as a distinct category of abuse, could be applied as a precedent:[64] At the time, Google had prominently displayed the results of its own price comparison service Google Shopping in special boxes on its own search results page. The price comparison service was not subject to the general algorithm for results.[65] Google had thus not applied the same criteria for the positioning of results from competing comparison services as it did for its own service,[66] leveraging its dominant position in the upstream market for general search to gain competitive advantages in the downstream market for price comparison services.[67] The European Commission and the European courts established three case-specific circumstances as constitutive criteria for the abusive nature of the conduct: the importance of the traffic generated by the general search engine, user behavior (highest attention to the top results), and the lack of substitutability of this traffic through other sources.[68] In addition, evidence of foreclosure effects was required, at least potentially.[69]

Parallels to the Google Shopping case can be found in the case concerning Google's AI Overviews, which the European Commission investigated for potential violations of Article 102 TFEU and the DMA.[70] The assessment of AI overviews depends on the specific design, the

註63：Autorité de la concurrence, *supra* note 32, at 293.
註64：Case C-48/22 P, Google & Alphabet v. Comm'n (Google Search), ECLI:EU:C:2024:726, 180 (Sept. 10, 2024).
註65：*Id.* at 3-13, 24.
註66：*Id.* at 24.
註67：*Id.* at 185.
註68：*Id.* at 159-61.
註69：*Id.* at 184.
註70：Google AI Overview: Das sind die Auswirkungen auf Wettbewerbsrecht und Urheberrecht, E-COMMERCE-MAGAZIN,

positioning and the conditions under which the overviews are created.[71] Instead of merely listing various websites in response to a query entered into the search engine, Google displays an AI-generated overview as an answer to the search question above the general search results.[72] Comparing this setup with Google Shopping, abusive conduct to the detriment of online publishers and to the detriment of competing AI search engine operators needs to be considered.[73] Consequently, this case can be assessed as an exploitative abuse (see above) and as self-preferencing.[74]

Regarding the disadvantage to other search engine operators, the theory of harm could be that Google uses its dominant position in the market for general search services to favour its own service in the adjacent AI search engine market. Thereby, Google prefers its own service over other AI search engines, taking into account that only the results of Google's own Gemini appear in the AI Overviews and not those of other AI search engines. One counter argument to consider is that an AI overview is only produced as a result of a concrete search query. Gemini therefore cannot refer to other AI overviews, which are only created at the same time. Also, no traffic is redirected, as AI Overviews are not displayed for general search queries about AI. On this basis, some commentators have argued that a theory of harm based on self-preferencing of Gemini over other AI search engine operators is not likely.[75] However, according to the European Commission, Google's conduct does amount to self-preferencing prohibited by Article 6 (5) DMA. On July 23, 2026, it imposed two fines totalling EUR 890 million on Google. The European Commission found that Google had allegedly systematically given greater visibility to its own services, such as Google Shopping, Hotels, Transport, and Sport.[76] The European Commission's decision suggests that the

https://www.e-commerce-magazin.de/recht-google-ai-overview-auswirkungen-wettberwerbsrecht-urheberrecht-a-43fd3bba7c37594596eb96e8851cc01f/; Witte Paz & Seitz, *supra* note 23, at 581; Lehmkuehler & Steinseifer, *supra* note 6, at 16.

註71：Lehmkuehler & Steinseifer, *supra* note 6, at 35; Witte Paz & Seitz, *supra* note 23, at 582.

註72：Lehmkuehler & Steinseifer, *supra* note 6, at 2; Witte Paz & Seitz, *supra* note 23, at 581.

註73：Witte Paz & Seitz, *supra* note 23, at 580-81.

註74：Google DMA Fine Breaks EU Record; Search Self-Preferencing Ruling Due, Tech Times (May 27, 2026), https://www.techtimes.com/articles/317268/20260527/google-dma-fine-breaks-eu-record-search-self-preferencing-ruling-due.htm.

註75：Witte Paz & Seitz, *supra* note 23, at 582-83.

註76：Press Release, Eur. Comm'n, Commission Fines Google €890 Million for Breaches of the Digital Markets Act (July 23, 2026), https://ec.europa.eu/commission/presscorner/detail/en/ip_26_1670. Furthermore, through restrictions in the Play Store, Google had allegedly prevented app providers from directing their users to alternative, often cheaper, purchasing channels outside the platform (“steering”).

integration of AI-generated content at the top of search results may itself constitute a form of preferencing Google's own services, irrespective of whether a separate AI search market exists.

Article 6 (5) DMA contains a specific prohibition on self-preferencing for rankings on core platform services, modeled after the Google Shopping case. The gatekeeper may not favor its own services and products in ranking, as well as in the related indexing and crawling, over similar services or products of a third party.[77] Furthermore, rankings must be based on transparent, fair and non-discriminatory conditions.[78] Since Google has already been designated as a gatekeeper and AI Overviews are integrated as a service into Google Search, which constitutes a core platform service, the case is also covered by the DMA. This applies even though AI applications themselves do not yet constitute core platform services within the meaning of Article 2 No. 2 DMA.[79] A ranking under the DMA is any form of relative prominence given to goods and services, or the relevance attributed to search results of online search engines through presentation, organisation or communication (Article 2 No. 22 DMA).[80] In this regard, Article 6 (5) DMA prohibits any preferencing of one's own services through legal, commercial or technical means, which, according to Recital 51 DMA, also includes the integration of one's own services into an online search engine.[81] On this basis as well, the aforementioned decision was issued against Google for the allegedly preferential display of its own services and the alleged restrictions imposed on the Play Store.[82]

#### 4. Tying and bundling

In connection with AI and market power, the competitive risk of tying and bundling may also arise. The Google/Android case which the CJEU recently decided is relevant for this matter, even though it does not directly address AI. First, Google, as the dominant undertaking in the market for Android app stores, was accused of having made the licensing of the Google Play Store conditional upon the pre-installation of Google Search. Second, the licensing of the Google Play Store was also made conditional upon the pre-installation of the Chrome browser. Google Search and the Chrome browser were thus tied to the Google Play Store. Third, device manufacturers were granted licenses to use the Google Play Store only if they did not use other Android versions. Fourth, Google promised device manufacturers and mobile network

註77：Bodenstein & Zinndorf, *supra* note 12, at 18; Silke Heinz, DMA Art. 6, in HANDKOMMENTAR DIGITAL MARKETS ACT (HK-DMA) mn. 83-87 (1st ed. 2023) (Ger.).
註78：Witte Paz & Seitz, *supra* note 23, at 583; Heinz, supra note 78, at mn. 92-94.
註79：Lehmkuehler & Steinseifer, *supra* note 6, at 38-39; Witte Paz & Seitz, *supra* note 23, at 583.
註80：Witte Paz & Seitz, *supra* note 23, at 583; Heinz, *supra* note 77, at mn. 92.
註81：Witte Paz & Seitz, *supra* note 23, at 583.
註82：Press Release, European Commission, *supra* note 76.

operators a share of advertising revenues from Google Search if they refrained from pre-installing competing general search services. In the first three instances, the General Court and the Court of Justice found an infringement of Article 102 TFEU.[83] With respect to the promised advertising revenues, however, the European Commission had failed to provide sufficient proof.[84]

Of particular doctrinal significance also for AI markets is the CJEU's holding in Google/Android regarding the standard of proof. The CJEU held that in cases involving tying and restrictive pre-installation conditions within ecosystems characterized by significant barriers to entry, strong network effects, and economies of scale, a systematic counterfactual analysis demonstrating what competition would have looked like absent the abusive conduct is not a required element of proof under Article 102 TFEU. The CJEU reasoned that the anticompetitive effects of such conduct could be established through an ecosystem-contextual assessment, taking into account factors such as status quo bias, pre-installation advantages, and the cumulative effect of contractual restrictions, without requiring proof that an equally efficient competitor would have been excluded.

This reasoning may also become relevant to matters concerning AI and market power, particularly because there is a tendency to integrate AI with other products or services. Companies with a dominant market position can tie the sale of products or services to the sale of their own AI solutions, while excluding models from other providers.[85] This can occur with complementary products, so that platforms integrate their own foundation models into operating systems and devices,[86] for example, in the form of integrating a generative AI solution into software, like a search engine, an operating system, productivity software or cloud computing services.[87]

The DMA also contains specific anti-tying provisions in Article 5 (8) DMA, which could apply when gatekeepers bundle AI services with already designated core platform services.[88] This provision became relevant in a judgment by the Regional Court of Mainz against Alphabet/Google in a private enforcement case (see below). In the

註83：Case C-738/22 P, Google LLC & Alphabet Inc. v. Comm'n, ECLI:EU:C:2026:533, 386 (July 2, 2026).

註84：*Id*. at 82-83.

註85：Autorité de la concurrence, supra note 33, at 287; G7 Competition Authorities and Policymakers' Summit Digital Competition Communiqué, at 2 (Rome, Oct. 4, 2024); European Commission, supra note 5, at 7.

註86：Autorité de la concurrence, *supra* note 32, at 287.

註87：Autoridade da Concorrência, *supra* note 33, at 34; Autorité de la concurrence, *supra* note 32, at 287.

註88：Picht, *supra* note 36, at 13.

court's view, Google forced users during the registration process to create a Gmail account. The court subsequently ordered Google to cease and desist due to a violation of Article 5 (8) DMA. Google was required to adjust the setup process so that users creating a Google account can also use email addresses from another service.[89]

### 5. Leveraging

Large digital companies have extensive data in particular from their social networks, email services, and video platforms, which are very valuable for training AI models.[90] This advantage can ultimately be used to expand their market position into the AI models' market. The DMA addresses this scenario with Article 5 (2) DMA, which prohibits cross-service data combination, and with Article 6 (2) DMA, which contains the prohibition on the use of business customer data. Both restrict the use of data collected across markets.[91]

In addition, leveraging from infrastructure to model layer can occur: The three large cloud providers Microsoft (Azure), Amazon (AWS), and Google (Google Cloud) control a significant portion of the infrastructure for AI development and are simultaneously connected with leading AI model developers through partnerships.[92] This creates incentives to grant preferential access to these partners, while third-party providers are only granted access under unfavourable conditions.[93] In this context, the European Commission's assessment of the Microsoft/OpenAI partnership is instructive. While the European Commission concluded that Microsoft's investment in OpenAI does not constitute a concentration under the EU Merger Regulation, it also indicated that it continues to monitor exclusivity clauses between the two companies, suggesting that such arrangements may raise concerns under Article 101 or 102 TFEU.

While cloud services can in principle be a core platform service within the meaning of Article 1(2) DMA, no service had been designated as such until June 2026. Until then, this risk had not yet been addressed by the DMA.[94] Recently, the European Commission communicated its preliminary view that Amazon's AWS and Microsoft's Azure should be designated as

註89：Regional Court Mainz, Aug. 12, 2025, 12 HK O 32/24 (Ger.); Saskia Kirchgessner & Sarah Zinndorf, *Private Enforcement in the Digital Age: Article 102 TFEU and the DMA – Convergences, Divergences, and the Road Ahead*, CLPD 104, 115 (2026).

註90：Podszun, *supra* note 3, at 243-44; Picht, *supra* note 36, at 12.

註91：Wielsch, *supra* note 11, at 158.

註92：Podszun, *supra* note 3, at 233-34; Competition & Markets Authority, Cloud Infrastructure Services, Provisional Decision Report 29-34 (Jan. 28, 2025).

註93：Autoridade da Concorrência, *supra* note 33, at 27; Autorité de la concurrence, *supra* note 32, at 255.

註94：Podszun, *supra* note 3, at 243.

gatekeepers for cloud computing services on qualitative grounds, even though neither meets the DMA's standard quantitative thresholds. If confirmed, would bring AI-critical cloud infrastructure within the scope of the DMA's conduct obligations, including interoperability, data portability, and anti-self-preferencing rules.

## IV. Private enforcement

Besides public enforcement as described above, both Article 102 TFEU and the DMA can be enforced by way of civil litigation. While private enforcement of Article 102 TFEU, both standalone and follow on, can be based on established case law,[95] private enforcement of the DMA is just arriving in practice.[96] The DMA, which applies upon designation as a gatekeeper and requires neither proof of a dominant market position nor of an anti-competitive effect, is in principle suitable for private enforcement, including interim relief and damages.[97] In Germany, private enforcement of the DMA was included in the applicable laws. Consequently, the following three judgments have already been issued, with more to be expected:

The Higher Regional Court of Cologne (OLG Koeln) decided in May 2025 about Meta's intention to use user data from Instagram and Facebook for the development and improvement of AI models.[98] A consumer protection association had alleged that Article 5 (2) DMA (see above) was violated.[99] However, the court dismissed the claim, reasoning that a combination in the sense of Article 5 (2) DMA would require the targeted linking of personal data across multiple services, which was not the case due to the de-identification.

Another important case is the judgment of the Mainz Regional Court against Google/Alphabet

---

註95 : An example in the digital sector under Article 102 TFEU is the recent damages claim in the case of Idealo against Google, based on the Commission decision on Google Shopping (AT. 39740). The Berlin Regional Court II awarded the claimants damages of EUR 572 million, which is the highest number of damages ever awarded by a German court in antitrust proceedings. It was also noteworthy that the court relied on the Commission's reasoning for the infringement under Article 102 TFEU for a period for which binding effect of the decision no longer applied, LG Berlin II, Nov. 13, 2025, 16 O 195/19 Kart (2) (Ger.); Kirchgessner & Zinndorf, *supra* note 89, at 108-09.

註96 : Kirchgessner & Zinndorf, *supra* note 89, at 104; Richter & Galle, *supra* note 14, at 848-49.

註97 : Kirchgessner & Zinndorf, *supra* note 89, at 107-08; Richter & Galle, *supra* note 14, at 848-49; René Galle & Felix Dressel, *Private Rechtsdurchsetzung des DMA – Stand und Perspektiven*, EuZW 107, 111 (2024) (Ger.); Lena Hornkohl, *Private Rechtsdurchsetzung des DMA*, WuW 602, 602-03 (2025) (Ger.).

註98 : Higher Regional Court Koeln, May 23, 2025, 15 UKl 2/25=NJW 2025, 3156 (Ger.); Kirchgessner & Zinndorf, *supra* note 89, at 117.

註99 : Higher Regional Court Koeln, 15 UKl 2/25=NJW 2025, 3156 (Ger.); Kirchgessner & Zinndorf, *supra* note 89, at 117.

regarding Gmail (see above). This can be regarded as the first stand-alone judgment on the merits in DMA private enforcement.[100]

With regard to self-preferencing, the Frankfurt Regional Court confirmed that AI Overviews (see above) fall under the ranking concept of Article 6 (5) DMA.[101]

In its first DMA Review Report, the European Commission commented only briefly on private enforcement of the DMA.[102] According to the Staff Working Document, the European Commission is aware of approximately ten proceedings in France, Germany, the Netherlands, and Poland, including the French Liligo claim against Alphabet concerning self-preferencing in Google Search.[103]

## V. Conclusions and Outlook

Addressing competitive risks in AI markets involving companies with significant market power poses substantial challenges for competition authorities and courts. The same applies to the companies themselves; due to the principle of self-assessment, they lack certainty as to whether their conduct complies with competition rules. In the context of Article 102 TFEU, this is particularly evident in the fact that it is often unclear from the outset whether a company actually holds a dominant market position – especially in multi-sided markets.[104] A defining characteristic of AI markets is their capacity for hyper scaling – that is, they are designed for massive, rapid, and automated growth. This creates a tension with the often complex and protracted process of investigating and establishing a dominant market position.[105] In addition, the problem of "entrenchment" arises. Key inputs, such as large datasets, are in the hands of a few market players, which can make market entry more difficult for new innovative entrepreneurs.[106] Digital incumbents thus have certain advantages over newcomers, which are reinforced by the various incentives and benefits of integrating AI into digital ecosystems.[107] Open architecture and interoperability can lower barriers to market entry and help avoid lock-in effects in closed ecosystems.[108] Closed systems,

註100：Kirchgessner & Zinndorf, *supra* note 89, at 107-08; Hornkohl, *supra* note 97, at 602-03.
註101：Regional Court Frankfurt a.M., Sept. 10, 2025, 2-06 O 271/25 (Ger.).
註102：COM, COM(2026) 178 final.
註103：COM, SWD(2026) 123 final; Stephan Kreifels, DMA Review Report: Private Enforcement nur eine Randnotiz?, NZKart 393, 393 (2026) (Ger.).
註104：Podszun, *supra* note 3, at 245-46; Hacker, *supra* note 8, at 1282.
註105：Podszun, *supra* note 3, at 245; Wielsch, *supra* note 11, at 154.
註106：European Commission, *supra* note 4, at 3; Autorité de la concurrence, *supra* note 32, at 255.
註107：Autoridade da Concorrência, *supra* note 33, at 39; Simonetta Vezzoso, *'Super-Apps' and the Digital Markets Act*, 12 J. Antitrust Enforcement 331, 335 (2024).
註108：G7 Competition Authorities and Policymakers' Summit Digital Competition Communiqué, at 5 (Rome, Oct. 4, 2024); Vezzoso, *supra* note 107, at 335.

on the other hand, offer the advantage of better security and tailored user experience.[109]

Furthermore, there is a certain asymmetry in available resources between competition authorities and companies. Competition authorities often lack sufficient personnel, data processing capacity, and economic expertise. Large companies can therefore mobilize more resources than public authorities.[110] This is exacerbated by the fact that proceedings often exhibit increased complexity and large amounts of data must be analyzed with the help of economic expertise. It should be noted in this context that the European Commission has set the bar quite high for itself by introducing the more economic approach.[111]

The DMA offers potential for effective action against competition risks resulting from AI.[112] Its advantages lie primarily in the fact that obligations for gatekeepers arise upon designation, and therefore no examination of market dominance is necessary.[113] However, its effectiveness also depends primarily on whether the European Commission can make effective use of the mechanisms of the regulation, such as the designation of additional undertakings and the updating competence. For example, the three dominant cloud providers have not yet been designated, even though they control a significant portion of the infrastructure and simultaneously have partnerships with leading AI model developers.[114] At the same time, the European Commission and the courts should pay attention not to over-regulate the digital economy through an overly broad interpretation and application of the DMA that could hinder innovation.

On the international scene, there seems to be a certain consensus among some of the major competition authorities regarding the identification of problems related to competition and AI, as evidenced by the fact that the European Commission, together with the US Department of Justice, the US Federal Trade Commission and the UK Competition and Markets Authority, published a joint, although rather general statement on competition in AI markets.[115] May the continuous cooperation and exchange among competition authorities help to strike the right balance between the entrepreneurial freedom required for the further development of AI and the protection of competition in highly concentrated markets.

---

註109：European Commission, *supra* note 4, at 11.
註110：Podszun, *supra* note 3, at 248-49.
註111：Podszun, *supra* note 3, at 246-47; Hacker, *supra* note 8, at 1282.
註112：Wielsch, *supra* note 11, at 160; Brueggemann, *supra* note 19, at 188.
註113：Karbaum, Schulz & Morath, *supra* note 12, at 515; Richter & Galle, supra note 14, at 848-49.
註114：Podszun, *supra* note 3, at 243; Press Release, Commission Reaches Preliminary Position That Amazon's and Microsoft's Marked Leading Cloud Services Should Be Designated Under the DMA, https://ec.europa.eu/commission/presscorner/detail/en/ip_26_1444.
註115：European Commission, *supra* note 4, at 9; Joint Statement on Competition in Generative AI Foundation Models and AI Products, 23 July 2024.