

May 14, 2025

The Honorable Ted Cruz
Chairman
Committee on Commerce, Science, and Transportation
United States Senate
Washington, District of Columbia 20510

The Honorable Maria Cantwell
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate
Washington, District of Columbia 20510

RE: Committee hearing, “Winning the AI Race: Strengthening U.S. Capabilities in Computing and Innovation”

Dear Chairman Cruz and Ranking Member Cantwell,

We appreciate your leadership in holding this important hearing to examine regulatory barriers in the artificial intelligence (AI) supply chain and fostering American leadership in the global AI ecosystem. Small businesses are leading the way on AI. As some of the leading consumers, developers, and adapters of AI tools, ACT | The App Association members have a major stake in how policymakers view AI markets. The App Association represents an ecosystem valued at approximately \$1.8 trillion domestically, supporting 6.1 million American jobs.¹ App Association 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. We are concerned that state-level efforts to regulate AI technologies before neither the risks nor the benefits of their use are fully understood could unnecessarily preempt App Association members’ ability to compete in AI markets and leverage the technologies. Similarly, although this sits largely adjacent to your jurisdiction, we note that policymakers and enforcers have cited unwarranted fears of concentration in AI markets² to justify premature antitrust interventions. Lurching forward to condemn AI markets as anticompetitive before they have fully formed casts a long shadow that undermines App Association members’ efforts to attract capital and benefit from the best inputs for their AI-driven offerings.

Parallel to overly aggressive government interventions driven by antitrust concerns are those rooted in consumer protection. Over 1,000 AI bills were pending at the end of most legislative sessions in 2025, signaling a tsunami of incoming regulations, many of them intended to

¹ <https://actonline.org/wp-content/uploads/APP-Economy-Report-FINAL-1.pdf>.

² <https://www.promarket.org/2024/08/27/big-tech-investments-in-ai-startups-do-not-raise-competitive-red-flags/>.

regulate AI models and systems themselves, rather than the risks they pose when used in specific ways. Given these considerations, we would welcome proposals to preempt state proposals and laws that specifically target AI. We do not believe such policies should eliminate the enforcement of state laws of general applicability or that target harmful conduct regardless of whether it occurs with the use of or marketing about AI services. There is no AI-shaped hole in existing laws that prohibit harmful conduct. We believe federal law should not necessarily prevent their enforcement, unless done as part of a separate federal framework addressing privacy, for example.

Ultimately, policymakers should address risks presented by the development or use of AI in various contexts directly and discretely. It is too easy to forget about the risk of American innovators—and the investment that supports them—moving too slowly. But that risk is real, and it is substantial, as the AI race with China intensifies. The over 1,000 AI measures pending in state legislatures greatly increase possibility that AI development and diffusion in the U.S. is unnecessarily hobbled and could take us several steps back from our current leading position on AI.

I. A Snapshot of the Marketplace

Far from being monopolized by a few giants, AI spans a rich mix of players.³ In 2024, AI-focused startups captured about 46 percent of all U.S. venture funding,⁴ a massive increase from under 10 percent a decade earlier. The United States now hosts thousands of AI startups,⁵ more than any other country, backed by hundreds of billions in investment over the past decade. This influx of new entrants has fueled intense competition and rapid technical progress. At every layer of the AI “tech stack” – from hardware (chips, cloud infrastructure) to AI models and applications – multiple firms large and small are vying to out-innovate each other.⁶

Whether viewed as a stack or web, there are several discrete markets involved with the production of AI tools consumers and businesses use. Like building blocks, some of the markets produce elements of the AI “stack” on which others are built, leading many to conceive of AI as a “tech stack.” But as Innovators Network Foundation (INF) Competition and Antitrust Law and Policy Fellow Elyse Dorsey recently observed, the stack acts in many ways more like a web since the product in each layer works best when developed cooperatively with other layers.⁷ Some AI markets like those for foundation model (FM) and large language model (LLM) development appear to be more capital intensive than others,

³ <https://www.forbes.com/lists/ai50/>.

⁴ <https://www.reuters.com/technology/artificial-intelligence/ai-startups-drive-vc-funding-resurgence-capturing-record-us-investment-2024-2025-01-07/#:~:text=AI%20startups%20also%20captured%20a,a%20decade%20earlier>.

⁵ <https://www.voroniapp.com/business/The-US-Leads-the-World-in-Artificial-Intelligence-Startups--1181>.

⁶ <https://actonline.org/2025/01/08/the-ai-ecosystem-dynamic-competitiveand-misunderstood/>.

⁷ Anant Raut, “DeepSeek and App-Leval Competition in AI,” Mar. 17, 2025, *Trust and Trade*, Amer. Bar Assoc. podcast, 37:33, available at <https://trustandtradepodcast.com>.

even with the entry of developers like DeepSeek and introduction of methods that reduce those input costs. Ms. Dorsey further notes that markets tend to undergo expansions and contractions throughout their lifecycles—and that FM and LLM layers of AI appear to be undergoing an expansion.⁸ With so much interest and investment in these areas, she described the markets as concentrated but rather competitive.

Well-capitalized companies competing in these foundational layers in turn helps ensure that small businesses can benefit from a finished product at the top of the stack. Similarly, it is important to understand how innovators in the app economy access FM and LLM models in practice—how are they made useful for the many idiosyncratic and evolving ways businesses in the real world need to put them to use. As App Association member Scott Weiner, fractional chief technology officer and AI lead at NeuEon, noted, small businesses usually demand access to these tools via their cloud service provider (CSP) or similar service providers. Pulling together access to the models, storage, chip capacity, and a variety of complementary services, CSPs make the service work. As Mr. Weiner describes, his small business client was recently able to build a complex digital health app using AI tools in a far shorter timeframe that would have been possible without AI tools and without a means of pulling them together and making them usable, as CSPs do.⁹

Incumbents and startups play on the same field: an incumbent might craft its own AI chips and models from scratch, while a scrappy newcomer zeroes in on a niche market, harnessing open-source models. This varied landscape means that, even for parts of the supply chain that require high capital expenditures, market dominance is fragile. Today's market leaders face constant threats from unexpected angles, where even a tiny chip startup or an innovative open-source breakthrough can rapidly disrupt their footing.

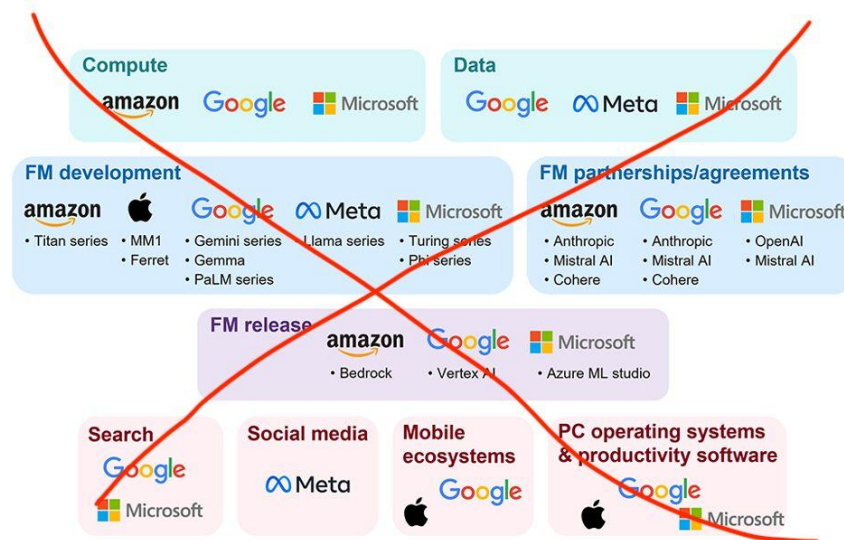
Unfortunately, recent rhetoric from competition authorities seems to ignore these realities, as some have raced to a conclusion that the AI ecosystem is dominated by a handful of companies working to corner the market and entrench their positions. For example, the UK's Competition & Markets Authority (CMA), in its April 2024 report on foundational models expressed concern that incumbent tech companies could heavily steer the direction of AI markets, possibly stifling healthy competition.¹⁰ CMA relies on an arbitrarily selective view of the marketplace, distilled in a now-infamous visual it unveiled at an American Bar Association (ABA) conference, contorted to overemphasize the participation and investment of specific American companies in various layers of the stack / web.

⁸ *Id.*

⁹ *Id.*

¹⁰ <https://www.gov.uk/government/publications/ai-foundation-models-update-paper>.

What the AI Ecosystem ISN'T



However, as shown by the visual below, the reality is that there exists rich complexity and diversity in the AI ecosystem. It is made up of several distinct but interconnected layers, each with a competitive and fast-moving landscape. For example, success of AI startups like Databricks, which recently secured a \$10 billion funding round,¹¹ show the ability of smaller innovators to compete with incumbents. Companies, large and small, contribute across different layers of the AI ecosystem. From hardware and foundation models to generative AI applications, innovation is thriving.

¹¹ <https://www.reuters.com/technology/databricks-secures-62-bln-valuation-ai-focused-funding-round-2024-12-17/>.

What the AI Ecosystem IS



However, these layers don't exist in isolation. Progress in one often sparks breakthroughs in others, creating a dynamic and collaborative environment. For example, AI startup Anthropic recently received a sizeable investment from Amazon,¹² allowing it to use Amazon Web Services' (AWS') advanced cloud computing capabilities to more effectively train and deploy its models.

The legal and regulatory treatment of AI plays a crucial role in shaping its future. Any proposals that target AI technologies or its uses must reflect the realities of the market, not

¹² <https://www.cnbc.com/2024/11/22/amazon-to-invest-another-4-billion-in-anthropic-openais-biggest-rival.html>.

unwarranted fears. History shows that poorly timed or overly restrictive regulations can hinder progress and stifle competition.¹³

We should ensure that newer companies contributing to AI development have the best chance to succeed. To meet this goal, policymakers must recognize the procompetitive role of major firms as important service providers and sources of capital for these entrants. Policymakers need to see the market for what it is: dynamic, decentralized, and full of promise.

II. What Competition Authorities are Missing: Investment is Necessary to Maximize AI's Ability to Serve the Public Interest

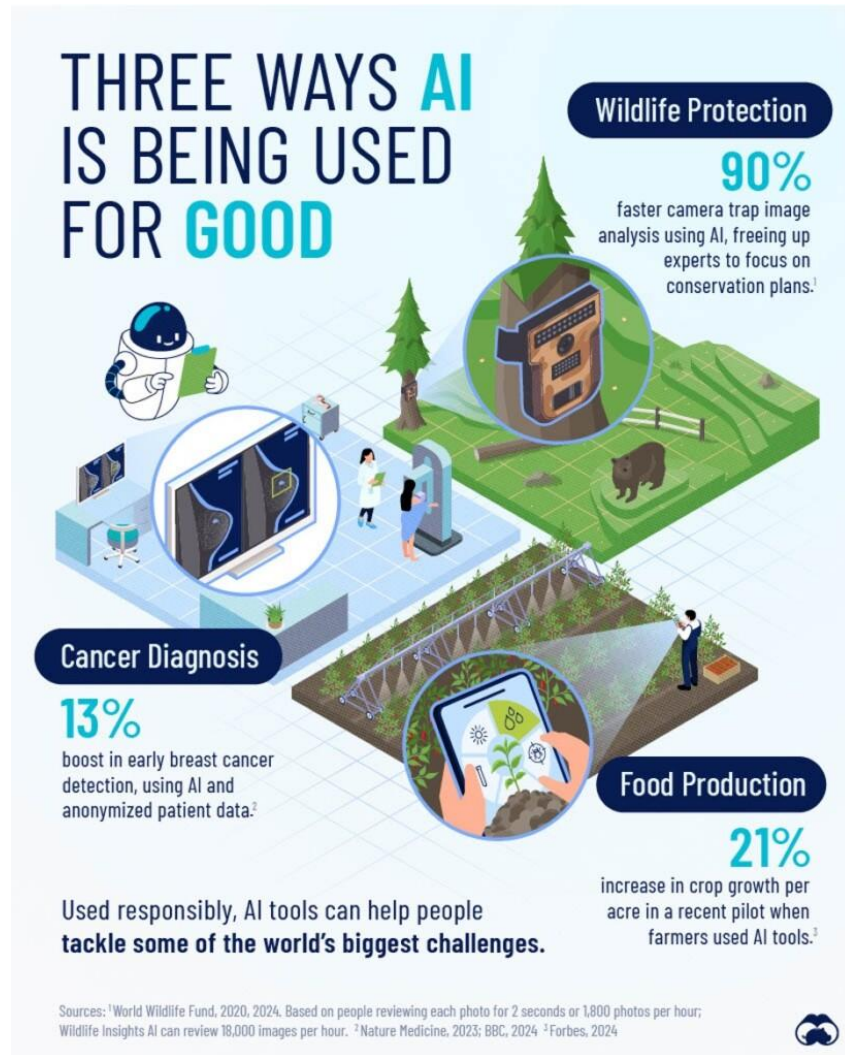
AI is already delivering real-world benefits,¹⁴ from detecting tumors earlier to boosting crop yields and protecting endangered species. In healthcare, AI enhances early diagnosis, improving outcomes and reducing invasive treatments. In agriculture, it drives smarter decisions on soil and resource use, making farming more productive and sustainable. In conservation, AI accelerates species monitoring, helping protect biodiversity in real time. AI's proven successes highlights its vast potential to drive positive societal change.

One key factor that allows this technology to fulfill its promise for the societal good **is investment**. Large companies have the resources to fund long-term research, build foundational AI models, and provide the infrastructure smaller businesses need to innovate. This market-led investment is pro-competitive, as it makes resources accessible to smaller firms, a point even recognized by Margrethe Vestager, the former European Commissioner for Competition, in her speech at the European Commission workshop.¹⁵ Startups and small businesses gain access to powerful AI technologies without the need for large upfront investments. In turn, they use AI to develop competitive, innovative solutions that benefit both businesses and consumers. However, without such foundational investment, many of these innovations wouldn't be possible. U.S. competition policymakers must account for this dynamic and ensure their enforcement frameworks do not inadvertently penalize the very investments that enable a competitive and innovative AI ecosystem.

¹³ <https://news.stanford.edu/stories/2023/09/antitrust-regulation-can-backfire>.

¹⁴ <https://actonline.org/2024/10/01/serving-the-public-good-with-nuanced-ai-policy-making/>.

¹⁵ https://ec.europa.eu/commission/presscorner/detail/en/speech_24_3550.



III. Antitrust Pre-Crime Units Threaten Market Conditions and Consumer Benefits

The previous Administration's Federal Trade Commission (FTC) and some of its European counterparts saw competition problems everywhere, even in the future, in markets that are highly competitive and still emerging. In 2024, the FTC blasted several companies competing in artificial intelligence (AI) markets with subpoenas under its 6(b) authority, casting the significant capital investments needed to kickstart AI research and development under the threatening specter of antitrust enforcement.¹⁶

Not long afterward, the FTC suggested that the recent CrowdStrike incident was due to concentration in the market,¹⁷ even though the primary culprit is none other than

¹⁶ <https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-launches-inquiry-generative-ai-investments-partnerships>.

¹⁷ <https://x.com/linakhanFTC/status/1814395610788929649>.

government regulation *addressing possible competition problems* in tech markets.¹⁸ Notably, this is exactly the kind of intervention that could result from the recent saber-rattling by competition enforcers discussed here. On the other side of the Atlantic, the United Kingdom’s (UK’s) Competition and Markets Authority (CMA) issued a fairly one-sided update report¹⁹ focusing on risks to competition posed by companies providing inputs to AI services, downplaying the costs of intervening to address those risks. Not to be left behind, the Department of Justice (DOJ) and the European Union (EU) signed a joint statement with the FTC and CMA further exaggerating competition risks in AI development.²⁰

Studying and understanding emerging markets are important aspects of enforcers’ work, but, by ignoring evidence weighing against their foregone conclusions and overstating the risks, these efforts read much more like excuses to intervene later on. The FTC’s final 6(b) study report takes this approach in Section 5, ominously alluding to competition risks and laying a foundation for future intervention. We agree with the current FTC Chair Ferguson in his dissent from Section 5, where he notes that the “limited, brief nature of the study should foreclose the drawing of broad conclusions about the AI industry and its future.”²¹

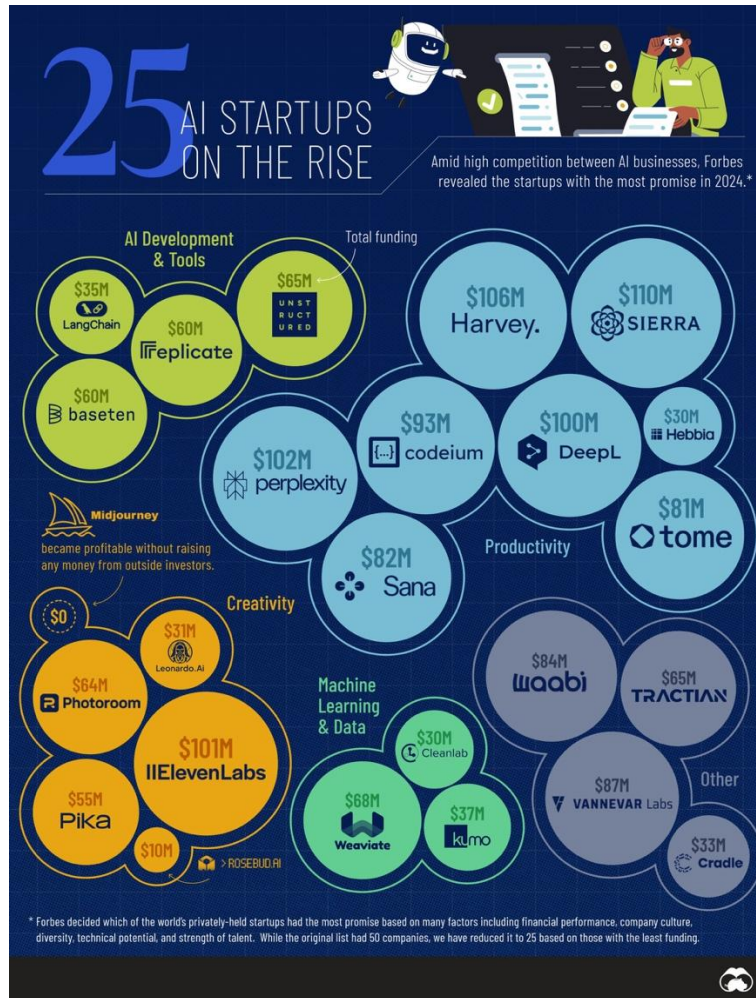
The agencies try to cast foundational elements of AI services as somehow more prone to competition problems than other markets with capital-intensive inputs, in part relying on what appears to be an inaccurate picture of the markets for AI services themselves as being dominated by input providers. The present reality of markets for AI services is much different, featuring robust competitors operating in a range of markets for AI services:

¹⁸ <https://www.aei.org/technology-and-innovation/raising-the-bar-not-lowering-our-guard-around-cybersecurity/>.

¹⁹ https://assets.publishing.service.gov.uk/media/661941a6c1d297c6ad1dfeed/Update_Paper_1_.pdf.

²⁰ <https://www.gov.uk/government/publications/joint-statement-on-competition-in-generative-ai-foundation-models-and-ai-products/joint-statement-on-competition-in-generative-ai-foundation-models-and-ai-products>.

²¹ https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-ai-6b-statement.pdf.



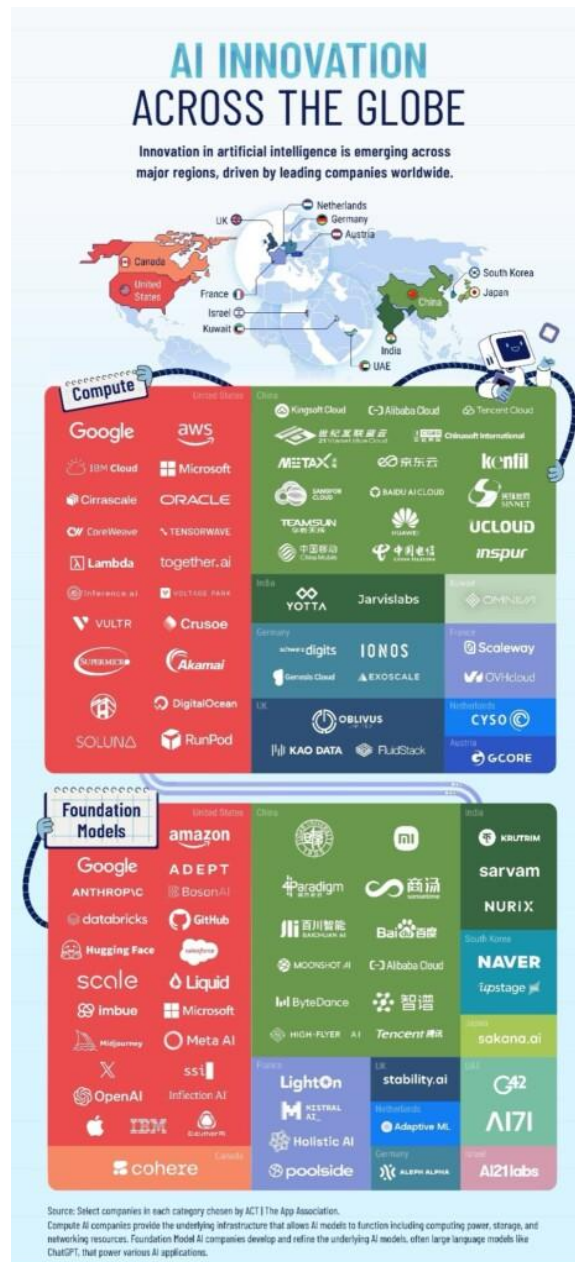
Importantly, the illustration here indicates just how much money investors are staking in AI startups, and these are the smallest of the top 100 new market entrants. The reality of these investments foreshadows a future for AI services that is dynamic and competitive, not stagnant and locked up by large companies. A clearer picture of the market as it exists and as it is likely to evolve may help stave off ill-advised intervention around the world.

As small businesses that leverage AI tools every day, competitors in the app economy deserve better than to have their preferences in AI services and prospects as providers of those services supplanted with the aspirations of regulators and enforcers. *Minority Report*-style efforts to detect and prevent possible future competition crimes, especially when those efforts are based on fiction rather than fact, could upend small businesses' prospects for years to come.

IV. Positioning the United States to Lead on AI

In October 2024, competition authorities from the G7 countries convened in Rome to discuss the AI industry. Their message to AI innovators was clear: expect coordinated and

vigorous scrutiny.²² Recent developments such as the unveiling of DeepSeek’s R1 AI model, notably released under an MIT open-source licensing model,²³ has called into question this interventionist mindset. Competing on an equal footing with top-tier AI systems from OpenAI, Google, Anthropic, and others at a fraction of the cost, this development underscores just how unpredictable and fiercely competitive the AI landscape is, as illustrated by the graphic below.



²² https://www.iftc.go.jp/file/241007G7_result1-1_EN.pdf.

²³ <https://actonline.org/2025/02/04/the-ai-revolution-is-far-from-over-three-key-observations-on-deepseeks-impact/>.

Policymakers must grasp the fundamental truth that competition is global and robust in the AI ecosystem. The moment demands forward-thinking policies that nurture, rather than stifle, innovation.

In the geopolitical battlefield for tech dominance AI is viewed (whether rightly or not) as a formidable instrument in the arsenal of governments. For example, it is a pillar of China's national strategy. In its 2017 "New Generation Artificial Intelligence Development Plan,"²⁴ China laid out an aggressive blueprint to dominate AI, positioning the technology as the engine of industrial transformation. Not to be outpaced, the United States has ramped up its own efforts. A recent Executive Order signed by President Trump explicitly reinforces AI leadership as a national priority, emphasizing its vital role in security, economic strength, and human progress.²⁵

However, in recent times, competition authorities, notably in the West,²⁶ have put harnessing AI's potential on the back burner in favor of parochial concerns about concentration in markets involving AI services. For example, in July 2024, Western competition watchdogs issued a joint warning about AI potentially entrenching monopolistic power.²⁷ If recent news has shown anything, it is that this fear does not align with reality. The emergence of players like DeepSeek demonstrates that the ecosystem is expanding, not contracting. Notably, the most groundbreaking generative AI models haven't come from entrenched incumbents with deep data silos. Instead, they have emerged from nimble innovators disrupting the status quo.²⁸ Yet regulators are on the path to apply outdated assumptions, treating AI as if it were destined to consolidate under a few monopolies. These fears, likely an after-effect from past battles against "Big Tech," fail to acknowledge AI's dynamic and unpredictable evolution. If anything, heavy-handed intervention at this stage could stifle progress, deterring new entrants and making AI development riskier and costlier. Premature regulation could inadvertently cement the dominance of current leaders, who will be the only ones capable of bearing the mounting compliance costs, rather than leveling the playing field for emerging innovators.

Policymakers must ensure that they only intervene when the costs of doing so are outweighed by the benefits. Even competition law investigations can cast a long shadow, as we have seen with the Federal Trade Commission's attempt at forecasting market

²⁴ <https://digichina.stanford.edu/work/full-translation-chinas-new-generation-artificial-intelligence-development-plan-2017/>.

²⁵ <https://www.whitehouse.gov/presidential-actions/2025/01/removing-barriers-to-american-leadership-in-artificial-intelligence/>.

²⁶ https://competition-policy.ec.europa.eu/document/download/79948846-4605-4c3a-94a6-044e344acc33_en.

²⁷ <https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-doj-international-enforcers-issue-joint-statement-ai-competition-issues>.

²⁸ <https://laweconcenter.org/resources/from-data-myths-to-data-reality-what-generative-ai-can-tell-us-about-competition-policy-and-vice-versa/>.

concentration in [its 6\(b\) study](#).²⁹ This kind of heavy-handed approach to AI trades dynamic market forces for government planning, leaving consumers and competition worse off.

Competition authorities must resist the impulse to regulate or investigate AI into stagnation. The global AI contest is happening now, and only governments that foster a climate of innovation will drive the future of this influential technology.

V. European Policies Lead to European Results

For the past couple years, we've been sending up flares about the problems with the European Union's (EU's) onslaught of digital market regulation. The negative consequences to markets for AI services will be especially acute. Our concerns center in particular on the Digital Markets Act (DMA),³⁰ because of how thoroughly it restricts³¹ the curated online marketplace (COM) services small app companies leverage to reach global markets. In one vivid example of how DMA's forced open access mandates relegate EU consumers to slower innovation timelines and uneven access to technology, Apple was compelled to delay Apple Intelligence access for EU markets as it worked through its compliance obligations.³² The worst may be yet to come for AI in Europe, however, as DMA compliance is an evolving concept and fundamentally puts government in the middle of development cycles.

The results of DMA and its ilk are predictable. In 2008, American gross domestic product (GDP) was roughly equal to the Eurozone's. But in 2023, the United States' GDP had grown to 1.5 times the Eurozone's GDP.³³ What happened? According to some experts, the United States' productivity growth is attributed to increased labor productivity resulting from macroeconomic incentives to rapidly deploy and adopt the technology.³⁴ And while American government generally allowed technology markets to produce and deploy these benefits, European governments maintained a regulatory environment that punished both as-yet nonexistent harms and risk-taking. The results are in and they speak for themselves—the United States is the clear winner on technology and the economy in the 2010s.

Unfortunately, the previous Administration took a major step backward in 2023 in ceding ground to the DMA and the European style approach to digital markets. Not only did the United States Trade Representative (USTR) remove DMA from the list of non-tariff trade barriers in its annual National Trade Estimate (NTE), but they also stepped back from the broader range of digital trade priorities protecting American access to global digital markets. The wait to see whether the second Trump Administration would continue to let other countries set digital trade norms ended abruptly recently. In a memo to the Department of

²⁹ <https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2025/01/behind-ftcs-6b-report-large-ai-partnerships-investments>.

³⁰ <https://actonline.org/2024/02/12/buyers-remorse-app-giants-reap-what-they-sow-in-europe/>.

³¹ <https://actonline.org/2025/01/30/as-rubber-meets-road-for-dma-commission-wants-nobody-at-the-wheel/>.

³² <https://www.cnbc.com/2024/06/21/apple-ai-europe-dma-macos.html>.

³³ <https://statisticstimes.com/economy/united-states-vs-eu-economy.php>.

³⁴ <https://www.apricitas.io/p/americas-productivity-boom>.

Commerce and USTR,³⁵ the President noted that “foreign governments have increasingly exerted extraterritorial authority over American companies, particularly in the technology sector, hindering these companies’ success . . .” The fact sheet accompanying³⁶ the memo specifically mentions DMA, noting that “[r]egulations that dictate how American companies interact with consumers in the European Union, like the [DMA] and Digital Services Act, will face scrutiny from the Administration.” While aimed primarily at the EU, the message is for all of the governments considering DMA-style interventions as a means of bolstering domestic competitors: the executive branch, for one, is going to notice.

Congressional leaders quickly followed suit as leaders from the House Judiciary Committee sent a letter to the European Commission’s (EC) new Executive Vice-President (EVP) for a Clean, Just, and Competitive Transition, Teresa Ribera.³⁷ The letter singles out DMA in particular, noting that “regulations like DMA will hurt consumers and stifle innovation,” and expressing concerns that it “may target American companies . . .” The letter requests a briefing from EVP Ribera regarding her “approach to DMA enforcement, ongoing DMA proceedings against American companies, and European plans to subsidize and build national champions.”

The memo from the President and the letter from the House Judiciary Committee reflect some of the same consternation we have voiced for several months about DMA. For example, the HJC letter highlighted a concern we share with DMA’s mandate³⁸ for designated gatekeepers to provide virtually unfettered access to personal data. In describing DMA as dictating “how American companies interact with consumers,” the memo similarly reflects our view of DMA as the EC taking away consumers’ ability to select a COM over an unmanaged marketplace. As we argued last year in a blog header, “DMA Prioritizes Bureaucrat Preferences over Those of Consumers and Compliance Over Innovation.”³⁹ The good news is, the Administration and this Committee are hearing the cries for help and taking steps to protect small app companies’ ability to compete globally.

VI. Protecting the Market for Companies is Key for AI Services

The previous Administration’s FTC also put on a clinic in how to chill the market for companies, including transactions likely to be procompetitive or benign. Specifically, it embarked on an effort to generally prohibit mergers, manifesting one of the only mortal fears for typically intrepid entrepreneurs like many of the App Association’s members. Although this Committee lacks jurisdiction directly over the Competition half of the FTC and,

³⁵ <https://www.whitehouse.gov/presidential-actions/2025/02/defending-american-companies-and-innovators-from-overseas-extortion-and-unfair-fines-and-penalties/>.

³⁶ <https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-issues-directive-to-prevent-the-unfair-exploitation-of-american-innovation/>.

³⁷ <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2025-02-23%20JDJ%20SF%20to%20Ribera%20re%20DMA.pdf>.

³⁸ <https://actonline.org/wp-content/uploads/European-Style-Online-Marketplace-Regulation-v1-1-2.pdf>.

³⁹ <https://actonline.org/2024/07/03/for-small-biz-in-the-usa-aicoa-is-dma/>.

consequently, its merger enforcement activity, its coordination and collusion with foreign officials on its idiosyncratic competition goals must be raised and corrective oversight may be within your purview.

The FTC's campaign incrementally added impediments for companies to be acquired. If the FTC were to publish a how-to guide on killing the market for mergers, here's how it might look:

- **Leave them in limbo:** In February 2021, the FTC “temporarily” suspended early termination (ET) notices⁴⁰ closing FTC review of proposed mergers subject to Hart-Scott-Rodino (HSR), with narrow exceptions. Merging parties rely heavily on ETs as a signal that they are clear to complete a transaction and that it is no longer under premerger review. Without an ET, parties to a transaction may not know for sure if they can move forward. The FTC has never returned to its normal practice of issuing ETs.⁴¹ *This helps ensure merging parties know they may never be allowed to merge even if the law does not support a challenge.*
- **While they're in limbo, threaten them:** Not long after its ET suspension, the FTC also began a practice of sending “warning letters” that a merger is still under review, issuing them in some cases after the expiration of the initial 30-day review period.⁴² *This helps ensure that merging parties know the FTC can pull the plug on a merger even after it seems to have received the green light.*
- **Since you can't change the statute, interpret it to illegalize more mergers:** The FTC adopted new final merger guidelines in December 2023,⁴³ which draw on older cases to suggest that currently legal mergers are now presumptively illegal.⁴⁴ *Even if most courts don't buy this, some might, and this may therefore help kill more acquisitions even before they start.*
- **Increase the administrative burdens:** The FTC proposed new HSR rules in June⁴⁵ of 2023, which would add a great deal of additional paperwork for all mergers subject to HSR premerger notification. It adopted a final version of the proposal in 2024, jettisoning many of the proposal's worst aspects, but maintaining unnecessary costs on merging parties. *If the extreme levels of uncertainty introduced by ET suspension,*

⁴⁰ <https://www.ftc.gov/news-events/news/press-releases/2021/02/ftc-doj-temporarily-suspend-discretionary-practice-early-termination>.

⁴¹ <https://www.americanactionforum.org/insight/early-terminations-termination-the-first-full-year-look-from-ftc-and-doj/>.

⁴² <https://www.wilmerhale.com/insights/client-alerts/20210816-the-ftcs-new-warning-letter-in-merger-reviews-more-waiting-after-the-hsr-waiting-period>.

⁴³ https://www.ftc.gov/system/files/ftc_gov/pdf/P234000-NEW-MERGER-GUIDELINES.pdf.

⁴⁴ <https://www.mercatus.org/research/policy-briefs/decoding-2023-ftc-and-doj-merger-guidelines-insights-shifting-antitrust>.

⁴⁵ <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-doj-propose-changes-hsr-form-more-effective-efficient-merger-review>.

warning letters, and presuming mergers illegal doesn't convince merging parties not to bother, surely a precipitous increase in red tape and hassle will do the trick.

- **If you can't challenge a merger, have a foreign government do it:** European law is far more permissive of government action against mergers, freeing European enforcers to challenge a much wider range of transactions. *European enforcers can be readily convinced to challenge mergers, especially if they involve companies already in their legal and regulatory crosshairs.*

Fortunately, the FTC discontinued some of these harmful policies. For example, as part of a bipartisan HSR deal, it began issuing ET letters again in 2024. Nonetheless, the damage may never be recovered as it carved an EU-style path on acquisitions. In one of the more vivid examples involving an AI company, the FTC sought EU involvement in Amazon's proposed purchase of iRobot, resulting in iRobot hanging on by a thread for months and ultimately, abandonment of the deal.⁴⁶ In turn, iRobot was unable to continue credible competition against Chinese competitors, leaving China to control the markets in which it competed and precipitous job losses in iRobot's U.S. operation.

Over the next four years, the FTC has a golden opportunity to undo the damage of the past. For example, it can revamp its 2023 unfair methods of competition (UMC) policy statement.⁴⁷ The statement advises companies their conduct could be "unfair" if it "may be coercive, exploitative, collusive, abusive, deceptive, predatory, or involve the use of economic power of a similar nature" or "otherwise restrictive or exclusionary." Thus, the "guidance" is really just a list of labels that could plausibly be assigned to a wide range of conduct, especially COM management practices. Current FTC Chairman Andrew Ferguson seems to get that this approach is inconsistent⁴⁸ with the FTC's role as a "cop on the beat." But, especially given his recent decision to reaffirm the equally unhelpful 2023 merger guidelines,⁴⁹ a more forceful rejection of an "everything digital is likely anticompetitive and no we won't say what's better" approach—especially as applied to COM management functions and acquisitions—is sorely needed.

Dampened acquisition prospects not only affect enterprise value, but they can also significantly weaken a company's bargaining power as it negotiates terms from lenders and equity investors, regardless of where the firm is in its lifecycle. As former FTC Commissioner Noah Phillips said in 2019, "The adage that 'barriers to exit are barriers to entry' makes the general, but too often overlooked, point that the harder it is to exit, the higher the cost of entering in the first place."⁵⁰ While it may be an adage in academia, it is reality for App

⁴⁶ <https://actonline.org/2024/01/29/for-entrepreneurs-anti-merger-enforcement-policies-hurt-small-business/>.

⁴⁷ https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyStatement.pdf.

⁴⁸ https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-dissent-2024-annual-regulatory-plan-agenda.pdf.

⁴⁹ <https://www.ftc.gov/news-events/news/press-releases/2025/02/ftc-chairman-andrew-n-ferguson-announces-ftc-doj-joint-2023-merger-guidelines-are-effect>.

⁵⁰ https://www.ftc.gov/system/files/documents/public_statements/1524321/phillips_-_competing_for_companies_5-31-19_0.pdf.

Association members and they oppose unnecessary uncertainty and costs weighing down their value and marketability as enterprises, especially in markets around AI services.

VII. A Role for Antitrust Enforcers: Standard-Essential Patents (SEPs)

The voluntary fair, reasonable, and non-discriminatory (FRAND) licensing commitment made by standard-essential patent (SEP) holders is essential to the further development of AI services. It plays an important role in technical standards, including those related to AI, to enable competition and innovation that directly benefit consumers.

The United States has long maintained the world's strongest intellectual property (IP) system due to its emphasis on developing mechanisms that support innovation and foster competition and technological progress. However, this system is increasingly under threat from foreign actors, particularly those aligned with the Chinese government, who exploit weaknesses in U.S. SEP policy and antitrust enforcement.

Technical standards provide an alternative path to modern invention that differs from the exclusivity of non-essential patents. They are common, especially at the foundational layers of the AI “stack,” but they permeate app-layer markets as well, from video compression to content provenance. The goal of establishing technical standards is to create an efficient and interoperable foundation for technology development that can be used by any industry participant who is willing and able to fairly compensate the relevant SEP holder. The SEP holder understands and agrees that by contributing to the standardization process, it cannot unduly exclude competitors from a standard past requiring a FRAND license.

Opportunistic SEP holders have distorted this system by taking advantage of standards-setting organization (SSO) policies that have ambiguous definitions of FRAND and manipulating a fair licensing negotiation process by, for example, overcharging or refusing to license to certain entities in a supply chain. Since SSOs facilitate access to technical standards that touch various industries, these opportunistic SEP holders plague many verticals, always looking for the next market to extract additional and unrelated value for their SEP. The anticompetitive harms experienced in the SEP licensing ecosystem disrupt fair usage of technical standards that support efficient innovation.

It has become increasingly evident that foreign SEP holders, especially Chinese companies, have developed strategies to manipulate their position in technical standards through SEP licensing practices that extract billions of dollars out of the U.S. economy. These practices harm American businesses and consumers by disrupting mature supply chains and discouraging American competitiveness in critical technologies.

The House Judiciary Committee's IP Subcommittee held a hearing investigating these issues in December 2024, “IP and Strategic Competition with China: Part IV – Patents, Standards,

and Lawfare.”⁵¹ One of the witnesses, Kent Baker of u-blox, warned that in part due to SEP abuse by China-backed competitors, his company may be forced out of a key automotive supply market, for cellular connectivity units. Not a month after the hearing ended, u-blox had exited the market just as he predicted,⁵² offering a vivid example of how SEP abuse by China-backed firms can eliminate Western competitors, leaving China to control key input markets.

VIII. Conclusion

A vibrant, innovative, and competitive AI ecosystem is achievable only if policymakers foster a policy environment that rewards innovation, encourages investment, and maintains the freedom necessary for continued growth. The future of AI is bright, provided we make informed and forward-looking choices today.

Thank you for your consideration.

Respectfully submitted,

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⁵¹ <https://judiciary.house.gov/committee-activity/hearings/ip-and-strategic-competition-china-part-iv-patents-standards-and-0>.

⁵² <https://markets.businessinsider.com/news/stocks/u-blox-announces-strategic-decision-to-increase-focus-on-locate-business-and-phase-out-cellular-as-well-as-an-impairment-1034223716?op=1>.