

# ANTI-AMERICAN ANTITRUST: HOW FOREIGN GOVERNMENTS TARGET U.S. BUSINESSES

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## HEARING

BEFORE THE

SUBCOMMITTEE ON THE ADMINISTRATIVE STATE,  
REGULATORY REFORM, AND ANTITRUST

COMMITTEE ON THE JUDICIARY

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINETEENTH CONGRESS

FIRST SESSION

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TUESDAY, DECEMBER 16, 2025

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REGULATORY REFORM, AND ANTITRUST

COMMITTEE ON THE JUDICIARY

*Washington, DC*

The Subcommittee met, pursuant to notice, at 10 a.m., in Room 2141, Rayburn House Office Building, the Hon. Scott Fitzgerald [Chair of the Subcommittee] presiding.

*Members present:* Representatives Fitzgerald, Jordan, Issa, Gooden, Hageman, Raskin, Correa, Balint, and Garcia.

Mr. FITZGERALD. [Presiding.] The Subcommittee will come to order. Without objection, the Chair is authorized to declare a recess at any time.

We welcome everyone to today's hearing on foreign antitrust laws and their effect on American companies.

I will now recognize myself for an opening statement.

If you want to beat your competitors, one option is to innovate them. Another is to regulate them, and unfortunately, foreign governments are increasingly choosing the second option.

That is what today's hearing is about and a growing effort to rewrite the rules of the global economy in a way that punishes success, targets American innovation, and leaves consumers worse off.

The blueprint for this effort is the European Union Digital Markets Act. For over half a century, antitrust law has been grounded in a simple principle: Protect consumers by promoting competition. The DMA flips that principle on its head. It protects competitors from competition without even considering how that might affect consumers.

The DMA does not ask whether consumers have been harmed. It does not even ask whether a business has done anything wrong. It asks whether a company is large, successful, and most importantly, American. If the answer is yes, the rules suddenly change. Common business practices are banned; innovation is treated as a threat, and foreign rivals are handed access to data and technology that they could never build or earn on their own. That is not com-

petition policy; that is forced redistribution, and we should not pretend that this came out of nowhere.

Europe's economy has declined rapidly over the past several decades. As the Draghi report highlighted, no EU company with a market capitalization over 100 billion euros has been created from scratch in the last 50 years.

Meanwhile, all six companies with a \$1 trillion valuation have been created in America over that same period. Thirty percent of the quote, "unicorn businesses" founded in Europe, they are startups with a valuation exceeding \$1 billion. They have all relocated their headquarters abroad at this point. Talented European engineers are frequently choosing San Francisco and Seattle over Berlin and Paris and taking with them their innovative ideas and patented technologies.

Instead of confronting overregulation and weak economic growth, EU officials have chosen a different path. They target American companies and call it regulation; tax innovation and call it fairness.

Well, what should concern us most is that this model is now spreading globally. We are seeing it in South Korea and we are seeing it in Brazil, and we are even seeing it in countries like Japan and Australia—different countries, but the same framework: Laws that single out American businesses, restrict consumer conduct, and hand sweeping power to regulators and bureaucrats with virtually no accountability or due process.

The activists behind these proposals call it competition policy, but, in reality, it is industrial policy designed to give their own corporations a geopolitical edge. This is not a coincidence; it is coordination. The strategy is simple: Copy American innovation, and then, find and regulate the companies that create it out of existence.

This is not a technical debate among different regulators; it is a values test. Do we believe in competition driven by consumers, and innovation or competition dictated by bureaucrats and foreign ministries?

The United States has always chosen the first path. We let markets work. We punish real harm and reward innovation. America built the strongest economy in the history of this world by trusting consumers, not regulators.

The DMA-style regulation would take us into exactly the opposite direction. It would raise prices, reduce choice, weaken privacy and security, and slow innovation. It would replace consumer judgment with regulatory command.

That is why the Trump Administration has been pushing back on these discriminatory tactics. Free trade does not mean tolerating attacks on the very principles that created our great economic system. Free trade only works when it is also fair. When foreign governments use regulation to discriminate against American companies, that is not competition; that is protectionism.

Free markets have been reciprocal in the past. When foreign governments went ahead and started to rig their laws against American companies, the United States will and can and should respond. Using our trade leverage to confront these policies is not aggressive; it is necessary.

We should be just as clear about our own path here at home. The United States should not import these failed ideas. We should reject DMA-style antitrust outright. We do not need European-style micromanagement. We need free market competition.

Our antitrust laws only work because they focus on consumers, evidence, and due process. In America, competition belongs to consumers, not commissioners. DMA-style antitrust rejects those values, and America should reject it all the way through to the end. Our principles are what have made America great and defending them is how we will keep America great for decades to come.

I want to thank all the witnesses for being here today, and I look forward to hearing what you have to say on this very important topic.

I will now recognize the Ranking Member. Mr. Raskin is going to go first.

Mr. RASKIN. Thank you very much, Mr. Chair. Welcome to all our witnesses. Thank you for joining us.

Today is just the second time this Congress and the administration has an official testifying before the Judiciary Committee. When we hear Roger Alford's testimony today, everybody will understand why they are not testifying about what is actually going on behind closed doors over there.

In April, Mr. Alford, who is a distinguished Professor of antitrust law and constitutional law at Notre Dame, began serving as the Principal Deputy Assistant Attorney General in the Antitrust Division. That is the No. 2 spot at Antitrust. By July of this year, Professor Alford was fired for insubordination after he blew the whistle on DOJ's corrupt approval of a merger between Hewlett Packard Enterprise and Juniper Networks.

Although the Antitrust Division strongly opposed this merger, its opposition was overridden by Attorney General Pam Bondi's then-Chief of Staff Chad Mizelle and her then-Counselor Stanley Woodward after Hewlett Packard lobbyists urged them to ignore and bypass the sweeping antitrust problems that had been identified.

Professor Alford, thank you for sounding the alarm today about backroom corruption, political favoritism, and betrayal of the rule of law at the Department of Justice. We are grateful to you for your courage in speaking out before this Committee.

Our colleagues have described this hearing as "anti-American antitrust," but I'm afraid they are not interested in actually dismantling monopolies, collusion, or price-fixing. On the contrary, their policy is all about elevating the interests of the largest corporations, especially the ones donating directly to Donald Trump and MAGA, over the public interest in putting them all far beyond the reach of U.S. foreign and domestic antitrust laws.

Our expert agencies, like the FTC, the FCC, and DOJ, review mergers to assess whether a proposed deal complies with the relevant antitrust laws or public interest standard, including by protecting U.S. consumers from rising prices. If, after applying the law to the facts, they find that the merger is not in the public interest, they can sue to stop it or propose conditions on any new combination.

Under this administration, merger review has turned into another instrument of corruption—a way for the President to reward

his rich insider friends and punish companies he dislikes, including news companies that have been critical of his administration. Antitrust enforcement is now driven by pay-to-play corruption, political favoritism, shakedowns, and retaliation, instead of the facts and the legal standards in each case. It is not the public interest that controls outcomes; it is the President's political and financial interests.

Take the case of Hewlett Packard Enterprise's purchase of Juniper Networks. When DOJ moved to block it, Hewlett Packard Enterprise hired two lawyers with connections to President Trump and his men, Mike Davis and Arthur Schwartz, for \$1 million apiece to lobby the White House, Attorney General Bondi's Chief of Staff Chad Mizelle, and the Attorney General's Counselor Stanley Woodward. Although DOJ staff and Trump's head of the Antitrust Division, Assistant Attorney General Gail Slater, strongly opposed the merger of these two large companies, the lobbyists got Mizelle to ignore not just the facts and the law, but also the recommendations of Donald Trump's own antitrust team to bless the deal.

We don't know what these lobbyists told Mizelle over cocktails in a private club in D.C., but we do know that he short-circuited DOJ's legal review process and gave the green light to a merger that, according to the Department of Justice's own press release, will, quote, "significantly reduce competition, resulting in large segments of the American economy paying more for less." That was a backroom deal that centralizes power and sends more wealth to the wealthy, making life a lot more expensive for the vast majority of Americans already struggling to stay afloat in this economy.

Take Skydance's acquisition of Paramount, which is owned by the Ellisons, close friends and big donors to President Trump, who plied him with financial and political favors to ensure Paramount's purchase of Skydance would go through. The company not only gave tickets worth about \$12,000 to the soon-to-be Chair of the FCC, Commissioner Brendan Carr, but also collected Carr's candid advice on how to effectively lobby his agency for approval.

While Chair Carr sat on the proposed deal, the White House squeezed Paramount to pay President Trump \$16 million to settle an utterly frivolous personal lawsuit that he had filed about the way *60 Minutes* edited an interview with Kamala Harris, and he pressured Paramount to give him an additional \$20 million in free ads—well, just for the hell of it. Even after this corrupt tribute was paid, the administration extracted more, installing an informant or "minder" directly in the newsroom at *CBS* to make sure its news coverage would always be suitably pro-Trump—adding naked violation of the First Amendment to this bonfire of corruption.

Even now, the President is saying he personally will be involved in the process of Warner Bros' sale, emphasizing that *CNN* must, quote, "be sold" because of the news outlet's discourteous coverage of his presidency. Netflix and Paramount both know that the person they really need to lobby on the proposed acquisition of Warner Bros by either company is the President himself. They have already gone to the White House to make their case. This is how a gangster State runs, not how antitrust enforcement is supposed to work in the United States of America.

Every time corporations and lobbyists use political influence and money to thwart the actual merger review process, the American people lose. We get a marketplace with more corporate concentration and consolidation, reduced competition, less innovation, and mired in political influence peddling. Prices go up; wages go down. The economic elite profits and economic inequality intensifies.

As our witness Professor Alford said of these lobbyists and their White House ties in August, quote, "Regardless of the outcome, their commitment is to exert and expand their influence and enrich themselves as their friends and supplicants are in power."

These cash-for-merger backroom deals reflect the broader patterns of money corruption that define this administration.

Today, we will hear from Roger Alford about the difference between fair enforcement of antitrust laws and backroom dealmaking. I hope my colleagues will listen to him and take to heart the warning that he shares about the economic costs of political corruption.

Thank you, Mr. Chair. I yield back to you.

Mr. ISSA. Mr. Chair? A point of privilege and personal question. Isn't it true that we still have a prohibition on pejorative remarks about the Office of the President or the President, as the Ranking Member just did? Is it not still a parliamentary objection to that language personally attacking the President and accusing him of crimes?

Mr. FITZGERALD. It is, and I would ask the Members to refrain from that. If they could direct any of their questions or comments to the Chair or in response to the witnesses, that would be certainly more appropriate.

Mr. ISSA. Mr. Chair, I'd further ask that this objection be placed after the Ranking Member's opening statement. I realize that he can say anything he wants on an opening statement, including a statement that is intended to be prohibited by House rules, but I would like my objection noted for the record.

Mr. FITZGERALD. That would—

Mr. RASKIN. Mr. Chair, I'll just state that nothing I stated is prohibited by any House rule and we are perfectly within our both First Amendment rights and Our Speech and Debate Clause rights to characterize both public policies that are taking place and actions that are taking place. I'm certain that the distinguished gentleman from California has engaged in equally vigorous criticism of Democratic Presidents and the administrations, and that is part of living in the land with freedom of speech.

Mr. ISSA. Mr. Chair, I will not ask that his words be taken—

Mr. FITZGERALD. Do you ask to—

Mr. ISSA. We will not ask that his words to be taken down because I want to go forward with this hearing. I do, again, insist that my objection be noted for the record.

Mr. FITZGERALD. Very good. We will now move on to opening statements. Beyond opening statements, we will come back to Chair Jordan. At this point, we will now introduce today's witnesses.

Mr. ISSA. Well, then, we can take Mr. Jordan next.

Mr. FITZGERALD. Yes, unless Chair Jordan would like—

Chair JORDAN. No, I just want to thank the Chair for this hearing and look forward to hearing from our witnesses.

Mr. FITZGERALD. OK.

Chair JORDAN. I will yield back to the Chair.

Mr. FITZGERALD. OK. Then, we will recognize the Ranking Member for an opening—

Ms. BALINT. Thank you, Mr. Chair.

Mr. FITZGERALD. OK.

Ms. BALINT. This hearing is nothing, from where I sit, it is nothing but a handout to big tech. These companies will oppose any rules to reform their anticompetitive conduct, no matter what nation or State tries to hold them accountable.

Republicans are concerned about other countries beating up on big tech. I'm concerned about big tech beating up on Americans. Most Americans are struggling. Huge, dominant companies that don't have real competitors are being pushed—pushed—to have more and more power, but they are not being pushed to lower their prices or to make products better.

We won't make life in this country more affordable if we don't commit to strong antitrust enforcement. Corporate greed is at the heart of rising prices. The fact is that both parties have failed to check the consolidation of economic power and the abuses of that power.

Dominant companies have grown larger under both Democratic and Republican Administrations, but here in the House Judiciary Committee support for rigorous antitrust enforcement and merger review has been bipartisan. It was this very Subcommittee that studied the digital market, released a report, and crafted antitrust rules to rein in big tech. Those bills were supported and voted out of this Committee by both parties. That was just a few years ago.

Boy, have times changed. Our bipartisan antitrust legislation failed to become law because of opposition from factions in both of our parties. Work still continued at the agencies. The FTC and DOJ sued big tech for breaking the antitrust laws. Many of these suits began under Trump, were continued under Biden, and now, are again in the hands of the Trump Administration.

In the Senate, Republicans like Senators Lee, Grassley, and Blackburn, and Democrats like Booker, Klobuchar, and Blumenthal, are still working to pass the same antitrust rules that started in this Committee. Those bills are, rightly, targeted at big tech. For example, Senator Lee's AMERICA Act would reform or break up dominant tech firms.

Why is it that today, here in this House Committee, my colleagues across the aisle are characterizing those bipartisan bills as anti-American? Why is that? Because they target multinational big-tech companies that Chair Jordan seems to like.

Today, Republicans in this Committee are showing the wide gap between them and other Members of their own party, and more importantly, the gap between what they are pursuing today and what Americans want us to be doing.

Their Senate colleagues, the Vice President, and Trump appointees at the Justice Department and the FTC, all support strong antitrust legislation and enforcement. While our own government prosecutes American big-tech companies for breaking the law and

our Senate colleagues advance measures to hold big tech accountable, we are, apparently, supposed to criticize other countries for doing the exact thing that our own voters want us to be doing, that Americans are actually clamoring for.

Countries around the world, including Australia, Brazil, Japan, South Korea, the U.K., and the EU, did what we did. They studied the digital market, found dominant tech companies, found that they were abusing their power and stifling competition, and then, crafted rules and brought lawsuits.

The Majority witnesses will claim that these rules and suits are unfairly targeting American companies, but that premise ignores reality. Other countries are actually trying to address the monopolistic power of big tech—power that poses danger to markets, democracies, and frankly, to public health; power that can and must be checked through the enforcement of antitrust laws.

We should be world leaders on this. We are Americans. Do we still believe in healthy competition? Why would we use time on this Committee to blast others who are taking on the power of monopolies that are increasingly controlling our lives?

Republicans will argue today that actions by other nations to address monopolistic power are discriminatory and unfairly target U.S. tech companies. The only true examples of discriminatory and unfair law enforcement are right here at home. I have an idea. Why don't we cleanup our own house first?

The true threat to enforcement of antitrust law and to American companies is the perversion of antitrust undertaken by the Trump Administration. Under this President, principled and fact—based review of one company buying another is overruled in favor of deals struck by Hewlett Packard's well—paid lobbyists with government officials over cocktails at private clubs.

Under Trump, Paramount's acquisition of Skydance was only approved after the President was paid tens of millions of dollars and a government spy was installed in an *NBC*—excuse me—in a *CBS* newsroom.

Under this administration, the President pardoned an indicted bid rigger. This is one of the few antitrust violations that are criminally prosecuted. The pardon came after the President played a round of golf with the alleged criminal's lobbyist. One round at Mar-a-Lago wipes away a possible 10-year prison sentence for a crime that Trump's own Department of Justice and FBI worked to prosecute.

Keep in mind that the individual pardoned was set to be deposed the very next day in a separate civil lawsuit, the government's Live Nation/Ticketmaster case. In one fell swoop, the Trump Administration manages to undermine two cases important to protect Americans from being fleeced by corporate misconduct and greed.

The United States has long stood for something better—predictable enforcement, independent institutions, and decisions grounded in law and evidence. When the administration treats antitrust as just another way to make a corrupt deal, when it weaponizes antitrust to achieve political goals and to reward its allies, it undermines the foundations of our market economy: Competitive merit, not political influence, to determine who succeeds in this country.

Competition creates the pipeline of American innovation and prosperity. Isn't that what we want? Isn't that what we say, what we want, what is better for all of us?

Again and again, we have seen this administration do favors for their rich friends and allies, while the rest of us suffer. Big tech and big media are allowed to get bigger, raise prices, and squash competitors. All they need is a seven-figure payment to lobbyists and secret deposits into the President's ballroom fund. Companies are taking notice. They see that the fate of any multibillion-dollar deal is going to run right through the Oval Office.

Right now, Warner Bros is up for sale, and the two biggest bidders, Netflix and Larry Ellison's Paramount, are doing all they can to get the White House to favor their buyout over another. Paramount is going to the White House and hanging out in the Presidential box at the Kennedy Center. President Trump promised sweeping changes to *CNN* after he renewed his longstanding criticism of the news channel. Not to be outdone, Netflix executives also paid homage to the President and visited the White House in recent days.

Americans of both parties see this and they don't like it, and they want us to do something about it. They want us to fight back. We should be doing all we can to address the real and present dangers that monopolies, especially media and tech monopolies, pose to our markets, our wallets, to consumers, to competitors, and, yes, frankly, to the democracy itself.

Big tech and big media are more than happy to pay to get their mega-mergers approved or evidence against them thrown out. Those close deals that lead to even more private economic power and control over what we watch, what we buy, what we see, and what we hear.

Our Chair, Jim Jordan, has long opposed bipartisan antitrust bills aimed at reining in giant tech companies and cracking down on their abusive business practices. In 2021, when we advanced bipartisan tech antitrust bills, he called them, quote, "Democrat bills," despite the support the bills continue to have from Republicans like Senators Grassley, Lee, and Blackburn.

Now, we are supposed to beat up on other countries for doing the thing that we attempted to do? Give me a break. Big tech and their secret million-dollar donations and backroom deals cannot be how this country enforces the law. We have to fight against monopolies wherever we find them, and we cannot and should not criticize other nations for addressing the big tech global harms.

I call on my colleagues to join me in standing up for the rule of law, for antitrust and competition laws to be enforced on the merits and the facts, not handshakes and favors and pay-to-play games.

I look forward to hearing from our witness Professor Roger Alford about how far we have perverted the rule of law and what we must do to ensure that transparency, accountability, and justice rule the day.

I yield back.

Mr. FITZGERALD. The gentlewoman yields back.

Without objection, all other opening statements will be included in the record.

Mr. FITZGERALD. We will now introduce today's witnesses.

Mr. Shanker Singham is the Chief Executive Officer of Competere, a trade law and economic policy consulting firm based in the U.K. He is also the Chair and President of the Competere Foundation for Trade and Competition Policy, a nonprofit organization that promotes trade, competitive markets, and property rights.

Professor Aurelien Portuese. Mr. Portuese is a Research Professor and the founding Director of the GW Competition and Innovation Lab at the GW Institute of Public Policy at George Washington University. He previously was a Professor at George Mason University, the founding Director of the Schumpeter Project on Competition Policy at the Information Technology and Innovation Foundation, and a Professor at various universities in both the U.K. and in France.

Mr. Dirk Auer. Mr. Auer is the Director of Competition Policy at the International Center for Law and Economics, a nonprofit organization that promotes the use of law and economics methodologies to inform public policy debates. Mr. Auer's research focuses on the competition and antitrust issues in the United States, the U.K., and Europe.

Professor Roger Alford. Mr. Alford is a Professor of Law at the University of Notre Dame Law School. His classes and work focus on international trade, international arbitration, global antitrust, and transnational civil litigation.

We welcome our witnesses and thank them for appearing today.

We will begin by swearing you in. Would you please rise and raise your right hand?

Do you solemnly swear or affirm, under penalty of perjury, that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

[All witnesses respond in the affirmative.]

Let the record reflect that the witnesses have answered in the affirmative.

Thank you. Please be seated.

Please know that your written testimony will be entered into the record in its entirety. Accordingly, we ask that you summarize your testimony in five minutes.

Mr. Singham, you may begin.

#### **STATEMENT OF SHANKER A. SINGHAM**

Mr. SINGHAM. Thank you very much, Chair, Ranking Members, and the Members of the Committee. Thank you for the opportunity to testify today.

My name is Shanker Singham. I appear on behalf of the Competere Foundation. I'm also Chair of the Growth Commission, which is an independent network of economists focused on lack of economic growth in the G7.

I have actually testified to this Committee before in 2010 on the Chinese competition law and anticompetitive market distortions in China. The concerns that I noted then about the possibility of the use of competition policy in other countries against American companies is still valid today, and what I'm about to say about a larger group of countries is even more troubling because it concerns countries who should be allied to the U.S. economic interests.

There is a battle which has been waging for some time for the world's operating system. Markets based on competition without—competition on the merits without distortions versus markets that are defined by government distortions, subsidies, privileges, and other methods of deciding market outcomes: The U.S. model versus the China model, if you will.

The way foreign governments regulate laws and digital platforms has become a major macroeconomic and trade issue for the United States. DMA-style digital regulations and interventionist antitrust enforcement abroad are operating as nontariff barriers. They lower growth in the countries that do them and impose very large costs on the U.S. economy, and they make the China model more likely to become the global norm.

Our work at Competere focuses on why some jurisdictions are able to turn digital innovation into higher incomes and others do not. We use an econometric framework to link policy conditions to GDP per capita across countries, focused on three pillars: The openness of the trade regime; how competitive the market is—in other words, how much it delivers competition on the merits—how well it protects property rights.

Digital regulation has now become one of the most—biggest sources of these distortions. Many governments are moving away from traditional effects—based antitrust toward ex ante prescriptive regimes modeled on the European Union's Digital Markets Act. These frameworks identify gatekeepers largely by size, and then impose conduct rules on self-preferencing data use, interoperability, ranking, and product integration without requiring proof of consumer harm. In practice, they function as nontariff barriers that fall overwhelmingly on U.S. firms.

We've shown in our written testimony that many of the assumptions on which digital regulation and nationalistic enforcement are based are false and misunderstand the nature of technology markets; how they've developed, and how their underpinning economics actually works.

This leads to the use of flawed doctrines such as the Essential Facilities Doctrine, or duties to deal, that treats them as if their government—created utilities, but have been around for a century.

Our detailed case study of Korea illustrates the scale of the problem. Korea's proposed Online Platform Markets Act—there are various iterations of online fairness acts the Koreans are introducing, even as we speak, and these have imposed asymmetric burdens on large firms, particularly U.S. firms, but they damage the Korean economy itself. Our data suggests that the damage to the Korean economy is extensive, \$450–\$470 billion over a 10-year period. The damage that they do to the U.S. economy is greater than \$500 billion over a 10-year period on a long-run basis.

What should Congress do? First, treat digital regulation, foreign digital regulation, as a core trade and economic security issue. U.S. trade policy should explicitly recognize the practices I've described as nontariff barriers and address them in bilateral and multilateral engagements. The National Security Strategy makes it clear that economic security, which includes anticompetitive regulation applied to U.S. firms, is a national security issue.

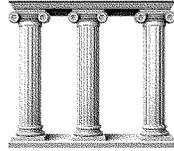
Second, Congress needs to row in behind all the weapons at our disposal to deal with this, including Section 232 tariffs, as well as Sections 301 and 338 investigations, to send a strong signal to countries that this type of damage to the U.S. economy will not be tolerated.

Third, despite agreements, and in cases where Chinese firms are clearly benefiting from heavy-handed enforcement against U.S. firms that they are not subject to, and where countries persist in damaging the U.S. economy through these measures, we think it wholly appropriate for Section 232 tariffs to be applied until the national security threat to the United States is removed.

We've submitted detailed testimony, our previous work over the last 30 years, a couple of books on distortions, anticompetitive market distortions, and trade issues. We look forward to your questions.

Thank you very much.

[The prepared statement of Mr. Singham follows:]



Competere Foundation

## Shanker Singham Written Testimony

### Global Context

1. Global economic growth, particularly in the European Union, Japan, Korea, and other major G7 economies, has remained subdued for at least two decades despite what should have been a period of extraordinary technological acceleration. GDP per capita growth in the G7 fell from about 2.6 percent per year in the 1970s and 1980s to 1.9 percent in the 1990s, 0.7 percent in the 2000s, and only about 1.0 percent in 2010–2021. The slowdown is even more pronounced in Western European economies, and recent data show UK GDP per capita actually falling in the post Covid period, while U.S. GDP per capita has recovered modestly.<sup>1</sup> This persistent slowdown, despite rapid technological change, marks one of the defining economic challenges facing advanced economies.
2. This puzzle is reinforced by international trade and technology trends. One would normally have expected higher growth in the 2000s and 2010s because of the Uruguay Round, the entry of former Eastern bloc economies into the global trading system, and the rise of large emerging economies such as India and China. Instead, advanced economy GDP per capita growth weakened, which suggests the presence of powerful growth retardants that offset or blocked the gains from openness and innovation.<sup>2</sup> The absence of these expected gains highlights a long-standing puzzle in growth analysis rather than any shortcoming in the technologies themselves.
3. The scale of technological progress can be seen in the work of Fujitsu’s Center for Cognitive and Advanced Technologies on the reasons productivity should have risen. Figure 1 below shows the dramatic improvements in computing power, automation capability, and data processing, all of which reduce the cost of information transmission and enable firms to reorganize production, improve supply chains, and allocate resources more efficiently.<sup>3</sup> Under standard growth frameworks, such changes ought to have produced measurable increases in output per worker and GDP per capita in advanced economies.

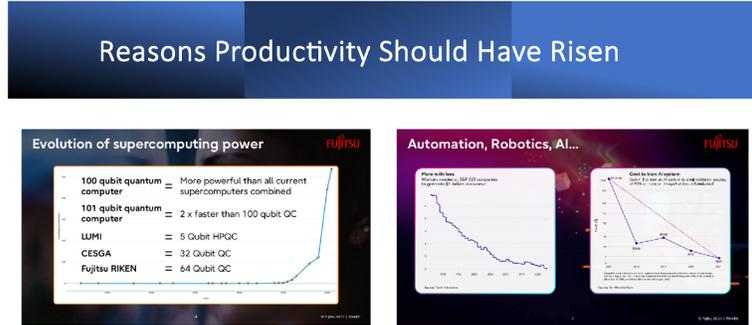
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<sup>1</sup> Douglas McWilliams, *The Growth Challenge: The Decline in GDP per Capita Growth in Advanced Economies* (London: The Growth Commission, July 2023), 6–8, 11–14.

<sup>2</sup> McWilliams, *The Growth Challenge*, 7–8, 13–14.

<sup>3</sup> Fujitsu, “Reasons Productivity Should Have Risen,” Center for Cognitive and Advanced Technologies, presentation materials, 2024.

The fact that these gains did not materialize to a greater extent in measured growth underscores how severe the impediments to transmission have been.



• Source: Fujitsu, The Center for Cognitive and Advanced Technologies

Figure 1

4. Over the same period, digital firms have come to account for an increasingly large share of economic value. This is evident both in the emergence of globally significant digital platforms and in the changing composition of major equity indices. A straightforward valuation-weighted estimate of the share of the Dow 30's market capitalization accounted for digital firms suggests a profound structural transformation. For 2000, 2010, and 2024, central estimates of this digital share are approximately 20 percent, 28 percent, and 58 percent respectively, based on aggregation of the market values of the major digital constituents of the index.<sup>4</sup> Figure 2 below summarizes these approximate values. This shift in where value is created is central to understanding how modern economies operate and where economic leadership now lies.

<sup>4</sup> Detailed valuation methodology for these estimates appears in [Annex 1](#)

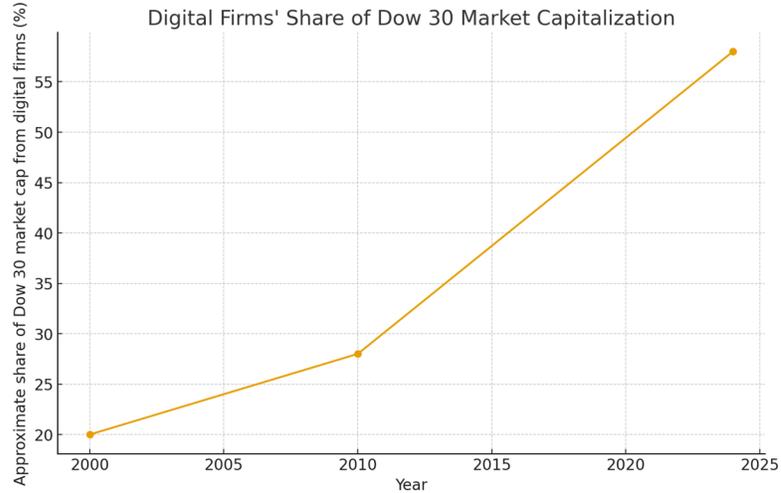


Figure 2. Approximate share of Dow 30 market capitalization accounted for digital firms, 2000–2024

5. These estimates indicate that a relatively small group of digital firms now accounts for most of the value represented in the Dow 30 index and a substantial share of total United States equity market value. The increasing centrality of these firms to the functioning of both the U.S. and global economies is difficult to overstate. At the same time, many other jurisdictions have not developed comparable digital clusters or have not permitted them to scale, which is reflected in the lower digital shares observed in markets such as the United Kingdom, the major EU economies, Hong Kong, Korea, and Singapore.<sup>5</sup> These contrasts illustrate how different policy and institutional environments influence whether digital firms emerge, scale, and contribute to national economic performance.
  
6. To make these differences across jurisdictions concrete, it is useful to measure how much of each major equity market is accounted for by the same tech-digital cluster that contains the so-called “Magnificent Seven” firms in the United States. For this purpose, tech-digital is defined as the portion of each index whose primary Global Industry Classification Standard sector is information technology, communication services, or consumer discretionary. This three-sector cluster includes all of the large United States digital

<sup>5</sup> MSCI, “MSCI USA Index (Sector Weights),” 2024; MSCI, “MSCI United Kingdom Index,” 2024; MSCI, “MSCI Europe Index,” 2024; Hang Seng Indexes Company, “Hang Seng Index Factsheet,” 2024; MSCI, “MSCI Korea Index,” 2024; MSCI, “MSCI Singapore Index,” 2024.

platforms commonly referred to as the “Mag7,” with Microsoft, Apple, and Nvidia classified in information technology, Alphabet and Meta classified in communication services, and Amazon and Tesla classified in consumer discretionary.<sup>6</sup>

7. Using this definition and the most recent index factsheets for 2024–2025, a simple cross-country comparison can be constructed that shows the share of each market’s total capitalization represented by tech-digital sectors. In the United States, the tech-digital cluster accounts for approximately 55.4 percent of the MSCI USA Index. In the United Kingdom, the comparable figure is about 9.9 percent of the FTSE 100. For developed Europe as a whole, the tech-digital share of the MSCI Europe Index is roughly 19.1 percent. In Hong Kong, the estimate is 14 percent information-technology weighting of the Hang Seng Index.<sup>7</sup> In Singapore the corresponding share of the MSCI Singapore Index is approximately 23.3 percent. In Korea, once the large chaebol conglomerate groups are removed from the calculation, independent digital firms account for only about 4 percent of total equity market capitalization.<sup>8,9</sup>
8. This adjustment is necessary because Korean chaebol such as Samsung, SK, LG, Hyundai, and related family-controlled groups are diversified industrial conglomerates with activities spanning many unrelated sectors. Treating the full market value of these groups as “digital” when only a small portion of their business is comparable to Mag7-type platforms would significantly overstate the scale of Korea’s independent digital sector. The 4 percent figure reflects the share of Korea’s market represented by non-chaebol digital firms (principally Naver, Kakao, Krafon, and HYBE) after chaebol holdings are excluded from the relevant sectors. Since some chaebol divisions do engage in genuinely digital activities, the true

<sup>6</sup> MSCI Inc., *MSCI USA Index (USD) Factsheet*, accessed December 9, 2025; S&P Global, “S&P 500: Top Constituents by Market Capitalization,” accessed December 9, 2025.

<sup>7</sup> Hang Seng Index sector data show that information technology accounts for roughly 14 percent of the index as of late 2024. Other sectors that might normally be grouped into a “new economy” cluster, such as consumer discretionary and communication services, include substantial non-digital activities. For example, brick-and-mortar retail, casinos, autos, and telecommunications. Because these mixed sectors cannot be reliably decomposed without constituent-level analysis, treating their full weight as “digital” would materially overstate Hong Kong’s true tech-digital share. The 14 percent figure should therefore be treated as a conservative lower bound, with the actual digital share somewhat higher but not significantly so.

<sup>8</sup> MSCI Inc., *MSCI USA Index (USD) Factsheet*; MSCI Inc., *MSCI United Kingdom Index (USD) Factsheet*; MSCI Inc., *MSCI Europe Index (USD) Factsheet*; Hang Seng Indexes Company, *Hang Seng Index Factsheet, 2024*; MSCI Inc., *MSCI Korea Index (USD) Factsheet*; MSCI Inc., *MSCI Singapore Index (USD) Factsheet*, all accessed December 9, 2025.

<sup>9</sup> The headline sector weights for the MSCI Korea Index classify approximately 59.7 percent of the index as belonging to information technology, communication services, and consumer discretionary. A decomposition of the MSCI Korea 20/35 factsheet and associated ETF holdings shows that major chaebol groups account for roughly four-fifths of total index weight and for most of the headline “tech-digital” component. Once these chaebol holdings are removed, the remaining non-chaebol digital firms represent about 4 percent of the total index, and roughly one-fifth of the non-chaebol segment. The 4 percent figure is therefore used as a conservative estimate of Korea’s independent digital sector.

independent digital share is likely somewhat higher than 4 percent, but not by much; 4 percent should be understood as a conservative estimate.<sup>10</sup>

9. Read in conjunction with the earlier Dow estimates, this cross-country comparison shows that the United States is the only major jurisdiction in which tech-digital firms consistently account for more than half of total equity market value, reflecting the scale and centrality of the Mag7 and related platforms. Other markets exhibit substantially lower tech-digital shares, either because comparable firms have not emerged or because policy and institutional choices have constrained their ability to scale. Figure 3 illustrates these differences.

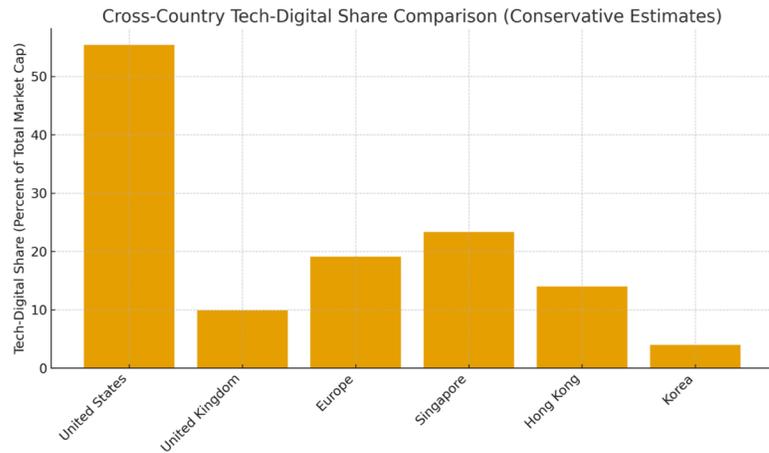


Figure 3: Tech-digital share of major equity markets, percent of total index market capitalization.

10. These comparisons indicate that the United States is the only major jurisdiction that has fully translated recent advances in digital technologies into large, globally competitive firms capable of operating at scale. Many other advanced economies have access to the same technological capabilities yet have not seen comparable digital growth. The 2025 National Security Strategy observes that continental Europe has experienced a significant decline in its share of global GDP, falling from 25 percent in 1990 to 14 percent today, partly because national and transnational regulations have undermined creativity and industriousness, and it warns that many European governments continue to pursue a failed

<sup>10</sup> MSCI Korea Index (USD) Factsheet

focus on regulatory suffocation.<sup>11</sup> These observations are consistent with the view that regulatory and competition policy frameworks can either support or suppress the growth of digital firms, and that differences in these frameworks help explain the divergence in outcomes across jurisdictions.

## Competition and Digital Policies in the Context of Global Growth

11. As we can see above, tech companies have played a central role in driving increases in GDP per capita in modern economies. Digital platforms in particular have expanded opportunities for participation in global markets by reducing transaction and information costs, permitting small and medium sized enterprises to reach wider consumer bases, and supporting the creation of new market segments such as online professional services and telemedicine. These developments have enabled households and firms to benefit from greater product variety, expanded geographic reach, and lower effective search and distribution costs, outcomes that align with the channels through which income growth occurs in the broader economic literature. The Competere Foundation's analysis notes that large digital platforms have facilitated instantaneous transfers of information, significantly reduced the cost of distribution, and supported new forms of economic activity.<sup>12</sup> The discussion of the New Media Economy framework from Shanker Singham's *Trade, Competition and Domestic Regulatory Policy* likewise explains that reductions in transmission costs in the microprocessor era contributed to the rise of multi sided platforms characterized by network effects, scale economies, and new pathways for productivity gains.<sup>13</sup> In combination, these factors have made digital platforms a major source of global output and income expansion. As digital platforms have become integral to modern economic activity, the policy environment in which they operate has emerged as a significant determinant of national and global growth. Most significant constraints on growth now arise from domestic regulatory measures that function as anti-competitive market distortions (ACMDs), rather than from traditional border barriers.<sup>14</sup>

<sup>11</sup> The White House, National Security Strategy of the United States (Washington, DC: The White House, 2025), 28.

<sup>12</sup> See Annex 2 for Shanker A. Singham, *Advice on Application of Competition Policy Against Large U.S. Firms in Korea* (Competere Foundation, October 2025), hereinafter "Competition Policy Against Large U.S. Firms."

<sup>13</sup> Shanker A. Singham and Alden F. Abbott, *Trade, Competition and Domestic Regulatory Policy: Trade Liberalisation, Competitive Markets and Property Rights Protection* (Routledge, 2023), Chapter 14 ("Impact of the New Media Economy"), hereinafter "Trade, Competition and Domestic Regulatory Policy."

<sup>14</sup> Shanker A. Singham, *Trade Policy in the Trump Administration: Advancing Reduction of Anti-Competitive Market Distortions* (Competere LLC, August 21, 2025), hereinafter "Trade Policy in the Trump Administration."

12. The economic effects described above are transmitted most directly through small and medium-sized enterprises, for whom digital platforms function as essential market infrastructure rather than merely optional distribution channels. In this sense, platforms shape not only aggregate growth outcomes but also the conditions of entry, expansion, and rivalry faced by smaller firms. SMEs rely on platform ecosystems to substitute for fixed investment in logistics, payments, marketing, and trust mechanisms, enabling participation in domestic and cross-border markets that would otherwise be inaccessible. Where digital platforms operate at scale under predictable, effects-based regulatory conditions, they lower entry barriers and intensify competition among SMEs, contributing to productivity growth and income expansion. Conversely, regulatory interventions that fragment platform operations, raise compliance costs, or introduce discretionary and opaque enforcement tend to impose disproportionate burdens on smaller firms, which lack the resources to absorb regulatory risk or adapt to frequent rule changes. In such cases, the primary economic effect of regulatory distortion is not a constraint on large firms per se, but a reduction in SME entry, innovation, and competitive intensity. This distributional channel is central to understanding how domestic regulatory measures can operate as anti-competitive market distortions with macroeconomic consequences, even when they are formally framed as competition or consumer protection policies.<sup>15,16</sup>

#### An introduction to ACMD theory

13. Anti-competitive market distortions (ACMDs) are domestic policy measures that impair the competitive environment by weakening property rights protection, reducing the intensity of domestic rivalry, or restricting exposure to international competition.<sup>17</sup> These interventions operate through the three pillars that underpin productivity and income growth: property rights, domestic competition, and international competition.<sup>18</sup> Distortions in any of these areas alter the incentives that govern investment, innovation, entry, and resource allocation, and thereby depress economic performance.
14. In practical terms, ACMDs include a wide range of domestic measures, such as regulatory requirements that raise fixed costs for new entrants, subsidies or state support that shield particular firms from market discipline, selective enforcement of competition rules, and sector-specific regulations that disadvantage foreign suppliers relative to domestic firms.

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<sup>15</sup> Southeast Asia Public Policy Institute, *Digital Platform Regulation in APEC Economies: Empowering Innovation and Inclusive Growth* (Bangkok and Singapore: Southeast Asia Public Policy Institute, September 2025).

<sup>16</sup> Nigel Cory, *Understanding the Impact of KFTC Enforcement on U.S. Firms: Qualitative Evidence and Analysis* (Washington, DC: National Bureau of Asian Research, November 2025).

<sup>17</sup> See [Annex 2](#)

<sup>18</sup> *Ibid*

Some of these interventions are explicitly protectionist, while others arise as unintended consequences of sectoral regulation or precautionary approaches in competition policy. What unites them is that they alter competitive conditions in ways that privilege particular firms, business models, or technologies, and that they frequently operate as de facto non-tariff barriers when they fall more heavily on foreign producers or on firms integrated into global value chains.

15. The SRB model was developed to quantify how such distortions affect GDP per capita by translating policy conditions into measurable pillar indices for property rights protection, domestic competition, and international competition.<sup>19</sup> Each index aggregates observable policy and institutional sub-factors. For example, the property rights index incorporates measures of contract enforcement, judicial effectiveness, expropriation risk, and protection of intellectual property. The domestic competition index reflects regulatory freedom, labor and financial market flexibility, business conditions, infrastructure and utilities access, and other indicators that shape firm rivalry. The international competition index captures tariff and non-tariff barriers and trade-facilitation metrics, such as customs efficiency and timeliness of shipments.<sup>20</sup> These indices are constructed to be exogenous explanatory variables by excluding outcome-based measures, ensuring that the model captures policy conditions rather than economic results.<sup>21</sup>
16. The econometric structure of the SRB model relates GDP per capita to a set of fundamental variables that directly determine productivity, including foreign direct investment, domestic credit availability, public health expenditures, educational attainment, and natural resource endowments.<sup>22</sup> These factors represent the channels through which policy conditions in the three pillars influence productivity. The model is calibrated using cross-country data with standard controls, enabling analysts to compare countries on a consistent basis. The original SRB formulation demonstrated a strong ability to explain cross-national variation in income, accounting for roughly 90 percent of the variation in GDP per capita with a mean prediction error of approximately 4 percent.<sup>23</sup>
17. As the model was refined, the SRB- $\gamma$  specification was introduced to address econometric issues and to make the analysis more useful for policymakers. The earlier version combined the three pillars into a single composite index, creating potential

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<sup>19</sup> Ibid

<sup>20</sup> Ibid

<sup>21</sup> Ibid

<sup>22</sup> Ibid

<sup>23</sup> Trade Policy in the Trump Administration

multicollinearity and endogeneity concerns.<sup>24</sup> The SRB- $\gamma$  model resolves these issues by correlating each pillar separately with GDP per capita in a panel data framework that includes country and time fixed effects.<sup>25</sup> In this formulation, each pillar enters the regression independently along with appropriate control variables, allowing the model to isolate the distinct contribution of property rights, domestic competition, and international competition to income levels. The fixed-effects structure mitigates omitted-variable bias and clarifies how improvements in pillar scores translate into higher productivity.<sup>26</sup>

18. Because the SRB- $\gamma$  model provides a transparent link between policy conditions and income, it enables policymakers to evaluate the economic cost of distortions and the benefits of reform. Improvements in domestic competition or property rights protection, for example, feed through the productivity channels in the model and produce measurable increases in GDP per capita.<sup>27</sup> These effects are not isolated to specific markets but reflect economy-wide changes in investment, credit availability, and the efficiency of resource allocation. The model's predictive accuracy and its consistency with other empirical findings on the growth impact of anti-competitive regulation reinforce the conclusion that domestic policy distortions can impose substantial macroeconomic costs.<sup>28</sup>
19. Competere's applied work in Korea and in the evaluation of regulatory actions affecting U.S. firms in Korea illustrates the real-world operation of these mechanisms. These studies apply the SRB- $\gamma$  model to show how domestic regulatory measures function as ACMDs by raising compliance burdens, limiting entry, disadvantaging foreign suppliers, or fragmenting digital markets, and then estimate the associated losses in GDP per capita relative to a more pro-competitive policy environment.<sup>29</sup> These analyses demonstrate that domestic regulatory choices, including in digital markets, can significantly alter a nation's competitiveness and long-run income trajectory.
20. Taken together, this body of work shows that ACMDs are not narrow competition issues but macroeconomic impediments. By weakening pillar conditions, they depress productivity and shift a country's long-run income path downward. The SRB- $\gamma$  model provides a

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<sup>24</sup> Shanker A. Singham, *International Trade, Regulation and the Global Economy: The Impact of Anti-Competitive Market Distortions* (Routledge, 2025), hereinafter "International Trade, Regulation and the Global Economy".

<sup>25</sup> *Ibid*

<sup>26</sup> *Ibid*

<sup>27</sup> *Ibid*

<sup>28</sup> See [Annex 2](#)

<sup>29</sup> *Ibid*

disciplined method to identify these distortions, quantify their effects, and guide reforms that strengthen competition, protect property rights, and enhance openness.<sup>30</sup>

21. As digital activity occupies a growing share of output and trade, digital regulatory measures increasingly shape these competition and property rights conditions and therefore play a central role in determining long run growth trajectories.

#### Why digital regulations can be ACMDs

22. Domestic regulation in the digital sector can function as an ACMD when it alters the competitive process by weakening property rights, raising barriers to entry, limiting exposure to foreign competition, or constraining the ability of firms to innovate.<sup>31</sup> Digital markets are characterized by marginal-cost curves that decline toward zero once the core product and infrastructure have been established and user numbers scale. While initial marginal costs may be high, they fall rapidly as user numbers grow, producing strong scale economies. Regulations that do not account for these characteristics can disrupt the conditions that sustain productivity and consumer benefit.<sup>32</sup> While governments may pursue legitimate policy objectives, regulatory measures that restrict market access, impose disproportionate burdens on certain firms, or mandate structural or behavioral constraints without evidence of harm can weaken the pillars of domestic and international competition and thereby reduce long-run economic performance.<sup>33</sup>
23. Not all forms of government intervention are anti-competitive. Measures that protect consumers from fraud, ensure safety, or preserve the integrity of financial systems are consistent with competitive markets when they are proportionate and non-discriminatory.<sup>34</sup> However, interventions become anti-competitive when they advantage particular firms, business models, or national industries, when they raise compliance costs in ways that deter entry or innovation, or when they fragment markets and prevent firms from realizing scale economies. Overly interventionist actions by competition authorities can also create distortions by imposing remedies or conduct obligations that interfere with dynamic rivalry or by mischaracterizing competitive conditions based on static market assumptions.<sup>35</sup> In such cases, even well-intentioned interventions can function as ACMDs because they alter competitive incentives, restrict investment, or shield domestic incumbents from market pressure.

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<sup>30</sup> Ibid

<sup>31</sup> Trade Policy in the Trump Administration

<sup>32</sup> Trade, Competition and Domestic Regulatory Policy

<sup>33</sup> Trade Policy in the Trump Administration

<sup>34</sup> Ibid

<sup>35</sup> Trade, Competition and Domestic Regulatory Policy

24. Digital regulation can operate as an ACMD through several mechanisms. Regulatory measures that increase fixed costs or compliance burdens can disproportionately harm smaller firms or new entrants, reduce contestability and limit innovation. Restrictions on data flows or interoperability can fragment digital ecosystems, reducing scale and the efficiency gains associated with network effects. Behavioral obligations that limit the ability of firms to integrate products, invest in new services, or optimize platform functionality can reduce service quality and prevent firms from achieving efficiencies that benefit consumers.<sup>36</sup> When these measures fall more heavily on foreign suppliers or on firms integrated into global value chains, they function as de facto non-tariff barriers, limiting international competition and reducing participation in global digital trade.<sup>37</sup>
25. As digital platforms have become integral to modern economic activity, the policy environment in which they operate has emerged as a significant determinant of national and global growth. Most significant constraints on growth now arise from domestic regulatory measures that function as ACMDs, rather than from traditional border barriers.<sup>38</sup> In this analysis, such measures are understood to affect three core pillars of an economy: the intensity of domestic competition, the openness of international competition, and the security of property rights.<sup>39</sup> Singham's *International Trade, Regulation and the Global Economy: The Impact of Anti-Competitive Market Distortions* develops an econometric framework, referred to as the SRB-γ model, that quantitatively relates each of these conditions to GDP per capita and finds statistically significant positive relationships between all three pillars and income levels, with domestic competition exhibiting a particularly strong association.<sup>40</sup>
26. In many jurisdictions, these challenges have been magnified by a broader shift away from traditional ex post, effects-based antitrust enforcement toward ex ante prescriptive regulatory frameworks for digital markets.<sup>41</sup> Under an effects-based approach, intervention is guided by demonstrable evidence of harm to the competitive process and is disciplined by established standards of proof. The emerging ex ante approach instead imposes predefined obligations or prohibitions on designated firms, often reflecting static assumptions about market structure or firm behavior rather than the outcomes of actual

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<sup>36</sup> Trade Policy in the Trump Administration

<sup>37</sup> Ibid

<sup>38</sup> Trade Policy in the Trump Administration

<sup>39</sup> Ibid

<sup>40</sup> International Trade, Regulation and the Global Economy

<sup>41</sup> Trade Policy in the Trump Administration

competitive dynamics.<sup>42</sup> This shift increases the likelihood that regulation will target conduct that is either competitively neutral or efficiency enhancing, and reduces the ability of markets to adjust through innovation and rivalry. As a result, regulatory intervention is more likely to function as an ACMD, affecting the conditions of domestic and international competition and weakening the incentives that sustain investment and productivity growth.

27. The evidence from Competere's analyses shows that digital regulatory measures can impose substantial economic costs when they weaken the competitive and innovation enhancing conditions that support growth. Broad or precautionary regulatory regimes can increase compliance burdens, limit the ability of firms to innovate, reinforce the position of less efficient competitors, and create structural impediments that reduce the output and quality improvements associated with digital platforms.<sup>43</sup> Likewise, domestic regulatory measures, including those affecting data, privacy, digital services, and platform conduct, now constitute a growing share of non-tariff barriers that restrict market access and raise the cost of participation in global supply chains.<sup>44</sup> Interventions which fragment platform ecosystems, constrain scale, or rely on static market definitions can undermine the beneficial effects associated with network economies and reduce the capacity of platforms to deliver consumer benefit.<sup>45</sup> These effects operate through the three pillars and can therefore limit productivity and depress GDP per capita when implemented without demonstrated evidence of consumer harm or efficiency gains.
28. Digital markets present particular regulatory challenges because they evolve rapidly, rely on continuous investment cycles, and integrate multiple functions that traditionally operated in separate competitive spaces. Regulators often apply static market definitions or precautionary frameworks in these environments, even though digital markets are characterized by dynamic rivalry, rapid innovation, and interdependent product and service offerings.<sup>46</sup> These characteristics increase the risk that well intentioned regulatory measures will misdiagnose competitive conditions, impose obligations that do not correspond to actual sources of market power, or adopt remedies that destabilize the innovation cycles on which platform markets depend.<sup>47</sup> Regulatory complexity also heightens the likelihood of error and can generate distortions when rules introduce uncertainty, fail to account for convergence across markets, or prioritize competitor

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<sup>42</sup> Trade, Competition and Domestic Regulatory Policy

<sup>43</sup> See [Annex 2](#)

<sup>44</sup> Trade Policy in the Trump Administration

<sup>45</sup> Trade, Competition and Domestic Regulatory Policy

<sup>46</sup> *Ibid*

<sup>47</sup> Trade Policy in the Trump Administration

welfare over consumer welfare.<sup>48,49</sup> Because these factors directly influence the three pillars of domestic competition, international competition, and property rights, the design and application of digital regulation has increasingly become a central determinant of long run economic performance.

29. Regulatory intervention in digital markets also carries a heightened risk of Type 1 error, in which authorities take action against conduct that is competitive or efficiency enhancing. Analyses in the economic and legal literature draw on the established view in antitrust jurisprudence, including the Supreme Court's reasoning in *Verizon v. Trinko*, that false positives can be more damaging than false negatives because they deter the forms of rivalry and investment that competition law is intended to protect.<sup>50</sup> Research further notes that premature or misdirected intervention in dynamic markets can suppress innovation, reduce output, and weaken long run productivity growth, outcomes that are particularly pronounced in sectors characterized by rapid technological change and network effects.<sup>51</sup> These concerns are reinforced by empirical findings showing that observed increases in concentration associated with expanding output or declining marginal costs often reflect innovation rather than reduced competition.<sup>52</sup> The error cost analysis in the modern antitrust literature likewise emphasizes that false positives can impose especially high costs in innovation driven markets, where mistaken intervention can disrupt investment cycles and reduce welfare over time.<sup>53</sup> When regulatory frameworks do not adequately account for these dynamics, the likelihood of error increases and the resulting distortions can impose significant and long lasting economic costs.
30. Taken together, these features of digital markets and the regulatory risks associated with them demonstrate why digital policy design has become a central determinant of economic performance. Domestic regulatory measures in the digital sphere now constitute a significant share of the non-tariff barriers that shape conditions of trade and influence the competitiveness of national economies.<sup>54</sup> When regulatory measures weaken the pillars of domestic competition, international competition, or property rights, the resulting

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<sup>48</sup> International Trade, Regulation and the Global Economy

<sup>49</sup> Trade, Competition and Domestic Regulatory Policy

<sup>50</sup> *Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004).

<sup>51</sup> Geoffrey A. Manne, "Error Costs in Digital Markets," *Global Antitrust Institute Report on the Digital Economy* (2020).

<sup>52</sup> Sharat Ganapati, "Growing Oligopolies, Prices, Output, and Productivity," *American Economic Journal: Microeconomics* 13, no. 3 (2021): 309–27.

<sup>53</sup> Joshua D. Wright and Murat C. Mungan, "The Easterbrook Theorem: An Application to Digital Markets," Working Paper, Texas A&M University School of Law, 2022.

<sup>54</sup> Trade Policy in the Trump Administration

distortions depress productivity and reduce GDP per capita.<sup>55</sup> Because digital platforms have become foundational infrastructure for communication, commerce, and the delivery of services across borders, the effects of these distortions extend beyond the regulating jurisdiction and influence the growth prospects of trading partners and integrated supply chains.<sup>56</sup> These dynamics underscore that digital regulation is now a macroeconomic policy choice with consequences for national prosperity and global economic performance, warranting careful evaluation of how specific regulatory approaches operate in practice.

### Underlying assumptions that underpin regulatory choices

31. Governments frequently approach digital platforms as if they were privatized versions of long standing public utilities, applying regulatory tools that were developed for sectors characterized by government ownership, limited entry, and cost structures that differ fundamentally from those of modern technology firms.<sup>57</sup> This perspective reflects an assumption that digital markets operate like traditional industrial sectors with U-shaped marginal cost curves and predictable patterns of output and pricing, even though digital platforms are characterized by marginal costs declining to zero, rapid scalability, and competitive dynamics driven by innovation rather than capacity constraints. These assumptions further treat large market shares as evidence of durable market power, notwithstanding the significant entry and expansion that occur when innovation or new functionality alters the competitive landscape.<sup>58</sup> Drawing on these assumptions, some authorities turn to doctrines such as the essential facilities doctrine, which historically applied to state controlled monopolies in infrastructure sectors where mandated access was necessary to enable downstream competition. Courts have long cautioned against expansive use of the essential facilities doctrine, which is sometimes invoked to justify regulatory mandates in digital markets. In *Twin Laboratories v. Weider Health and Fitness*, the Second Circuit rejected an attempt to compel access to a rival's distribution network, holding that the doctrine applies only in the narrowest circumstances and only when a facility cannot be reasonably duplicated, the defendant controls that facility, and the refusal to provide access creates a clear threat to competition. The court emphasized that a firm does not become an essential facility merely because access would make a competitor's business easier or more profitable, and it declined to impose a duty to deal where alternative channels were available.<sup>59</sup> *Twin Labs* illustrates that the essential facilities doctrine does not apply to markets in which firms can build independent

<sup>55</sup> International Trade, Regulation and the Global Economy

<sup>56</sup> See [Annex 2](#)

<sup>57</sup> Trade, Competition and Domestic Regulatory Policy

<sup>58</sup> See [Annex 2](#)

<sup>59</sup> *Twin Laboratories, Inc. v. Weider Health & Fitness*, 900 F.2d 566 (2d Cir. 1990).

distribution systems or compete through alternative business models, a principle directly relevant to digital platforms that operate in contestable and rapidly evolving environments.<sup>60</sup> These analogies misinterpret the economic characteristics of digital markets, which are defined by dynamic rivalry, network effects, and convergence across functions, and have contributed to regulatory responses that are misaligned with the mechanisms through which platform based competition delivers consumer benefit and productivity growth.

32. Regulatory misdiagnosis is further reinforced when jurisdictions adopt competition doctrines developed in the European Union without regard to the institutional context that shaped them. The EU's early approach to vertical restraints and to firms designated as dominant was driven by concerns unique to the process of constructing the single market.<sup>61</sup> During the 1980s and 1990s, European competition authorities sought to prevent commercial arrangements that could reintroduce barriers between member states, particularly exclusive dealing or territorial limitations that operated along national lines and threatened to fragment the internal market.<sup>62</sup> This integration imperative coupled with a civil law tradition produced a more formalistic and interventionist approach toward vertical agreements and dominance than that taken in the United States, where enforcement has traditionally required demonstrated harm to the competitive process rather than a structural inference based on firm size or contractual form (except during the recent period in which U.S. enforcement shifted toward a more EU-style orientation under FTC Chair Khan).<sup>63</sup> Outside the EU, however, the institutional conditions that justified this approach do not exist, and replicating EU doctrines in markets without the same integration concerns introduces regulatory constraints that lack economic justification. When these doctrines are layered onto digital markets, and combined with misapplied concepts such as the essential facilities doctrine, the resulting regulatory structures risk suppressing innovation, reducing investment, and generating anti-competitive market distortions that weaken long-run economic performance.<sup>64</sup>
33. Nearly all the core assumptions that have come to shape government treatment of digital platforms are incorrect. These misconceptions distort the way regulators interpret platform behavior, frame competitive conditions, and assess market outcomes, and they have contributed to policy responses that diverge from the economic realities of digital markets. Correcting these errors is essential to evaluating the regulatory approaches discussed

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<sup>60</sup> See [Annex 2](#)

<sup>61</sup> Trade, Competition and Domestic Regulatory Policy

<sup>62</sup> Shanker A. Singham, *A General Theory of Trade and Competition: Trade Liberalisation and Competitive Markets* (London: Cameron May 2007).

<sup>63</sup> Trade, Competition and Domestic Regulatory Policy

<sup>64</sup> International Trade, Regulation and the Global Economy

below and to understanding how certain interventions risk creating anti-competitive market distortions rather than promoting competitive, innovation-driven markets.

1. The first incorrect assumption is that digital platforms resemble old-line government firms that were later privatized, such as legacy telecommunications incumbents. Digital platforms did not inherit state-granted monopolies, protected market positions, or exclusive control over physical infrastructure. Instead, they emerged comparatively recently through entrepreneurial activity, with founders often assuming substantial personal risk in environments characterized by limited access to capital and uncertain commercial viability. Although leading technology firms now account for a significant share of the value of major equity indices, many of the most prominent platforms did not exist two decades ago. Their rapid emergence and scaling reflect competitive pressures, innovation cycles, and shifting consumer preferences rather than the continuation of state-controlled enterprises. Treating them as privatized utilities therefore mischaracterizes both their origins and the competitive conditions under which they operate.
  - a. The rise of these firms is reflected in the aggregate market value of the leading U.S. technology platforms. Estimates of the combined market capitalization of the “Magnificent Seven” firms show an increase from well under one trillion dollars in the early 2000s to over 8 trillion dollars by 2025, indicating that a group of companies which either did not exist or were relatively small two decades ago now accounts for a substantial share of total U.S. equity market value.<sup>65</sup> The charts presented above make this pattern explicit by showing that the rise of large digital firms reflects changes in where value is created in the economy rather than the persistence of inherited monopoly positions, with the United States exhibiting far higher digital-market capitalization shares than jurisdictions that have imposed more precautionary regulatory approaches.
2. The second incorrect assumption is that the underlying economics of digital platforms is similar to that of traditional non-technology firms. Digital platform markets are characterized by marginal cost curves that decline toward zero once the core product and infrastructure have been established, a defining feature that alters both cost structures and competitive dynamics.<sup>66</sup> Scale and network effects are essential to efficiency in these markets, and platforms that fail to expand or sustain their installed user bases can lose relevance quickly.<sup>67</sup> The experience of early social networking sites, including the rapid displacement of MySpace by a rival offering superior functionality, demonstrates how firms that appear dominant can

<sup>65</sup> The Magnificent Seven: U.S. Big Tech Market Cap Boom, 2000Q3–2025,” Voronoi, accessed December 8, 2025, <https://www.voronoiapp.com/markets/-The-Magnificent-Seven-US-Big-Tech-Market-Cap-Boom-2000Q3-2025-1612>.

<sup>66</sup> Trade, Competition and Domestic Regulatory Policy

<sup>67</sup> See [Annex 2](#)

be overtaken when innovation shifts user preferences.<sup>68,69</sup> Treating these economic characteristics as equivalent to those of conventional industrial firms obscures how scale, low marginal costs, and network effects drive consumer benefit in digital markets, and can lead to regulatory approaches that undermine the mechanisms through which platform competition supports productivity growth.<sup>70</sup>

3. The third incorrect assumption is that market share in digital platform markets is a reliable proxy for market power. Market power is properly understood as the ability to profitably raise price, restrict output, reduce quality, or otherwise degrade competitive conditions.<sup>71</sup> In digital markets, high observed market shares often reflect the temporary results of innovation, investment, and strong network effects, rather than durable power over price.<sup>72</sup> Firms that appear dominant at one point in time can be rapidly displaced when a rival introduces a superior product or functionality, as illustrated by the swift replacement of MySpace by Facebook in the social networking sector. More recent developments in generative artificial intelligence similarly show that even firms with substantial incumbency advantages can face significant competitive pressure when new technologies emerge.<sup>73</sup> Because digital competition operates through dynamic rivalry rather than static market positions, analytical tools such as the Olley-Pakes decomposition, which distinguishes productivity gains arising from within-firm improvements and those arising from reallocation toward more productive firms, provide a more accurate framework for assessing competitive effects than simple concentration measures.<sup>74</sup> Reliance on market share alone therefore risks conflating success achieved through competition on the merits with the actual exercise of market power and can lead to regulatory interventions that misidentify competitive outcomes as harms.
4. The fourth incorrect assumption is that the goal of competition policy is to protect small competitors or to preserve a preferred market structure, rather than to safeguard the competitive process that delivers consumer welfare and productivity growth. The modern understanding of competition policy in the United States was shaped in significant part by the work of Harold Demsetz, who emphasized that higher levels of concentration can result from superior efficiency and that no economic theory supports the view that small, fragmented markets are inherently

<sup>68</sup> Brian Stelter, "MySpace, America's Greatest Mistake," *New York Times*, June 17, 2009.

<sup>69</sup> Tom Anderson and Chris DeWolfe, "What Happened to MySpace," *Harvard Business Review*, July 2011.

<sup>70</sup> ITRG, Chapters 3 and 4

<sup>71</sup> Herbert Hovenkamp, *Federal Antitrust Policy: The Law of Competition and Its Practice*, 6th ed. (St. Paul, MN: West Academic Publishing, 2020), definition of market power.

<sup>72</sup> Trade, Competition and Domestic Regulatory Policy

<sup>73</sup> Kate Conger, Cade Metz, and Yiwen Lu, "Google's AI Efforts Face Rising Competition," *New York Times*, January 12, 2024; Will Knight, "The Rise of Generative AI and the New Era of Platform Competition," *MIT Technology Review*, March 2024.

<sup>74</sup> G. Steven Olley and Ariel Pakes, "The Dynamics of Productivity in the Telecommunications Equipment Industry," *Econometrica* 64, no. 6 (1996): 1263–1297.

desirable.<sup>75</sup> Demsetz argued that competition policy should not penalize firms that grow large through successful rivalry, since such growth can reflect the allocation of resources toward more productive enterprises.<sup>76</sup> When authorities interpret size or market structure as harms in themselves, enforcement risks shifting away from protecting consumer welfare and toward protecting less efficient competitors. This misinterpretation distorts market outcomes, weakens incentives for investment and innovation, and can transform competition policy into a source of anti-competitive market distortions rather than a framework for promoting economic growth.<sup>77</sup>

5. The fifth incorrect assumption arises from the belief that digital platforms function like large government-owned entities, which leads to the misapplication of doctrines such as the essential facilities doctrine. The essential facilities doctrine was developed in the context of industries where a firm controlled an infrastructure asset that could not be reasonably duplicated and where denying access risked excluding downstream rivals.<sup>78</sup> Courts applying the doctrine have emphasized that its use must be rare, given the risk that compelled access can undermine incentives for investment and reduce overall efficiency.<sup>79</sup> The difficulties inherent in applying this doctrine are illustrated by cases such as *Twin Laboratories, Inc. v. Weider Health & Fitness*, in which courts struggled to define what constitutes a “facility,” when duplication is feasible, and under what circumstances a firm’s refusal to deal may constitute anti-competitive conduct.<sup>80</sup> Extending this doctrine to digital platforms, which are not state monopolies, do not control bottleneck physical infrastructure, and operate in markets characterized by rapid innovation and multiple avenues for distribution, risks converting competitive conduct into a basis for liability. When this occurs, regulatory intervention can weaken incentives for platform investment, disrupt innovation cycles, and create ACMDs that impede long-run productivity growth.<sup>81</sup> The case law post *Twin Labs*, notably the Supreme Court cases *Verizon v. Trinko* and *Pacific Bell v. linkLine*, show that the doctrine has continued to be substantially narrowed, making it extremely rare to impose a duty to deal or to find a facility to be truly essential. The core elements required under the *Twin Labs* test have not changed.<sup>82,83</sup>

<sup>75</sup> Harold Demsetz, “Industry Structure, Market Rivalry, and Public Policy,” *Journal of Law and Economics* 16, no. 1 (1973): 1–9.

<sup>76</sup> *Ibid*

<sup>77</sup> Trade, Competition and Domestic Regulatory Policy

<sup>78</sup> Philip Areeda, “Essential Facilities: An Epithet in Need of Limiting Principles,” *Antitrust Law Journal* 58 (1989): 841–853.

<sup>79</sup> *Ibid*

<sup>80</sup> *Twin Laboratories, Inc. v. Weider Health & Fitness*, 900 F.2d 566 (2d Cir. 1990).

<sup>81</sup> Trade, Competition and Domestic Regulatory Policy

<sup>82</sup> *Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004).

<sup>83</sup> *Pacific Bell Telephone Co. v. linkLine Communications, Inc.*, 555 U.S. 438 (2009).

6. The sixth incorrect assumption is that competition is a cooperative or gentle process that can be managed so as to avoid aggressive rivalry. In functioning market economies competition is brutal, firms compete by seeking to outperform their rivals through lower prices, better products, and improved services, and this process is often demanding for participants.<sup>84</sup> When competition proceeds without distortions, the resulting pressure to innovate and to allocate resources more efficiently contributes directly to productivity growth and higher living standards.<sup>85</sup> Regulatory approaches that attempt to soften rivalry or restrain firms that have succeeded through innovation risk weakening these incentives and slowing the pace at which markets adjust to new technologies and consumer preferences.<sup>86</sup> Evidence from jurisdictions that have adopted more interventionist competition and digital regulatory frameworks shows that policies emphasizing competitor welfare or structural objectives over consumer welfare and dynamic efficiency can reduce innovation intensity and coincide with slower growth in GDP per capita.<sup>87</sup>
7. The seventh incorrect assumption is that domestic regulation has little or no effect on international trade. Competition policy, domestic regulatory measures, and trade policy are closely interconnected, and domestic interventions can significantly alter the conditions under which firms participate in global supply chains and external markets.<sup>88</sup> When regulatory requirements restrict market access, raise compliance costs, impose discriminatory obligations, or disproportionately burden firms from particular trading partners, they operate as non-tariff barriers and influence cross-border commerce in the same manner as more traditional trade restrictions.<sup>89</sup> European officials often depict digital regulation as a matter of internal sovereignty that should be insulated from trade discussions, even when the measures overwhelmingly affect foreign, largely U.S., firms. In response to comments by U.S. Commerce Secretary Howard Lutnick suggesting that steel and aluminum tariffs might be eased if the European Union reconsidered its digital rules, European Commission Vice President Teresa Ribera replied that “the European digital rule-book is not up for negotiation.”<sup>90</sup> In a subsequent interview with *Politico* about the same linkage, she described Washington’s approach as “blackmail,” adding that

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<sup>84</sup> Frank H. Easterbrook, “The Limits of Antitrust,” *Texas Law Review* 63 (1984): 1–40 (discussion of competitive rivalry and the role of the market process).

<sup>85</sup> International Trade, Regulation and the Global Economy

<sup>86</sup> Trade, Competition and Domestic Regulatory Policy

<sup>87</sup> Korea Report

<sup>88</sup> A General Theory of Trade and Competition

<sup>89</sup> Trade, Competition and Domestic Regulatory Policy

<sup>90</sup> Charlotte Van Campenhout and Foo Yun Chee, “European Digital Rule-Book Not up for Negotiation, Says EU’s Ribera,” *Reuters*, November 25, 2025.

this “does not mean that we accept that kind of blackmail.”<sup>91</sup> She also stressed that the EU’s digital rulebook should have nothing to do with trade negotiations and characterized the legislation as a matter of European sovereignty.<sup>92</sup> However, the burden of the policies she is defending fall overwhelmingly on non-European (mostly US) technology firms. This is not a conscious admission of protectionism, but an unwitting example of how domestic regulatory choices, framed as exercises of sovereignty, can function in practice as powerful non-tariff barriers to U.S. trade and investment. These patterns are not confined to Europe. In Korea, regulatory measures affecting digital markets have predominantly burdened large U.S. firms while leaving Chinese firms connected to major chaebol groups comparatively unaffected, illustrating how domestic regulation can alter competitive conditions in ways that disadvantage particular foreign participants. A similar pattern appears in India, where regulatory initiatives directed at online commerce and platform operation have been applied principally to Walmart and Amazon while domestic firms have not been subject to comparable obligations. These examples further demonstrate how domestic regulatory measures can function as selective non-tariff barriers that shape international competitive outcomes. These effects are especially pronounced when regulatory measures target sectors in which a country’s leading exporters are concentrated, such as digital services in the United States.<sup>93</sup> Recent analysis has documented how foreign regulatory initiatives directed at large U.S. technology firms function as non-tariff attacks that weaken the competitive position of those firms in global markets and distort international trade flows.<sup>94</sup> Similar patterns can be observed in other jurisdictions and sectors where domestic measures have been used to influence market outcomes in ways that affect foreign suppliers and alter competitive conditions across borders.<sup>95</sup>

34. The same pattern appears in sectors wholly unrelated to digital markets. One prominent example is the use of compulsory licensing in the pharmaceutical sector, where governments have overridden patent rights held primarily by foreign firms in order to promote domestic industry objectives. As detailed in *International Trade, Regulation and the Global Economy*, compulsory licenses issued in jurisdictions such as India were justified on public-interest grounds but were structured in ways that disproportionately affected innovative foreign manufacturers while favoring local producers.<sup>96</sup> These actions

<sup>91</sup> Francesca Micheletti and Jacob Parry, “Top EU Official Accuses U.S. of ‘Blackmail’ in Trade Talks,” *Politico Pro*, November 26, 2025. (Quoted in “Top EU Official Accuses U.S. of ‘Blackmail’ in Trade Talks,” *LordsPress*, November 27, 2025.)

<sup>92</sup> *Ibid*

<sup>93</sup> *International Trade, Regulation and the Global Economy*

<sup>94</sup> Robert D. Atkinson, “Stopping Non-Tariff Attacks on U.S. Tech Firms and Industries,” letter to Hon. Scott Bessent, Hon. Howard W. Lutnick, Hon. Jamieson Greer, and Mr. Peter Navarro, July 2, 2025, Information Technology and Innovation Foundation, Washington, DC.

<sup>95</sup> *Trade Policy in the Trump Administration*

<sup>96</sup> *International Trade, Regulation and the Global Economy*

altered competitive conditions by weakening intellectual-property protections, reducing the expected return on research and development, and shifting market share toward domestic firms. The pharmaceutical examples demonstrate that the underlying issue is not limited to digital regulation but reflects a broader policy tendency to use domestic regulatory instruments as de facto non-tariff barriers that influence international competitive outcomes.

35. The overall approach adopted by the European Union and certain other jurisdictions toward digital platforms reflects a misunderstanding of the fundamental purpose of competition policy and its role in promoting wealth creation and increases in GDP per capita. Competition policy is intended to protect the competitive process that disciplines firms, fosters innovation, secures property rights, and enables exposure to domestic and international competition.<sup>97</sup> When regulatory measures depart from these principles and instead focus on managing market structure, restraining successful firms, or prioritizing competitor welfare over consumer welfare, they risk creating ACMDs that reduce productivity and suppress long-run economic performance.<sup>98</sup> These effects are of particular concern for advanced economies, including G7 countries, where sustained growth depends on improving the intensity of domestic competition, maintaining openness to international markets, and strengthening the institutional conditions that support innovation and investment.<sup>99</sup>

### Self-Defeating Nature of DMA-like regulations

36. Regulatory frameworks modeled on the European Union's Digital Markets Act impose prescriptive obligations and structural constraints on digital platforms that can function as ACMDs when applied without evidence of consumer harm or clear efficiency justification.<sup>100</sup> These regimes often rely on static assumptions about market power, prescribe conduct rules based on firm size or business model rather than demonstrated effects, and require interoperability or data-access mandates that interfere with investment incentives and the ability of platforms to achieve efficiencies associated with scale and network effects.<sup>101</sup> In markets characterized by rapid innovation, low marginal costs, and dynamic rivalry, such measures can impede the competitive processes they are intended to protect.

<sup>97</sup> Harold Demsetz, "Industry Structure, Market Rivalry, and Public Policy," *Journal of Law and Economics* 16, no. 1 (1973): 1–9.

<sup>98</sup> International Trade, Regulation and the Global Economy

<sup>99</sup> OECD, *Economic Policy Reforms: Going for Growth* (Paris: OECD Publishing, annual series).

<sup>100</sup> Trade, Competition and Domestic Regulatory Policy

<sup>101</sup> *ibid*

37. Because DMA-like regulations introduce obligations that alter market structure, restrict product integration, or impose uniform behavioral rules across heterogeneous business models, they weaken the conditions of domestic competition by raising compliance burdens, limiting entry, and constraining the mechanisms through which platforms improve quality and reduce costs.<sup>102</sup> They can also impair international competition by functioning as non-tariff barriers when such regulations fall more heavily on foreign digital firms or create requirements that limit participation in global digital value chains.<sup>103</sup> These effects reduce exposure to foreign rivalry and diminish the incentive for firms to innovate and adopt global best practice. In addition, prescriptive rules undermine property rights when they weaken control over data, platform architecture, or proprietary technologies, thereby reducing the expected return on investment and discouraging innovation.<sup>104</sup>
38. Because these regulations weaken the pillars of domestic competition, international competition, and property rights, they produce macroeconomic consequences that extend beyond specific digital markets. The SRB- $\gamma$  model provides a means of quantifying these effects by demonstrating how distortions in the three pillars reduce productivity and depress GDP per capita.<sup>105</sup> When obligations such as mandatory interoperability, restrictions on self-preferencing, or limits on integrating complementary services raise costs or prevent firms from achieving scale, the resulting distortions feed through the productivity channels of the model and shift the economy onto a lower long-run income path.<sup>106</sup>
39. Competere's analysis of Korea illustrates these dynamics. The Korea case study identifies regulatory measures affecting digital platforms that impose disproportionate burdens on certain firms, restrict the ability of platforms to innovate or scale, and limit the flexibility needed to respond to competitive pressures.<sup>107</sup> When these measures are applied in a prescriptive manner similar to DMA-style regimes, they generate ACMDs by raising entry barriers, increasing compliance costs, and creating structural disadvantages for international suppliers.<sup>108</sup> Using the SRB- $\gamma$  model, the study quantifies the resulting loss in GDP per capita relative to a less distortionary regulatory framework, demonstrating that such measures reduce productivity and suppress long-run economic growth.<sup>109</sup>

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<sup>102</sup> Trade Policy in the Trump Administration

<sup>103</sup> *Ibid*

<sup>104</sup> *Ibid*

<sup>105</sup> See [Annex 2](#)

<sup>106</sup> *Ibid*

<sup>107</sup> *Ibid*

<sup>108</sup> *Ibid*

<sup>109</sup> *Ibid*

40. For countries whose principal policy objective is to increase productivity and raise living standards, DMA-like regulatory approaches are therefore self-defeating. By weakening the competitive and innovation-enhancing conditions that support growth, these frameworks remove wealth from the economy rather than generating it. The Korea case study confirms that prescriptive digital regulations can produce measurable reductions in national income, underscoring the need for regulatory approaches that preserve competition without imposing distortions that undermine the pillars of economic performance.<sup>110</sup>
41. Damaging DMA-style regulation harms the small business sector. Many small firms rely on these platforms to reach global markets and would be wholly unable to do so if they were damaged. The impact on the SME sector has been analyzed by the Southeast Asian Public Policy Institute.<sup>111</sup> The paper notes that the MSME sector accounts for 40-60% of GDP in the APEC region. Clearly damaging that sector will have a big economic impact.

### Core Elements that make a digital policy anti-competitive and wealth destroying

42. Core elements that make a digital policy anti-competitive and wealth-destroying can be understood in terms of how particular doctrines and enforcement approaches generate Type 1 error, suppress innovation, and misdiagnose competitive conditions in dynamic markets. In the digital sector, where scale economies, network effects, and rapid technological change are central features, these errors translate directly into ACMDs that weaken domestic and international competition and depress long-run GDP per capita.
- 1. Wrong application of essential facilities doctrine/duty to deal doctrines and Type 1 error:** Misapplication of the essential facilities doctrine can transform digital regulation into an anti-competitive market distortion by compelling firms to share assets or functionalities in ways that undermine incentives to invest and innovate. The original U.S. formulation in *MCI v. AT&T* required strict conditions for an essential facility, including control by a monopolist, inability to duplicate the facility, denial of access, and feasibility of providing access. Subsequent analysis notes that the U.S. Supreme Court has severely restricted, and arguably rejected, broad use of the doctrine, particularly in light of *Verizon v. Trinko* and *Pacific Bell v. linkLine*.<sup>112,113</sup> As the Supreme Court emphasized in *linkLine*, these doctrines have become even narrower than the formulations explored in *Twin Labs*, making any duty-to-deal

<sup>110</sup> Ibid

<sup>111</sup> Southeast Asia Public Policy Institute, [Digital Platform Regulation in APEC Economies: Empowering Innovation and Inclusive Growth](#) (Bangkok and Singapore: Southeast Asia Public Policy Institute, September 2025).

<sup>112</sup> *Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004).

<sup>113</sup> *Pacific Bell Telephone Co. v. linkLine Communications, Inc.*, 555 U.S. 438 (2009).

theory in digital markets especially difficult to sustain. Leading antitrust commentary has warned that expansive applications are “manifestly hostile” to the goals of antitrust because they undermine rivals’ incentives to develop their own assets rather than free-ride on existing infrastructure.<sup>114</sup> In digital markets, treating platforms or data as “essential facilities” and mandating access on that basis risks Type 1 error by condemning conduct that is competitive or efficiency-enhancing. Error-cost analysis emphasizes that false positives are more damaging than false negatives in dynamic markets, because they chill the very conduct antitrust is meant to protect and can lead to losses in dynamism and output.<sup>115</sup> When essential-facilities reasoning is extended to digital platforms without satisfying the traditional conditions, it can deter investment in new infrastructure, encourage dependence on mandated access instead of innovation, and thereby function as an anti-competitive market distortion.

- 2. Overly intrusive enforcement based on erroneous market definitions and market-share metrics:** Overly intrusive enforcement that relies on static market definitions and market-share metrics rather than evidence of durable market power and competitive effects can also turn digital policy into an anti-competitive distortion. Analyses of digital markets warn that undue reliance on simple concentration measures or static market boundaries, without a deep understanding of the durability of market power or the relationship between concentration and output, increases the risk of Type 1 error.<sup>116</sup> In sectors where firms are expanding real output, increased concentration is often associated with innovation and cost reductions, indicating that higher market shares can be a sign of competitive success rather than market power.<sup>117</sup> A precautionary enforcement approach that infers harm from concentration alone, or from narrow product-market definitions that ignore dynamic rivalry, would tend to target precisely those firms that are expanding output and innovating. Error-cost analysis further emphasizes that false positives in digital markets are especially costly because they deter investment and innovation that would otherwise raise welfare.<sup>118</sup> In this setting, digital policies that treat high market share as a proxy for harm and impose intrusive enforcement based on static definitions can suppress the competitive processes that drive productivity growth, converting competition policy itself into an anti-competitive market distortion.

<sup>114</sup> Trade, Competition and Domestic Regulatory Policy

<sup>115</sup> Geoffrey A. Manne, “Error Costs in Digital Markets,” in *The Global Antitrust Institute Report on the Digital Economy* (Arlington, VA: George Mason Law & Economics Center, 2020), 3–5; Joshua D. Wright and Murat C. Mungan, “The Easterbrook Theorem: An Application to Digital Markets,” 2020.

<sup>116</sup> Competition Policy Against Large U.S. Firms

<sup>117</sup> Sharat Ganapati, “Growing Oligopolies, Prices, Output, and Productivity,” *American Economic Journal: Microeconomics* 13, no. 3 (2021): 309–27.

<sup>118</sup> Manne, “Error Costs in Digital Markets”; Wright and Mungan, “The Easterbrook Theorem: An Application to Digital Markets.”

- 3. “Big is bad” philosophies that chill innovation and growth:** Competition policies based on a “big is bad” philosophy, in which large firms are presumed harmful by virtue of their size, make digital regulation anti-competitive by discouraging scale and chilling innovation. Recent analysis notes the risk of a return to “big is bad” populism in antitrust, combined with a shift toward rules-based oversight of dominant firms in the European Union and more restrictive merger and monopolization enforcement.<sup>119</sup> In digital markets, where scale and network effects are integral to consumer benefits and innovation, policies that treat size or growth as inherently suspect force successful firms to slow or alter their growth trajectories as they approach arbitrary thresholds, such as “gatekeeper” designations or notional dominance benchmarks. This behavior is not hypothetical: work on firm dynamics shows that high-growth young firms are a major source of productivity gains, and precautionary enforcement that penalizes firms as they scale would disproportionately harm these contributors.<sup>120</sup> When domestic policies implicitly or explicitly adopt a “big is bad” stance and design thresholds that trigger heightened obligations once firms reach certain market-share or size levels, they create incentives to avoid investment and expansion. The resulting chilling effect on innovation and growth reduces dynamic competition and weakens the domestic-competition pillar, thereby lowering long-run GDP per capita.
- 4. Threshold-based obligations that restrict business models and integration:** Digital policies that impose special obligations on firms once they cross certain thresholds of market share or perceived market power, particularly when these obligations limit what business they can do with their own entities or subsidiaries, create anti-competitive market distortions by restricting business models and efficient integration. Frameworks inspired by the EU Digital Markets Act, for example, define “gatekeepers” as providers of core platform services characterized by large scale economies, strong network effects, and user lock-in, and then impose a list of obligations on them, including requirements to allow third-party interoperability and to grant business users access to data generated on the platform, backed by substantial fines and potential structural or behavioral remedies.<sup>121</sup> When such regimes restrict self-preferencing, integration of complementary services, or the ability to use common infrastructure across subsidiaries once firms cross a size or market-share threshold, they alter the competitive process by preventing firms from realizing efficiencies associated with multi-sided platform operation and vertical integration. Applied to domestic or foreign digital firms, these rules can raise compliance costs, distort organizational

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<sup>119</sup> Competition Policy Against Large U.S. Firms

<sup>120</sup> Ryan A. Decker, John Haltiwanger, Ron S. Jarmin, and Javier Miranda, “Where Has All the Skewness Gone? The Decline in High-Growth (Young) Firms in the U.S.,” *European Economic Review* 86 (2016): 4–23.

<sup>121</sup> See [Annex 2](#)

structure, and reduce incentives to invest in integrated services that benefit consumers. Where thresholds and obligations are applied selectively to certain large firms, they also function as vertical distortions that disadvantage particular business models relative to others. In aggregate, these threshold-based restrictions weaken domestic and international competition, affect property-rights control over data and platform architecture, and therefore operate as anti-competitive market distortions that destroy wealth rather than creating it.

## Korea Case Study: Domestic Regulation as an Anti-Competitive Market Distortion

43. Korea provides a clear example of how domestic regulatory measures can function as anti-competitive market distortions when they weaken property rights, reduce domestic rivalry, or restrict exposure to international competition. Competere's analysis of Korea's regulatory environment shows that recent measures affecting digital platforms impose disproportionate burdens on large foreign firms, raise compliance costs, limit the ability of firms to innovate or scale, and create structural advantages for domestic competitors.<sup>122</sup> These effects operate through all three pillars of the SRB-γ model and produce measurable reductions in productivity and GDP per capita.
44. The Korea Online Platform Markets Act (KOPMA) illustrates these dynamics. The proposed framework would impose ex ante obligations on designated platform operators, including restrictions on product integration, limitations on ranking and search-display practices, and broad requirements concerning data handling and interoperability.<sup>123</sup> These measures would weaken the property-rights pillar by restricting firms' control over platform architecture and data assets, undermine domestic competition by constraining the ability of firms to respond to rivalry through innovation, and reduce international competition by selectively burdening foreign firms operating in Korea.
45. Competere's application of the SRB-γ framework to KOPMA estimates that the regulation alone is associated with a loss of approximately 215 billion dollars to the Korean economy over ten years, representing about 12.6 percent of GDP per capita and roughly 4,161 dollars per capita.<sup>124</sup> When combined with losses attributed to interventionist antitrust enforcement, the total rises to approximately 391 billion dollars in a simple aggregation. Applying a conservative interaction premium of 15 to 20 percent to account for the

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<sup>122</sup> See [Annex 2](#)

<sup>123</sup> *Ibid*

<sup>124</sup> *Ibid*

reinforcing effects of ex ante regulation and antitrust enforcement yields a combined projected loss in the range of 449 to 469 billion dollars over a decade.<sup>125</sup>

46. The structure of Korea's digital sector further demonstrates how these distortions arise. Analysis of the MSCI Korea index shows that approximately 80 percent of index weight is held by chaebol entities, with roughly 56 percent of total index value consisting of digital assets controlled by chaebol groups. Removing chaebol-controlled digital firms leaves only about four percent of Korea's digital-market capitalization attributable to non-chaebol firms, and the digital share of the non-chaebol slice itself is approximately twenty percent. These figures illustrate that Korea's digital ecosystem is dominated by diversified conglomerates rather than platform firms comparable to those in the United States. Domestic regulatory measures therefore fall disproportionately on foreign platforms, altering competitive conditions in a manner consistent with an anti-competitive market distortion.
47. Competere's companion analysis of U.S. losses demonstrates that Korea's regulatory approach imposes significant cross-border effects. The combined impact of Korean interventionist antitrust enforcement and KOPMA-style regulatory obligations is estimated to generate losses of approximately 500 to 525 billion dollars to the U.S. economy over ten years.<sup>126</sup> These losses arise through reduced participation in global digital value chains, foregone investment, diminished output, and weakened exposure to international competition. Korea's case study shows how domestic regulation in the digital sector can function as an anti-competitive market distortion with measurable macroeconomic consequences for both Korea and its trading partners.

## Derivative Nature of DMA-Style Regulations and Their Influence on Korean Policy

48. Korea's regulatory approach to digital platforms is not unique. It reflects a broader global trend in which jurisdictions adopt frameworks modeled on the European Union's Digital Markets Act (DMA). The DMA introduced a prescriptive regulatory structure that imposes obligations on firms designated as "gatekeepers" based on size and structural criteria rather than demonstrated competitive harm.<sup>127</sup> Korea's discussions of the Online Platform Markets Act (OPMA) and related KFTC guidelines reference the DMA directly, and the substantive obligations proposed under Korean law correspond closely to DMA provisions

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<sup>125</sup> Ibid

<sup>126</sup> See [Annex 2](#)

<sup>127</sup> European Commission, *Digital Markets Act* (Regulation (EU) 2022/1925), Title II obligations.

governing ranking, data access, interoperability, multi-homing, and restrictions on integrating complementary services.<sup>128</sup>

49. These similarities are significant because they show that Korea has imported a regulatory model designed for the institutional and market-integration concerns of the European Union rather than conditions specific to Korea's domestic market. The DMA emerged from EU efforts to address fragmentation within the single market and to increase Europe's influence over global digital governance.<sup>129</sup> By contrast, Korea's digital ecosystem is dominated by diversified conglomerates rather than platform firms operating in scale-intensive multisided markets comparable to those in the United States. Adopting DMA-style obligations in this context risks weakening property rights, reducing domestic rivalry, and restricting international competition by imposing structural constraints that disproportionately affect foreign firms.
50. The alignment between EU DMA obligations and Korean regulatory proposals is summarized in table 3:

<b>Theme</b>	<b>Korea (OPMA/KFTC)</b>	<b>EU DMA Obligations</b>
<b>Self-preferencing / ranking</b>	KFTC 2023 Guidelines flag theory; Coupang case; NAVER saga signals evidentiary bar	DMA Art. 6(5): no self-preferential ranking/indexing/crawling
<b>Steering / external offers</b>	Addressed via MRFTA/consumer deception (case-by-case)	Art. 5(4): allow developers/businesses to steer users outside the gatekeeper's core platform services
<b>Multi-homing &amp; tying</b>	Guidelines discuss tying/multi-homing restrictions	Arts. 5–6: restrictions on tying and anti-multi-homing practices
<b>MFN / parity clauses</b>	Scrutiny under unfair terms; OPMA drafts referenced MFNs	Art. 5(3): bans wide MFNs for core platform services
<b>Data combination &amp; access</b>	Algorithmic manipulation and data leverage analyzed; privacy via PIPA	Art. 5(2): combine personal data only with consent; Art. 6(10/11): business/ad data access

51. These parallels demonstrate that Korea's digital regulations do not emerge organically from domestic competitive conditions but instead reflect policy transplants derived from the EU model. This matters for two reasons. First, the DMA relies on analytical assumptions (including essential-facilities reasoning, structural dominance inferences, and static

<sup>128</sup> Korea Fair Trade Commission, OPMA draft materials and 2023 Guidelines; Competere Foundation, *Korea Economic Losses Report* (2025), analysis of OPMA obligations.

<sup>129</sup> European Commission, *Europe's Digital Decade: Digital Targets for 2030* (2021), discussion of single-market integration and digital sovereignty.

theories of harm) that lack empirical grounding in dynamic platform markets. Second, the adoption of DMA-style measures by non-EU jurisdictions extends a regulatory template that functions as a non-tariff barrier when applied to foreign firms, particularly U.S. digital service providers.<sup>130</sup> As Competere's Korea and U.S. analyses show, such measures weaken the pillars of domestic and international competition and reduce long-run productivity.

52. As we note in the study on Korea, the damage done to the U.S. economy is exacerbated not only by the substance of competition policy enforcement which suffers from the flawed assumptions set out above, but also from the procedural irregularities associated with the way that competition policy is enforced. These irregularities are increasing rapidly in Korea particularly under the new Chairman of the KFTC, Joo Byeong-ki. The increase in dawn raids, threats of criminal actions, harassment of witnesses is on a substantial upward path as noted by the National Bureau of Asian Research (NBR) in its detailed report, *Understanding the Impact of KFTC Enforcement on U.S. firms*.<sup>131</sup> The report highlights practices that show procedural irregularities which are captured in Competere's economic model:
53. *Despite these differences, all firms expressed common concerns regarding the KFTC's investigative practices. Recurring themes included the following:*
- *A low threshold for opening investigations*
  - *A lack of details and transparency about the specific alleged misconduct and the associated theory of harm*
  - *Unnecessarily aggressive investigative tactics and raids*
  - *Overly broad information requests and data seizures*
  - *The frequent use of (or threats to use) criminal referrals as an enforcement and intimidation tool.*
54. The NBR report also disturbingly highlights the lack of technological, economic and even legal knowledge that is deployed by the KFTC in cases, specifically:
55. *The KFTC strictly limits the information that firms receive during investigations. Unlike in the EU, the United States, and other countries, the KFTC does not as a matter of course provide the firm under investigation with access to its case file. This impedes the firm's ability to*

<sup>130</sup> See Annex 2

<sup>131</sup> Nigel Cory, *Understanding the Impact of KFTC Enforcement on U.S. Firms: Qualitative Evidence and Analysis* (Washington, DC: National Bureau of Asian Research, November 2025).

*understand the full scope and specific details of the alleged misconduct and thus defend itself.*

56. As the NBR report notes, KFTC practice is well outside the mainstream of other antitrust agencies including, even the EU. Indeed, many of the complaints of U.S. firms with regard to KFTC enforcement recall earlier complaints raised against the EU authorities in their investigations in the 1990s and 2000s. These complaints led to improvements in the EU's process where procedural guarantees were established to allow companies to properly defend themselves. It is noteworthy that the Chaebol companies and their Chinese partners seem to be exempted from the most extreme of these attacks. This is of particular concern given that many of these attacks on U.S. digital firms could lead to China competitors starting to dominate in global markets. As the National Security Strategy notes, economic security is a paramount concern, and within economic security, anti-competitive regulation in substance and application constitute a major national security threat. This is especially troubling in a country that should be a major U.S. ally in what is the most important geo-political and geo-economic region on the planet. We would argue the threat is sufficiently high as to warrant the imposition of section 232 tariffs.<sup>132,133</sup>

## Conclusion

57. Foreign regulatory initiatives directed at large U.S. technology firms increasingly operate as domestic policy measures that weaken the pillars of competition and property rights on which economic growth depends. The analyses presented in this testimony show that when digital regulations depart from effects-based principles, rely on static market assumptions, or impose obligations tied to firm size or market share, they function as ACMDs that depress productivity, reduce investment, and alter long-run income trajectories. The experience of jurisdictions that have adopted prescriptive digital regulatory frameworks demonstrates that these measures frequently generate Type 1 error, suppress dynamic rivalry, and constrain the mechanisms through which digital platforms deliver innovation and consumer benefit.
58. The Korea case study illustrates the scale of the resulting economic harm. Application of the SRB- $\gamma$  model shows that KOPMA, combined with interventionist antitrust enforcement, is associated with an estimated reduction of approximately 469 billion dollars in Korean GDP over ten years. The companion analysis of U.S. losses finds that similar regulatory approaches directed at American firms may impose a long-run cost of roughly 525 billion

<sup>132</sup> The White House, *National Security Strategy of the United States of America* (Washington, DC: The White House, 2025).

<sup>133</sup> Trade Expansion Act of 1962, Pub. L. No. 87-794, § 232, 76 Stat. 872 (codified as amended at 19 U.S.C. § 1862).

dollars on the U.S. economy. These effects arise because domestic regulatory choices in the digital sector weaken the pillars of domestic and international competition and undermine the security of property rights, thereby shifting economies away from their potential output paths.

59. The crosswalk between Korea's regulatory framework and the European Union's Digital Markets Act further demonstrates that these policies are not isolated developments but are part of a broader pattern in which foreign governments pursue interventions that disadvantage U.S. firms, constrain their ability to innovate, and alter competitive conditions in global markets. Requirements concerning self-preferencing, data access, multi-homing, parity clauses, and ranking practices mirror DMA obligations and create structural disadvantages for American companies operating abroad. These measures function as de facto non-tariff barriers that impede participation in global digital value chains and restrict the export competitiveness of U.S. digital services, a sector in which the United States maintains a comparative advantage.
60. Competition policy should promote the competitive process, be based on protection of property rights (since that is what firms have to compete with), and maintain openness to domestic and international rivalry. When foreign regulatory systems adopt approaches that penalize success, restrict innovation, or target firms because of their origin, they undermine these principles and impose significant costs on both their own economies and on U.S. businesses. Ensuring that competition policy remains grounded in demonstrable evidence of harm, aligned with dynamic market realities, and cognizant of its impact on global supply chains is essential to safeguarding American economic interests.
61. For these reasons, it is vital that the United States continue to aggressively restrain foreign regulatory barriers by evaluating their effects on U.S. firms through rigorous analytical frameworks and promote regulatory approaches (both domestically and internationally) that support innovation, encourage competitive intensity, and strengthen the pillars of economic growth. The evidence presented in this testimony shows that policies which weaken these conditions do not merely disadvantage individual firms; they impose broad macroeconomic costs that undermine prosperity and constrain the growth potential of the United States and its trading partners. As noted in the National Security Strategy, with its emphasis on economic security examples like the Korean case constitute an existential threat to the United States, as if left unchecked they will deliver the market to China firms.

## About Shanker Singham

Shanker A. Singham is one of the world's leading experts on international trade, competition policy, and regulatory reform, and is the CEO of Competere Group, President

of the Competere Foundation, and Chairman of the Growth Commission. He has worked on the interaction between trade, competition, and domestic regulatory policy for more than three decades, advising governments, multilateral institutions, and companies on how anticompetitive market distortions impede growth. His longstanding engagement with these issues is reflected in earlier work, including his Council on Foreign Relations working paper *Freeing the Global Market: How to Boost the Economy by Curbing Regulatory Distortions* (2012) ([Annex 3](#)) and his testimony before the House Judiciary Subcommittee on Competition and the Courts on China's Anti-Monopoly Law (2010) ([Annex 4](#)), both of which set out the foundations of the framework applied in this testimony. A full overview of the Competere Foundation can be found in [Annex 5](#).

**All the Annexes and the complete testimony is available at: <https://docs.house.gov/meetings/JU/JU05/20251216/118753/HHRG-119-JU05-Wstate-SinghamS-20251216-U8.pdf>**

Mr. FITZGERALD. Thank you, Mr. Singham. We will now go to Professor Portuese. You may begin.

**STATEMENT OF AURELIEN PORTUESE**

Mr. PORTUESE. Chair Jordan, Chair Fitzgerald, Ranking Member Raskin, and the distinguished Members of the Subcommittee, thank you for the opportunity to testify today.

My work as Professor and founding Director of the GW Competition and Innovation Lab is focused on one thing: Promoting innovation for the benefit of consumers.

I'm here to deliver a message of urgency. Congress must act to curb DMA—inspired regulations that are multiplying all around the world. These proposals are disproportionately targeting U.S. tech companies and insulate local monopolies.

There are things that the administrations and the Congress can do to stop their spread. Before I turn to what Congress can do, including, Chair Fitzgerald, your well-crafted proposals, let me first talk about why the DMA is a problem.

Despite the benefits of the DMA, such as enhanced interoperability and adjustments to the app store rules, which could be achieved through way less harmful means, these are the reasons why the DMA is a problem:

First, the DMA wrongly targets U.S. tech companies. Now, every single gatekeeper designated in the DMA is a U.S. company. This is not an accident; it's by design.

Second, the DMA is anti-innovation. The DMA forces and focuses on high political risks rather than actual harm, and the effect is to deter a firm from innovating.

Third, DMA harmed consumers. For example, European consumers cannot access Google Maps in their search results, and they don't have Apple intelligence in their—as AI features in the iPhones. This is an effect of the DMA.

Despite this, these problems, the DMA is spreading globally: South Korea, Brazil, Australia, Japan, and other jurisdictions are considering DMA-inspired regulations.

I regularly engage with those regulators in these countries. If they move forward, that will cement Europe's approach at the expense of U.S. enterprises.

The U.S. can avert this trend for what I call "sharp power," a proactive strategy to advance pro-innovation regulations worldwide. This approach requires deliberate actions from Congress and the administrations to reassert tech leadership by reinvesting its full leadership on consumer welfare globally and as well as integrating national security concerns and competition enforcement.

Now, I want to outline four ways the U.S. can curb DMA-inspired regulations.

First, provisions akin to Chairman Fitzgerald's H.R. 4278, to Protect U.S. Companies from Foreign Regulatory Taxation Act, will be a strong step forward. This bill will empower the U.S. to impose reciprocal tariffs or sanctions on jurisdiction that implement DMA-like rules. This would help level the global playing field and protect American innovations.

Second, Congress should enact legislation that will allow the government to take regulatory measures against discriminatory for-

eign regulations. These could be accomplished through amendments of the International Trade Act of 1974, which would strengthen the U.S. Trade Representative's authority to address unfair trade practices in digital markets.

Third, Congress should initiate an investigation into the DMA's effect globally. Investigations will help assess the compliance costs, which are assessed to be perhaps over \$1 billion per year annually. This investigation could help measure the impact of the DMA and DMA-like regulations on consumer experiences and any benefit, if any at all. This information would bolster efforts to identify an alternative path for government considering competition legislation.

Fourth and finally, Congress and the administration should prioritize digital diplomacy. Europeans have digital sovereignty. We should prioritize digital diplomacy to influence foreign competition policies.

This would entail establishing a dedicated task force within the State Department and the U.S. Trade Representative's office to engage bilaterally and multilaterally with allied nations. Through technical assistance and competition dialogs, the U.S. can promote alternatives to the DMA.

For instance, diplomatic efforts could encourage the USTR's effects-based analyses, which focuses on actual harm and consumer benefits instead of hypothetical risks. These can help counter the EU influence and promote global standards that are truly pro-competition and pro-innovation.

I encourage the U.S. to take advantage of this window of opportunity to counter the spread of the DMA and champion a better approach.

Thank you, and I welcome your questions.

[The prepared statement of Mr. Portuese follows:]

**WRITTEN TESTIMONY OF  
PROFESSOR AURELIEN PORTUESE**

*Committee on the Judiciary  
Subcommittee on the Administrative State, Regulatory Reform, and Antitrust  
“Anti-American Antitrust: How Foreign Governments Target U.S. Businesses”  
Hearing, December 16<sup>th</sup>, 2025  
Rayburn House Office Building, Washington DC*

**Aurelien Portuese**  
*Legal and Economic Expert  
Research Professor and Founding Director of the GW Competition & Innovation Lab  
at The George Washington University*

*Chairman Jordan, Ranking Member Nadler, and distinguished members of the Subcommittee:*

Thank you for the opportunity to testify on the threats posed by discriminatory foreign regulations modeled on the European Union's Digital Markets Act (DMA).

My name is Aurelien Portuese and I am a legal and economic expert focused on the intersection of law and economics. I have served as an expert consultant, advising foreign governments on how to craft competition legislation that promotes innovation. I am also a Research Professor at the George Washington University and the Founder of the Competition & Innovation Lab, a leading global academic center of 40 Senior Fellows, including the Nobel Prize Laureate Philippe Aghion. We focus on research and real-life projects focused on promoting regulatory approaches that stimulate innovation, spark competition, and ultimately benefit consumers. My testimony today reflects my own views and does not represent the views of the George Washington University.

My testimony today will focus on three core points:

1. The European Union’s Digital Markets Act (DMA) is a protectionist tool that has been weaponized against U.S. companies, stifles innovation, and harms consumers. It has had some positive effects (such as interoperability and app store rules change), but these effects are narrow and can be accomplished without the DMA’s negative effects;
2. The DMA is spreading across the world, in countries like South Korea, Brazil, Australia, and Japan, demonstrating how the EU is wielding its soft power to adversely impact U.S. businesses;
3. In response to the DMA, the U.S. has an opportunity to use its “sharp power” to foster global pro-innovation regulations that also safeguard national security. As part of this:
  - Congress could pass legislation — including amendments to the International Trade Act of 1974 and provisions like those contained in H.R. 4278, the “Protect U.S. Companies from Foreign Regulatory Taxation Act” introduced by Rep. Fitzgerald (R-WI), — which would better enable the U.S. to take action against jurisdictions that adopt DMA-like regulations that discriminate against US companies;
  - Congress could initiate investigations into the DMA, to document its negative effects on global trade, businesses, and consumers; and
  - Congress and the Administration should engage in digital diplomacy efforts aimed at influencing foreign jurisdictions’ competition regulations.

#### **A. The DMA Unnecessarily Discriminates Against U.S. Companies and is Anti-Innovation**

The DMA purports to promote competition and fairness in digital markets. In reality, it does just the opposite. The DMA applies to “gatekeepers,” defined through vague qualitative criteria such as significant impact, important gateway roles, and entrenched positions, alongside quantitative thresholds like €6.5 billion in EEA turnover and 45 million users, and are subjected to per se prohibitions under Articles 5 and 6. The gatekeepers designated under the DMA are predominantly American companies who are leaders in technology and innovation. Notwithstanding some limited positive effects, the DMA has proven to be costly for business, anti-innovation, and detrimental to consumers.

### 1. *The DMA is a protectionist tool being used against US tech companies*

Despite assertions by European officials to the contrary—likely intended to forestall trade disputes or retaliatory measures—the DMA was expressly crafted with discriminatory intent. This underlying purpose of the DMA is difficult to refute. Owing primarily to persistent market fragmentation and excessive regulatory burdens, Europe has proven incapable of producing globally competitive technology champions. In response, the European Commission has advanced the notion of “digital sovereignty,”<sup>1</sup> a euphemism that effectively masks protectionist policies. The core objective has been to reduce the reliance of European small and medium-sized enterprises (SMEs) on dominant American technology platforms.

Indeed, ahead of the introducing the DMA proposal in 2020, European officials and politicians made clear that it was part of a Digital Sovereignty agenda<sup>2</sup> to claim autonomy, rather than dependency, on U.S. big tech companies.<sup>3</sup>

<sup>1</sup> See, ahead of the DMA proposal in December 2020, former Commissioner Thierry Breton calls for European sovereignty because of the “technological wars waged by the United States and China: “Europe must now take its strategic interests into its own hands in order to ensure sovereignty, which has become a common necessity. In a world where the balance of power between blocs is hardening, the race for autonomy and power is in full swing. Faced with the “technological war” being waged by the United States and China, Europe must now lay the foundations of its sovereignty for the next 20 years”, in Thierry Breton, “Europe: Keys to Sovereignty”, September 11 2020, <https://www.linkedin.com/pulse/europe-keys-sovereignty-thierry-breton/>

<sup>2</sup> European Commission, Shaping Europe's digital future: op-ed by Ursula von der Leyen, President of the European Commission, February 18<sup>th</sup>, 2020, [https://ec.europa.eu/commission/presscorner/detail/en/ac\\_20\\_260](https://ec.europa.eu/commission/presscorner/detail/en/ac_20_260) (“We successfully shaped other industries – from cars to food – and we will now apply the same logic and standards in the new data-agile economy. I sum up all of what I have set out with the term ‘tech sovereignty’. This describes the capability that Europe must have to make its own choices, based on its own values, respecting its own rules. This is what will help make tech optimists of us all.”). Ahead of the introduction of the DMA, European politicians expressed the need to reclaim digital sovereignty, later embodied by the DMA. See German EU Council Presidency, Digital Sovereignty, 2020 [https://erstesung.de/wp-content/uploads/2020/10/20-10-14\\_Germany\\_EU\\_Digital-Sovereignty.pdf](https://erstesung.de/wp-content/uploads/2020/10/20-10-14_Germany_EU_Digital-Sovereignty.pdf) (citing Commission President in July 2019, “It may be too late to replicate hyperscalers, but it is not too late to achieve technological sovereignty in some critical technology areas” and former German Chancellor Angela Merkel in May 2019, “We see the digital sovereignty of the people, so to speak, the digital sovereignty of every citizen, as a model for the implementation of digitization. (...) This is where Europe should leave its mark on the implementation and shaping of digitization.”)

<sup>3</sup> Huw Roberts, Josh Cowls, Federico Casolari, Jessica Morley, Mariarosaria Taddeo, Luciano Floridi, Safeguarding European values with digital sovereignty: an analysis of statements and policies, Internet Policy Review, Vol 10(3) (2021) (“The perceived misbehaviour of large American technology companies—and the scarcity of European alternatives—has given momentum to large-scale policy responses by the EU. The release of the Commission’s proposals for a Digital Services Act (DSA) and Digital Markets Act (DMA) represent clear moves in this direction.”)

Commentators were lucid about the DMA’s protectionist twist at the release of the proposal in 2020<sup>4</sup>, and still now.<sup>5</sup> For example, commentators consider that:

*“The DMA will consequently place ‘ex-ante’ obligations on platforms to address these ‘egregious practices’ [...] Whilst EU officials insist that the overarching aim of the policies is the [e]mpowerment of citizens [and] of companies’ in order to create a ‘society of equals’[...], in imposing controls on large American digital platforms, the larger effect of these two policies will be once again to send a geopolitical signal to the United States. In other words, when placed in the context of strategic autonomy and digital sovereignty, both the DSA and DMA have become part of the EU’s mission to demonstrate its more assertive position on the global stage.”<sup>6</sup>*

In a moment of truth, the rapporteur of the DMA Andreas Schwab, when questioned about the previous Biden’s Administration concerns about the protectionist intent of the DMA, replied: *“Let’s focus first on the biggest problems, on the biggest bottlenecks. Let’s go down the line—one, two, three, four, five—and maybe six with [China’s] Alibaba,” he said. “But let’s not start with number seven to include a European gatekeeper just to please Biden.”<sup>7</sup>*

<sup>4</sup> Mark Scott, Thibault Larger, Laura Kayali, “Europe rewrites rulebook for digital age”, Politico, December 15th, 2020 (“Many of Silicon Valley’s biggest companies could face blockbuster fines under new proposals from the European Union announced Tuesday aimed at boosting digital competition and protecting people from online harm. The announcement represents a watershed moment for Ursula von der Leyen’s Commission, which has made so-called “technological sovereignty,” or efforts to bolster the bloc’s role in digital markets, a central piece of its legislative agenda.”); Cleo Willems, “The U.S. and EU have a lot of work to do to rebuild their trade relationship”, CNBC, December 16th 2020, (“Europe’s Digital Markets Act, released just this week, also threatens to significantly strain the alliance. Once again, the EU is engaging in asymmetric policymaking that targets American firms for regulation and massive fines while using creative thresholds to exempt European digital and non-digital rivals. To make matters worse, the EU’s constant invocation of the need for “digital sovereignty” suggests this is not coincidental, but a concerted plan to shield EU champions from foreign competition.”)

<sup>5</sup> Walid Chaichloudj, “Achieving Digital Sovereignty via the DMA: A European Illusion?”, *Journal of European Competition Law & Practice* (Oxford University Press), forthcoming [Special Issue DMA], August 2025 (“Although formally framed as a competition instrument, the DMA also embodies a geopolitical ambition to achieve European digital sovereignty.”); Jonathan Jacobson, ‘Competition vs. Regulation’ in Darren Bosh, Andrew I. Gavil and Spencer Weber Waller (eds), *Harry First, A Global Vision for Competition Law, Liber Amicorum* (Concurrences 2025), 335; Hamidou Mahagidhe Kaboré, ‘The Geopolitical Dimension of the EU Digital Markets Act (DMA): A Theoretical Analysis’ in Linda Arcelin (ed), *Les régulations européennes du numérique et le droit du marché* (Bruylant 2024), 129, 130.

<sup>6</sup> Dennis Broeders, Fabio Cristiano, Monica Kaminska, In Search of Digital Sovereignty and Strategic Autonomy: Normative Power Europe to the Test of Its Geopolitical Ambitions”, *Journal of Common Market Studies*, Vol. 61(5), pp.1261-1280 (2023) (also noting that “more recent policy proposals like the AI-Act, the Chips Act and the DSA and DMA acts are more openly a mix of market and consumer protection on the one hand and a rebuff of foreign influence in the EU (markets) on the other.”)

<sup>7</sup> Quoted in Javier Espinoza, James Politi, “US warns EU against anti-American tech policy”, *ArsTechnica*, June 21, 2021, <https://arstechnica.com/tech-policy/2021/06/us-warns-cu-against-anti-american-tech-policy/?comments=1&comments-page=1#comments>

With TikTok now under American ownership<sup>8</sup> and Booking.com's holdings having established its headquarters in Connecticut, all entities designated as gatekeepers under the Digital Markets Act (DMA) are American companies. This outcome represents the very scenario that the DMA's drafters sought to avoid through the somewhat contrived and delayed designation of Booking.com as a gatekeeper, as well as through the subsequent inclusion of TikTok in that category.

The European Commission introduced the Digital Markets Act (DMA) with the aim of securing global digital competitiveness through regulatory measures rather than through genuine competition based on superior performance and innovation. However, competitiveness cannot be achieved by regulating one's way to the top: outcompeting rivals requires excellence in innovation, not the imposition of asymmetric burdens on them via instruments such as the DMA.

## *2. The DMA is a precautionary regulation that may stifle innovation from tech champions and hurt consumers*

The DMA constitutes an ex-ante precautionary regulation designed to proactively prohibit designated gatekeepers from engaging in certain conduct that is defined in broad and imprecise terms.<sup>9</sup> Such conduct is restricted based on purely hypothetical "structural" risks to competition, which may not reflect real-life effects that are in fact pro-competition and benefit consumers.<sup>10</sup>

<sup>8</sup> White House, Fact Sheet: President Donald J. Trump Saves TikTok While Protecting National Security, September 25th, 2025, <https://www.whitehouse.gov/fact-sheets/2025/09/fact-sheet-president-donald-j-trump-saves-tiktok-while-protecting-national-security/>; Michael Sainato, US and China reach 'final deal' on TikTok sale, treasury secretary says, The Guardian, October 26th 2025, <https://www.theguardian.com/technology/2025/oct/26/us-china-tiktok-deal-scott-bessent>

<sup>9</sup> See Aurelien Portuese, Precautionary Antitrust: The Changing Nature of Competition Law", Journal of Law, Economics and Policy, Vol 17(3), 2022, pp.548-634, [https://awards.concurrences.com/LMG/pdf/precautionary\\_antitrust\\_jlep.pdf?103468/35422c62f4fe44cc0cdadb4ecfe13c72df394f5bc2d0b261684cf8f0264c363](https://awards.concurrences.com/LMG/pdf/precautionary_antitrust_jlep.pdf?103468/35422c62f4fe44cc0cdadb4ecfe13c72df394f5bc2d0b261684cf8f0264c363); Aurelien Portuese, The Digital Markets Act: The Path to Overregulation, Competition Policy International, June 13, 2022; Aurelien Portuese, The Digital Markets Act: A Triumph of Regulation Over Innovation, ITIF Report, August 2022), <https://www2.itif.org/2022-digital-markets-act.pdf>; Aurelien Portuese, "European Competition Enforcement in the Digital Economy: The Birthplace of Precautionary Antitrust". (November 11, 2020). The Global Antitrust Institute Report on the Digital Economy 17. Available at SSRN: <https://ssrn.com/abstract=3733715> or <http://dx.doi.org/10.2139/ssrn.3733715>; Aurelien Portuese, "The Digital Markets Act: European Precautionary Antitrust", ITIF Report, May 2021, <https://www2.itif.org/2021-digital-markets-a4.pdf>; Aurelien Portuese, "Precautionary Antitrust: A Precautionary Tale in European Competition Policy" In: Mathis, K., Tor, A. (eds) Law and Economics of Regulation. Economic Analysis of Law in European Legal Scholarship, vol 11. Springer, Cham, (2011), [https://doi.org/10.1007/978-3-030-70530-5\\_10](https://doi.org/10.1007/978-3-030-70530-5_10)

<sup>10</sup> The structural risks to competition were the main concerns that justified the adoption of an ex-ante "New Competition Tool" which predated the Digital Markets Act. See European Commission, Proposal for a Regulation by the Council and the European Parliament introducing a new competition tool, Inception Impact Assessment, Ref. Ares(2020)2877634 - 04/06/2020, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=intcom:Ares\(2020\)2877634](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=intcom:Ares(2020)2877634)

**This fundamental flaw in the DMA’s approach is that relies on unproven assumptions of competitive harm before they have even occurred, while simultaneously depriving companies of defenses traditionally available to demonstrate their conduct promotes efficiency and innovation.** <sup>11</sup> Speed at the expense of accuracy is preferred: defendants cannot articulate efficiency arguments for the sake of expediency of allegedly “self-enforcing obligations” which are far from being clear and self-enforcing. Additionally, the administrative procedure—referred to by the DMA as a “regulatory dialogue”—lacks the fundamental procedural safeguards and due process protections that characterize conventional competition enforcement. In essence, the DMA’s architecture draws directly from the logic of the precautionary principle, effectively limiting conduct before there is evidence that it actually poses a harm to competition or consumers.<sup>12</sup> Ultimately, this inversion of the burden of proof, whereby conduct is prohibited unless the gatekeeper can demonstrate its compatibility with the regulation despite the absence of established harm, deters innovation and chills investment.

The DMA entered into force in March 2024 and, so far, the results have been underwhelming. Surveys indicate that the majority of EU consumers report new complications using the internet that are traceable to the DMA. These consumers report having a worse online experience today, with two-thirds saying they must search longer for relevant online content than before the DMA.<sup>13</sup>

The European Commission anticipated in 2020 that the DMA would cost only few millions of euros for companies to comply with whilst generating billions of euros of value for consumers and increased growth for the economies. The European Commission estimated that annual compliance costs for gatekeepers would vary from €9.87 million and €21.15 million. Meanwhile, they estimated the benefits would amount to €92.8 billion from minimizing internal market fragmentation by 2025; between €12 billion and €23 billion for increased economic growth; preservation of 600,000 jobs, and from €221 billion to €323 billion of innovation benefits over 10 years.<sup>14</sup> **None of the predicted economic**

<sup>11</sup> Aurelien Portuese, “The Digital Markets Act: European Precautionary Antitrust”, ITIF Report, May 2021, <https://www2.itif.org/2021-digital-markets-a4.pdf> ; Friso Bostoen, “Understanding the Digital Markets Act”, *The Antitrust Bulletin*, Vol. 68(2), (2023) (“Including an efficiency defense would risk bringing in effects analysis through the backdoor. The burden would be on the gatekeeper rather than the EC, but gatekeepers would be motivated to come up with plausible arguments to shift the burden back to the EC, which would then be forced into an effects analysis. This inability to escape an effects analysis could undo much of the gains in enforcement speed.”)

<sup>12</sup> On the precautionary principle as anti-innovation principle, see Aurelien Portuese, Julien Pillot, “The Case for an Innovation Principle: A Comparative Law & Economic Analysis”, *Manchester Journal of International Law*, Vol 15(2), (2018), <https://laweconcenter.org/wp-content/uploads/2018/11/Portuese-Pillot-The-Case-for-an-Innovation-Principle-A-Comparative-Law-and-Economics-Analysis-2018-1.pdf>

<sup>13</sup> NextTrade Group, Impact of the Digital Markets Act (DMA) on consumers across the European Union: Results from a survey with 5,000 consumers, September 2025, [https://www.nexttradegroupplc.com/\\_files/ugd/478c1a\\_9d7c98475ce8404188d2f8dbb1c9d2ff.pdf](https://www.nexttradegroupplc.com/_files/ugd/478c1a_9d7c98475ce8404188d2f8dbb1c9d2ff.pdf)

<sup>14</sup> European Commission, Commission Staff Working Document Impact Assessment Report Annexes Accompanying the document Proposal for a Regulation Of The European Parliament And Of The Council on contestable and fair

**benefits of the DMA have been proven**, and both the 2024<sup>15</sup> and 2023<sup>16</sup> DMA Implementation Reports do not quantify any tangible economic benefits on innovation and economic growth.

On the flip side, compliance costs have mushroomed as designated gatekeepers navigate multiple European regulations that often conflict. It is estimated that the cost of complying due to resource reallocation and external counseling “could amount to \$1 billion per year.”<sup>17</sup>

Enforcement of the DMA demonstrates that it has been targeted as U.S. companies, while failing to sanction EU companies engaged in similar conduct. The European Commission issued its first noncompliance decisions on April 22th, 2025.<sup>18</sup> The Commission fined Apple €500 million for breaching the anti-steering rule in Article 5(4) by continuing to restrict developers from freely informing users about cheaper alternatives outside the App Store. They also fined Meta €200 million for its pay-or-consent model, which the Commission found violated Article 5(2) by failing to offer a genuine less-data-intensive personalized advertising option alongside the choice between full data combination for personalized ads or a paid ad-free subscription. Both infringements were largely foreseeable, as the decisions closely followed the preliminary findings the Commission had shared in mid-2024. On the same day, the Commission closed, without infringement, its investigation into Apple’s user-choice obligations after the company implemented changes the Commission deemed sufficient. Apple and Meta have both indicated they will appeal, focusing primarily on the substantive interpretations rather than the fines themselves. There have also been additional preliminary findings issued in a case against Alphabet and another case against Apple.<sup>19</sup>

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markets in digital sector (Digital Markets Act), SWD(2020) 363 final, December 15, 2020, <https://digital-strategy.ec.europa.eu/en/library/impact-assessment-digital-markets-act>

15 European Commission, Report From The Commission To The Council And The European Parliament Annual report on Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), COM(2025) 166 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52025DC0166> .

16 European Commission, Report From The Commission To The Council And The European Parliament Annual report on Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), COM(2024) 106 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52024DC0106>

17 Carl J. Schramm, Costs to U.S. Companies from EU Digital Services Regulation, CCA Report, July 2025, <https://ccianet.org/research/reports/costs-to-us-companies-from-eu-digital-services-regulation/>

18 European Commission, Commission finds Apple and Meta in breach of the Digital Markets Act, April 22th, 2025, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_25\\_1085](https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1085)

<sup>19</sup> Anupriya Datta, “Apple and Meta appeal DMA decisions that saw them fined €700 million”, Euractiv, July 7, 2025, <https://www.euractiv.com/news/apple-and-meta-appeal-dma-decisions-that-saw-them-fined-e700-million/>

### 3. *The DMA may have positive effects – openness of app stores and interoperability*

Notwithstanding the negative effects of the DMA, some provisions may be yielding benefits. Specifically, the DMA may be successfully promoting greater openness in relation to app stores and advancing more comprehensive interoperability. However, many of these benefits largely align with case-specific injunctions issued by U.S. courts in litigation against large platforms. This demonstrates that it is possible to achieve these positive outcomes, without the significant cost that comes with regulations like the DMA.

For example, Apple has changed its app store rules following the EU's noncompliance decision and Google may be subject to similar fines as Apple.<sup>20</sup> In response, Apple now allows iOS sideloading and third-party app marketplaces, fully removes anti-steering restrictions (letting apps freely promote and link to cheaper external purchases), supports alternative payment processors via 600+ new APIs, and replaces the €0.50 per-install Core Technology Fee with a 5% Core Technology Commission on promoted digital goods (plus a 5% Initial Acquisition Fee only on new users for 12 months). Google now permits unrestricted in-app links to external offers and rival stores, drops its service fee to 0–3% when developers use external billing, expands its External Offers Program, and provides full technical support for competing Android app stores.

These positive changes largely mirror the exact changes already required by U.S. courts as part of the remedies Epic Games won in its lawsuit against Apple and Google. The Ninth Circuit's 2021 anti-steering ruling against Apple (under California's Unfair Competition Laws) forced the same link-out freedoms now applied EU-wide, while the October 2024's permanent injunction in *Epic v. Google* mandated distribution of rival stores inside Play, banned revenue-sharing on sideloading, and ended anti-steering—provisions now enforced across the entire EU under the DMA. Thus, the DMA has delivered to all European developers, without further litigation, almost the full set of structural reforms Epic spent five years and hundreds of millions of dollars pursuing in the United States.

Another positive aspect of the DMA is promotion of greater interoperability. Since the enforcement of the DMA commenced in March 2024, the designated gatekeepers have enacted targeted interoperability advancements across their core platforms, directly addressing obligations under Articles 6 and 7 to dismantle data silos and enable seamless third-party integrations, while upholding privacy standards. Apple has authorized third-party app marketplaces and sideloading on iOS, processed over 150 interoperability requests encompassing smartwatch pairing, digital car keys, and health data access, implemented RCS messaging with full feature parity for cross-platform exchanges in

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<sup>20</sup> Foo Yun Chee, Google faces fines over Google Play if it doesn't make more concessions, sources say, December 10, 2025, <https://www.reuters.com/sustainability/boards-policy-regulation/google-faces-fines-over-google-play-if-it-doesnt-make-more-concessions-sources-2025-12-10/>

2024, and introduced the Critical Messaging Interoperability API in March 2025 to support end-to-end encrypted one-to-one messaging with competitors, with group chats slated for 2026.

Alphabet's Google have also facilitated anonymized search query sharing with rival engines, exposed host card emulation APIs for third-party digital wallets and NFC payments in 2024, and Google has begun distributing competing app stores' catalogs within Google Play as part of its 2024–2027 injunction compliance. Meta has enabled third-party clients on WhatsApp and Messenger for end-to-end encrypted one-to-one chats since March 2024, group messaging in 2025, and voice/video calls by 2026–2027. Microsoft has integrated cloud-PC interoperability APIs into Windows 11 and permitted LinkedIn data exports to rival CRM platforms in 2025, while Amazon and ByteDance have bolstered seller and business data portability alongside multi-homing functionalities.

These DMA-mandated enhancements align precisely with the remedies pursued in the U.S. Department of Justice's antitrust suit against Apple<sup>21</sup>. The DOJ's complaint explicitly demands injunctions mirroring DMA provisions, including mandated access to third-party app stores on iOS (echoing Article 6(4)), full NFC and digital wallet interoperability for rival payment apps (per Article 6(9)), and non-degraded cross-platform messaging standards without iMessage's "green bubble" degradation (aligning with Article 6(7) and 6(10)). On June 30, 2025, Judge Julien Xavier Neals denied Apple's motion to dismiss in its entirety, affirming the DOJ's plausible claims of monopoly power and anticompetitive conduct—such as blocking "super apps," suppressing cloud streaming, limiting third-party smartwatch compatibility, and restricting developer APIs—rejecting Apple's "refusal to deal" defenses and citing precedents like the DOJ's Google ad-tech victory. This ruling propels the case toward discovery and an anticipated trial in 2026 or later, potentially yielding nationwide structural reforms equivalent to the DMA's ex ante interoperability mandates, though enforced via case-specific injunctions rather than uniform regulation.

The increased competition in app distribution and the substantial interoperability gains undeniably represent positive outcomes of the DMA. However, these benefits do not redeem the regulation's fundamentally flawed design, which is both misguided and discriminatory.

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<sup>21</sup> *United States v. Apple Inc.* filed March 21, 2024, in the U.S. District Court for the District of New Jersey) alleges monopolization of U.S. performance smartphone (70% share) and broader smartphone (65% share) markets under Section 2 of the Sherman Act through ecosystem lock-in tactics that stifle innovation and consumer choice.

## B. DMA Contagion has Weaponized Europe’s Normative Soft Power

The DMA not only imposes binding obligations on major United States-based technology firms within the European Union but also exemplifies Europe’s longstanding mastery of normative soft power.<sup>22</sup> Lacking the capacity—or, in many cases, the inclination—to project influence through military might or coercion (hard power), the European Union has instead leveraged its most potent asset: a unified internal market of more than 500 million prosperous consumers, underpinned by advanced infrastructure and robust institutional frameworks. Through sophisticated regulatory leadership and persuasive standard-setting, Europe induces alignment rather than compels obedience (soft power).

This normative soft power has proven remarkably effective.<sup>23</sup> The phenomenon widely recognized as the “Brussels Effect”<sup>24</sup> now manifests globally, as jurisdictions across virtually every continent voluntarily—or semi-voluntarily—adopt European regulatory templates in fields ranging from data protection and environmental standards to competition policy and digital governance. In so doing, Europe achieves a dual strategic objective: it enhances the international competitiveness of its own firms by establishing European norms as the de facto global benchmark, while simultaneously erecting entry barriers to protect domestic interests. Thus, through the quiet authority of regulation rather than the blunt instrument of coercion, Europe extends its influence far beyond its borders and secures enduring geopolitical and economic advantages. In response, the U.S. has remained mostly complacent amid the DMA contagion across the globe.

### 1. *America’s has displayed inaction and complacency in response to the DMA*

In February 2025, President Trump issued a directive “*Defending American Companies and Innovators from Overseas Extortion and Unfair Fines and Penalties.*”<sup>25</sup> President Trump’s

<sup>22</sup> Zaki Laidi, *Norms Over Force: The Enigma of European Power*, (CERI Series in International Relations and Political Economy), (Palgrave Macmillan, 2008); Dennis Broeders, Fabio Cristiano, Monica Kaminska, In Search of Digital Sovereignty and Strategic Autonomy: Normative Power Europe to the Test of Its Geopolitical Ambitions”, *Journal of Common Market Studies*, Vol. 61(5), pp.1261-1280 (2023)

<sup>23</sup> Marc Scott, “Europe tech’s ambition: to be the world’s digital policeman”, *Politico*, August 20, 2017, <https://www.politico.eu/article/europe-tech-ambition-to-be-world-digital-policeman/>

<sup>24</sup> Anu Bradford, *The Brussels Effect: How the European Union Rules the World*, (Oxford University Press, 2020); Christen, Elisabeth et al. (2022) : *The Brussels Effect 2.0: How the EU sets global standards with its trade policy*, FIW-Research Reports, No. 2022-07, FIW - Research Centre International Economics, Vienna, <https://www.econstor.eu/bitstream/10419/278200/1/1819336239.pdf> ; Annagret Bendiek, Isabella Stuerzer, “The Brussels Effect: European Regulatory Power and Political Capital: Evidence for Mutually Reinforcing Internal and External Dimensions of the Brussels Effect from the European Digital Policy Debate”, *Digital Society*, Vol.2(5) (2023).

<sup>25</sup> White House, “*Defending American Companies And Innovators From Overseas Extortion And Unfair Fines And Penalties*”, February 21st, 2025, <https://www.whitehouse.gov/presidential-actions/2025/02/defending-american-companies-and-innovators-from-overseas-extortion-and-unfair-fines-and-penalties/> . See also White House, “*Fact Sheet: President Donald J. Trump Issues Directive to Prevent the Unfair Exploitation of American Innovation*”, February 21 2025, <https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-issues->

initiative encompasses rigorous examination of the design and enforcement of the DSA and DMA, in addition to other digital services taxes.<sup>26</sup> Yet, prior to this year, the United States not only permitted the DMA's design and implementation with scant intervention but also saw its antitrust enforcers lend active support to its application against American technology firms.

Throughout the DMA's legislative journey, the former Biden Administration displayed negligible apprehension regarding its discriminatory effects or unforeseen repercussions. Only former Commerce Secretary Gina Raimondo voiced fleeting reservations, and her views were swiftly overrun by the Neo-Brandeisians within the Biden Administration<sup>27</sup>, whose resolve to expedite the DMA's implementation remained unyielding.<sup>28</sup>

Indeed, the Biden Administration let the European Commission open a new office in San Francisco to directly apply the DMA to Silicon Valley companies<sup>29</sup>—thereby, signaling that the main target of the DMA were Silicon Valley companies and not Chinese or European companies. This office is meant to make “sure that tech firms understand the wave of new EU regulation that is coming their way, as all companies should have a fair chance to implement and comply with these new rules.”<sup>30</sup> In other words, DMA's compliance by design intervenes at the inception of the design of products and services of the “gatekeepers,” with a risk of over-deterrence that can create innovation costs.

Additionally, Biden's antitrust enforcers promoted the implementation of the DMA as an “act of international cooperation.”<sup>31</sup> The former antitrust chiefs' willingness to praise and facilitate the implementation of the DMA was demonstrated in Staff Report of the House

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[directive-to-prevent-the-unfair-exploitation-of-american-innovation/](#) (“Regulations that dictate how American companies interact with consumers in the European Union, like the Digital Markets Act and the Digital Services Act, will face scrutiny from the Administration.”)

<sup>26</sup> White House, “Fact Sheet: President Donald J. Trump Issues Directive to Prevent the Unfair Exploitation of American Innovation”, February 21 2025, <https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-issues-directive-to-prevent-the-unfair-exploitation-of-american-innovation/>

<sup>27</sup> Aurelien Portuese, “Biden Antitrust: The Paradox of the New Antitrust Populism”, *George Mason Law Review*, Vol.29(4), pp.1087-1133 (2022) [https://lawreview.gmu.edu/print\\_issues/biden-antitrust-the-paradox-of-the-new-antitrust-populism/](https://lawreview.gmu.edu/print_issues/biden-antitrust-the-paradox-of-the-new-antitrust-populism/) (“Breaking away from the Obama period, Biden antitrust relies on a large number of controversial assumptions underpinning the NeoBrandisian agenda. Several assumptions justify this efficiency-decreasing Neo-Brandisian agenda, including the beliefs that (1) market power is contradictory with competition; (2) concentration cannot generate competition; (3) prices often are anticompetitive because they are either excessive or predatory; (4) mergers are carried out for anticompetitive reasons; and (5) the current lack of competition may lead to fascism.”)

<sup>28</sup> Aurelien Portuese, “Biden Administration Rightly Speaks Out on Europe's DMA”, *Innovation Files*, December 13, 2021, <https://itif.org/publications/2021/12/13/biden-administration-rightly-speaks-out-europes-dma/>

<sup>29</sup> European Union External Action, *USDigital: EU opens new Office in San Francisco to reinforce its Digital Diplomacy*, September 1, 2022, [https://www.eeas.europa.eu/eeas/usdigital-eu-opens-new-office-san-francisco-reinforce-its-digital-diplomacy\\_en](https://www.eeas.europa.eu/eeas/usdigital-eu-opens-new-office-san-francisco-reinforce-its-digital-diplomacy_en)

<sup>30</sup> Charles Manoury, the European Commission spokesperson quoted in *World Economic Forum*, “Why the European Union is opening a Silicon Valley ‘embassy’”, August 16 2022, <https://www.weforum.org/stories/2022/08/why-the-european-union-is-opening-a-silicon-valley-embassy/>

<sup>31</sup> See Letter of Chairman James Comer, August 21, 2023, <https://oversight.house.gov/wp-content/uploads/2023/08/8-21-23-Letter-to-FTC-re-EU-Digital-Markets-Act.pdf>

Committee on Oversight and Accountability of October 31, 2024.<sup>32</sup> Moreover, despite being consistently categorized over the years as a foreign trade barrier by the United States Trade Representatives<sup>33</sup>, senior officials in the Biden Administration praised the DMA. In 2023, the U.S. antitrust authorities “announced planned liaisons of agency experts from the FTC and the Antitrust Division in Brussels, with each agency sending an official to assist with implementation of the Digital Markets Act.”<sup>34</sup>

The U.S. also squandered opportunities to meaningfully engage on harms caused by the DMA. When the U.S. and Europe launched in 2021 the EU-US Trade and Technology Council, European and American antitrust authorities started the EU-US Joint Technology Competition Policy Dialogue (“TCPD”).<sup>35</sup> This coordination presented a significant opportunity to articulate concerns regarding the DMA and to harmonize enforcement approaches across jurisdictions. Regrettably, however, the DMA and analogous regulations fall outside the remit of the TCPD. Excluding discussion of the DMA from a transatlantic forum on digital competition renders the initiative largely ineffective and constitutes an implicit concession by the United States to the extraterritorial influence of the DMA, rather than engaging with it constructively in an appropriate multilateral setting.

Unsurprisingly, the rest of the world followed the DMA’s inspiration for two main reasons: these countries have already followed European antitrust cases against U.S. Big Tech companies, and the U.S. itself has not pushed back against the DMA and its contagion.

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<sup>32</sup> Committee on Oversight and Accountability, The Federal Trade Commission Under Chair Lina Khan: Undue Biden-Harris White House Influence And Sweeping Destruction Of Agency Norms. Staff Report, October 31 2024, <https://oversight.house.gov/wp-content/uploads/2024/10/HCOA-Majority-Staff-Report-FTC-Investigation.pdf>

<sup>33</sup> Executive Office of the President of the United States, 2025 National Trade Estimate Report on Foreign Trade Barriers of the President of the United States on the Trade Agreements Program, United States Representative, March 2025, <https://ustr.gov/sites/default/files/files/Press/Reports/2025NTE.pdf> (noting that “The “gatekeepers” designated by the DMA disproportionately capture U.S. firms compared to their EU competitors, and therefore undermine U.S. competitiveness in the European market by increasing the compliance costs on certain U.S. firms while not placing a similar burden on EU competitors. The Commission is currently investigating U.S. firms and has imposed excessive fines for violating the DMA.”)

<sup>34</sup> Federal Trade Commission, “FTC, Justice Department, and European Commission Hold Third U.S.- EU Joint Technology Competition Policy Dialogue”, March 30 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-justice-department-european-commission-hold-third-us-eu-joint-technology-competition-policy>. See also Klon Kitchen, “How the FTC Is Undermining U.S. Interests in Europe”, American Enterprise Institute, April 25 2023, <https://www.aei.org/op-eds/how-the-ftc-is-undermining-u-s-interests-in-europe/>

<sup>35</sup> European Commission, “EU-US hold fourth Joint Technology Competition Policy Dialogue”, April 10 2024, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_24\\_1952](https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1952)

## 2. *The rest of the world is succumbing to the DMA*

The EU has promoted convergence, in both enforcement and regulatory requirements. In many cases, countries have taken enforcement action that mirrors EU actions taken before and after implementation of the DMA. For example:

- **In India**, the Competition Commission of India initiated the Google Android case (Case No. 39 of 2018) in 2018, deciding it in October 2022, with a fine. The allegations mirrored EU concerns regarding mandatory pre-installation of Google applications, revenue-sharing tying Play Store access to exclusivity, and restrictions on Android forks. Evidence of EU influence includes extensive replication of the European Commission's 2018 Android decision, with verbatim passages and unreviewed European evidence, as noted in reports and Google's appeals. As of December 2025, the ₹1,337.76 crore fine and behavioral remedies remain largely upheld, with appeals pending before the Supreme Court.
- **In South Korea**, the Korea Fair Trade Commission addressed Google's anti-fragmentation agreements in a case initiated in 2016 and decided in 2021, imposing a fine for requiring such agreements to prevent Android forks and entrench dominance. The theories align closely with the European Union's 2018 Android decision, reflecting parallel enforcement trends. The outcome includes a 207 billion won fine and corrective orders, with appeals ongoing as of December 2025.
- **In Australia**, the Australian Competition and Consumer Commission has not pursued direct abuse-of-dominance cases mirroring the pre-2019 European Union Google decisions; however, its Digital Platforms Inquiry from 2017 to 2019 and subsequent reports drew indirectly on international developments, including European Union actions, to address self-preferencing and related concerns.
- **In Brazil**, a Google Android enquiry launched in 2019 explicitly followed the European Union's 2018 investigation and was settled in December 2025, with requirements for Google to terminate certain agreements without an additional fine. Beyond these jurisdictions, similar influences appeared in cases in Turkey and Russia.

These and other jurisdictions have also contemplated legislation mirroring the DMA. For example,

- **In South Korea**, the proposed amendments to the Monopoly Regulation and Fair Trade Act (MRFTA) in September 2024, following the scrapping of the Platform Competition Promotion Act (PCPA) in February 2024, incorporate DMA-like designations for dominant platforms, with bans on self-preferencing and efficiency

defenses subject to reversal of proof. These measures protect local firms like Naver and Kakao from U.S. competition, prohibit pro-consumer conduct such as bundling that subsidizes services, and stifle innovation through preemptive regulation that deters disruptive entry.

- **In Brazil's**, PL 2768/2022, under consultation since 2023, mandates interoperability and non-discrimination for gatekeepers with income exceeding R\$70 million, imposing fines up to 2% of revenue. This low threshold risks capturing emerging U.S. players like Uber and Google early in their growth. Meanwhile, investigations by CADE into self-preferencing and other issues favor domestic rivals, enabling free-riding and reducing incentives for American investments in logistics and e-commerce.
- **In Australia**, ongoing ACCC inquiries and Treasury consultations as of December 2024 propose service-specific obligations for designated platforms. These initiatives address perceived anticompetitive conduct but adopt precautionary elements, such as barriers to entry presumptions, that prohibit pro-consumer practices like data leveraging, potentially insulating local media and intermediaries from U.S. platforms in search and advertising.
- **In Japan**, the Smartphone Software Competition Promotion Act, adopted in June 2024, targets app stores and operating systems with bans on discrimination and data misuse, allowing case-by-case rebuttals but emphasizing exemptions only for privacy and security. This asymmetric regulation by size affects U.S. ecosystems like Apple's iOS, mandating alternatives that erode proprietary controls and enable rivals to compete without equivalent innovation risks. Additionally, the Japan Federal Trade Commission's guidelines, drafted in 2025, focus on core services in a manner that shields domestic firms.

Collectively, these DMA-inspired regimes create a patchwork of extraterritorial burdens, leading to market fragmentation, increased compliance costs, and deterred cross-border innovation. In addition, they insulate non-U.S. rivals, treat American efficiencies as unfair, and prioritize static contestability over dynamic disruption. Moreover, the shift from ex-post judicial enforcement to ex-ante rules across these jurisdictions signals a broader transatlantic and global trend, which ultimately harms consumer interests and deters innovation.

The table below recaps the main features of these DMA-inspired regulations in these jurisdictions:

Jurisdiction	Regulation Name	Size Thresholds	Companies Targeted	Practices	Remedies	Legislative Process
South Korea	Platform Competition Promotion Act	Quantitative criteria including average market capitalization $\geq$ approximately USD 20.3 billion, annual platform revenue $\geq$ approximately USD 2 billion, and $\geq$ 10 million average monthly users or $\geq$ 50,000 business users; qualitative factors also considered for designation	Large digital platforms, including global/U.S. firms (e.g., Google, Apple) and domestic firms (e.g., Naver, Kakao); concerns over impact on both foreign and domestic operators	Self-preferencing, tying/bundling, multi-homing restrictions, most-favored-nation clauses, data access restrictions	Significant fines (up to 10% of turnover), behavioral remedies and ongoing monitoring by KFTC	Multiple bills proposed and pending in National Assembly; faced delays due to U.S. pressure, domestic concerns, and trade considerations; not enacted as of December 2025
Brazil	Bill 4675/2025 (Fair Digital Competition Bill); amends competition law to introduce ex-ante tools via CADE	Qualitative (market power, network effects, data control) and quantitative thresholds (e.g., global revenue $\geq$ approximately USD 9.2 billion or domestic $\geq$ approximately USD 0.9 billion) for "systemically relevant" platforms; case-by-case designation	Large digital platforms, primarily global/U.S. firms expected (e.g., Google, Apple, Meta); 5-10 estimated designations	Tailored obligations (e.g., interoperability, data access, fairness in dealings, restrictions on self-preferencing)	Fines up to significant percentages of turnover; behavioral remedies imposed by CADE	Proposed and submitted to Congress (September 2025); under legislative review as of December 2025
Australia	Proposed digital competition regime (economy-wide or service-specific); based on ACCC recommendations	To be determined (likely size-based thresholds such as revenue or user numbers for designated services; priorities include app marketplaces and ad tech)	Dominant digital platforms, including global firms (e.g., Apple, Google for app stores; Meta, Google for ad tech)	Prohibitions on anti-competitive conduct (e.g., self-preferencing, bundling); potential interoperability and fairness requirements	Fines and remedies administered by ACCC	Final ACCC inquiry report issued (March 2025); government consultation completed (February 2025); proposal pending legislation as of December 2025
Japan	Act on Improving Transparency and Fairness of Digital Platforms (2021); lighter transparency-focused regime	Revenue and transaction value thresholds for designation as specified providers (e.g., based on sales of goods/services via platform)	Designated platforms (e.g., Amazon, Rakuten for e-commerce; Apple, Google for app stores; TikTok added 2025; includes both domestic and foreign/U.S. firms)	Disclosure of terms, algorithmic criteria, complaint handling; voluntary improvements encouraged	Annual reporting and evaluations; potential referral to JFTC for antitrust violations	Enacted and in force; ongoing designations and evaluations as of December 2025

Several other jurisdictions, including China, Chile, Turkey, Canada, Mexico, New Zealand, and South Africa, have also introduced regulatory proposals inspired by the DMA. However, as of December 2025, legislative processes in many of these countries remain stalled or are progressing slowly. These initiatives retain the potential for

adoption in their respective jurisdictions, which could impose additional digital trade barriers globally and further fragment international markets.

### **C. Steps Congress and the Administration Can Take to Counter the DMA and Similar Approaches.**

In light of Europe’s soft normative power, and without using hard power as a response, the U.S. could use its capabilities and leverage to protect its national security, encourage innovation and competitiveness of its companies domestically and internationally. This can be accomplished increased investigations into the effects of DMA and similar legislation, legislation that facilitates action against countries that adopt DMA like regulations that discriminate against U.S. companies, and investments in “digital diplomacy” to influence foreign jurisdictions’ regulations.

#### **a. Congress’s Oversight and Legislation**

Congress can utilize its investigative and legislative authority to act against jurisdictions that adopt discriminatory legislation modeled on the DMA. Specifically:

- i. **Congress could launch an investigation and write a report quantifying the costs of the DMA** on innovation incentives and product design, as well as its advantage (with respect to interoperability and app store rule changes). To date, this type of in-depth analysis has not been conducted. This inquiry should also investigate the active role of European officials in advocating for DMA-inspired regulations and investigate the role the US has played in the implementation of the DMA.
- ii. **Congress should pass a law with provisions like those contained in H.R. 4278, the “Protect U.S. Companies from Foreign Regulatory Taxation Act,”** introduced by Rep. Fitzgerald, which aims to protect certain U.S. entities from enforcement of foreign digital market regulations. The bill seeks to shield major U.S. digital companies from foreign regulations—like the DMA—that are seen as potentially hindering their operations and U.S. economic/technological security.
- iii. **Congress should amend the Trade Act of 1974 to incorporate reciprocity against discriminatory digital regulations** like the DMA. This should include provisions that:

- Penalize countries that impose ex ante obligations on designated "gatekeepers" (predominantly United States firms) without evidence of anticompetitive harm.
- Impose penalties on countries that violate WTO principles, such as national treatment under General Agreement on Tariffs and Trade (GATT) Article III, which act as non-tariff barriers. This definition would encompass the DMA and similar regimes, enabling USTR investigations upon petitions from affected industries.
- Amend Section 301(b) to authorize the imposition of reciprocal tariffs or market access restrictions on goods or services from the offending jurisdictions. For example: tariffs on European Union exports (e.g., automobiles or agricultural products) could be levied at rates equivalent to the economic harm caused by DMA compliance, estimated via USTR reports; relief from such tariffs would be granted upon verifiable amendments to the DMA, such as incorporating effects-based defenses or exemptions for security and innovation.
- Require USTR to consult with Congress and stakeholders before implementing measures, ensuring bipartisanship.
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**b. Congressional and Administrative Efforts on Digital Diplomacy:**

Congress and the Administration should also engage in digital diplomacy, designed to influence other jurisdictions' approach to competition regulation. Specifically, Congress and/or the Administration should:

- i. **Integrate the DMA into existing TCPD discussions.** The Department of Commerce and the International Trade Administration can join these meetings where antitrust authorities meet to ensure that the trade aspects of the DMA are fully addressed;
- ii. **Re-activate the WTO's Working Group on Competition & Trade,** which has been dormant for the last 20 years. This Working Group can be useful to recognize ex-ante digital regulations and foreign trade barriers that are *de facto* discriminatory;
- iii. **Establish a dedicated, bipartisan task force under the auspices of the United States International Trade Commission (USITC)** to monitor extraterritorial digital regulations that function as trade barriers. The agency's mandate includes conducting investigations, providing

reports to Congress and the President, and advising on trade policy, making it a natural fit for monitoring extraterritorial digital regulations that function as de facto trade barriers. The task force could be cemented through standalone legislation or as an amendment to existing trade laws, such as the Trade Expansion Act of 1962 (19 U.S.C. §§ 1801 et seq.) or the Trade Act of 1974 (19 U.S.C. §§ 2101 et seq.), with an initial authorization period of five years, subject to renewal based on demonstrated efficacy. The taskforce could conduct ongoing surveillance of regulatory changes, enforcement actions, and proposals; establish formal mechanisms for soliciting input from U.S. entities; and quantify impacts, such as job losses or R&D reductions attributable to foreign regulations.

#### **D. Conclusion**

The DMA's misguided approach harms U.S. companies, consumers, and the broader global economy. Unfortunately, DMA-like approaches are now spreading far beyond the EU, in markets in Asia and the Americas.

For too long, the U.S. has rested on its laurels, failing to take action to prevent the spread of policies like the DMA, and in some cases, has even promoted the DMA contrary to the interests of U.S. companies and consumers. However, it is not too late for Congress and the Administration to Act. The U.S. can take action to influence future regulations across the world and act against countries' that improperly discriminate against U.S. companies.

Mr. FITZGERALD. Thank you, Professor. Mr. Auer, you now may begin.

**STATEMENT OF DIRK AUER**

Mr. AUER. Chair Fitzgerald, Ranking Member Correa, and the Members of the Subcommittee, thank you for the opportunity to testify.

My name is Dirk Auer. While I work for an American research institution, I live in Belgium. From that vantage point, I have watched a disturbing trend accelerate.

Over the past years, the European Union has enacted various digital market regulations and imposed colossal fines on American companies. I wish I could sit here and tell you these policies will make markets fairer and more contestable, as European policy-makers claim, but that is not the case.

It is becoming increasingly clear Europe's regulations will harm its startups, its consumers, and most importantly for me, my children's future. In practice, these policies are naked attempts to penalize American success and subsidize European stagnation. Because Europe has let all this unfold—sorry. Because America has let all this unfold with little to no response, other jurisdictions are rapidly forming suit.

To understand why this is happening, we must look at the brutal economic reality. We are witnessing a great divergence. Since the year 2000, the U.S. economy has powered ahead, while Europe's engine has stalled. Real disposable income has grown nearly twice as fast in the U.S. as in the EU.

Over the past 50 years, Europe built ASML, Spotify, and Novo Nordisk. Not terrible, but in that same time, the U.S. formed Microsoft, Alphabet, Apple, Meta, Amazon, OpenAI, and many, many others. To put it bluntly, Europe has become an open-air museum. It is rich in history and culture, but increasingly irrelevant in the global production of value.

The lack of European tech giants encourages its politicians to regulate tech firms. That way, they can act tough on corporate power without antagonizing any domestic voting bloc.

The enforcement numbers tell the story. Since 2019, the EU Commission has virtually stopped fining domestic firms for competition violations. American firms, on the other hand, were hit with almost \$8 billion in fines.

Europe did not stop there. Its marquee tech regulation, the Digital Markets Act, was gerrymandered to almost exclusively target five American companies, while conveniently excluding almost all large European firms.

All this has resulted in degraded online services and delayed product launches. Google was forced to remove theseamless Maps integration from search. Likewise, Apple intelligence was delayed in Europe. Worse, Europe's overzealous regulation harms American consumers, too, because the world's brightest engineers must now comply with foreign regulations instead of designing groundbreaking new services.

An even bigger danger for the United States is that this model is highly contagious. We are seeing DMA-inspired regulations crop up in the U.K., Japan, Brazil, and South Korea. This is, arguably,

happening because the United States aided and abetted the EU when it passed the DMA. The U.S. administration's silence was interpreted as permission, and other jurisdictions are now emboldened to follow suit.

Historically, defending U.S. commerce was a bipartisan duty. When the EU targeted the Boeing–McDonnell Douglas merger, the Clinton Administration threatened a trade war. When the EU went after Apple for back taxes, President Obama called it unfair and commercially driven.

Unfortunately, in recent years, U.S. antitrust agencies have broken with this tradition, effectively outsourcing their enforcement wishlists to foreign capitals. When the EU blocked the Amazon iRobot deal, Washington's silence was deafening.

This leads to my most critical point for this body. This administration must make foreign regulators understand that discriminatory targeting of U.S. tech carries consequences. Doing so would deter protectionist regulations; thereby, protecting U.S. companies, their workers, and ultimately, American consumers.

It is also crucial for the U.S. to remain a shining beacon of consumer—focused antitrust enforcement. The U.S. cannot credibly combat discriminatory regulations abroad if it adopts similar ones at home. In short, the transatlantic alliance is strongest when it is based on mutual growth and innovation, not on the managed decline of one partner at the expense of the other.

The time has come to reassert the principles of market competition and innovation that make the Western economy the envy of the world.

Thank you very much.

[The prepared statement of Mr. Auer follows:]

International  
Center for  
Law & Economics

**Written Testimony of Dirk Auer  
Director of Competition Policy  
International Center for Law & Economics (ICLE)**

*Hearing of the House Judiciary Subcommittee on Administrative State,  
Regulatory Reform, and Antitrust*

*“Anti-American Antitrust: How Foreign Governments Target U.S. Businesses”*

*December 16, 2025*

*2141 Rayburn House Office Building*

*Washington, D.C.*

**Executive Summary: The Widening Atlantic Divide**

Thank you to Chairman Thomas Massie, Ranking Member J. Luis Correa, and members of the Subcommittee for this opportunity to testify on “Anti-American Antitrust: How Foreign Governments Target U.S. Businesses.” My name is Dirk Auer, and I am director of competition policy for the International Center for Law & Economics (ICLE), a nonprofit, nonpartisan research center whose mission is to promote the use of law & economics methodologies to inform public-policy debates. While ICLE is headquartered in Portland, Oregon, I live in Belgium, where I also serve as an adjunct professor of European competition law at the University of Liège.

From this vantage point, I have borne witness as European Union (EU) competition policy has become unmistakably politicized in recent years, with the Digital Markets Act (DMA), in particular, pitched even by its framers as a tool to target American success. To understand the root of this regulatory hostility, one must look at the historical trajectory and what has been a widening economic gap between a dominant U.S. digital economy and a stagnant Europe.

Moreover, with the active encouragement of Europe’s political class, the EU’s interventionist blueprint has spread to Japan, South Korea, Brazil, and Australia, with other jurisdictions likely to follow suit. This has effectively created a global regime of “non-tariff attacks” that degrade security and squander engineering talent. To check this contagion will require that the United States recognize and critique foreign policymakers’ flawed incentives, vigorously defending U.S. interests against the expansion of discriminatory regulations.

The speed of this reversal has been remarkable. At the turn of the millennium, the geopolitical and economic partnership between the United States and the EU was predicated on a fundamental symmetry. The United States and EU stood as twin pillars of the industrial world, characterized by robust consumer markets, deeply integrated trade relationships, and a shared potential to define the contours of the budding information age. In the quarter century since, the United States has become a global powerhouse for digital services—birthing and nurturing the “trillion-dollar” tech giants that now drive global innovation and productivity. Meanwhile, by contrast, Europe’s economic engine has stalled, with widening gaps in GDP, GDP per capita, and productivity.<sup>1</sup>

As former European Central Bank President Mario Draghi observed in a recent report sponsored by European Commission: “On a per capita basis, real disposable income has grown almost twice as much in the US as in the EU since 2000.”<sup>2</sup> And while factors beyond regulatory policy—including

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<sup>1</sup> For example, nominal U.S. GDP exceeds that of the EU by nearly 50% (\$30.62 trillion to \$21.1 trillion), while U.S. GDP per capita is nearly double that observed in the EU (\$89,600 to \$46,800). See *World Economic Outlook, United States Datasets*, INT’L MON. FUND (Oct. 2025) and *World Economic Outlook, European Union Datasets*, INT’L MON. FUND (Oct. 2025), <https://www.imf.org/external/datamapper/profile/EU>.

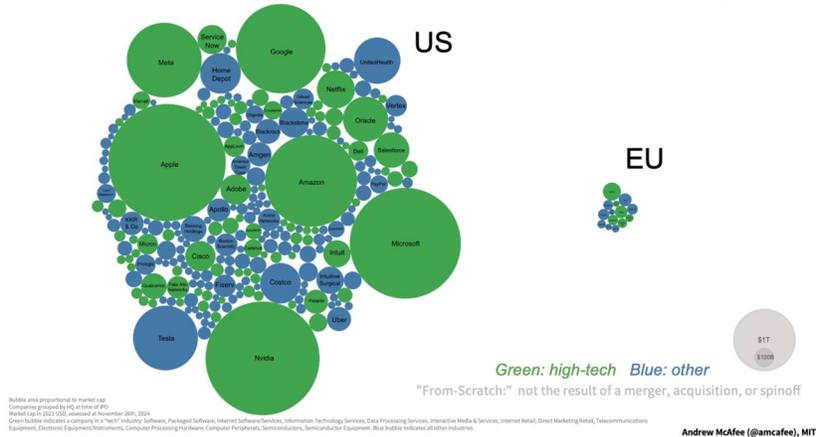
<sup>2</sup> Mario Draghi, *The Future of European Competitiveness—A Competitiveness Strategy for Europe*, EUR. COMM’N (2024), at 5, [https://commission.europa.eu/document/97e481fd-2dc3-412d-be4c-f152a8232961\\_en](https://commission.europa.eu/document/97e481fd-2dc3-412d-be4c-f152a8232961_en) [hereinafter “Draghi Report”].

the war in Ukraine—have likely played some role, they are only one part of the picture. As Draghi put it:

Europe largely missed out on the digital revolution led by the internet and the productivity gains it brought: in fact, the productivity gap between the EU and the US is largely explained by the tech sector. The EU is weak in the emerging technologies that will drive future growth. Only four of the world’s top 50 tech companies are European.<sup>3</sup>

Europe’s relative decline is therefore not merely a cyclical downturn; it is a secular stagnation driven almost entirely by the technology sector—or more accurately, by Europe’s conspicuous absence from it. There is no European Google, no European Apple, and no European Amazon. Moreover, the gap is not merely the product of a handful of established American tech titans: the United States has a far larger population of *young* valuable companies, as well.<sup>4</sup> Granted, Europe is not completely devoid of innovative firms—ASML, SAP, Novo Nordisk, and Airbus, to name a few—but the contrast with the United States and, increasingly, China, is nevertheless stark.

Public From-Scratch US and EU Companies Less than 50 Years Old with \$10B+ Market Cap



SOURCE: McAfee (2024), see note 4.

Numerous voices have argued this divergence is at least partly the result of Europe’s cumbersome web of regulations.<sup>5</sup> But few acknowledge the equally important inverse: Europe’s lack of a tech sector is perhaps the primary cause of its increasingly harmful regulatory apparatus. When legislators

<sup>3</sup> *Id.*

<sup>4</sup> Andrew McAfee, *A Visualization of Europe’s Non-Bubbly Economy*, THE GEEK WAY (Dec. 2, 2024), <https://geekway.substack.com/p/a-visualization-of-europes-non-bubbly>.

<sup>5</sup> Draghi Report, *supra* note 2 at 8, 30.

seek easy victories to demonstrate relevance to their constituents, regulating successful foreign tech companies has become the path of least resistance and, not incidentally, a source of unearned revenue.<sup>6</sup>

Unlike domestic reforms, which often trigger fierce opposition from entrenched local constituencies, targeting U.S. tech firms offers high political rewards with little immediate domestic cost. For example, while the European Commission's decision to block a domestic merger between rail firms Siemens and Alstom was met with intense political opposition, the European public applauds when billions of dollars in fines are imposed on U.S. tech companies. The result is an EU regulatory regime that is protectionist in effect, if not in express intent,<sup>7</sup> and compounded by the absence of meaningful institutional limits on the EU's ability to legislate.<sup>8</sup>

Indeed, Europe's top policymakers seek to leverage these structural flaws to score political victories and further their careers—for instance, by overseeing the ever-growing budgets and staff needed to enforce new legislation.<sup>9</sup> But Brussels lacks any serious accounting of the consumer costs and benefits of its major digital regulatory initiatives.<sup>10</sup> Consumers, who bear the brunt of these costs, form a large and highly dispersed group. This is exacerbated in the European Union by the fragmentation of the relevant constituency across 27 member states. The beneficiaries, by contrast, are usually concentrated and well-organized industries—European access seekers, entrenched legacy industries such as news publishers—with repeated interactions, shared informational advantages, and strong incentives to engage in political mobilization.

This lopsided incentive structure has led to a system of “non-tariff attacks”<sup>11</sup> that impose concentrated costs on U.S. innovators and diffuse, delayed, and often hidden harms on consumers

<sup>6</sup> See, e.g., Hilal Aka, *EU Regulatory Actions Against U.S. Tech Companies Are a De Facto Tariff System*, INFO. TECH. & INNOV. FOUND. (Apr. 28, 2025), <https://itif.org/publications/2025/04/28/de-facto-eu-tariff-system>.

<sup>7</sup> See, e.g., Meredith Broadbent, *Implications of the Digital Markets Act for Transatlantic Cooperation*, CTR. FOR STRATEGIC & INT'L STUDIES (Sep. 15, 2021), <https://www.csis.org/analysis/implications-digital-markets-act-transatlantic-cooperation>; Dirk Auer & Geoffrey A. Manne, *Is European Competition Law Protectionist? Unpacking the Commission's Unflattering Track Record*, INT'L CTR. FOR LAW & ECON. (Mar. 25, 2019), <https://laweconcenter.org/resources/is-european-competition-law-protectionist-unpacking-the-commissions-unflattering-track-record>.

<sup>8</sup> Luis Garicano, *How Brussels Writes So Many Laws*, SILICON CONTINENT (Dec. 4, 2025), <https://www.siliconcontinent.com/p/how-brussels-writes-so-many-laws>.

<sup>9</sup> WILLIAM A. NISKANEN, BUREAUCRACY AND REPRESENTATIVE GOVERNMENT (1971).

<sup>10</sup> The EU's General Data Protection Regulation (GDPR) is a case in point. Empirical reviews have shown that the regulation led to higher market concentration and weaker venture-capital investment in Europe. See, e.g., Samuel G. Goldberg, Garrett A. Johnson, & Scott K. Shriver, *Regulating Privacy Online: An Economic Evaluation of the GDPR*, 16 AMER. ECON. J. ECON. POL'Y 325 (2024); Daniel J. Gilman & Liad Wagman, *The Law and Economics of Privacy*, 29 UCLA J. L. & TECH. 55 (2024); John M. Yun, *A Report Card on the Impact of Europe's Privacy Regulation (GDPR) on Digital Markets*, 31 GEO. MASON L. REV. 104 (2024); Garrett A. Johnson, Scott K. Shriver, & Samuel G. Goldberg, *Privacy & Market Concentration: Intended & Unintended Consequences of the GDPR*, 69 MGMT. SCI. 5695 (2023); Jean-Pierre Dubé et al., *Frontiers: The Intended and Unintended Consequences of Privacy Regulation for Consumer Marketing*, 44(5) MARK. SCI. 975-984 (2025); Wenlong Li et al., *Mapping the Empirical Literature of the GDPR's (In-)Effectiveness: A Systematic Review*, 57 COMP. L. & SEC. REV. 106129 (2025).

<sup>11</sup> See, e.g., Eric Fruits et al., *ICLE Comments to the USTR on Significant Foreign Trade Barriers*, INT'L CTR. FOR LAW & ECON. (Oct. 30, 2025), <https://laweconcenter.org/resources/icle-comments-to-the-ustr-on-significant-foreign-trade-barriers>.

on both sides of the Atlantic. These costs are manifest in degraded user experiences, significant security vulnerabilities, and the withholding of cutting-edge AI features from consumers. In Europe, we already see major product launches delayed or degraded to fit bureaucratic requirements. But EU consumers never learn of the would-be entrants that choose not enter EU markets, or the would-be startups that never form or whose products are never brought to market.

If this regime spreads, it would cause a massive diversion of high-level engineering talent away from frontier innovation and toward bureaucratic compliance—a shift that penalizes consumers all over the world, not least in the United States. Unfortunately, the danger to the U.S. economy is compounded by the fact that Brussels' regulatory model is proving highly contagious.

The “Brussels Effect”—often touted by EU officials as a badge of honor—is mutating into a vector for regulatory stagnation, as foreign regulators increasingly copy the EU blueprint, albeit with their own idiosyncrasies. The spread of these initiatives may be at least partially due to the conspicuous silence from the United States when the EU enacted laws like the DMA. Regardless of the cause, the worldwide proliferation of such regulations threatens to fragment the global digital economy, multiplying the compliance burden on U.S. firms and entrenching a global standard based on European stagnation, rather than American dynamism.

Ultimately, Brussels' increasingly Kafkaesque web of online regulation and bureaucracy appears, first and foremost, to be the fruit of EU policymakers' fundamentally misaligned incentives. Unless those incentives change, Europe is unlikely to stray from its current trajectory, and other jurisdictions can be expected to follow suit.

One way to change those incentives would be for the U.S. foreign policy to embrace a full-throated defense of the nation's critical tech sector against these protectionist measures. Indeed, this would be a return to the historical norm. For decades, prior administrations repeatedly mounted vigorous defenses of U.S. commercial interests against discriminatory foreign overreach. In this respect, the recent collaboration between U.S. antitrust agencies and EU regulators during the Biden administration is a distinct outlier.

It is not only legitimate but desirable for the United States to pressure Brussels by raising the costs of discriminatory regulation and reasserting the primacy of innovation over bureaucratic control. While the specific policy instruments and diplomatic approaches are for the U.S. government to determine, the United States must demonstrate that the political costs of discriminatory regulation will no longer be zero.

### **I. The Great Divergence: Economic Stagnation as the Precursor to Regulation**

To fully comprehend the motivations behind the European Union's aggressive regulatory posture, one must first grasp the scale of the economic failure that serves as its backdrop. The regulatory impulse in Brussels is not solely, or even primarily, driven by the technical nuances of antitrust

theory or genuine consumer-welfare concerns. Rather, it is the predictable reaction to a structural innovation crisis.

### **A. The Draghi Diagnosis: A Static Industrial Structure**

The “Great Divergence” between the U.S. and EU economies is the defining economic story of the last two decades, and the Draghi Report provides a sobering, data-driven diagnosis of this reality. In it, Draghi paints a stark picture of the EU economy:

EU economic growth has been persistently slower than in the US over the past two decades, while China has been rapidly catching up. The EU-US gap in the level of GDP at 2015 prices has gradually widened from slightly more than 15% in 2002 to 30% in 2023, while on a purchasing power parity (PPP) basis a gap of 12% has emerged [see Figure 3]. The gap has widened less on per capita basis as the US has seen faster population growth, but it is still significant: in PPP terms, it has risen from 31% in 2002 to 34% today. The main driver of these diverging developments has been productivity. Around 70% of the gap in per capita GDP with US at PPP is explained by lower productivity in the EU [see Figure 4]. Slower productivity growth has in turn been associated with slower income growth and weaker domestic demand in Europe: on a per capita basis, real disposable income has grown almost twice as much in the US as in the EU since 2000.<sup>12</sup>

If there’s any one statistic that encapsulates the continent’s stagnation, it’s that no EU company with a market capitalization of more than €100 billion has been created from scratch in the last 50 years.<sup>13</sup> Europe’s economy remains dominated by incumbents established in the 19th and 20th centuries—automotive giants, luxury brands, and pharmaceutical conglomerates. These are mature industries that, while valuable, do not offer the explosive productivity growth associated with the digital revolution. In the tech sector, the continent suffers from a dearth of new firm creation and a chronic inability to scale innovation; it is a situation made all the more puzzling by the continent’s considerable technical expertise and renowned scientific and technical universities.

In stark contrast, all six U.S. companies with valuations exceeding €1 trillion were created in the last half-century.<sup>14</sup> The U.S. economy successfully transitioned to a digital-first model, where growth is driven by the creation of entirely new markets, platforms, and technologies. Europe, conversely, remains locked in the industrial patterns of the past. The productivity gap between the two jurisdictions is now driven basically entirely by the technology sector.<sup>15</sup>

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<sup>12</sup> Draghi Report, *supra* note 2 at 12.

<sup>13</sup> *Id.* at 6.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 5.

## B. The Dynamism Deficit

Europe's stagnation appears is further illustrated by dynamic measures of business formation and growth. Recent work by Filippo Biondi *et al.*, draws on harmonized micro-aggregated data for 19 European countries between 1997 and 2021 to document a broad-based decline in “business dynamism,” which is the process of firm entry, expansion, contraction, and exit that reallocates jobs toward more productive firms.<sup>16</sup> The authors find that job-reallocation rates have fallen in every European country they studied, with an average decline of about 21%; a drop similar in magnitude was also observed in the United States over the same period.<sup>17</sup>

But absolute levels of dynamism remain lower in Europe, due partly to measurement differences but also reflecting structural rigidities.<sup>18</sup> Using comparable measures (continuing firms with at least 20 employees), Biondi *et al.* report average U.S. job-reallocation rates of around 24%, versus only 8–12% in Germany, Spain, and Belgium; some Eastern European countries initially exhibited U.S.-like reallocation rates but converge downward over time.<sup>19</sup> In parallel, the share of employment accounted for by young firms (those less than five years old) has fallen across most of Europe, and the decline in reallocation is concentrated in large and mature firms.<sup>20</sup> Composition effects—shifts in activity away from young firms—explain only about one-fifth of the overall drop in job reallocation, suggesting the main problem is that incumbent firms have become less dynamic.<sup>21</sup>

This dynamism gap matters because reallocation is not just incidental to growth. Economists David Baqaee and Emmanuel Farhi estimate that roughly half of aggregate U.S. productivity growth between 1997 and 2015 came from the reallocation of resources from low-productivity to high-productivity firms.<sup>22</sup> When this reallocation process slows, productivity stagnates. In Europe, by contrast, the reallocation channel appears to be shrinking, rather than contributing. A 2021 European Central Bank meta-analysis of empirical studies found that increasing resource misallocation could be costing the euro area up to 0.2 percentage points of annual total factor production (TFP) growth—approximately half of the euro area's average annual TFP growth over 2014-2019.<sup>23</sup> Europe's regulatory environment—characterized by rigid labor markets, fragmented

<sup>16</sup> Filippo Biondi *et al.*, *Declining Business Dynamism in Europe: The Role of Shocks, Market Power, and Technology* (IWH-CompNet Discussion Paper No. 2023-02, 2023), available at [https://www.iwh-halle.de/fileadmin/user\\_upload/publications/iwh-compnet\\_discussion\\_papers/iwh-compnet-discussion-paper\\_2023\\_02\\_Biondi\\_Inferredera\\_Mertens\\_Miranda.pdf](https://www.iwh-halle.de/fileadmin/user_upload/publications/iwh-compnet_discussion_papers/iwh-compnet-discussion-paper_2023_02_Biondi_Inferredera_Mertens_Miranda.pdf).

<sup>17</sup> *Id.* at 2.

<sup>18</sup> *Id.* at 11-12.

<sup>19</sup> *Id.* at 11.

<sup>20</sup> *Id.* at 13-17.

<sup>21</sup> *Id.* at 14.

<sup>22</sup> David Baqaee & Emmanuel Farhi, *Productivity and Misallocation in General Equilibrium*, 135 Q.J. ECON. 105 (2020).

<sup>23</sup> Paloma Lopez-García & Bela Szörfi, *Resource Allocation and Productivity in the Euro Area*, ECB ECON. BULL. (Jul. 2021), Chart 2, [https://www.ecb.europa.eu/press/economic\\_bulletin/articles/2021/html/ecb.ebart202107\\_02\\_c95a8477e1.en.html](https://www.ecb.europa.eu/press/economic_bulletin/articles/2021/html/ecb.ebart202107_02_c95a8477e1.en.html).

capital markets, and an increasingly aggressive competition apparatus—systematically impedes precisely the firm entry, exit, and resource reallocation that drives long-run prosperity.

### **C. The Brain Drain and Capital Flight**

This stagnation creates a vicious cycle that regulation cannot fix—and indeed, frequently exacerbates. Because European companies specialize in mature technologies, they offer fewer opportunities for top-tier technical talent to work on frontier problems. An engineer wanting to build the next generation of large language models (LLMs) or consumer platforms finds limited opportunities in Berlin or Paris compared to San Francisco or Seattle.

Crucially, the problem is not a lack of raw talent or scientific output. European universities and research institutes still produce world-class work in fields ranging from mathematics to machine learning. The Draghi Report notes that only about one-third of patented inventions from European universities are ever commercially exploited, and that innovative firms trying to scale up are “hindered at every stage by the lack of a Single Market and an integrated capital market.”<sup>24</sup> Europe generates ideas; the United States, by contrast, turns them into global platforms and products.

This leads to a significant “brain drain.” The EU produces fewer STEM graduates per capita than the United States (850 vs. 1,100 per million inhabitants). It also sees a depletion of its existing talent pool, as engineers and researchers migrate to the United States for better employment opportunities, higher wages, and a more dynamic culture of innovation.<sup>25</sup> The Draghi Report identifies the innovation and technology deficit as the heart of the productivity gap.<sup>26</sup>

Furthermore, the lack of a unified capital market in Europe—the EU’s “Capital Markets Union” remains an aspirational goal, rather than a reality—means that European startups struggle to scale. They hit a funding wall that their American counterparts do not face. Venture-capital investment in the EU is a fraction of that in the United States, limiting promising firms’ ability to grow rapidly.<sup>27</sup> Between 2008 and 2021, nearly 30% of European “unicorns” (startups valued over \$1 billion) relocated their headquarters abroad, with the vast majority moving to the United States.<sup>28</sup> The companies that do remain often find themselves acquired by U.S. firms or stunted by the very regulatory fragmentation that Brussels claims to be solving.

### **D. The ‘Open Air Museum’ Reality**

The result is an EU that resembles an “open-air museum”: a continent rich in history, culture, and quality of life, but increasingly irrelevant in the global production of value. The Draghi Report acknowledges that the era in which the EU could rely on cheap Russian energy, boundless Chinese

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<sup>24</sup> Draghi Report, *supra* note 2 at 6.

<sup>25</sup> *Id.* at 36.

<sup>26</sup> *Id.* at 24.

<sup>27</sup> *Id.* at 25.

<sup>28</sup> *Id.* at 6.

markets, and U.S. security guarantees is over.<sup>29</sup> The geopolitical pillars that supported Europe's "leisure" economy have crumbled.

What sustained Europe's regulatory indulgence was not wisdom, but privilege. Pieter Garicano has described European policymaking as a system of "luxury rules," laws that confer status on policymakers and signal virtue to constituents, but that only a society insulated from competitive pressure can afford.<sup>30</sup> Germany's decision to shutter its nuclear power plants consciously increased reliance on Russian gas. The EU's ban on fracking raised energy costs, while shifting extraction to Azerbaijan, Qatar, and the United States. These choices were known to weaken Europe's economy. What made them politically viable was the implicit assumption that someone else would pick up the tab. America would provide security, foreign suppliers would provide energy, and U.S. technology firms would provide the innovation upon which European consumers and businesses rely.

The EU's General Data Protection Regulation (GDPR) exemplifies this pattern. The regulation was supposed to protect consumer privacy and reassert Europe's technological relevance. The evidence suggests it has done the opposite—at least, for European firms. Samuel Goldberg, Garrett Johnson, and Scott Shriver (2024) find that web traffic and online tracking fell 12% after GDPR took effect.<sup>31</sup> Mert Demirer *et al.* (2024) estimate that EU firms now store 26% less data on average than their American counterparts and have reduced computation relative to U.S. firms by 15%; their structural estimates suggest GDPR made data storage approximately 20% more costly for EU firms.<sup>32</sup> Rebecca Janssen *et al.* (2022) document that new app entries in the Google Play Store fell by half after the GDPR's implementation, with roughly one-third of existing apps exiting the EU market—a lost generation of innovative software.<sup>33</sup>

Jian Jia, Ginger Zhe Jin, and Liad Wagman (2021) find that venture-capital deals in the EU fell 26.1% relative to the United States following GDPR's rollout, with early-stage deals dropping 34% and deals involving young firms (0–3 years old) declining 30.3%. The effects were concentrated in data-intensive and consumer-facing ventures, precisely the categories where Europe most needs new entrants.<sup>34</sup> One small Spanish business-to-business company that Luis Garicano spoke with had a contact database of 300,000 firms before GDPR; the day the regulation took effect, that dropped to

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<sup>29</sup> *Id.* at 7.

<sup>30</sup> Pieter Garicano, *The End of Luxury Rules*, SILICON CONTINENT (Nov. 6, 2024), available at <https://www.siliconcontinent.com/p/the-end-of-luxury-rules>.

<sup>31</sup> Samuel G. Goldberg, Garrett A. Johnson & Scott K. Shriver, *Regulating Privacy Online: An Economic Evaluation of the GDPR*, 16 AM. ECON. J.: ECON. POL'Y 325 (2024).

<sup>32</sup> Mert Demirer *et al.*, *Data, Privacy Laws and Firm Production: Evidence from the GDPR* (Nat'l Bureau of Econ. Rsch., Working Paper No. 32146, 2024).

<sup>33</sup> Rebecca Janßen *et al.*, *GDPR and the Lost Generation of Innovative Apps* (Nat'l Bureau of Econ. Rsch., Working Paper No. 30028, 2022).

<sup>34</sup> Jian Jia, Ginger Zhe Jin, & Liad Wagman, *The Short-Run Effects of the General Data Protection Regulation on Technology Venture Investment*, 40 MKTG. SCI. 661 (2021).

15,000 because explicit consent was now required.<sup>35</sup> The systematic evidence confirms that this anecdote reflects a broader pattern.

The regulation has also failed on its own terms. Christian Peukert *et al.* (2022) and Goldberg, Johnson, and Shriver (2024) find that market concentration in web technology increased after GDPR, as smaller firms exited and large incumbents with existing datasets absorbed their market share.<sup>36</sup> A privacy regulation produced more concentration, not less.

The damage is compounding as the economy shifts toward artificial intelligence. GDPR's "purpose specification" requirement, which mandates that data be collected for a stated purpose and used only for that purpose, conflicts with the very structure of machine learning, which depends on finding patterns that were not anticipated when the data was collected.<sup>37</sup> The "data minimization" principle, limiting both volume and retention of data, directly constrains model training. The Draghi Report acknowledges this:

...limitations on data storing and processing create high compliance costs and hinder the creation of large, integrated data sets for training AI models. This fragmentation puts EU companies at a disadvantage relative to the US, which relies on the private sector to build vast data sets, and China, which can leverage its central institutions for data aggregation.<sup>38</sup>

Yet, instead of deregulating in order to unleash the creative destruction necessary for renewal, the political impulse in Europea has been to double down on the "Brussels Effect"—using market size to impose rules on foreign innovators. Faced with a persistent innovation deficit, European policymakers have seemingly concluded that, if they cannot build the leading tech companies, they will regulate the ones that exist.

This approach has been codified in the DMA, the Digital Services Act (DSA), and the AI Act. These frameworks are effectively industrial-policy tools designed to handicap foreign incumbents, all in the hope that European challengers might emerge in the space created by regulatory friction.<sup>39</sup> As the data shows, however, regulation is a poor substitute for innovation. The productivity gap remains, and the EU's primary export in the digital age has become regulation itself, rather than digital products.

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<sup>35</sup> Luis Garicano, *Is GDPR Undermining Innovation in Europe?*, SILICON CONTINENT (Sep. 11, 2024), <https://www.siliconcontinent.com/p/is-gdpr-undermining-innovation-in>.

<sup>36</sup> Christian Peukert *et al.*, *Regulatory Spillovers and Data Governance: Evidence from the GDPR*, 41 MKTG. SCI. 746 (2022); Goldberg *et al.*, *supra* note 31.

<sup>37</sup> Regulation 2016/679, of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation), art. 5(1)(b), 2016 O.J. (L 119) 1 (EU).

<sup>38</sup> Draghi Report, *supra* note 2 at 30.

<sup>39</sup> See Broadbent, *supra* note 7.

## II. The Political Economy of Tech Regulation: A Public Choice Perspective

So why does the European Union persist in a regulatory strategy that arguably harms its own consumers and has failed to produce a thriving tech sector? To answer this, one must look beyond the stated goals of “fairness” and “contestability”<sup>40</sup> and examine the incentives of the political actors involved. Public-choice theory—the economic study of non-market decisionmaking—offers an explanatory framework. In a world where politicians want to maximize political support and bureaucrats want to maximize their agency’s power and budget, tech regulation represents a “path of least resistance.”<sup>41</sup>

### A. Why Politicians Regulate: A Public Choice Perspective

Public choice has been defined as “the application of the methodology of economics to the study of politics.”<sup>42</sup> Sometimes called the “economics of politics,” public choice is “a relatively new science located at the interface between economics and politics.”<sup>43</sup> Its analytical tools are sufficiently robust to generate both theoretical predictions and empirical explanations of political outcomes. Departing from the conventional-wisdom assumption that politicians behave as benevolent maximizers of public interest, public-choice theory models political actors as rational utility maximizers, whose strategic choices depend on institutional constraints and incentive structures embedded in specific political systems (such as simple majority voting, qualified majority voting, bicameral legislatures, two-party systems, and multiparty systems).<sup>44</sup>

The political-economy literature posits that legislative behavior is driven principally by the so-called “electoral connection.” As David Mayhew established, legislators act as “single-minded reelection seekers,”<sup>45</sup> formulating policy not primarily to maximize economic efficiency, but to maximize

<sup>40</sup> Article 1(1) of the Digital Markets Act expressly states that: “The purpose of this Regulation is to contribute to the proper functioning of the internal market by laying down harmonised rules ensuring for all businesses, **contestable and fair markets** in the digital sector across the Union where gatekeepers are present, to the benefit of business users and end users.” [Emphasis added.] See Regulation (EU) 2022/1925, of the European Parliament and of the Council of 14 September 2022 on Contestable and Fair Markets in the Digital Sector and Amending Dirs. (EU) 2019/1937 & (EU) 2020/1828 (Digital Markets Act), art. 1(1), 2022 O.J. (L 265) 1.

<sup>41</sup> See WILLIAM A. NISKANEN, BUREAUCRACY AND REPRESENTATIVE GOVERNMENT (1971).

<sup>42</sup> See Dennis C. Mueller, *Public Choice: An Introduction*, in READINGS IN PUBLIC CHOICE AND CONSTITUTIONAL POLITICAL ECONOMY (Charles K. Rowley & Friedrich Schneider eds., 2008), 31.

<sup>43</sup> See Charles K. Rowley, *Public Choice and Constitutional Political Economy*, in READINGS IN PUBLIC CHOICE AND CONSTITUTIONAL POLITICAL ECONOMY (Charles K. Rowley & Friedrich Schneider eds., 2008), 3.

<sup>44</sup> In this regard, James M. Buchanan and Gordon Tullock’s seminal work *THE CALCULUS OF CONSENT: LOGICAL FOUNDATIONS OF CONSTITUTIONAL DEMOCRACY*, widely regarded as the foundational text of modern public-choice theory, devote several chapters to the “analysis of decision-making rules,” systematically distinguishing among alternative institutional arrangements according to the voting thresholds and decision structures employed in the political process.

<sup>45</sup> See DAVID R. MAYHEW, *CONGRESS: THE ELECTORAL CONNECTION* (1974), 17.

electoral support and reelection probabilities whenever possible. Economist Anthony Downs, in his classical public-choice treatise “An Economic Theory of Democracy,” provided foundational structure for this approach by modeling political systems:

Based on the assumption that every government seeks to maximize political support. We further assume that the government exists in a democratic society where periodic elections are held, that its primary goal is reelection, and that the election is the goal of those parties now out of power.<sup>46</sup>

In “The Logic of Collective Action,” Mancur Olson, also widely regarded as a founding figure of public choice, demonstrates through the application of economic price theory how relatively small and well-organized groups are able to exert disproportionate influence over public policy in order to extract economic rents or secure regulatory advantages at the expense of the diffuse and unorganized public.<sup>47</sup> As summarized by C. K. Rowley:

The logic of collective action suggests that competition among interest groups does not simply reinforce an underlying voter-directed political equilibrium. Rather, it predictably distorts the underlying political equilibrium in favor of policies favored by the more effective interest groups, policies that typically provide concentrated benefits for the few financed by dispersed taxes on the many.<sup>48</sup>

This logic concerning interest-group behavior and its effects on political outcomes was further developed by Bruce Yandle.<sup>49</sup> The essence of this framework follows directly from the incentive-based premises of public-choice theory described above: political outcomes cannot be understood solely as expressions of voter preferences or moral consensus, but rather as the product of strategic alliances between groups that derive economic rents from regulation and groups that provide moral or ideological justification for the same regulatory outcomes:

Here is the essence of the theory: durable social regulation evolves when it is demanded by both of two distinctly different groups. “Baptists” point to the moral high ground and give vital and vocal endorsement of laudable public benefits promised by a desired regulation. Baptists flourish when their moral message forms a visible foundation for political action. “Bootleggers” are much less visible but no less vital. Bootleggers, who expect to profit from the very regulatory restrictions desired by Baptists, grease the political machinery with some of their expected proceeds.<sup>50</sup>

<sup>46</sup> See ANTHONY DOWNS, *AN ECONOMIC THEORY OF DEMOCRACY* (1957), 11.

<sup>47</sup> See MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION* (1965).

<sup>48</sup> See Charles K. Rowley, *Public Choice and Constitutional Political Economy*, in *READINGS IN PUBLIC CHOICE AND CONSTITUTIONAL POLITICAL ECONOMY* (Charles K. Rowley & Friedrich Schneider eds., 2008), 3, 6.

<sup>49</sup> See Bruce Yandle, *Bootleggers and Baptists: The Education of a Regulatory Economist*, *REGULATION* (1983), 12; see also Bruce Yandle, *Bootleggers and Baptists in Retrospect*, *REGULATION* (1999), 5; ADAM SMITH & BRUCE YANDLE, *BOOTLEGGERS & BAPTISTS: HOW ECONOMIC FORCES AND MORAL PERSUASION INTERACT TO SHAPE REGULATORY POLITICS* (2014).

<sup>50</sup> Bruce Yandle, *Bootleggers and Baptists in Retrospect*, *REGULATION* (1999), 5.

As will be demonstrated in the following subsections, a substantial portion of the political dynamics underlying European regulation of U.S. tech firms can be coherently explained through the “Baptists and bootleggers” framework.

### **B. The Path of Least Resistance: Why Tech?**

Political decision-making inevitably involves weighing the concentrated benefits of a given policy against its political and electoral costs. Legislators thus tend to pursue policies that increase their expected probability of reelection in subsequent election cycles. Regulations, statutes, and other legislative outputs are primarily chosen not for their abstract public interest, but rather for their capacity to maximize electoral support. This logic applies symmetrically: just as politically weak groups are more likely to bear regulatory burdens, politically strong interest groups are better positioned to block, dilute, or reverse regulatory initiatives that threaten their material interests.

Applying this logic to Europe, in traditional economic sectors, European regulators confront highly organized and politically powerful domestic groups, which render structural reform politically hazardous, even though it may enhance social welfare for all Europeans. In agriculture, attempts to reduce subsidies or modify farming practices routinely trigger immediate and highly visible protests. Farmers in France, Belgium, and Germany have repeatedly demonstrated their ability to block highways, paralyze major urban centers with tractors, and engage in disruptive demonstrations, including at government buildings.<sup>51</sup> This concentrated political leverage is perhaps most visibly exerted at the international level, where, for example, French agricultural lobbies have effectively paralyzed the European Union’s trade policy, forcing President Emmanuel Macron to threaten to block the free-trade agreement between the EU and the South American trade bloc Mercado Común del Sur (MERCOSUR) in direct response to domestic tractor blockades and union demands to shield local markets from South American competition.<sup>52</sup> French Agriculture Minister Annie Genevard vowed to block the deal specifically due to farmer pressure, as protests were organized by the Fédération Nationale des Syndicats d’Exploitants Agricoles (FNSEA) union explicitly to stop the agreement.<sup>53</sup>

Similarly, in labor and energy markets, efforts to reform labor laws or pension plans mobilize trade unions and mass protest movements, as illustrated by the “Yellow Vest” movement and recurrent pension-reform strikes in France.<sup>54</sup> These domestic groups have clear “skin in the game,” electoral

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<sup>51</sup> See *French Workers, Angered by Macron’s Pension Plan, Strike En Masse*, AL JAZEERA (Jan. 19, 2023), <https://www.aljazeera.com/news/2023/1/19/nationwide-strikes-begin-in-france-over-pension-reform>; see also Claude Martin, *What Changes Has the Yellow Jacket Movement Triggered in French Social Protection and Tax Systems?*, EUR. COMM’N (2019), available at <https://ec.europa.eu/social/BlobServlet?docId=20847&langId=en>.

<sup>52</sup> See *French Farmers Rally Against EU-Mercosur Trade Deal, Demand Changes*, EUROPEAN NEWSROOM (Nov. 18, 2024), <https://europeannewsroom.com/french-farmers-rally-against-eu-mercospur-trade-deal-demand-changes>.

<sup>53</sup> See *French Minister Vows to Block EU-Mercosur FTA Out of Concern for Its Farmers*, MERCOPRESS (Nov. 10, 2025), <https://en.mercopress.com/2025/11/10/french-minister-vows-to-block-eu-mercospur-fta-out-of-concern-for-its-farmers>.

<sup>54</sup> See Al Jazeera, *supra* note 51; see also Martin, *supra* note 51.

leverage, and the organizational capacity to impose significant political costs on legislators. The political cost of intervening in this sector is therefore immediate, tangible, and potentially regime-threatening.

U.S. tech giants, however, have no such natural constituency in Europe or other jurisdictions that copy its regulations. They have relatively few voting employees compared to traditional industries, no real trade unions, and no deep-seated cultural cachet. For instance, while the European automotive sector employs 13.8 million people directly and indirectly,<sup>55</sup> and the agricultural sector accounts for over 9 million farms (“with the overwhelming majority, about 93% in 2020, of the EU’s farms are classed as being family farms”),<sup>56</sup> the direct workforce of U.S. tech firms is a fraction of this size.

Apple directly employs approximately 22,000 people across the entire European continent,<sup>57</sup> and Meta’s workforce in the region is estimated at roughly 19,000.<sup>58</sup> Unlike the millions of farmers who can lay siege to Paris or Brussels and protest against reforms that will harm them, these relatively small (although well compensated) cohorts of tech workers do not block highways or decide national elections.

Thus, when the European Commission imposes a multi-billion euro fine on Google or Apple, there are no protests in the streets of Brussels. There is also little to no pushback from Europe’s capitals. To the contrary, such actions are often framed as defending European “sovereignty” against foreign dominance, a narrative that plays well with voters skeptical of globalization and concerned about data privacy (a “Baptist” group, in Yandel’s taxonomy). In other words, regulating U.S. tech firms is politically “cheap” because it allows politicians to appear active and tough on corporate power without antagonizing any domestic voting bloc.

This is best evidenced by the stern rebuke the European Commission faced when it moved to block the proposed merger of Siemens and Alstom, two large European companies. The decision drew sharp rebukes from European capitals. Within a month of the decision, France and Germany issued a joint manifesto explicitly calling for an “update of current merger guidelines,” essentially to support

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<sup>55</sup> *Automotive Industry*, EUR. COMM’N, [https://single-market-economy.ec.europa.eu/sectors/automotive-industry\\_en](https://single-market-economy.ec.europa.eu/sectors/automotive-industry_en) (last visited Dec. 10, 2025), (“The automotive industry is crucial for Europe’s prosperity. The automotive sector provides direct and indirect jobs to 13.8 million Europeans, representing 6.1% of total EU employment. 2.6 million people work in direct manufacturing of motor vehicles, representing 8.5 % of EU employment in manufacturing. The EU is among the world’s biggest producers of motor vehicles and the sector represents the largest private investor in research and development (R&D). To strengthen the competitiveness of the EU automotive industry and preserve its global technological leadership, the European Commission supports global technological harmonisation and provides funding for R&D.”)

<sup>56</sup> *Farms and Farmland in the European Union – Statistics*, EUROSTAT (Nov. 2022), [https://ec.europa.eu/eurostat/statistics-explained/index.php/Farms\\_and\\_farmland\\_in\\_the\\_European\\_Union\\_-\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php/Farms_and_farmland_in_the_European_Union_-_statistics).

<sup>57</sup> *Apple Europe*, EUR. UNION DIGITAL SKILLS & JOBS PLATFORM, <https://digital-skills-jobs.europa.eu/en/community/networking/organisations/apple-europe> (last visited Dec. 10, 2025).

<sup>58</sup> *See How Many People Work at Meta?*, ELECTROIQ (Aug. 13, 2025), <https://electroiq.com/stats/how-many-people-work-at-meta> (estimating Meta’s European workforce at approximately 19,000 employees).

the creation of “European Champions” that can compete globally.<sup>59</sup> This backlash ultimately fueled many of the reforms that new Commissioner for Competition Teresa Ribera has been asked to implement. In her mission letter to Ribera, European Commission President Ursula von der Leyen explicitly mandated a “new approach to competition policy” that is “more supportive of companies scaling up in global markets,” signaling a clear departure from the strict consumer-welfare standards applied to foreign firms.<sup>60</sup>

This is not to say that market concentration and data privacy in online markets can never raise legitimate public-policy concerns, but rather that the political calculus in Europe—and many other jurisdictions—is distorted. In a rigorous domestic policy environment, these social grievances would be weighed against the economic costs of regulation, such as job losses or reduced investment. In the context of transatlantic tech regulation, however, this balancing act is structurally absent. Because U.S. tech firms are the primary targets of the DMA and DSA, the costs of intervention are externalized to (largely) foreign shareholders and a diffuse global consumer base, while the “political benefits” are concentrated locally. This asymmetry drastically lowers the threshold for intervention, not due to any internal cost-benefit analysis, but because it is the path of least political resistance.

Furthermore, this dynamic creates a perverse fiscal incentive best described as “taxation by regulation.” Under EU budgetary rules, antitrust fines imposed on foreign firms flow directly into the general EU budget, effectively reducing the gross national income (GNI)-based contributions required from EU member states.<sup>61</sup> This turns enforcement into a mechanism of revenue extraction.

According to recent data, fines levied against major U.S. tech firms totaled approximately \$2.03 billion in 2023, representing nearly 6% of the EU’s tariff revenue base; by 2024, these reported fines

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<sup>59</sup> *A Franco-German Manifesto for a European Industrial Policy fit for the 21<sup>st</sup> Century*, MINISTÈRE DE L’ÉCONOMIE ET DES FINANCES & BUNDESMINISTERIUM FÜR WIRTSCHAFT UND ENERGIE (2019), available at [https://www.bundeswirtschaftsministerium.de/Redaktion/DE/Downloads/F/franco-german-manifesto-fora-european-industrial-policy.pdf?\\_\\_blob=publicationFile&v=1](https://www.bundeswirtschaftsministerium.de/Redaktion/DE/Downloads/F/franco-german-manifesto-fora-european-industrial-policy.pdf?__blob=publicationFile&v=1), (“Europe’s economic strength in the coming decades will be hugely dependent on our ability to remain a global manufacturing and industrial power. The industrial sector of the 20th century is changing before our eyes due to digitalization. Brand new industrial sectors are appearing such as those linked to artificial intelligence, others are changing at great speed such as the car or railways sectors, and other traditional sectors will continue to be essential such as steel or aluminium. If Europe still wants to be a manufacturing powerhouse in 2030, we need a genuine European industrial policy. [...] 2. Adapt our regulatory framework: We will only succeed if European companies are capable of competing on the global stage. [...] Updating current merger guidelines to take greater account of competition at the global level, potential future competition and the time frame when it comes to looking ahead to the development of competition to give the European Commission more flexibility when assessing relevant markets. This would enable a more dynamic and long-term approach to competition, at the global scale. This could entail adapting regulation no 139/2004 and current merger guidelines.”)

<sup>60</sup> Ursula von der Leyen, *Mission Letter to Teresa Ribera Rodriguez*, EUR. COMM’N (Sep. 17, 2024), available at [https://commission.europa.eu/document/download/33d74e86-3a17472c-ba93-59d1606bbc20\\_en?filename=mission-letter-ribera\\_0.pdf](https://commission.europa.eu/document/download/33d74e86-3a17472c-ba93-59d1606bbc20_en?filename=mission-letter-ribera_0.pdf)

<sup>61</sup> *Fines*, EUR. COMM’N, [https://competition-policy.ec.europa.eu/index/fines\\_en](https://competition-policy.ec.europa.eu/index/fines_en) (last visited Dec. 10, 2025), (“Fines imposed on undertakings found in breach of EU antitrust rules are paid into the general EU budget. This money is not earmarked for particular expenses, but Member States’ contributions to the EU budget for the following year are reduced accordingly. The fines therefore help to finance the EU and reduce the burden for taxpayers.”)

escalated to nearly \$6.7 billion, roughly one-fifth (19.5%) of that same base.<sup>62</sup> In effect, these enforcement actions function as direct fiscal transfers from American shareholders to European treasuries, allowing national governments to subsidize domestic budgets without the political pain of raising local taxes. Or, in other words, EU antitrust fines on American companies, instead of remediating competition concerns, have turned into a “*de facto* tariff system.”<sup>63</sup>

Finally, this regulatory expansion offers significant non-monetary rewards for the regulators themselves. Enforcement actions allow ambitious politicians, such as former Commissioners Margrethe Vestager and Thierry Breton, to project power on the global stage, building reputations as “tough enforcers” that act as currency for their future political aspirations.

### **C. The Bureaucratic Imperative and the ‘Baptists and Bootleggers’ Dynamic**

European tech regulation exemplifies the classic “Baptists and bootleggers” coalition described by economist Bruce Yandle.<sup>64</sup> In this model, the “Baptists” are the privacy advocates and civil-society groups who argue for regulation on moral grounds, such as privacy, democracy, and fairness. The “bootleggers” are the protectionist industries and rivals who benefit financially from the restrictions placed on their competitors. The Baptists provide political cover for the self-interested goals of the bootleggers, allowing protectionist policies to be sold as public-interest measures.

In the digital context, the bootleggers include less-efficient rivals and “business users,” European firms such as Spotify,<sup>65</sup> news publishers,<sup>66</sup> and app developers,<sup>67</sup> as well as U.S. competitors like Epic Games<sup>68</sup> that strategically exploit regulatory processes to constrain larger platforms. These firms lobby for obligations that compel designated “gatekeepers” to provide interoperability, data access, prominent rankings, or preferential terms, thereby leveraging state power to secure competitive advantages they could not gain through market competition alone.

This behavior fits squarely within the rent-seeking tradition: rather than investing in innovation, resources are devoted to political strategies that redistribute surplus away from more efficient

<sup>62</sup> Robert D. Atkinson & Hilal Aka, *Defending American Tech in Global Markets*, INFO. TECH. & INNOV. FOUND. (Dec. 1, 2025), <https://itif.org/publications/2025/12/01/defending-american-tech-in-global-markets>.

<sup>63</sup> See Hilal Aka, *EU Regulatory Actions Against US Tech Companies Are a De Facto Tariff System*, INFO. TECH. & INNOV. FOUND. (Apr. 28, 2025), <https://itif.org/publications/2025/04/28/de-facto-eu-tariff-system>.

<sup>64</sup> See Yandle, *supra* note 49.

<sup>65</sup> *Commission Decision of 4 March 2024, Case AT.40437, Apple – App Store Practices (music streaming)*, (summary at 2024 O.J. (C 3556) 1).

<sup>66</sup> *Decision 21-D-17 of July 12, 2021 Regarding Compliance with Injunctions Issued Against Google (Fr.)*, AUTORITE DE LA CONCURRENCE.

<sup>67</sup> *Case C-233/23, Alphabet Inc. v. Autorità Garante della Concorrenza e del Mercato*, 2023 O.J. (C 261) 18 (request for preliminary ruling).

<sup>68</sup> *Epic Games Inc. v. Apple Inc.*, 67 F.4th 946 (9th Cir. 2023), *cert. denied*, 144 S. Ct. 681 (2024); *Epic Games Inc. v. Google LLC*, No. 3:20-cv-05671-JD, 2023 U.S. Dist. LEXIS 220706 (N.D. Cal. Dec. 11, 2023) (jury verdict).

competitors. Campaigns against news aggregators, proposals for “network fees” requiring platforms to subsidize telecom operators,<sup>69</sup> and cases such as the *Android Auto* litigation, brought against Google by former Italian state electricity monopoly ENEL,<sup>70</sup> all illustrate how regulation is used as a substitute for contracting or entry, even by very large incumbents.

European officials also play the role of “Baptists.” Indeed, the European Commission itself has an institutional incentive to expand its jurisdiction. By defining broad categories of “gatekeepers” and “systemic risks,” the Commission creates a perpetual need for oversight, monitoring, and enforcement. This justifies larger staffs, bigger budgets, and expanded powers.<sup>71</sup> The transition from *ex-post* antitrust enforcement (which requires detailed, evidence-based proof of harm in specific cases) to *ex-ante* regulation (which imposes blanket bans and obligations upfront) dramatically lowers the burden of proof for regulators. Under the DMA, the Commission does not need to prove that a specific practice harms consumers; it simply needs to show that a “gatekeeper” engaged in a prohibited practice. This shift empowers bureaucrats to intervene in product design and business models with unprecedented speed and a lack of judicial constraints, reinforcing the cycle of regulation.

In contrast, as explained in more detail below, the costs of these regulations are spread across millions of consumers. When a user searches for a hotel on Google and is presented with a less useful list of links, rather than an integrated map and price-comparison tool, the harm is real but subtle. They lose time and convenience. But they rarely attribute this degradation to the DMA; they might simply think the product has become “worse.” This “rational ignorance” protects regulators from accountability. The cost per user is small enough to prevent organized backlash, but the aggregate welfare loss can be significant. Similarly, the costs to U.S. firms are concentrated but, because they are foreign entities, they lack the voting blocks to impose a cost on European politicians, such as lost elections or campaign funds. Moreover, their complaints are easily dismissed as the “whining of monopolists.”

All of this amounts to an environment where the regulation of large American firms is almost a foregone conclusion, and where external forces will almost certainly be required if the tide is to be turned.

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<sup>69</sup> See *Europe's Internet Ecosystem: Socio-Economic Benefits of a Fairer Balance Between Tech Giants and Telecom Operators*, AXON PARTNERS GRP. (May 2022), <https://connecteurope.org/insights/reports/europes-internet-ecosystem-socio-economic-benefits-fairer-balance-between-tech> (report commissioned by ETNO proposing mandatory network contributions from large content providers).

<sup>70</sup> Case C-233/23, *Alphabet Inc. v. Autorità Garante della Concorrenza e del Mercato*, 2023 O.J. (C 261) 18 (request for preliminary ruling).

<sup>71</sup> See WILLIAM A. NISKANEN, BUREAUCRACY AND REPRESENTATIVE GOVERNMENT (1971).

### III. The Regulatory Arsenal: DMA and Antitrust as Industrial Policy

The assertion that EU tech regulation is discriminatory is not merely a complaint from American boardrooms; it is supported by the design and application of the laws themselves. While European officials vehemently deny protectionist intent, claiming that the rules apply to all, the empirical reality tells a different story of targeted enforcement and “gerrymandered” criteria.

#### A. Targeted Enforcement

The disparity in fines is stark and suggests systematic bias. An analysis of violation tracker data shows that large European multinationals pay most of their penalties outside the EU, particularly in the United States, for offenses like financial fraud or environmental violations (e.g., Volkswagen’s emissions scandal).<sup>72</sup> Within the EU, however, competition and tech enforcement is lopsidedly focused on U.S. firms.

In 2019, Geoffrey Manne and I examined whether EU competition enforcement (specifically non-cartel antitrust enforcement under Articles 101 and 102 TFEU since the entry into force of Regulation 1/2003) exhibited protectionist bias against U.S. firms.<sup>73</sup> Using a dataset of 68 European Commission decisions adopted between 2004 and earlier 2019, we found that, while EU firms were involved in roughly twice as many decisions as U.S. firms, U.S. companies bore vastly higher fines.<sup>74</sup> In total, U.S. firms paid about €10.9 billion in fines, compared to €1.17 billion for EU firms. Conditional on an infringement finding, average and median fines for U.S. firms were respectively around 19 times and more than 50 times higher than those imposed on EU firms. At face value, these figures supplied initial suspicion for protectionist enforcement.<sup>75</sup>

The paper also showed that this asymmetry was overwhelmingly driven by sectoral concentration, rather than nationality-based discrimination. Nearly all U.S. fines fell on a handful of major technology companies (Google, Intel, Qualcomm, and Microsoft) reflecting both U.S. dominance in the tech sector and the European Commission’s enforcement priorities in digital markets. The structure of these firms’ revenues, which are often heavily concentrated in single-product markets, further inflated fines under the Commission’s methodology, which is based on the value of sales tied to the infringement. By contrast, many sanctioned EU firms operated in more diversified sectors (e.g., pharmaceuticals), which mechanically led to lower fines, even for serious infringements.<sup>76</sup> From

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<sup>72</sup> Philip Mattera & Siobhan Standaert, *Europe’s Biggest Corporate Lawbreakers at Home and Abroad*, GOOD JOBS FIRST (Jun. 2025), <https://goodjobsfirst.org/europes-biggest-corporate-lawbreakers-at-home-and-abroad>.

<sup>73</sup> Dirk Auer & Geoffrey Manne, *Is European Competition Law Protectionist? A Quantitative Analysis of the Commission’s Decisions*, INT’L CTR. FOR LAW & ECON. (2019).

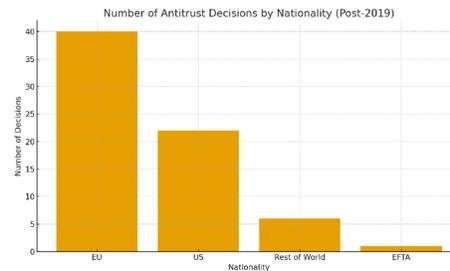
<sup>74</sup> *Id.*, at 4.

<sup>75</sup> *Id.*, at 10.

<sup>76</sup> *Id.*, at 8.

this perspective, the bias against U.S. firms appeared largely to be an artefact of sectoral focus, combined with fine-setting rules, rather than evidence of deliberate protectionism.

To assess whether these earlier patterns persist in more recent enforcement, we collected all non-cartel, non-merger antitrust decisions adopted by the European Commission since March 25, 2019, the cutoff point of the original study. This updated dataset includes 69 decisions: 40 with EU-based defendants, 22 with U.S.-based defendants, six with firms based in the rest of the world, and only one with a firm from the European Free Trade Association (EFTA, the non-EU European nations of Iceland, Liechtenstein, Norway, and Switzerland). The distribution of cases remained broadly consistent with the earlier period: EU firms continue to account for the largest share of decisions by volume, while U.S. firms represent a substantial but clearly minority share of total enforcement actions.



Turning to outcomes, the post-2019 enforcement landscape is characterized by a relatively high rate of non-punitive case resolution. Of the 69 decisions in the dataset, 17 were closed with commitments and 16 resulted in infringement decisions imposing fines. A larger group of 32 cases were terminated by the Commission on its own initiative or following the rejection of third-party complaints, indicating a substantial filtering of allegations before reaching the sanctions stage. Of the remaining matters, two were still pending at the time of data collection, while two were resolved through informal comfort letters. Overall, this distribution suggests a continued preference for administrative closure and negotiated outcomes over formal infringement findings in a significant share of recent cases.

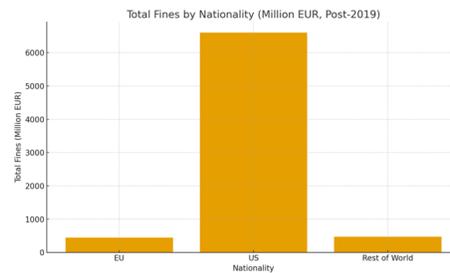
Disaggregating outcomes by the origin of the defendant reveals a stark asymmetry in the Commission's recent enforcement practice. Of the 32 cases terminated without formal sanctions (either through the rejection of a complaint or closure *ex officio*), 27 concerned European firms (84.4%), while only two involved U.S. firms (6.3%) and three involved firms from the rest of the world (9.3%). Consistently, both types of "informal comfort" letters issued in the period were supplied to European firms.

The pattern reverses sharply when one turns to monetary sanctions. Of the 16 infringement decisions imposing fines, nine were directed at U.S. firms (56.3%), five at EU firms (31.3%), and

two at firms from the rest of the world (12.5%). Given that EU firms constitute the clear majority of defendants, these figures indicate a pronounced overrepresentation of U.S. firms among sanctioned cases, coupled with a near absence of U.S. firms in the population of terminated proceedings. This suggests that the pattern identified in the original paper was maintained, if not amplified, in more recent EU competition enforcement.

The asymmetry becomes even more pronounced once the magnitude of financial penalties is considered. Over the post-2019 period, European firms were fined a total of €441.9 million, while firms from the rest of the world paid €469.2 million. By contrast, U.S. companies alone were sanctioned to the tune of €6.6 billion, which is by far the dominant share of total fines imposed.

When these figures are read together with the case-volume data, the inversion is striking: European firms, who constituted the clear majority of defendants, incurred the lowest aggregate fines, while U.S. firms, who appeared in barely half as many cases, paid roughly 15 times more in monetary penalties. Much like in the earlier period, the updated data reveal a systematic decoupling of enforcement intensity (as measured in case numbers) and enforcement severity (as measured in financial sanctions), with U.S. firms once again concentrated at the punitive extreme.



Sectoral differentiation continued to mirror the earlier findings in a strikingly consistent manner. Among the fine-imposing decisions directed at U.S. firms, enforcement remains overwhelmingly concentrated in the tech sector, with the three largest penalties targeting Google (AdTech), Apple (App Store practices), and Meta (Marketplace). By contrast, the highest fines imposed on European firms arose in traditional consumer-goods markets, notably beer (AB InBev), luxury products (Gucci), and textiles (Pierre Cardin).

A related but institutionally distinct pattern emerged in commitment decisions, which accounted for 17 cases (roughly one quarter of all decisions in the period). Of these, 10 concerned U.S. firms, five EU firms, and one each an EFTA and a rest-of-world firm. Almost all U.S.-directed commitment decisions again targeted high-tech markets (Broadcom, Visa, Microsoft, Corning, Apple, Amazon), while those addressed to European firms were more diversified, spanning technology (SAP), services (Insurance Ireland), and network industries (Renfe, T-Mobile).

While the commitment data do not allow for definitive inferences, they nevertheless point in a suggestive direction. Given that commitments enable the European Commission to terminate cases rapidly under the shadow of potentially large fines, they place the authority in a powerful quasi-regulatory bargaining position. The systematic use of this tool in high-tech cases involving U.S. firms raises the possibility that the commitment mechanism is being deployed as a flexible instrument of sectoral intervention in complex digital markets. This not only blurs the line between regulation and competition enforcement but also generates rule-of-law concerns, due to its limited transparency, and potentially functions as a non-tariff barrier from a U.S. perspective.

In summary, the post-2019 data strongly reinforce the core empirical patterns identified in the earlier study. As before, European firms continue to dominate enforcement by volume (generating the most inquiries), while U.S. firms dominate enforcement, as measured as the severity of penalties imposed. The updated figures replicate the earlier decoupling between case frequency and penalty magnitude with even greater intensity: EU firms account for the greatest number of defendants but also account for the overwhelming majority of terminated cases and comfort letters and remain comparatively insulated from the heaviest financial sanctions. By contrast, U.S. firms are disproportionately represented among fining decisions, are almost entirely absent from terminated proceedings, and account for the vast majority of total penalties imposed.

The sectoral channel identified in the earlier paper not only persisted but intensified: sanctions and commitments directed at U.S. firms remain tightly concentrated in high-tech and digital markets, whereas EU firms are more often sanctioned in traditional consumer goods and regulated sectors. The cumulative picture is thus one of remarkable temporal stability in nationality- and sector-linked enforcement asymmetries, coupled with a procedural shift toward aggressive use of both fines and commitments in U.S.-led tech markets. This should deepen the concern that EU competition enforcement may operate as a form of *de facto* effects-based protectionism, even in the absence of explicit discriminatory intent.

### **B. Gerrymandering the Gatekeepers and ‘Non-Tariff Attacks’**

The DMA stands as the centerpiece of the EU’s U.S.-targeted regulatory regime, where the law’s definition of a “gatekeeper” appears to have been reverse-engineered to capture specific U.S. firms, while intentionally excluding others. The quantitative thresholds established in the law—€7.5 billion in annual European Economic Area (EEA) turnover, €75 billion in market capitalization, and 45 million monthly active users—effectively draws a circle around the leading American tech companies: Alphabet, Amazon, Apple, Meta, and Microsoft.<sup>77</sup>

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<sup>77</sup> Mikołaj Barczentewicz, *The Digital Markets Act as an EU Digital Tax: When Compliance Costs Dwarf Regulatory Estimates*, TRUTH ON THE MKT. (Jul. 8, 2025), <https://laweconcenter.org/resources/the-digital-markets-act-as-an-eu-digital-tax-when-compliance-costs-dwarf-regulatory-estimates>.

This targeted design was confirmed when the European Commission issued its first designations in September 2023. Of the six companies named, five were headquartered in the United States and the sixth, ByteDance (TikTok), is Chinese; not a single European firm was designated.<sup>78</sup>

This selection bias underscores that the DMA's criteria were effectively tailored to regulate foreign tech giants while shielding domestic interests. Large European incumbents in telecommunications, media, and finance often hold significant market power in their respective domains but escape similar scrutiny because they do not meet the specific "gatekeeper" metrics globally. Even in instances where European firms might technically qualify, enforcement priorities clearly favor targeting the "GAFAM" companies, reflecting a *de facto* industrial policy designed to handicap industry leaders from abroad.<sup>79</sup>

The Information Technology and Innovation Foundation (ITIF) has termed these regulatory actions "Non-Tariff Attacks" (NTAs).<sup>80</sup> Unlike traditional trade barriers, which are transparent and quantifiable, these regulatory barriers are cloaked in the normative language of "fairness" and "privacy." Their economic effect is, however, largely identical to protectionism: they raise the cost of doing business for foreign competitors, degrade the quality of foreign products by forcing unbundling or data siloing, and extract rents from foreign firms. The double standard was further highlighted by the recent Draghi Report, which calls for "European champions" and the relaxation of merger rules for EU firms. This creates a hypocritical policy environment, where scale is viewed as "anticompetitive" when achieved by American firms, but "necessary for competitiveness" when sought by Europeans.<sup>81</sup>

Beyond market distortion, this regulatory strategy has evolved into a significant mechanism for revenue generation. The \$6.7 billion in fines imposed on U.S. tech firms in 2024 represents nearly 20% of the total tariff revenue collected by the EU, suggesting that regulatory fines are increasingly functioning as a *de facto* tariff or tax on U.S. digital exports.<sup>82</sup> The fiscal reliance on these penalties is becoming stark. In 2024, the EU budget received more funds from fines imposed on U.S. technology firms than the amount of income tax paid by those same firms (to EU member states); financial penalties totaled €3.8 billion, while public technology firms paid only €3.2 billion in income tax.<sup>83</sup>

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<sup>78</sup> Press Release, *Digital Markets Act: Commission Designates Six Gatekeepers*, EUR. COMM'N (Sep. 6, 2023), [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_4328](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4328).

<sup>79</sup> *Id.*

<sup>80</sup> Robert D. Atkinson, *Letter to the Trump Administration Regarding Non-Tariff Attacks on US Tech Firms and Industries*, INFO. TECH. & INNOV. FOUND. (Jul. 2, 2025), <https://itif.org/publications/2025/07/02/letter-regarding-non-tariff-attacks-on-us-tech-firms-and-industries>.

<sup>81</sup> For references to the importance of scale, see Draghi Report, *supra* note 2, at 35-39.

<sup>82</sup> Robert Atkinson & Hilal Aka, *Defending American Tech in Global Markets*, INFO. TECH. & INNOV. FOUND. (Dec. 1, 2025), available at <https://www2.itif.org/2025-defending-us-tech.pdf>.

<sup>83</sup> *Id.*, at 7-10.

This data reveals that regulatory penalties have become an attractive alternative to standard taxation. Since taxation is an exclusive competence of member states and politically sensitive to legislate at the EU level, the European Commission can utilize its regulatory powers to bypass these constraints, effectively funding its operations through the targeted enforcement of foreign entities.

#### **IV. The Tangible Costs of Regulation: Consumer Welfare and Innovation**

The costs of Europe's regulatory assertiveness are not borne solely by corporate shareholders. They are passed down to consumers on both sides of the Atlantic and result in a significant "innovation tax" that slows global technological progress. The narrative that these regulations are "pro consumer" collapses under scrutiny when one examines the tangible degradation of services and the rise in friction for users.

##### **A. Harms to European Consumers**

The primary victims of the DMA are, ironically, the European citizens it purports to protect. By mandating how products must look and function, regulators have forced companies to "break" features that users loved and relied upon. As Mario Zúñiga explains, the DMA forces platforms to dismantle integrated functionalities that consumers voluntarily choose, substituting regulatory preferences for user preferences and undermining precisely the non-price attributes (security, reliability, seamless design) that users value.<sup>84</sup> These consequences are already evident in multiple product categories.

##### *1. Degraded search and maps integration*

One of the clearest examples of degradation is the removal of direct Google Maps integrations from Google Search in the European Union. To comply with the DMA's prohibition on "self preferencing," Google was required to strip out the clickable map modules and embedded previews that millions of Europeans routinely used to obtain directions, compare locations, and access contextual information instantly. The result is a slower, more fragmented experience that forces users to take additional unintuitive steps to complete tasks that were previously seamless.<sup>85</sup>

According to Nextrade Group's survey of 5,000 European consumers across 20 EU member states, nearly two thirds of respondents report that they now must search longer to find relevant online information compared to the pre-DMA period, and a majority of frequent search-engine users state that routine searches take significantly more time to complete. In addition, 35% of surveyed

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<sup>84</sup> Mario Zúñiga, *Ms Vestager: Do Not Tear Down This Wall*, TRUTH ON THE MKT. (Aug. 5, 2024), <https://truthonthemarket.com/2024/08/05/ms-vestager-do-not-tear-down-this-wall>.

<sup>85</sup> *Impact of the Digital Markets Act (DMA) on Consumers Across the European Union: Results from a Survey with 5,000 Consumers*, NEXTRADE GRP. (Sep. 2025), <https://www.nextradegroupllc.com/impact-of-the-dma-on-eu-consumers>.

consumers reported a decline in the quality of map services, and 33% stated that search results have become less relevant.<sup>86</sup>

This is a clear case of regulatory compliance reducing consumer utility and is consistent with ICLE's assessment of DMA interoperability obligations, which explained that when regulators prohibit integrated design choices, platforms are compelled to fragment previously seamless user experiences.<sup>87</sup>

### ***II. Less efficient travel booking and vertical search***

The DMA prohibits "self-preferencing" in vertical search, meaning Google also cannot seamlessly integrate flight and hotel comparisons in the EU. This has led to the removal of useful widgets, forcing users to click through multiple intermediary sites or perform several separate searches to obtain the same information that was previously available in one place. Among individuals who travel at least once a month, 42% report that search results for flights and hotels are less helpful today than before the DMA.<sup>88</sup>

Additionally, an Epicenter report warned that mandated separation in vertical search may impair platforms' ability to present coherent comparative information, leading to negative effects for both users and suppliers.<sup>89</sup> There is direct evidence of this effect, as hotels have also seen a significant drop in direct traffic. Instead, the DMA has boosted visits to third-party aggregators of flights and accommodation services, and funneled users to large online-travel-agency intermediators, rather than allowing Google to offer ready visibility into available flights and hotels at the hotel's own site.<sup>90</sup> These online travel agencies charge substantial commissions, reducing price transparency and potentially raising booking expenses.

ICLE's consultation on interoperability further emphasizes that forced architectural changes of this kind "can degrade both device performance and reliability," especially when integrated tools are better equipped to present relevant information.<sup>91</sup>

### ***III. The privacy paradox and security tradeoffs***

While the EU touts its supposed privacy vigilance, the DMA's data-portability and interoperability mandates actually create new security risks. Forcing "gatekeepers" to open their data silos to third

<sup>86</sup> *Id.*

<sup>87</sup> Geoffrey A. Manne, Dirk Auer, & Mario A. Zúñiga, *Comments of ICLE to Commission Consultation on Proposed Measures for Interoperability Between Apple's iOS Operating System and Connected Devices (DMA.100203)*, INT'L CTR. FOR LAW & ECON. (Jan. 8, 2025), <https://laweconcenter.org/resources/comments-of-icle-to-commission-consultation-on-proposed-measures-for-interoperability-between-apples-ios-operating-system-and-connected-devices-dma-100203>.

<sup>88</sup> Nexttrade Group, *supra* note 85.

<sup>89</sup> *Digital Revival? How Regulation Prevents the Rise of European Tech Leaders*, EPICENTER (Feb. 2025), available at [https://www.epicenternetwork.eu/wp-content/uploads/2025/02/Digital-Revival\\_revised\\_web.pdf](https://www.epicenternetwork.eu/wp-content/uploads/2025/02/Digital-Revival_revised_web.pdf).

<sup>90</sup> Nexttrade Group, *supra* note 85.

<sup>91</sup> Manne, Auer, & Zúñiga, *supra* note 87.

parties can act as a "Trojan Horse," allowing bad actors to exfiltrate sensitive user data under the guise of portability. The risks associated with these requirements are increasingly visible. ICLE has documented how these requirements prevent platforms from excluding known bad actors, prioritizing "contestability" over user safety.<sup>92</sup>

These structural changes also have privacy implications for personalization and relevance. A Nexttrade Group survey found that 39% of users now see less relevant advertising, 30% reported that video recommendations are less aligned with their interests, and 25% say that it has become more difficult to find personalized job leads since the DMA took effect. These reductions in personalization often reflect limitations on platforms' ability to use and protect data in the ways necessary to deliver accurate, individualized results.

Furthermore, the early evidence suggests the DMA's market-structure interventions are not yielding measurable consumer benefits. An Apple-commissioned study examining the effects of DMA-mandated changes to the App Store found that, while Apple reduced commission fees for EU developers, 91% of developers did not pass these savings on to consumers—instead retaining the difference.<sup>93</sup> This suggests the DMA's interventions have introduced additional risks and operational burdens without corresponding improvements in price or service quality. Overall, the evidence indicates that the DMA's privacy and security-related mandates weaken security protections, reduce personalization, and impose costs that are not offset by observable consumer gains.

#### IV. The 'Brussels Effect' and exporting inefficiency

The EU explicitly aims to export its regulatory model through the so-called "Brussels Effect," the phenomenon where multinational firms adopt EU standards globally to simplify operations. In digital markets, this occurs through two primary channels: *de facto* harmonization (in which multinational firms apply EU rules globally to simplify compliance) and *de jure* harmonization (in which foreign jurisdictions adopt EU-style regulations in their own legal systems).

While this dynamic has been celebrated in other policy areas, the *de facto* application of the Brussels Effect to digital-competition rules often exports inefficiencies, rather than improvements. Instead of driving higher performance, as the "California Effect" arguably once did in environmental policy, the Brussels Effect in tech extends a precautionary regulatory model that constrains experimentation and product evolution.

We are also already seeing the *de jure* effect, as countries like Brazil, India, and Turkey consider digital competition laws modeled on the DMA's structure, obligations, and enforcement tools.<sup>94</sup>

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<sup>92</sup> Mikolaj Barczentewicz, *The DMA's Challenge to User Safety: Lessons from Apple's Porn App Controversy*, TRUTH ON THE MKT. (Feb. 4, 2025), <https://truthonthemarket.com/2025/02/04/the-dmas-challenge-to-user-safety/lessons-from-apples-porn-app-controversy>.

<sup>93</sup> Jane Choi, *What Happens to App Prices when Developers Pay Lower Commission Fees? Evidence from the European Union*, Analysis Crp. (Nov. 2025), available at <https://developer.apple.com/download/files/DMA-Study-Nov-2025.pdf>.

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This diffusion of DMA-style rules creates an increasingly fragmented global compliance landscape for U.S. firms. Each new jurisdiction that adopts or adapts the EU model adds another set of reporting, design, and interoperability requirements, magnifying the burden on firms that operate across borders.

#### V. *Innovation delayed and denied*

The DMA's effects extend beyond degraded usability; they also manifest in delayed or foregone innovation. The risk of noncompliance and the possibility of fines that can reach up to 10% of global turnover create strong incentives for firms to withhold or postpone new products in the European market. These delays illustrate a broader regulatory chill: when the cost of offering a new feature is uncertain, firms rationally avoid releasing it in jurisdictions with high enforcement risk.

A clear example of this is Apple Intelligence, which Apple has paused in the EU due to concerns that DMA interoperability requirements would force changes compromising the security architecture of its devices. European users therefore cannot access the company's latest AI capabilities, even though they are broadly available in other major markets.<sup>95</sup>

Meta's Threads application was also delayed for several months in the EU. Meta explicitly attributed the postponement to uncertainty about compliance with the DMA's restrictions on combining user data across services, such as Instagram and Threads. While Threads launched rapidly in the United States and dozens of other jurisdictions, the EU rollout was withheld until Meta could redesign the service to meet DMA requirements.<sup>96</sup>

Google has similarly stated that DMA compliance obligations are delaying the rollout of new features in Europe. In its 2024–2025 reporting, Google acknowledged that reengineering products to satisfy DMA design mandates and documentation burdens can postpone EU launches by “up to a year,” particularly for AI-driven search and integrated-service modules.<sup>97</sup> One company official stated that EU rules like the AI Act, DSA, and DMA have forced Google to “hold back the launch of innovative features,” leading to concerns around product innovation.<sup>98</sup>

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*Issue Spotlight: Digital Competition Regulations Around the World*, INT'L CTR. FOR LAW & ECON. (Aug. 15, 2025), <https://laweconcenter.org/spotlights/digital-competition-regulations-around-the-world>.

<sup>95</sup> Akshaya Asokan, *Apple to Delay AI Rollout in Europe*, BANKINFOSECURITY (Jun. 21, 2024).

<sup>96</sup> Dan Milmo, *Meta Delays EU Launch of Twitter Rival Threads Amid Uncertainty over Personal Data Use*, THE GUARDIAN (Jul. 5, 2023), <https://www.theguardian.com/media/2023/jul/05/meta-delays-eu-launch-of-twitter-rival-threads-amid-uncertainty-over-personal-data-use>.

<sup>97</sup> Egle Markeviciute, *Consumer Waiting Game: Why Do Tech Products Launch Later in Europe?*, EURONEWS (Sep. 26, 2025), <https://www.euronews.com/next/2025/09/26/consumer-waiting-game-why-do-tech-products-launch-later-in-europe>.

<sup>98</sup> Cynthia Kroet, *Google's AI Feature on Hold in Most EU Member States Due to 'Strict Rules'*, EURONEWS (Apr. 1, 2025), <https://www.euronews.com/next/2025/04/01/googles-ai-feature-on-hold-in-most-eu-member-states-due-to-strict-rules>.

These examples demonstrate that the "cost" of regulation is not just financial; it is the absence of innovation. European consumers are living in a digital lag, waiting for products that are standard elsewhere.

### **B. The Hidden Tax on American Innovation**

While the harm to European consumers is more direct, the harm to the United States no less consequential. It manifests in distorted investment incentives, inefficient resource allocation, and a gradual erosion of U.S. firms' competitive position. As noted above, European regulatory choices frequently operate as *de facto* global standards, extending their reach well beyond the EU's borders and constraining conduct that remains lawful in the United States.

This extraterritorial effect is reinforced by the EU's enforcement architecture. Under regimes like the DMA, fines for noncompliance can reach up to 20% of a firm's worldwide turnover, not merely its EU-derived revenues. As a practical matter, this subjects globally active firms to regulatory exposure for their entire global footprint, thereby projecting European regulatory authority far beyond its territorial and economic scale.

The consequence is not only higher expected penalties, but a systematic reorientation of firm behavior away from productive activity. Profitable monetization strategies are foreclosed; managerial and financial resources are diverted from research, development, and innovation toward regulatory compliance; and firms are increasingly burdened by procedural obligations and legal risk. Taken together, these effects function as an implicit tax on American innovation, raising the cost of successful market participation at home and abroad, and chilling *ex ante* incentives to innovate for fear of falling foul of European regulatory regimes.

### **VI. The opportunity cost of compliance**

From a law & economics perspective, the economic cost of regulation is not limited to fines or administrative fees. It also includes the opportunity cost of scarce capital and labor that firms must redirect to satisfy regulatory requirements, rather than toward activities that enhance value. Under the DMA, this diversion of productive resources has become a material and measurable burden for globally active firms.

Under an economically efficient regulatory regime, compliance costs should be proportionate to the benefits of regulation and should not unduly impede firms' ability to allocate resources to their most productive uses. Where regulatory burdens exceed their benefits, the resulting excess compliance costs must necessarily be financed through the diversion of resources from other activities, including product design, research and development, and innovation.

As discussed in section IVA, however, the DMA has so far delivered no tangible benefits, while imposing real costs on European consumers. Emerging evidence from workshop disclosures and industry reports further suggests that actual compliance demands under the DMA have far exceeded the initial regulatory cost estimates and have involved massive reallocations of engineering and

managerial effort. Whereas the European Commission’s impact assessment projected modest compliance costs of roughly €10 million annually across all designated gatekeepers—about €2 million per company—the actual compliance burdens are reportedly orders of magnitude higher.<sup>99</sup>

According to the designated gatekeepers’ testimonials to the Commission:

- Meta reportedly dedicated close to 600,000 engineering hours to DMA-compliance activities, with more than 11,000 employees involved in design, build, and implementation work.
- Apple has engaged “hundreds of thousands of engineering hours” and “thousands of employees” across engineering, design, operations, marketing, and other departments to bring DMA-compliance efforts to life.
- Google reportedly assigned about 3,000 engineers full-time over two years solely for compliance with a single DMA article.<sup>100</sup>

These figures illustrate a fundamental law & economics insight: when regulation imposes costly requirements, the social cost is not limited to the explicit expenditures; it also includes the value of foregone alternative uses of labor and capital. Every hour that a top engineer spends reorganizing codebases, building regulatory-reporting mechanisms, redesigning user interfaces, or implementing sideloading-related architecture is an hour not spent on innovation, research and development, product design, or strategic growth initiatives. These tradeoffs represent opportunity costs that are often invisible in compliance tallies but are critical to understanding the regulatory impact on dynamic efficiency.

Indeed, as the designated gatekeepers themselves have acknowledged, compliance work routinely displaces investment in product enhancement and future technological advances. For large technology firms, where engineering talent is a key competitive asset, this diversion implies a real efficiency loss: firms are forced to reallocate their most valuable human capital to satisfy regulatory checklists, rather than to expand the frontier of technology or improve consumer offerings.<sup>101</sup>

In economic terms, this represents a departure from Pareto-improving regulation; instead, the DMA engenders a hidden tax on innovation, where compliance expenditures and workforce deployment serve regulatory ends that may not align with the productive deployment of resources that would maximize consumer welfare and long-term economic growth.

<sup>99</sup> Mikolaj Barczentewicz, *The Digital Markets Act as an EU Digital Tax: When Compliance Costs Dwarf Regulatory Estimates*, TRUTH ON THE MKT. (Jul. 8, 2025), <https://truthonthemarket.com/2025/07/08/the-digital-markets-act-as-an-eu-digital-tax-when-compliance-costs-dwarf-regulatory-estimates>.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*; see also Selcukhan Ünekbas & Lazar Radic, *Implementing the EU’s Digital Markets Act: The Seen and the Unseen*, TRUTH ON THE MKT. (Jun. 25, 2025), <https://truthonthemarket.com/2025/06/25/implementing-the-eus-digital-markets-act-the-seen-and-the-unseen>.

Moreover, because the DMA aspires to function as a *de facto* global regulatory standard, the diversion of resources beyond the point of net social benefit—assuming such benefits exist at all, as opposed to merely redistributing surplus toward successful rent seekers—has effects that extend well beyond the European market. These excess compliance costs are likely to reduce firms’ capacity to invest in innovation and to develop products and services that consumers and businesses value, thereby weakening their global competitive position. Given the identity of the firms most heavily burdened by the DMA, this dynamic is likely to constrain US competitiveness not only within the European Union, but also in third-country markets and, potentially, on a global scale.

### VII. Impact on US competitiveness

It is difficult to quantify with precision the extent to which EU regulation hampers the global competitiveness of U.S. firms. Nevertheless, it is self-evident that an asymmetrical regulatory regime designed to promote “fairness” by constraining one group of firms—comprised overwhelmingly of U.S. companies—while relaxing constraints or conferring advantages on their rivals will necessarily affect competitive outcomes.

Indeed, this redistribution of competitive capacity is not a byproduct of the DMA, but its core objective.<sup>102</sup> The law explicitly seeks to reallocate rights and obligations in order to achieve a conception of “fairness” understood as improving the relative position of non-gatekeeper firms *vis-à-vis* gatekeepers, on the premise that the latter possess “too much” economic power.<sup>103</sup>

At the heart of this equity-based vision lies an end state in which the digital economy’s gains are more evenly distributed across firms, irrespective of how those gains were generated. Toward that end, the DMA deliberately prevents gatekeepers from leveraging their competitive advantages to widen—or even maintain—the distance between themselves and their competitors.

Thus, Amazon is prohibited from using third-party seller data to compete with those sellers on its own platform; Apple is required to open its iOS ecosystem to third-party app stores and alternative in-app payment systems; and Google is restricted in its ability to integrate complementary services such as Maps, Flights, or Shopping into its search product. These disruptions undermine the incentives for co-investment and diminish the quality and coordination that platforms historically delivered.<sup>104</sup>

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<sup>102</sup> See, generally, Lazar Radic, Geoffrey Manne, & Dirk Auer, *Regulate for What? A Closer Look at the Rationale and Goals of Digital Competition Regulations*, 22 BERKELEY BUS. L.J. 201 (2025), (arguing that the goals of the DMA and similar *ex ante* regimes are the redistribution for wealth from gatekeepers and leveling up competitors).

<sup>103</sup> See, e.g., Digital Markets Act, recital 62 (defining “unfairness” in terms of an imbalance of rights and obligations). The DMA does not specify what constitutes the appropriate balance of rights and obligations. The recitals do, however, make clear that the regulatory objective is to recalibrate those rights by constraining designated gatekeepers while expanding the entitlements of business users and competitors. See, e.g., recitals 2–4 (characterizing digital markets in which gatekeepers operate as structurally unfair and tilted in their favor, thereby implying that the correction of such unfairness requires redistributive intervention that disadvantages gatekeepers relative to other market participants).

<sup>104</sup> Carmelo Cennamo *et al.*, *Economic Impact of the Digital Markets Act on European Businesses and the European Economy*, LAMA ECON. RES. (Jun. 2025), available at <https://www.dmcforum.net/wp-content/uploads/2025/06/120625-FINAL-CCIA->

They also decrease the value of the affected platforms by reducing personalization, lowering the effectiveness of personalized advertising (which, according to some studies, is three times more valuable than non-personalized ads), and higher costs for digital marketing.<sup>105</sup> These effects impose new barriers for firms relying on digital platforms, thereby decreasing those platforms' value and attractiveness to investors.

Indeed, according to Carmelo Cennamo *et al.*, the estimated losses from the DMA for firms in service sectors across the EU total €114 billion, which corresponds to up to 0.64% of the total turnover of the sectors under consideration—*i.e.*, retail. This economic loss translates to an average drop in revenue per-worker of up to €1,122 annually across the affected services sectors.<sup>106</sup>

But it is possible that this is a feature, not a bug, of the law. The DMA's obligations share a common logic: They seek to break the designated gatekeepers' competitive advantages like data integration, ranking optimization, and first-party service integration,<sup>107</sup> in order to create commercial space for rivals, even where those rivals are less efficient or offer inferior products.

From a law & economics perspective, this approach represents a decisive shift away from consumer welfare and efficiency as guiding principles, and toward a notion of "fairness" grounded in predetermined market structures and equitable outcomes.<sup>108</sup> By design, the DMA suppresses successful business models and weakens firms that have achieved scale and integration through competition on the merits. Given the identity of the firms most affected, the implicit aim is to dampen U.S. technological competitiveness in both European and global markets.

## **V. A Historical Perspective: The Bipartisan Tradition of Defending US Interests**

Given the fundamentally skewed incentives driving Brussels' regulatory agenda, where targeting U.S. innovators offers high political rewards and revenue with negligible domestic downsides, external pressure remains the only effective counterweight. So long as the political cost of discriminatory regulation remains near zero for European officials, the expansion of protectionist regimes like the DMA will inevitably continue. Therefore, it is imperative that U.S. policymakers alter this calculus by demonstrating that attacks on American firms carry tangible diplomatic and economic consequences. Far from being a radical departure, vigorous resistance to foreign regulatory overreach represents a return to a longstanding, bipartisan tradition of U.S. economic statecraft—a history in which administrations of both parties have successfully intervened to shield American commerce from "non-tariff attacks."

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[DMA-Report.pdf](#)

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> See Radic *et al.*, *supra* note 102.

In recent years, the bipartisan consensus on defending U.S. economic interests abroad appeared to fray. The Biden administration—and specifically the Federal Trade Commission (FTC) under Chair Lina Khan—took the unprecedented step of collaborating with EU regulators to target U.S. companies. Both the FTC and the U.S. Justice Department (DOJ) have worked closely with the European Commission on DMA implementation through a collaborative mechanism called the “U.S.-EU Joint Technology Competition Policy Dialogue.”<sup>109</sup> This effectively amounted to a U.S. regulatory agency outsourcing its enforcement wish list to a foreign power because it could not achieve those outcomes through the ordinary paths contemplated by its domestic law.

Initially, Biden-era U.S. Commerce Secretary Gina Raimondo and U.S. Trade Representative Katherine Tai criticized the DMA,<sup>110</sup> and the latter even classified it as a barrier to digital trade.<sup>111</sup> After criticism from politicians like Sen. Elizabeth Warren (D-Mass.), Raimondo fell silent on the issue.<sup>112</sup> The USTR even took the DMA out of its barriers-to-trade list.<sup>113</sup> Clearly, the more progressive wing of the Biden administration had the lead on competition issues.

Against this backdrop, the more robust posture signaled by the Trump administration appears less like an outlier and more as a return to the historical norm of U.S. economic diplomacy. For decades, both Democratic and Republican administrations have aggressively defended U.S. firms against discriminatory foreign regulation and protectionist law enforcement.

#### **A. The Beef Hormone Dispute (1981-1997)**

Starting in 1981, the European Community (EC) began to implement limits on trade in beef treated with growth hormones (“hormone beef”), ultimately leading to a total ban in 1989. The restrictions would result in the United States losing an export market of approximately \$145 million dollars per year.<sup>114</sup> The EC claimed the ban was needed to protect consumers from possible health risks associated with these hormones. The United States, however, argued that the ban was scientifically baseless, noting that international bodies and the U.S. Food and Drug Administration (FDA) had deemed the hormones safe.

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<sup>109</sup> Thibault Denamiel et al., *Beyond Economics: How U.S. Policies Can Undermine National Security Goals*, CTR. FOR STRATEG. & INT’L STUDIES (May 3, 2024), <https://www.csis.org/analysis/beyond-economics-how-us-policies-can-undermine-national-security-goals>.

<sup>110</sup> *Id.*

<sup>111</sup> 2023 *National Trade Estimate Report on Trade Barriers*, OFF. OF THE U.S. TRADE REP. (Mar. 31, 2023), at 173, available at <https://ustr.gov/sites/default/files/2023-03/2023%20NTE%20Report.pdf>.

<sup>112</sup> Leah Nylen & Samuel Stolton, *U.S. Slow to Respond to EU’s Landmark Tech Regulation*, POLITICO (Mar. 25, 2022), <https://www.politico.com/news/2022/03/25/us-eu-digital-markets-act-00020551> (“The U.S. Department of Commerce issued a statement from Secretary Gina Raimondo praising the new trans-Atlantic data deal but deferred comments to the White House on the DMA.”)

<sup>113</sup> 2024 *National Trade Estimate Report on Trade Barriers*, OFF. OF THE U.S. TRADE REP. (Mar. 29, 2024), at 153-154, available at <https://ustr.gov/sites/default/files/2023-03/2023%20NTE%20Report.pdf>.

<sup>114</sup> Adrian R. Halpern, *The U.S.-EC Hormone Beef Controversy and the Standards Code: Implications for the Application of Health Regulations to Agricultural Trade*, 14 N.C. J. INT’L L. 135 (1989), <https://scholarship.law.unc.edu/ncjil/vol14/iss1/8>.

Lacking a legitimate safety reason, it could be assumed that the regulation was fundamentally a protectionist tool designed to shield inefficient European farmers from American competition. In a swift retaliatory strike, President Ronald Reagan raised “customs duties to a level of 100 percent ad valorem on as much as \$100 million in EC exports to the United States in response to the implementation of the Directive.”<sup>115</sup>

Importantly, the World Trade Organization (WTO) later declared in 1997 that “the EU had not presented sufficient scientific evidence to justify the import ban” (although an appellant body later granted more deference to EU food-safety regulations).<sup>116</sup>

### **B. The Clinton Administration: Boeing-McDonnell Douglas (1997)**

The Clinton administration, in a similar vein, went to the brink of a trade war to defend the Boeing-McDonnell Douglas merger. When the EU threatened to block this merger between two U.S. defense and aerospace contractors—despite approval by the FTC—President Bill Clinton intervened personally. Clinton warned that the United States would file a WTO complaint and impose retaliatory sanctions if the EU blocked the deal.<sup>117</sup>

Beyond the potential impact of the merger on the passenger aircraft-manufacturing market, the U.S. government viewed the EU’s opposition to the transaction as a veiled attempt to protect Airbus, the European national champion, rather than a legitimate competition concern. In the end, the intervention was positive. The EU subsequently cleared the merger,<sup>118</sup> establishing a strong precedent that discouraged Brussels from unfairly enforcing competition law to the detriment of the U.S. firms, including in the commercial jet-aircraft industry.

### **C. The Bush Administration: the GE-Honeywell Merger and the Microsoft Case (2001)**

The George W. Bush administration also engaged in high-level criticism of and diplomatic actions with the EU over both merger control and antitrust enforcement, highlighting the divergence between the U.S. consumer-welfare standard and the European approach (which seeks to protect atomistic market structure and competitors).<sup>119</sup>

<sup>115</sup> Ronald Reagan, *Memorandum on Imports From the European Economic Community*, REAGAN LIB. (Dec. 24, 1987), <https://www.reaganlibrary.gov/archives/speech/memorandum-imports-european-economic-community>.

<sup>116</sup> *The U.S. EU Beef Hormone Dispute*, CRS Congress Reports, LIB. OF CONGRESS (Jan. 9, 2017), <https://www.congress.gov/crs-product/R40449>.

<sup>117</sup> Tom Buerkele, *President Hints at Retaliation If Antitrust Officials Bar Merger: Clinton Warns EU Of Trade Conflict Over Boeing Deal*, N.Y. TIMES (Jul. 18, 1997), <https://www.nytimes.com/1997/07/18/18/18T-president-hints-at-retaliation-if-antitrust-officials-bar-merger-clinton.html>.

<sup>118</sup> Press Release, *The Commission Clears the Merger Between Boeing and McDonnell Douglas Under Conditions and Obligations*, EUR. COMM’N (Jul. 30, 1997), [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_97\\_729](https://ec.europa.eu/commission/presscorner/detail/en/ip_97_729).

<sup>119</sup> Dirk Auer, Geoffrey A. Manne, & Sam Bowman, *Should ASEAN Antitrust Laws Emulate European Competition Policy?*, 67

During the revision of the \$45 billion acquisition of Honeywell International by General Electric in 2001, a deal previously cleared by the DOJ, President Bush publicly expressed his concern that “the Europeans have rejected it.”<sup>120</sup> The president’s comments were echoed by Commerce Secretary Don Evans, who urged the European Commission to “think seriously about how constructive a merger like this could be.”<sup>121</sup> The DOJ’s antitrust chief, Charles James, openly criticized the EU’s “portfolio effects” analysis as “antithetical to the goals of antitrust law enforcement.”<sup>122</sup>

In 2004, immediately after the European Commission ordered Microsoft to pay a €497 million fine and to unbundle Windows Media Player from its Windows operating system, the DOJ issued a predictably sharp rebuke. Assistant U.S. Attorney General R. Hewitt Pate criticized the decision in statement:

Imposing antitrust liability on the basis of product enhancements and imposing ‘code removal’ remedies may produce unintended consequences. Sound antitrust policy must avoid chilling innovation and competition even by ‘dominant’ companies. A contrary approach risks protecting competitors, not competition, in ways that may ultimately harm innovation and the consumers that benefit from it. It is significant that the U.S. district court considered and rejected a similar remedy in the U.S. litigation.<sup>123</sup>

As this case demonstrates, even where the administration itself favored scrutinizing Microsoft’s behavior under U.S. antitrust law, it was cognizant of the important risks that arise when foreign enforcers reject the consumer-welfare standard and impose disproportionate fines on U.S. firms.

#### **D. The Obama Administration: Big Tech Cases and Apple State Aid (2015-16)**

The Obama administration, while prioritizing strong transatlantic relations, drew a firm line when EU regulation targeted U.S. companies unfairly or unreasonably.

This bipartisan wariness of Brussels’ motives was perhaps most candidly articulated by President Barack Obama himself. In a 2015 interview, just as Commissioner Vestager was ramping up her enforcement agenda against Silicon Valley, Obama bluntly characterized the EU’s aggressive posture as protectionism in disguise:

In defense of Google and Facebook, sometimes the European response here is more commercially driven than anything else. As I’ve said, there are some countries like

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SINGAP. ECON. REV. 1637 (2022).

<sup>120</sup> William Drozdiak, *EU Official Decries Bush Effort on GEHoneywell*, WASHINGTON POST (Jun. 18, 2001), <https://www.washingtonpost.com/archive/business/2001/06/19/eu-official-decries-bush-effort-on-ge-honeywell/94bbd73b-6fa2-4de7a103-3ea45f2a9739>.

<sup>121</sup> *Id.*

<sup>122</sup> Charles A. James, *International Antitrust in the Bush Administration*, DEP’T JUST. (Sep. 21, 2001), <https://www.justice.gov/atr/speech/internationalantitrust-bush-administration>.

<sup>123</sup> Press Release, *Assistant Attorney General for Antitrust, R. Hewitt Pate, Issues Statement on the EC’s Decision on its Microsoft Investigation*, DEP’T JUST. (Mar. 24, 2004), [https://www.justice.gov/archive/atr/public/press\\_releases/2004/202976.htm](https://www.justice.gov/archive/atr/public/press_releases/2004/202976.htm).

Germany, given its history with the Stasi, that are very sensitive to these issues. But sometimes their vendors –their service providers who, you know, can’t compete with ours– are essentially trying to set up some roadblocks for our companies to operate effectively there....

The President. We have owned the Internet. Our companies, you know, have created it, expanded it, perfected it in ways that they can’t compete. And oftentimes what is portrayed as high-minded positions on issues sometimes is just designed to carve out some of their commercial interests.<sup>124</sup>

Likewise, when the European Commission ordered Ireland to recover €13 billion in “back taxes” from Apple in 2016, claiming illegal state aid, Treasury Secretary Jack Lew intervened forcefully. He published an op-ed in the *Wall Street Journal*<sup>125</sup> and wrote directly to EC President Jean-Claude Juncker expressing his concern that “the commission’s novel approach to its investigations seeks to impose unfair retroactive penalties, is contrary to well established legal principles, calls into question the tax rules of individual countries, and threatens to undermine the overall business climate in Europe.”<sup>126</sup> In August of that year, the U.S. Treasury Department also issued a detailed white paper criticizing the EC’s approach, and explaining that it 1. departed from previous EU caselaw and EC decisions; 2. was retroactive; and 3. was inconsistent with international tax rules.<sup>127</sup>

This stark assessment from a Democratic president underscores that the current recognition of the EU’s regulatory gerrymandering is not a new or partisan invention, but a longstanding realization by U.S. leadership that Europe’s regulatory sword is sharpened by its own competitive failure.

### **E. The Biden Outlier and the Return to Normal**

The above examples demonstrate that defending U.S. firms against regulatory and law enforcement overreach in other jurisdictions is a standard function of the U.S. government. Whether it was Clinton defending Boeing, Bush defending GE, or Obama defending Apple, the principle remained the same: U.S. companies should not be treated as “piggy banks” by foreign regulators, nor should foreign regulators dictate the structure of American industry. Of course, U.S. companies abroad should respect local regulations, but these should be applied with full respect of the rule of law.

The Biden administration’s collaboration with the EU to enforce the DMA was the anomaly. By cheering on foreign regulators who were targeting American national champions, the FTC broke with decades of bipartisan tradition. A return to a policy where the U.S. government actively

<sup>124</sup> Interview with Kara Swisher of “Re/code” in Stanford, California, AM. PRESIDENCY PROJ. (Feb. 13, 2015), <https://www.presidency.ucsb.edu/documents/interview-with-kara-swisher-recode-stanford-california>.

<sup>125</sup> Jacob J. Lew, *Europe’s Bite Out of Apple Shows the Need for U.S. Tax Reform*, WALL ST. J. (Sep. 12, 2016), <https://www.wsj.com/articles/europes-bite-out-of-apple-shows-the-need-for-u-s-tax-reform-1473722046>.

<sup>126</sup> Press Release, *Lew Op.Ed: Europe’s Bite Out of Apple Shows the Need for U.S. Tax Reform*, DEP’T TREAS. (Sep. 12, 2016), <https://home.treasury.gov/news/press-releases/j15050>.

<sup>127</sup> *The European Commission’s Recent State Aid Investigations of Transfer Pricing Rules*, DEP’T TREAS. (Aug. 24, 2016), available at <https://home.treasury.gov/system/files/131/WhitePaperEUStateAid8-24-2016.pdf>.

counters discriminatory foreign regulations, as signaled by the Trump administration, therefore amounts to restoration of the proper role of U.S. economic statecraft.

## **VI. Conclusion: Altering the Incentive Structure and Restoring Balance**

The accumulated evidence points to an inescapable conclusion: Europe has fallen into a path of stagnation that creates increased incentives to regulate U.S. firms, while the United States has chosen a path of innovation and growth. Unfortunately, the incentive structure currently facing European policymakers makes continued tech regulation almost inevitable. It is a strategy with potentially large political rewards (revenue, prestige, protectionism) and low political costs (no domestic opposition, diffuse consumer harm).

So long as this equation holds, we will see more regulations like the DMA, more fines, and more targeting of U.S. innovation. The risk is that having failed to compete, Europe will increasingly penalize U.S. firms and consumers around the world through its regulatory expansionism and its desire to be the world's leading regulator. To protect American consumers, firms, and the broader innovation ecosystem, the United States must alter this incentive structure. It must raise the cost of discriminatory regulation:

1. **Credible consequences and reciprocity:** The U.S. government must make clear that discriminatory targeting of its tech sector will have tangible consequences for the broader transatlantic relationship. The threat of targeted retaliatory tariffs—or the use of Section 301 investigations into discriminatory digital-trade practices—may be an effective tool to focus minds in Brussels and dismantle the non-tariff barriers that the DMA and DSA represent.
2. **The United States must actively counter the “Brussels Effect”:** This involves vigorous diplomacy with third countries (Brazil, India, UK, etc.) to discourage them from copying the DMA model and to offer an alternative vision of digital governance that prioritizes innovation and consumer welfare over bureaucratic control. In fact, this may already be occurring. Abroad, the Trump administration appears to have successfully (at the margin, at least) diverted Europe and other jurisdictions from overly broad AI regulations (or some aspects thereof) while pursuing a modest version of AI regulation domestically that preserves incentives to innovate and avoids regulatory fragmentation across state lines.
3. **Domestic unity and oversight:** Congress should exercise oversight to ensure that U.S. agencies are not lending aid and comfort to foreign regulators that target U.S. companies. The resources of the U.S. government should be used to enforce U.S. laws, not to help the European Commission implement regulations that Congress itself has declined to enact.
4. **Domestic policy:** Finally, the United States cannot credibly combat discriminatory regulations abroad if it adopts them at home. Pursuing domestic initiatives like the defunct American Innovation and Choice Online Act (AICOA) that mirror the DMA's approach of targeting

specific successful firms with *ex ante* prohibitions would severely undermine the U.S. diplomatic stance. If Washington validates the premise that "big is bad" and that regulatory gerrymandering is a legitimate policy tool, it effectively hands a blank check to foreign regulators in Brussels, Seoul, and beyond to do the same to U.S. companies. To lead the global digital economy, the United States must practice what it preaches, maintaining a competition regime grounded in the consumer-welfare standard and the rule of law, rather than validating the very protectionist logic it seeks to dismantle overseas.

By altering the incentives of European policymakers, the United States can protect its companies, its workers, and ultimately, the consumers who benefit from the world's leading digital ecosystem. The transatlantic alliance is strongest when it is based on mutual growth and innovation, not on the managed decline of one partner at the expense of the other. The time has come to reassert the principles of market competition and innovation that made the western economy the envy of the world.

Mr. FITZGERALD. Thank you, Mr. Auer. Professor Alford, you may begin.

**STATEMENT OF ROGER P. ALFORD**

Mr. ALFORD. Chair Fitzgerald, Ranking Member Raskin, thank you for the opportunity to testify here today.

I've testified at the Senate Judiciary Committee on several occasions, but this is my first opportunity to testify here in the House. I welcome the opportunity to discuss the politicalization of European antitrust enforcement, but also, I want to address my remarks, first, to the more pressing concern of the politicalization of United States antitrust enforcement.

The DOJ Justice Manual is unequivocal; the rule of law depends on the even-handed administration of justice. The legal judgments of the Department of Justice must be impartial and insulated from political influence. It is imperative that the Department's investigatory and prosecutorial powers be exercised free from partisan considerations.

On June 16, 2024, former prosecutor and current lawyer and lobbyist Trey Gowdy stated the following:

Our justice system is the last thing that is holding us together. No one is above the law, but no one is beneath the law either. You should not be targeted because of your status, and you should not be rewarded because of your status.

Today, Trey Gowdy is playing a leading role in promoting a politicized justice system. After the Department of Justice indicted Tim Leiweke with bid rigging in July 2025, Gowdy lobbied senior leadership within the Department of Justice to get the case dropped, but to no avail. Gowdy went above the heads of every senior official within the Department of Justice and appealed directly to President Trump. The Tim Leiweke pardon is not the first or the last example of politicized antitrust enforcement in the past year.

In Aspen, this past August, I spoke about the HPE-Juniper merger scandal. I am heartened that over a dozen State Attorneys General have successfully intervened in that case, and that the court is holding hearings, including a hearing today, on that case.

Of course, the concerns go far beyond Trey Gowdy. The MAGA lobbyists are shameless in their self promotion, aware that their window of opportunity is short and closing fast. Press reports reveal the pervasive practice of lobbyists attempting to corruptly influence antitrust law enforcement.

The populist Steve Bannon said that,

We're in a fight right now . . . . The concentration of power comes from the lobbyists, [and] the top law firms, and they're all over the White House, the administration, and the President.

MAGA lobbyists, reportedly, are liberally pitching their services to clients, stating that, for a mere \$225,000 a month per client, these lobbyists will go above and around the Antitrust Division to lobby their cases, and even seek to have AAG Gail Slater removed from her Senate-confirmed position.

The future of the Republican Party is at stake in this battle. MAGA lobbyists are betraying President Trump's populist antitrust agenda. If the Antitrust Division does not have a free hand to address the affordability crisis that is plaguing the American people,

what hope does it have for the Republican Party to be the party of the working class and the rural poor? It is also disheartening, given the hopes and dreams that so many of us had just one year ago.

What is to be done about the politicalization of antitrust enforcement? Among the best responses is greater involvement by State Attorneys General. When Federal enforcers can stand alone, there is a risk of a single point of political failure.

Another response is reform from within the antitrust bar. More transparency is critical. The lobbying disclosure requirements should be enforced, and FOIA requests should be redoubled.

Of course, as I mentioned, greater judicial oversight is also critical, both with respect to merger review and conduct cases. Congressional oversight is welcome, and I welcome hearings such as this to address the matter.

Then, ultimately, though, reform must occur from within the Department of Justice. The government enjoys the presumption of regularity, but that presumption can be rebutted.

In my view, we should consider the current hearing as another manifestation of efforts to politicize antitrust enforcement. Much of the antitrust enforcement in Europe parallels antitrust enforcement in the United States, including prosecutions brought by the Trump Administration and Republican State Attorneys General.

I am not suggesting that there are not real risks of discrimination against American companies with respect to antitrust enforcement abroad. My written testimony provides details in that regard. I have said as much on previous occasions.

Yes, the risk of discrimination is real abroad, and I witnessed it firsthand when I was at the Department of Justice, but the risk that big-tech companies have achieved gatekeeper status are also—and abusing their monopoly power—are also real.

I look forward to your questions. Thank you very much.

[The prepared statement of Mr. Alford follows:]

**Anti-American Antitrust: How Foreign Governments Target U.S. Businesses**

Before the Committee of the Judiciary  
Subcommittee on the Administrative State, Regulatory Reform, and Antitrust

Roger P. Alford  
Professor of Law, Notre Dame Law School  
Former Principal Deputy Assistant Attorney General, U.S. Department of Justice  
Former Deputy Assistant Attorney General, U.S. Department of Justice

December 16, 2025

Chairman Fitzgerald, Ranking Member Nadler, and Members of the Subcommittee, thank you for inviting me to testify today. I look forward to discussing with you the Anti-American Antitrust. I am a conservative populist antitrust scholar who teaches at Notre Dame Law School and was a former Principal Deputy Assistant Attorney General for the Department of Justice's Antitrust Division in the current Administration and Deputy Assistant Attorney General for International Affairs in the first Trump Administration. I am deeply concerned about Anti-American Antitrust enforcement, particularly enforcement that does not align with the populist America First antitrust agenda as reflected in the leadership of Assistant Attorney General Gail Slater.

I welcome the discussion of concerns regarding the politicalization of European antitrust enforcement. But I want to begin my remarks with the more pressing and urgent concern of the politicalization of United States antitrust enforcement.

*The Politicalization of US Antitrust Enforcement*

The DOJ Justice Manual is unequivocal: "The rule of law depends upon the evenhanded administration of justice. The legal judgments of the Department of Justice must be impartial and insulated from political influence. It is imperative that the Department's investigatory and prosecutorial powers be exercised free from partisan consideration. It is a fundamental duty of every employee of the Department to ensure that these principles are upheld in all of the Department's legal endeavors."<sup>1</sup> It further states that "The success of the Department of Justice depends upon the trust of the American people. That trust must be earned every day. And we can do so only through our adherence to the longstanding Departmental norms of independence from inappropriate influences, the principled exercise of discretion, and the treatment of like cases alike."<sup>2</sup>

On June 16, 2024, former prosecutor and current lobbyist Trey Gowdy stated that "Our justice system is the last thing that is holding us together.... No one is above the law, ... but no one is

<sup>1</sup> DOJ Justice Manual, Section 1-8.100, available at <https://www.justice.gov/jm/jm-1-8000-congressional-relations>.

<sup>2</sup> Id. at Section DOJ Justice Manual, Section 1-8.600, available at <https://www.justice.gov/jm/jm-1-8000-congressional-relations>.

beneath the law either. You should not be targeted because of your status, and you should not be rewarded because of your status. The woman wears a blindfold for a reason. . . . Lady Justice wears a blindfold. I wonder why that is? So she doesn't know who is in front of her. Whether it is a friend or a foe. Until we get back to that, we are going to struggle with this perception/reality of a politicized justice system.”<sup>3</sup>

Today, Trey Gowdy is playing a leading role in promoting a politicized justice system. On July 9, 2025, the Department of Justice’s Antitrust Division charged Tim Leiweke with bid rigging “to benefit his own company and deprive a public university and taxpayers of the benefits of competitive bidding.”<sup>4</sup> According to published reports, Gowdy lobbied senior leadership within the Department of Justice to get the case dropped, but to no avail. So Gowdy went above the heads of every senior official in the Department of Justice and appealed directly to President Trump.<sup>5</sup> During a golf outing with President Trump on November 16, Gowdy convinced the President that Leiweke had been treated unfairly by Trump’s own Department of Justice.<sup>6</sup> Precisely what was unfair? The companies and other executives had secured immunity deals if they would cooperate and testify against the principal offender, Tim Leiweke.<sup>7</sup> Two weeks later, Tim Leiweke received a preemptive pardon.<sup>8</sup>

While President Biden flagrantly abused the pardon power, Republicans should not pretend that what happened with Tim Leiweke was normal. There is no evidence that the pardon was given consistent with the pardon procedure of the Department of Justice,<sup>9</sup> or indeed that antitrust leadership or other senior DOJ leadership briefed President Trump on the merits of the case. To my knowledge, it is the first preemptive pardon in the history of criminal antitrust enforcement. The only other possible example is President Trump’s posthumous pardon of Zay Jeffries in October 2019, also a client of Trey Gowdy.<sup>10</sup> Not surprisingly, Gowdy is now overwhelmed with calls from other indicted white collar criminals seeking special favors. Gowdy has not clarified how his lobbying efforts are consistent with his professed belief that justice is blind, and that no one should be rewarded because of their status.

The Tim Leiweke pardon is not the first or the last example of politicized antitrust enforcement in the past year. In Aspen this past August I spoke about the HPE/Juniper merger scandal and what I believed to be a perversion of justice by Associate Attorney General Stanley Woodward and Chief of Staff Chad Mizelle settling that case on the cheap as a result of influence peddling by lobbyists Arthur Schwartz and Mike Davis.<sup>11</sup> I am heartened that over a dozen state attorneys general have successfully intervened in that case and that a federal court is holding hearings,

<sup>3</sup> Extra: Trey Gowdy on Hunter Biden, President, and the “Weaponization” of the DOJ, *Radio Fox News* (June 14, 2024) (Minute 14:) available at <https://radio.foxnews.com/2024/06/16/extra-trey-gowdy-on-hunter-biden-president-trump-and-the-weaponization-of-the-doj/>.

<sup>4</sup> Press Release, *Live Entertainment CEO Indicted of Orchestrating Conspiracy to Rig Bidding Process for Public University Arena*, (July 9, 2025), <https://www.justice.gov/opa/pr/live-entertainment-ceo-indicted-orchestrating-conspiracy-rig-bidding-process-public>.

<sup>5</sup> Dave Michaels, *A Round of Golf Changed Trump’s Tone on the Concert Industry*, *Wall Street Journal* (Dec. 6, 2025).

<sup>6</sup> Id.; Dave Michaels & Katherine Sayre, *Trump Pardons Stadium Developer Charged in Texas Arena Bid-Rigging Case*, *Wall Street Journal* (Dec. 3, 2025).

<sup>7</sup> Dave Michaels, *A Round of Golf Changed Trump’s Tone on the Concert Industry*, *Wall Street Journal* (Dec. 6, 2025).

<sup>8</sup> Executive Grant of Clemency, (Dec. 2, 2025), <https://www.justice.gov/pardon/msdia/1419981/dl?inlink>.

<sup>9</sup> Office of Pardon Attorney, Department of Justice, available at <https://www.justice.gov/pardon/about-office>.

<sup>10</sup> Statement from the Press Secretary Regarding the Pardon of Zay Jeffries, (Oct. 10, 2019), available at <https://trumpwhitehouse.archives.gov/briefings-statements/statement-press-secretary-regarding-pardon-zay-jeffries/>.

<sup>11</sup> Roger P. Alford, *The Rule of Law Versus the Rule of Lobbyists*, (August 18, 2025), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5396537](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5396537).

including one today, on the status of the state AG's efforts to hold the merging parties accountable for their corrupt process and their unlawful merger.<sup>12</sup>

Of course, the concerns go far beyond Trey Gowdy. The MAGA lobbyists are shameless in their self-promotion, aware that their window of opportunity is short and closing fast. Press reports reveal the pervasive practice of lobbyists attempting to corruptly influence antitrust law enforcement. The Global Competition Review reported that in the first half of 2025, lobbyists such as Ballard Partners and Miller Strategies are earning exponentially more revenue lobbying on competition matters than they received in previous years.<sup>13</sup> The Wall Street Journal reported that in the midst of ongoing antitrust investigations, UnitedHealth has “spent more money on lobbying than it ever has in a comparable time frame.”<sup>14</sup> Bloomberg reports that law firm partners describe it as “malpractice” to not enlist lobbyists because relationships with the White and DOJ front office can impact the outcome of a case.<sup>15</sup> “It’s now on the menu in a way that it never has been,” said one partner.<sup>16</sup> The Free Press confirms that lobbying is now a common strategy in a variety of ongoing antitrust investigations.<sup>17</sup> The populist Steve Bannon said that “[w]e’re in a fight right now. The concentration of power comes from the lobbyists, the top law firms... and they are all over the White House, this administration, and the president.”<sup>18</sup> As one expert put it, lobbying on antitrust matters is “the dirty secret that no one wants to talk about.”<sup>19</sup>

MAGA lobbyists reportedly are liberally pitching their services to clients, starting at a mere \$225,000 a month—more than the annual salary of senior DOJ officials. When asked what services they provide beyond what the law firms offer, these lobbyists will openly say that they will go above and around the Antitrust Division to lobby their case, and even seek to have Gail Slater removed from her Senate-confirmed position.<sup>20</sup> The risks of obstruction of justice are obvious, just as they were obvious when lobbyists sought to influence the decision to have Slater’s deputies removed in July. But the lobbyists remain undeterred and even appear emboldened. One is reminded of the maxim: “Their destiny is destruction, their god is their stomach, and their glory is in their shame.”<sup>21</sup>

These lobbyists proudly proclaim that they fight every day for President Trump and his America First agenda. But at the exact same time, they accept extraordinary lobbying fees to represent corporations that oppose and even despise the Trump Administration. They trumpet their MAGA credentials while lining their pockets with bags of anti-MAGA booty. In truth, these lobbyists are

<sup>12</sup> Order Granting Motion for Intervention, *United States v. Hewlett Packard Enterprise Co.*, Case No. 25-cv-00951-PCP (Dec. 1, 2025).

<sup>13</sup> Anna Langlois, “*Very Connected People*”: *The Trump Aligned Lobbyists Winning on Antitrust*, Global Competition Review, (Aug. 28, 2025), <https://globalcompetitionreview.com/gr-usa/article/very-connected-people-the-trump-aligned-lobbyists-winning-antitrust>.

<sup>14</sup> Josh Dawsey, Christopher Weaver and Anna Wilde Mathews, *UnitedHealth is Spending Big on Trump Allies to Fix its Washington Problems*, Wall Street Journal (Sept. 14, 2025), [https://www.wsj.com/business/unitedhealth-is-spending-big-on-trump-allies-to-fix-its-washington-problems-8ca64351?st=GeapoW&reflink=desktopwebshare\\_permalink](https://www.wsj.com/business/unitedhealth-is-spending-big-on-trump-allies-to-fix-its-washington-problems-8ca64351?st=GeapoW&reflink=desktopwebshare_permalink).

<sup>15</sup> Katie Arcieri, *Law Firms Ponder Lobbying DOJ, White to Get Deals Through*, Bloomberg Law (Nov. 24, 2025), available at <https://news.bloomberglaw.com/antitrust/law-firms-ponder-lobbying-doj-white-house-to-get-deals-through>.

<sup>16</sup> *Id.*

<sup>17</sup> Gabe Kaminsky, *Feuding, Factions, and MAGA Operatives Drive Trump’s Antitrust Policy*, The Free Press (Sept. 29, 2025), <https://www.thefp.com/p/feuding-factions-and-lobbyists-drive-trump-antitrust-policy>.

<sup>18</sup> *Id.*

<sup>19</sup> Anna Langlois, “*Very Connected People*”: *The Trump Aligned Lobbyists Winning on Antitrust*, Global Competition Review, (Aug. 28, 2025), <https://globalcompetitionreview.com/gr-usa/article/very-connected-people-the-trump-aligned-lobbyists-winning-antitrust>.

<sup>20</sup> Joshua Steinman, (Nov. 8, 2025) available at <https://x.com/joshuasteinman/status/1987345016310931486?s=46> (“Want to know how much it PAYS in Washington to try and stop something like this? \$225k a month. That’s how much certain folks are offering around town to try and take out Gail Slater.”)

<sup>21</sup> Philippians 3:19 (NIV)

cowards, threatening their adversaries that “justice is coming” so “you better lawyer up,” but then running from a fair fight into the arms of their powerful friends in government whenever justice is coming for their own clients. The hypocrisy is apparent to almost everyone, but few are willing to state the obvious that the emperor lobbyists wear no clothes.

The future of the Republican Party is at stake in this battle. MAGA lobbyists are betraying President Trump’s populist antitrust agenda, pretending that we are the Republican Party of John D. Rockefeller rather than the party of Theodore Roosevelt and Roger Sherman. As I testified before the Senate Judiciary Committee at this time last year, President Trump’s Republican Party Platform ran on a policy of making housing more affordable, reducing the cost of higher education, promoting choice and competition in healthcare, and adopting economic policies that drive down the cost of living and prices for everyday goods and services.<sup>22</sup> If the Antitrust Division does not have a free hand to address the affordability crisis that is plaguing the American people, what hope does the Republican Party have to be the party of the working class and the rural poor?

It is all so disheartening, given the hopes and dreams many of us had at the start of the Trump Administration for a populist antitrust agenda. When I reread my Senate Judiciary Testimony from one year ago today about the emerging America First antitrust agenda and the Republican realignment, one cannot help but wonder what might have been.<sup>23</sup> Meanwhile, AAG Gail Slater and her amazing team press on, reminding themselves daily of Sir Thomas More’s admonition: “You must not abandon the ship in a storm because you cannot control the winds.... What you cannot turn to god, you must at least make as little bad as you can.”<sup>24</sup>

#### *How to Address the Politicalization of Antitrust Enforcement?*

What is to be done about the politicalization of antitrust enforcement? Among the best responses to address lobbyists’ efforts to antitrust enforcement at the federal level is greater involvement of state attorneys general. When federal enforcers stand alone, there is a risk of a single point of political failure. The diffusion of power makes successful lobbying more difficult. For the sake of the federal enforcers seeking to resolve cases on the merits without political interference, state AGs should expand their role in partnering with federal enforcers.<sup>25</sup> It is encouraging that Tennessee Republican Attorney General Jonathan Skrmetti confirmed that state AGs will continue the lawsuit against Live Nation and Ticketmaster if the DOJ settles.<sup>26</sup>

A second response is reform within the antitrust bar. Many blue chip law firms are complicit with their clients in hiring corrupt lobbyists to circumvent traditional antitrust enforcement. Just as the

<sup>22</sup> Roger P. Alford, *Continuing a Bipartisan Path Forward for Antitrust Enforcement and Reform*, Senate Judiciary Committee, Subcommittee on Competition Policy, Antitrust, and Consumer Rights (Dec. 17, 2024), available at <https://www.judiciary.senate.gov/imo/media/doc/2024-12-17-pm-testimony-alford.pdf>, quoting 2024 Republican Party Platform, (July 8, 2024), available at <https://www.presidency.ucsb.edu/documents/2024-republican-party-platform>.

<sup>23</sup> Roger P. Alford, *Continuing a Bipartisan Path Forward for Antitrust Enforcement and Reform*, Senate Judiciary Committee, Subcommittee on Competition Policy, Antitrust, and Consumer Rights (Dec. 17, 2024), available at <https://www.judiciary.senate.gov/imo/media/doc/2024-12-17-pm-testimony-alford.pdf>, quoting 2024 Republican Party Platform, (July 8, 2024), available at <https://www.presidency.ucsb.edu/documents/2024-republican-party-platform>.

<sup>24</sup> Sir Thomas More, *Utopia*.

<sup>25</sup> See also Ron Knox, *Empower State Attorneys General to Strengthen Antitrust*, INSTITUTE FOR LOCAL SELF-RELIANCE (Jul. 16, 2025), <https://ilsr.org/article/independent-business/empower-state-attorneys-general-to-strengthen-antitrust/>.

<sup>26</sup> Khushita Vasant, *Ticketmaster Monopoly Suit to Proceed Should US Drop Out, Tennessee AG Says*, MLEX, (Dec. 11, 2025).

ABA addressed procedural fairness concerns when global government enforcers fell short,<sup>27</sup> they should now address procedural abuses within their own ranks. Lawyers have ethical obligations not to obstruct justice, improperly influence government officials, act with dishonesty or deceit, or engage in conduct that is prejudicial to the administration of justice.<sup>28</sup> ABA Antitrust Section Chair Renate Hesse understands the gravity of the current situation. Has she stepped up yet? Will she step up soon? If she doesn't, will Chair-Elect Melanie Aitken do so?

Third, more transparency is critical. Reporters on the antitrust beat across the political spectrum are playing an invaluable role in highlighting the unethical behavior of lobbyists, lawyers, and senior government officials. The lobbying disclosure requirements should be enforced, and lawyers who act as lobbyists should disclose their role. FOIA requests regarding the activities of specific lawyers and lobbyists are obvious sunshine measures that can help expose shadowy conduct.

Fourth, congressional oversight is welcome, including at hearings such as this and similar hearings that focus more specifically on the politicalization of United States antitrust enforcement. One can assume that the MAGA lobbyists, lawyers, and their clients know that there are limits to what the public will tolerate, and our public representatives in Congress can and should hold MAGA lobbyists, lawyers, and their clients accountable for crossing certain ethical and legal boundaries. When the political winds shift, one hopes that Congress will hold them accountable. Congressional subpoenas could shed light on the scope of the problem.

Fifth, judicial oversight is crucial as well, both with respect to merger review and conduct cases. The federal court in the HPE/Juniper merger case appears willing to closely scrutinize the merits of the proposed settlement, and, where appropriate, the process by which the compromised settlement was reached. The scope of Tunney Act review is untested in the Ninth Circuit. If the scope of judicial review proves insufficient, Congress should explore Tunney Act reforms, including expansion to include the Federal Trade Commission.

Finally, reform from within the Department of Justice is essential. The Justice Manual states that trust must be earned every day, and mandates that the "legal judgments of the Department of Justice must be ... insulated from political influence."<sup>29</sup> The government enjoys the presumption of regularity, with courts crediting certain facts to the government as to what happened and why they happened. This presumption narrows judicial scrutiny and widens executive discretion.<sup>30</sup> But the presumption of regularity can be rebutted,<sup>31</sup> and the Department of Justice would suffer immeasurably if it were to lose the presumption that its conduct is normal. But it is not normal to have this degree of political influence on DOJ investigations and prosecutions. It is not normal for Deputy Attorney General Todd Blanche to say that the DOJ is at war with the judiciary, or for former Chief of Staff Chad Mizelle to threaten judges with impeachment.<sup>32</sup> If the DOJ wants to

<sup>27</sup> ABA SECTION ON ANTITRUST L., ASSESSMENT OF GLOBAL COMPETITION AGENCY IMPLEMENTATION OF ABA BEST PRACTICES FOR ANTITRUST PROCEDURE (Apr. 29, 2019), [http://www.americanbar.org/content/dam/aba/administrative/antitrust\\_law/sal-procedural-transparency2019-04-29.pdf](http://www.americanbar.org/content/dam/aba/administrative/antitrust_law/sal-procedural-transparency2019-04-29.pdf); Christopher S. Yoo, Thomas Fetzer, Shan Jiang, and Yong Huang, *Due Process in Antitrust Enforcement: Normative and Comparative Perspectives*, 94 SOUTHERN CAL. L. REV. 843 (2021); Roger P. Alford, *Due Promoting International Procedural Norms in Competition Law Enforcement*, 68 KANSAS L. REV. 1165 (2020).

<sup>28</sup> ABA Model Rules of Professional Conduct, Model Rule 8.4.

<sup>29</sup> DOJ Justice Manual, Section 1-8.100, available at <https://www.justice.gov/jm/jm-1-8000-congressional-relations>.

<sup>30</sup> *The Presumption of Regularity in Judicial Review of the Executive Branch*, 131 HARVARD L. REV. 2431, 2432 (2018).

<sup>31</sup> *Id.* at 2440.

<sup>32</sup> *Id.* at 2440.

preserve the presumption of regularity, it is essential that the DOJ adhere to longstanding norms, minimize political influence, and restore public trust in their investigations and prosecutions.<sup>33</sup>

*The Politicalization of EU Antitrust Enforcement?*

In my view, we should consider the current hearing as another manifestation of efforts to politicize antitrust enforcement. The charge is that Europe is discriminating against American Big Tech companies and that Europeans are enforcing their antitrust laws in an anti-American manner. Who is pushing that agenda before the White House and Congress? Of course, it is Big Tech companies and their lobbyists and surrogates. In truth, American companies are on both sides of European antitrust enforcement, seeking investigations and the subject of investigations. Big Tech lobbyists are asking the Trump Administration and Congress to preference American Big Tech companies over other American companies, including American Little Tech companies competing in Europe.

Much of the antitrust enforcement in Europe parallels antitrust enforcement in the United States. And of course, there is bipartisan consensus in the United States that Big Tech companies are abusing their monopoly power and the Trump Administration as well as dozens of Republican state AGs all have brought antitrust cases against Big Tech companies for their abuse of power.<sup>34</sup> The real concern about Europe is not discriminatory antitrust enforcement but rather that something is fundamentally broken in the European market such that there are almost no European competitors successful enough to be described as Big Tech companies.<sup>35</sup>

I am not suggesting that there are not real risks of discrimination against American companies with respect to antitrust enforcement abroad. Indeed, I specifically addressed the concern of *de jure* and *de facto* discrimination against American companies in antitrust enforcement at a speech I gave in Germany in May 2018.<sup>36</sup> And my principal focus during the first Trump Administration was to promote fundamental due process in antitrust enforcement. I was the lead negotiator with Assistant Attorney General Makan Delrahim on an international agreement promoting procedural fairness signed by over seventy-seven other antitrust enforcers around the world.<sup>37</sup> The first principle of that agreement is a national treatment rule, stating that competition enforcers “will ensure that its investigations and enforcement policies and Procedural Rules afford Persons in another jurisdiction treatment no less favorable than persons of its jurisdiction in like circumstances.”<sup>38</sup>

In the first Trump Administration we witnessed discrimination by Korean enforcers against U.S. companies with respect to the extraterritorial application of global licensing remedies.<sup>39</sup> We

<sup>33</sup> Mattathias Schwartz, *The Federalist Society is Torn Between its Legal Philosophy and Trump's Demands*, New York Times, (Nov. 22, 2025).

<sup>34</sup> Roger P. Alford, *The Bipartisan Consensus on Big Tech*, 71 EMORY L. J. at 925-27.

<sup>35</sup> See generally The Draghi Report on European Competitiveness, (Sept. 9, 2024), available at [https://commission.europa.eu/topics/competitiveness/draghi-report\\_en](https://commission.europa.eu/topics/competitiveness/draghi-report_en).

<sup>36</sup> Roger Alford, *Public Interest Standard and the Dangers of Discrimination*, (May 8, 2018), available at <https://www.justice.gov/archives/opa/speech/file/1060791/dl>.

<sup>37</sup> Makan Delrahim, “*With a Little Help From My Friends*”: *Using Principles of Comity to Protect International Antitrust Achievements*, (Sept. 12, 2019), available at <https://www.justice.gov/archives/opa/speech/file/1201656/dl?inline=>; Press Release, Dep’t of Just., New Multilateral Framework on Procedures Approved by the International Competition Network (Apr. 5, 2019), <https://www.justice.gov/opa/pr/new-multilateral-framework-procedures-approved-international-competition-network>.

<sup>38</sup> ICN Framework on Competition Agency Procedures, available at [https://internationalcompetitionnetwork.org/wp-content/uploads/2019/04/ICN\\_CAP.pdf](https://internationalcompetitionnetwork.org/wp-content/uploads/2019/04/ICN_CAP.pdf).

<sup>39</sup> Roger P. Alford, *Antitrust Enforcement in an Interconnected World*, (Jan. 29, 2018), available at <https://www.justice.gov/archives/opa/speech/file/1034976/dl?inline=>.

engaged in formal consultations with our counterparts there to address such concerns.<sup>40</sup> In the second Trump Administration we also have witnessed China selectively targeting Big Tech companies in retaliation for the Trump Administration's imposition of tariffs on Chinese products.<sup>41</sup> In such instances it is appropriate to address such discriminatory antitrust enforcement.

So the risks of discrimination are real, and I witnessed it first-hand. But the risks that Big Tech companies that have achieved gatekeeper status are abusing their monopoly power is also real. Other countries are not acting inappropriately if they are enforcing their laws in a fair-minded and nondiscriminatory way to address competition concerns in their markets, just as our federal enforcers are not acting inappropriately when we investigate foreign companies that are abusing their monopoly power, engaging in price fixing, or seeking to merge in a manner that is anticompetitive. If foreign competitors are harming United States markets with anticompetitive conduct, I hope and assume that federal enforcers will not hesitate to act. In assessing whether there is discrimination, each case should be taken on its own merits.

I look forward to taking your questions. Thank you.

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<sup>40</sup> Wooyoung Lee and Choi Hyung-jo, *KFTC Plans to Revise Rules to Reflect Concerns with Competition Proceedings, Procedural Fairness*, MLEX Global Antitrust (Feb. 13, 2020).

<sup>41</sup> Paresh Dave, *China is Investigating Google Over Trump's Tariffs*, Wired, (Feb. 4, 2025).

Mr. FITZGERALD. Thank you, Professor. We will now proceed under the five-minute rule with questions.

I want to recognize the gentleman from California, Mr. Issa, first.

Mr. ISSA. Thank you, Mr. Chair. Thank you for holding this important hearing. Notwithstanding the professor's claim that this is somehow politicizing, nothing could be further from the truth. The fact is this Subcommittee, and the entire Committee, has clearly been on this subject for a long time, but it vacillates.

As the Ranking Member would often state, forget about competition abroad—I'm talking about the Subcommittee Ranking Member in this case—let's just go ahead and focus on American companies. Nothing could be more inappropriate.

President Trump is the first President in a very long time to ask, what is the relevant market? Three out of our four witnesses understand; the relevant market in antitrust is now the world, and in tech, it is the world.

When countries like Korea, Australia, and most of Europe, countries that we have—and Brazil, for that matter—we considered allies, in fact, used their vast market power, not always in that product, but their vast market power as sovereign nations to, in fact, adversely affect our competitiveness. It doesn't matter—and I'll go on the record—it doesn't matter if you have a 100 percent market share in the United States and a 100 percent global market share as an original innovator, if, in fact, foreign nations—in jealousy or simply not wanting to, in fact, allow these unicorns to exist—in fact, use their market power to stop you. That is what is going on often with our closest allies.

Notwithstanding, I'll just quote one, and I would like it to put up behind me. Chair Joo of the Korea Free Trade Commission—that is a wonderful title—in his own words, disparages America, takes us down. In fact, his commission, as this board says—and I would ask unanimous consent that the entire article be placed in the record—says, “So why are many Americans, especially White workers in the Rust Belt in the Midwest, so angry?”

I'll tell you why they are so angry, as somebody born and raised in Cleveland, Ohio, and somebody who happily went to work for the Trump Administration, because, in fact, they believed in free and fair trade, something that we had talked about, but always left the second half off.

The fact is we now have to take on the status quo of global competitiveness. China, but also our allies; Europe, one of our closest partners, including Australia, in fact, are operating in unfair trade practices. The Digital Markets Act is just one in which every unicorn in that field is American, and as innovators, and they as regulators, they intend on using regulation to take us out of our competitive lead.

Let there be no doubt that there are additional barriers and they are not new. I know that the testimony we are receiving today is important, but I'm just going to give you one piece of testimony.

More than 40 years ago, I began traveling the world and doing international business. More than 30 years ago, I was in South Korea for a trade conference. The highest level of management at

that time, both government and Samsung and the other majors, proudly said to the delegation that had gone there,

We're so delighted to have you here. We want you to, in fact, come here and invest, transfer your technologies, and enjoy the benefits of our ability to make your products.

He didn't even listen to himself. They were not interested in buying our products. They were not interested in joint ventures. They were interested in technology transfers. Even when they manufacture in the United States, Hyundai and Kia, they won't even obey our rules and, in fact, will illegally bring in their own workers, which has recently been found by this administration.

I normally ask a lot of questions. I'm not going to ask a lot of questions this time. I'm going to thank our witnesses.

I'm going to, because you raised your hand, go to Professor Portuese, because you do want to say something and I would like to hear it—quickly.

Mr. PORTUESE. Thank you very much.

I want to rivet back to the point that you made about relevant markets, because that's at the basis of antitrust principles. To look at if companies abuse their positions, we look at—first, we have to define the relevant market. We cannot call companies “monopolies” if we haven't defined relevant market.

You say that the relevant market today is the world. That is true. I just want to add that, also, the relevant market is not online or offline. These companies compete both—with their online platforms, but they compete with, also, offline groceries and other effects. The idea of, first, insulating what we call digital markets is wrongheaded. There's no such thing as digital market. There are markets and digital is just a means of distribution to the consumers.

When digital platforms compete, digital advertising competes with print advertising. Digital supermarkets compete with groceries offline.

Mr. FITZGERALD. The gentleman's—

Mr. PORTUESE. The competition is much larger than what we can think.

Mr. FITZGERALD. The gentleman's time has expired.

Mr. ISSA. Mr. Chair, I would ask unanimous consent to enter into the record an article entitled, “The Chinese Fan Who Made It into the Trump Administration.” This article discusses the professor who is with us here today, Mr. Alford. Without objection.

Mr. FITZGERALD. Without objection. I now recognize—

Ms. BALINT. Mr. Chair, I ask unanimous consent.

Mr. FITZGERALD. Go ahead.

Ms. BALINT. I ask unanimous consent to submit “Trump Warner Bros Meddling Pushes the Limits of Executive Power” from *Bloomberg*, which quotes Professor Herbert Hovenkamp, stating that Trump's involvement in this merger, quote, “illustrates that not only is this President interfering with enforcement policy, but is doing so for reasons that have nothing to do with antitrust.”

Mr. FITZGERALD. Without objection. I now recognize the Ranking Member of the Full Committee, Mr. Raskin, again for five minutes.

Mr. RASKIN. Mr. Chair, thank you very much. Mr. Alford, you served in the first Trump Administration and the second Trump Administration, is that right?

Mr. ALFORD. Yes, correct.

Mr. RASKIN. Am I correct in deducing you are Republican?

Mr. ALFORD. Yes, correct.

Mr. RASKIN. Thank you for your testimony. I am wondering about this: What is the greater threat today to a healthy and competitive U.S. economy? Corruption in our own antitrust agencies or foreign countries enforcement of their antitrust laws?

Mr. ALFORD. I would say the former. The concern for protecting the U.S. market is absolutely critical to the American people. What we want in the United States is vigorous antitrust enforcement that will protect the average American. That is being undermined now in light of the undue influence of lobbyists.

Mr. RASKIN. The DOJ Manual begins by stating, "The legal judgments of the Department of Justice must be impartial and insulated from political influence." Can you share with the Judiciary Committee what you saw as the second most senior political appointee at the Antitrust Division of DOJ relevant to that principle?

Mr. ALFORD. Yes. Obviously, to be careful with respect to government deliberate privilege, but as has been publicly reported, lobbyists are pervasively involved in the—every level of the Department of Justice trying to influence the outcomes, not based on the merits, but based on relationships that these lobbyists have with particular individuals in power. My written testimony actually goes into detail of numerous different articles that sort of outline that kind of problem.

Mr. RASKIN. In that context if our antitrust system is failing because it is being overrun by insider influence, political lobbying, money contributions and so on, what do you think the role of this deflection is toward international antitrust in the conversation about what needs to be happening in America?

Mr. ALFORD. Well, obviously if you really want to focus on the politicalization of antitrust enforcement, we should focus on fixing our problems at home first and foremost.

With respect to concerns about what is happening abroad in the extent to which there's discrimination, most of the cases that are being addressed with respect to European antitrust enforcement have very close parallels to exactly the same kind of cases that are being brought in the United States by Republican administrations, as well as Republican State Attorneys General, as well as private parties? You can go down the list and look at what the European cases are and then find parallels in the United States.

Mr. RASKIN. You've taught both international antitrust and domestic antitrust for decades at Notre Dame Law School and other places. Can you put in just a common parlance what it means to American citizens, American consumers, and small businesses, if we depart from strong antitrust enforcement and instead let the whole system be overrun by insider influence and big money?

Mr. ALFORD. Well, just last month the Rasmussen poll had a survey of whether or not American people support vigorous antitrust enforcement and the results were overwhelming. Overwhelming American support for vigorous antitrust enforcement. What we fear

and what we think is happening is that rather than having cases decided on the merits there are cases that are being resolved based on political relationships. When that happens there is a corrupting influence that happens throughout the government.

The risk is real that without the contributions of State Attorneys General, private litigation, or careful judicial oversight that the good work the Antitrust Division is trying to accomplish, that Gail Slater is trying to accomplish will not be possible.

Mr. RASKIN. Again, if you would break it down for us. I am talking about the original principles of antitrust. If we allow for greater and greater concentration, consolidation of corporate power, and control over markets, what does that mean to consumers in terms of prices? What does it mean to workers in terms of wages? What does it mean for the possibility of other businesses to enter into the competitive sphere?

Mr. ALFORD. Sure. Obviously, if there's not vigorous antitrust enforcement, then the pocketbook issues that are central to the American people with respect to housing, healthcare, agriculture, entertainment, and the whole variety of different industries that are critical to the American people—all of the prices will go up. There will be lower quality, less innovation, and fewer entrants.

Mr. RASKIN. Very good. I yield back to you, Mr. Chair.

Mr. FITZGERALD. Thank you, the gentleman yields back. I now recognize the gentleman from Texas for five minutes.

Mr. GOODEN. Thank you. Mr. Portuese, based on your work on digital competition policy, what have we learned about how broad ex ante platform regulations such as the DMA affect the speed at which new technologies reach the market, particularly for small- and medium-sized tech firms?

Mr. PORTUESE. Thank you very much. This ex ante type of relations is what I call fundamentally precautionary. In Europe we have these principles, precautionary principles which stop acting, developing products and services. Even if there's no actual harm, just very remote, what we call hypothetical risks of something happening leads to prohibition.

What we've learned from these ex ante type of relations is that blanket regulation doesn't work in the sense that it's just deterring on innovations and leads to underinvestments. Because companies will spend more time on compliance and counsels and fees trying to understand regulations that are always vague rather than focusing on innovation and deploying products.

I just want to agree with Representative Raskin when he said we need stronger enforcement. Yes, but that's why we don't need regulations. Regulation is the opposite of enforcement. The greater risks for potentially corruptions or risks for consideration are regulatory capture, is the risk of crony capitalism. What we have is the greater amount of the number of regulations, the more we have these kinds of regulation dialogs between these large companies and the regulator behind closed doors.

I prefer a system based on U.S. antitrust where there's enforcement, in quote, "that is public and is based on evidence and effects-based analysis rather than regulatory potential capture between closed doors, between a regulator, and a company where each com-

pany is treated differently according to their political favors or others.

We need to reinforce the role of the courts and the judicial principles that are underlying the antitrust history.

Mr. GOODEN. I guess I have also heard that these laws are designed by foreign governments to kneecap American companies so that the local companies who are effectively exempted can get ahead. My question to you finally then is how many of these domestic companies are subject to these new rules and can you explain how these foreign legislatures have carefully, or not carefully, designed their regulations to target American companies?

Mr. PORTUESE. It's very interesting because the DMA was capturing most of the U.S. companies. Now, it's all U.S. tech companies. *Booking.com* was the only Dutch European companies that could have been included into the DMA. Now, *booking.com* has a holding in Connecticut. Can be considered as an American constitution. TikTok was regulated. Now, with the sale of TikTok we can consider TikTok as a U.S. company when it comes to U.S. All companies under the DMA are somehow American companies.

Sometimes those regulations in other parts of the world, try to include a local company to avoid overt discriminatory intent of those regulations, because otherwise they're going to be sued before the world trade organizations. That doesn't mean that in effect they are disproportionately targeting U.S. tech companies. To include one company out of seven or eight and the rest are all Americans, the point is digital sovereignty and to target U.S. tech companies.

Mr. GOODEN. Thank you. Oh, sorry. Mr. Singham, go ahead.

Mr. SINGHAM. Just wanted to come back very quickly on that question with regard to Korea specifically. It relates to something that Congressman Raskin also said, which is this issue of cronyism that my colleague mentioned.

What you see in Korea is that the U.S. companies and the U.S. platforms are targeted through the regulation and through the operation of the KFTC and some of the things that it does which violate the principles that were talked about here in terms of predictable enforcement, due process, and competition on the merits that Congresswoman Balint mentioned.

What's happening is that the Chinese firms are linked to the Korean chaebol. They escape virtually all enforcement activities and it's the U.S. companies that are in the target crosshairs. That is why I made the comments I made about delivering by this approach or delivering the markets in these sort of battleground countries to the China model and to Chinese companies.

Mr. GOODEN. Thank you. I appreciate that. I yield back.

Mr. FITZGERALD. The gentleman yields back. I am going to recognize the gentlewoman from Wyoming for a unanimous consent request.

Ms. HAGEMAN. Thank you. I would like unanimous consent to enter into the record an article by Axios, titled, "Scoop: U.S. intelligence intervened with DOJ to push HPE–Juniper merger." This article explains that it was not corruption, but U.S. national security interests against Communist China—owned Huawei that led to the HPE–Juniper settlement.

Mr. FITZGERALD. Without objection. I now recognize the Ranking Member of the Committee today.

Ms. BALINT. That is all right.

Mr. FITZGERALD. Ms. Balint.

Ms. BALINT. Today. Thank you so much to the witnesses for being here. I very much appreciate it.

Professor Alford, you have been such an important voice on antitrust, and I am so grateful that you are here because the work that we have to do going forward has to be bipartisan. The majority argues that antitrust rules for dominant big tech in other countries are discriminatory, and they claim it is anti-American. We don't have any jurisdiction over foreign countries. What this hearing is really about, and as my Ranking Member has said, "is about trying to stop longstanding bipartisan efforts to hold big tech accountable."

Professor Alford, does the EU's Digital Markets Act resemble bills that this Committee advanced in the 117th Congress?

Mr. ALFORD. Yes, it does. There was a whole spate of bills, particularly in 2022, that addressed concerns about these different monopoly abuses in a whole variety of different sectors. Those bills were bipartisan in nature. They were voted out of Committees, but with supermajority numbers. Senators Grassley, Blumenthal—Senators Grassley and Lee and others like that were very, very prominent proponents of those bills.

Ms. BALINT. Yes, They still support—

Mr. ALFORD. They would have had a very good chance of passing, but for the fact that Chuck Schumer did not present them to the floor.

Ms. BALINT. This is what we have talked about on this side, it is what I talked about in my opening statement, that it is both parties, Members of both parties that are holding up progress on this.

Does antitrust enforcement help smaller tech companies?

Mr. ALFORD. Antitrust enforcement is critical to the success of small- and medium-sized companies. If we do not have a way to bring enforcement actions against monopoly abuse, then the companies that are trying to compete with those big-tech companies are going to have an incredibly difficult time to survive.

The central focus of antitrust is not protecting other competitors. It's protecting the American consumers. Obviously, the American consumers want vigorous opportunities to choose between different products from different companies and therefore it inures to the benefit of the consumers when little and medium tech companies are thriving.

Ms. BALINT. As you said—you referenced the Rasmussen poll, which is fascinating. It was conducted back in November. You had 69 percent of those polled saying they want the government to do more antitrust enforcement. Only 13 percent of those polled disagreed.

This is what I am hearing from my constituents regardless of party. They feel like they are getting screwed over by big companies that do not have their best interest in mind. Given the framing of this hearing this morning, it seems like the Majority would like for foreign governments to stand down and not act even when American tech companies break the rules.

Let's think about the inverse of that. Should we only enforce our laws against U.S. companies, or should we also address bad conduct in the U.S. by foreign companies, Mr. Alford?

Mr. ALFORD. Well, as I said in my written testimony, Federal enforcers are acting appropriately when they investigate foreign companies that are abusing monopoly power, engaging in price fixing, or seeking to merge in a manner that is anticompetitive. If foreign competitors are harming United States markets with anticompetitive conduct, I assume, I hope that Federal enforcers will not hesitate to act.

When I was at the Department of Justice in the first Trump Administration and in the second Trump Administration, we saw numerous examples of foreign companies that were engaging in anti-competitive conduct. We did not hesitate to go after those companies if we thought that there was a serious problem.

Ms. BALINT. You go where the evidence is?

Mr. ALFORD. Yes, absolutely.

Ms. BALINT. As you said—and this is one of the things that I really appreciate about you and your integrity is it is even-handed justice. You go where the facts take you.

I wanted to give you time to respond to my colleague from Wyoming about the national security concerns in the HPE–Juniper merger. Do you have something that you would like to say on that?

Mr. ALFORD. Yes. It's interesting. The suggestion that this is really about national security is belied by the fact that it was never presented to the Antitrust Division as a serious argument. Obviously, it would have been the kind of thing that we would have considered had it been considered relevant.

The Department of Justice right now in the hearings in the Tunney Act in California before the Federal court have not mentioned one time the national security arguments. It's not even in any of the arguments. They recognize that's not the kind of thing that should have been a factor in the determination of whether or not to settle that case.

Ms. BALINT. I really appreciate that. It is my understanding it only came that argument only came in a press conference when they knew that cameras would be there. It was a hook for the press. I really thank you for your time. Again, this requires bipartisan efforts and I am ready to do the work with anyone on the other side that is willing to work with me.

Mr. ALFORD. Antitrust enforcement is a bipartisan issue.

Mr. FITZGERALD. The gentlewoman's time is expired.

Ms. BALINT. Yield back.

Mr. FITZGERALD. The gentlewoman yields back. I now recognize the gentlewoman from Wyoming for five minutes.

Ms. HAGEMAN. Professor Portuese, you have said that the Digital Market Act and similar legislation harms consumers. I am especially concerned about harm to children. For example, Apple has written that DMA compliance creates new exposure to harmful apps citing that for the first time pornography apps are available on iPhone from other marketplaces. Can you speak more about how these foreign laws are creating this issue and the implication for child safety?

Mr. PORTUESE. Thank you very much for the questions. The positive thing about interoperability is that it can create more choices for the consumers, but the negative things is when you have blanket regulations that force interoperability, force other operators to accept business users that are not the most legitimate ones. This is the type of regulation that makes interoperability and forced to accept different apps, different app stores that lead to really child safety issues.

The question is: How can we have those tech platforms create in a way that promote choice, but for quality bringing new actors, new business users in these digital systems that promote quality? We don't want to undermine children's safety. These regulations are blanket regulations that force any actors who have any claim to enter into this digital legacy system. That's why we end up with potentially those apps in our iPhones where we haven't asked for it.

It's a case for—it demonstrates that we need a case-by-case approach to every kind of complaint or every competition concern. We cannot have blanket regulations where we treat equally legitimate U.S. firms and Chinese malware and spyware, or Russian's malware and spyware. These regulations almost treat equally all these actors. That isn't acceptable because we don't have a way to correct, to bring efficiency defense, or innovation defense. These defenses are explicitly prohibited in those types of regulations.

Ms. HAGEMAN. OK. Mr. Singham, you seem to have something you would like to offer with regard to this discussion.

Mr. SINGHAM. Yes, thank you, Congresswoman. Because of your question goes to the heart of the issue, which is much of this regulation is based on the assumption that these platforms are sort of like government—owned utilities that have monopoly power, or total power, and you must therefore impose on them duties to deal and you must impose on them through the operation of things like the Essential Facilities Doctrine.

Now, in the U.S. we have learned that the Essential Facilities Doctrine duties to deal should be sparingly used and only when the facility is truly essential. Leaving aside the issues of market power, durability of market power, and the size of the market that Congressman Issa mentioned, the fact that these are not in fact government-owned entities means that if you impose this kind of duty to deal on them, you are going to get all these unintended consequences. That's why the regulatory approach, the ex-ante regulatory approach is not a very good approach.

Mr. HAGEMAN. What is the solution?

Mr. SINGHAM. Well, the solution is the proper and sound implementation of competition law. What I'm concerned about is the way the competition agencies in Europe, and Korea particularly, and other countries are approaching it is they are imposing those same duties on these companies through competition law.

I am also concerned about the way the competition law is being enforced in places like Korea, in particular, where we see enforcement that is unpredictable, harassment of witnesses. You see a whole range of procedural irregularities. They're actually captured in our economic model, which is why the amount, the cost to the U.S. economy is so great. When you talk about the affordability cri-

sis, it's around \$2,000 per American. That is the cost of the bad regulation and the bad approach to competition policy.

Ms. HAGEMAN. Coming from Europe? Coming from these—

Mr. SINGHAM. In other countries.

Ms. HAGEMAN. Coming from these other countries?

Mr. SINGHAM. That \$2,000 is just Korea by itself.

Ms. HAGEMAN. Just Korea?

Mr. SINGHAM. The EU and all the other countries is going to be much greater. There's real damage to the U.S. economy that is being done by the lack of proper enforcement of competition policy that flies in the face in the case of Korea from the U.S. operation and implementation of antitrust law, and even the European operation of antitrust law. The complaints that people make about Korea are the same complaints people made about the EU's enforcement in the 1990s and 2000s.

Ms. HAGEMAN. Well, I appreciate that. Obviously, we need to have a much more detailed discussion about these particular issues, but I am out of time.

Before I yield back, I would like unanimous consent to enter into the record a speech by Professor Alford that he delivered in Beijing in May 2016, in which Professor Alford compared President Trump to Senator Bernie Sanders and complained that President Trump might use trade to stand up to China.

Mr. FITZGERALD. Without objection.

Ms. HAGEMAN. With that, I yield back.

Mr. FITZGERALD. Without objection. The gentlewoman yields back. The gentleman from California is now recognized for five minutes.

Mr. CORREA. Thank you, Mr. Chair.

First, let me welcome and thank the witnesses for being here today. If I can, I would like to ask each and every one of you a yes or no question.

Mr. Alford, are you for corruption?

Mr. ALFORD. No, I'm not.

Mr. CORREA. Mr. Auer, are you for corruption?

Mr. AUER. No.

Mr. CORREA. Mr. Portuese?

Mr. PORTUESE. No.

Mr. CORREA. Mr. Singham?

Mr. SINGHAM. No.

Mr. CORREA. I want to also distinguish between antitrust and overregulation European style. European overregulation, there is really only one winner. That is the Chinese economy. There are some in the U.S. who have embraced the European Union philosophy of big is bad, irrespective of the consequences. I want folks to remember two proposed mergers: Spirit Airlines and iRobot. Both of those mergers were opposed. They didn't happen. I consider them both self-inflicted wounds. Today instead of Amazon a Chinese rival robot company took over iRobot.

I am from California. The fifth largest economy in the world today. These big firms we are talking about are mostly California firms. They are our biggest taxpayers in California that support our social programs, support education, create millions of jobs in California, and they are responsible for innovation. Silicon Valley

and most of the places in the State of California. I believe the European approach puts a big target on the backs of these firms, American companies.

The problem today is not only are U.S. firms being threatened by European regulation, other self-inflicted wounds is what we are doing to them here in the U.S. Crushing tariffs. Slashing research funding. Zeroing out research funding at our universities. Of course, our new immigration policies that have essentially stopped the immigration of the world's best and brightest to America.

Mr. Auer, I am going to start out with you, if I can, with the little time I have. Explain to me the concept of U.S. gatekeepers. What is that?

Mr. AUER. Under the DMA the European—

Mr. CORREA. European regulation.

Mr. AUER. Yes, under the European Digital Markets Act the European Commission has the power to designate as gatekeepers essentially companies that have very large revenue and a very—

Mr. CORREA. Those are companies that have been designated from all over the world that are gatekeepers?

Mr. AUER. It is essentially the U.S. tech companies.

Mr. CORREA. U.S. tech companies? When they go after U.S. firms that have—when Europeans go after U.S. firms those penalties, are those based on fines and revenues of Europe, or the whole company worldwide revenues?

Mr. AUER. For competition it's based on the European revenue with a cap being set based on their global revenue. Under the DMA it's not yet clear.

Mr. CORREA. You talked about your children's future. What did you mean by that?

Mr. AUER. Europe's overregulation. There is mounting evidence that Europe's overregulation is causing huge harm to its economy. For the GDPR for instance the evidence is clear. I am worried that Europe, if no one pushes Europe in the right direction, will continue down this path, and it's the path to poverty.

Mr. CORREA. Saying goes that U.S. innovates, Europe regulates, and the Chinese emulate. Close your eyes and think about what the world is going to look like in 5–10 years if we go down the European approach.

Mr. AUER. It's a very scary thought. If you're in Europe and you see on the one hand, you're falling behind the technological frontier compared to U.S., antagonist jurisdictions like China are—

Mr. CORREA. My concern is that we are looking at antitrust, we are looking at competition with a lens of maybe 10–15 years ago. Today the competition is not only American firms. It is international competition as well. AI and other areas of high tech. Competition is fierce. Investment is tremendous. Europeans, they are falling behind. American firms are leading the way. The Chinese firms are right with us.

What is the significance of winning these high-tech competitions to the American economy, the American worker, to the American taxpayer? Mr. Portuese?

Mr. Singham, you had something to say?

Mr. SINGHAM. In sort of the cost to the U.S. personally, the average American family, of the interpretation of antitrust policy in

these countries and the regulations that come after the competition world, the competition—derived regulation, if you'd like, it's about—and they're always cast as fair competition, our Korea study alone says 525 billion in over 120 years to the U.S. economy. These are very significant numbers.

Mr. CORREA. We are essentially losing at long-term economic job loss?

Mr. SINGHAM. Yes. Job loss, loss of money in the affordability crisis. As Mr. Auer said, "the European economy and the countries that do this are the ones that lose arguably the most." Our Growth Commission—

Mr. CORREA. I am really more focused on the California, U.S. jobs than I am the Europeans.

Thank you, Mr. Chair. I am out of time. I appreciate your indulgence.

Mr. FITZGERALD. The gentleman yields back. I am now going to recognize myself for five minutes.

Thank you, Mr. Correa. I think you got us kind of back on the right track here for what we were trying to accomplish today, which was just to have a discussion and expose what is going on and has started in Europe, which some Members of this Committee were exposed to on a congressional trip that happened this past summer in Brussels, then in London, and in Dublin where it was very clear to me after meeting with those that had created the DMA or similar types of bureaucratic structures that there is eight major platforms. Seven of the eight were created here in the States, and many of them in Mr. Correa's district.

All I had to do was hear the first conversation with the counsel, with the attorney for Apple who said the issue is—and very frustrated by this, is that these European commissions that are creating these DMAs it is a situation where it is a moving target always. Always a moving target.

Once they think they are in compliance they will get another letter saying you are in violation, and oftentimes a violation that quite honestly, they disagree with. Then, beyond that what you would see is this level of frustration on something that we just spoke about, which was how they were going to levy fines on these American corporations. Two percent of global revenue. It is ridiculous what they are actually doing.

In the 27 countries of the EU, who are now floundering on many different fronts—and there is always this affinity with the EU, but quite honestly, they are not able to compete with the States. What they are doing is trying to carve out a space for some of these platforms that may have had a little bit of success, or small successes, so that they can try and flourish. Well, that is not the way it works. It is not going to work that way.

That is what I was hoping this discussion would be about today. We have a real problem with the EU on this front. It is up to us as the Members of Congress. I know the administration has taken a lot of bullets here today, but it also is a responsibility for the Executive Branch to do the same thing. That may have been missed here today.

Mr. Singham, I want to ask you specifically if I could to move on. The Korea Fair Trade Commission, which we are now con-

cerned, is kind of doing the same thing that we see in Europe. Can you give us—because you have estimated that South Korea’s targeting of American companies could cost us trillions in economic costs. Then, South Korea could potentially lose out on as much as \$450 billion if it continues down the same road. What is your overall perspective about what is going on in Korea when it comes to fair trade right now?

Mr. SINGHAM. Chair, what you’ll see in Korea is—there’s one element of this, which is the DMA, the European Digital Markets Act is the model that is sort of being spread around the world. Korea is a particular battleground. Japan, Brazil, Australia, the U.K., and others are following suit. It’s based on a fundamentally flawed model that we’ve described earlier here.

What the Korean case shows is it’s not just the regulation approach to digital platforms. It’s also what the KFTC is doing. Our economic model that we wrote about in this book actually picks up these procedural irregularities.

The lack of predictable environment that you referred to with the counsel, I think from Apple you mentioned, that sort of thing is incredibly chilling because what happens is companies—they don’t know what they can do. Competition is not a tea party. It is a brutal exercise. Actually, the efficiency gains and the wealth creation that comes from competition comes because of that really brutal competitive process. It isn’t a tea party.

When these companies don’t know what they’re supposed to do, they pull their punches and they don’t do anything. They don’t innovate. They don’t develop. That’s what you’re seeing in Europe and that’s what you’re seeking in Korea. That’s why the cost is so high.

Mr. FITZGERALD. Very good. Thank you. Thank you very much. I am going to now recognize the gentleman from Illinois for five minutes.

Mr. SINGHAM. Thank you, Chair Fitzgerald.

Donald Trump campaigned on reigning in the power and influence of the tech industry. He said he would no longer allow the industry to, quote, “run wild stifling competition in our most innovative sector.” He appointed regulators who talked about a big game about breaking up tech companies and smashing their cartel. It turns out that Trump was not running to be Commander in Chief. He was running to be lobbyist in chief for big tech.

There was a reason why the tech CEOs were grinning in the front row at Trump’s inauguration. They had them in their pockets. They knew that he would sell out American workers and consumers. They were right. As part of his betrayal Trump has turned the State Department and USTR into lobbying arms for big tech. His administration uses industry talking points and abuses trade authorities to bully countries over tech regulation.

Let’s be clear about what Republicans are empowering big companies to do: Favoring their products on the platforms they own, forcing users to take bundled products, refusing to make their products compatible with their competitors, surveilling users and denying them access to their own data.

Where is the popular support for any of this? Since when did MAGA voters want their elected officials to fight for big tech’s right

to screw them over? This isn't about innovation. The big-tech companies are in the business—aren't in the business of innovation. They are in the business of extracting our data and selling it to advertisers at the expense of labor, privacy, and consumer rights. They are paying politicians like Trump and his loyalists in Congress to let them get away with it.

The truth is Trump's betrayal of the working class and his corrupt embrace of big tech is not a break from U.S. policy. It is a continuation. This is just the latest example of the U.S. defending corporate abuses even if it comes at the price of undermining democracy at home and abroad.

This corrupt alliance is why our government negotiates trade agreements like NAFTA, to prioritize corporate interests over workers. It is why we prop up autocratic leaders who back U.S. corporate interests even if they support terrorism or drug trafficking, too. It is why we fail at effectively regulating industries even as their practices harm workers, consumers, and communities at large.

When Trump used the age-old playbook campaigning on big tech regulation then selling people out, he got caught in a lie. He is not America's first. He is corporate America first. Now Trump is angry that other countries are actually trying to do what he promised to do.

Mr. Alford, thank you for being here today. In your opinion does threatening other countries with tariffs and sanctions over their digital regulations without evidence of discrimination against U.S. companies help or harm the movement to address big tech's monopoly abuses?

Mr. ALFORD. It does nothing to address the monopoly of abuses in the United States. The litigation that was started in the first Trump Administration has continued with the State Attorneys General, including many Republicans is the best way to deal with that concern.

Mr. GARCIA. Thank you. Mr. Chair, I yield back.

Mr. FITZGERALD. The gentleman yields back.

I would like to ask unanimous consent to enter into the record a speech by Professor Alford that was delivered in Beijing in August 2018. Also, unanimous consent to enter into the record a speech by Professor Alford that was delivered in Shanghai in August 2017.

I now would recognize the Chair of the Whole Committee.

Chair JORDAN. Thank you, Chair. Mr. Singham, the Ranking Member said, "the United States needs to be more like Europe." Do you agree with that?

Mr. SINGHAM. No, I think Mr. Auer—

Chair JORDAN. That would be the dumbest thing ever.

Mr. SINGHAM. Yes.

Chair JORDAN. How about you, Mr. Portuese? You think we should be more like Europe?

Mr. PORTUESE. No, I don't. We should—

Chair JORDAN. Wasn't it about like 20 years ago the GDP in the European Union, which was like 400-and-some million people, and the GDP in the United States with like 300-and-some million peo-

ple was roughly the same. Right? Mr. Portuese. Yes. Yes, that's right.

Chair JORDAN. What is it today?

Mr. PORTUESE. It's one-third higher in the—

Chair JORDAN. That is even accounting for Brexit, right?

Mr. PORTUESE. Right. In the U.K.—it's actually 40 percent lower in the U.K.—

Chair JORDAN. You got a Member of Congress saying we should be more like Europe. That may be one of the craziest things I have ever—what do you think, Mr. Auer? Should we be more like Europe?

Mr. AUER. No, I don't think so.

Chair JORDAN. Yes. Not just overall, but with a digital marketing act that we are going to—how many big-tech companies have, by the way?

Mr. AUER. None.

Chair JORDAN. Zero. Zero. We want to take this—what, we got like seven humongous tech companies that have done amazing things. They are not all perfect. I went after them before—for goodness sake, they shadowbanned me, we found out a few years ago. I went after them. They are not perfect, but they are amazing.

What does Europe want to do? Oh, we can't create them because we got layer of bureaucracy on top of bureaucracy. Our GDP is like flat while America's is growing like crazy. Let's go shake down the American tech industry.

Is that right, I see you shaking your head, Mr. Portuese. Is that right?

Mr. PORTUESE. The main thing about competition is that we need dynamic competition. Europe is frozen into a static competition where we preserve the status quo. The core of the competitive process is competition on the merits where there's disruptions and technological innovations. It's not about protecting the current incumbents and protecting the—

Chair JORDAN. We need choice in competition to get growth into—and good things for consumers. The Chair makes this point better than anyone, but when we were over there this summer in Europe, we met with the app creators in Europe. They told us, they said, you know what, if you got a new app, you know where you go? You don't go to Europe. You go to the United States—frankly, I was surprised, they say you go to the United States or Dubai. You don't go to Europe. Because you can't get—there is so much regulation you can't do it. It is ever scarier, because it's not just the Digital Market Act. It's also the Digital Services Act.

Mr. PORTUESE. Right.

Chair JORDAN. They get into the censorship thing.

Mr. PORTUESE. Yes.

Chair JORDAN. Maybe that is why Democrats want us to be more like Europe, so they can censor what Americans are saying. I don't want that. It is just a matter of time before it happens because we had the irony of how the Good Lord works. It was amazing. We had Nigel Farage testifying. That every week, the day before he came Graham Linehan, a comedian, issues a tweet while he is in Arizona—so an Irish citizen does a tweet in Arizona, flies to Heathrow and gets arrested for what he tweeted here. He is not even a cit-

izen of the U.K. Now, that is the online—but it is the same as the Digital Services Act.

Mr. PORTUESE. It's part of the same package. The Digital Services Act is one leg; the DMA is the other leg.

Chair JORDAN. Yes.

Mr. PORTUESE. More generally there's the cloud out. There's also the EU AI Act, which is coming. It's part of what they call a legislative package. It's not one regulation or the other. Those come by packages of regulations.

Chair JORDAN. Such a deal. I am going to let—I know Mr. Singham and Mr. Auer want to get in here, but that is such a deal. We can censor American speech, censor European speech, and censor American speech. If they don't do what we want them to say, we can shake them down to get a ton of money under the DMA. Wow. Such a deal.

Mr. PORTUESE. Yes.

Chair JORDAN. We have Members on the other side saying we should do that. We should embrace that. Mr. Singham I will come to you.

Mr. SINGHAM. Yes, I was just going to say with respect to Europe, it's not working that well over there, so we certainly don't want it over here. It's very clear. If you look at the data in the last 25 years, the European economies, particularly Western European economies—the central Eastern Europeans are doing slightly better—have absolutely stagnated. In fact, in many cases some of the member states, Germany for example, have been in a contraction phase. Not just GDP per capita is going down, but overall GDP is going down.

This is why it is so troubling for European citizens, because their prospects, their growth prospects are looking extremely bad at the moment. This is something they've done to themselves. This is not something that's been imposed from without. It's the regulatory approach of the Europeans of which the DMA and the DSA are examples that have led to this crisis in Europe.

Chair JORDAN. Well said. Well said. I am going to give Mr. Auer the last 30 seconds.

Mr. AUER. America has one superpower above all. It's faith in free markets. In our space that leads to evidence—based antitrust that tries to ensure that consumers get the best deal and that puts aside dangerous autocratic preferences of enforcement and looks at the data quality only, dispassionately.

Mr. PORTUESE. Europeans recognize their overregulations, as Chair Fitzgeralds mentions. We have the Draghi report. If you read the Draghi report in Europe, it says that we killed innovation in Europe by European regulations. Europeans themselves recognize their overregulated. That's why now they posed the EU AI Act. They know they're killing the regulations.

It's not like there's no diagnosis. The diagnosis is here. Why would you emulate and copy something that they themselves recognize as broken?

Chair JORDAN. Great question. Great question. I yield back to the Chair and thank you for this hearing.

Mr. FITZGERALD. The Chair yields back.

Ms. BALINT. Mr. Chair, I have some unanimous consents to enter into the record.

Mr. FITZGERALD. I recognize the Ranking Member.

Ms. BALINT. From *Common Dreams*, “Big Tech’s Most Effective Lobbyist, Jim Jordan, Is Temporarily Constrained.” From the *Washington Examiner* “Swamp undrained: Trump—cozy lobbying firms,” from *National Politics*, “How Big Tech Powered A Coup,” and the *Economic Policy*, “Trump is Big Tech’s Personal Lobbyist.”

Mr. FITZGERALD. Without objection.

Ms. BALINT. Thank you, Mr. Chair.

Mr. FITZGERALD. I also asked unanimous consent. A letter from the U.S. Chamber of Congress, dated December 2015; a letter from the Consumer Choice Center, dated December 11, 2025; a letter from NetChoice, dated December 15, 2025; a letter from the App Association, dated December 2025; and a statement from Alden Abbot and Satya Mara of the Mercatus Center at George Mason University.

Without objection.

Ms. BALINT. Mr. Chair. I have one more, please.

Mr. FITZGERALD. The gentlewoman is recognized.

Ms. BALINT. I ask unanimous consent to enter into the record Professor Alford’s whistleblowing speech from April, “The Rule of Law Versus the Rule of Lobbyists.”

Mr. FITZGERALD. Without objection.

Ms. BALINT. Thank you, Mr. Chair.

Mr. FITZGERALD. The gentlewoman yields back.

That concludes today’s hearing. We thank our witnesses for appearing before the Committee today.

Without objection, all Members will have five legislative days to submit additional written questions for the witnesses or additional materials for the record.

Without objection, the hearing is adjourned.

[Whereupon, at 10:57 a.m., the Subcommittee was adjourned.]

All materials submitted for the record by Members of the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust can be found at: <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=118753>.

