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PUBLIC INTEREST COMMENT

Foreign Governments' Ex Ante DMA-Style Rules Harm Competition and Innovation in Digital Markets While Discriminating Against US Firms

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NOTE: The following comments borrow material from Satya Marar's forthcoming research paper on the use of ex ante rules to govern competition in digital markets.

COMMENTS

Ex Ante Rules Are Inappropriate for Addressing Competition in Digital Markets

Competition or antitrust law across jurisdictions is governed by some combination of ex ante rules and ex post enforcement of laws that may complement or substitute for each other.[3] In the United States, antitrust is primarily governed by the Sherman Act, Clayton Act, and FTC Act statutes.[4] These are ex post antitrust enforcement instruments that are interpreted by enforcement agencies and judges primarily on a case-by-case basis. In the United States, the enforcement of competition in digital platform markets remains the purview of antitrust law rather than competition rules. Since the 1970s, US courts have interpreted these statutes as reflecting a consumer welfare prescription.[5] This entails applying quantitative and qualitative tools of economic analysis to specific product or geographic markets to identify and proscribe conduct that is likely to reduce competition and leave consumers worse off, rather than being concerned with whether a firm's conduct merely leaves its competitors worse off.[6] The long-standing consumer welfare standard has triggered a shift away from penalizing firms based on their size, market concentration, or success of their product relative to competitors'.[7] Instead, it favors affording businesses great leeway to experiment with business practices that might better serve consumers, thereby encouraging growth, dynamism, and innovation.

Conversely, under the European Union (EU) and similar civil-law legal systems, antitrust law complements sector-specific ex ante competition regulations and rules. These rules apply outright prohibitions to a wider range of conduct than US antitrust law does, thereby obviating the need to find anticompetitive effects or consumer harm within a specific market.[8] Such rules are underpinned by the notion that state intervention in markets is necessary to protect competitors, facilitate competition, and uphold values other than consumer welfare by providing guardrails within which competition can

[3] See Christopher S. Yoo, "Conceptual Frameworks to Guide When to Replace Competition Law with Rules" (Mercatus Policy Brief, Mercatus Center at George Mason University, 2024).
[4] Alden F. Abbott, "US Antitrust Laws: A Primer" (Mercatus Policy Brief, Mercatus Center at George Mason University, 2021).
[5] Reiter v. Sonotone Corp., 442 U.S. 330, 343 (1979), wherein the Sherman Act is described as a "consumer welfare prescription," quoting Robert Bork, *The Antitrust Paradox: A Policy at War with Itself* (Basic Books, 1978), 66, cited in Alden Abbott and Satya Marar, "The Robinson-Patman Act: A Statute at Odds with Competition and Economic Welfare" (Mercatus Policy Brief, Mercatus Center at George Mason University, June 6, 2023).
[6] Abbott, "US Antitrust Laws: A Primer."
[7] For instance, empirical research by Chicago school economists such as Harold Demsetz questioned conventional assumptions that market concentration or durable profit margins were signs of anticompetitive conduct or an anticompetitive market, rather than a potential indication that the prevailing firms are simply more efficient competitors better equipped to serve consumers. See Harold Demsetz, "Two Systems of Belief About Monopoly," in *Industrial Concentration: The New Learning, The 1974 Conference on Industrial Concentration,* ed. H. J. Goldschmid et al. (Little, Brown, 1974), 164, 166–67. In the 1960s, a merger was deemed presumptively anticompetitive if the merged entity would possess over 30 percent of the relevant market; see United States v. Philadelphia Nat'l Bank, 374 U.S. 321 (1963). However, more recent jurisprudence acknowledges that market-concentration figures alone are not dispositive as to whether the post-merger entity will raise prices and restrict output, reduce innovation, or harm consumers in other ways without being undercut by competitors or new market entrants. These factors are best assessed through alternative metrics and understanding the specific features and competitive dynamics of the relevant market. See Douglas H. Ginsburg and Joshua D. Wright, "Philadelphia National Bank: Bad Economics, Bad Law, Good Riddance," *Antitrust Law Journal* 80, no. 2 (2015): 377–96; Satya Marar, "Artificial Intelligence and Antitrust Law: A Primer" (Mercatus Special Study, Mercatus Center at George Mason University, 2024).
[8] See Giovanna Massarotto, "Regulating Tech Titans: What American Antitrust Can Learn from Europe" (University of Pennsylvania, Institute for Law and Econ Research Paper, 2024), 24–33. The equivalent practice in the United States might involve declaring a wider range of business practices as per se illegal for antitrust purposes.

occur.[9] Such outright prohibitions enshrined in rules increase the costs and limit the ability of businesses to experiment with practices that may foster innovation and improve consumer welfare.[10] They may thus amount to state enforcers and policymakers supplanting the process of competition, experimentation, and innovation in business practices and models with their own designs, whilst inadvertently (or even intentionally) favoring some market participants over others, rather than upholding vigorous market competition to determine "winners."

For instance, the EU's Digital Markets Act (DMA) imposes ex ante regulation upon "gatekeeper" firms operating primarily in digital platform markets. Gatekeeper firms are banned from engaging in various types of vertical restraints through mandates requiring interoperability,[11] data portability,[12] and nondiscrimination[13] within their platforms. An ample body of economic evidence finds that such vertical restraints often have ambiguous or even procompetitive effects on competition and consumer welfare.[14] Similarly, self-preferencing (in which gatekeeper platforms are prohibited from engaging under the DMA)[15] also has ambiguous or potentially procompetitive effects,[16] even for third-party sellers.[17] Proscriptive regulation, rather than case-by-case adjudication that considers the net competitive effects of a given practice under antitrust law, is thus inappropriate for digital platform markets, as it risks undermining competition and innovation rather than fostering them.[18] This is further highlighted by the nature of high-tech markets, which are characterized by "short life cycles, frequent innovation, and noticeable dynamic competition."[19]

[9] Massarotto, "Regulating Tech Titans."
[10] Massarotto, "Regulating Tech Titans."
[11] DMA Recital (55), (57), Art. 6(7).
[12] DMA Recital (59), (96), Art. 6(9).
[13] DMA Recital (61) (62), Art. 6(12).
[14] See Christopher S. Yoo, "Technological Determinism and Its Discontents," *Harvard Law Review* 127, no. 3 (January 2014): 929–31 for a review and summary of this economic literature.
[15] DMA Recital (52), Art. 6(5), (11).
[16] Consumers often benefit from self-preferencing. An example of this is where the incumbent's product is a more convenient option that is quickly highlighted, or where the ability to self-preference provides incentive for a firm to enter into the market for the product and boost competition. See Lazar Radic and Geofrey A. Manne, "Amazon Italy's Efficiency Offense," *Truth on the Market*, January 11, 2022. Self-preferencing is also unlikely to be used as a business strategy on a platform unless the platform expects that its revenue from selling its own product under self-preferencing will exceed the expected commission from sales of third-party products that may be lost. This may explain why Amazon enters into competition with only 8 percent of the third-party seller products offered on its platform. See G. S. Crawford, M. Courthoud, R. Seibel, and S. Zuzek, "Amazon Entry on Amazon Marketplace" (CEPR Discussion Paper No. 17531, CEPR Press, 2022). Furthermore, platforms that give preference to inferior products would undermine the attractiveness of their platform to its users, thereby rendering themselves vulnerable to competition from rivals.
[17] For instance, Zhu notes that "if Amazon's entries attract more consumers, the expanded customer base could incentivize more third-party sellers to join the platform. As a result, the long-term efects for consumers of Amazon's entry are not clear." See Feng Zhu, "Friends or Foes? Examining Platform Owners' Entry Into Complementors' Spaces," *Journal of Economics and Management Strategy* 28, no. 1 (2019): 23, 26.
[18] See Yoo, "Conceptual Frameworks to Guide."
[19] International competition authorities have declined to police competition in digital markets through ex ante rules for this reason. For instance, in December 2022, Taiwan's Fair Trade Commission (TFTC) issued a white paper on "Competition Policy in the Digital Economy" that struck a more skeptical tone on ex ante regulation. The white paper cited the "controversy of whether it is appropriate for competition authorities to implement ex ante controls," and counseled that "as the digital economy features frequent innovation, short life cycles, and noticeable dynamic competition, the best enforcement principle at this stage is 'issue driven,'" with an eye toward ex post efforts to "[resolve] problems based on each case." See W. Reinsch and K. Suominen, "Are US Digital Platforms Facing a Growing Wave of Ex Ante Competition Regulation" (Center for Strategic and International Studies, 2023), citing "White Paper on Competition Policy in the Digital Economy (Summary)" (Taiwan Fair Trade Commission, 2023).

The exporting of the DMA's regulatory model for leading US digital platforms to other foreign jurisdictions thus represents a threat to the competitiveness of US firms, as well as the US economy itself, by inhibiting the ability of firms to raise revenue, access data for refining technology tools, including AI tools, and invest in future innovations. These effects come at a time of increasingly intensifying high-tech competition between the US and China. Only one Chinese firm, ByteDance, is identified as a gatekeeper and subject to regulation under the DMA. By contrast, all other identified "gatekeeper" firms under the DMA are American.

DMA-Style Rules Are Nontariff Trade Barriers that Discriminate Against US Firms

Despite aiming to identify "gatekeeper" firms for specific "core platform services," such as social media, mobile app stores, search engines, and others, the DMA classifies firms as "gatekeepers" based on their global or European Economic Area revenues rather than market share or ability to raise prices, restrict quality, or otherwise limit competition in the market for these products and services. The DMA also includes provisions for classifying firms as "gatekeepers" based on qualitative criteria, such as "considerable economic power" and an "entrenched and durable position" if they do not meet its strict turnover thresholds. However, these are references to market power that are entirely subjective without analyzing competitive conditions, including the incentives of other competitors, in one or more markets in which firms operate. Moreover, using qualitative factors to classify a firm as a gatekeeper gives European competition enforcers strong arbitrary discretion to deem politically disfavored firms as "gatekeepers" unless their judgments are also supported by analyzing competitive conditions and the role of competitors in the market for a "core platform service."[20] For instance, this may be supported by an analysis of consumers' ability to switch services to competitors in the event that a would-be "gatekeeper" platform raised prices or restricted quality, including their ability to substitute to other products or services.

European officials have countered that the DMA does not discriminate against US firms since any European or other non-American firm that meets its quantitative or qualitative criteria would also be classified as a "gatekeeper."[21] However, the DMA's failure to adequately account for market share and competitive dynamics in specific product and geographic markets has led to a perverse result whereby US digital platforms facing vigorous competition from European alternatives in the market for specific goods and services, or within specific countries or regions, are classified as "gatekeepers" and subject to burdensome regulation that does not apply to their competitors. For instance, American e-commerce giant Amazon is classified as a "gatekeeper" in the EU under the DMA. However, its market share for e-commerce in Poland and the Czech Republic is less than that of European digital marketplace Allegro.[22] Similarly, European digital marketplace Zalando is the number one marketplace for fashion products in Germany, Poland, Italy, and the Netherlands.[23] Thus, the DMA's "gatekeeper" definition (and similar standards under DMA-like ex ante proposals in other jurisdictions) may be considered protectionist,

[20] "While abstract and general standards tend to protect individual freedom more than concrete and individualized rules, the low level of specification of articles 3(1) and 3(6) could raise, rather than limit the Commission's discretion [to determine gatekeepers] compared to a traditional market power and market definition assessment." See Nicolas Petit, "The Proposed Digital Markets Act (DMA): A Legal and Policy Review," *Journal of European Competition Law and Practice* 12, no. 7 (2021): 529–41.

[21] See Lilla Nóra Kiss, "Does the DMA Intentionally Target US Companies?," Information Technology and Innovation Foundation (ITIF), March 21, 2025.

[22] See Grace Mendez, "The Top 14 European Marketplaces in 2025," *channelengine* (blog), August 22, 2025.

[23] Mendez, "The Top 14 European Marketplaces in 2025."

discriminatory nontariff barriers to international competition that protect domestic firms from competition from American rivals by imposing discriminatory burdens.[24]

Additional evidence, including statements from EU officials during the DMA's development and amendments that were suggested and included in the DMA, further supports the idea that the DMA was intended to disproportionately burden US firms.[25]

Competitive Harm to US Businesses Operating Overseas: The Evidence So Far

Undermining the value of "core platform services" operated by US tech firms by preventing American businesses from experimenting with business practices that may better serve consumers harms US tech firms and reduces opportunities for revenue and profit. It also harms businesses reliant on those platforms to reach consumers, including both American firms selling goods and services to European consumers, as well as European firms reliant on US tech platforms. Here are some examples with regard to the DMA after little over a year of its operation.

DMA-style accessibility mandates for third parties undermine quality, prevent product differentiation, and reduce trust in US digital platforms

For example, consider DMA Art. 6(4), which mandates that "gatekeeper" mobile phone platforms, including Google's Android and Apple's iOS, must allow for the "sideloading" of third-party applications and app stores. Art. 6(7) additionally stipulates that they must grant these third parties access to the operating system's essential software and hardware features. Gatekeepers may take "necessary and proportionate" measures to prevent third-party apps or app stores from undermining the operating system's hardware, or to enable users to protect security in relation to third-party apps and app stores. However, they must provide justification for doing so or risk penalties. Platforms must design interoperability interfaces and access application processes for third party apps and app stores under uncertainty that even a well-intentioned or well-designed system or interface will not attract prosecution or penalties from enforcers, or lawsuits from unsatisfied third parties themselves. Mandated "sideloading" of third-party app stores and apps in US-owned digital platforms may help various apps and app stores to reach a wider audience. However, it also represents a degradation in user experience for many amidst heightened security and privacy risks that drive a loss in user trust in the platform. For instance, some alternative app stores, by reason of deliberate business models or lower ability or desire to police content on their stores, are distribution hubs for pirated[26] and adult[27] content.

Increased proliferation of pirated content due to Apple's or Android's reduced ability to control their devices' service ecosystem also undermines the ability of American intellectual property owners to enforce their rights in Europe. And a perceived loss in security features and increased ability to

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[24] Nigel Cory and Robert Holleyman, "Safeguarding US Companies from Unfair South Korean Competition Policies" (National Bureau of Asian Research, Policy Brief, June 12, 2025).

[25] "[W]hile the motive behind the DMA may not be anti-American, that does not mean it was not intended to have a disproportionate effect on US firms. Indeed, one of the clearest indicators of intent comes from Andreas Schwab, a Member of the European Parliament and rapporteur of the DMA, who expressly stated that the law should focus on 'the top five' companies rather than include any European firm just to 'appease the US.' In fact, the European Parliament's Internal Market and Consumer Protection Committee (IMCO) report, which Schwab drafted, explicitly advocated for adjusting the DMA's thresholds in ways that kept US firms within scope while exempting most EU competitors. This is a sort of smoking gun: If the DMA were truly intended to be neutral, these radical, last-minute amendments would not have been necessary." See Kiss, "Does the DMA Intentionally Target US Companies?," footnote 21.

[26] Konstancija Gasaitytė, "Apple Is Expecting a Piracy Frenzy in Europe," *Cybernews*, April 18, 2025.

[27] "Apple Blasts EU Laws After First Porn App Comes to iPhones," *Bloomberg News*, March 2, 2025.

access adult content make it more difficult for parents to shield their teenagers from inappropriate and harmful material on their phones, driving a loss of confidence that would reduce their willingness to allow their children to use the devices or apps they are unfamiliar with in the first place. This leads to a decline in fairness and market contestability for European and American app developers who produce age-appropriate content aimed at younger audiences, including educational content.

Similarly, since the DMA took effect, Google has been unable to integrate its search and service aggregator tools in the EU because the DMA forces "gatekeeper" search engines, only including US firm Google, to link to third-party booking sites for flights, hotels, and other services. This may have made the market more contestable in the short run for those specific booking sites that have experienced an increase in traffic. However, this also means that hotel and flight bookings take far more clicks than they previously did. One study quantifies the time wasted by consumers at over 3.3 million euros annually.[28] Degraded experiences in booking hotels due to the absence of direct booking options integrated into Google search have also helped drive a 36 percent reduction in direct bookings on Google Hotel Ads, with the service's European web traffic dropping by 30 percent,[29] indicating significant competitive harm due to the regulatory restrictions. Smaller businesses that rely more on Google search to drive traffic to their services face disproportionate harm from the degraded user experience and resulting decline in platform patronage, losing rather than improving their ability to contest for market share, and indicating an unfair competitive outcome in addition to harm to consumers.

Interoperability mandates of the kind described above also limit the ability of US digital platforms to distinguish themselves from each other and from competitors, further undermining their ability to compete in jurisdictions that apply ex ante DMA-style rules by providing different user experiences to attract different consumer segments. For instance, Apple and Android mobile devices and their respective app stores already provide different levels of interoperability for external apps, security, targeted advertising, and privacy features that are appealing to different consumers.[30] In the landmark US antitrust decision of *Epic Games v. Apple*, for instance, Apple was not found liable for the offence of monopolization under Section 2 of the Sherman Act due to the restrictions it imposes on third-party apps in its app store as it competes with Android, which holds a comparable share of the US mobile device and mobile app store market, by offering a lesser level of interoperability while promising higher security and privacy standards.[31] By contrast, the DMA brands both Apple and Android as "gatekeepers" while exempting any competitor devices and app stores from similar interoperability mandates.

Uncertainty, regulatory costs, and arbitrary treatment

The use of ex ante rules to govern competition in digital markets is partly motivated by wanting to reduce the time, uncertainty, and resource expenditure that executive and judiciary bodies, as well as private plaintiffs, incur relative to administering and enforcing laws on a case-by-case basis.[32] However, rather than providing commercial certainty to the regulated parties, the DMA has created substantial uncertainty as to what constitutes compliance among both "gatekeeper" platforms and enforcement

[28] Louis-Daniel Pape and Michelangelo Rossi, "Is Competition Only One Click Away? The Digital Markets Act Impact on Google Maps" (CESifo Working Paper No. 11226, 2024), https://ssrn.com/abstract=4922400.
[29] Javier Delgado, "DMA Implementation Sinks 30% of Clicks and Bookings on Google Hotel Ads," *Mirai*, May 7, 2024.
[30] Andrew Cunningham, "iPhone vs. Android: Which Is Better for You?," *New York Times*, May 16, 2023.
[31] Epic Games, Inc. v. Apple, Inc., 559 F. Supp. 3d 898, 923 (N.D. Cal. 2021).
[32] See Yoo, "Conceptual Frameworks to Guide"; Louis Kaplow, "Rules Versus Standards: An Economic Analysis," *Duke Law Journal* 42 (1992): 557, 570, 577; Isaac Ehrlich and Richard A. Posner, "An Economic Analysis of Legal Rulemaking," *Journal of Legal Studies* 3 (1974): 257, 266–67.

officials themselves. And similar effects will likely play out for DMA-style regulatory proposals in other jurisdictions.

For instance, in April 2025, the European Commission (EC) applied a 500 million euro fine to Apple for violating the DMA due to noncompliant terms in Apple's agreements controlling communications between app developers and users. Under penalty of daily fines, the EC required Apple to propose modifications to comply with the DMA.[33] In June 2025, Apple proposed changes under the DMA to ensure its compliance and reportedly received an understanding that these would be accepted. Despite this, as of September 2025, the EC continues to solicit feedback and consult with third parties as to whether the changes would bring Apple into DMA compliance. Conversely, "[t]here is no set timeframe by which the EU needs to decide on Apple's compliance, but the Commission has threatened that law-breaching firms could be fined retroactively for unsatisfactory compliance proposals." These costs, delays, and uncertainty threaten to chill innovation and deny European consumers and businesses access to cutting-edge American technologies and product features that could set them back relative to their foreign competitors. Even if a product feature or business practice is likely to be DMA-compliant, the threat of fines and the associated costs of prosecution and any delays due to "consultations" with third parties on remedies or further investigations (ironically, on a case-by-case basis) may deter firms from rolling these out in Europe while they become accessible to the rest of the world. And since these investigations and policy judgments by regulators are not based on judicial precedent, they are likely to deliver less certainty to affected platforms about what the platforms need to do in the future to meet their obligations without incurring significant further costs.

Appropriating proprietary resources from US firms without adequate compensation

The DMA requires that gatekeepers provide users and/or rivals with free access to various tools, resources, data, and interfaces for facilitating analytics, interoperability, and data portability.[34] These rules prevent gatekeepers from passing on all or even some of the costs of providing those tools, resources, and data to the firms that request them or benefit from them. DMA Recital 62 stipulates that price or other general conditions of access will be deemed unfair if they cause an "imbalance of rights and obligations" for business users, or if they give the gatekeeper a "disproportionate advantage". Recital 62 also provides some benchmarks as guidance for what kinds of conditions would meet the obligations.

However, the precise content of the obligations will vary and depend on the circumstances of each case, gatekeeper, and service. Such mandates for a firm to provide a proprietary resource or tool to competitors or third parties for free or at a suppressed cost promote "free riding" and thus discourage competition and innovation by undermining all market participants' incentives to invest in developing such useful consumer-serving resources.

This is why US antitrust courts impose a heavy burden on plaintiffs seeking access to inputs or other resources from their competitors or other firms to remain competitive.[35] Even where such inputs are recognized as necessary or important for allowing rivals to compete, US antitrust courts generally balance the need to compensate the input owner with the desire to make the input available in order to foster competition in tailoring antitrust remedies. For instance, in the recent Google Search

[33] See Jacob Parry, "EU Tests if Apple Has Done Enough to Avoid Daily Fines," *Politico*, September 17, 2025.
[34] See DMA Art. 6(7), 6(8), 6(9) and 6(10).
[35] See, e.g., Verizon Communications Inc. v. Law Ofices of Curtis V. Trinko, LLP, 540 U.S. 398 (2004): "Compelling such firms to share the source of their advantage is in some tension with the underlying purpose of antitrust law, since it may lessen the incentive for the monopolist, the rival, or both to invest in those economically beneficial facilities."

decision, DC District Court Judge Mehta determined that Google's search indexing and user point-and-click data allowed it to maintain its monopoly in search since rivals couldn't obtain similar data partially due to Google's contracts with web browsers and mobile devices to be their default search engine.[36] He ruled that denying rival search engines the ability to refine their algorithms through accessing this data or gathering comparable user data prevented them from creating a comparable alternative and thus illegally helped maintain Google's monopoly. However, in the subsequent Google Search remedies decision,[37] he ordered Google to make this data available to competitors on "commercial terms" rather than for free or at cost. In doing so, he attempted to maintain competitive incentives for both Google and its competitors to gather and improve upon available data, and to continue developing similar tools and resources to foster improved search. Although the remedy curtails Google's freedom to share or not share its proprietary data, it still aims to ensure that Google is compensated for its resource at market rates.

Delayed rollout of American AI tools and innovations in European markets

Potential security risks related to complying with the DMA's interoperability mandate resulted in a delayed rollout of Google and Apple's AI features to EU consumers. For instance, when Apple's iOS 26 becomes available, European consumers will not be able to autotranslate audio through their AirPods due to delays tied to ensuring, or attempting to ensure, DMA compliance.[38] Three other AI-related features on Apple products, Phone Mirroring, SharePlay Screen Sharing enhancements, and Apple Intelligence, were previously not offered to EU consumers until March–April 2025 despite being rolled out elsewhere in 2024.[39] Similarly, Google attributed uncertainty around regulations, including compliance with the DMA, to the delayed rollout of AI overviews for Google Search in Europe.[40] This feature was launched in other countries in May 2024,[41] but it did not become available in European regions until March 2025.[42] The rapid evolution and dynamic nature of new technologies and their features, including AI, which are increasingly being applied in new ways and to address new issues, means that DMA compliance and uncertainty-related delays are likely to continue rather than decline over time.

Conclusion and Recommendations

The DMA and similar proposals in other jurisdictions represent a form of anticompetitive market distortion, or "ACMD," that unduly discriminates against US firms relative to foreign competitors and inhibits international trade in digital services. As explained by the Growth Commission,[43] an independent and nonpartisan group of international economists who produce new research and engage in dynamic economic modeling to identify policies that can increase income per person, "ACMDs involve government actions that empower certain private interests to obtain or retain artificial

[36] United States of America et al., v. Google LLC, Memorandum Opinion, No. 20-cv3010 (APM) (D.D.C. Aug. 5, 2024) ['Google Search'].
[37] United States v. Google LLC, No. 1:20-cv-3010, at 4, 128 (D.D.C. Sept. 2, 2025) ['Google Search remedies decision'].
[38] Ivan Mehta, "Apple's New Live Translation Feature for AirPods Won't Be Available in the EU at Launch," *TechCrunch*, September 11, 2025.
[39] Foo Yun Chee, "Apple to Delay Launch of AI-Powered Features in Europe, Blames EU Tech Rules," *Reuters*, June 21, 2024; Roman Dillet, "Apple Intelligence Is Coming to the EU in April 2025," *TechCrunch*, October 28, 2024.
[40] Oona Lagercrantz, "Europe's AI Blues: US Companies Slow Deployment" (Center for European Policy Analysis, November 1, 2024.
[41] Lagercrantz, "Europe's AI Blues: US Companies Slow Deployment."
[42] Barry Schwartz, "Google Rolls Out AI Overviews in EU Regions," *Search Engine Land*, March 26, 2025.
[43] Growth Commission, *2024-2025 Growth Presidency Memo*, November 13, 2024.

competitive advantages over their rivals be they foreign or domestic. In particular, ACMDs may flow from government regulations that eliminate or lessen competition, regulations that apply differently to different firms, and regulations that exempt certain favored firms from coverage. The United States and other nations are all prone to having ACMDs, which often are adopted due to the lobbying efforts of self-interested ACMD beneficiaries." The World Bank and Organisation for Economic Co-operation and Development both encourage world governments to abolish ACMDs,[44] and the Centre for Economics and Business Research similarly found that ACMDs lowered global output by approximately 14 percent in 2019.[45]

ACMDs are a fitting subject for bilateral and multilateral international trade negotiations. Although tariffs and other trade barriers can slow economic growth and reduce competition and consumer welfare,[46] narrowly targeted and proportionate sanctions that target foreign ACMDs can lead to increased competition, innovation, and economic growth if they result in the abolition of these nontariff trade barriers. Alternatively, and in order to reduce losses to economic growth and competition that can result from even narrowly tailored and targeted retaliatory trade barriers, the US government may consider reducing or abolishing domestic ACMDs that burden foreign firms in exchange for foreign governments reducing or abolishing their own. This action would be consistent with President Trump's executive order on "Unleashing Prosperity Through Deregulation,"[47] which orders US government agencies to identify rules or regulations they administer that function as ACMDs and reduce competition and innovation.

[44] Growth Commission, *2024-2025 Growth Presidency Memo.*

[45] Shanker Singham, *International Trade, Regulation and the Global Economy: The Impact of Anti-Competitive Market Distortions* (Taylor & Francis, 2025).

[46] See Paul Best, "The Paradox of Protectionism: How Tariffs Hurt the Businesses They're Supposed to Help," (Cato Institute, *Free Society*, Fall 2024).

[47] Katie Branson, "Trump 2.0 Regulatory Executive Orders," *EDUCAUSE Review* (online), April 9, 2025.