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

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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 from vantage point, I have born 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.[1]

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."[2] And while factors beyond regulatory policy—including

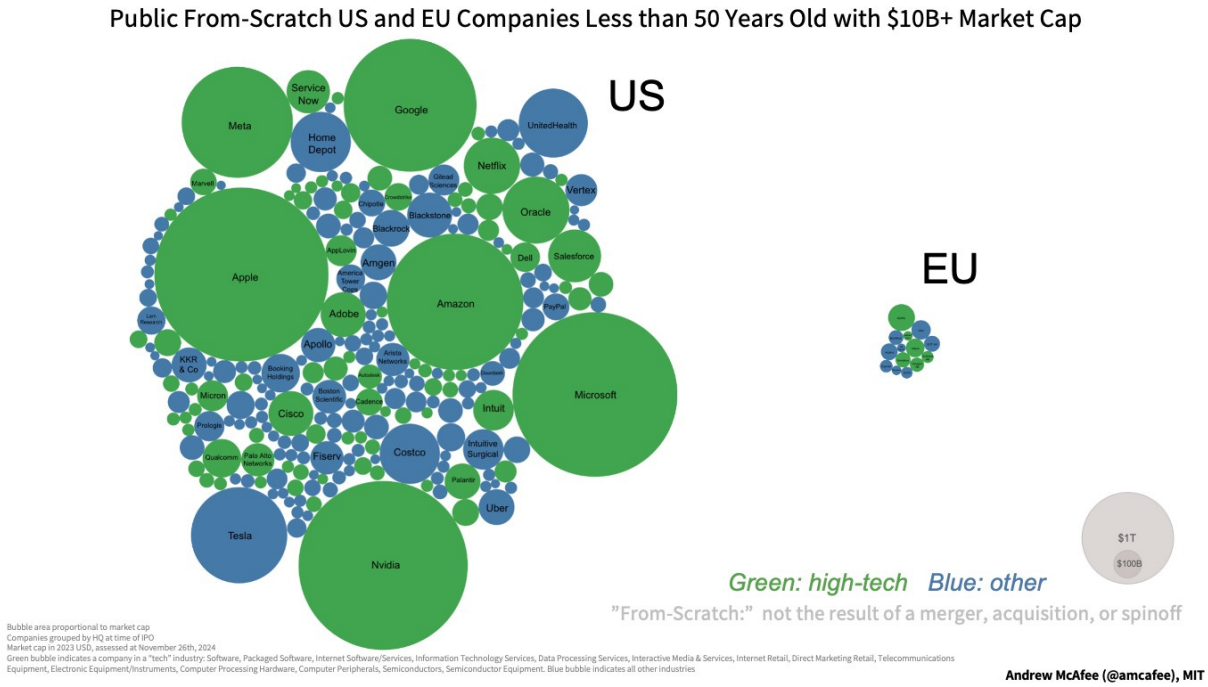
[1] For example, nominal U.S. GDP exceeds that of the EU by nearly 50% ($30.62 trillion to $21.1 trillion), while U.S. GDP per capita is nearly double that observed in the EU ($89,600 to $46,800). *See World Economic Outlook, United States Datasets*, INT'L MON. FUND (Oct. 2025) and *World Economic Outlook,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

[2] 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 [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.[3]

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.[4] 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.



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.[5] 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

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[3] *Id.*

[4] 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.

[5] 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.[6]

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,[7] and compounded by the absence of meaningful institutional limits on the EU's ability to legislate.[8]

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.[9] But Brussels lacks any serious accounting of the consumer costs and benefits of its major digital regulatory initiatives.[10] 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"[11] that impose concentrated costs on U.S. innovators and diffuse, delayed, and often hidden harms on consumers

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[6] *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.

[7] *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.

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

[9] WILLIAM A. NISKANEN, BUREAUCRACY AND REPRESENTATIVE GOVERNMENT (1971).

[10] 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).

[11] *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.[12]

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.[13] 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.[14] 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.[15]

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[12] Draghi Report, *supra* note 2 at 12.

[13] *Id.* at 6.

[14] *Id.*

[15] *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.[16] 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.[17]

But absolute levels of dynamism remain lower in Europe, due partly to measurement differences but also reflecting structural rigidities.[18] 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.[19] 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.[20] 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.[21]

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.[22] 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.[23] Europe's regulatory environment—characterized by rigid labor markets, fragmented

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[16] 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_Inferrera_Mertens_Miranda.pdf.

[17] *Id.* at 2.

[18] *Id.* at 11-12.

[19] *Id.* at 11.

[20] *Id.* at 13-17.

[21] *Id.* at 14.

[22] David Baqaee & Emmanuel Farhi, *Productivity and Misallocation in General Equilibrium*, 135 Q.J. ECON. 105 (2020).

[23] Paloma Lopez-Garcia & 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.

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."[24] 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.[25] The Draghi Report identifies the innovation and technology deficit as the heart of the productivity gap.[26]

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.[27] 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.[28] 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

[24] Draghi Report, *supra* note 2 at 6.

[25] *Id* at 36.

[26] *Id.* at 24.

[27] *Id* at 25.

[28] *Id* at 6.

markets, and U.S. security guarantees is over.[29] 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.[30] 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.[31] 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.[32] 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.[33]

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.[34] 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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[29] *Id* at 7.

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

[31] 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).

[32] 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).

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

[34] 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.[35] 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.[36] 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.[37] 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.[38]

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.[39] 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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[35] Luis Garicano, *Is GDPR Undermining Innovation in Europe?*, SILICON CONTINENT (Sep. 11, 2024), https://www.siliconcontinent.com/p/is-gdpr-undermining-innovation-in.

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

[37] 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).

[38] Draghi Report, *supra* note 2 at 30.

[39] *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"[40] 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."[41]

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."[42] Sometimes called the "economics of politics," public choice is "a relatively new science located at the interface between economics and politics."[43] 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).[44]

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,"[45] formulating policy not primarily to maximize economic efficiency, but to maximize

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[40] 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.

[41] *See* WILLIAM A. NISKANEN, BUREAUCRACY AND REPRESENTATIVE GOVERNMENT (1971).

[42] *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.

[43] *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.

[44] 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.

[45] *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."[46]

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.[47] 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.[48]

This logic concerning interest-group behavior and its effects on political outcomes was further developed by Bruce Yandle.[49] 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.[50]

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[46] *See* ANTHONY DOWNS, AN ECONOMIC THEORY OF DEMOCRACY (1957), 11.

[47] *See* MANCUR OLSON, THE LOGIC OF COLLECTIVE ACTION (1965).

[48] *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.

[49] *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).

[50] 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.[51] 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.[52] 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.[53]

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.[54] These domestic groups have clear "skin in the game," electoral

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[51] *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.

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

[53] *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-mercosur-fta-out-of-concern-for-its-farmers.

[54] *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,[55] 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"),[56] 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,[57] and Meta's workforce in the region is estimated at roughly 19,000.[58] 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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[55] *Automotive Industry*, EUR. COMM'N, 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.")

[56] *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.

[57] *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).

[58] *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.[59] 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.[60]

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.[61] 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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[59] *A Franco-German Manifesto for a European Industrial Policy fit for the 21st 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-for-a-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)."

[60] Ursula von der Leyen, *Mission Letter to Teresa Ribera Rodríguez*, EUR. COMM'N (Sep. 17, 2024), *available at* https://commission.europa.eu/document/download/33d74e86-3a17-472c-ba93-59d1606bbc20_en?filename=mission-letter-ribera_0.pdf

[61] *Fines*, EUR. COMM'N, 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.[62] 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."[63]

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.[64] 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,[65] news publishers,[66] and app developers,[67] as well as U.S. competitors like Epic Games[68] 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

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[62] 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.

[63] *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.

[64] *See* Yandle, *supra* note 49.

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

[66] *Decision 21-D-17 of July 12, 2021 Regarding Compliance with Injunctions Issued Against Google (Fr.)*, AUTORITÉ DE LA CONCURRENCE.

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

[68] *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,[69] and cases such as the *Android Auto* litigation, brought against Google by former Italian state electricity monopoly ENEL,[70] 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.[71] 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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[69] *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).

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

[71] *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).[72] 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.[73] 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.[74] 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.[75]

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.[76] From

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[72] 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.

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

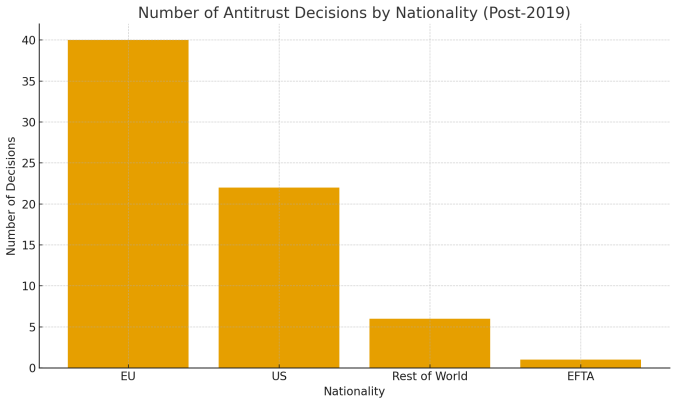
[74] *Id.*, at 4.

[75] *Id.*, at 10.

[76] *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.

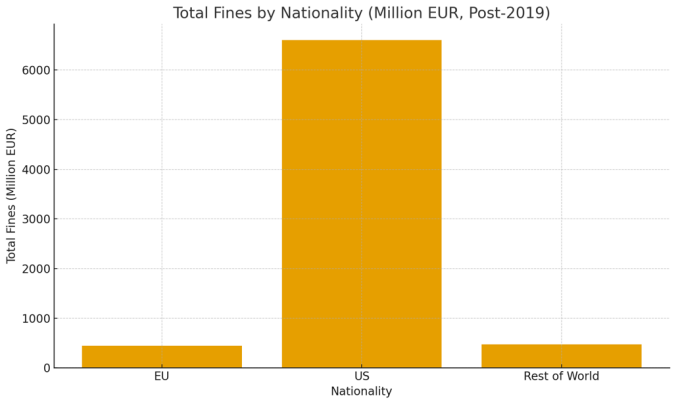
Disaggregating outcomes by the origin of the defendant reveals a stark asymmetry in the Commission's recent enforcement practice. Of the 32 cases terminated without formal sanctions (either through the rejection of a complaint or closure *ex officio*), 27 concerned European firms (84.4%), while only 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.[77]

[77] 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://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.[78]

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.[79]

The Information Technology and Innovation Foundation (ITIF) has termed these regulatory actions "Non-Tariff Attacks" (NTAs).[80] 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.[81]

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.[82] 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.[83]

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[78] 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.

[79] *Id.*

[80] 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.

[81] For references to the importance of scale, see Draghi Report, *supra* note 2, at 35-39.

[82] 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.

[83] *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.[84] These consequences are already evident in multiple product categories.

I. 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.[85]

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

[84] 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.

[85] *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.[86]

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.[87]

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.[88]

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.[89] 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.[90] 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.[91]

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

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[86] *Id.*

[87] 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.

[88] Nextrade Group, *supra* note 85.

[89] *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.

[90] Nextrade Group, *supra* note 85.

[91] 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.[92]

These structural changes also have privacy implications for personalization and relevance. A Nextrade 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.[93] 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.[94]

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[92] 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.

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

[94]

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.[95]

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.[96]

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.[97] 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.[98]

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.

[95] Akshaya Asokan, *Apple to Delay AI Rollout in Europe*, BANKINFOSECURITY (Jun. 21, 2024).

[96] 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.

[97] 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.

[98] 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.[99]

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.[100]

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.[101]

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.

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[99] 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.

[100] *Id.*

[101] *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.[102] 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.[103]

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.[104]

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[102] *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).

[103] *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).

[104] 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.[105] 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.[106]

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,[107] 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.[108] 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."

DMA-Report-.pdf.

[105] *Id.*

[106] *Id.*

[107] *Id.*

[108] *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."[109] 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,[110] and the latter even classified it as a barrier to digital trade.[111] After criticism from politicians like Sen. Elizabeth Warren (D-Mass.), Raimondo fell silent on the issue.[112] The USTR even took the DMA out of its barriers-to-trade list.[113] 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.[114] 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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[109] 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.

[110] *Id.*

[111] *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.

[112] 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.")

[113] *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.

[114] 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/ncilj/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."[115]

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).[116]

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.[117]

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,[118] establishing a strong precent 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).[119]

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[115] 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 .

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

[117] 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/IHT-president-hints-at-retaliation-if-antitrust-officials-bar-merger-clinton.html.

[118] 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.

[119] 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."[120] 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."[121] The DOJ's antitrust chief, Charles James, openly criticized the EU's "portfolio effects" analysis as "antithetical to the goals of antitrust law enforcement."[122]

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.[123]

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).

[120] William Drozdiak, *EU Official Decries Bush Effort on GE-Honeywell*, WASHINGTON POST (Jun. 18, 2001), https://www.washingtonpost.com/archive/business/2001/06/19/eu-official-decries-bush-effort-on-ge-honeywell/94bbd73b-6fa2-4de7-a103-3ea45f2a9739.

[121] *Id.*

[122] Charles A. James, *International Antitrust in the Bush Administration*, DEP'T JUST. (Sep. 21, 2001), https://www.justice.gov/atr/speech/international-antitrust-bush-administration.

[123] 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.

> 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.[124]

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*[125] 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."[126] 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.[127]

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

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[124] *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.

[125] 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.

[126] 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/jl5050.

[127] *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/WhitePaper-EU-State-Aid-8-24-2016.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.