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The Geopolitical Dimension of the EU Digital Markets Act (DMA): a Theoretical Analysis

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1- On 14 September 2022, the Digital Markets Act (hereafter DMA) was adopted with the objective of upholding contestable and fair markets in the digital sector.² This landmark European Union (EU) regulation targets gatekeepers, i.e., undertakings providing core platform services in the digital ecosystem with significant impact on the digital single market.³ It lays out in indefinite terms a set of obligations for these key economic players under the supervision of the European commission⁴ and national competition authorities, to the benefit of business users and end users.⁵

Yet the vast majority of these large online platforms operating on the digital single market, such as Alphabet (previously known as Google), Amazon or TikTok, are non-EU companies.⁶ The non-EU characteristic of companies that have the single market in their hand, is strategically problematic for the EU; as it creates an unfavorable external dependency,⁷ which may be used, in a competitive global context, to serve foreign governments interests⁸ at the very expense of the EU's

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² Regulation (EU) 2022/1925 of the European Parliament and council of 14 September 2022 on contestable and fair market in the digital sector and amending the Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), OJ L 265, 12 october 2022.

³ Article 2 (1) and Article 3, DMA

⁴ Hereafter “the Commission”.

⁵ The DMA uses the word “end users” instead of consumers. This voluntarism of the co-legislators in terms of provision of legal protection to the society as a whole (all legal person without any exception including legal entity) may cost the EU consumer law its coherence and relevance. As the attention moves from the consumer to the citizen. In this contribution the word consumer should be preferred even though end users are not necessarily consumers. This choice has the merit to be in line with the spirit of the DMA as it seeks to empower, in the first place, not end-users, but consumer. On the definition of the consumer status see: Article 2(1) Consumer Rights Directive (CRD).

⁶ L. ARCELIN, « Le droit de la concurrence comme réponse des États », C. CASTETS-RENARD, V. NDIOR et L. RASS-MASSON (dir.), *Enjeux internationaux des activités numériques — Entre logique territoriale et puissance des acteurs privés*, Larcier, Bruxelles, 2020, p. 138.

⁷ A. RENDA, “Can the EU Digital Markets Act Achieve its Goals?” The Digital Revolution and the New Social Contracts Series, Center for Governance of Change, IE University, June 2022.

⁸ C. THIBOUT, « Google et l'État fédéral États-Unien : interdépendance, contestation et hybridation », *Entreprises et Histories*, Septembre 2021, n° 104, pp. 142-163; A. G. SCHERER, and G. PALAZZO, “The New Political Role of Business in a Globalized World: A Review of a New Perspective on CSR and its Implications for Firms, Governance and Democracy”, *Journal of management studies*, June 2011, Vol. 48, issue 4, pp. 715-931.

interests and objectives.⁹ Additionally, most of these platforms are characterized by their increasing ability to benefit from extreme economies of scale, to build strong network effects, to allow many business users operating on different markets to reach consumers across the Union, etc. These characteristics may lead to anti-competitive-like behaviors, as they can lead to unfair practices. They can also contribute to weaken market contestability.¹⁰

2- Due to the irreconcilable nature of the above indicated characteristics as well as suspected practices with principles and values¹¹ on which the digital single market is grounded, the EU co-legislators had to enact a number of legislations¹² in order to safeguard and strengthen the continuous functioning of the single market. However, as the DMA, *per se*, is neither a competition law instrument nor a consumer law instrument, one may consider, in spite of what it literally indicates, that part of its essential motivation goes beyond purely competition-related concerns.

In fact, the Explanatory Memorandum of the DMA proposal¹³ as well as the recitals of the (adopted) DMA mention abundantly purely competition-related risks.¹⁴ Paradoxically, the geo-political aspiration of the EU to minimize its over-reliance on outsiders¹⁵ (the actual *raison d'être* of the DMA) is nowhere to be found. The fact that the geopolitical dimension of the DMA is unmentioned suggests at least two things. First, it invites the citizen to consider that the DMA has no such dimension. Second, it suggests that the co-legislators were not aware of the potential political dimension of the DMA during the negotiations process. Or that they have deliberately decided to ignore such dimension presumably because of its self-evident character. None of these hypotheses is credible and satisfactory enough to prevent studies intended to question the actual *raison d'être* of the DMA.

⁹ Which are clearly expressed in Article 3 of the Treaty on the European Union (TEU).

¹⁰ Market contestability refers to the ability of smaller undertakings to effectively (...) challenge gatekeepers on merits of their products and services. See : Recital 32 DMA.

¹¹ For an overview on these values see: B. PAJOT, « La rivalité sino-américaine, facteur structurant de la géopolitique du numérique », in C. CASTET-RENARD, V. NDIOR et L. RASS-MASSON (dir.), *Enjeux internationaux des activités numériques Entre logique territoriale des États et puissance des acteurs privés*, Bruxelles, Larcier, 2020, p. 50.

¹² The DMA being part of them.

¹³ COM(2020) 842 final, 15 December 2020 proposal of a regulation of the European Parliament and of the Council on establishing contestable and fair markets in the digital sector (Digital Markets Act).

¹⁴ Though the DMA is not an antitrust instrument.

¹⁵ Outside of the Union. It is important to bear in mind that, in principle, international relations are made of mutual dependencies. It is our choice not to focus on third countries dependence on EU. For an illustration of this interdependence see: A. G. SCHERER and G. PALAZZO, “The New Political Role of Business in a Globalized World: A Review of a New Perspective on CSR and its Implications for Firms, Governance and Democracy” *Journal of management studies*, 2011, vol 48, issue 4, 715-931, June; N. TOCCI, “European Strategic Autonomy: What it is, Why we Need it, How to Achieve it?” IAI, 2021, p. 7.

3- It results from what has been indicated above that the continuous functioning of the digital single market is substantially dependent on foreign players (outsiders). This reliance on outsiders constitutes a geopolitical vulnerability or a strategic fragility exploitable at the very expense of the EU and its member states or at least some of them.¹⁶ This factual observation is what makes the DMA worth being considered teleologically, i.e., from a geo-political standpoint, so as to complement the official narrative about its *ratio legis*.¹⁷ What does the word geopolitics stand for?

4- Geo-politics as a concept, emerged out of the combination of two words: geography and politics. Initially, it was solely used in reference to rivalries of power or influence over territories and [possibly] the populations living on the concerned territories.¹⁸ However, the relevance of this strictly territorial-based definition of the term has started to diminish, as territorial disputes became much less frequent in Europe¹⁹ immediately after World War II. Consequently, the meaning of the concept has known a slight evolution. So, today, geopolitics also refers to rivalries of power or influence that do not have any concrete or direct territorial implication.²⁰ Furthermore, due to the progress made in the field of AI²¹ and AI-related technologies, influential activities,²² and rivalries of power between states are increasingly exerted in virtual environments; and sometimes through or thanks to the technical abilities of gatekeepers targeted by the DMA.²³

¹⁶ See the Commission Recommendation (EU) 2023/2113 of 3 October 2023 on Critical Technology areas for the EU's Economy Security for further Risk Assessment with Member States, ELI: <http://data.europa.eu/eli/reco/2023/2113/oj> (hereafter recommendation (EU) 2023/2113), Recitals 1 and 14.

¹⁷ According to the official narrative, the DMA is all about restoring fairness and increasing the level contestability on the digital single market.

¹⁸ Y. LACOSTE, « Géopolitique la longue Histoire d'aujourd'hui », Larousse, 2009, pp. 8-9.

¹⁹ Until recently with the annexation of Crimea in 2013 by Russia and the war imposed on Ukraine by Russia. On this point see notably : N. TOCCI, "European Strategic Autonomy: What it is, Why we Need it, How to Achieve it?", p. 13 and seq. Available at: <https://www.iai.it/sites/default/files/9788893681780.pdf>

²⁰ Y. LACOSTE, « Géopolitique la longue Histoire d'aujourd'hui », Larousse, 2009, pp. 8-9; B. PAJOT, « La rivalité sino-américaine, facteur structurant de la géopolitique du numérique », in C. CASTET-RENARD, V. NDIOR et L. RASS-MASSON (dir.), *Enjeux internationaux des activités numériques Entre logique territoriale des États et puissance des acteurs privés*, Bruxelles, Larcier, 2020, p. 49.

²¹ Artificial Intelligence

²² Through surveillance, politically motivated cyberattacks or hacking carried out by state agents or stealing of citizens data, when they are not sold or handed over to government agency. On these points see: L. JACKSON, "The threat of TikTok — U.S. officials say TikTok is a national security risk. They are turning it into their advantage", The New York Time, 23 March 2023.

²³ For an illustration of how influential activities can be carried out see: L. JACKSON, "The threat of TikTok — U.S. officials say TikTok is a national security risk. They are turning it into their advantage", The New York Time, 23 March 2023. It is indicated in the article that "Tech Companies (...) know where we travel, who our friends are, what we watch [...]. Governments want to use this data for surveillance, (...) and espionage. So, they hack, hoard, steal and buy it. (...) U.S. (...) government can demand that social media giants, based in U.S. and subject to U.S. law, hand over data about users. (...)".

5- It is a well-established fact that geopolitical *wars* cannot be waged without elaborating strategies.²⁴ In the case of the EU, the need to take such strategic steps first manifested itself in the military domain.²⁵ So, the first strategies elaborated were intended to put an end to the EU's undesired external military dependency on NATO.²⁶ In that regard, the term strategic autonomy was first used to describe the ambition of the Union to build capacity for autonomous actions in the defence sector. However, over the years the evolution of the international order made the EU aware of some other areas of unfavorable dependency.²⁷ Therefore, the strategic autonomy concept ended up being used in a broader sense to capture the political aspiration of the Union to build resilience or to gain a certain level of autonomy in critical areas, like Artificial intelligence (including the digital sector), advanced semiconductors etc.²⁸

In a general sense, strategic autonomy refers to the way EU plans to prevent, response and resist to intended human-related challenges that can have negative impacts on its interests. In a strictly digital economy-oriented sense, strategic autonomy refers to the ambition and the ability of the EU to (re)shape a new system of global economic governance more compatible with EU's interests, while protecting the Union from third countries willing to take "advantage of [its] external dependence on critical technologies".²⁹

6- What makes such external dependency a real threat for the EU and its member states' interests is the possible weaponization³⁰ of both the platforms and

²⁴ And in that regard, we may speak of geostrategy, which designates any actions or inaction intended to resist or overcome any challenging situation between political rivals, or to mitigate the negative impacts of such situation. On this point see: B. PAJOT, « La rivalité sino-américaine, facteur structurant de la géopolitique du numérique », in C. CASTETS-RENARD, V. NDIOR et L. RASS-MASSON (dir.), *Enjeux internationaux des activités numériques Entre logique territoriale et puissance des acteurs privés*, Larcier, Bruxelles, 2020, p. 43. On the need to take strategic steps when facing adversity see: Recommendation (EU) 2023/2113, Recitals 1 and 2.

²⁵ [Joint Declaration](#) on European Defence. Joint Declaration issued at the British-French Summit, Saint-Malo, 3-4 December 1998; N. HELWIG and V. SINKKONEN, "Strategic autonomy and the EU as a global Actor: the Evolution, the Debate, and Theory of a Contested Term", *European Foreign Review* 27 (special issue), April 2022, p. 3, §. 2.

²⁶ The acronym NATO stands for North Atlantic Treaty Organization. On the EU dependency on NATO see notably: M. I. CLAUSSON, *NATO: Status, Relations and Decision-making*, Nova Publishers, 2007, p. 3 and seq.; J. KIRKEGAARD, "Toward Defining and Deploying European Interest(s)", The German Marshall Fund of the United States, November 2021; A. BUDEANU, « La stratégie d'influence chinoise en Europe centrale et orientale », *Questions internationales*, n°116, novembre-décembre 2022, p. 86.

²⁷ Recommendation (EU) 2023/2113 recitals 1 to 7.

²⁸ Recommendation (EU) 2023/2113 recital 12. On the controversial nature of the expression "strategic autonomy" see for instance: D. FIOTT, "Strategic Autonomy: Toward 'European Sovereignty' in Defence?" *EUJSS*, November 2018; N. TOCCI, "European Strategic Autonomy: What it is, Why we Need it, How to Achieve it?", *op. cit.* p. 8.

²⁹ N. HELWIG and V. SINKKONEN, *op. cit.* p. 7; Recommendation (EU) 2023/2113 recital 5 notably.

³⁰ Remember that in 2016 Twitter (now known as X), Netflix, Reddit, CNN, and others were brought down due to a cyber-attack. On this major attack that interrupted some essential internet service[s] across Europe

the infrastructures through which core digital services are provided to EU-based businesses and consumers.³¹ As a regional superpower, the EU is striving, by all means³², to get the risks associated with this dependency under its control. That is the kind of attitude one would expect from an entity profoundly attached to its sovereignty³³.

Anu BRADFORD, in her book “The Brussels effect”, demonstrated that the EU has a worldwide regulatory power, backed notably by the size and potentials of its market.³⁴ So, we contend that this unilateral regulatory power puts the EU in the position of a geopolitical power that exerts, or seeks to exert influential activities or counter-influential activities by means of regulations in its best interests and in the light of its values.³⁵ In that regard, the DMA can be regarded as a political tool that the EU intends to use for its geopolitical interests.³⁶ This approach seems less common in Law schools, particularly in France.

7- The motives of this contribution can be attributed either to the growing weaponization of gatekeepers’ technological means by governments for ideological reasons or the fear of such weaponization.³⁷ Remember that very recently TikTok³⁸

notably, see: The Guardian, “DDoS [Distributed Denial of Service] that disrupted Internet was largest of its kind in history, experts say”, 26 October 2016. On the damages caused by this attack see p. 17. Commission Staff working document, Liability for emerging digital technologies, SWD (2018) 137 final, 25 April 2018. The threat pointed out here is clearly recognized in the Recommendation (EU) 2023/2113, Recital 5.

³¹ B. PAJOT, (2020), *op. cit.* p. 47; L. JACKSON, “The threat of TikTok — U.S. officials say TikTok is a national security risk. They are turning it into their advantage”, The New York Times, 23 March 2023. This weaponization constitutes the main reason why apps like Facebook, Instagram etc. were banned in China. On the same trend, and quite recently Uber (the ride sharing app) was forced to leave the Chinese market not because of its “rivals, but because of interference from the state”. On this last point see: W. C. KIRBY, “The real reason why Uber is giving up in China”, *Harvard Business Review*, August 2016. For a slightly similar view see: C. ZHANG, “China’s New Regulation Tailored for Sharing Economy — The Case of Uber Under Chinese Local Government Regulation in Comparison to EU, US and UK”, *Computer Law and Security Review*, vol. 35, 2019, pp. 473 and seq. Available at: <https://ssrn.com/abstract=3529040>

³² In this paper we will focus on the legal means used by the EU to respond to the concerned dependency.

³³ On the controversy or the relevance of the use of the word sovereign with regards to the EU see notably: A.-T. NORODOM, « Être ou ne pas être souverain, en Droit, à l’ère numérique », in C. CASTETS-RENARD, V. NDIOR et L. RASS-MASSON (dir.), *Enjeux internationaux des activités numériques Entre logique territoriale et puissance des acteurs privés*, Larcier, Bruxelles, 2020, pp. 21-41, especially pp. 30 and seq. Where the author examines the relevance of the term *vis-à-vis* the EU.

³⁴ A. BRADFORD, *The Brussels Effect - How the EU Rules the World*, Oxford Press University, 2020, p. 7.

³⁵ Not to mention the willingness of the Union, like other superpowers, to play a leadership role in AI, AI regulation, AI-related technologies (Cloud) or semiconductors production.

³⁶ Knowing that the geopolitical objective of the EU in the digital sphere is to regain control over its digital markets by means of various regulations, the DMA being one of them. For an illustration of this intuitive position see for instance: the Recommendation (EU) 2023/2113, p. 1-6.

³⁷ Such politically motivated maneuver is perceived by the EU as a multifaceted threat: threat to economic security, democracy, fundamental rights, in short, a threat to its sovereignty as a non-state entity in the international arena.

Subsequently the app was banned from government devices and networks by the U.S. federal government and some other state. On this point see: L. JACKSON, “The threat of TikTok — U.S. officials say TikTok is a

has been accused by the U. S. Congress of constituting a sort of backdoor through which the Chinese government exercises its espionage activities.³⁹ These accusations lead to the hearing of Mr. Shou Chew — TikTok’s CEO — by the said Congress. During his hearing before the congress, Mr. Chew, has apparently failed to provide sufficient guaranties that the data collected through TikTok’s trackers on American consumers cannot be accessed and utilized by the Chinese government.

In the same vein, and out of the same suspicious links between ByteDance (the parent company of TikTok) and the Chinese Communist Party (CCP), the European Commission has formally suspended “the use TikTok on its corporate devices”.⁴⁰

8- Against this suspicious backdrop, one may ask the following question: can tech giants operating on the single market provide sufficient guaranties that the data they collect on the Union citizens cannot be accessed and (mis)used by the governments to which they pledge allegiance at the expense of the EU?⁴¹

A negative answer to this question would probably be the most realistic one. Which suggests that the sovereignty to which the EU aspires to in the digital sphere is in jeopardy. Thus, how would the EU react if foreign players like Google, Alibaba, Amazon, or Facebook constitute constant threats for its digital sovereignty? The DMA seems to be part of the Union reaction to protect and strengthen its digital autonomy.

This contribution seeks to examine the DMA’s potential to allow the EU to (re)conquer its sovereignty in the digital sphere. And by the way, promote, through a potential Brussels effect, its models of state governance and society, which are competing against Chinese and American models notably. It will be divided into two parts. The first part —which is mainly descriptive— will be devoted to the presentation of some innovative⁴² provisions of the DMA with possible geopolitical

national security risk. They are turning it into their advantage”, The New York Time, 23 March 2023. TikTok is a popular short video sharing app owned by ByteDance, a Chinese Tech Company. It seems that ByteDance is regularly used by the Chinese Communist Party as a tool for its surveillance and espionage activities. And in that regards, journalists are privileged targets. As far as the U.S. are concerned, they are no stranger to espionage activities (for an illustration of the U.S. case see : case [C-362/14 Shrems](#), eps. §. 11, 12, 13, 14, 28, 34).

³⁹ To watch the congressional hearing of TikTok’s CEO see the following link: <https://www.youtube.com/watch?v=E-4jtTFsO4>.

⁴⁰ European Commission-Press Release “The commission strengthen security and suspends the use of TikTok on its corporate devices”, Brussels, 23 February 2023.

⁴¹ The data collected in the European Union are commonly transferred and stored in dataset located outside of the Union.

⁴² Their innovative nature comes from the fact that, in the case of the EU, they are unprecedented in a strictly legal sense. But we are aware of the fact that there are lot of similarities between the DMA and the US

implications (I). The second part will try to consider teleologically the DMA from a geopolitical perspective, with a particular focus on the Union's digital autonomy (II).

I— Innovative provisions of the DMA with potential geopolitical implications

9- The DMA is intended to apply, in the digital sector,⁴³ to gatekeepers that offer core platform services to business users and consumers established or domiciled in the Union, regardless of the place where the gatekeepers are established;⁴⁴ and the law applicable to the provision of the service (article 1 (2) DMA).

Are considered core platform services, under article 2 (2) DMA, ten specific digital sector-related services, namely: 1° online intermediation services⁴⁵; 2° online search engine⁴⁶; 3° online social networking services⁴⁷; 4° video-sharing platform services⁴⁸; 5° number-independent interpersonal communication services⁴⁹; 6° operating systems⁵⁰; 7° web browsers⁵¹; 8° virtual assistants⁵²; 9° cloud computing services⁵³; and 10° online advertising services,⁵⁴ apprehended in a broader sense. What is eye-catching when this list of services is mentioned is the fact that the prominent and dominant companies involved in the provision of these services are either U. S.-based companies or Chinese tech companies (this point will be further discussed in the second part).⁵⁵ This does not mean that all potential gatekeepers are necessarily outsiders.

Regardless of the place where it is established, in order for any undertaking that provides, at least, one of the core platform services indicated above to be subjected to the DMA, it has to acquire a status: the gatekeeper status. To acquire the gatekeeper status the said undertaking has to meet a number of criteria, which are not necessarily decisive (A). It stems from the acquisition of the gatekeeper

Platform Competition and Opportunity Act of 2021 and Ending platform Monopolies Act of 2021. Moreover, most of the provisions laid down in the DMA are mere codification of former cases.

⁴³ See Article 2(4) DMA.

⁴⁴ The application of EU regulation to foreign players who do not have any direct or immediate territorial connection with the EU is known as the extraterritorial effect of EU Regulation. This is considered to be different from the market-driven harmonization associated with the Brussels Effect. On this point see: A. BRADFORD, *op. cit.* p. 68.

⁴⁵ App Store, Amazon marketplace, Google shopping would be perfect examples.

⁴⁶ Like Google search

⁴⁷ Instagram, TikTok, LinkedIn would be perfect examples here.

⁴⁸ Like Youtube

⁴⁹ Like Messenger or Whatsapp.

⁵⁰ Like Android, iOS or Windows for computers.

⁵¹ Like Samsung internet Browser, Safari or (Google)Chrome

⁵² Alexa and Siri would be examples.

⁵³ Like Google Cloud, Gaia-x (which is still a project), Microsoft Azur, or Amazon Web Services

⁵⁴ Like Amazon Ad., Google Ad or Meta Ad.

⁵⁵ H. JOUVENEL, « Qui contrôle quoi ? », *Futuribles*, 2023, p. 3.

status a set of obligations that can lead to administrative sanctions in case of non-compliance (B).

A. The acquisition of the gatekeeper status: presumptive criteria and indicative clues

10-An undertaking cannot be qualified as gatekeeper unless it satisfies the following criteria. First, it must have the ability, or at least the potential, to have a “significant impact on the single market”, which should be interpreted as the ability of the said undertaking to jeopardize the security of the functioning of the single market in terms of continuous supply or endless reiteration of B2C⁵⁶ transactions, i.e., meeting of supply and demand.⁵⁷ It is worth noting that the significant impact concept is quite similar to the antitrust law concept of dominance.⁵⁸

However, despite the apparent closeness of this concept with the antitrust law concept of dominance, the two cannot be conflated. Although it is a common thing that dominant firms have significant impacts on the market where they operate. The converse is not necessarily true. Meaning that having a significant impact on the single market, according to the DMA, does not necessarily mean that you enjoy a dominant position. For instance, on the EU browser market, Apple has been designated as a gatekeeper with regards to the core platform service it provides through “Safari”, yet its global market shares on this particular market is far less than 50 per cent.⁵⁹

In fact, an undertaking is regarded as enjoying a dominant position, on a particular market, when it possesses an economic strength that gives it the power to adopt unilateral behavior with potential negative effects on both competition and consumers. Whereas an undertaking is regarded as having a significant impact on the single market when its annual turnover, for a specific core platform service equals the minimum amount of 7,5 billion during each of the last three financial year. In addition, the concerned platform service should be offered in three member states at least. Alternatively, an undertaking can also be regarded as having a significant impact on the single market when its average market capitalization reaches the minimum amount of 75 billion during the last three financial year.⁶⁰

⁵⁶ Business to consumer

⁵⁷ Since the gatekeepers seem to have absolute control over B2C transactions.

⁵⁸ L. VOGEL, « Les grands textes du droit de la concurrence », Bruxelles, Bruylant, 2020, p. 959.

⁵⁹ Summary of the Commission Decision 5 September 2023 designating Apple as a gatekeeper pursuant to article 3 of EU 2022/1925 of the European Parliament and of the Council on contestable and fair in the digital sector, StatCounter <https://gs.statcounter.com/browser-market-share/desktop-mobile-tablet/europe/#monthly-202301-202401>

⁶⁰ Article 3(2)(a) DMA

Unlike the interpretation of the dominant position concept, which is economically dynamic and fact-based in principle,⁶¹ the threshold-based examination of the significant impact concept seems rather stationary in principle with no self-evident real competition-related logic behind.

11-Secondly, an undertaking cannot acquire the gatekeeper status unless it provides a core platform service that constitutes an essential gateway for business users to reach consumers across the Union's digital market. But how do we know that this requirement is met? We have got some quantitative indications from article 3 DMA.

In fact, an undertaking is presumed to be an essential gateway for business users where it provides at least one of the platform services mentioned above to a minimum of 45 million active users⁶² on a monthly basis, during the last financial year. Cumulatively, the exact same service should be (have been) offered to, at least, 10 000 business users during the same timeframe indicated earlier.⁶³

12-Thirdly, it is required from the candidate gatekeepers to enjoy or to be in the position to enjoy an entrenched and durable position on the relevant market. And in accordance with article 3(2) point c) DMA, an undertaking is presumed to enjoy an entrenched and durable position when it reaches the minimum number of 45 million active users per month; and at least 10 000 business users during each of the last three financial year.

13-From a teleological standpoint, there is not much to say about these conditions, except that they target specifically foreign players operating on the single market. The geopolitical reasons that can be attached to this targeting shall be discussed, in detail, in the second part of this contribution.

The procedure that leads to the designation decision is a declaratory-type procedure, whereby the potential gatekeeper bears the responsibility to assess, and notify, its eligibility to the Commission. Basically, the assessment of the eligibility consists of, among other thing, checking whether the above indicated minimum threshold is met in terms of monthly active consumers and business users.⁶⁴

⁶¹ Commission — Guidance of the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct undertakings, §15

⁶² A monthly active user for an online intermediation service (for instance) should be understood as the number of consumers who interacts, in any way possible, at least once a month with the gatekeeper through the relevant core platform service. The exact same logic is applicable, *mutatis mutandis*, to determine the number of active users of the other 9 core platform services. See the chart at the end of the DMA's Annex.

⁶³ Article 3(2)(b), Recital 20 DMA

⁶⁴ For more detail on the methodology see the annex of the DMA.

Once it came to the conclusion that it is eligible to the status, it has to notify its eligibility to the Commission.⁶⁵ Subsequently, the Commission may issue a designation decision according to article 3(9) in a specific timeframe, concerning a specific core platform service.⁶⁶ Any failure on the part of the gatekeeper to comply with its duty to notify its eligibility to the gatekeeper status can lead either to a designation decision as a sanction or (and) an administrative fine in case of obvious bad faith on the part of the concerned gatekeeper.⁶⁷

The acquisition of the gatekeeper status is neither absolute nor definitive; in the sense that the status is subjected to regular review.⁶⁸ It can even be rebutted or legally challenged, regardless of the fact the above indicated threshold are met or not.⁶⁹ But where an undertaking has been designated as a gatekeeper (as this has been the case for Google⁷⁰, Apple, Facebook⁷¹ and TikTok for instance), it must comply with a set of obligations and prohibitions(B); unless it has been exempted from complying in accordance with articles 9 or 10 DMA.

B. The obligations imposed on gatekeepers

14-The acquisition of the gatekeeper status does not go without consequences.⁷² Concretely, six months after the acquisition of the status, gatekeepers have to comply with a number of obligations,⁷³ which can be distinguished in two types: general obligations and specific obligations.

⁶⁵ For an illustration see Apple's notification: Notification of 3 July 2023 made by Apple Inc. and its European subsidiary Apple Distribution Ltd. Pursuant to Article 3(3) DMA, ELI: <http://data.europa.eu/eli/C/2023/549/oj>. In early July 2023, 7 potential gatekeepers have notified their eligibility to the Commission. And subsequently, six of them have been designated as gatekeepers: Apple, Alphabet, Amazon, Meta, Microsoft, and ByteDance. On this point see: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4328

⁶⁶ The use of the singular does not preclude, where relevant, an undertaking from being designated as a gatekeeper for multiple core platform services. Apple for instance has been designated as a gatekeeper for three core platforms services: AppStore, iOS and safari. In the same vein Amazon has been designated as a gatekeeper for two platforms services namely: Amazon marketplace and Amazon advertising. See Summary of the Commission Decisions 5 September 2023 designating [separately] Apple and Amazon as a gatekeepers pursuant to article 3 of EU 2022/1925 of the European Parliament and of the Council on contestable and fair in the digital sector, ELI: <http://data.europa.eu/eli/C/2023/549/oj> and ELI: <http://data.europa.eu/eli/C/2023/905/oj>

⁶⁷ Article 3(3) DMA

⁶⁸ Article 4 (1) DMA

⁶⁹ Article 3(5) DMA, order of 9 February 2024, *Bytedance v. Commission*, case T-1077/23 ECLI:EU:T:2024 :94.

⁷⁰ Now known as Alphabet.

⁷¹ Now known as Meta.

⁷² This is probably why Bytedance (the parent company of TikTok, the Entertainment platform) is challenging the designation of TikTok as a gatekeeper. See the pending case before the CJEU: *Bytedance v Commission*, case T-1077/23, ECLI:EU:T:2024 :94.

⁷³ Article 3(10) DMA.

Regardless of the type to which they can be attached, the said obligations are expressed either in a positive way or in a negative way. Some academics refer to them as “Dos and Don’ts.”⁷⁴

The catalogue of dos and don’ts in question — that is about to be highlighted — are essentially competition-related counterstrategies intended to address or annihilate market or commercial strategies frequently deployed by foreign gatekeepers at the very expense of EU-based business and consumers.⁷⁵

The presentation of the DMA’s obligations can only be geopolitically meaningful if they are assembled and presented in accordance with a number of geopolitical-related strategies identifiable across the act. Actually, they are more of counterstrategies in response to market strategies deployed by foreign gatekeepers.

15-The obligations imposed on gatekeepers will be presented according to the following (counter)strategies: the diversification strategy,⁷⁶ the strategy of transparency⁷⁷ and openness and the control and dissuasion strategy —intended to address, among others things, market foreclosure strategies—. ⁷⁸ Like the former, each of these strategies are expected to counterbalance markets strategies applied by foreign gatekeepers in order to build, strengthen and expand their respective empire on the single market. Some of these market strategies and counterstrategies are reminiscent of various antitrust cases or proceedings before the Commission.

16-First, the diversification strategy or the diversification focused obligations and prohibitions. Basically, this strategy —reminiscent of the Coty1 case—⁷⁹ assumes that gatekeepers increase and strengthen their power on the market by obliging their commercial partners or business users in the wording the DMA, to concede to them exclusivity for the distribution of the said partners’ products. This example is particularly relevant with regards to gatekeepers that provide online intermediation services like Amazon marketplace or Apple’s App store.

⁷⁴ For an illustration see: A. RENDA, “Can the EU Digital Markets Act Achieve its Goals?” The Digital Revolution and the New Social Contracts Series, Center for Governance of Change, IE University, 2022, p. 5.

⁷⁵ For illustration of commercial strategies deployed on the single, see for instance: judgment of 11 December 2023, *Cisco systems inc. v European commission*, case T-79/12, ECLI:EU:T:2013:635, paragraphs 116, 128, 129 and seq “market foreclosure strategy”, judgment of 25 October 2002, *Tetra Laval*, case T-5/02.

⁷⁶ In reference to the supply chain.

⁷⁷ S. MAHER, “Transparency is Key to Curbing the Power of Big Tech”, Center for International Governance Innovation, 2021.

⁷⁸ They will be presented in terms of obligations and in the exact same order.

⁷⁹ Judgment of 6 December 2017, case C-230/16, *Coty Germany GmbH v Parfümerie Akzente GmbH*, ECLI:EU:C:2017:603.

17-The diversification strategy, symbolized in article 5 (3), (4) and (7), is based on the idea that, in a position of dependency (in which most EU-based business users happen to be), the more diversified the supply chain is, the less vulnerable you are (likely to be).⁸⁰

In line with these considerations, article 5 (3) and (4) requires from gatekeepers to restrain themselves from prohibiting or dissuading, EU-based business users to offer the same goods and services they offer through the platform, on different conditions, via other online channels. It is undeniable that the intent behind these two paragraphs is to help bring about and strengthen diversity in the channels through which goods and services can be offered by EU-based businesses to consumers across the Union.

18-According to the same idea that diversification of sources of dependence can mitigate the realization of the risks associated with the said dependency, article 6 (6) prohibits gatekeepers that provide operating systems from restricting users to switch between different software applications and services provided through the relevant core platform service. This can be regarded as a sort of empowerment of the EU consumers.

The diversification strategy is also identifiable in article 6 (4) and (7) and article 7. These two articles are intended to translate in law the technical notion of interoperability, which refers to the technical compatibility through which users of an App, for instance, are allowed to reach and communicate with users of another App. Concretely, the idea is to allow for instance users of Instagram to reach and communicate with users of Messenger no matter the operating systems used.

19-The ultimate goal of this right to interoperability is to put an end to the absolute exclusionary way gatekeepers' ecosystems function and thrive. To this end, the Commission has chosen to adopt a gradualist approach starting with the interpersonal messaging services not based on any national or international number(s) or numbering plan.⁸¹ We expect this interoperability trend to be generalized across the internal market.

The willingness to diversify the supply chain in the digital market is also recognizable in article 6(9), as it allows consumers or data subjects to claim control over their data, in order to redeploy or share them with potential economic rivals. This is known as data portability.

⁸⁰ For an overview of this viewpoint see for instance: REpowerEU: joint European Action for more Affordable, secure and Sustainable Energy, COM (2022) 108 final, 8 March 2022.

⁸¹ See: Article 7 and 53(2) DMA and article 2(7) Directive 2018/1972 of the European parliament and of the Council of 11 December 2018 establishing European electronic communications code, OJ L 321 17 December 2018.

20-Secondly, the transparency strategy or the transparency and openness focused obligations. This strategy is also evocative of a number of antitrust case-law.⁸² On the openness side, this strategy is founded on the idea that most of the potential gatekeepers thrived because of the opaque and exclusionary way they operate, particularly when it comes to data they collect. The reader would note that the Commission is very active on the topic of free flow of data.

On the transparency side, it is assumed that the opacity in which some platforms operate, especially on the online advertising markets, give them unfair market advantages, that make them unchallengeable. The co-legislators considered that excluding data from any exclusive appropriation would create conditions to restore and strengthen fairness on the market. And that is exactly what the DMA is trying to do via article 6 (10) notably.

The transparency strategy can also be identified in articles 5 (2), (9), (10); 6(10) and (11) DMA. Article 5 (2), intended to promote a consent-based data processing, invites gatekeepers to restrain themselves from undercover and systematic collection of personal data from third-party sources.⁸³ Because, most of the time, the data collected from third-party sources are exploited at the very expense of the concerned third-party.

21-In a complementary manner, article 6 (10) encourages gatekeepers to practice a sort of data altruism⁸⁴ with their business partners, especially when the concerned data have been aggregated thanks to third-party commercial interactions with consumers. As it excludes data from exclusive appropriation, article 6(10) materializes the openness, which is supposed to promote innovation.

As far as article 5 (9) and (10) is concerned, it imposes a number of transparency requirements on gatekeepers. It is worth mentioning that, from now on, gatekeepers must provide relevant analytics and metrics related to the advertising services provided to advertisers and publishers. It is also required from gatekeepers to observe full transparency vis-à-vis the Commission, especially with regards to their potential merger plans. This requirement reinforces the Commission control on gatekeepers.

22-Thirdly, the control strategy or the control and dissuasion focused obligation. The aim of the obligations that can be associated with this strategy is

⁸² Judgment of 4 July 2023, *Meta vs. Bundeskartellamt*, Case C-252/21, ECLI:CU:C:2023:537; *Amazon Marketplace and Amazon Buy Box Cases*, AT.40462, AT.40703, Commission Decision 20 December 2022.

⁸³ We speak of third-party source, when a platform tracks and collects personal data from its users even when they are using third internet pages.

⁸⁴ Here in a literal sense. For a legal definition of data altruism see: article 2(10) Data Governance Act.

dual. On the one hand, we see the willingness to control or contain the external expansion on foreign gatekeepers on the single market. And on the other, the intent is to keep a watchful eye on how foreign gatekeepers run their business, or algorithms.

The two aspects of the control strategy, which are control and deter, are respectively symbolized in articles 14 and 23 DMA notably. The basic idea in the first aspect of the control strategy is to examine carefully how the future digital market structure is going to look like if the Commission were to give the concentration project a green light. The idea in the second aspect is probably to deter gatekeepers from adopting or implementing commercial decisions with negative impacts on the functioning of the digital single markets, meaning on market equity and contestability.

Following the deterrence aspect of the control strategy, the Commission has been granted a number of super-powers for compliance's sake. For example, the Commission can request an independent auditing of any gatekeepers or to conduct or request a wide range of intrusive measures.

23-By exercising these extensive powers, the ability of the Commission to instigate compliance is unquestionable. Certainly, the powers of the Commission under the DMA should be viewed, from gatekeepers' perspective, as additional obligations. Because where the commission decides to exercise any of them against a specific gatekeeper, it has no other choice but to abide by them or face financial sanction. So, they complement the above-mentioned explicit obligations, that is why they are mentioned here. Considered together, these obligations suggest a number geopolitical reading that needs to be unveil (II).

II— Unveiling the geopolitical dimension of the DMA

24-It is our contention that the underlying objective of the DMA is to contest the dominance of foreign gatekeepers on the single market by promoting and inciting the emergence of “EU champions” in the digital sector.⁸⁵ This is believed to be at the best interest of the Union and its member states. Since the emergence of “EU champions” would help put an end to, or to a lesser extent, reduce the unfavorable dependence of both EU businesses and citizens on foreign players.⁸⁶

⁸⁵ For similar views see: A. BLANDIN-OBERNESSER, « Digital Services Act et Digital Markets Act : un nouveau cadre européen pour la régulation des plateformes », in B. BERTRAND, (dir.), *La politique européenne du numérique*, 1^{re} ed., Bruxelles, Bruylant, 2020, p. 695 ; P. LAROUCHE, “Legislation on Digital Platform Giants: the Future of Competition Law?”, *Competition Law Review*, 2022, n° 1, pp. 2-4; A. RENDA, *op. cit.* p. 11 ; F. JENNY, *op. cit.* p. 59, §189 and seq.

⁸⁶ Recital 2 DMA ; European Commission, [The EU: Shaping the Global Digital Space](#) How is the EU shaping the global digital space to benefit its citizens and businesses?, 7 May 2021.

25-So, the DMA is not a usual piece of legislation, in the sense that it has a very pronounced pro-EU-bias. In fact, the *ratio legis* of the DMA is not to regulate the conduct of gatekeepers, but to replace the dominance of foreign gatekeepers with that of EU champions.⁸⁷ Thus, this is what makes it more of a purely geopolitical instrument, as well as a strategic legal framework. And as such, the DMA (together with other pieces of legislation)⁸⁸ is intended to address the dependency dilemma that the EU faces in the digital sector.⁸⁹ If it succeeds the Union's aspiration for more autonomy in the digital sphere would be satisfied. But before we discuss the attainment of such political objective, we shall try to interpret the above presented obligations from a geopolitical perspective. And we shall do so by helping ourselves with the strategies we have identified (A). And second, we shall try to assess the DMA's ability to realize its geopolitical objective (B).

A. Geopolitical interpretations of strategies identified in the DMA

26-For a better understanding of the basis of our analysis, the reader should be invited to consider the international order the way it is, i.e., an extremely polarized world where states⁹⁰, rivals by nature, are constantly seeking or trying to take advantage of one another wherever their respective interests collide.

Against this backdrop, the more a state is dependent, the more vulnerable it looks in the international sphere. Therefore, it is, in principle, the ambition of each state to be the least dependent on other states. To use an analogy, it is like having your arm in the mouth of a crocodile in hostile environment for the animal.

The EU is well aware of this necessary and pragmatic approach of the international relations, that is exactly why the DMA has been conceived as a tool to mitigate the dependence of the internal market on outsiders.⁹¹

27-Indeed, a close examination of the DMA clearly reveals the willingness of the European Commission to get rid of the Union unfavorable dependence on outsiders, namely foreign gatekeepers. It seeks to so via a sort of self-empowerment approach. Are empowered the Commission itself (through extensive powers), EU

⁸⁷ A. RENDA, *op. cit.* p. 8, especially p. 12.

⁸⁸ Regulation (EU) 2023/1781 of the European Parliament and of the Council on establishing a framework of measures on strengthening Europe's semiconductor ecosystem and amending Regulation 2021/694 (chips act), OJ, L 229, 18 September 2023.

⁸⁹ For a similar view see: P. LAROUCHE, *op. cit.* p. 2. Where the DMA is considered as a tactical instrument with connotations that disqualifies it as a competition law instrument.

⁹⁰ Or state-like actor like the EU.

⁹¹ B. PAJOT, *op. cit.* p. 50.

businesses, and consumers in their interaction with gatekeepers. This approach is expected to deploy its effects through various obligations, part of which have been presented above. A number of strategic considerations are clearly recognizable in some of these obligations.

The three strategies presented in the first part of the paper, are the one that will be examined. It might be useful to remind them in the order in which they will be dealt with: the diversification strategy, the transparency and openness strategy and the control and dissuasion strategy.

28-First, the diversification strategy. This strategy, as previously indicated, is identifiable in articles 5(3) and (4), 6(4) and 7 DMA. Its ultimate goal as it should be recalled here is to diversify the supply chain so as to mitigate, as much as possible, the risks associated with a dependency situation.

As far as articles 5(3), 6(4) and 7 are concerned, their geopolitical aim is to end the non-substitutability character of foreign gatekeepers' services, by widening the choice of both business users and end users, which corresponds to the empowerment approach mentioned earlier. The enlargement of business users and end users' choice is expected to decrease their level of dependence on gatekeepers, as they should be able to offer the same products via other sales channels on favorable conditions in order to attract consumers.

This strategic approach is based on the assumption that the non-substitutability character of foreign gatekeepers exacerbates the extent to which the Union is dependent on them. Concretely, this strategy is expected to neutralize the ability of gatekeepers to adopt unilateral decisions with huge negative impacts on the internal market.

29-Second, the transparency strategy. As one would expect from such strategy, the goal is to get rid of all niches of opacity and asymmetry of information that make room for gatekeepers to thrive, therefore reinforcing their hold on the single market, especially in their relationships with business partners. This is particularly true for the online advertising market, where advertisers did not have access to insightful data with regards to advertising services provided to them by gatekeepers.

Under the DMA, gatekeepers would be obliged to be completely transparent, when so requested, not only towards advisers, but more generally vis-à-vis the Commission. One may argue here that the logic behind the transparency strategy is in perfectly in line with the following saying: "whoever possesses the information is powerful."

The effects of the transparency strategy are dual. Either you play the game, and you are as transparent as we expect you to be (in which case you are also, somehow,

vulnerable to us); or you do not (in which case your manifest bad faith is easy to demonstrate) and you receive a fine and probably a damage to your reputation. The transparency strategy complements and reinforces the control of Commission over gatekeepers.

30-Third, the control strategy. It might be useful to remind the reader that this strategy is composed of two aspects, each illustrated respectively in articles 14 and 23 DMA.

Article 14 (1) DMA entrusts the Commission with the power to be informed of any intended concentration. This right of the Commission to be informed, *per se*, is nothing new under the sun. What may be new under the sun are the paradigms according to which future merger plans would be examined by the Commission. In fact, we believe that no matter the pro-competitive effects, the Commission will probably oppose any acquisition plan that puts the Union's digital autonomy in jeopardy. In that sense this aspect of the control strategy would be a tool to contain and limit, as much as necessary, the ever-growing dominance of foreign players on the digital single market.⁹²

The other aspect of the control strategy is very well illustrated in articles 15, 16, 20, 21 and 23 DMA. Under article 15 for instance, gatekeepers' algorithms should be submitted to independent auditing measures, to which the Commission can access. Article 23 entrusts the Commission with the powers to carry out its own inspection measures. It stems from article 23 (1) DMA that the Commission may conduct all necessary inspections, which can be regarded as a sort of power rebalancing mechanism. The Commission wants to manifest its hegemony over, both, its internal market and the market players operating on it. This is the least one could say about the intrusive powers that the Commission is entrusted with under the DMA.

How likely are these strategies to help the EU strengthen its autonomy in the digital sphere?

B. An assessment of the DMA's ability to withstand the geopolitical battle to which the EU is subjected to

31-The immediate assessment of the efficacy of a new legal instrument, in a non-empirical analysis is not an easy task. First, we cannot feed off anything solid coming from the ground, since the new instrument did not have enough time to deploy its full effects. Second, we are not conducting an empirical study anyway.⁹³

⁹² F. JENNY, *op. cit.*, p. 38.

⁹³ The empirical evaluations of the DMA's impacts on the EU businesses and consumers shall be conducted, according to the wording of article 53, by the Commission; and by May 2026. Article 53 (2) stipulates that

Third, one might find oneself trapped in wishful type of thinking. Not to consider the fact that imponderables, as such, are necessarily out of sight. But these obstacles are not unsurmountable.

Considering the genius ability of gatekeepers to dodge legal obligations to which they are supposed to abide by, the first thing to worry about, when trying to evaluate the impacts of a legal instrument which targets the concerned platforms, is to expect that they will not be able to circumvent the obligations they are subjected to. This enforcement-related concern has been quite well anticipated by the co-legislators, as article 13 DAM lays down a wide range of anticircumvention measures intended to prevent any foreseeable strategic circumvention. Can be regarded as a circumvention strategy, any practice or behavior that can impede, in its object or effects, the full and effective compliance with the DMA. And in this regard, there are good reasons to wager that the possibilities for potential gatekeepers to circumvent the DMA would likely be very limited, which suggests that the above indicated strategies would deploy their effects.

32-First, the diversification strategy. One of the concrete geostrategic objectives of the diversification strategy is to provoke a sort of collective disintermediation⁹⁴ which would help EU business users recover their independence in their relations with gatekeepers; and at the same time reduce their dominance and financial capacity. As some foreign gatekeepers generate their revenue out of the number of transactions or interactions between end users and business users that happen via their platforms. This can represent a serious threat for gatekeepers whose business model relies on the intermediary role they play in B2C transactions.

Theoretically this is a very practical course of action, which is definitely in line with the strategic autonomy concept as it could help EU business users regain a level of autonomy with regards to commercial partnership with foreign gatekeepers. However, given the ability of potential gatekeepers to increase their attractiveness on the market and on both sides, we do not expect such collective disintermediation to happen soon, at least as far as online intermediation services are concerned. Partly, because of the fact that shopping via a marketplace when you are a consumer, it is much interesting for at least two reasons. On the one hand, marketplaces are easier to access (good referencing) and simpler to use. On the other hand, in case of non-conformity for instance, the consumer may sue both the seller and the intermediate.

the empirical “evaluations shall assess whether the aims of this regulation of ensuring contestable and fair markets have been achieved.”

⁹⁴ Disintermediation happens when, after the first contact business users and end users decide to deal directly with each other without using the intermediation platform of the gatekeeper. On this point: F. JENNY, op. cit. p. 43, §57.

33-Secondly, let's discuss the potential efficacy of the control strategy, symbolized in the merger control and some other procedural-related and intrusive powers that the Commission has been entrusted with.

Considering past mergers⁹⁵ that have produced today a sort of resentment in Brussels, and given the current technological context and aspirations of the EU in the global digital ecosystem;⁹⁶ we believe that merger plans involving potential gatekeepers will probably not be reviewed or approved based solely on their potential procompetitive effects. Instead, the examination of merger plans will certainly integrate the EU's strategic autonomy aspiration in the criteria that need to be considered. In fact, this may even turn out as a decisive criterion in the future. To make it more concrete, we are convinced that if Qwant⁹⁷, were to take control of Google (or Gaia-x to take control of Amazon Web Services (AWS)), they would face little to no resistance on the part of Brussels. Conversely, the Commission would probably never allow Google to swallow Qwant or AWS to take control of the Gaia-x project.

The point is that the potential pro or anticompetitive effects of such imaginary acquisitions would probably be overlooked, in favor of the EU's digital sovereignty.

In the final analysis, there cannot be serious doubts about the potential of the control strategy to limit the external expansion of dominant foreign players on the internal market, and subsequently the expansion of their dominance. So, in that regard, it is quite a safe bet to say that the DMA will probably put an end to the killer acquisition phenomenon,⁹⁸ especially when the targeted company is an EU startup. Plus, it (re)balances somehow powers relations between the Commission (that represents EU's interests) and foreign gatekeepers operating on the internal market.

34-By contrast, it seems impossible to assess how the EU startups are going to react to the political message or strategic advantage given to them by the DMA. The concerned advantage constitutes a number of competition-related resources⁹⁹ intended to help them grow faster, by enjoying or taking advantage of the data-related investments made by gatekeepers in general.

⁹⁵ F. JENNY, (2021), p. 53, § 149 and seq.

⁹⁶ F. QUENTIN, A. STROWAL, « La stratégie européenne pour les données », in B. BERTRAND, (dir.), *La politique européenne du numérique*, Brussels, Bruylant, 2020, p. 725.

⁹⁷ Qwant is a French search engine.

⁹⁸ Killer acquisition refers to cases of concentration where the acquiring undertaking's market strategy is to absorb startups, which innovative solutions possess high competition value, in order to prevent future competition. The startups are targeted for their potential. Killer acquisitions are seen as attempts to erect barriers to entry on a specific market by "overpaying for an input."; F. JENNY, *op. cit.* p. 53.

⁹⁹ Like data (access, use and portability), which is of strategic importance. These recourses are stipulated in Article 5 (2), (3), (4), (7), (8) and Article 6 (2), (4), (5), (6), (10), (11), (13) DMA to mention but these two provisions.

This advantage can be a sort of double edge sword, as founders of promising startups, in some cases are sometimes eager to give away their innovative solutions for overpaid money.

All well considered, we believe that the DMA has the tactical capacity to help the EU build its digital autonomy, or at least help mitigate the potential negative effects that come along with its external dependence on outsiders. Therefore, there is no doubt that, if adequately enforced, the DMA, together with some other pieces of legislation like the chips act, the semiconductor ecosystem act, the incoming AI Act, will help the EU reduce its unfavorable dependence on outsiders, therefore reach a more balanced strategic position in the global digital sphere.

To conclude, it seems important to remind the reader that the aim of this paper is not to blame, denounce or criticize the fact that the EU defends (or wants to) its geopolitical interests. However, in the specific case of the DMA, what can be considered as regrettable on the part of the Union (that seems to be so profoundly attached to democratic values like transparency) is the fact that the co-legislators have deliberately try to confuse or obscure the (geo)political message of the DMA by not mentioning it in the Explanatory Memorandum. This could be considered as a misleading omission.