

Should France Mandate Gatekeepers to Notify Mergers?

Dr Christophe Carugati

A mandatory notification requirement for gatekeepers would disproportionately increase their regulatory burdens and the French Competition Authority's administrative costs without significantly enhancing the review of problematic mergers.

1 Introduction

The French Competition Authority (FCA) is considering amendments to the French merger control law to review below-threshold mergers as part of a public consultation closing on 16 February 2025¹. The FCA has outlined three potential options:

- **Option 1:** Introducing a call-in power to mandate notification of mergers not meeting the national merger thresholds.
- **Option 2:** Introducing a mandatory notification requirement for certain companies.
- **Option 3:** Using antitrust provisions post-merger implementation.

While several European countries have already adopted Options 1 and 3, Option 2 is inspired by Switzerland, where firms deemed dominant by a final and non-appealable decision must notify all mergers. However, the French proposal goes further, requiring notification when a firm has:

- Been subject to a merger prohibition decision or a clearance decision with commitments or
- Been fined or had commitments imposed for abuse of dominance under European or French antitrust law or
- Been designated as a gatekeeper under the Digital Markets Act (DMA).

¹ Autorité de la concurrence, Public Consultation on the Introduction of a Merger Control Framework for Addressing Below-Threshold Mergers, 14 January 2025 (accessed 10 February 2025). Available at: <https://www.autoritedelaconcurrence.fr/en/press-release/public-consultation-introduction-merger-control-framework-addressing-below-threshold>

Under Article 14 of the DMA, designated gatekeepers have a reporting obligation to inform the European Commission of all intended acquisitions in the digital sector. The French proposal would transform this reporting obligation into a mandatory notification requirement at the national level of all acquisitions, not only in the digital sector.

This analysis focuses exclusively on the mandatory notification requirement for gatekeepers. If implemented, this measure would disproportionately increase regulatory burdens for gatekeepers and inflate administrative costs for the FCA, despite no clear evidence that most gatekeeper mergers pose competition concerns².

2 Assessment

The Digital Markets Act (DMA) seeks to ensure contestability and fairness by imposing obligations on designated gatekeepers in some digital markets. Among these, gatekeepers must inform the European Commission of all intended acquisitions in the digital sector, including those involving data collection, if they qualify as a concentration under the European Merger Regulation (EUMR).

This reporting obligation serves two primary functions. First, it allows the Commission to track gatekeepers' acquisition strategies, providing insights into market trends and expansion. Second, it enables National Competition Authorities (NCAs) to refer acquisitions to the Commission under the referral mechanism of Article 22 EUMR, potentially triggering a merger review³.

In this way, the reporting obligation complements the EUMR's referral mechanism, allowing the Commission to review below-threshold mergers.

However, in the *Illumina v. Commission* ruling, the European Court of Justice (ECJ) restricted the Commission's ability to accept referrals unless the acquisition met national merger control thresholds, citing concerns over legal certainty. This decision has two major implications.

² Christophe Carugati, Which Mergers Should The European Commission Review Under The Digital Markets Act?, *Bruegel*, 9 December 2022 (accessed 10 February 2025). Available at: <https://www.bruegel.org/policy-brief/which-mergers-should-european-commission-review-under-digital-markets-act>

³ For a deeper analysis, see Christophe Carugati, How Should Europe Revamp Merger Policy for Non-Notifiable Deals?, *Digital Competition*, 24 September 2024 (accessed 10 February 2025). Available at: <https://www.digital-competition.com/comment/how-should-europe-revamp-merger-policy-for-non-notifiable-deals%3F>

First, the Commission has to adjust its merger policy. While the Commission is still considering a policy response to the ruling, it encourages NCAs to refer acquisitions when they have jurisdiction, such as in the *NVIDIA/Run: ai* merger, where Italy used its call-in power to review the deal⁴.

Second, the Commission has to rethink its DMA policy, seeking alternative ways to review gatekeepers' acquisitions when NCAs lack jurisdiction. The French consultation is part of this broader effort to identify necessary tools to scrutinise below-threshold mergers.

The French proposal would change the DMA's reporting obligation into a mandatory notification requirement for all gatekeepers' acquisitions in France. This would grant the FCA the power to review gatekeeper mergers at the national level and refer them to the Commission for further scrutiny at the European level.

As of 11 February 2025, since the DMA's reporting obligation took effect on 5 September 2023 for the first list of designated gatekeepers (Alphabet, Amazon, Apple, ByteDance, Meta and Microsoft), 13 acquisitions have been reported (**Table 1**)⁵.

Table 1: List of acquisitions reported under the DMA

Gatekeeper	Acquisition	Notification (Yes/No)
Microsoft	Microsoft/Activision Blizzard	Yes
	Microsoft/Inflection.AI	No
ByteDance	ByteDance/PT Tokopedia	No
Apple	Apple/Blueye	No
	Apple/Datakalab	No
	Apple/Mayday Labs Inc.	No
	Apple/DarwinAI	No
	Apple/Drishti	No

⁴ European Commission, Commission Approves Acquisition of Run:ai by NVIDIA, 20 December 2024 (accessed 10 February 2025). Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_6548

The parties are challenging the Commission's decision before the ECJ. Lewis Crofts, Nvidia Goes to Court Over EU Regulator's Move to Review Run:ai deal, *Mlex*, 15 January 2025 (accessed 10 February 2025). Available at: <https://www.mlex.com/mlex/articles/2284345/nvidia-goes-to-court-over-eu-regulator-s-move-to-review-run-ai-deal>

⁵ European Commission, List of Acquisitions (accessed 10 February 2025). Available at: <https://digital-markets-act-cases.ec.europa.eu/acquisitions>. The reporting obligation for Alphabet, Amazon, Apple, ByteDance, Meta and Microsoft started on 5 September 2023 and for Booking on 13 May 2024.

Amazon	Amazon/Pellicano	No
	Amazon/MX Media	No
	Amazon/Perceive	No
Alphabet	Alphabet/Cameyo	No
	Alphabet/Evaluable AI	No

Source: European Commission.

Aside from the *Microsoft/Activision* merger, none of these acquisitions have been notified under the EUMR. However, the *Microsoft/Activision* merger review started on 30 September 2022, before the reporting obligation applied to Microsoft⁶.

Additionally, the Commission attempted to review Microsoft's partnership with Inflection.AI via the referral mechanism, but the NCAs making the referral requests withdrew them following the *Illumina* ruling, as the deal did not meet their national merger control thresholds⁷.

This raises key questions about the effectiveness of the DMA's reporting obligation, as it has never been used to require a gatekeeper to notify the Commission of a reported acquisition, thanks to the referral mechanism. However, the Commission has not explained why none of the reported acquisitions have been referred.

The lack of referral could stem from NCAs lacking jurisdiction or incentives to scrutinise or refer the acquisitions to the Commission.

However, even when NCAs have call-in powers, as in Denmark, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Norway, Slovenia, and Sweden, they have not used them to refer gatekeepers' acquisitions to the Commission. This suggests that either call-in powers are ineffective in catching these acquisitions due to a lack of competences (e.g., the acquisition has no nexus with the territory) or NCAs see no competition concerns, reducing their incentive to act.

⁶ European Commission, Case M.10646 Microsoft/Activision Blizzard (Accessed 10 February 2025). Available at: <https://competition-cases.ec.europa.eu/cases/M.10646>

⁷ European Commission, Commission Takes Note of the Withdrawal of Referral Requests by Member States Concerning the Acquisition of Certain Assets of Inflection by Microsoft, 18 September 2024 (accessed 10 February 2025). Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_4727

In the latter case, assuming NCAs had the ability but lacked the incentive to refer gatekeepers' acquisitions to the Commission, this suggests that mandatory notification would not significantly improve merger scrutiny of problematic mergers. Instead, it would increase regulatory burdens for gatekeepers, raise administrative costs for competition authorities, and likely lead to unnecessary merger reviews of transactions unlikely to harm competition.

3 Recommendation

While this assessment is limited by the lack of information (no explanation for the absence of referral) and the small sample size (only 13 reported acquisitions), it suggests that introducing a mandatory notification requirement for gatekeepers at the French level would be unnecessary and disproportionate, given that most gatekeepers' acquisitions have not raised competition concerns.

However, if the FCA were to adopt mandatory notification to increase the likelihood of reviewing potentially problematic mergers, it would not necessarily achieve this goal. The requirement must include a local nexus condition, ensuring that only acquisitions with a substantial link to France, such as the target company having significant operations in the country, are subject to review.

The absence of a local nexus has already prevented the German Competition Authority from reviewing the *Microsoft/Inflection.AI* partnership⁸, prompting its president to call for revisions to the German merger control law⁹.

Accordingly, even if mandatory notification were introduced, it would not guarantee that the FCA could review all gatekeeper acquisitions, particularly those lacking a clear connection to the French market.

⁸ Bundeskartellamt, Taking Over Employees May Be Subject to Merger Control In Germany – Bundeskartellamt Not Competent to Review Microsoft/Inflection Transaction As Inflection Has No Substantial Operations in Germany, 29 November 2024 (accessed 10 February 2025). Available at: https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2024/29_11_2024_Microsoft.html

⁹ Janith Aranze, Exclusive: German Authority Wants Rule Change to Catch AI Partnerships, Voices Call-In Concerns, *GCR*, 27 November 2024 (accessed 10 February 2025). Available at: <https://globalcompetitionreview.com/article/exclusive-german-authority-wants-rule-change-catch-ai-partnerships-voices-call-in-concerns>

About

Digital Competition

Digital Competition (<https://www.digital-competition.com/>) is a research and strategy consulting firm dedicated to promoting open digital and competition policies that foster innovation for businesses, law firms, and government agencies. Led by Dr. Christophe Carugati, a passionate and impartial expert in digital and competition policy, the firm combines expertise in law, economics, and policy to deliver cutting-edge research, strategic consulting, think tank initiatives, tailored training programmes, and impactful conferences. Digital Competition is committed to addressing the most pressing challenges in the rapidly evolving landscape of digital and competition policies. This analysis was conducted independently and did not receive any funding.

This paper is part of our Digital Competition Regime Hub (<https://www.digital-competition.com/digitalcompetitionregime>). The Hub provides research on the design, implementation, and enforcement of digital competition regimes worldwide.

We provide research on AI and digital markets and strategic advice on digital competition regimes, including responses to consultations in Europe, the UK and Australia. Our services also include tailored training sessions on AI and digital markets, with dedicated programmes to the European and UK digital competition regimes, as well as speaking engagements at conferences.

Contact us for membership, service, or press inquiries.

Dr. Christophe Carugati



Dr. Christophe Carugati (christophe.carugati@digital-competition.com) is the founder of Digital Competition. He is a renowned and passionate expert on digital and competition issues with a strong reputation for doing impartial, high-quality research. After his PhD in law and economics on Big Data and Competition Law, he is an ex-affiliate fellow at the economic think-tank Bruegel and an ex-lecturer in competition law and economics at Lille University.