ACT
The App Association

ANTITRUST AT A CROSSROADS: PROTECTING INNOVATION IN THE AI ERA

2025

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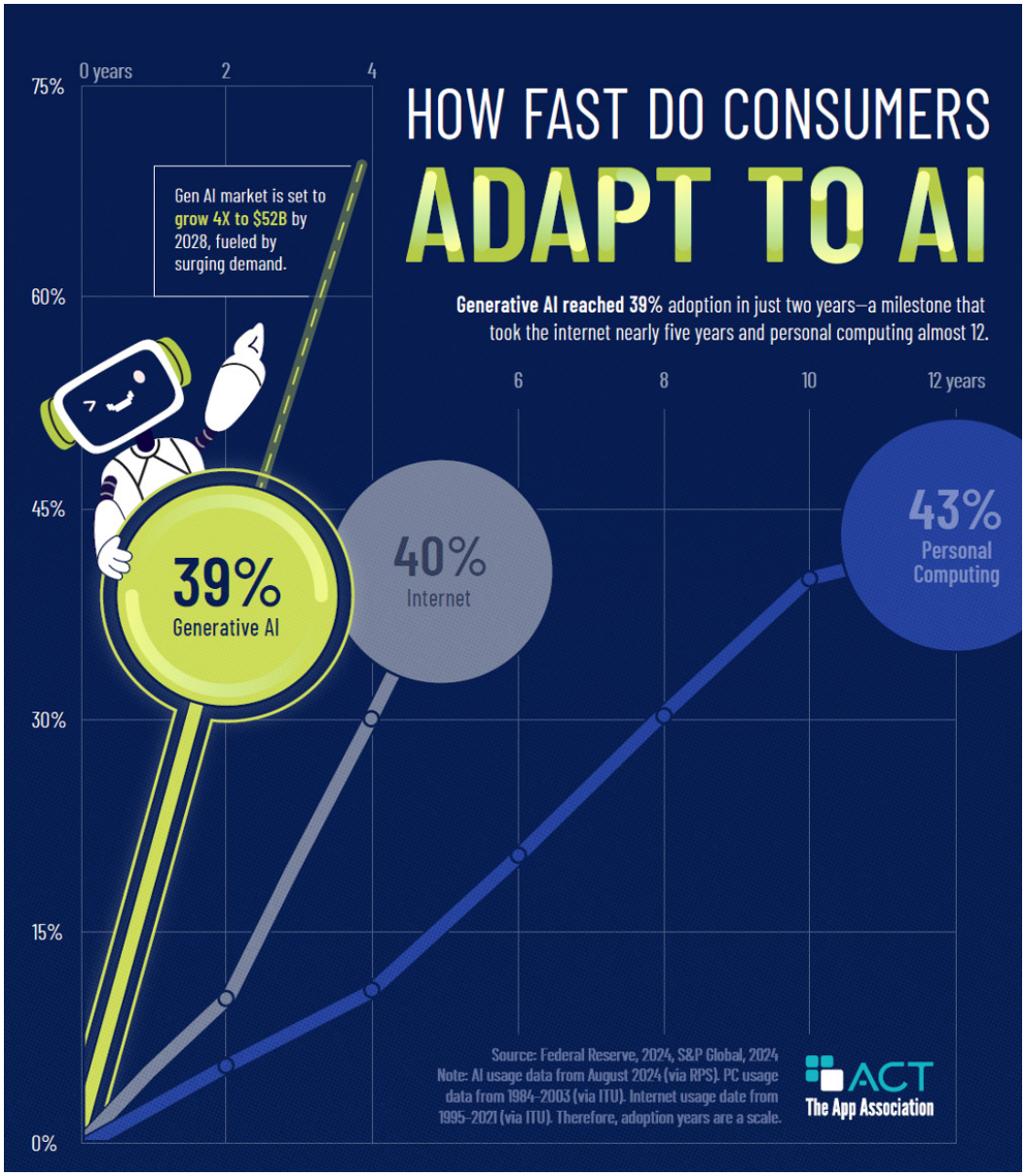
ACT | The App Association

EXECUTIVE SUMMARY

Generative AI has woven itself into mainstream life faster than virtually any other technology in recorded history: **nearly 40 percent of adults in the United States already use it,**[1] a level of adoption that took the personal computer a dozen years to reach. For policymakers, the question is not whether they should prepare for AI 's arrival. The question is how to engage with a technology that is already here. Policymakers' task is to ensure that the policy environment allows for market forces to deliver ever-improving AI services across the technology stack.

The surge in AI's adoption has spurred record private capital investment. U.S. startups secured



most of the global AI venture funding in 2024,[2] sparking a race to out-innovate one another. Just as consumers are embracing the technology, policymakers in the United States and abroad are proposing ill thought-out preemptive actions. The Federal Trade Commission's (FTC's) assault on Prime incentives, U.S. Department of Justice (DOJ) musings about carving up Google's services, and the EU's one-size-fits-all Digital Markets Act (DMA) mandates already show how good intentions can turn into consumer headaches. These measures would outlaw common integrations and acquisitions,the crucial mechanisms that enable AI innovation, before their benefits are realized or their risks are fully understood.

Early experiments with this approach are already backfiring. In the European Union, the DMA has taken aim at large tech platforms through sweeping ex-ante (preemptive, rules-before-harm) mandates that extend into areas critical to AI services, like interoperability, data access, and platform integrations. These measures are delaying critical security updates and placing costly burdens on small app developers pioneering innovations in AI.[3] The DMA's one-size-fits-all rules offer a clear warning: blunt regulation can do more harm than good, especially for emerging technologies like AI. Some European officials are pushing to formally expand the DMA to cover AI and cloud services, despite no clear market failure and mounting concerns over regulatory overlap with the AI Act.[4] If U.S. policymakers follow the same script, capital[5] and talent will migrate to more innovation-friendly jurisdictions, just as global demand for AI accelerates.

In the United States, regulators have launched major antitrust lawsuits intended to rein in dominant firms. But these cases risk backfiring, by raising consumer prices and slowing down delivery times in the process.[6] AI is a fast-moving, cost-sensitive market. Legal actions that ignore trade-offs could hurt the very users they aim to protect.

Meanwhile, aggressive merger rhetoric has already chilled early-stage investment. Startups and small businesses like ACT | The App Association's members are seeing lower seed valuations and losing leverage in negotiations. When exit opportunities shrink, innovation slows.

Policymakers should follow three principles to chart a smarter course in the United States:

1. **Rely on the applicability of existing laws** to harms that may result from use, development, or deployment of AI systems, focusing on whether the conduct at issue threatens competition or not.

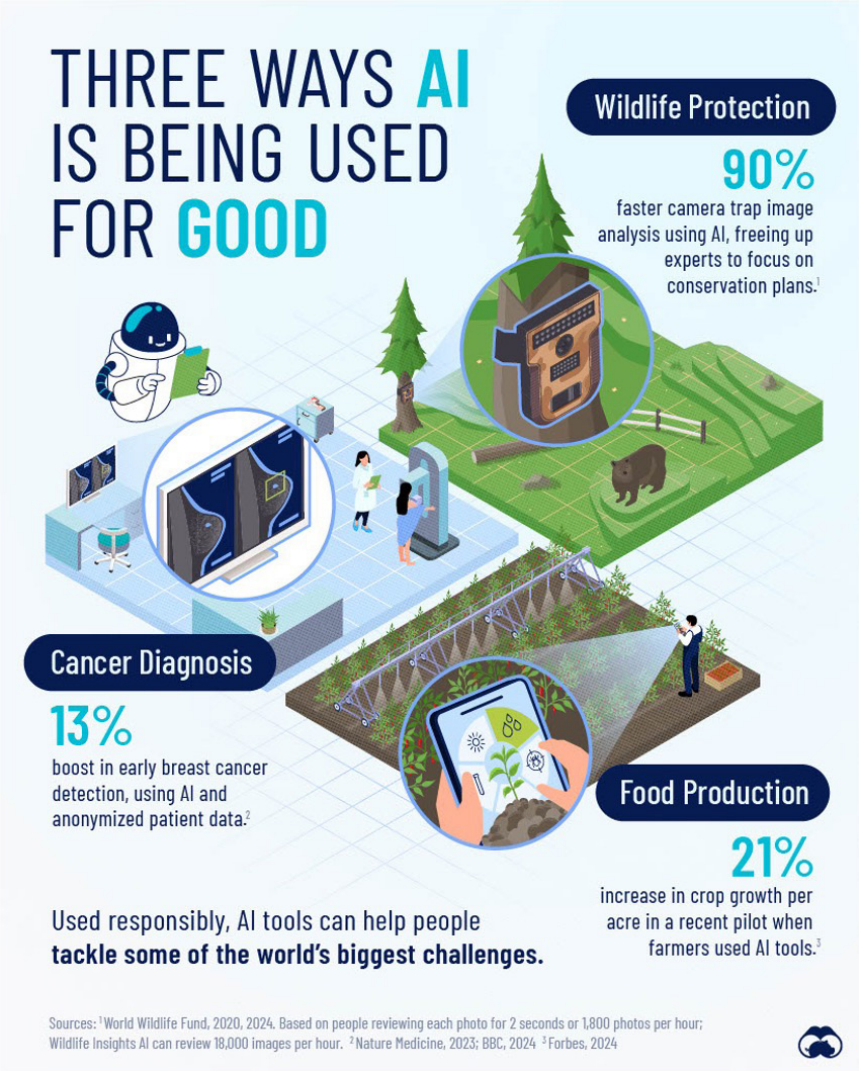
2. **Safeguard smaller rivals' access to capital** and investment, including via mergers and acquisitions.

3. **Avoid antitrust claims that seek to outlaw conduct based on speculative harms** or that seek remedies to drastically restrict important curated online marketplace (COM) management functions.

Anchoring policy and enforcement decisions, including those related to antitrust and competition, in these principles will help maximize consumers' benefits from—and America's lead in—global AI markets.

AI AT THE ANTITRUST CROSSROADS

AI has broken out of the lab and rushed into everyday life. From detecting tumors invisible to the human eye, to boosting food production yields and aiding wildlife conservation efforts, AI has already had a profound and tangible impact, with even greater potential ahead. In healthcare, AI tools like Mia[7] are revolutionizing early cancer detection, giving patients a better chance of recovery and reducing the need for invasive treatments. In agriculture, programs like India's Saagu Baagu[8] use AI to provide real-time advice and soil analysis, boosting crop yields by 21 percent while reducing pesticide and fertilizer use,making farming more productive and sustainable. In wildlife conservation, platforms like Wildlife Insights[9] process thousands of images from camera traps, allowing conservationists to monitor species in real time and accelerate efforts to protect endanger ed wildlife. AI's proven success across these areas highlight its vast potential to drive positive societal change. Investors have taken notice of inherent value here. For example, in 2024, U.S. AI startups pulled in roughly half of all global venture funding, the widest lead of any country in the data set.[10]



Antitrust-Adjacent Activity

This surge in technology advancement and adoption has stirred a parallel burst of activity amongst public officials with a wide range of proposed interventions, many of which assume a level of concentration in AI markets that does not exist[11] or seek to address risks assessed without empirical rigor.[12] For example, as of this writing, more than 1,000 measures are pending in state legislatures that would target AI technologies. Some proposals would subject AI systems to defacto pre-market review, effectively requiring government approval or risk assessment before deployment, treating a general-purpose technology as inherently more risky than other technologies posing the same kinds ofrisks.[13] Others would create transparency regimes that are

effectively impossible to comply with, especially for competitors other than the world's largestcompanies.[14] The effect of these measures,ironically, would be to build competitive moats around the largest competitors in AI markets,worsening prospects for smaller rivals.

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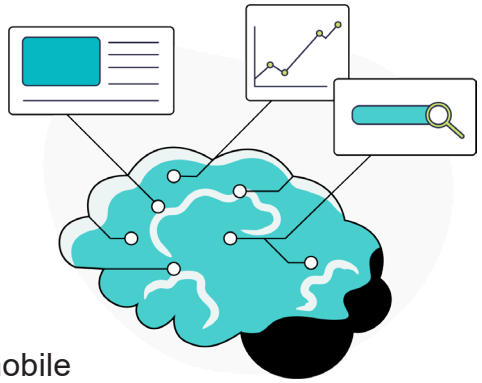
Meanwhile, antitrust and competition enforcers are taking a variety of actions to prevent investments in AI through partnerships or acquisitions. For example, U.S. federal and state enforcers are weighing structural break-ups that would pry browser, search, and mobile operating system assets apart.[15] Similarly, the FTC and DOJ have maintained the Biden Administration's enforcement statement that casts an antitrust liability shadow over several categories of pro-competitive mergers.[16] Vertical integrations, roll-ups, and startup acquisitions face heightened scrutiny, even when they boost competition or scale promising tech. That uncertainty chills investment and narrows exit paths, leaving early-stage innovation stuck on the sidelines. Lastly, Congress, state legislatures, and governments around the world are in various stages of considering ex-ante regulatory frameworks to drastically restrict the curation and management measures online marketplaces undertake in order to compete with other distribution options. For example, the American Innovation and Choice Online Act (AICOA, S. 2033, 118th) would presumptively prohibit removal of bad actors and low-quality content from app stores and online retail marketplaces, undermining their value to small businesses.[17] While not strictly applied to AI marketplaces, AICOA would seriously harm small businesses' access to high-propensity consumers at a time when trust is paramount to AI adoption.

Across the Atlantic, the DMA has already curtailed broad categories of conduct, such as self-preferencing, bundling services, and third-party integrations,[18] before any showing of harm, and its first compliance cycle is slowing software updates and imposing sweeping interoperability mandates.[19] This is affecting AI services that depend on tight integration with mobile platforms and is a preview of what could happen if policymakers expand the application of these rigid rules to a fast-moving, still-evolving technology.[20]



Ironically, the antitrust interventions aimed at AI markets tend to seek restrictions on AI markets' most significant advantages: vertical integration, a healthy market for acquisitions, and dynamic marketplace management. Integration between chips, models, and apps often cuts costs and speeds learning. Acquisitions supply the liquidity and incentives founders need to keep betting on the next breakthrough. COMs are a means of distribution that can help connect developers, deploying AI, with their target customers via trusted channels. Antitrust interventions to eliminate these attributes would raise prices, undermine privacy and security, and push capital away from smaller, younger startups and toward more established firms hampering innovation.

The choice before policymakers is stark:adopt a risk-based, evidence-driven framework that targets proven harms, or freeze the engine that currently makes the United States the most

fertile ground on earth for AI innovation. The pages that follow lay out the facts and the path to the smarter option.

EX-ANTE ANTITRUST INTERVENTIONS BASED ON MARKET MISUNDERSTANDINGS ENDANGER AI INNOVATION

Policymakers are considering ex-ante regulatory frameworks that would outlaw broad categories of conduct before any evidence of consumer harm is shown: vertical integration, self-preferencing, and conduct that harms other competitors' prospects. The cost is compounding damage to the startups, developers, and users that policymakers are claiming to help.

DMA: A European Approach Yielding European Results

The DMA offers a glimpse of what ex-ante competition-based regulation of COMs looks like when the rubber hits the road. One year into enforcement, the EU's DMA has become a case study in regulatory overreach. Framed as a tool to rein in dominant platforms and unlock competition, the DMA instead creates friction, fragmentation, and uncertainty, especially for the startups it was meant to empower.[21] The DMA illustrates what happens when regulators outlaw conduct without a workable alternative and then struggle to show what "better" looks like.

AI Services are Likely Subject to DMA

The DMA's "interoperability" requirements likely apply to AI tools introduced as "features" of operating systems already covered by the DMA. The DMA might also subject foundation models provided by covered companies to all of its "gatekeeper" restrictions and requirements.

This potential applicability has deprived EU businesses and consumers of a range of AI benefits. For example, Apple was initially forced to delay roll out of Apple Intelligence as a feature of iOS in the EU.[22] If applied to Apple Intelligence, the DMA's interoperability mandates would have exposed proprietary and personal information to competitors in ways Apple has sought to avoid by performing the feature 's processing on individuals' devices and on "private cloud" servers.[23] Thus, while the delay has now ended,[24] the DMA still deprived EU consumers of timely access to a new AI service, and temporarily blocked an innovative way of addressing AI's inherent privacy risks at its gates. EU consumers miss out on the improvement of the product in the European context for as long as these innovations are delayed; experience with it is limited to other parts of the world and further improvements and iterations are driven by consumers outside of Europe. This will have a compounding effect for European consumers and AI businesses as their technology lag compounds.

The DMA Makes it Harder for Small Businesses to Compete

Before the DMA, European startups already faced structural challenges: fewer VC dollars, slower scale, and limited global reach compared to their U.S. or Asian peers. The DMA didn't fix that. It made it worse. By forcing Curated Online Marketplaces (COMs) to overhaul security, payment, and discovery functions, the DMA stripped away the scaffolding many small developers relied on to reach consumers.

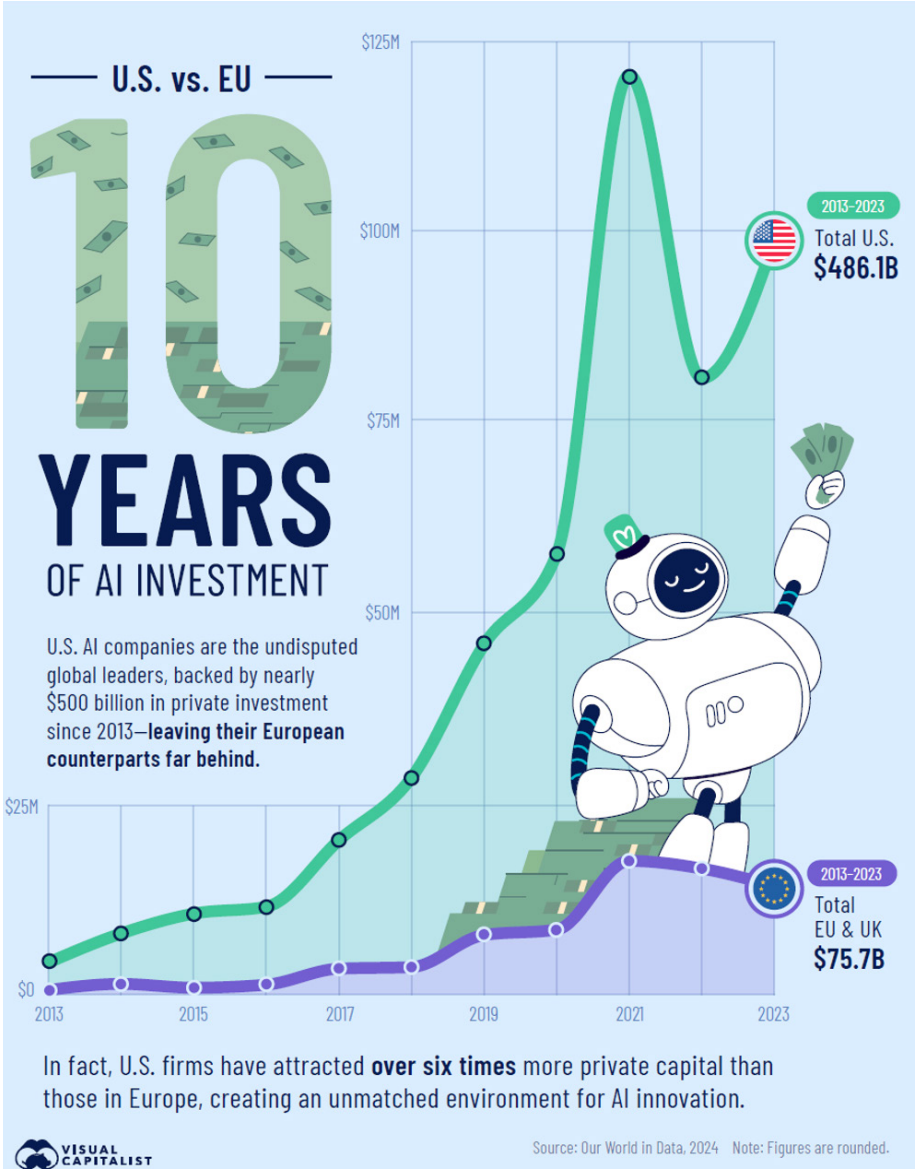
This was replaced by a patchwork of rules, duplicate app stores,and rising compliance costs. Rather than spurring a wave of

meaningful new distribution channels, the DMA 's "open access" mandate is likely to produce little beyond niche gaming storefronts. Developers in education, health, and enterprise software have seen no new options, only delays in software updates and greater legal exposure.

Worse, consumer trust is likely to be eroded. Guardrails like fraud detection, standardized ratings, and privacy features, once provided by COMs like Google Play and Apple's App Store, have been weakened or removed altogether. Startups now likely have to rebuild that trust from scratch, often without the brand recognition or security tooling to do so.

Contrary to its goals, the DMA has thus deepened the divide between large incumbents and the small players trying to break through. Compliance costs hit small developers hardest. Security risks cut into user acquisition. Delayed roll outs and regulatory uncertainty choke the very innovation the law claims to support.

The investment trends in the AI ecosystem tell a vivid story and offer a cautionary tale for any regulator tempted to hard-code market structure without



understanding how digital ecosystems actually work. Over the past decade, the United States has attracted more than $486 billion in private AI investment, more than six times the total raised in the EU and UK combined. That divergence isn'tonly about talent. It's also about policy. While the United States has fostered innovation through flexible rules and scalable infrastructure, the EU has layered on compliance regimes like the DMA that make experimentation risky and returns uncertain.

For any jurisdiction serious about competing in AI, DMA-style regulation is a warning, not a model.

The DMA is Spreading

Despite its poor track record thus far, the DMA has inspired other jurisdictions outside of Europe to lead with regulation first, instead of innovation. Countries like the Republic of Korea, Brazil, Japan, Colombia, and Thailand recently considered legislation that is identical to or at least rooted in the DMA. In these jurisdictions,small businesses are fighting back to ensure policymakers avoid the same mistakes European regulators have made. [25]

COMPETITION IN AI IS ALREADY VIGOROUS

The claim that a handful of incumbents have sewn up the future of artificial intelligence collapses when confronted with the marketplace itself. The UK Competition & Markets Authority recently drew headlines with a graphic that shrank the field to a few familiar logos, [26] but the image talks less about reality than about how narrow definitions can distort it. A fuller picture shows a layered, fast-moving ecosystem crowded with challengers and restless capital.

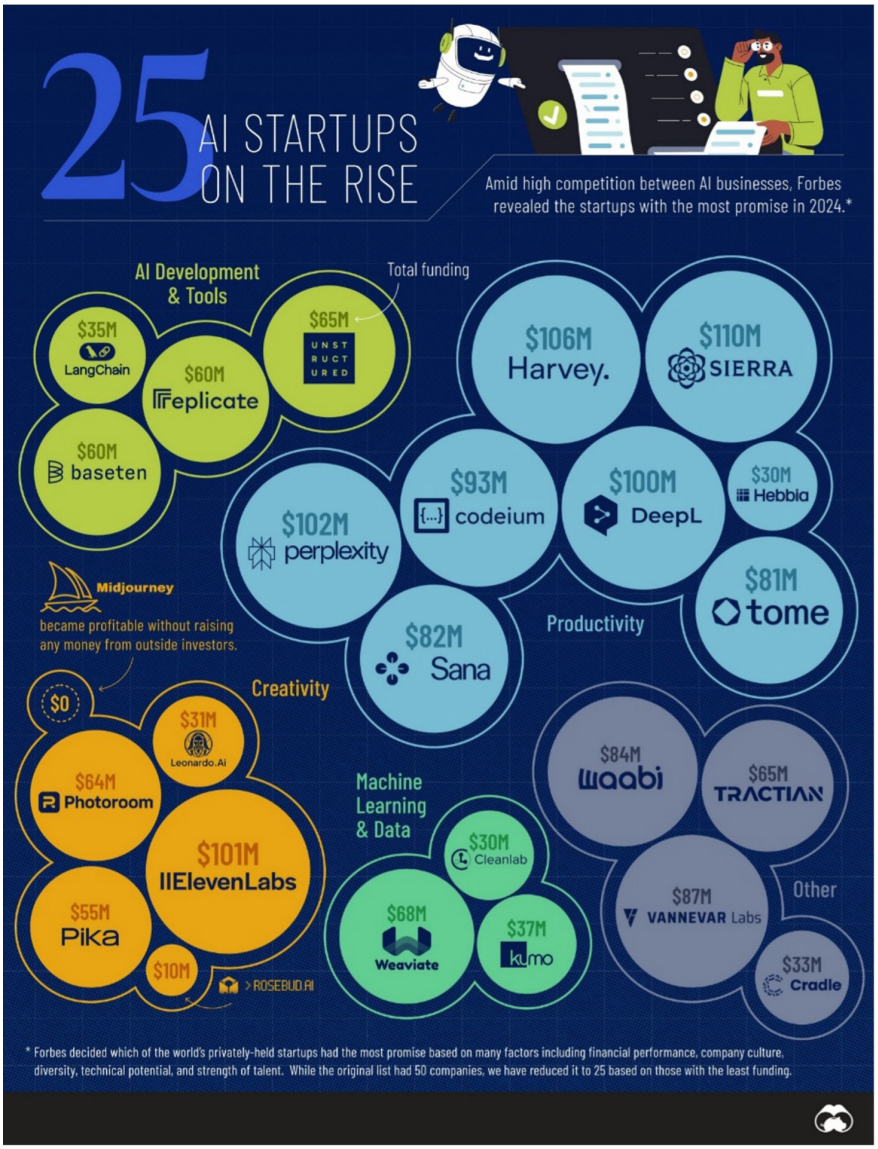
Computing and Chips"

NVIDIA's current GPU lead is real, yet serious rivals are already on the field. AMD[27] and Intel [28] ship alternative accelerators; Cerebras is selling wafer-scale engines; [29] Tenstorrent and several RISC-V startups are sampling chips aimed at edge

devices,[30] hyperscale clouds knit all of the above into pay-by-the-minute clusters. U.S. chip startups have raised billions recently,[31] providing clear evidence that investors expect new winners, not settled dominance.

Foundational Models

Closed-weight labs such as OpenAI and Anthropic face a swarm of open-source challengers.[32] In the past year alone, the community produced five headline model families—Llama, Mistral, Gemma, Phi, and Grok—each forked, fine-tuned, and redeployed within weeks. The cycle is so quick that leadership in foundational models flips roughly every 12 to 18 months. These facts are incompatible with the entrenched monopoly narratives that some regulators are pushing.



Applications and Services

Downstream, the field is even noisier: more than 17,000 U.S. startups list AI as a core capability.[33] Databricks, for example, recently raised a $10 billion round to expand its data-warehouse-meets-AI platform,[34] proof that capital still backs insurgents with credible scale ambitions. The AI-enabled productivity-software market is highly fragmented with no dominant players, and niche players routinely outrun incumbents on data or user-experience advantages, from synthetic-biology design tools [35] to code-review copilots.[36]

Capital Partnerships are Crucial for Startups' Success

Far fr om foreclosing competition, large incumbents often bankroll it. Amazon 's recent multi-billion-dollar stake in startup Anthropic gives the smaller firm discounted cloud capacity while putting pressure on model pricing across the board.[37] Similar linkups crisscross every layer of the stack, underscoring how vertical relationships frequently accelerate, rather than suppress, competition.[38]

Investment dispersion

Venture data reinforces the point: Robust entry, not consolidation, is the market's default setting. Early-stage funding rounds captured roughly46 percent of all U.S. AI funding in 2024,[39] a sharp break from the late-stage deals[40] that characterized the cloud and social media booms.

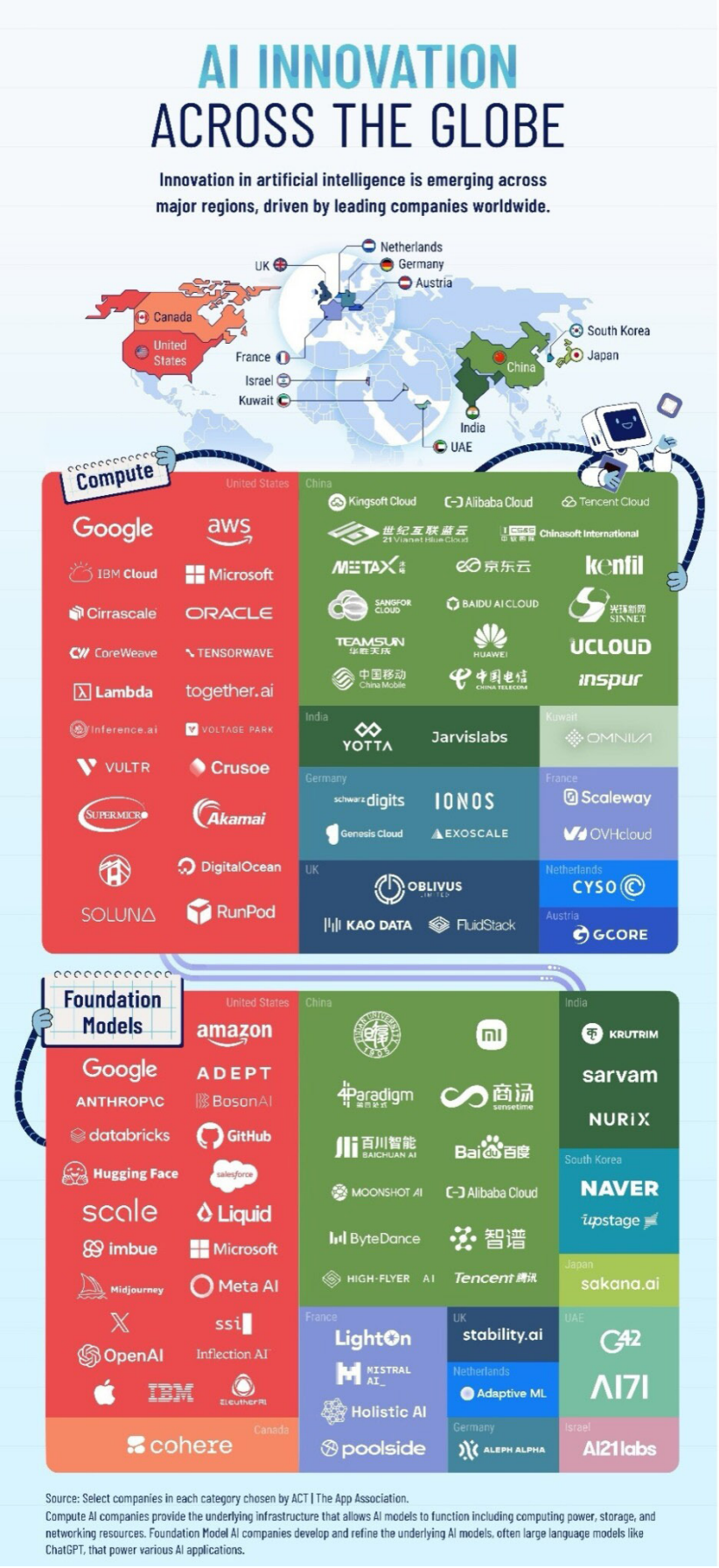
Global contest

Competition is equally intense abroad. Paris-based Mistral exports bilingual models;[41] Seoul's Rebellions sells edge-AI chips to European automakers;[42] Dubai's Falcon series became a highly downloaded open-weight model recently.[43] China 's DeepSeek has upended the global AI race with open-weight models like R1 and V3, trained for a fraction of the cost of GP T-4, yet rivaling it in math and reasoning tasks.[44] Allies and rivals alike court the same capital and talent the United States hopes to keep.

Taken together, these facts reveal an ecosystem that is *dynamic, decentralized, and full of promise.* Precisely the environment regulators should strive to preserve, not pre-emptively reshape.

Antitrust lawsuits seeking DMA-style remedies and limits on investment would hamstring U.S. AI innovation.

It is critical that COMs have flexibility to invest in AI startups and the various links in the AI supply chain.[45] Unfortunately, antitrust actions have deterred and even sought to forbid these important investments. In antitrust cases involving digital markets, experience has shown that even where a court has found antitrust liability for specific conduct, enforcers are tempted to recommend remedies that go well beyond the allegedly harmful conduct.



The App Association was founded in part to fight for small businesses and developers' interests in the *Microsoft* antitrust case where other well-resourced tech competitors were inundating the U.S. DOJ with calls for self-interested remedies, with no care for the effect on little tech.[46]

UNITED STATES V. GOOGLE, LLC – GOOGLE SEARCH CASE

With AI we are again pushing back on calls for enforcers to become de facto regulators via antitrust remedies. In *United States v. Google LLC*,[47] for example, the U.S. DOJ has suggested remedies including divestiture (splitting off) of products like Chrome and Android.[48]

Divestiture Remedies: COMs

Even the DMA stops short of ordering divestiture of complementary business lines owned by COMs and other designated "gatekeepers." Thus, DOJ is proposing to go even further than the DMA to restrict the ability for digital marketplaces to compete for business. As we noted in an earlier piece:

> Such a drastic measure, whether applied to Chrome or Android, would introduce a host of problems into the relevant markets as DOJ seeks a viable owner of either service that is supposedly better positioned than Google to operate those business units. Since the integration of Android with Google Play and Chrome with Google Ads and Analytics has generally benefited users, potential buyers likely have a steep hill to climb just to get back to where consumers expect the services to be. As consumers of Google search (including search ads) and Chrome, small businesses in the app economy would be unpleasantly surprised to see degradation in those products because of less capable ownership. Here, small businesses in the app economy might actually prefer the DMA provision over DOJ's divestiture plan.[49]

Divestiture Remedies: Browser

The vertical integration of browser engines (software powering web browsers), back-end services (developer tools), and web browsers (Chrome) has produced an end product that works for consumers. Chrome in particular is impossible to run without a host of back-end services Google provides. The logistical and technical problems posed by trying to separate browser engine layers fr om each other serve as an example of how costly it can be to disintegrate fundamentally integrated parts of a technology stack. Chrome itself, without the support in elements provided on a proprietary basis by Google, would not function properly . Similarly, if divestiture is intended to pr event Google's dominance in AI by eliminating its control over one possible distribution method, it over estimates the importance of browsers as a means of diffusing AI. As a result, the remedy would both do little to improve competition in LLM services and devalue the end product for consumers. There is reason for concern when enforcers propose structural separations of technology stacks in a way that serves only to punish the previous owners and would result in inferior offerings for consumers. Emergent AI markets are built on complex webs of inputs and other interdependencies. An increased willingness to disintegrate these webs for the purpose of trying to inject competition at specific layers or elements of the web is bad news for AI competition and innovation.

Open Access Requirements

In a similarly problematic suggested remedy in the Google search case, DOJ proposes a DMA-style requirement for Google to syndicate and share search "index information" and user-side search history with "Qualified Competitors."[50] Unfortunately, this would amount to an even more extreme intervention than the DMA's analogous provisions. For example,the DMA's Article 6(10) is limited to data generated in the context of end users' interaction with the business user's services. DOJ 's remedy, by contrast, would allow third parties to access the entire search index and user-side data regardless of whether the data pertains to the requesting party's business activities or not. TheDMA's mandated access to personal data already presents both massive new privacy and security risks and crippling new disincentives to invest in search and search-adjacent product development. DOJ's proposed remedies would supercharge these negative effects. For AI this means one of the few credible competitors (Google) in the market for large datasets—a key input for LLM development—would no longer have an incentive to invest in the further development or improvement of these datasets because it would have to provide those datasets to competitors.

AI Investment Notification Requirements

Lastly, DOJ proposes to prohibit Google from acquiring "any interest in, or any part of, any company; enter[ing] into a new joint venture, partnership, or collaboration; or expand[ing] the scope of existing joint venture, partnership, or collaboration, with any company that . . . controls a Search Access Point or GenAI Product"[51] unless it agrees to submit to more cumbersome notification and review requirements of any such investment. These additional hurdles are especially costly when considering the substantial risk of investments in AI startups.

For most startups,scaling up doesn't end in an IPO, it ends in acquisition.[52] IPOs are limited to startups with exceptionally high valuations and are practically inaccessible in most geographies due to Sarbanes-Oxley compliance costs and weak post-IPO performance for smaller firms.[53] When acquisition paths narrow, startups run out of capital and promising technologies stall.

The looming threat of antitrust enforcement only sharpens that ledge. Regulatory uncertainty weakens bargaining power and can tank deals before they start.[54] Critics presume that big-firm acquisitions kill competition, but the data tells more nuanced story and does not support a presumption of harm.[55] In many cases, acquisitions accelerate innovation by giving small teams access to infrastructure, distribution, and global scale they can't reach alone.[56]

When policymakers convert these nuanced trade-offs into bright-line bans, they gamble with the entire venture-funding flywheel: capital formation → grisk-taking → broad-based diffusion of new tools. Empirical studies confirm the trend: tightening vertical merger policy threatens to shrink exit options and thus chills upstream investment, especially in ecosystems outside top-tier hubs.[57] In the long run the effect compounds, because fewer successful exits today mean fewer serial entrepreneurs, angel investors, and specialized engineers tomorrow.

A precise, harm-focused merger standard, one that asks whether a specific deal is likely to lessen competition, not whether every deal should be presumed suspect, protects that cycle while leaving enforcers free to block the rare transaction that would truly choke off the next rival. A blanket presumption of harm not only ignores this economic reality, it risks stalling the very innovative ecosystems it aims to defend.

FTC V. AMAZON – UNDERMINING THE CONSUMER-WELFARE STANDARD

The FTC's antitrust case against Amazon shows how misguided enforcement can dismantle the distribution infrastructure that AI developers increasingly rely onto reach users. COMs are essential channels for connecting emerging AI tools with customers in trusted, secure environments. Stripping them of key features, like fast delivery, curated listings, and price guarantees, would raise costs, erode privacy and security, and make it harder for new entrants to scale.

At issue are two key practices: requiring a commitment to provide two-day delivery for Prime-badged listings and featuring products that offer the lowest price.[58] The Commission paints both as exclusionary. But that framing skips over a basic question: what would be better for consumers?

Take shipping. Amazon doesn't force sellers to use Fulfillment by Amazon (FBA) to earn a Prime badge, but it does ask that they meet a two-day shipping guarantee to provide the level of service that Amazon's customers expect from Prime. Some small businesses simply can't do that on their own. FBA provides them with one option to offer the guarantee. The result is faster delivery, lower fulfillment costs, and broader access to Prime shoppers. That's not coercion. That's scale sharing, which ultimately benefits the consumers.

The same goes for price. Amazon rewards sellers who give their best offer on its website. That ensures shoppers get competitive prices when shopping on Amazon and do not lose trust in the retailer by discovering better deals after-the-fact at other stores.[59] The FTC treats this as a ceiling on competition. In reality, it's Amazon competing for consumers, and giving sellers visibility in exchange.

Both policies benefit consumers and make the retailer more attractive. That's not anticompetitive. It's competition. And when regulators aim to ban those practices without offering a better model, they risk leaving the market worse off.

Markets don't need more red tape. They need more ways for small firms to plug into demand and scale. While no model is perfect, Amazon 's, while arguably imperfect,does that better than most. The Commission's complaint fails to show otherwise. And when antitrust forgets its north star, which is consumer welfare, it stops being a shield for competition and starts becoming a weapon against it.

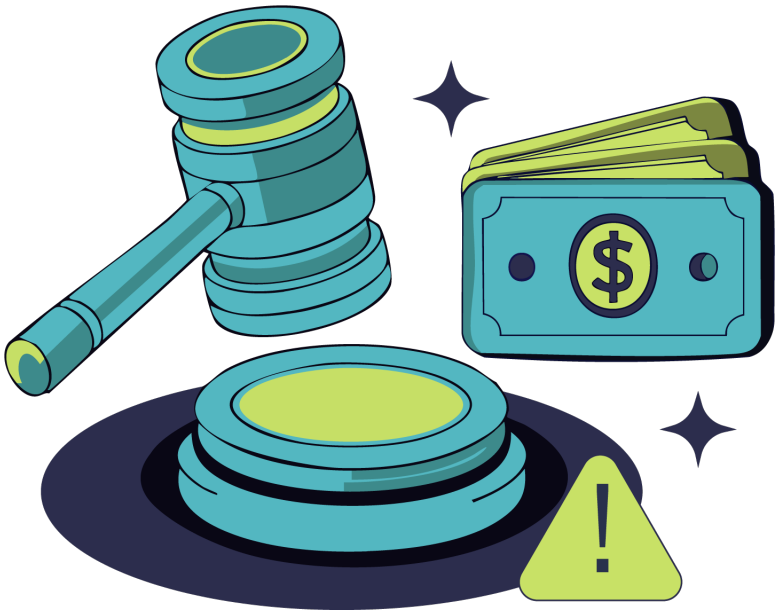
CONCLUSION – REGULATE THE HARM, NOT THE HYPE

Heavy-handed antitrust sounds simple in a soundbite. In practice it slows updates, raises prices, and starves the startups and small businesses like the App Association's members that keep America's AI engine firing. The FTC's assault on Prime incentives, DOJ musings about carving up Google's services, and the EU's one-size-fits-all DMA mandates already show how good intentions can turn into small business and consumer headaches. A smarter course pairs vigilance with restraint. The following principles, each tied to a concrete action, draw the line.

- **Focus on the applicability of existing laws** to harms that may result from use, development, or deployment of AI systems, whether the conduct at issue threatens consumers or not. Current laws are sufficient to address any real harms to competition, and structural rules plopped into a dynamic marketplace that is highly competitive and where risks of harm are not fully understood yet would require constant revisions and likely would impose grave costs on consumers and startup companies in the AI ecosystem.

- **Safeguard smaller rivals' access to capital** and investment, including via mergers and acquisitions.

- **Avoid antitrust claims that seek to outlaw conduct based on speculative harms** or that seek remedies to drastically restrict important COM management functions.



Follow these principles, and antitrust keeps the sharp-eyed cop on the beat, protecting consumers and rivalry, without becoming the central planner that stalls the next breakthrough.

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