

The EU's cloud paradox: promoting competition, procuring sovereignty

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Summary

The EU is pursuing two tracks at once in cloud markets. On one, it is promoting competition with an unusually broad arsenal: the Data Act's binding switching rules, enforcement under Articles 101 and 102 TFEU and, since 25 June 2026, the preliminary designation of AWS and Azure as gatekeepers under the Digital Markets Act (DMA). On the other, it is assembling an industrial-policy architecture, from the Cloud Sovereignty Framework to the proposed Cloud and AI Development Act, that conditions access to public demand on sovereignty requirements. Given that cloud adoption is a precondition for European competitiveness and for artificial intelligence, how these two tracks interact deserves closer scrutiny than the policy debate has so far given it. This Policy Paper examines whether they are in contradiction, and answers: yes, but only under certain configurations, and those configurations are a choice.

On the competition side, the Paper organises the obstacles documented by authorities across jurisdictions into four families of barriers (contractual, technical, strategic and structural) and matches them against the three instruments. The exercise exposes real gaps within the track itself: restrictive software licensing, the most active lock-in mechanism, is a usage problem that no ex ante instrument reaches and that enforcement has addressed only at the tying margin; and the DMA's encounter with cloud carries serious procedural frictions, from designating while the obligations catalogue is still under review to fitting a gateway concept designed for two-sided platforms onto a vertically integrated B2B market.

On the industrial-policy side, the Paper traces how establishment and control requirements have migrated from administrative practice into proposed binding law, and what the exclusionary configurations cost: price premiums of 20% to 30% in comparable regimes, fewer effective bidders in procurement markets that already show competition deficits and legal exposure under Article 63 TFEU where restrictions reach EU-established subsidiaries of foreign parents. On the older question of whether public procurement should serve any objective beyond competitive purchasing, the position taken here is neither purist nor permissive: strategic use of public demand is admissible, but

the evidence shows the exclusionary variant vindicating the purists' warnings, while only Made with Europe configurations survive the strategic school's own test of disciplined design.

The central argument is that the contradiction between the two tracks is real but contingent, not inherent. Contestable markets and reduced strategic dependency are both legitimate objectives; what makes them collide is instrument design and the absence of joint authorship or evaluation. The Paper closes with five coherence conditions: (a) each instrument confined to its own job; (b) a corrected sequence within the competition track; (c) Made with Europe as the default configuration with the burden of justification on structural exclusion; (d) coherence obligations across instruments; and (e) joint measurement of the two tracks' interaction. The conditions do not settle the political choice between openness and strategic autonomy; they demand that whichever balance is struck be done so consciously, against shared standards, rather than emerge as the residue of instruments drafted without regard to one another.

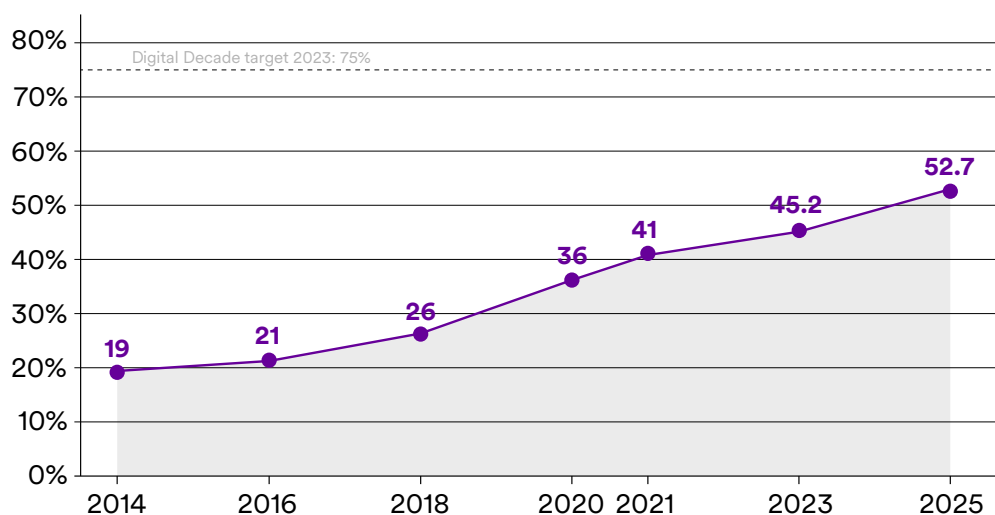
1. Cloud, competitiveness and AI

Cloud computing, the remote provision of computing resources by third parties over the internet on pay-as-you-go terms, has ceased to be one technology market among many. It is the layer on which firms build their capacity to innovate, adapt and compete, and it has become the core infrastructure for artificial intelligence: training and deploying AI models requires a scale of compute that only cloud infrastructure can efficiently provide. Cloud and AI are not adjacent markets but structurally interdependent ones, each amplifying the centrality of the other. This interdependence is, not coincidentally, the argument the Commission has now placed at the centre of its designation case.

European reliance on the technology is deepening quickly. According to Eurostat, 52.7% of EU enterprises used paid cloud services in 2025, an increase of more than seven percentage points over 2023, and 77.5% of those users were classified as highly dependent, meaning they purchase at least one sophisticated service such as database hosting, security software or development platforms (Figure 1). The trajectory has been propelled in part by dramatic price declines: the quality-adjusted price of a representative class of cloud products fell by close to 80% over the 2010s (Byrne, Corrado & Sichel, 2021), turning capital expenditure into operating expenditure for firms that could never have afforded the underlying infrastructure. The Digital Decade programme targets 75% enterprise adoption by 2030. Adoption, in other words, is policy.

Figure 1.

**EU enterprises buying cloud computing services, 2014-25
(% of enterprises)**



Source: Eurostat, Cloud computing statistics on the use by enterprises (isoc_cicce_use); enterprises with 10 or more employees.

Supply, by contrast, is highly concentrated and becoming more so in relative terms for Europe. At the close of 2025, AWS held roughly 29% of the global cloud infrastructure market, Microsoft Azure around 20% and Google Cloud around 13%. In Europe, the three hyperscalers account for an estimated 65% to 70% of cloud infrastructure revenues, while the combined share of European providers has declined from approximately 29% in 2017 to around 15% today (Synergy Research Group, 2025). This concentration is not an accident of conduct alone: it reflects deep structural features, including very high fixed costs of data centre construction, pronounced economies of scale and scope, and ecosystem integration, all of which systematically favour incumbents.

Concentration is not in itself evidence of weak competition. In industries with very high fixed costs and pronounced scale economies, a small number of efficient suppliers can be the competitive outcome rather than its negation, and a long tradition in industrial organisation holds that market structure may reflect efficiency, and that what disciplines incumbents is the credible threat of entry rather than the count of firms (Demsetz, 1973; Baumol, Panzar & Willig, 1982). The competitive concern in cloud therefore rests not on market shares but on conduct and outcomes: switching between providers that the CMA found to be extremely rare, sustained profitability consistent with significant barriers, and the accumulation of contractual, technical and strategic frictions documented in the next section. It is that evidence, not concentration as such, that the pro-competition track responds to.

In this specific technological domain, competition and competitiveness converge: a lack of effective competition among cloud providers restricts choice, quality, innovation and pricing efficiency, and high switching costs act as a barrier to cloud adoption itself, reducing digital competitiveness at both firm and macroeconomic level. Competition in cloud is a precondition for competitiveness, not a rival objective to it (Arnal, 2026a).

This Paper examines an apparent contradiction at the heart of the EU's cloud policy. Precisely because cloud adoption is a competitiveness imperative, the EU has mobilised an unusually broad pro-competition arsenal: a symmetric regulation dismantling switching barriers (the Data Act), classic antitrust enforcement (Articles 101 and 102 TFEU) and, since 25 June 2026, the preliminary designation of AWS and Azure as gatekeepers under the DMA. In parallel, and at comparable speed, it has been assembling a second track of industrial-policy instruments, from the Cloud Sovereignty Framework to the proposed Cloud and AI Development Act, which, in their more restrictive configurations, narrow participation and raise costs in the very markets the first track seeks to open. Applied to the same market at the same time, the two tracks risk pulling in opposite directions. The pages that follow map the barriers that justify the competition track (Section 2), the pro-competition instruments and their internal frictions, including the DMA's uneasy fit with cloud (Section 3), the industrial-policy track (Section 4) and then confront the two: is the contradiction real, and if so, is it inherent or a matter of design (Section 5)? Section 6 derives the coherence conditions under which the EU can pursue both objectives without each undercutting the other.

2. The barriers to contestability

Competition authorities and market studies across jurisdictions, including the UK Competition and Markets Authority (CMA), the French Autorité de la concurrence, the Dutch ACM and the OECD, converge on a remarkably consistent diagnosis of what restricts contestability in cloud markets. Their findings can be organised into four families of barriers, summarised in Figure 2: contractual, technical, strategic and structural (Arnal, 2026a).

Figure 2.
Barriers to contestability in cloud markets

Category	Main mechanisms	Evidence base	Effect on contestability
Contractual	Egress fees on outbound data (ingress is free, exit is not); committed spend agreements locking clients into multi-year minimum expenditure; cloud credits steering startups toward hyperscalers from inception	CMA final decision (2025); Autorité de la concurrence Opinion 23-A-08 (2023); OECD (2025); FTC market inquiry (2023)	Artificially inflated switching costs; customers retained by exit penalties rather than merit; price opacity
Technical	Proprietary and incompatible APIs; limited interoperability between environments; data portability constraints; costly application re-architecture on switching; multi-cloud viable only for highly mature organisations	CMA (2025): full switching between public cloud providers is extremely rare; ACM market study (2022); EC sector inquiry (2022)	Lock-in embedded in system design; prohibitive transition risk, especially for SMEs

Strategic	Software licensing restrictions that make key products more expensive on rival clouds; bring your own licence (BYOL) limits; bundling of infrastructure, platform and software; ecosystem leverage	CMA (2025): materially higher wholesale prices charged to AWS and Google than to Azure customers for the same Microsoft software; CISPE complaint (2022); Google complaint to the EC (2024)	Foreclosure of rivals unable to replicate enterprise bundles; leverage of adjacent software dominance into cloud
Structural	Scale economies and global fixed-cost spreading; vertical integration across IaaS, PaaS and SaaS; reputational and regulatory asymmetries favouring incumbents in regulated sectors; skills, certifications and partner ecosystems coupled to a single architecture	Synergy Research (2025); CERRE (2024); OECD (2025); Manganelli (2026)	Durable entry and expansion barriers; quasi-tying without explicit contracts; supply-side talent lock-in

Source: the author.

Two features of this landscape matter for regulatory design. The first is that the barriers interact and reinforce one another: a customer that has optimised workloads for one provider's proprietary tools, trained its staff on that technology and signed multi-year committed spend agreements faces cumulative switching costs that may be prohibitive in practice, whatever any single barrier looks like in isolation. Many of these frictions are not inevitable consequences of technology but deliberate architectural choices: the literature on digital ecosystems documents how non-compatibility has repeatedly served to entrench dominant positions (Kretschmer & Schneider, 2022). The CMA's finding that full switching between public cloud providers is extremely rare is the empirical signature of that accumulation.

The second feature is that the four families sit at different points on the line between transactional friction and structural dependency. Contractual barriers, and the surface layer of technical ones, are essentially transactional: egress fees, switching charges, transition terms and closed interfaces can be corrected through targeted, symmetric rules of the kind the Data Act contains. Strategic and structural barriers, together with the deeper layer of technical ones (proprietary architectures, the cost of re-architecting applications), amount to structural dependency: they are embedded in system design, licensing terms and market structure, and outlast any regulation of fees. This distinction organises the division of labour among the EU's instruments, which the next section maps.

3. The pro-competition track: instruments and internal frictions

3.1. The Data Act: transactional frictions

Regulation (EU) 2023/2854, fully applicable since 12 September 2025, is the instrument specifically built for the transactional layer, and its design differs from the DMA in one decisive respect: it is symmetric. It applies to all providers of data processing services, large and small, without prior designation, thereby avoiding the designation bottleneck that has defined the DMA's encounter with cloud.

Its Chapter VI establishes binding switching rules: providers must support customer switching, complete transitions within 30 days, and progressively eliminate switching charges. Since January 2024 providers may pass on only the direct costs of migration; from 12 January 2027, all switching-related charges are prohibited. The Act's cornerstone concept of functional equivalence, requiring migrated services to maintain sufficient technical continuity, carries a recognised design tension between dynamism and equivalence: mandating baseline compatibility across services risks a lowest common denominator outcome that dulls differentiation (Ennis & Evans, 2023), and the economic literature on the proposed cloud rules raised similar efficiency concerns before adoption (Gans, Hervé & Masri, 2024). Chapter VIII requires providers of PaaS and SaaS services to make open interfaces publicly available and to ensure compatibility with common specifications or harmonised standards, for which the Commission issued a standardisation request to CEN and CENELEC in July 2025. Enforcement sits with national authorities, with penalties of up to 4% of global turnover foreseen, which raises familiar concerns about fragmentation and uneven application.

There are early signs of market effect. Microsoft, AWS and Google have introduced free data transfer programmes for switching customers globally, including in jurisdictions not directly covered, a shift in provider behaviour

traceable to regulatory pressure. The CMA, however, found in its 2025 final decision that customer uptake of these programmes had so far been low, and cautioned that their voluntary character makes them revocable (CMA, 2025). The relevant precedent is cautionary. Under the 2018 Free Flow of Non-Personal Data Regulation, the EU first tried a voluntary approach to cloud switching: Article 6 tasked industry with developing self-regulatory codes of conduct on data portability, which materialised as the SWIPO codes. Uptake was minimal, adherence carried no monitoring or enforcement, and providers' commercial practices remained essentially unchanged. The Commission's own impact assessment for the Data Act documented this failure and relied on it to justify replacing self-regulation with binding rules. The episode suggests a division of labour: voluntary mechanisms can play a useful transitional role, but they are no substitute for binding obligations, because they are revocable and because those who make the commitments also control their scope. That was true of SWIPO for barriers as tractable as data portability; there is little reason to expect more of voluntary programmes today.

The Data Act's limits are equally clear. Its provisions on charges do not capture the full cost of switching, which includes application re-architecture, penalties under long-term commercial agreements and the retraining of technical teams. It does not address market power directly. And, crucially for what follows, it does not reach software licensing: it regulates the cloud service, not the licence conditions of the software that runs on it.

3.2. Articles 101 and 102 TFEU: the licensing front

EU competition law provides the ex post instruments. Article 101 TFEU prohibits restrictive agreements, including vertical arrangements that foreclose market access, which in cloud can encompass exclusive licensing agreements or contractual terms limiting interoperability or portability. Article 102 prohibits abuse of dominance and has long been interpreted to cover tying, bundling, discriminatory pricing and loyalty-inducing rebates, all of which map onto cloud business models. The structural limits are equally well known: enforcement is reactive and case-specific, requires demonstrating foreclosure effects through detailed economic analysis in complex, layered ecosystems where market boundaries are genuinely hard to draw (Caffarra & Scott Morton, 2021), and the duration of investigations erodes deterrence. That insufficiency was the diagnosis of the Commission's own special advisers (Crémer, de Montjoye & Schweitzer, 2019) and, ultimately, the original justification for the DMA. A countervailing caution deserves acknowledgement. Petit and Teece (2021) argue that in digital markets the competition that matters is dynamic

rather than static: incumbents are typically displaced by technological shifts and new entrants, not by rivals gradually gaining share, and an enforcement posture calibrated to static market shares risks chilling the very investments through which that displacement occurs. The right conclusion to draw from this argument, however, is not abstention but precision: enforcement should target specific, well-documented conduct that forecloses rivals, such as the licensing practices discussed below, rather than scale or integration as such.

The reason this toolkit matters more than its limits suggest is the phenomenon of strategic adaptation. As regulation closes the classic levers of lock-in (egress charges, switching terms), incumbents reinforce control through the licensing perimeter, where regulation remains silent (Arnal, 2026a). The documented mechanisms, first analysed systematically in Jenny (2021), include restrictions on bring your own licence rights when software is deployed on rival clouds, and price differentials for running key products off-platform: the CMA found that Microsoft charges AWS and Google materially higher wholesale prices for its own software than it charges Azure customers for the same products, and Google has claimed that moving legacy workloads to a non-Microsoft cloud can cost several times more. The open analytical question, whether such practices constitute a structural barrier or a legitimate exercise of intellectual property rights, is genuinely contested; what is not contested is that they operate today, at scale, in the seam between instruments.

The enforcement record on this front is real but partial, and the distinction matters. Two different mechanisms are at stake. Tying and bundling are a purchase problem: when a customer buys product A (the productivity suite), product B (Teams) comes attached, so rivals cannot compete to supply B. That is what the Teams case addressed: in September 2025 the Commission accepted commitments from Microsoft covering the tying of Teams to the productivity suites, interoperability for rival communication tools and data portability. Restrictive cloud licensing is a usage problem: software the customer already owns, such as Windows Server or SQL Server, can be run cheaply on Microsoft's own cloud but becomes far more expensive to deploy on AWS or Google Cloud, because the licence terms restrict or penalise bring your own license (BYOL) rights on rival infrastructure. The customer's existing software thus acts as a magnet towards Azure. Resolving the first problem does not touch the second: the Teams commitments are proof of concept that Article 102 can bite at the software-cloud frontier, but the pricing differentials and BYOL restrictions at the heart of the cloud complaints remain without an EU-level decision. The CISPE complaint was settled privately in July 2024 on terms that excluded AWS and Google from its benefits (CISPE, 2024), and Google's September 2024 complaint on Microsoft's cloud licensing never produced a formal proceeding before being withdrawn in November 2025, once the Commission had opened its DMA market investigations (Google Cloud, 2024). The licensing front is covered in theory, exercised at the margins.

3.3. The DMA and cloud: a structural mismatch

Cloud computing services have been listed among the DMA's core platform services from the outset (Article 2(2)(i)). On 18 November 2025 the Commission opened three parallel market investigations: two qualitative designation investigations (AWS and Azure) and a third, under Article 19, into whether the DMA's obligations need updating for cloud at all. The framing already carried a signal: the investigations referred to practices that may limit competitiveness and fairness, a formulation that departs from the DMA's own statutory pairing of fairness and contestability. On 25 June 2026 the Commission communicated its preliminary view that AWS and Azure, the largest and second largest cloud computing services in the EU, should be designated as gatekeepers because each constitutes an important gateway between businesses and their customers, with the reasoning leaning heavily on the AI-cloud nexus: AI tools and partnerships have become a decisive factor in cloud procurement, and both services retain a substantial share of AI-driven demand within their own ecosystems. Amazon and Microsoft may submit written representations until September 2026; since a market investigation must close within 12 months, the final decision is due by November 2026, with six months to comply if designation is confirmed. Litigation before the General Court is a near certainty, the ByteDance precedent suggests interim suspension will not be granted, and the combined average duration of proceedings before the two EU courts is close to five years (Botta, 2026).

The DMA conceptualises the gatekeeper as an intermediary between business users and end users: the model of the multi-sided platform. Cloud, particularly at the IaaS and PaaS layers, forms a vertical pipeline in which providers supply infrastructure to businesses that then serve their own end users. The provider does not intermediate access to those end users and often has no visibility into them; many workloads are purely internal. This is the gateway problem (Zoboli, 2026). Put simply, cloud may be indispensable infrastructure without necessarily being a gateway in the strict DMA sense. That distinction matters because the DMA was not designed to regulate every powerful digital infrastructure provider, but a particular type of bottleneck between businesses and users.

The quantitative thresholds fail mechanically as a result. Designation is presumed at €7.5 billion of annual EEA turnover (or €75 billion of market capitalisation) combined with 45 million monthly active end users and 10,000 yearly active business users for the service in question. In cloud, the direct users are enterprise customers, whose numbers sit structurally far below the end-user threshold; this is not an empirical gap that adoption will close but a reflection of how the service is consumed. That leaves the qualitative route

of Article 3(8), which permits designation after a market investigation if three substantive criteria are met: significant impact on the internal market, the status of an important gateway for business users to reach end users, and an entrenched and durable position. For the hyperscalers, the first and third criteria are comfortably satisfied. The legal battleground is the second. The issue is therefore not whether AWS or Azure matter for the internal market. Plainly, they do. Nor is it whether their position is durable. The harder question is whether they perform the specific intermediation function that the DMA requires.

The qualitative factors the article enumerates (network effects, scale and scope economies, data advantages, lock-in, vertical integration) are indicators of the importance of an existing gateway; they cannot construct a gateway function where intermediation between business users and end users is structurally absent or attenuated. A designation resting on economic characteristics alone would conflate market power with the specific regulatory concept of gatekeeping the DMA was designed to address. Two pathways have been proposed to bridge the gap, cloud marketplaces (where genuine two-sided dynamics exist between independent software vendors and enterprise customers) and indirect ecosystem capture; both are analytically coherent, and both stretch the framework beyond its original design parameters (Manganelli, 2026). The tension is a known fault line of the regulation: ecosystems dominate the competition policy discourse yet are nearly absent from the DMA's legal text, a divide the General Court only began to bridge in ByteDance by supplying an ecosystem definition for designation purposes (van den Boom & Hornung, 2025). The cloud designations will test how much weight that bridge can bear. They will also test whether the DMA can move from regulating platforms that intermediate transactions or attention to regulating infrastructures that shape digital dependence more indirectly.

Even where designation succeeds, the obligations catalogue is poorly calibrated for cloud. The most notable gap is the absence of a cloud-to-cloud interoperability mandate: Article 7 establishes a strong interoperability regime, but it applies only to number-independent interpersonal communication services, that is, messaging, despite interoperability being the core of the contestability concerns identified in cloud markets. The obligations that would apply (restrictions on combining personal data, prohibitions on tying, data portability requirements) were drafted with consumer-facing platforms in mind. Nothing in the catalogue specifically addresses cross-market licensing practices.

And a definitional inconsistency completes the picture: the DMA defines cloud by reference to the original NIS Directive of 2016, since replaced by NIS2, while the Data Act does not use the term at all, subsuming cloud within data processing services. The Union's key instruments on cloud do not share a definitional language. The result is an uncomfortable combination: the Commission is trying to bring cloud within the DMA at the same time as it is

still examining whether the DMA’s obligations are fit for cloud. That is why the Article 19 investigation is not a technical add-on. It is the condition for making designation effective.

Hence the structural tension noted across the commentary (Tyagi, 2026; Zoboli, 2026): the Commission is pursuing designation under a framework whose suitability for cloud it is simultaneously assessing. Whether the designation ultimately matters will be decided less in the designation decision itself than in the Article 19 investigation, whose stakeholder roundtables of July 2026 cover technical interoperability, the economic conditions of procurement and contractual terms. Section 6 returns to what that recalibration should contain.

3.4. Taking stock: what reaches what

The three instruments can now be read together. Figure 3 maps the four families of barriers identified in Section 2 against the Data Act, Articles 101 and 102 TFEU and the DMA as it would apply if the June designation is confirmed under the obligations catalogue currently in force. The DMA column is deliberately a snapshot: the Article 19 investigation may yet update the catalogue, and the point of the snapshot is precisely to show what that update needs to deliver. Two patterns emerge, one by row and one by column.

Figure 3.
Which instrument reaches which barrier

Barrier	Data Act	Articles 101 and 102 TFEU	DMA (obligations catalogue as it stands, if designation is confirmed)
Contractual	Yes, by design: switching support, 30-day transitions, charges limited to direct costs and prohibited from January 2027. Does not capture re-architecture costs or penalties under long-term agreements	In theory (exploitative or foreclosing terms under Article 102), rarely exercised; FTC and national inquiries active	Partially: portability and data-combination obligations drafted for consumer platforms; no provision targeting committed spend or credits

The pro-competition track: instruments and internal frictions

Technical	Yes, partially: open interfaces for PaaS and SaaS, functional equivalence; effectiveness hinges on CEN-CENELEC standards still in development	Only where design choices amount to abusive foreclosure; evidentiary burden high	No cloud-to-cloud interoperability mandate: Article 7 covers messaging only. The main calibration gap
Strategic (licensing and bundling)	No: regulates the cloud service, not the licence conditions of the software running on it	Covered in theory and exercised at the margins: Teams commitments (2025) resolve tying to productivity suites; cloud licensing differentials remain without an EU-level decision; CISPE settled privately (2024), Google complaint pending	No: no obligation specifically addresses cross-market licensing practices, even after designation
Structural	No: symmetric transactional instrument, does not address market power	Ex post and case by case; slow relative to market dynamics; merger control at the perimeter	In principle yes: this is the DMA's purpose; in practice contingent on the gateway construction surviving judicial review and on Article 19 recalibration

Note: the DMA column assesses the obligations catalogue currently in force (Articles 5 to 7). The ongoing Article 19 investigation may lead to updated obligations for cloud services; the column therefore describes the baseline against which any such recalibration should be measured, not a prediction of the regime's final shape.

Source: the author.

The matrix exposes the state of the track. Reading down the strategic row: the Data Act does not reach licensing by design, the DMA does not reach it even with designation, and competition law reaches it in theory but has been exercised at EU level only at the tying margin. The single most active lock-in mechanism in today's cloud market has no ex ante instrument and a thin ex post record. Reading across the columns: the instrument the Commission has chosen to activate first, designation, is the one whose coverage is most contingent, resting on a legally novel gateway construction and an obligations catalogue that misses the two barriers (cloud interoperability and licensing) that matter most.

How much of this pattern is inevitable, and how much is a choice, is best seen in comparison. The UK worked from an equivalent evidentiary record: the CMA closed its cloud infrastructure market investigation on 31 July 2025 with findings materially identical to the Commission's diagnosis, namely that AWS and Microsoft hold significant and entrenched market power, that

full switching between public cloud providers is extremely rare, and that Microsoft's licensing weakens the competitive constraint AWS and Google can exert. Its inquiry group recommended opening strategic market status (SMS) investigations, the functional analogue of gatekeeper designation under the UK's digital markets regime, against both providers.

The CMA Board then assembled the same three types of instrument in a different order. In March 2026 it declined to prioritise the cloud SMS designations, citing market developments: both firms had introduced changes on egress fees and interoperability, extending Data Act style benefits to UK customers, with progress to be reviewed after six months. Instead, in May 2026 it launched an SMS investigation into Microsoft's business software ecosystem (Windows, Office, Teams, Copilot and server products), with a designation decision due by February 2027, aimed squarely at the licensing practices its cloud investigation had identified as unresolved.

The comparison is not that one authority acted and the other did not; both acted. Working from the same evidence, London chose monitored commitments on the infrastructure layer and pointed its designation instrument at licensing, the very cell that the EU matrix leaves uncovered, while Brussels chose designation of the infrastructure layer and left licensing without a dedicated instrument. These are frictions internal to the pro-competition track: real, consequential, but in principle correctable through sequencing and the Article 19 recalibration. The deeper problem, to which the paper now turns, comes from outside the track.

4. The industrial-policy track

The DMA proceedings do not exhaust the EU's response to cloud concentration. In parallel, and at considerably higher speed, the Union has been building an architecture of origin preference in cloud procurement whose stated rationale is not contestability but sovereignty, resilience and strategic autonomy (Arnal, 2026b).

Three developments define the track. The first is the Commission's Cloud Sovereignty Framework of October 2025, an administrative methodology scoring providers on eight sovereignty objectives across five levels (SEAL-0 to SEAL-4), applied for the first time in the €180 million Sovereign Cloud tender. The award, in April 2026, went to European providers; no bidder reached SEAL-4, three fully European consortia reached SEAL-3, and a consortium relying on a Thales-Google joint venture was admitted at the SEAL-2 eligibility minimum.

The outcome should be read with restraint: a single tender of €180 million says little about how these configurations would perform at hyperscale workloads. What it offers is the first practical data point on the framework's own terms: the most demanding level, which in practice requires a fully European stack, attracted no bids; high assurance proved attainable through European suppliers at this scale; and the framework itself admitted controlled non-EU technology as an eligible route to its sovereignty objectives.

The second development is the Cloud and AI Development Act, proposed on 3 June 2026 as the centrepiece of the Tech Sovereignty Package. It would convert the sovereignty requirements applied so far through administrative channels into statutory assurance and procurement conditions under Article 114 TFEU, with four Union assurance levels and a Union added value criterion in the procurement of cloud and AI services. The migration from administrative practice to binding law brings judicial review and exposure to the EU's external commitments, which is welcome; it also entrenches, in legislation, a technique of establishment and control requirements that reaches the corporate identity of the operator rather than the origin of the product.

The third is the accumulating institutional practice beneath the legislation, from the ECB's requirement that digital euro providers be EU nationals controlled by EU nationals, imposed through its own procurement discretion without any regulation mandating it, to national moves such as the migration of France's Health Data Hub from Azure to a European provider.

The costs of this track are measurable. The economic evidence on origin preference is consistent: local content and control requirements in comparable regimes generate cost premia typically in the range of 20% to 30%, concentrated precisely in sectors with high scale economies (Hufbauer et al., 2013); each additional bidder in EU procurement reduces prices by around 2% (Matilla-García & Vega, 2025), while the share of single-bidder tenders in the EU has nearly doubled in a decade (European Court of Auditors, 2023). The legal exposure is equally material: requirements that exclude or penalise EU-established subsidiaries by reference to the nationality of their ultimate parent operate within the space protected by the fundamental freedoms, most directly Article 63 TFEU, and none of the current instruments has explicitly conducted the proportionality assessment that such restrictions require (Arnal, 2026b). Whether these costs are the acceptable price of legitimate objectives, or the symptom of a policy at war with itself, is the question the next section confronts.

5. An apparent contradiction, examined

Set side by side, the two tracks collide at three precise points. The first is arithmetic: the competition track measures success in more switching, more effective bidders and lower prices, while establishment and control requirements structurally reduce the pool of eligible suppliers in procurement markets that already exhibit competition deficits. One track works to enlarge the denominator that the other shrinks. The second collision concerns the treatment of the same firms. The competition track presupposes that the hyperscalers remain in the European market: the DMA does not exclude anyone, it disciplines conduct precisely so that competition with and around these firms improves. The exclusionary configurations of the sovereignty track presuppose the opposite: that these same firms, or their EU-established subsidiaries, which under Kolin¹ remain EU economic operators, should be barred from certain contracts by reference to the nationality of their ultimate parent, regardless of how they behave. One track says stay and behave; the other says no conduct will suffice. The incoherence has a concrete bearer: the European public buyer, who is promised more competition by the first track and pays the premium of a thinner bidding field under the second. The third is rhetorical, and legally the most corrosive: the Commission's framing of the cloud investigations in terms of competitiveness and fairness, rather than the DMA's statutory pairing of fairness and contestability, imports industrial-policy objectives into a competition instrument. That blurring weakens the designation's legal robustness before the General Court, hands the designated firms the argument that the DMA is protectionism by other means, and thereby undermines the credibility of the competition track itself.

¹ Judgment of 22 October 2024, Kolin, C-652/22, EU:C:2024:910 (Grand Chamber). The Court held that economic operators from third countries that have not concluded an international agreement with the EU guaranteeing reciprocal access to public procurement (in that case, a Turkish contractor in a Croatian railway tender) cannot invoke the EU procurement directives, including their equal-treatment guarantees; whether and on what terms such operators participate falls within the EU's exclusive competence under the common commercial policy, so Member States cannot grant them access rights of their own accord, and contracting authorities that do admit them may subject them to less favourable treatment. The regime turns on establishment, not on ultimate ownership: companies incorporated and established in the EU are EU economic operators for procurement purposes irrespective of the nationality of their parent. Hence the point in the text: exclusion of third-country operators without an agreement is legally available, but differentiation reaching EU-established subsidiaries must be justified under the fundamental freedoms, not under Kolin.

There is a reasonable case that no contradiction exists. The two tracks do different jobs: one sets rules for how firms compete, the other decides what the public sector buys. Sovereignty instruments respond to risks that competition analysis is not designed to capture, such as exposure to foreign legal frameworks like the US CLOUD Act, or the resilience of services on which entire sectors depend. And wanting both open markets and less strategic dependency is not incoherent in itself; industrial policy and competition rules have coexisted for as long as both have existed. On this reading, the two tracks are not in conflict but simply divide the work between them.

Behind the two tracks lies an older question: whether public procurement should pursue any objective beyond obtaining the best offer under competitive conditions. The competition-oriented school answers no, warning that every horizontal use of procurement distorts the market it buys from and that the distortion is paid by the buyer (Sánchez Graells, 2015). A second tradition treats public demand as a legitimate and powerful policy lever, from innovation procurement (Edquist & Zabala-Iturriagagoitia, 2012; Mazzucato, 2013) to the recent rehabilitation of industrial policy in mainstream economics, whose central lesson is that design and discipline matter more than the label (Juhász, Lane & Rodrik, 2024). EU law sits closer to the second: the 2014 directives expressly allow environmental, social and innovation criteria linked to the subject matter of the contract, upheld by the Court since *Concordia Bus*.

This paper supports an intermediate line between these two schools of thought, contingent on design. Where sovereignty requirements take the form of structural exclusion (*Made in Europe*), the collision with the competition track is direct and measurable in premiums, bidder counts and litigation risk. Where they take the form of operational safeguards under which third-country technology may participate within a controlled framework (*Made with Europe*), the collision largely disappears. The Sovereign Cloud tender is the natural experiment: no bidder reached the highest sovereignty level, three fully European consortiums reached SEAL-3, and a consortium built on a Thales-Google joint venture was admitted at the eligibility minimum. The same lesson emerges from SAFE's accommodation of partner countries in defence procurement. Full structural exclusion proved operationally out of reach at the technological frontier; operational mitigation proved workable. The objectives are compatible; certain configurations of instruments are not.

If the contradiction is a design failure, its cause is institutional. Each instrument has been authored separately (competition enforcement in one directorate, the sovereignty framework in another, the procurement policy of the ECB under its own discretion), none was drafted to fit the others, and no mechanism evaluates their cumulative effect on the same market. The aggregate has no author (Arnal, 2026b). That diagnosis is, in its way, encouraging: a contradiction produced by uncoordinated accumulation, rather than by deliberate strategy, can be corrected by design. The final section sets out how.

6. Five coherence conditions

Five conditions follow from the analysis. They do not settle the choice between openness and strategic autonomy, on which reasonable positions differ and which different sectors may legitimately resolve differently. They set the terms under which the EU can pursue both objectives at once without each track undercutting the other, and they demand that whatever balance is struck be struck consciously, against shared standards, rather than emerge as the residue of instruments drafted without regard to one another.

6.1. Make each instrument stick to its job

Section 5 gave the coherence view its due: the two tracks can divide the work between them, one disciplining conduct, the other deciding what the public sector buys. But that division of labour holds only if each instrument stays on its side of it. The DMA's job is fairness and contestability; framing its cloud investigations in terms of competitiveness imports industrial-policy objectives into a competition instrument, weakens the designation before the General Court and hands the designated firms the protectionism argument. Symmetrically, sovereignty objectives should be pursued through the instruments built for them (procurement conditions, certification and investment), not smuggled into competition enforcement. Zero-sum reasoning, the assumption that constraining US providers automatically creates opportunities for European ones, is not a substitute for either policy.

6.2. Fix the sequence within the competition track

The frictions identified in Section 3 have a correct order of operations. Let the Data Act deploy through its January 2027 milestone and evaluate what it has and has not achieved before layering further obligations on the same transactional barriers. Move now on licensing, the usage problem that no ex ante instrument reaches: the Teams' commitments show that Article 102 can produce results at the software-cloud frontier, the licensing practices identified in the withdrawn complaints deserve an own-initiative proceeding, and coordination with the CMA, whose decision on Microsoft's business software ecosystem is due by February 2027, would converge remedies rather than fragment them. And treat Figure 3 as the baseline against which the Article 19 recalibration must be judged: if the updated catalogue does not deliver cloud-to-cloud interoperability, address licensing and adapt the economic-conditions obligations to enterprise markets, designation will have added legal risk without adding coverage, a symbol with a five-year court docket attached.

6.3. Make Made with Europe the default configuration

Where sovereignty objectives (security, resilience and reduced dependency) can be met through operational conditions verifiable whatever the supplier's nationality, that configuration should be the default, and instruments that exclude structurally should bear the burden of justifying the additional cost, the thinner bidding field and the legal exposure they entail. The Sovereign Cloud outcome supports the default: the level amounting to structural exclusion attracted no bids, while operational routes were exercised. The burden is highest where differentiation reaches EU-established subsidiaries, which remain EU economic operators under Kolin whatever the nationality of their ultimate parent: such instruments must articulate an overriding reason of public interest and demonstrate proportionality under the fundamental freedoms, most directly Article 63 TFEU. Whether that burden can be met for a narrow core of workloads is a political choice; meeting it explicitly is not optional.

6.4. Impose coherence obligations across the two tracks

A single cloud tender can today engage the Data Act, DMA obligations (if designation is confirmed), the Cloud Sovereignty Framework, funding-programme eligibility rules and, once enacted, the Cloud and AI Development Act, each with its own definitions, review avenues and author. Coherence requires three concrete things: (a) harmonised definitions across instruments (EU origin, eligible establishment and permissible third-country control); (b) a mechanism that assesses the cumulative effect of stacked instruments on the same procurement, rather than each in isolation; and (c) review procedures commensurate with the substantive effect of each instrument, whatever its legal vehicle.

6.5. Measure both tracks against the same scoreboard

Because the two tracks pursue different objectives, each should be judged by its own indicators: the competition track by switching rates, the number of effective bidders, the single-bid share in cloud tenders and price developments for public and enterprise buyers; the sovereignty track by measures of dependency actually reduced, such as the share of critical public workloads with tested exit and continuity arrangements and the diversification of suppliers across assurance levels. What is missing today is not either set of indicators but their joint reporting. Published together, they would make the cross-effects visible: a sovereignty instrument that improves dependency indicators while bidder numbers collapse and prices rise is imposing the very costs this paper documents, and a competition instrument that improves switching while dependency deepens is missing something too. The first half of 2027, when the Data Act's full prohibition of switching charges, the CMA's decision on Microsoft's software ecosystem and, if confirmed, the start of DMA compliance land within weeks of one another, is the natural first reporting window: a convergence of deadlines that joint measurement would turn into an evaluation.

7. Conclusions

Europe's cloud policy is not short of instruments; it is short of an author. On the competition track, the Data Act is deploying, Article 102 has shown it can bite at the software-cloud frontier, and the DMA is in the process of being extended, with real procedural strain, to infrastructure. On the industrial-policy track, sovereignty requirements have migrated from administrative practice into proposed binding law. Each instrument is defensible on its own terms. The difficulty is their interaction: in the exclusionary configurations that parts of the second track have adopted, the two pull in opposite directions, and the cost lands on the same European firms and public buyers whose competitiveness both tracks invoke.

This Paper's contribution is to show that the collision is contingent rather than inherent, and therefore correctable. It disappears under identifiable design conditions: instruments confined to their own objectives, a corrected sequence within the competition track anchored in the Article 19 recalibration, Made with Europe as the default configuration with the burden of justification on structural exclusion, coherence across instruments, and joint measurement of their interaction. None of these conditions resolves the choice between openness and strategic autonomy, which is political and which different sectors may legitimately resolve differently. What they rule out is the current method: striking the balance inadvertently, as the aggregate of decisions taken in isolation.

The test will come quickly. In the first half of 2027, the Data Act's full prohibition of switching charges, the CMA's decision on Microsoft's software ecosystem and, if the designation is confirmed, the start of DMA compliance will land within weeks of one another, while the Cloud and AI Development Act moves through the legislature. Whether that convergence is treated as a portfolio to be sequenced and measured, or as deadlines that happen to coincide, will show whether the balance is at last being struck consciously.

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