WRITTEN TESTIMONY OF PROFESSOR AURELIEN PORTUESE

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Subcommittee on the Administrative State, Regulatory Reform, and Antitrust
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Chairman Jordan, Ranking Member Nadler, and distinguished members of the Subcommittee:

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

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

My testimony today will focus on three core points:

1. **The European Union's Digital Markets Act (DMA) is a protectionist tool that has been weaponized against U.S. companies, stifles innovation, and harms consumers. It has had some positive effects (such as interoperability and app store rules change), but these effects are narrow and can be accomplished without the DMA's negative effects;**

2. **The DMA is spreading across the world, in countries like South Korea, Brazil, Australia, and Japan, demonstrating how the EU is wielding its soft power to adversely impact U.S businesses;**

3. **In response to the DMA, the U.S. has an opportunity to use its "sharp power" to foster global pro-innovation regulations that also safeguard national security. As part of this:**
   - **Congress could pass legislation — including amendments to the International Trade Act of 1974 and provisions like those contained in H.R. 4278, the "Protect U.S. Companies from Foreign Regulatory Taxation Act" introduced by Rep. Fitzerald (R-WI), —l which would better enable the U.S. to take action against jurisdictions that adopt DMA-like regulations that discriminate against US companies;**
   - **Congress could initiate investigations into the DMA, to documents its negative effects on global trade, businesses, and consumers; and**
   - **Congress and the Administration should engage in digital diplomacy efforts aimed at influencing foreign jurisdictions' competition regulations.**

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

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

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

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

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

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

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

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

Commentators were lucid about the DMA's protectionist twist at the release of the proposal in 2020[4], and still now.[5] For example, commentators consider that:

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

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

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

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

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

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

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

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

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

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

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

9 See Aurelien Portuese, Precautionary Antitrust: The Changing Nature of Competition Law", Journal of Law, Economics and Policy, Vol 17(3), 2022, pp.548-634, https://awards.concurrences.com/IMG/pdf/precautionary_antitrust_jlep.pdf?103468/35422e62f4fe44cc0cdadbf4ecfe13e72df394f5bc2d0b261684cf8f0264e363 ; Aurelien Portuese, The Digital Markets Act: The Path to Overregulation, Competition Policy International, June 13, 2022; Aurelien Portuese, The Digital Markets Act: A Triumph of Regulation Over Innovation, ITIF Report, August 2022), https://www2.itif.org/2022-digital-markets-act.pdf ; Aurelien Portuese, "European Competition Enforcement in the Digital Economy: The Birthplace of Precautionary Antitrust", (November 11, 2020). The Global Antitrust Institute Report on the Digital Economy 17, Available at SSRN: https://ssrn.com/abstract=3733715 or http://dx.doi.org/10.2139/ssrn.3733715 ; Aurelien Portuese, "The Digital Markets Act: European Precautionary Antitrust", ITIF Report, May 2021, https://www2.itif.org/2021-digital-markets-a4.pdf ; Aurelien Portuese, "Precautionary Antitrust: A Precautionary Tale in European Competition Policy" In: Mathis, K., Tor, A. (eds) Law and Economics of Regulation. Economic Analysis of Law in European Legal Scholarship, vol 11. Springer, Cham, (2011), https://doi.org/10.1007/978-3-030-70530-5_10

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

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

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

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

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

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

13 NextTrade Group, Impact of the Digital Markets Act (DMA) on consumers across the European Union: Results from a survey with 5,000 consumers, September 2025, https://www.nextradegroupllc.com/_files/ugd/478c1a_9d7c98475ce8404188d2f8dbb1c9d2ff.pdf

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

benefits of the DMA have been proven, and both the 2024[15] and 2023[16] DMA Implementation Reports do not quantify any tangible economic benefits on innovation and economic growth.

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

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

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

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

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

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

18 European Commission, Commission finds Apple and Meta in breach of the Digital Markets Act, April 22th, 2025, https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1085

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

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

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

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

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

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

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

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

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

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

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

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

B. DMA Contagion has Weaponized Europe's Normative Soft Power

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

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

1. America's has displayed inaction and complacency in response to the DMA

In February 2025, President Trump issued a directive "*Defending American Companies and Innovators from Overseas Extortion and Unfair Fines and Penalties*."[25] President Trump's

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

[23] Marc Scott, "Europe tech's ambition: to be the world's digital policeman", Politico, August 20, 2017, https://www.politico.eu/article/europe-tech-ambition-to-be-world-digital-policeman/

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

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

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

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

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

Additionally, Biden's antitrust enforcers promoted the implementation of the DMA as an "act of international cooperation."[31] The former antitrust chiefs' willingness to praise and facilitate the implementation of the DMA was demonstrated in Staff Report of the House

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

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

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

[28] Aurelien Portuese, "Biden Administration Rightly Speaks Out on Europe's DMA", Innovation Files, December 13, 2021, https://itif.org/publications/2021/12/13/biden-administration-rightly-speaks-out-europes-dma/

29 European Union External Action, US/Digital: EU opens new Office in San Francisco to reinforce its Digital Diplomacy, September 1, 2022, https://www.eeas.europa.eu/eeas/usdigital-eu-opens-new-office-san-francisco-reinforce-its-digital-diplomacy_en

30 Charles Manoury, the European Commission spokesperson quoted in World Economic Forum, "Why the European Union is opening a Silicon Valley 'embassy'", August 16 2022, https://www.weforum.org/stories/2022/08/why-the-european-union-is-opening-a-silicon-valley-embassy/

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

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

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

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

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

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

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

35 European Commission, "EU-US hold fourth Joint Technology Competition Policy Dialogue", April 10 2024, https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1952

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

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

- **In India**, the Competition Commission of India initiated the Google Android case (Case No. 39 of 2018) in 2018, deciding it in October 2022, with a fine. The allegations mirrored EU concerns regarding mandatory pre-installation of Google applications, revenue-sharing tying Play Store access to exclusivity, and restrictions on Android forks. Evidence of EU influence includes extensive replication of the European Commission's 2018 Android decision, with verbatim passages and unreviewed European evidence, as noted in reports and Google's appeals. As of December 2025, the ₹1,337.76 crore fine and behavioral remedies remain largely upheld, with appeals pending before the Supreme Court.

- **In South Korea**, the Korea Fair Trade Commission addressed Google's anti-fragmentation agreements in a case initiated in 2016 and decided in 2021, imposing a fine for requiring such agreements to prevent Android forks and entrench dominance. The theories align closely with the European Union's 2018 Android decision, reflecting parallel enforcement trends. The outcome includes a 207 billion won fine and corrective orders, with appeals ongoing as of December 2025.

- **In Australia**, the Australian Competition and Consumer Commission has not pursued direct abuse-of-dominance cases mirroring the pre-2019 European Union Google decisions; however, its Digital Platforms Inquiry from 2017 to 2019 and subsequent reports drew indirectly on international developments, including European Union actions, to address self-preferencing and related concerns.

- **In Brazil**, a Google Android enquiry launched in 2019 explicitly followed the European Union's 2018 investigation and was settled in December 2025, with requirements for Google to terminate certain agreements without an additional fine. Beyond these jurisdictions, similar influences appeared in cases in Turkey and Russia.

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

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

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

- **In Brazil's,** PL 2768/2022, under consultation since 2023, mandates interoperability and non-discrimination for gatekeepers with income exceeding R$70 million, imposing fines up to 2% of revenue. This low threshold risks capturing emerging U.S. players like Uber and Google early in their growth. Meanwhile, investigations by CADE into self-preferencing and other issues favor domestic rivals, enabling free-riding and reducing incentives for American investments in logistics and e-commerce.

- **In Australia**, ongoing ACCC inquiries and Treasury consultations as of December 2024 propose service-specific obligations for designated platforms. These initiatives address perceived anticompetitive conduct but adopt precautionary elements, such as barriers to entry presumptions, that prohibit pro-consumer practices like data leveraging, potentially insulating local media and intermediaries from U.S. platforms in search and advertising.

- **In Japan**, the Smartphone Software Competition Promotion Act, adopted in June 2024, targets app stores and operating systems with bans on discrimination and data misuse, allowing case-by-case rebuttals but emphasizing exemptions only for privacy and security. This asymmetric regulation by size affects U.S. ecosystems like Apple's iOS, mandating alternatives that erode proprietary controls and enable rivals to compete without equivalent innovation risks. Additionally, the Japan Federal Trade Commission's guidelines, drafted in 2025, focus on core services in a manner that shields domestic firms.

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

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

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

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

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

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

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

a. Congress's Oversight and Legislation

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

i. **Congress could launch an investigation and write a report quantifying the costs of the DMA** on innovation incentives and product design, as well as its advantage (with respect to interoperability and app store rule changes). To date, this type of in-depth analysis has not been conducted. This inquiry should also investigate the active role of European officials in advocating for DMA-inspired regulations and investigate the role the US has played in the implementation of the DMA.

ii. **Congress should pass a law with provisions like those contained in H.R. 4278, the "*Protect U.S. Companies from Foreign Regulatory Taxation Act*,"** introduced by Rep. Fitzerald, which aims to protect certain U.S. entities from enforcement of foreign digital market regulations. The bill seeks to shield major U.S. digital companies from foreign regulations—like the DMA—that are seen as potentially hindering their operations and U.S. economic/technological security.

iii. **Congress should amend the Trade Act of 1974 to incorporate reciprocity against discriminatory digital regulations** like the DMA. This should include provisions that:

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

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

i. **Integrate the DMA into existing TCPD discussions**. The Department of Commerce and the International Trade Administration can join these meetings where antitrust authorities meet to ensure that the trade aspects of the DMA are fully addressed;

ii. **Re-activate the WTO's Working Group on Competition & Trade,** which has been dormant for the last 20 years. This Working Group can be useful to recognize ex-ante digital regulations and foreign trade barriers that are *de facto* discriminatory;

iii. **Establish a dedicated, bipartisan task force under the auspices of the United States International Trade Commission (USITC)** to monitor extraterritorial digital regulations that function as trade barriers. The agency's mandate includes conducting investigations, providing

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

D. Conclusion

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

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