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MARCH 2026

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THE DIGITAL OMNIBUS AND DMA REVIEW: COMPETING DIRECTIONS

The European Commission (EC) is currently navigating two different paths for its digital policy. While the "Digital Omnibus" aims to simplify rules and reduce costs for businesses, the ongoing review of the Digital Markets Act (DMA) could lead to stricter requirements for AI and cloud services. Below, we look at these competing directions and what they mean for the future of EU regulation.

Digital Omnibus

On 19 November 2025, the EC unveiled the **Digital Omnibus**, a significant legislative package aimed at simplifying the EU's dense digital framework to reduce administrative costs by an estimated €5 billion by 2029. This initiative comes at a time of intensifying domestic and international pressure on the EC to reduce digital regulation and compliance burdens.

At its core, the Omnibus seeks to streamline the rules on data, cyber and AI. It consolidates new and existing data legislation, folding the Data Governance Act, the Free Flow of Non-Personal Data Regulation and the Open Data Directive into a single, unified Data Act.

It also includes amending the GDPR to foster an "innovation-friendly privacy framework", notably by amending the definition of personal data, and relaxing the rules around cookies and processing for bias detection for AI. In addition, the proposal streamlines cyber and data breach notifications to ease the compliance burden.

Moreover, to support the developing AI sector, the EC has proposed changes to the AI Act which include delaying the implementation of the rules on use of high-risk system by up to 16 months, and trying to ensure technical standards are ready first.

The Digital Omnibus is expected to move into the trilogue phase, the inter-institutional negotiations between the European Commission, the Parliament, and the Council, later this year. If a political agreement is reached by late 2026, formal adoption would follow in effect around mid-2027.

DMA Review

The EC has initiated its first effectiveness **review** of the DMA, which is due to be completed by May 2026. The EC launched several consultations in 2025 seeking feedback on whether the DMA is meeting its objectives and whether amendments may be needed.

QUICK LINKS

DIGITAL OMNIBUS & DMA REVIEW

CJEU DUTCH APP STORE CASE

FRENCH DOCTOLIB CASE

ITALIAN RYANAIR CASE

SPANISH GOOGLE COMMITMENTS

GERMAN APPLE ATTF REMEDIES

Preliminary feedback published in early 2026 indicates that respondents broadly supported the DMA's mission to ensure fair and contestable digital markets. However, respondents identified several implementation challenges, including expanding the list of core platform services (CPS), adjusting gatekeeper designation criteria, revising or providing further guidance on specific obligations, and strengthening enforcement tools and processes.

At the same time, many respondents (particularly gatekeepers) raised concerns that reinforcing existing obligations or adding new CPS categories (for example to cover cloud services) could impose disproportionate burdens and generate administrative overload, which may have negative effects on innovation, especially in sectors (such as generative AI) which are still at an early stage of development.

The Commission will reflect on all contributions as it prepares its review report.

The Road Ahead

Looking ahead, the Digital Omnibus and the DMA review signal that the EC's digital policy agenda is entering a new phase. However, it also shows the EC moving in two parallel but potentially conflicting directions. While the Omnibus seeks to streamline obligations and reduce burden, the DMA review may introduce new duties in areas like AI and cloud services, raising the possibility that simplification in one part of the digital rulebook may be offset by tightening in another.

CJEU CLARIFIES APPROACH TO JURISDICTION WHEN HARM OCCURS IN VIRTUAL SPACES

In its **judgment** of 2 December 2025, the Court of Justice of the European Union (CJEU) clarified that all Dutch courts have both international and territorial jurisdiction to hear a representative action concerning the alleged anticompetitive conduct of Apple in relation to its Dutch App Store.

Background

Two Dutch foundations, Stichting Right to Consumer Justice and Stichting App Stores Claims, brought representative actions before the District Court of Amsterdam to defend the collective interests of unidentified but identifiable users of the App Store Netherlands. This concerns both consumers and business users who purchased apps on the Dutch App Store. The foundations alleged that Apple abuses its dominant position on the app distribution market by retaining 15% to 30% commission from the sale price of third-party apps.

The foundations sued several Apple entities, including Dutch subsidiaries as well as Apple, Inc. (Apple's American parent company) and Apple Distribution International Ltd (Apple's Irish distributor for the EU, including the Netherlands). Apple challenged the District Court's jurisdiction over its American and Irish entities, arguing that the Dutch courts lacked authority because the alleged harmful event did not occur in the Netherlands and, alternatively, that jurisdiction could only extend to claims concerning users who made purchases in Amsterdam itself.

In an interim ruling of 13 August 2023, the District Court preliminarily found it had international jurisdiction since the Dutch App Store was aimed exclusively at consumers in the Netherlands. However, territorial jurisdiction proved more complex due to the mobile nature of iOS users. Moreover, based on the opt-out mechanism under Dutch collective action law (WAMCA), the identities and domiciles of affected users are unknown when jurisdiction is determined. Given these difficulties, the District Court referred questions to the CJEU regarding the interpretation of Article 7(2) of the **Brussels I bis Regulation** that deals with questions of jurisdiction in civil and commercial matters.

Advocate General Sanchez's opinion

The general rule to establish jurisdiction under the Brussels I bis Regulation is based on the defendant's domicile. In contrast, establishing jurisdiction based on the place where the damage occurred or the place of event giving rise to it is a special rule of jurisdiction under the I bis Regulation. The Advocate General noted that, as a special rule, it should be interpreted strictly as well as independently from national legal concepts. According to the Advocate General, the place where the damage occurred should be treated as the place of domicile of the users of the App Store. This means that not all courts in the territory of Netherlands would have jurisdiction, but only the one where a particular user is domiciled who is alleging harm. The Advocate General went on to state that this interpretation of the special rule of jurisdiction should not change even in case of representative actions such as those brought by the two Dutch foundations. This aligned with Apple's argument that the jurisdiction of the Amsterdam District Court could only extend to claims concerning users who live in Amsterdam itself.

The CJEU's judgment: departure from AG opinion

The CJEU took a different approach from that proposed by the Advocate General. According to CJEU, the virtual space that the Dutch App Store constitutes corresponds to the entire Dutch territory. The CJEU noted that the Dutch App Store is specifically designed for the Netherlands. Any harm arising from purchases via that App Store could therefore occur within that territory. Where a user was located at

QUICK LINKS

DIGITAL OMNIBUS & DMA REVIEW

CJEU DUTCH APP STORE CASE

FRENCH DOCTOLIB CASE

ITALIAN RYANAIR CASE

SPANISH GOOGLE COMMITMENTS

GERMAN APPLE ATTF REMEDIES

the time of the relevant purchase is therefore not relevant. The CJEU added that in the specific circumstance of a collective compensation action where no individual damage claims have been transferred, it cannot be required that the national court individually determines the specific location where the alleged damage occurred for each alleged injured party. The possible injured parties and their number have not yet been identified in such a collective action. The CJEU therefore confirmed the international and territorial jurisdiction of every Dutch court to handle such a collective action under Article 7(2) of the Brussels I bis Regulation.

App Store designed specifically for the Netherlands

The App Store NL was considered as being specifically designed for the Netherlands not only because it uses the Dutch language but also because it offers apps for sale to only those users whose Apple ID is associated with the Netherlands and who have a valid payment method in the Netherlands. Moreover, some of the apps offered for sale via the Dutch App Store are created just for the Dutch market. This means that online platforms design choices (country linked accounts, payment methods) and market specific content can have a bearing on questions concerning jurisdiction of national courts to entertain claims for damages suffered in a virtual space.

Implications for private enforcement

The judgment notes that traditional territorial jurisdiction concepts must adapt to digital marketplace realities where harm may occur in virtual spaces. It reflects the Court's view that digital marketplace interactions do not fit neatly within conventional geographic boundaries. Moreover, the CJEU's approach mitigates localised jurisdictional constraints that might otherwise apply to consolidated claims against online platforms. The judgment may therefore facilitate collective actions against online platforms by permitting any Dutch court with substantive jurisdiction to hear claims on behalf of all affected users nationwide, even when those users remain unidentified at the outset. This, in turn, would avoid the need to fragment proceedings across multiple district courts based on individual domiciles.

QUICK LINKS

DIGITAL OMNIBUS & DMA REVIEW

CJEU DUTCH APP STORE CASE

FRENCH DOCTOLIB CASE

ITALIAN RYANAIR CASE

SPANISH GOOGLE COMMITMENTS

GERMAN APPLE ATTF REMEDIES

FRENCH COMPETITION AUTHORITY FINES FIRST KILLER ACQUISITION IN FRANCE

On 6 November 2025, the French Competition Authority (FCA) issued a landmark abuse of dominance **decision** against Doctolib, France's leading provider of digital solutions for online medical appointment bookings and teleconsultations.

While the crux of the fine relates to alleged exclusivity clauses and tying practices, the decision is of particular note for its application, for the first time by the FCA, of abuse of dominance provisions to a below-thresholds acquisition of a competitor. This follows the CJEU's landmark *Towercast* **ruling** (Case C-449/21, 16 March 2023), which confirmed that a concentration that falls below EU and national notification thresholds may be examined ex post by national competition authorities as a potential abuse of dominance under Article 102 TFEU. This article focuses on this issue.

Doctolib's 2018 acquisition of its main competitor, MonDocteur
In July 2018, Doctolib acquired MonDocteur, its main competitor, for approximately €38 million. The transaction, which fell below both EU and French merger control notification thresholds, was not subject to review.

Alleged anticompetitive intent: the role of internal documents
In order to demonstrate the alleged anticompetitive purpose of the acquisition, the FCA relied extensively on internal documents seized during dawn raids. These included references to MonDocteur as the only competitor, and to the contemplated transaction aimed at "killing" the competing product, reducing price pressure and increasing prices, with the planned disappearance of the platform and the migration of customers. One document is thus quoted as explicitly stating that "the value creation is not the addition of the MonDocteur asset but its disappearance as a competitor, with gains that are absolutely immediate upon closing".

Legal framework: application of the *Towercast* jurisprudence
The legal test set out in *Towercast* requires demonstrating that the degree of dominance achieved through the concentration would substantially impede competition, to the extent that only undertakings whose behaviour depends on the dominant undertaking would remain in the market.

In reaching its finding, the FCA considered in particular:
- Doctolib's dominant position prior to the acquisition;
- the elimination of Doctolib's only significant competitor on a market characterised by strong indirect network effects, thus reinforcing the anticompetitive impact of the acquisition;
- documentary evidence of anticompetitive intent and a market foreclosure strategy; and
- effects on market structure, with no competitor to Doctolib achieving more than a few percentage points of market share. The FCA noted, in this respect, that in a fast-growing two-sided market with network effects and high barriers, the elimination of the only credible rival had permanently dried up competitive intensity.

QUICK LINKS

DIGITAL OMNIBUS & DMA REVIEW

CJEU DUTCH APP STORE CASE

FRENCH DOCTOLIB CASE

ITALIAN RYANAIR CASE

SPANISH GOOGLE COMMITMENTS

GERMAN APPLE ATTF REMEDIES

Limited fine due to past uncertainty over below-thresholds mergers – but a stark warning for future killer acquisitions

Overall, the FCA imposed fines of €4.6m for the exclusivity and tying practices, and €50,000 for the MonDocteur acquisition – taking into account the legal uncertainty that existed prior to the Towercast judgment regarding the application of Article 102 TFEU to below-threshold concentrations. However, the FCA has warned that fines may be higher for future offenders. Similarly, while the FCA did not order a breakup of the transaction in this case, in part because of this uncertainty, it might decide to do so in future cases.

Ongoing appeal and questions raised

This landmark case raises a number of questions, including:

- the fact that a transaction can be challenged after completion under Article 102 TFEU, 7 years after the event;
- the question of dominance: Doctolib has argued that it was only a start-up buying another, which is standard, especially in the tech industry; and
- the standard of proof: the FCA acknowledged that the *Towercast* framework requires demonstrating substantial impediment to competition, not merely reinforcement of a dominant position. The Paris Court of Appeal, in remanding the original *Towercast* case to the FCA for further investigation, emphasised that where significant time has elapsed since the transaction, actual market evolution may be particularly relevant. In the present case, the FCA's extensive reliance on documentary evidence of anticompetitive intent (i) raises questions as to whether this is sufficient to pass the test of significant impediment to competition; and (ii) suggests that, absent such compelling documentary evidence, ex post challenges to concentrations may face evidentiary hurdles.

Doctolib is currently appealing the decision and further clarity on these points may therefore come from the Paris Court of Appeal's pending judgment in this respect.

Looking ahead: the French call-in power for below-threshold mergers

Since the CJEU's *Illumina/Grail* ruling of September 2024 (Case C-611/22, 3 September 2024) invalidating the Article 22 referral mechanism for transactions below the national thresholds, the FCA has been pushing for new call-in powers, similar to those which have already been implemented in a number of other European jurisdictions (including, e.g. Denmark, Italy, Ireland). Following a consultation in January 2025, a legislative proposal in this respect is expected in the course of 2026.

QUICK LINKS

DIGITAL OMNIBUS & DMA REVIEW

CJEU DUTCH APP STORE CASE

FRENCH DOCTOLIB CASE

ITALIAN RYANAIR CASE

SPANISH GOOGLE COMMITMENTS

GERMAN APPLE ATTF REMEDIES

ITALIAN COMPETITION AUTHORITY FINDS RYANAIR LIABLE FOR EXCLUSIONARY ABUSE AGAINST TRAVEL AGENCIES

On 19 December 2025, the Italian Competition Authority (AGCM) **found** that Ryanair had implemented an exclusionary strategy aimed at restricting travel agencies' ability to intermediate the sale of Ryanair flights and related ancillary tourism services, in breach of Article 102 TFEU and Article 3 of Law No. 287/1990 (case A568, decision no. 31774).

The decision is structured around a distinct upstream and downstream assessment. Upstream, the AGCM defined the relevant market as the provision of national and short-haul scheduled passenger air transport services to and from Italy, regarded as a key input for travel agencies. Departing from a route-by-route origin–destination approach, the AGCM assessed competition from the perspective of intermediaries requiring access to a sufficiently broad and attractive network of connections. On that basis, Ryanair was found to be dominant, given its market shares of around 38-39% on domestic and European services to and from Italy, its stronger position on several domestic routes and in most airport catchment areas, and the significant gap compared with the next competitor. Downstream, the AGCM identified a national market for the online intermediation of flights, whether sold alone or bundled with other services, and local markets for traditional brick-and-mortar travel agency services.

The conduct under scrutiny concerned the conditions under which online travel agencies (OTAs) and traditional travel agencies could acquire Ryanair tickets via the ryanair.com website and incorporate them into composite travel products. According to the Authority, from spring 2023 onwards Ryanair progressively implemented a unitary strategy that rendered access to, and distribution of, its flight inventory increasingly burdensome for intermediaries, particularly where tickets were combined with flights operated by other carriers or with ancillary services.

The first phase began in mid-April 2023, when Ryanair introduced enhanced passenger verification procedures applicable exclusively to bookings made through agency channels. These measures entailed additional identification requirements, including facial recognition mechanisms. In the AGCM's assessment, the new procedures introduced additional friction in the customer journey for agency-originated bookings and resulted in a differentiated, and comparatively more onerous, treatment compared to tickets purchased directly via the airline's website.

From the second half of 2023, Ryanair adopted further technical measures directly affecting agencies' transactional capacity. The AGCM identified episodes of intermittent or complete blocking of booking attempts carried out by intermediaries through the website, restrictions on payment instruments typically associated with OTA activity, and the deletion of user accounts linked to travel agencies. In the Authority's view, these measures worked as technical impediments to the effective procurement of tickets and significantly curtailed agencies' ability to complete purchases on behalf of customers, especially where automated or structured booking systems were employed. Their cumulative impact was to materially deteriorate access conditions to an input regarded as strategically important for downstream intermediation.

In early 2024, Ryanair introduced restrictions in its agreements with global distribution systems providers, limiting the ability of OTAs to access its inventory. At the same time, online intermediaries were required to enter into dedicated distribution agreements, while traditional agencies were confined to an exclusively offline access model. According to the AGCM, these frameworks imposed commercial and technical constraints that substantially altered the terms on which intermediaries could operate. The agreements required the use of controlled technical interfaces and imposed conditions affecting fare availability and the integration of ancillary services, whereas the offline model applicable to traditional agencies was subject to operational limitations.

QUICK LINKS

DIGITAL OMNIBUS & DMA REVIEW

CJEU DUTCH APP STORE CASE

FRENCH DOCTOLIB CASE

ITALIAN RYANAIR CASE

SPANISH GOOGLE COMMITMENTS

GERMAN APPLE ATTF REMEDIES

Taken as a whole, the AGCM characterised these successive phases as cumulative expressions of a single and continuous exclusionary abuse. The case was not framed as a refusal to supply in the strict sense, since access to the inventory was not formally denied. Rather, the AGCM qualified the conduct as a progressive and substantial worsening of the conditions of access to a strategically important upstream input that had previously been available, capable of foreclosing intermediaries active in downstream markets by making their business activity more complex and costly.

In the AGCM's analysis, Ryanair's strategy rendered access to its flight inventory materially more onerous for travel agencies and constrained their ability to operate under commercially sustainable conditions. Particular emphasis was placed on the role of a leading carrier's content in attracting customer traffic to online intermediaries. A reduction in, or deterioration of, access through agency channels was therefore considered liable to diminish intermediaries' appeal to consumers and, as a consequence, to weaken the competitive pressure they exert in the distribution of travel services.

Accordingly, the AGCM concluded that Ryanair's conduct constituted a single and continuous abuse of a dominant position and imposed a fine of approximately €255 million, and ordered the company to cease and desist from the infringing conduct.

QUICK LINKS

DIGITAL OMNIBUS & DMA REVIEW

CJEU DUTCH APP STORE CASE

FRENCH DOCTOLIB CASE

ITALIAN RYANAIR CASE

SPANISH GOOGLE COMMITMENTS

GERMAN APPLE ATTF REMEDIES

CNMC ACCEPTS GOOGLE'S OFFERED COMMITMENTS AND CLOSES INVESTIGATION INTO ITS AGREEMENTS WITH NEWSPAPER PUBLISHERS

On 17 December 2025, the Spanish Competition Authority (CNMC) **decided** to terminate, subject to commitments, the proceedings brought against Google for potential illegal practices in its agreements with newspaper publishers and news agencies. In the framework of these proceedings, Google requested a conventional termination procedure, which allows the CNMC to close proceedings without issuing a formal finding of infringement (and, therefore, without imposing a fine) in exchange for the adoption of binding commitments.

The proceedings, which stemmed from a 2021 complaint by *Centro Español de Derechos Reprográficos* (CEDRO), focused on how Google negotiated with Spanish newspaper publishers in relation to two of its services: Google News Showcase (GNS Agreements) and Google News (ENP Agreements). The ENP and GNS Agreements provided for the transfer of neighbouring rights (intellectual property rights that allow publishers to control the online use of their press publications by intermediary platforms). Under these agreements, Google obtains the relevant rights in order to display journalistic content on its services.

The CNMC identified a series of practices that could be contrary to competition rules:
- a lack of transparency in relation to the remuneration under the ENP agreements;
- the absence of updated and retroactive payments;
- insufficient transparency regarding the scope of the ENP and GNS licences;
- the inclusion of termination clauses capable of deterring publishers from taking legal action; and
- the imposition of English law and language, and the jurisdiction of the London Court of International Arbitration.

According to the CNMC, Google's imposition of these commercial conditions could distort the normal functioning of the market by preventing fair compensation and undermining publishers' ability to negotiate on an equal footing. The CNMC therefore expressed preliminary concerns that Google may have abused its dominant position by imposing allegedly unfair commercial terms (Articles 2.2.a LDC and 102.a TFEU) and engaged in unfair competition (Article 3 LDC) by allegedly exploiting the economic dependence of Spanish publishers.

According to the CNMC, the commitments offered by Google in relation to the ENP and GNS Agreements with agencies and publishers are adequate and protect the public interest. These commitments, with an initial term of five years (extendable for another five years at the CNMC's request), are considered sufficient to address the preliminary competition concerns identified, including those relating to transparency in negotiations, the level of remuneration offered by Google and the content of the agreements, among others. For example, Google has committed to informing publishers of the methodology and parameters used to calculate remuneration and the relevant advertising revenues, as well as to disclosing certain strategic data about its online advertising business to publishers (e.g. its advertising revenue or the share of impressions attributable to publishers' publications).

In light of the above, the CNMC concluded its investigation against Google, in what constitutes a further example of the authority's increasing focus on cases related to the digital sector.

QUICK LINKS

DIGITAL OMNIBUS & DMA REVIEW

CJEU DUTCH APP STORE CASE

FRENCH DOCTOLIB CASE

ITALIAN RYANAIR CASE

SPANISH GOOGLE COMMITMENTS

GERMAN APPLE ATTF REMEDIES

APPLE'S ATTF – FCO LAUNCHES MARKET TEST

The German Federal Cartel Office (Bundeskartellamt) is subjecting Apple to a **market test** to assess proposed remedies in the ongoing investigation into Apple's App Tracking Transparency Framework (ATTF). The market test, announced in December 2025, is designed to determine whether Apple's proposed changes are sufficient to address competition concerns that the FCO raised in February 2025.

Background

Since its implementation in April 2021, Apple's ATTF has required providers of third-party apps on iOS to obtain additional consent from users before accessing certain user data for advertising purposes. This consent request pops up when a non-Apple app is started for the first time. However, Apple does not apply the same requirements to its own apps. According to the FCO, the consent dialogues for Apple's own apps and for third-party apps differ substantially, with the wording and design of Apple's own dialogues making it more likely that users will consent than those presented by third-party apps.

In February 2025, the FCO sent Apple a preliminary legal assessment, expressing concerns that this asymmetric treatment may be prohibited under both Section 19a of the German Competition Act (thus, the case builds on the FCO's designation of Apple as a company of paramount significance for competition across markets in April 2023) and Article 102 TFEU. In that assessment, the FCO set out its preliminary findings:

- The rules do not affect Apple when combining user data across different services in its ecosystem and using this data for advertising purposes.
- Third-party apps show users up to four consecutive consent dialogues, while Apple's own apps show a maximum of two.
- The consent dialogues encourage users to allow Apple to process their data, while discouraging users from accepting third-party data processing.

The FCO stated that at the core of the case are the rules on how apps gain access to user data, which is of critical importance for competition. According to the FCO, such rules must be transparent, fair, and apply equally to all market participants.

Apple faces similar cases in several other European jurisdictions. The FCO has stressed that they closely coordinated with other national regulators within the European Competition Network (ECN) and with the European Commission.

Apple's Proposed Remedies and the Market Test

Apple has now submitted proposed remedies that, in the FCO's preliminary view, could potentially resolve the competition concerns. The proposals include a redesign of the prompt used by third-party apps and Apple's own prompt. Both are to be redesigned to be neutral and harmonized in content, language, and visual design. The proposals also include a simplification of the consent architecture for third-party apps, so providers can use it for additional consent requests.

The FCO intends to use the market test to assess Apple's proposed remedies. The market test is addressed to app publishers, associations representing the media and advertising industries, content providers, as well as the German data protection regulators. The FCO will decide after the market test whether they consider Apple's proposed remedies as sufficient to resolve its concerns.

COMPETITION LAW IN THE DIGITAL AGE

MARCH 2026

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