

# ENERGY AND DATA CENTERS: KEY COMPETITION CONSIDERATIONS



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# CPI ANTITRUST CHRONICLE

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## ENERGY AND DATA CENTERS: KEY COMPETITION CONSIDERATIONS

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Power supply is the lifeblood of any data center. Securing a viable grid connection is both essential and increasingly challenging, particularly in a number of jurisdictions (such as the UK and Ireland) where grid capacity is under severe pressure and connection queues stretch into the 2030s. Against this background, we highlight below a recent development in competition policy, whereby competition authorities are beginning to focus on energy supply and consumption as key parameters of competition and their own specific competition risks. Given the ongoing competition enforcement and regulatory focus on data centers and key services they may support (in particular Generative Artificial Intelligence), we recommend that data center developers and their investors, as well as energy suppliers, keep a watching brief on this development and provide an overview of latest public activities to assist with this effort.

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# I. COMPETITION FOCUS ON ENERGY

On December 17, 2025, the French Competition Authority (“FCA”) published a study (the “Study”), following an earlier opinion published in June 2024 on the competitive functioning of the generative AI sector (Opinion No. 10 24-A-05) (the “Opinion”) – you can view the FCA’s English press release [here](#). The Opinion and the Study are of particular interest for all stakeholders in the AI sector, but also energy suppliers and generators, as they start to map out how European competition authorities might think about enforcement priorities in this space in the near future.

## A. Energy Access as a Specific Area of Focus

In its Study, the FCA focused on the energy and environmental footprint of AI, highlighting access to electricity and land as potential barriers to entry on this market. The FCA points to:

- grid congestion and length of grid connection delays (up to 5-7 years), especially in congested areas;
- preferential energy supply agreements secured by large digital players;
- excessive reservation of electricity or land capacity, potentially foreclosing access to these inputs for competitors; and
- risks of discriminatory long-term supply contracts (the **Power Purchase Agreements** or **PPAs**) by incumbent energy suppliers.

According to the FCA, these practices are liable to produce foreclosure effects and raise prices to the detriment of other market participants. This places data center siting strategies, long-term PPAs and grid capacity reservations within the scope of potential competition scrutiny.

## B. Environmental Performance and Standardization

The FCA identifies ‘frugal AI’ (i.e. minimization of the environmental impact and resource consumption of AI) as a new parameter of competition, capable of fostering innovation and entry. At the same time, it warns against:

- Unsubstantiated environmental claims relating to frugal AI (‘greenwashing’);
- Refusals to disclose environmental footprint data, in particular by dominant players or through parallel behavior, which may hinder the emergence of frugality as a parameter of competition by preventing customers from assessing and comparing AI solutions on environmental performance; and
- Anti-competitive conduct within standardization processes – the FCA supports the development of national, European and international standards to measure AI’s environmental footprint, noting potential pro-competitive benefits such as transparency and comparability.

As a result of these risks, environmental claims and participation in standard-setting initiatives require robust competition compliance safeguards.

# II. DATA CENTERS ALREADY IN THE COMPETITION SPOTLIGHT

While the above area of focus is a relatively new development, it is fair to say that data centers have been in the competition spotlight across a number of jurisdictions for a sustained period of time.

## A. Dawn Raids in the European Data Center Construction Sector

In November 2024, the European Commission (“EC”) [announced](#) dawn raids at the premises of companies active in the data center construction sector and formal requests for information being sent to several companies. The EC has expressed concern that companies in this sector have breached Article 101 of the Treaty on the Functioning of the European Union by colluding not to compete for each other’s employees (“no-poach agreements”).

Through this action, the EC is seeking to tackle not only competition concerns in the data center sector, but also in labor markets, as competition authorities across the globe have been shining a spotlight on anti-competitive behaviors at that particular level of the supply chain. The investigation is ongoing.

## B. Market Investigations in Public Cloud Infrastructure Services

Both France and the UK recently used their market investigation powers to scrutinize the public cloud infrastructure industry – respectively in 2022-2023 and 2023-2025. In both instances, the competition authorities identified the importance of high-capacity data center ownership for

market expansion across the cloud value chain, and the sizeable advantage held by only two or three “hyperscalers” in that area. Both authorities concluded their review by turning to the prospect of future ex ante regulation for digital markets as an effective way to address competition concerns.

### III. TREATMENT OF DATA CENTERS UNDER EU AND UK DIGITAL MARKET REGULATION

#### *A. At the EU Level*

Cloud services fall within the scope of the EU’s Digital Markets Act (“DMA”). In particular, the DMA definition of “cloud computing services” is drafted broadly to capture any digital service enabling on-demand administration and remote access, regardless of the specific service model. Data storage services provided by data centers may well take the form of cloud computing – where they do, they will fall within the remit of the DMA.

Only cloud computing service providers which are considered to be an important gateway for operators to reach end-users are at risk of being designated “gatekeepers” by the EU Commission and having to comply with the obligations and prohibitions set out in the DMA (for example to facilitate better interoperability for easier switching and to secure fairer access terms).

After a first wave of designations which focused on other categories of services (including operating systems and online intermediation platforms), the EU Commission is currently conducting two investigations in view of determining whether Amazon Web Services and Microsoft Azure should be designated for their cloud computing services.<sup>2</sup>

#### *B. At the UK Level*

The UK digital regime is more recent than the EU regime. To date, the CMA has carried out designation investigations in relation to (1) general search and search advertising services, and (2) mobile platforms. The CMA also announced on March 31, 2026 that it would launch a further designation investigation into Microsoft’s business software ecosystem in May 2026.

As to public cloud infrastructure services, while the CMA had previously signaled that it would recommend opening a designation investigation in this sector in early 2026, it instead announced on 31 March 2026 that it had secured commitments from Microsoft and Amazon to support greater choice for businesses and public sector organizations in the UK. These proposed measures are aimed at reducing impediments to switching between cloud service providers (in particular via the charging of high egress fees and limiting the interoperability of cloud services). This effectively by-passes a formal designation process under the UK digital markets regime, though the CMA has stated that it will continue to actively engage with the hyperscalers to secure effective solutions for customers. Alongside this, the CMA is set to launch a targeted designation investigation into Microsoft’s business software ecosystem (comprising tools such as Windows, Word, Excel, Teams, and Copilot) in May 2026. The CMA has stated that designating Microsoft in relation to these activities would enable it to act on a major concern identified during its cloud market investigation – Microsoft’s use of software licensing reducing competition in cloud services.<sup>3</sup>

### IV. MORE COMPETITION SCRUTINY LIKELY AS GENERATIVE AI IS A GROWING PRIORITY FOR PUBLIC AUTHORITIES

Data centers and competition concerns relating to their energy requirements are likely to remain in the spotlight for the foreseeable future, particularly those set to support the infrastructural needs of booming AI services. The rapid evolution of Generative AI has prompted a wave of scrutiny from authorities and policymakers around the world. Looking at authorities with competition functions specifically, as AI technologies become increasingly central to economic growth and digital innovation, regulators are grappling with the challenge of fostering innovation while ensuring that markets remain open, competitive, and fair.

In France, this has led to an early and sustained policy effort, starting with the national AI strategy launched in 2018 and followed, in March 2024, by 25 recommendations from the AI Commission launched by the French Prime Minister, notably aimed at strengthening computing capacity, improving access to data and contributing to global AI governance.

<sup>2</sup> See November 2025 European Commission press release: [https://digital-markets-act.ec.europa.eu/commission-launches-market-investigations-cloud-computing-services-under-digital-markets-act-2025-11-18\\_en](https://digital-markets-act.ec.europa.eu/commission-launches-market-investigations-cloud-computing-services-under-digital-markets-act-2025-11-18_en).

<sup>3</sup> See CMA press release, 31 March 2026: <https://www.gov.uk/government/news/cma-announces-package-of-actions-on-business-software-and-cloud-services>.

At the European and international levels, this momentum has translated into an increasingly dense regulatory landscape. The EU AI Act,<sup>4</sup> which will largely be applicable from August 2026, introduces new obligations for providers of large generative AI models, alongside broader digital regulations such as the Data Act.<sup>5</sup> Other initiatives such as the UK Bletchley Declaration and international events, for example the February 2025 AI Action Summit in France, reflect the strategic importance which public authorities now attach to AI.

Examples of latest ongoing activities include:

- The UK Financial Conduct Authority's launch of the Mills Review, which is set to look into how advances in AI could transform retail financial services and in what ways regulators may need to adapt their approach;
- The UK Digital Regulation Co-operation Forum (DRCF)'s Agentic AI initiative and its recent foresight paper on the future of agentic AI;
- The CMA's March 2026 guidance for businesses on how to comply with consumer law when using AI agents; and
- The FCA's consultation on AI Agents.

Recent reports, legislative changes, and policy statements from major jurisdictions reveal a convergence of concerns — alongside some regional nuances — about the risks and opportunities presented by Generative AI. A recurring theme across most jurisdictions is the potential for market concentration. The development of Generative AI relies on access to substantial resources: vast datasets, specialized computing infrastructure, and highly skilled talent. This creates a natural advantage for large, established technology firms, often referred to as “incumbents,” who can leverage their existing assets and relationships to reinforce their market positions. Several authorities, including those in the UK, France, and the EU, have highlighted the risk that a handful of players could dominate the value chain, from foundational model development through to downstream applications.

Another area of concern is the control of critical inputs such as cloud computing power and proprietary data by vertically integrated firms. These companies are not only suppliers of essential infrastructure but also direct competitors in AI model development. This dual role can create bottlenecks, raise entry barriers for new players, and potentially lead to exclusionary practices. Reports from the U.S. Federal Trade Commission (“FTC”) and the Portuguese Competition Authority, among others, point to the possibility of preferential treatment for partners, increased switching costs due to exclusivity clauses, and technical lock-in via proprietary hardware and software.

## V. WHAT IT MEANS FOR BUSINESSES

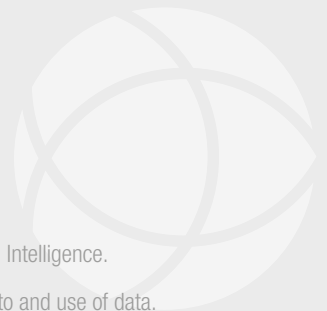
The FCA's Opinion and Study underline that competition authorities are ready to intervene early to prevent lock-in effects and the reinforcement of barriers to entry in the AI sector, even in the absence of formal dominance findings. As noted above, access to key inputs – computing power, cloud infrastructure, data, energy and talent – is already under active scrutiny.

As a result, competition law must be embedded in the structuring of AI-related deals, including partnerships, cloud agreements, minority investments and vertical integrations. It should also be factored into market entry and growth strategies, as enforcement is likely to combine ex ante digital regulation with traditional antitrust tools.

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4 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on Artificial Intelligence.

5 Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data.



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