

April 1, 2025

The Honorable Scott Fitzgerald
Chairman
Committee on the Judiciary
Subcommittee on the Administrative State,
Regulatory Reform, and Antitrust
United States House of Representatives
Washington, District of Columbia 20510

The Honorable Jerrold Nadler
Ranking Member
Committee on the Judiciary
Subcommittee on the Administrative State,
Regulatory Reform, and Antitrust
United States House of Representatives
Washington, District of Columbia 20510

RE: Subcommittee hearing, “Artificial Intelligence: Examining Trends in Innovation and Competition”

Dear Chairman Fitzgerald and Ranking Member Nadler,

We appreciate your leadership in holding this important hearing to examine artificial intelligence (AI) trends through an antitrust lens. As some of the most important consumers, developers, and adapters of AI tools, ACT | The App Association members have a major stake in how antitrust enforcers and regulators approach markets for AI services. The App Association represents an ecosystem valued at approximately \$1.8 trillion domestically, supporting 6.1 million American jobs.¹ App Association members are innovators that create the software bringing your smart devices to life. They also make the connected devices that are revolutionizing healthcare, agriculture, public safety, financial services, and virtually all other industries.

I. A Snapshot of the Marketplace

Far from being monopolized by a few giants, AI spans a rich mix of players.² In 2024, AI-focused startups captured about 46 percent of all U.S. venture funding,³ a massive increase from under 10 percent a decade earlier. The United States now hosts thousands of AI startups,⁴ more than any other country, backed by hundreds of billions in investment over the past decade. This influx of new entrants has fueled intense competition and rapid technical progress. At every layer of the AI “tech stack”—from hardware (chips, cloud infrastructure) to AI models and applications—multiple firms large and small are vying to out-innovate each other.⁵

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

² <https://www.forbes.com/lists/ai50/>.

³ <https://www.reuters.com/technology/artificial-intelligence/ai-startups-drive-vc-funding-resurgence-capturing-record-us-investment-2024-2025-01-07/#:~:text=AI%20startups%20also%20captured%20a,a%20decade%20earlier>.

⁴ <https://www.voronoiaapp.com/business/The-US-Leads-the-World-in-Artificial-Intelligence-Startups--1181>.

⁵ <https://actonline.org/2025/01/08/the-ai-ecosystem-dynamic-competitiveand-misunderstood/>.

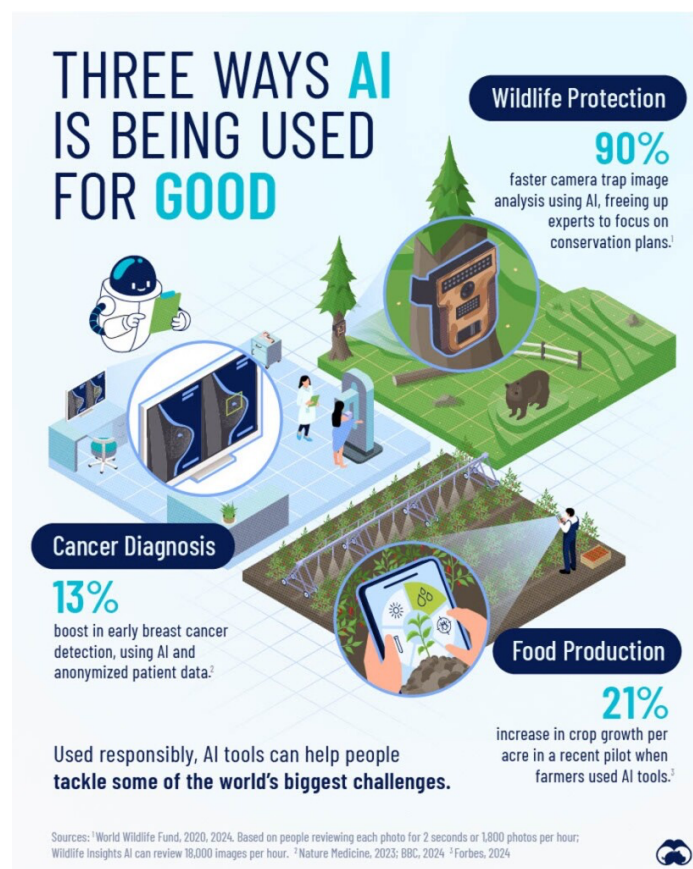
Incumbents and startups play on the same field; an incumbent might craft its own AI chips and models from scratch, while a scrappy newcomer zeroes in on a niche market, harnessing open-source models. This varied landscape means dominance is fragile. Today's leaders face constant threats from unexpected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

New companies are launching AI products across domains from education to healthcare, often building on foundational research but adding novel ideas of their own. This ferment of startups, open-source projects, and corporate research and development (R&D) has created a virtuous cycle of competition that benefits consumers and spurs continuous advancement.

II. What Competition Authorities are Missing: Consumer Benefits of AI

AI is not merely another technological trend—it represents transformative potential for society. AI markets today are highly dynamic, with innovation arising from both tech incumbents and an explosion of startups.

From detecting tumors invisible to the human eye to boosting food production yields and aiding wildlife conservation efforts, AI has already had a profound and tangible impact, with even greater potential ahead. In healthcare, AI tools like Mia⁶ are revolutionizing early cancer detection, giving patients a better chance of recovery and reducing the need for invasive treatments. In agriculture, programs like India's Saagu Baagu use AI to provide real-time advice and soil analysis, boosting crop yields by 21 percent while reducing pesticide and fertilizer use and making farming more productive and sustainable. In wildlife conservation, platforms like Wildlife Insights process thousands of images from camera traps, allowing conservationists to monitor species in real-time and accelerate efforts to protect endangered wildlife. AI's proven success across these areas highlights its vast potential to drive positive societal change.



⁶ <https://www.bbc.com/news/technology-68607059>.

One key factor that enables AI's growth is investment. Large companies have the resources to fund long-term research, build foundational AI models, and provide the infrastructure smaller businesses need to innovate. This market-led investment is pro-competitive, as it makes resources accessible to smaller firms, a point recognized by Margrethe Vestager in her speech at the European Commission workshop.⁷ Startups and small businesses gain access to powerful AI technologies without the need for large upfront investments. In turn, they use AI to develop competitive, innovative solutions that benefit both businesses and consumers. However, without such foundational investment, many of these innovations wouldn't be possible.

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

The previous Administration's Federal Trade Commission (FTC) and some of its European counterparts saw competition problems everywhere, even in the future, in markets that are highly competitive and still emerging. Last year, the FTC blasted several companies⁸ competing in AI markets with subpoenas under its 6(b) authority, casting the significant capital investments needed to kickstart AI research and development under the threatening specter of antitrust enforcement.

Not long afterward, the FTC suggested that the recent CrowdStrike incident was due to concentration in the market,⁹ even though the primary culprit is none other than government regulation¹⁰ *addressing possible competition problems* in tech markets. Notably, this is exactly the kind of intervention that could result from the recent saber-rattling by competition enforcers discussed here. On the other side of the Atlantic, the United Kingdom's (UK's) Competition and Markets Authority (CMA) issued a fairly one-sided update report¹¹ focusing on risks to competition posed by companies providing inputs to AI services, downplaying the costs of intervening to address those risks. Not to be left behind, the Department of Justice (DOJ) and the European Union (EU) signed a joint statement with¹² the FTC and CMA further exaggerating competition risks in AI development.

Studying and understanding emerging markets are important aspects of enforcers' work, but by ignoring evidence weighing against their foregone conclusions and overstating the risks, these efforts read much more like excuses to intervene later on. The FTC's final 6(b) study report takes this approach in Section 5, ominously alluding to competition risks and laying a foundation for future intervention. We agree with current FTC Chair Ferguson in his dissent

⁷ https://ec.europa.eu/commission/presscorner/detail/en/speech_24_3550.

⁸ <https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-launches-inquiry-generative-ai-investments-partnerships>.

⁹ <https://x.com/linakhanFTC/status/1814395610788929649>.

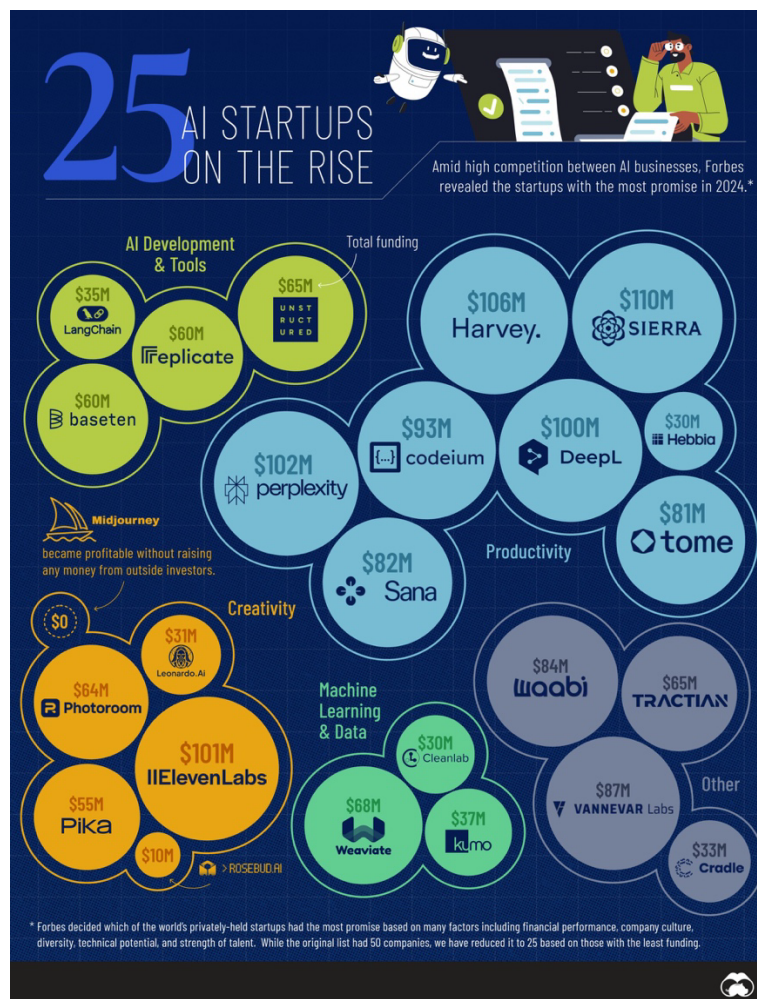
¹⁰ <https://www.aei.org/technology-and-innovation/raising-the-bar-not-lowering-our-guard-around-cybersecurity/>.

¹¹ https://assets.publishing.service.gov.uk/media/661941a6c1d297c6ad1dfeed/Update_Paper_1_.pdf.

¹² <https://www.gov.uk/government/publications/joint-statement-on-competition-in-generative-ai-foundation-models-and-ai-products/joint-statement-on-competition-in-generative-ai-foundation-models-and-ai-products>.

from Section 5, where he notes that the “limited, brief nature of the study should foreclose the drawing of broad conclusions about the AI industry and its future.”¹³

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



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

¹³ https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-ai-6b-statement.pdf.

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

IV. AI Markets: A Stack or a Web?

Whether viewed as a stack or web, there are several discrete markets involved with the production of AI tools consumers and businesses use. Like building blocks, some of the markets produce elements of the AI supply chain on which others are built, leading many to conceive of AI as a “tech stack.” But as Innovators Network Foundation (INF) Competition and Antitrust Law and Policy Fellow Elyse Dorsey recently observed, the stack acts in many ways more like a web since the product in each layer works best when developed cooperatively with other layers.¹⁴ Some AI markets like those for foundation model (FM) and large language model (LLM) development appear to be more capital intensive than others, even with the entry of developers like DeepSeek and introduction of methods that reduce those input costs. Ms. Dorsey further notes that markets tend to undergo expansions and contractions throughout their lifecycles—and that FM and LLM layers of AI appear to be undergoing an expansion.¹⁵ With so much interest and investment in these areas, she described the markets as concentrated but rather competitive.

Well-capitalized companies competing in these foundational layers in turn helps ensure that small businesses can benefit from a finished product at the top of the stack. Similarly, it is important to understand how innovators in the app economy access FM and LLM models in practice—how are they made useful for the many idiosyncratic and evolving ways businesses in the real world need to put them to use? As Scott Weiner, fractional chief technology officer and AI lead at App Association member company NeuEon, noted, small businesses usually demand access to these tools via intermediaries like their cloud service provider (CSP). Pulling together access to the models, storage, chip capacity, and a variety of complementary services, CSPs make the service work. As Mr. Weiner describes, his small business client was recently able to build a complex digital health app using AI tools in a far shorter timeframe that would have been possible without AI tools and without a means of pulling them together and making them usable, as CSPs do.¹⁶

Unfortunately, recent rhetoric from competition authorities seems to ignore these realities, as some have raced to a conclusion that the AI ecosystem is dominated by a handful of companies that have all but cornered the market and entrenched their positions. For example, the UK's Competition & Markets Authority (CMA), in its April 2024 report on

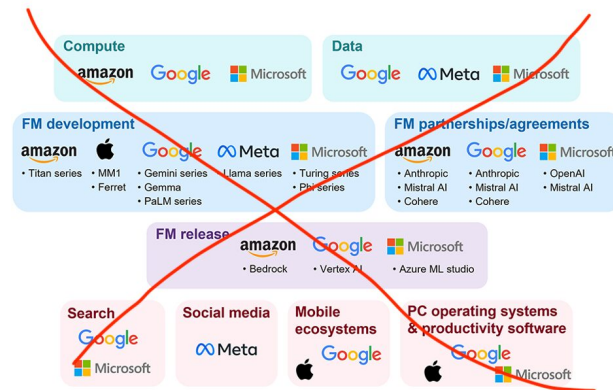
¹⁴ Anant Raut, “DeepSeek and App-Level Competition in AI,” Mar. 17, 2025, *Trust and Trade*, Amer. Bar Assoc, podcast, 37:33, available at <https://trustandtradepodcast.com>.

¹⁵ *Id.*

¹⁶ *Id.*

foundational models¹⁷ expressed concern that incumbent tech companies could heavily steer the direction of AI markets, possibly stifling healthy competition. CMA relies on an arbitrarily selective view of the marketplace, distilled in a now-infamous visual it unveiled at an American Bar Association (ABA) conference, contorted to overemphasize the participation and investment of specific American companies in various layers of the stack / web.

What the AI Ecosystem ISN'T:



However, as shown by the visual below, the reality is that there exists rich complexity and diversity in the AI ecosystem. It is made up of several distinct but interconnected layers, each with a competitive and fast-moving landscape. For example, success of AI startups like Databricks, which recently secured a \$10 billion funding round,¹⁸ show the ability of smaller innovators to compete with incumbents. Companies, large and small, contribute across different layers of the AI ecosystem. From hardware and foundation models to generative AI applications, innovation is thriving.

¹⁷ <https://www.gov.uk/government/publications/ai-foundation-models-update-paper>.

¹⁸ <https://www.reuters.com/technology/databricks-secures-62-bln-valuation-ai-focused-funding-round-2024-12-17/>.

What the AI Ecosystem IS:



However, these layers don't exist in isolation. Progress in one often sparks breakthroughs in others, creating a dynamic and collaborative environment. For example, AI startup Anthropic recently received a sizeable investment from Amazon,¹⁹ allowing it to use AWS' advanced cloud computing capabilities to more effectively train and deploy its models. Regulators play a crucial role in shaping the future of AI. However, their actions must reflect the realities of the market, not unwarranted fears. History shows that poorly timed or overly restrictive regulations can hinder progress and stifle competition.²⁰

Therefore, regulators must tread carefully to ensure they don't disrupt this momentum. Enforcers must apply antitrust laws to prevent harm to competition and consumers, but

¹⁹ <https://www.cnbc.com/2024/11/22/amazon-to-invest-another-4-billion-in-anthropic-openais-biggest-rival.html>.

²⁰ <https://news.stanford.edu/stories/2023/09/antitrust-regulation-can-backfire>.

these safeguards must be informed by an accurate understanding of the ecosystem. Overly strict approaches risk reinforcing the dominance of established players while sidelining smaller, more agile innovators.

We should ensure that newer companies contributing to AI development have the best chance to succeed by recognizing the procompetitive role of major firms as important service providers and sources of capital for these entrants. The future of AI is bright when it exists in a regulatory environment that rewards innovation. To do that, policymakers need to see the market for what it is: dynamic, decentralized, and full of promise.

V. Positioning the United States to Lead on AI

In October 2024, competition authorities from the G7 countries convened in Rome to discuss the AI industry. Their message²¹ to AI innovators was clear: expect coordinated and vigorous scrutiny. The recent unveiling of DeepSeek’s open-source R1 AI model, notably released under an MIT open-source licensing model,²² has called into question this interventionist mindset. Competing on an equal footing with top-tier AI systems from OpenAI, Google, Anthropic, and others at a fraction of the cost, this development underscores just how unpredictable and fiercely competitive the AI landscape is, as illustrated by the graphic below.



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

²¹ <https://en.agcm.it/dotcmsdoc/pressrelease/G7%202024%20-%20Digital%20Competition%20Communiqu%C3%A9.pdf>.

²² <https://actonline.org/2025/02/04/the-ai-revolution-is-far-from-over-three-key-observations-on-deepseeks-impact/>.

In the geopolitical battlefield for tech dominance AI is viewed (whether rightly or not) as a formidable instrument in the arsenal of governments. For example, it is a pillar of China's national strategy. In its 2017 "New Generation Artificial Intelligence Development Plan,"²³ China laid out an aggressive blueprint to dominate AI, positioning the technology as the engine of industrial transformation. Not to be outpaced, the United States has ramped up its own efforts. A recent Executive Order²⁴ signed by President Trump explicitly reinforces AI leadership as a national priority, emphasizing its vital role in security, economic strength, and human progress.

However, in recent times, competition authorities, notably in the West,²⁵ have put harnessing AI's potential on the back burner in favor of parochial concerns about concentration in markets involving AI services. For example, in July 2024, Western competition watchdogs issued a joint warning²⁶ about AI potentially entrenching monopolistic power. If recent news has shown anything, it is that this fear does not align with reality. The emergence of players like DeepSeek demonstrates that the ecosystem is expanding, not contracting. Notably, the most groundbreaking generative AI models haven't come from entrenched incumbents with deep data silos. Instead, they have emerged from nimble innovators disrupting the status quo.²⁷ Yet regulators are on the path to apply outdated assumptions, treating AI as if it were destined to consolidate under a few monopolies. These fears, likely an after-effect from past battles against "Big Tech," fail to acknowledge AI's dynamic and unpredictable evolution. If anything, heavy-handed intervention at this stage could stifle progress, deterring new entrants and making AI development riskier and costlier. Premature regulation could inadvertently cement the dominance of current leaders, who will be the only ones capable of bearing the mounting compliance costs, rather than leveling the playing field for emerging innovators.

Policymakers must ensure that they only intervene when the costs of doing so are outweighed by the benefits. Even competition law investigations can cast a long shadow, as we have seen with the Federal Trade Commission's attempt at forecasting market concentration in its 6(b) study.²⁸ This kind of heavy-handed approach to AI trades dynamic market forces for government planning, leaving consumers and competition worse off.

²³ <https://digichina.stanford.edu/work/full-translation-chinas-new-generation-artificial-intelligence-development-plan-2017/>.

²⁴ <https://www.whitehouse.gov/presidential-actions/2025/01/removing-barriers-to-american-leadership-in-artificial-intelligence/>.

²⁵ https://competition-policy.ec.europa.eu/document/download/79948846-4605-4c3a-94a6-044e344acc33_en.

²⁶ <https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-doj-international-enforcers-issue-joint-statement-ai-competition-issues>.

²⁷ <https://laweconcenter.org/resources/from-data-myths-to-data-reality-what-generative-ai-can-tell-us-about-competition-policy-and-vice-versa/>.

²⁸ <https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2025/01/behind-ftcs-6b-report-large-ai-partnerships-investments>.

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

VI. European Policies Lead to European Results

For the past couple years, we've been sending up flares about the problems with the European Union's (EU's) onslaught of digital market regulation. The negative consequences to markets for AI services will be especially acute. Our concerns center in particular on the Digital Markets Act (DMA),²⁹ because of how thoroughly it restricts³⁰ the curated online marketplace (COM) services small app companies leverage to reach global markets. In one vivid example of how DMA's forced open access mandates relegate EU consumers to slower innovation timelines and uneven access to technology, Apple was compelled to delay Apple Intelligence access for EU markets as it worked through its compliance obligations.³¹ The worst may be yet to come for AI in Europe, however, as DMA compliance is an evolving concept and fundamentally puts government in the middle of development cycles.

The results of DMA and its ilk are predictable. In 2008, American gross domestic product (GDP) was roughly equal to the Eurozone's. But in 2023, the United States' GDP had grown to 1.5 times the Eurozone's GDP.³² What happened? According to some experts, the United States' economic expansion is attributed to increased labor productivity resulting from macroeconomic incentives to rapidly deploy and adopt technologies like AI.³³ And while American government generally allowed technology markets to produce and deploy the innovations leading to higher per-capita productivity, European governments maintained a regulatory environment that punished both nonexistent harms and risk-taking. The results are in and they speak for themselves—the U.S. is the clear winner on technology and the economy in the 2010s.

Unfortunately, the previous Administration took a major step backward in 2023 in ceding ground to the DMA and the European style approach to digital markets. Not only did the United States Trade Representative (USTR) remove DMA from the list of non-tariff trade barriers in its annual National Trade Estimate (NTE), but they also stepped back from the broader range of digital trade priorities protecting American access to global digital markets. The wait to see whether the second Trump Administration would continue to let other countries set digital trade norms ended abruptly earlier this year. In a memo to the Department of Commerce and USTR,³⁴ the President noted that “foreign governments have increasingly exerted extraterritorial authority over American companies, particularly in the

²⁹ <https://actonline.org/2024/02/12/buyers-remorse-app-giants-reap-what-they-sow-in-europe/>.

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

³¹ <https://www.cnn.com/2024/06/21/apple-ai-europe-dma-macos.html>.

³² <https://statisticstimes.com/economy/united-states-vs-eu-economy.php>.

³³ <https://www.apricitas.io/p/americas-productivity-boom>.

³⁴ <https://www.whitehouse.gov/presidential-actions/2025/02/defending-american-companies-and-innovators-from-overseas-extortion-and-unfair-fines-and-penalties/>.

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

We appreciate that this Committee’s and Subcommittee’s leadership quickly followed suit with a letter to the European Commission’s (EC) new Executive Vice-President (EVP) for a Clean, Just, and Competitive Transition, Teresa Ribera.³⁶ The letter singles out DMA in particular, noting that “regulations like DMA will hurt consumers and stifle innovation,” and expressing concerns that it “may target American companies . . .” The letter requests a briefing from EVP Ribera regarding her “approach to DMA enforcement, ongoing DMA proceedings against American companies, and European plans to subsidize and build national champions.”

The memo from the President and the letter from this Committee reflect some of the same consternation we have voiced for several months about DMA. For example, the HJC letter highlighted a concern we share with DMA’s mandate³⁷ for designated gatekeepers to provide virtually unfettered access to personal data. In describing DMA as dictating “how American companies interact with consumers,” the memo similarly reflects our view of DMA as the EC taking away consumers’ ability to select a COM over an unmanaged marketplace. As we argued last year³⁸ in a blog header, “DMA Prioritizes Bureaucrat Preferences Over Those of Consumers and Compliance Over Innovation.” The good news is, the Administration and this Committee are hearing the cries for help and taking steps to protect small app companies’ ability to compete globally.

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

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

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

³⁵ <https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-issues-directive-to-prevent-the-unfair-exploitation-of-american-innovation/>.

³⁶ <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2025-02-23%20JDJ%20SF%20to%20Ribera%20re%20DMA.pdf>.

³⁷ <https://actonline.org/wp-content/uploads/European-Style-Online-Marketplace-Regulation-v1-1-2.pdf>.

³⁸ <https://actonline.org/2024/07/03/for-small-biz-in-the-usa-aicoa-is-dma/>.

- **Leave them in limbo:** In February 2021, the FTC “temporarily” suspended early termination (ET) notices³⁹ closing FTC review of proposed mergers subject to Hart-Scott-Rodino (HSR), with narrow exceptions. Merging parties rely heavily on ETs as a signal that they are clear to complete a transaction and that it is no longer under premerger review. Without an ET, parties to a transaction may not know for sure if they can move forward. The FTC has never returned to its normal practice⁴⁰ of issuing ETs. *This helps ensure merging parties know they may never be allowed to merge even if the law does not support a challenge.*
- **While they’re in limbo, threaten them:** Not long after its ET suspension, the FTC also began a practice of sending “warning letters”⁴¹ that a merger is still under review, issuing them in some cases after the expiration of the initial 30-day review period. *This helps ensure that merging parties know the FTC can pull the plug on a merger even after it seems to have received the green light.*
- **Since you can’t change the statute, interpret it to illegalize more mergers:** The FTC adopted new final merger guidelines in December 2023,⁴² which draw on older cases to suggest that currently legal mergers are now presumptively illegal.⁴³ *Even if most courts don’t buy this, some might, and this may therefore help kill more acquisitions even before they start.*
- **Increase the administrative burdens:** The FTC proposed new HSR rules in June⁴⁴ of 2023, which would add a great deal of additional paperwork for all mergers subject to HSR premerger notification. It adopted a final version of the proposal in 2024, jettisoning many of the proposal’s worst aspects, but maintaining unnecessary costs on merging parties. *If the extreme levels of uncertainty introduced by ET suspension, warning letters, and presuming mergers illegal doesn’t convince merging parties not to bother, surely a precipitous increase in red tape and hassle will do the trick.*
- **If you can’t challenge a merger, have a foreign government do it:** European law is far more permissive of government action against mergers, freeing European enforcers to challenge a much wider range of transactions. *European enforcers can be readily convinced to challenge mergers, especially if they involve companies already in their legal and regulatory crosshairs.*

³⁹ <https://www.ftc.gov/news-events/news/press-releases/2021/02/ftc-doj-temporarily-suspend-discretionary-practice-early-termination>.

⁴⁰ <https://www.americanactionforum.org/insight/early-terminations-termination-the-first-full-year-look-from-ftc-and-doj/>.

⁴¹ <https://www.wilmerhale.com/insights/client-alerts/20210816-the-ftcs-new-warning-letter-in-merger-reviews-more-waiting-after-the-hsr-waiting-period>.

⁴² https://www.ftc.gov/system/files/ftc_gov/pdf/P234000-NEW-MERGER-GUIDELINES.pdf.

⁴³ <https://www.mercatus.org/research/policy-briefs/decoding-2023-ftc-and-doj-merger-guidelines-insights-shifting-antitrust>.

⁴⁴ <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-doj-propose-changes-hsr-form-more-effective-efficient-merger-review>.

Fortunately, the FTC discontinued some of these harmful policies. For example, as part of a bipartisan HSR deal, it began issuing ETs again in 2024. Nonetheless, the damage may never be recovered as it carved an EU-style path on acquisitions. In one of the more vivid examples involving an AI company, the FTC sought EU involvement in Amazon’s proposed purchase of iRobot, resulting in iRobot hanging on by a thread for months and ultimately, abandonment of the deal.⁴⁵ In turn, iRobot was unable to continue credible competition against Chinese competitors, leaving China to control the markets in which iRobot had competed and precipitous job losses in iRobot’s U.S. operation.

Dampened acquisition prospects not only affect enterprise value, but they can also significantly weaken a company’s bargaining power as it negotiates terms from lenders and equity investors, regardless of where the firm is in its lifecycle. As former FTC Commissioner Noah Phillips said in 2019, “The adage that ‘barriers to exit are barriers to entry’ makes the general, but too often overlooked, point that the harder it is to exit, the higher the cost of entering in the first place.”⁴⁶ While it may be an adage in academia, it is reality for App Association members and they oppose unnecessary uncertainty and costs weighing down their value and marketability as enterprises, especially in markets around AI services.

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

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

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

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

⁴⁵ <https://actonline.org/2024/01/29/for-entrepreneurs-anti-merger-enforcement-policies-hurt-small-business/>.

⁴⁶ https://www.ftc.gov/system/files/documents/public_statements/1524321/phillips_-_competing_for_companies_5-31-19_0.pdf.

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

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

This Committee's IP Subcommittee held a hearing investigating these issues in December 2024, "IP and Strategic Competition with China: Part IV – Patents, Standards, and Lawfare."⁴⁷ One of the witnesses, Kent Baker of u-blox, warned that in part due to SEP abuse by China-backed competitors, his company may be forced out of a key automotive supply market, for cellular connectivity units. Not a month after the hearing ended, u-blox had exited the market just as he predicted,⁴⁸ offering a vivid example of how SEP abuse by China-backed firms can eliminate Western competitors, leaving China to control key input markets.

IX. Conclusion

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

Sincerely,

Graham Dufault



General Counsel
ACT | The App Association

⁴⁷ <https://judiciary.house.gov/committee-activity/hearings/ip-and-strategic-competition-china-part-iv-patents-standards-and-0>.

⁴⁸ <https://markets.businessinsider.com/news/stocks/u-blox-announces-strategic-decision-to-increase-focus-on-locate-business-and-phase-out-cellular-as-well-as-an-impairment-1034223716?op=1>.

Appendix

App Economy Competitors Located in Key Committee Districts

Majority

Chair: Scott Fitzgerald, WI-05

- Founded over 20 years ago with a location in Hartland, Xorbix Technologies⁴⁹ is a custom software development firm helping businesses meet their customers online. They offer a number of services such as full-service custom software development, mobile app development, and general IT consulting.

Darrel Issa, CA-48

- Located just steps away from the beach in El Segundo, Thinklogic⁵⁰ is a technology consulting business that has been around since 1998. Thinklogic reaches across industries such as education, healthcare, law, government, and retail to provide services in custom mobile and web development, CMS implementation, cloud hosting, and eCommerce.

Ben Cline, VA-06

- Founded in 2016, Elegant Peak⁵¹ is a custom website and digital marketing firm focused on supporting small businesses. With a focus on SEO, intentional marketing, and customer acquisition on behalf of their clients, Elegant Peak supports small businesses as they look to grow their digital presence.

Lance Gooden, TX-05

- Based in Garland, StellR⁵² is a custom software development and IT services company focused on connecting their clients' business goals to their long-term strategies. With a focus on UX/UI design, mobile app development, website design, and AI optimization, StellR makes sure their clients are utilizing the most up to date tech trends and solutions.

Harriet M. Hageman, WY

- BlackFog is a cyberthreat prevention company that uses a unique combination of behavioral analysis and data exfiltration technology to identify, stop, and prevent

⁴⁹ <https://xorbix.com/>.

⁵⁰ <https://www.thinklogic.com/>.

⁵¹ <https://elegantpeak.com/>.

⁵² <https://stellrit.com/>.

future data hacks, unauthorized data collection, and more across mobile and web endpoints. Their services protect their clients and their clients' most sensitive data and privacy while also strengthening their regulatory compliance.

Mark Harris, NC-08

- Based in Charlotte with another office in Waxhaw, Idea Forge Studios⁵³ is a web and graphic design firm that has been in business since 2011. They specialize in website development and search engine optimization (SEO), serving clients all over the United States, both large and small.

Derek Schmidt, KS-02

- Founded in 2014, Foster Care Technologies⁵⁴ is an evidence-based support tool that helps inform placement decisions in foster care. Through their work with the University of Kansas School of Social Welfare, it was determined their product leads to better long-term placement outcomes for children in foster care, as well as reduced costs for agencies working on placement.

Michael Baumgartner, WA-05

- Founded in 2017, Gestalt⁵⁵ is a 15-person team working to bring healthcare into the 21st century by replacing microscopes and glass slides with automated, electronic and digital workflows. They provide services related to pathology in the medical field to professionals as well as those in education or academic research.

Minority

Ranking Member: Jerrold Nadler, NY-12

- Founded in 2024, Superset⁵⁶ preps, reviews, and files data compliance documents on behalf of small and medium-sized businesses, helping their clients save time and money. With a focus on supporting data brokers, Superset helps all of their clients ensure compliance with global privacy regulations so that consumers and businesses can be confident their data is being managed appropriately.

J. Luis Correa, CA-46

⁵³ <https://www.linkedin.com/company/idea-forge-studios-llc/>.

⁵⁴ <https://fostercaretech.com/>.

⁵⁵ <https://www.gestaltiagnostics.com/>.

⁵⁶ <https://www.trustsuperset.com/>.

- Axis Technical Group⁵⁷ provides enterprise level technology solutions, prioritizing AI solutions for document classification, data extraction business intelligence, and data strategy. Founded in 2002, their primary service, Axis Smart Data Extraction,[®] focuses on supporting the real estate and title industries.

Becca Balint, VT

- Aprexis Health Solutions⁵⁸ is cloud-based software that helps patients with personalized services for Medication Therapy Management and includes more than 1,000 participating pharmacies and more than 1 million patients. Founded in 2009, Aprexis works with health plans, pharmacy networks, corporate employers, and providers to deliver improved, patient-centric health outcomes.

Jesús “Chuy” García, IL-04

- Based in Burr Ridge and founded in 2012, Ascura is a digital health platform that uses intelligent automation to support both patients and caregivers with streamlined workflows and simplified screening and intake solutions. Their care coordination products and post-care patient engagement solutions empower patients while reducing caregiver burnout.

Zoe Lofgren, CA-18

- Founded in 2012, Fresco Capital⁵⁹ is an early-stage venture fund that focuses on helping small companies build out their key markets and expand their businesses globally. Their team helps each of their portfolio companies scale, identify long-term and exit strategies, and find mentors and partners along the way.

Henry C. “Hank” Johnson, GA-04

- Founded in 2015 just outside Atlanta, Turbojet Technologies⁶⁰ is an individual web developer that works for other small businesses and non-profits. Turbojet provides website buildouts, as well as support programs and integration across Drupal, WordPress, and other PHP-based websites. While Turbojet is a small operation, they occasionally hire contract designers from across the country if they need to scale up for a larger project.

⁵⁷ <https://axistechnical.com/>.

⁵⁸ <https://aprexis.com/>.

⁵⁹ <https://fresco.vc/>.

⁶⁰ <https://www.turbojettech.com/>.