

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, including CEOs and association 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 triilogue 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
CEO



Gaëlle Laborie
President



Luc D'Urso
CEO



Pierre Baudracco
President



Mathieu Migout
CEO



Roberto Beneduci
CEO



Audrey Louail
Co-Founder and CEO



Mawet Emmanuel
Owner



Francesco Russo
Senior Partner



Fabrizio Leo
CEO



Louis Chemineau
CEO



Jean-Pascal Macchi
CEO



Federico Germi
CEO



Laurent Mele
CEO



Michaël Ferrec
President



Danilo Vivarelli
CEO



Alain Garnier
CEO



David Amorin
CEO



Jacqueline Van de Werken
General Counsel



Mailo

Philippe Lenoire, Founder
Pascal Voyat, Founder

Majalog

Jacques Le Gousse
CEO



Luc Bretones
Partner



Raphaël Richard
CEO



Michele Zunino
CEO



Luc Bretones
CEO



Laurent Seror
CEO



Antonio Baldassarra
CEO



Claudio de Luca
CEO



Michel Lecomte
CEO



Emilio Colombo
CEO



Gerard Dupin
Owner



Thierry Bayon
CEO



David Fayon
Advisor



Frans Imber-Vier
CEO



UpCloud

Antti Vilpponen
CEO



Lionel Roux
CEO



Didier Serrat
CEO

For enquiries or responses to the signatories, please contact: francisco.mingorance@CISPE.cloud