

WHAT'S HAPPENING IN DIGITAL MARKETS COMPETITION REGULATION?

EDITION 1

As digital markets regulation evolves, products and services must be designed with applicable and future rules in mind. From interim measures against major platforms, new guidelines for dominant companies and proposed new merger guidelines, as well as important court rulings, this briefing distils the most significant recent developments with practical takeaways for tech in Europe.

1. A NEW ERA FOR TECH DOMINANCE: NEW ARTICLE 102 GUIDELINES

In September 2026, the Commission published its new Guidelines on the application of Article 102 TFEU to abusive exclusionary conduct by dominant undertakings, the most comprehensive restatement of EU abuse-of-dominance principles in over a decade. While the Guidelines apply to exclusionary conduct generally, their digital markets focus is unmistakable: ecosystems, data advantages, and network effects feature prominently.

- **40% Market Share Safe Harbour:** Dominance is unlikely below 40% market share though it can still exist where barriers to entry are high.
- **Digital Dominance Factors:** Network effects, switching costs, data-driven barriers, user lock-in, and ecosystem control can establish dominance even at modest market shares.
- **Ecosystems as Market Power:** Where a firm operates across interlinked products, the entire ecosystem can be a source of dominance: network effects, switching challenges, and compounding data advantages are all relevant.
- **Self-Preferencing:** This is now treated as a standalone abuse category. Where a dominant platform leverages its position to favour its own products, particularly exploiting behavioural biases, this may distort competition.
- **Access Restrictions:** Delays, unfair conditions, or refusals remain a priority for the Commission. Where a perceived dominant firm develops an input for third-party use (e.g., an API), restricting access may be abusive even if the input in question is not strictly “indispensable.” This incorporates recent case law into the guidance.

More broadly, the new Guidelines confirm that compliance in the European Union does not begin and end with the Digital Markets Act (“DMA”). Abuse-of-dominance enforcement remains active. Recent tech dominance based enforcement actions include:

- In February 2026, the German *Bundeskartellamt* prohibited Amazon from applying so-called price control mechanisms on its marketplace and ordered the disgorgement of €59 million in economic benefits, a notable use of disgorged profits as a remedy.
- On 9 June 2026, in an interim ruling, the Commission ordered Meta to restore WhatsApp access to rival AI assistances, finding at first sight, an abuse of dominance by blocking the WhatsApp for Business API. A full decision has yet to be reached, but this interim decision followed interim measures imposed by the Italian AGM in December 2025, which serves as a reminder that National Competition Authorities (“NCAs”) often move first.
- On 8 July 2026, the French *Autorité de la concurrence* required Meta to re-engage in negotiations with publishers over press content remuneration, finding Meta had likely abused its dominant position by unilaterally dictating terms.

KEY TAKEAWAYS: The Guidelines signal a more interventionist approach to digital markets under Article 102. Market shares should be monitored remembering that ecosystem-based market power can trigger dominance findings even at relatively low individual market shares. Self-preferencing is firmly on the enforcement radar. Platforms operating as both marketplace and competitor must design neutral ranking and display systems. Interoperability demands must be addressed promptly since delays or onerous conditions can themselves constitute abuse.

2. NEW DRAFT EU MERGER GUIDELINES: ENTRENCHMENT, ECOSYSTEMS, AND THE END OF SAFE HARBOURS

On 30 April 2026, the Commission published Draft Merger Guidelines, expected to be finalised this year. Three developments are especially significant for technology transactions.

1. First, “*entrenchment of a dominant position*” will now be a standalone theory of harm. A merger may result in a Significant Impediment to Effective Competition (“SIEC”) where the merged firm gains control over assets that reinforce barriers to entry within a “core market” or “ecosystem.” Digital ecosystems are considered a particular source of such barriers. The 2008 safe harbour (30% share, HHI <2,000) has been removed. That approach was endorsed by the General Court in *Booking Holdings v Commission* (Case T-1139/23), which confirmed that even a small market-share increment can significantly impede competition where strong network effects exist and the transaction would create an ecosystem competitors cannot replicate (on appeal).
2. Second, “*dynamic foreclosure incentives*” will be taken into account. This is when merged entities may foreclose rivals to strengthen market power over time, particularly where viability depends on scale, data, or network effects.
3. Third, an “*Innovation Shield*” is being introduced: a safe harbour where the Commission “in principle does not find a SIEC” for transactions involving innovative start-ups, subject to conditions including at least three independent competitors with comparable innovation capabilities or R&D organisations remain post-merger. DG COMP officials have indicated the shield is likely to be revised and it remains to be seen how many acquirers will benefit in practice.

KEY TAKEAWAYS: The entrenchment theory and removal of safe harbours fundamentally change tech M&A risk. Expect longer timelines, intrusive data requests, and remedy exposure for targets with strategic data, IP, or customer access. Build regulatory engagement into deals from the outset.

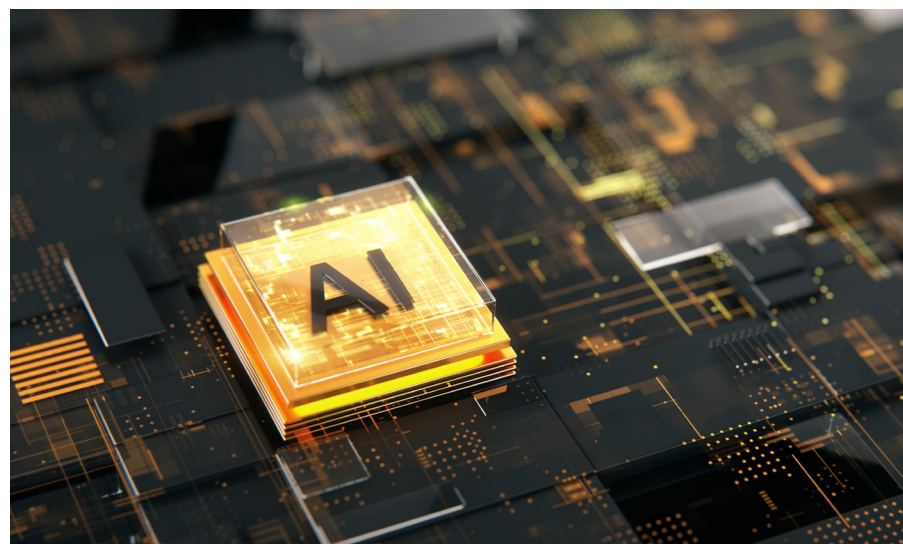
3. AI: ENFORCEMENT IN MOTION

The same concerns driving Article 102 and merger enforcement such as data accumulation, ecosystem lock-in, and network effects are now front and centre in AI regulation. Enforcers across jurisdictions are treating AI agents and AI-enabled business software as the next critical issue. In this vein, in one of its latest Strategic Market Status ("SMS") investigations, the Competition and Markets Authority ("CMA") has cited concerns that licensing practices may undermine customer choice as AI gets embedded in enterprise software. Similarly, the French Autorité de la concurrence (July 2026) flagged AI agents as an emerging gateway to digital services, identifying risks including self-preferencing, lock-in, and algorithmic collusion.

Agentic AI is emerging as a challenge for regulators, as these autonomous systems fit less well in frameworks designed for traditional platform intermediation, although the CMA has issued guidance making clear that a firm remains responsible for its agentic AI use.

EVP Ribera and the Bundeskartellamt have both suggested that Article 102 and § 19a GWB may be more effective than the DMA for AI-related conduct. In the UK, the CMA is using flexibility built into the Digital Markets, Competition and Consumers Act ("DMCCA") to impose conduct requirements and secure commitments where this achieves outcomes faster, an approach the CMA describes as maximising "speed to impact."

KEY TAKEAWAYS: AI enforcement is active. Companies with existing market power expanding into AI should expect scrutiny on data advantages, compute access, and partnerships that entrench incumbents. Designs should incorporate interoperability and data portability.



4. DMA ENFORCEMENT MATURES: FINES, DESIGNATIONS AND SPECIFICATION DECISIONS

The DMA is maturing as an enforcement tool. The Commission's first statutory review (28 April 2026) concluded it "*remains fit for purpose*" citing greater browser/search choice, alternative app stores, and enhanced data portability. EVP Ribera has signalled the Commission will use the DMA to stop "*big tech players from leveraging their dominance of the past into AI.*" Recent developments include:

- In June 2026, the Commission preliminarily found that two cloud computing services may be designated under the DMA, as each is deemed an "*important gateway between businesses and their customers*" despite not meeting the quantitative thresholds. In this context, the Commission has expressed generic concerns relating to competitiveness and fairness which appear to go beyond the specific obligations envisaged in the DMA.
- In July 2026 the General Court dismissed Apple's challenges to its gatekeeper designation, confirming that app store classification is "technology neutral" and upholding the DMA's separation of designation from obligation imposition.

The Digital Fairness Act (expected Q4 2026) will target dark patterns, addictive design, unfair personalisation, and problematic subscription practices, adding another regulatory layer alongside the General Data Protection Regulation, Digital Services Act, DMA and AI Act.

KEY TAKEAWAYS:

- **Expect sustained enforcement.** DMA specification decisions, conduct requirements, and fines are becoming routine; the United Kingdom's DMCCA regime has moved from designation to active intervention. Both regimes are building momentum, expect more to come.
- **Gatekeeper challenges fail.** The trend of the General Court rejecting challenges to Commission decisions to designate / not to designate players and core platform services confirms the DMA's broad scope.
- **Prepare for regulatory overlap.** The DMA, UK DMCCA, Digital Fairness Act, and AI rules increasingly converge. The same conduct can trigger parallel obligations across regimes. A joined up compliance strategy is essential.
- **Engage early.** NCAs, the Commission, and the UK CMA coordinate closely. Early engagement with one does not preclude action by others.

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