



# Digital Markets Act & Data Act for Cloud Services

Austrian Regulatory Authority for Broadcasting and  
Telecommunications (RTR) Workshop

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# Agenda

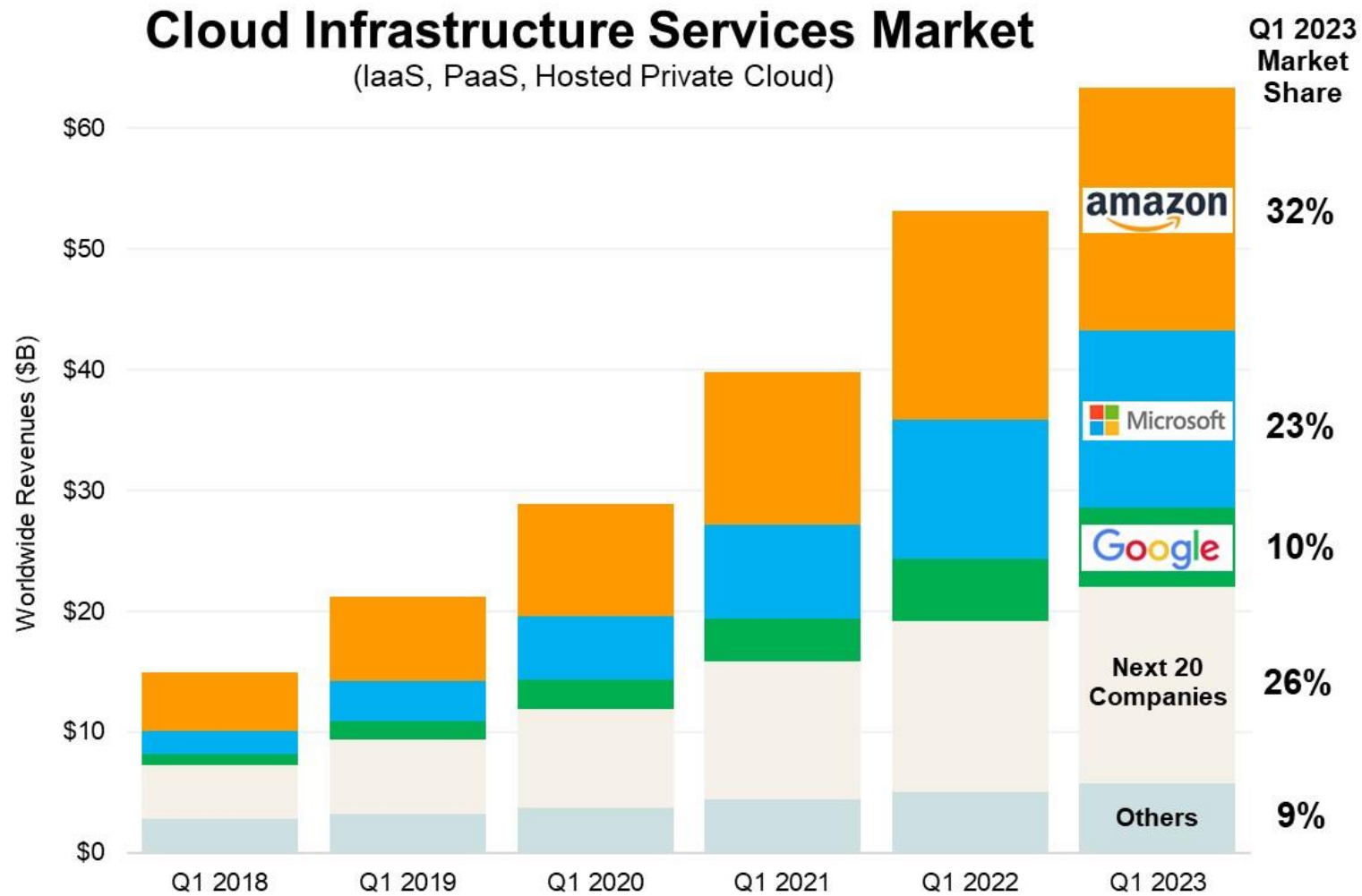


Cloud Market Landscape

Cloud Services as Core Platform Service in the DMA

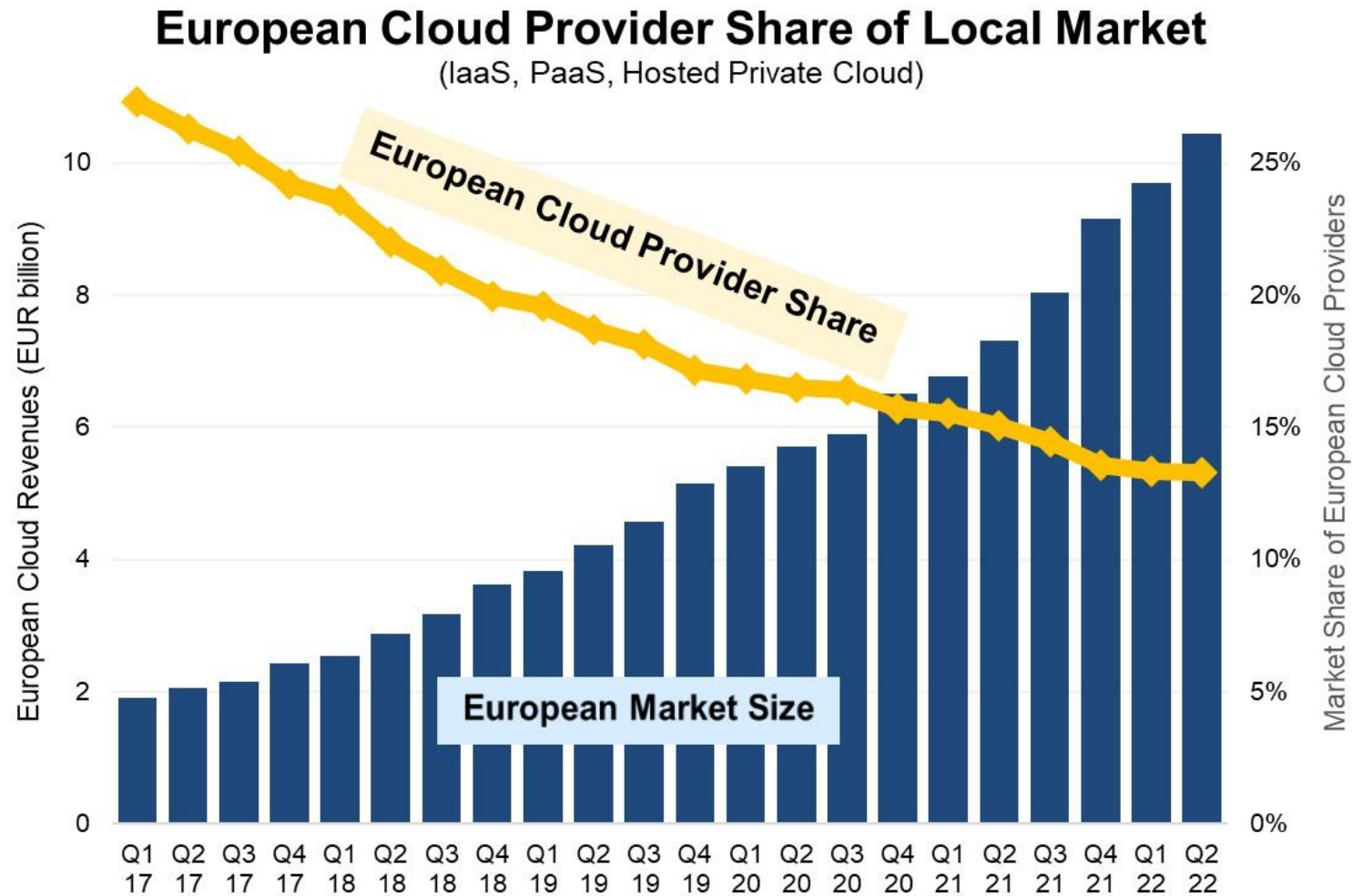
Cloud Switching in the Data Act Commission's Proposal

# Cloud Market is Consolidated ...



Source: Synergy Research Group

# Among the 'Others' the European Providers.



Source: Synergy Research Group

# DMA - Logic of Intervention

- ◆ **Market consolidation trends** and underlying market dynamics contributed to the identification of market failures in the **digital sector**:
  - ◆ **Extreme Scale and Scope Economies**, often resulting from nearly zero marginal costs to add customers and business users ;
  - ◆ **Strong Network Effects** associated to the multi-sidedness of online platforms ;
  - ◆ **Data Driven-Advantages** that leave no room for competitors ;
  - ◆ **Presence of Large Platforms**, often integrated in large **ecosystems**, exacerbates negative effects triggered by these features, thus making it impossible for markets to self-correct.

# DMA - Gatekeepers & Core Platform Services

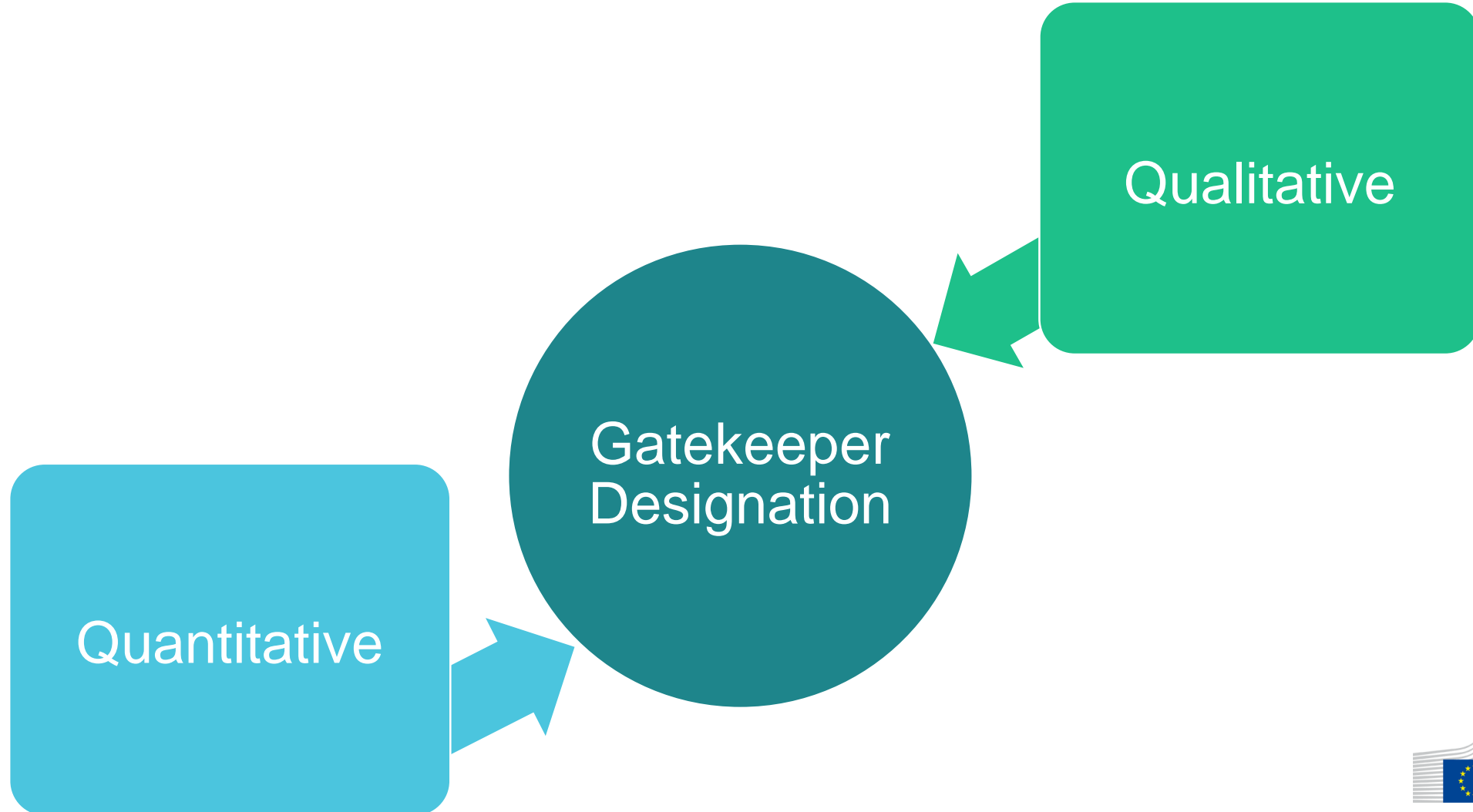
## *Gatekeepers' Characteristics*

- ◆ Highly concentrated platform services;
- ◆ One or very few large digital platforms set the commercial conditions irrespective of their competitors, customers or consumers;
- ◆ Few large digital platforms act as gateways for business users to reach their consumers and vice-versa;
- ◆ Gatekeeper power often misused by means of unfair behaviour

## *Core Platform Services (CPSs) in Scope*

- a) online intermediation services
- b) online search engines
- c) online social networking services
- d) video-sharing platform services
- e) number-independent interpersonal communication services
- f) operating systems
- g) web browsers
- h) virtual assistants
- i) **cloud computing services**
- j) advertising services

# DMA - Gatekeeper Designation Process



# DMA - Gatekeeper Quantitative Designation

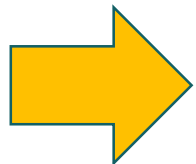
## Gatekeeper?

- ◆ Has a **significant impact** on the internal market
- ◆ Operates a **core platform service**, which serves as an **important gateway** for business users to reach end users
- ◆ Enjoys an **entrenched and durable position** in its operations or it is foreseeable that it will enjoy such a position **in the near future**



## Article 3(2) – Rebuttable presumption

- Annual EEA turnover  $\geq$ EUR 7.5 billion in the last 3 financial years  
OR
  - Average market capitalisation or the equivalent fair market value  $\geq$ EUR 75 billion in the last financial year  
AND
  - It provides a core platform service in at least three Member States
- > 45 million monthly active end users established or located in the Union  
AND
  - > 10 000 yearly active business users established in the Union in the last financial year
- Requirements in Article 3(2)(b) met in the last three financial years



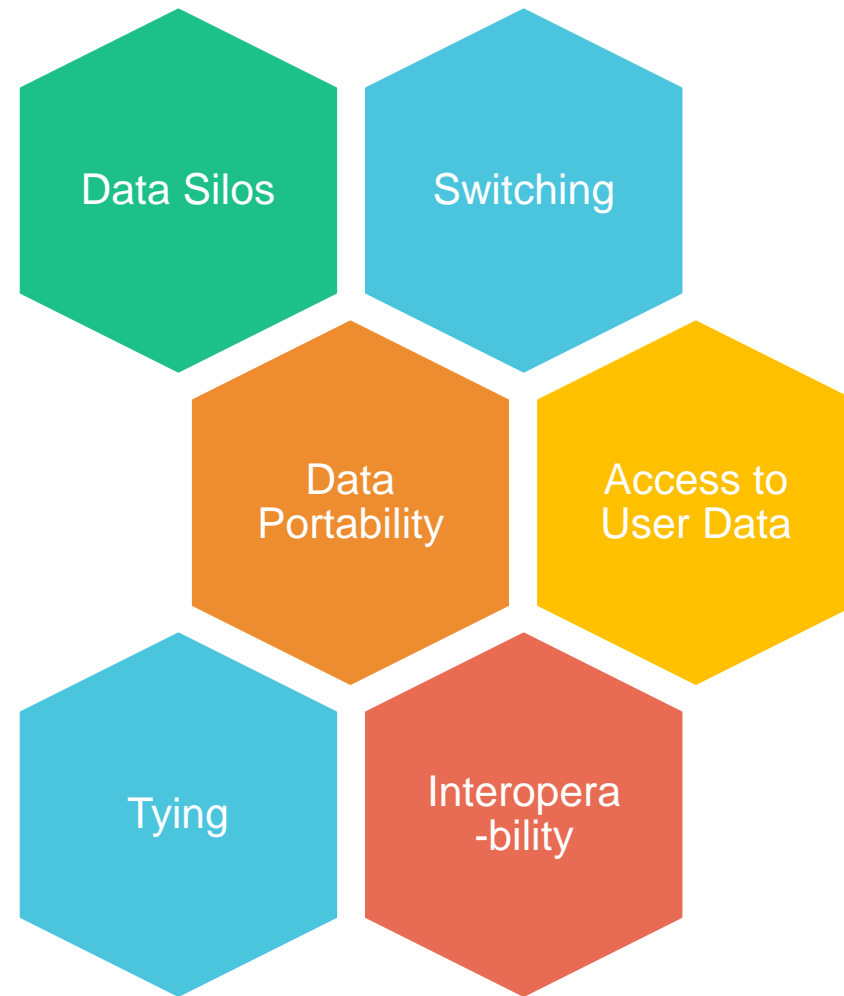
If the quantitative thresholds are not met, possibility to explore qualitative designation based on criteria in Article 3(8))



# DMA - Cloud Services as 'Core Platform Service'

Core Platform Service	Active End Users	Active Business Users
Cloud Computing Services	Number of unique end users who engaged with any cloud computing services from the relevant provider of cloud computing services at least once in the month, in return for any type of remuneration, regardless of whether this remuneration occurs in the same month.	Number of unique business users who provided any cloud computing services hosted in the cloud infrastructure of the relevant provider of cloud computing services during the year.

# DMA - Gatekeeper Obligations & Prohibitions - Possibly Relevant to Cloud Services



# DMA - Enforcement & Governance



## Enforcement Powers

- Non-compliance decisions with fines **up to 10% of annual turnover**
- Periodic penalty payments of **up to 5% of daily turnover**
- Repeated infringements with fines **up to 20% of annual turnover**
- Systematic non-compliance can lead to **merger moratorium**

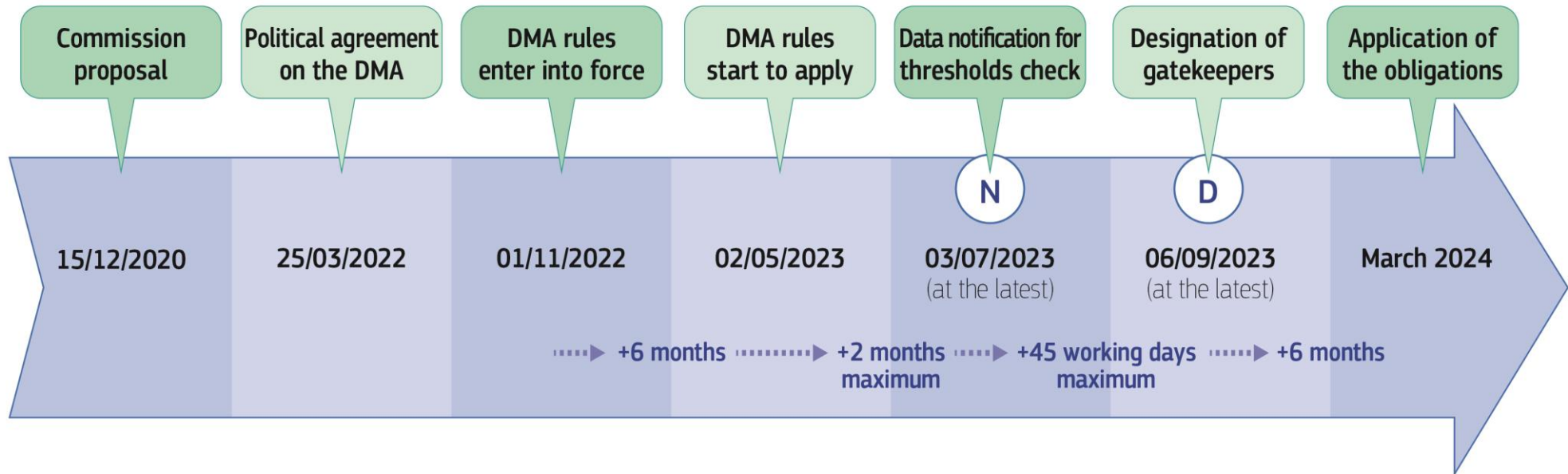


## Governance

- Commission as enforcer of the DMA
- Close cooperation with National Authorities and Courts
- Role for pre-investigation by National Authorities

# DMA - Timeline

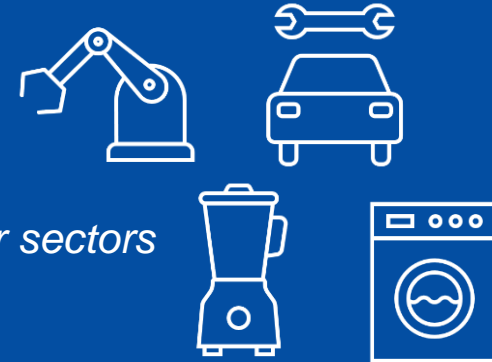
## Timeline for Digital Markets Act



# Data Act - Main Objectives

## Better access to IoT data

*Rules for IoT data also frame data sharing in other sectors*



**Tackle contractual unfairness**



**Make business data available for the common good**



**Easier switching between cloud services**

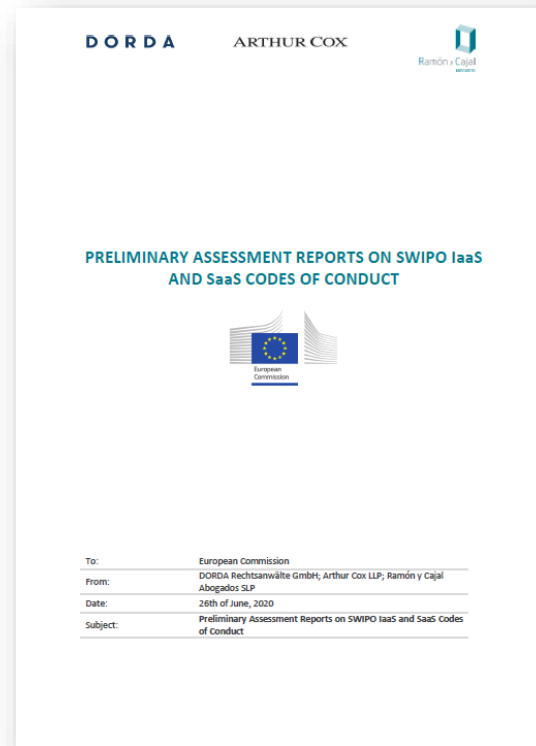


**Facilitate data flows through technical standards and interoperability**

# Data Act - Cloud Switching Rationale

Free Flow of Non-Personal Data Regulation

Article 6 – Voluntary Codes of Conduct on Cloud Switching



*“The introductory provisions in each of IaaS and the SaaS Codes of Conduct point towards the Article 6 objectives but in each case, the more detailed substance of the Code of Conduct seems to lose sight of these objectives.*”

***As a result, it is not clear that compliance with either or both of the Codes of Conduct results in a clear commitment from the cloud service provider to implement and maintain processes, procedures and controls that help to avoid cloud service provider lock-in and that make it easier for customers to switch between cloud service providers and port their data back to customer servers/systems.***”

# Data Act - Cloud Switching Key Characteristics



**Free switching**  
(Art. 25)

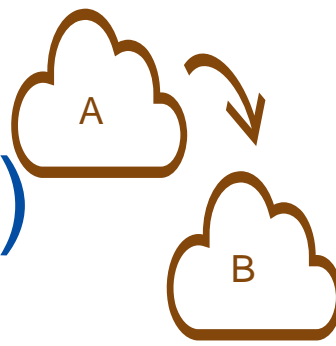


**Fast switching**  
(Art. 23, 24)



**Fluid switching**  
(Art. 23, 26, 29)

# Data Act - Cloud Switching Provisions (1/2)



## General provisions (Art. 23)

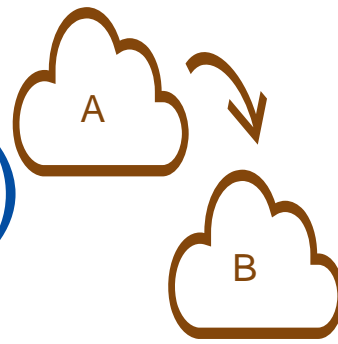
- General obligation to remove commercial, technical, contractual and organisational obstacles to switching
- Applicable to services of the same 'service type'
- Switching includes:
  - Termination of the contract
  - Conclusion of a new contract
  - Porting of all digital assets
  - Maintaining functional equivalence

## Contractual provisions (Art. 24)

- Mandatory maximum transition period of 30 days
  - where technically unfeasible: 6 months (burden of proof on provider).
- Service continuity & assistance
- 1 month data retrieval period after termination of the service provision



# Data Act - Cloud Switching Provisions (2/2)



## Provisions on charges (Art. 25)

- Full abolition of switching charges (e.g. data egress fees)
- 3 years transition period during which limited charges may apply

## Provisions on interoperability (Art 26. & Art. 29)

- For IaaS services: direct obligation to allow switching with functional equivalence
- For PaaS/SaaS services: open interfaces and mandatory compatibility with open standards taken up in an EC open standards repository

# Data Act - Enforcement & Governance

- MS to designate one or more existing competent authorities / establish new ones
- For Chapter VI related to cloud switching:
  - Experience in the field of data and electronic communications services (Art. 31.2.c)
  - Tasks include:
    - Cooperation with all relevant competent authorities for enforcement in line with other applicable Union legislation and self-regulation (Art. 31.3.h)
    - Ensuring withdrawal of charges in accordance with Article 25 (Art. 31.3.i)

# Thank you



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