

December 15, 2025

The Honorable James Jordan
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, District of Columbia 20515

The Honorable Jamie Raskin
Ranking Member
Committee on the Judiciary
United States House of Representatives
Washington, District of Columbia 20515

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 20515

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 20515

RE: Committee hearing, “Anti-American Antitrust: How Foreign Governments Target U.S. Businesses”

Dear Chairman Jordan, Ranking Member Raskin, Chairman Fitzgerald, and Ranking Member Nadler,

Thank you for the opportunity to submit this statement for the record. ACT | The App Association represents small and medium-sized technology companies that develop software and connected devices powering the modern digital economy. ACT represents a domestic ecosystem valued at approximately \$1.8 trillion, supporting 6.1 million American jobs.¹ ACT members are innovators that create the software bringing your smart devices to life. They also make connected devices that are revolutionizing healthcare, agriculture, public safety, financial services, and virtually all other industries.

Because our members build, deploy, and rely on digital platforms including curated online marketplaces (COMs) to reach customers, they are directly affected not only by domestic

¹ ACT | The App Association. *State of the App Economy*. (2023), <https://actonline.org/wp-content/uploads/APP-Economy-Report-FINAL-1.pdf>

competition policy, but also by foreign regulatory frameworks that shape global technology markets. For this reason, ACT appreciates the Committee's attention to the European Union's Digital Markets Act (DMA) and the growing evidence that its design and implementation are producing consequences well beyond Europe's borders.

While framed as a competition law targeting a limited number of large firms, the DMA is increasingly functioning as a structural regulatory model that reshapes how digital products are designed, secured, and deployed globally. And small businesses that lack the resources to absorb regulatory uncertainty, compliance costs, and degraded platform functionality feel these effects most acutely. For these reasons, we led a coalition expressing support for the Committee to advance the *Protect U.S. Companies from Foreign Regulatory Taxation Act* (H.R. 4278). Among other things, the legislation would prohibit U.S. federal courts from enforcing orders issued under the DMA. Pursuant to comity norms, U.S. courts often enforce foreign orders issued under typical, nondiscriminatory domestic legal frameworks. However, we believe the United States must oppose enforcement of fundamentally discriminatory frameworks like DMA within American borders. Policymakers need to send a clear signal that they support small businesses looking to leverage COMs and other online platforms in order to compete with larger rivals around the world.

Background

The European Commission's (EC's) DMA empowers the EU to impose sweeping restrictions on the core platform services (CPS) of "designated gatekeepers" meeting certain criteria. Embedded in the DMA framework is a drawn-out process whereby the EC first designates gatekeepers subject to DMA; then identifies any CPS owned by designated gatekeepers; and finally, translates the various high-level prohibitions and mandates in DMA to each one of the specific CPS controlled by designated gatekeepers.² The DMA is particularly problematic for small businesses in the app economy because it either prohibits or threatens key platform management functionalities that small businesses rely on more so than their larger rivals to reach consumers around the world. ACT members widely benefit from three things that leading COMs offer, all of which DMA threatens:

1. **Built-in consumer trust.** For software developers, trust is paramount. Take smartphones, for example. Today, many of us take for granted the myriad measures operating systems and app stores take to keep malware and other harmful content off our devices. DMA threatens this paradigm by forcing app stores and operating systems to roll out the red carpet for all comers, including bad actors. As a result, consumers will rationally steer away from startups and small developers they've never heard of (our members) and toward larger, more established rivals that spend millions on marketing and advertising annually (some of which support DMA).

² EUROPEAN COMM'N, THE DIGITAL MARKETS ACT: ENSURING FAIR AND OPEN DIGITAL MARKETS, available at https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en.

2. **Off-loading overhead.** App stores and other COMs currently provide bundled service offerings at lower costs than if the services were cobbled together separately. App stores and other COMs also have a progressive fee structure that charges small business developers far less for distribution than larger companies. DMA outlaws these progressive fee structures as well as the offering of complementary distribution services and the day-to-day marketplace management activities that small businesses disproportionately rely on to compete with larger rivals.
3. **Instantaneous access to global markets.** App stores and other COMs currently enable worldwide app distribution. Discriminatory frameworks like DMA threaten to balkanize distribution, imposing government-directed marketplace management regimes that start and stop at national or continental borders.

The DMA Represents a Departure from Established Competition Principles

For our EU member companies who want to succeed through ingenuity and innovation, the DMA is a major brick in a growing wall of regulation, surmountable only with the help of compliance attorneys. Facing economic warning signs, the EC has doubled and tripled down on regulating technology markets early and often (*ex-ante*), rather than taking an *ex-post* approach centered on demonstrated systemic harms typical of the United States. The DMA is distinct from traditional antitrust enforcement in both its structure and operation. Rather than addressing specific conduct shown to harm competition or consumers, the DMA imposes broad, *ex-ante* obligations on designated firms based on size and status alone. These obligations apply irrespective of whether the covered conduct is procompetitive, efficiency-enhancing, or beneficial to consumers.

In the United States, competition law has long been grounded in case-specific analysis, economic evidence, and remedies tailored to demonstrated harms. By contrast, the DMA establishes bright-line prohibitions and mandates that are untethered from market realities and enforced through a highly discretionary administrative process. This approach substitutes regulatory control for competition on the merits and introduces persistent uncertainty into markets that depend on rapid iteration and technological integration.

It is no secret that this regulatory environment has led to economic stagnation, depressed capital access for startups, and produced comparatively few domestic champions in global tech markets. Over the past decade-and-a-half, the U.S. gross domestic product (GDP) surged from roughly equal to the Eurozone's in 2011 to about 1.5 times its size in 2024.³ While experts quibble over the details, many point to faster productivity gains in the United States due to its far larger technology investment and adoption rates during this period.⁴

³ STATISTICS TIMES, COMPARING UNITED STATES AND EUROPEAN UNION BY ECONOMY, <https://statisticstimes.com/economy/united-states-vs-eu-economy.php> (2025).

⁴ Patrick Artus, *Economics: Why Europe is falling behind the USA*, POLYTECHNIQUE INSIGHTS (June 11, 2024), available at <https://www.polytechnique-insights.com/en/columns/economy/economy-why-europe-is-falling-behind-the-usa/>.

For small businesses that depend on stable, predictable platform environments to reach customers and innovate, this shift has profound consequences. Recent survey data of small technology companies operating across the EU, United Kingdom, and United States demonstrates that European-style *ex-ante* regulation is already delaying access to frontier AI tools, forcing feature downgrades, and postponing product launches.⁵ These delays impose real and measurable costs on small businesses, including lost revenue, foregone efficiency gains, and missed opportunities to compete with global rivals.

In contrast, U.S.-based firms operating under an *ex-post* enforcement model are integrating AI more rapidly, deploying higher-value applications, and reinvesting productivity gains into further innovation. The divergence illustrates a growing transatlantic gap driven not by technical capacity, but by regulatory design choices.

The DMA Has Undermined Privacy, Security, and Trust

As the DMA has moved from theory to implementation, its most consequential provisions, particularly those labeled as “interoperability” have revealed significant flaws. Twin interoperability mandates work together to nullify software platform management: Article 6(4), which forces your smart device to accept third-party app stores and software; and Article 6(7), which mandates open access to smart devices and operating systems by any device maker or service provider. Rather than enabling technical interoperability, DMA implementation has increasingly resembled forced access to proprietary features and system-level capabilities. This has weakened operating system resource management, expanded attack surfaces for malicious actors, and constrained the ability of platforms to enforce security standards that small developers rely on to earn consumer trust.

For small app developers and connected device companies, consumer trust is not a luxury; it is an essential input. When regulatory mandates degrade platform security or force premature disclosure of new features, it is small businesses, not large, well-known brands that suffer first and most severely.

The DMA Is Being Exported as a Regulatory Template

Despite the mounting evidence that DMA has been harmful to European and U.S. developers and consumers, jurisdictions around the world are considering measures patterned from DMA. For example, the United Kingdom enacted the Digital Markets, Competition, and Consumers Act (DMCCA), with an implementation schedule through Spring 2026.⁶ The UK’s Competition and Markets Authority (CMA) is struggling to balance privacy and security with the law’s sweeping restrictions on both potentially harmful and

⁵ ACT | The App Association. *The Hidden Cost of AI Regulations for EU and UK Startups and SMEs*. (2025), <https://actonline.org/the-hidden-cost-of-ai-regulations-a-survey-of-eu-uk-and-u-s-companies/>.

⁶ Suman Khurana, “UK Government sets out implementation plan for the Digital Markets, Competition and Consumers Act 2024,” DLA PIPER INSIGHTS (September 25, 2024), *available at* <https://www.dlapiper.com/en/insights/publications/2024/09/uk-government-implementation-plan-for-digital-markets-competition-and-consumers-act-2024>.

procompetitive conduct. Likewise, Japan recently enacted and began to implement the Promotion of Competition for Specified Smartphone Software Act (“Smartphone Act”),⁷ a “mini”-DMA specifically for smartphones and mobile operating systems. The Smartphone Act’s strict prohibitions on basic app store management functions and restrictions on app stores’ efforts to compete with one another threaten the benefits of software distribution for small business app developers.⁸ South Africa’s Competition Commission is actively enforcing digital antitrust regulations heavily influenced by the DMA.⁹

The Republic of Korea’s (RoK’s) legislature is considering several iterations of legislation that are rooted in DMA. Interestingly, the most recent iteration, the Fairness in Online Platform Intermediated Transactions Act (“Fairness Act”), is not a purely *ex-ante* framework. However, just like the *American Innovation and Choice Online Act* (AICOA) from last Congress, the Fairness Act would impose presumptive prohibitions on broad categories of conduct by online marketplaces and platforms that are often procompetitive.¹⁰ Although the Fairness Act’s proponents point to this softened approach and suggest that it is a more palatable version of a prior proposal that more closely resembled DMA, it presents the same problems.¹¹ Specifically, the proposal would target COMs based on an unfounded presumption that they abuse business users, empowering the Korean Fair Trade Commission (KFTC) to intervene into competitive digital markets under vague authority and criteria that invite selective enforcement. Meanwhile, Brazil has been developing its own *ex-ante* competition regulation framework for nascent digital markets¹² for over a year, and rumors now swirl of its imminent introduction and passage in the legislature, which ACT has discouraged.¹³ Other important markets, including Australia, Malaysia, Indonesia, Thailand, Kenya, and Turkey, are at various stages of developing DMA-like regulations.

⁷ Press release, Japan Fair Trade Comm’n, Designation of Specified Software Operators under the Act on Promotion of Competition for Specified Smartphone Software, (March 31, 2025), *available at* <https://www.jftc.go.jp/en/pressreleases/yearly-2025/March/250331.html>.

⁸ See Letter from Morgan Reed, President, ACT | The App Association, to H.E. AKAZAWA Ryosei, Minister of State for Economic and Fiscal Policy, (May 19, 2025), *available at* <https://actonline.org/2025/05/19/act-the-app-association-letter-to-the-japanese-government-on-trade-negotiations-with-the-united-states/>.

⁹ Competition Commission South Africa, *Media and Digital Platforms Market Inquiry (MDPMI): Provisional Report*, February 2025, https://www.compcom.co.za/wp-content/uploads/2025/02/CC_MDPMI-Provisional-Report_Non-Confidential-Final.pdf.

¹⁰ See Lilla Nóra Kiss and Hilal Aka, “Korea’s New Fairness Act Risks Chilling Innovation and Derailing Trade Talks,” INFO. TECH. & INNOVATION FOUND., (July 24, 2025), *available at* <https://itif.org/publications/2025/07/24/koreas-new-fairness-act-risks-chilling-innovation-and-derailing-trade-talks/>.

¹¹ See Letter from Morgan Reed, President, ACT | The App Association, to Minister Yeo Han-koo, Minister of Trade, Industry and Energy, (July 25, 2025), *available at* <https://actonline.org/2025/07/25/letter-from-act-the-app-association-to-the-minister-of-trade-industry-and-energy-in-the-republic-of-korea-re-ongoing-trade-negotiations-with-u-s/>.

¹² Anna Moskal, and Marcella Brandão Flores da Cunha, “Brazil’s Path towards Digital Ex Ante Competition Regulation – Remarks on the Brazilian Ministry of Finance 2024 Proposal,” KLUWER COMPETITION BLOG, (April 4, 2025), *available at* <https://legalblogs.wolterskluwer.com/competition-blog/brazils-path-towards-digital-ex-ante-competition-regulation-remarks-on-the-brazilian-ministry-of-finance-2024-proposal/>.

¹³ See Letter from Morgan Reed, President, ACT | The App Association, to Fernando Haddad, Minister of Finance (July 29, 2025), *available at* <https://actonline.org/2025/07/30/act-the-app-association-letter-to-minister-of-finance-fernando-haddad-re-digital-platform-legislation-in-brazil-english-and-portuguese-versions/>.

While this may seem like an insurmountable wave of regulation, other important regulators are appropriately walking back DMA-like proposals because they are observing (1) the longstanding harm to the EU's competitiveness such an approach has had over time and (2) the immediate negative impacts of the DMA's implementation. Most notably, the Indian government has withdrawn a legislative proposal for *ex-ante* digital platform regulation,¹⁴ instead electing to address demonstrated harms through the enforcement of technology-neutral competition law. And for those countries still considering emulating the DMA, it is not too late for these jurisdictions to learn from Europe's *ex-ante* DMA misadventure and go back to the drawing board. It is critically important to ensure the negative effects of the framework are highlighted, including by Congress.

Preserving an Innovation-Centered Competition Framework

ACT urges Congress to continue exercising caution against importing or normalizing *ex-ante* digital market frameworks that undermine security, slow innovation, and disadvantage small businesses. Existing U.S. antitrust and consumer protection laws already provide robust tools to address anticompetitive conduct when it occurs. These tools are flexible, evidence-based, and adaptable to evolving technologies.

Oversight that reinforces these principles, while resisting pressure to substitute rigid regulatory mandates for case-by-case enforcement, will better protect competition, consumers, and the small businesses that drive American innovation.

Conclusion

ACT appreciates the Committee's leadership in examining the global effects of the Digital Markets Act. The experience to date demonstrates that while the DMA may promise greater competition, its implementation has instead introduced uncertainty, degraded digital ecosystems, and imposed disproportionate costs on small innovators.

We look forward to supporting the Committee's continued oversight and stand ready to provide additional data and member perspectives as Congress evaluates how best to safeguard competition and innovation in the digital economy.

Thank you for your consideration.

Respectfully submitted,



¹⁴ Manu Kaushik, *Govt to Withdraw Draft Digital Competition Bill*, FIN. EXPRESS (August 10, 2025), <https://www.financialexpress.com/business/industry-govt-to-withdraw-draft-digital-competition-bill-3942328/>.

Graham Dufault
General Counsel
ACT | The App Association

A handwritten signature in black ink, appearing to read 'Kedharnath' followed by a stylized flourish.

Kedharnath Sankararaman
Policy Associate
ACT | The App Association