February 04, 2026

The Honorable James Jordan
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, District of Columbia 20515

The Honorable Jamie Raskin
Ranking Member
Committee on the Judiciary
United States House of Representatives
Washington, District of Columbia 20515

RE: Committee hearing, "Europe's Threat to American Speech and Innovation: Part II"

Dear Chairman Jordan and Ranking Member Raskin,

Thank you for the opportunity to submit this statement for the record. ACT | The App Association represents small and medium-sized technology companies that develop software and connected devices powering the modern digital economy. ACT represents a domestic ecosystem valued at approximately $1.8 trillion, supporting 6.1 million American jobs.[1] ACT members are innovators that create the software bringing your smart devices to life. They also make connected devices that are revolutionizing healthcare, agriculture, public safety, financial services, and virtually all other industries.

Because our members often rely on digital platforms including curated online marketplaces (COMs) to reach customers, they are directly affected not only by domestic competition policy, but also by foreign regulatory frameworks that seek to reshape COM distribution services. For this reason, ACT appreciates the Committee's attention to the European Union's Digital Markets Act (DMA) and the growing evidence that its design and implementation are producing consequences well beyond Europe's borders. This statement focuses specifically on the DMA, which presents the most direct and immediate structural threat to innovation for small U.S. technology businesses operating globally.

While framed as a competition law targeting a limited number of large firms, the DMA is increasingly functioning as a structural regulatory model that supplants experts' decisions about how digital products are designed, secured, and deployed globally with those of regulators. And small businesses that lack the resources to absorb regulatory uncertainty, compliance costs, and degraded platform functionality feel these effects most acutely. For these reasons, we led a coalition expressing support for the Committee to advance the *Protect U.S. Companies from Foreign Regulatory Taxation Act* (H.R. 4278). Among other things, the legislation would prohibit U.S. federal courts from enforcing orders issued

[1] ACT | The App Association. *State of the App Economy.* (2023), https://actonline.org/wp-content/uploads/APP-Economy-Report-FINAL-1.pdf

under the DMA. Pursuant to comity norms, U.S. courts often enforce foreign orders issued under typical, nondiscriminatory domestic legal frameworks. However, we believe the United States must oppose enforcement of fundamentally discriminatory frameworks like DMA within American borders. Policymakers need to send a clear signal that they support small businesses looking to leverage COMs and other online platforms in order to compete with larger rivals around the world.

Background

The European Commission's (EC) DMA empowers the EU to impose sweeping restrictions on the core platform services (CPS) of "designated gatekeepers" meeting certain criteria. Embedded in the DMA framework is a drawn-out process whereby the EC first designates gatekeepers subject to DMA; then identifies any CPS owned by designated gatekeepers; and finally, translates the various high-level prohibitions and mandates in DMA to each one of the specific CPS controlled by designated gatekeepers.[2] The DMA is particularly problematic for small businesses in the app economy because it either prohibits or threatens key platform management functionalities that small businesses rely on more so than their larger rivals to reach consumers around the world. ACT members widely benefit from three things that leading COMs offer, all of which DMA threatens:

1. ***Built-in consumer trust****.* For software developers, trust is paramount. Take smartphones, for example. Today, many of us take for granted the myriad measures operating systems and app stores take to keep malware and other harmful content off our devices. DMA threatens this paradigm by forcing app stores and operating systems to roll out the red carpet for all comers, including bad actors. As a result, consumers will rationally steer away from startups and small developers they've never heard of (our members) and toward larger, more established rivals that can spend millions on marketing and advertising annually (some of which support DMA).

2. ***Off-loading overhead****.* App stores and other COMs currently provide bundled service offerings at lower costs than if the services were cobbled together separately. App stores and other COMs also have progressive fee structures that charge small business developers far less for distribution than larger companies. DMA outlaws these progressive fee structures as well as the offering of complementary distribution services and the day-to-day marketplace management activities that small businesses disproportionately rely on to compete with larger rivals.

3. ***Instantaneous access to global markets****.* App stores and other COMs currently enable worldwide app distribution. Discriminatory frameworks like DMA threaten to

[2] EUROPEAN COMM'N, THE DIGITAL MARKETS ACT: ENSURING FAIR AND OPEN DIGITAL MARKETS, available at https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en.

balkanize distribution, imposing government-directed marketplace management regimes that start and stop at national or continental borders.

The DMA Represents a Departure from Established Competition Principles

For our EU member companies who want to succeed through ingenuity and innovation, the DMA is a major brick in a growing wall of regulation, surmountable only with the help of compliance attorneys. Facing economic warning signs, the EC has doubled and tripled down on regulating technology markets early and often (*ex-ante*), rather than responding to demonstrated systemic harms (*ex-post*). The DMA is distinct from traditional antitrust enforcement in both its structure and operation. Rather than addressing specific conduct shown to harm competition or consumers, the DMA imposes broad, *ex-ante* obligations on designated firms based on size and status alone. These obligations apply irrespective of whether the covered conduct is procompetitive, efficiency-enhancing, or beneficial to consumers.

Recent experience undercuts the claim that DMA-style bright-line mandates meaningfully reduce enforcement costs or increase legal certainty. In practice, disputes over app-store "anti-steering" illustrate that rigid, *ex-ante* rules can generate prolonged interpretive battles that spill over onto developers' planning and investment decisions. We are two years since the DMA has gone into effect, and there are still key compliance questions that remain contested, including what conditions and fee structures are "permitted" under the anti-steering mandate, with ongoing regulator–firm negotiations and shifting expectations that create persistent uncertainty for the businesses the law purports to protect.[3]

In the United States, competition law has long been grounded in case-specific analysis, economic evidence, and remedies tailored to demonstrated harms. By contrast, the DMA establishes bright-line prohibitions and mandates that are untethered from market realities and enforced through a highly discretionary administrative process. This approach substitutes regulatory control for competition on the merits and introduces persistent uncertainty into markets that depend on rapid iteration and technological integration.

It is no secret that this regulatory environment has led to economic stagnation, depressed capital access for startups, and produced comparatively few domestic champions in global tech markets. Over the past decade-and-a-half, the U.S. gross domestic product (GDP) surged from roughly equal to the Eurozone's in 2011 to about 1.5 times its size in 2024.[4] While experts quibble over the details, many point to faster productivity gains in

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[3] *See* Satya Marar, *The Blind Spots of Brightline Rules: The DMA and Anti-Steering,* TRUTH ON THE MARKET (Feb. 02, 2026), *available at* https://truthonthemarket.com/2026/02/02/bright-lines-blind-spots-and-the-cost-of-anti-steering/; Satya Marar, *Brightline Rules and Case-by-Case Courts: The DMA and Epic v Apple,* TRUTH ON THE MARKET (Feb. 02, 2026), *available at* https://truthonthemarket.com/2026/02/02/brightline-rules-and-case-by-case-courts-the-dma-and-epic-v-apple/.

[4] STATISTICS TIMES, COMPARING UNITED STATES AND EUROPEAN UNION BY ECONOMY, https://statisticstimes.com/economy/united-states-vs-eu-economy.php (2025).

the United States due to its far larger technology investment and adoption rates during this period.[5]

For small businesses that depend on stable, predictable platform environments to reach customers and innovate, this shift has profound consequences. Recent survey data of small technology companies operating across the EU, United Kingdom, and United States demonstrates that European-style *ex-ante* regulation is already delaying access to frontier AI tools, forcing feature downgrades, and postponing product launches.[6] These delays impose real and measurable costs on small businesses, including lost revenue, foregone efficiency gains, and missed opportunities to compete with global rivals.

In contrast, U.S.-based firms operating under an *ex-post* enforcement model are integrating AI more rapidly, deploying higher-value applications, and reinvesting productivity gains into further innovation. The divergence illustrates a growing transatlantic gap driven not by technical capacity, but by regulatory design choices.

The DMA Has Undermined Privacy, Security, and Trust

As the DMA has moved from theory to implementation, rather than enabling technical capabilities, the Commission has forced access to proprietary features and system-level controls. This has weakened operating system resource management, expanded attack surfaces for malicious actors, and constrained the ability of platforms to enforce security standards that small developers rely on to earn consumer trust.

For small app developers and connected device companies, consumer trust is not a luxury; it is an essential input. When regulatory mandates degrade platform security or force premature disclosure of new features, it is small businesses, not large, well-known brands that suffer first and most severely.

Conclusion

ACT appreciates the Committee's leadership in examining how European digital regulations threaten American innovation and competitiveness. The experience to date demonstrates that while the DMA may promise greater competition, its implementation has instead introduced uncertainty, degraded digital ecosystems, and imposed disproportionate costs on small innovators.

The United States already possesses robust antitrust and consumer protection laws. Preserving an innovation-centered and evidence-based framework will better serve consumers, competition, and the small businesses that drive American technological leadership.

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[5] Patrick Artus, *Economics: Why Europe is falling behind the USA*, POLYTECHNIQUE INSIGHTS (June 11, 2024), *available at* https://www.polytechnique-insights.com/en/columns/economy/economy-why-europe-is-falling-behind-the-usa/.

[6] ACT | The App Association. *The Hidden Cost of AI Regulations for EU and UK Startups and SMEs.* (2025), https://actonline.org/the-hidden-cost-of-ai-regulations-a-survey-of-eu-uk-and-u-s-companies/.

We look forward to supporting the Committee's continued oversight and stand ready to provide additional data and member perspectives as Congress evaluates how best to safeguard competition and innovation in the digital economy.

Thank you for your consideration.

Respectfully submitted,

Graham Dufault
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