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IMPROVING TRANSATLANTIC COOPERATION ON DIGITAL COMPETITION

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- Despite US officials' stated opposition to the EU's Digital Markets Act, the United States and the European Union have similar priorities on digital competition.
- Dialogue between US and EU regulators could identify consistent approaches to mergers and antitrust issues, making it easier for companies to adopt similar business models on both sides of the Atlantic.
- Public communications linking antitrust actions to consumer welfare, competitiveness, and economic growth can help competition enforcers withstand political pressure.

President Donald Trump's policies are substantially reshaping prospects for transatlantic cooperation across a range of policy areas. In digital competition, the picture is complex. The Trump administration opposes Europe's competition regulation, but both the European Commission and US federal and state competition enforcers have similar priorities when it comes to competition in digital markets.

US-European Union (EU) dialogue could help make interventions to promote digital competition more effective. It could boost consistency (helping firms adopt the same remedies across both sides of the Atlantic) and help regulators share knowledge and best practices. Beyond technical alignment, EU and US authorities can coordinate on narratives and messaging, ensuring that regulatory measures are perceived as fair and mitigating the risk of digital competition policy fueling foreign policy disputes.

At a recent roundtable hosted by the Centre on Regulation in Europe (CERRE) and the Atlantic Council, we identified the following recommendations for competition enforcers on digital antitrust.

- The European Commission and national competition authorities should continue to cooperate with US federal agencies and strengthen their cooperation with US state attorneys general, given their important role in US digital antitrust cases.
- To effectively learn from each other's experience with remedies, and to enhance mutual learning and correct remedies when needed, competition agencies in both the EU and the United States should have a robust, evidence-based assessment about how their remedies have performed.
- The European Commission needs to improve its communication strategy when pursuing antitrust cases. Antitrust enforcement must be closely linked to consumer welfare, competitiveness, and economic growth. Enhancing its legitimacy can help ensure European competition enforcers withstand any political pressure.
- Europe needs to better highlight how open and competitive markets foster innovation. Tools to open competition are therefore important ways to support US and European global technological leadership.

In relation to merger policy, competition authorities on both sides of the Atlantic are evolving to better tackle the role of innovation in digital markets. Recommendations include the following.

- EU and US authorities should develop consistent guidelines setting out how they will assess a merger's impacts on innovation capabilities (such as chips and computing power, skills, data, and risky and patient capital) and incentives to innovate. Pro-innovation merger control should promote the new innovators and not protect the old ones.
- The Directorate-General for Competition (DG-Comp) should aim to learn from the US merger



guidelines and US authorities' recent practices to inform the EU's current exercise of revising its own guidelines.

- As with antitrust remedies, competition authorities in both the EU and the United States must be honest and clear about how their merger remedies have performed, so that different authorities can become better by learning from each other's successes and mistakes.



Introduction

Trump's policies have challenged the transatlantic relationship and are reshaping prospects for transatlantic cooperation. On digital competition, the picture is particularly complex. The president and some of his appointees to the Federal Trade Commission (FTC) and the Department of Justice (DOJ) Antitrust Division oppose Europe's competition regulation, the Digital Markets Act (DMA)—and the president recently threatened to investigate the EU's nearly €3 billion fine imposed on Google as an unfair trade barrier under Section 301 of the Trade Act of 1974. Despite this, when it comes to ex post digital antitrust cases, US federal and state competition enforcers and the European Commission have similar priorities. More broadly, competition authorities on both sides of the Atlantic are grappling with how to adopt consistent, principled, and predictable approaches in digital markets. This can better take innovation, investment, and firms' capabilities into consideration during competitive analysis, and a consistent approach is key for global corporations.

US-EU dialogue could help improve the efficiency and effectiveness of interventions to promote digital competition. It could do the following.

- Facilitate mutually consistent approaches to common regulatory challenges, reducing burdens on regulators and making it easier for global firms to adopt the same business models across both sides of the Atlantic.
- Even where consistency is not possible, help regulators by sharing knowledge and best practices, or even help authorities to divide and conquer in areas such as ex post antitrust cases in which authorities on both sides of the Atlantic are pursuing similar goals.
- Mitigate the risks of foreign policy disputes as digital competition interventions increasingly have cross-border impacts, and as the Trump administration bristles at foreign governments enforcing competition law and pro-competitive regulation against US champions.

But how can this mutually beneficial cooperation be maintained? In 2021, the EU and United States established a Joint Technology Competition Policy Dialogue, supplementing established agreements between the European and US competition agencies, and there is still dialogue between antitrust enforcers. However, given the growing perception of a difference in values between the EU and the United States, and tensions on a range of topics from trade to defense, prospects for cooperation risk becoming narrower in the future.

Cooperation on digital antitrust

European and US authorities have a significant degree of alignment on ex post antitrust enforcement in the digital sector. In digital markets, large firms have often argued that highly innovative digital markets had natural “winner take all” characteristics, but there is nevertheless competition for the market. These firms argue they are subjected to significant competitive pressure from those who might displace them with disruptive innovation and, therefore, have strong incentives to keep innovating. This implies a marginal role for competition agencies. In practice, however, many digital markets have seen little displacement of incumbents in recent years. Effective antitrust remedies not only enforce competition law but also create space for innovation, enabling new entrants and disruptive technologies to challenge incumbents and thrive. While, until recently, innovation in some markets appeared to have slowed, there is an open question about how much artificial intelligence



(AI) could disrupt the architecture of digital ecosystems—and whether that implies antitrust authorities should step back or play a role in keeping this possibility open.

In the meantime, competition authorities in the EU and United States have become more assertive. On the US side, the FTC and DOJ are pursuing cases against tech firms brought under previous administrations, despite the Republican Party’s traditional light-touch approach to antitrust. The FTC and DOJ’s approach is fueled by a view that conservative antitrust must not allow “private tyranny,” just as it is opposed to government tyranny.¹ In particular, FTC Chairman Andrew Ferguson has applauded that “this administration . . . is rediscovering the wisdom of taking competition enforcement seriously.”²

In Europe, although there have been few new antitrust cases under the new European Commission, a number of ongoing cases are being pursued against the same firms, on similar timeframes and in relation to similar conduct. These cases have been supplemented by enforcement action under the DMA. Some of these cases might have different underlying motivations—with US authorities more concerned with the potential role of large technology firms in stifling plurality of voices online, and the EU more concerned with ensuring market contestability. But they nevertheless illustrate authorities’ common challenges, particularly how to design remedies for highly complex and fast-moving digital markets.

EU and US competition policies increasingly interact. For example, in a case brought by the US DOJ and some states against Google regarding its conduct in the search market, the DOJ sought an extensive list of potential remedies, including data-sharing rules that looked similar to obligations in the EU’s DMA. In September 2025, the district court decided to apply a narrower data-sharing remedy. A similar question about alignment of remedies will arise in the EU and US cases concerning Google’s digital advertising technologies.

However, challenges remain in coordinating antitrust actions on both sides of the Atlantic.

A first challenge is ensuring that the tenets of antitrust analysis remain synchronized. Protecting disruptive innovation in digital markets, for example, might require identifying robust theories of harm closer to market realities and moving away from reliance on static market definitions. However, the US legal system—in which the FTC and DOJ must convince a judge of their case—makes EU-US alignment difficult. Even if EU and US competition authorities agree on a common approach to a particular case, judges might take a different approach. In particular, competition cases in the United States go before generalist US judges, some of whom might be relatively conservative about government intervention. For example, European competition agencies are exploring how large firms can stymie disruptors by preventing their access to inputs to innovate or impacting their access to customers. They have used these concerns to rework the essential facilities doctrine and the tests for when discrimination is anticompetitive (with EU courts often sympathetic to their approaches, as in

¹ “Assistant Attorney General Gail Slater Delivers First Antitrust Address at University of Notre Dame Law School,” US Department of Justice, April 28, 2025, <https://www.justice.gov/opa/speech/assistant-attorney-general-gail-slater-delivers-first-antitrust-address-university-notre>.

² Andrew N Ferguson, “Competition in the 21st Century: Heeding the Rallying Cry for Deregulation,” US Federal Trade Commission, May 7, 2025, https://www.ftc.gov/system/files/ftc_gov/pdf/chairman-ferguson-2025-icn-remarks.pdf.



the Google Shopping and Android Auto cases).³ However, there is limited evidence that US courts are as willing to see principles evolve.

A second challenge is remedy design. Ex post antitrust remedies can have global impacts—for example, by raising costs of operating different business models in different countries, or by requiring structural changes to large firms or technical changes that cannot be implemented at a regional level. Conversely, for firms that can benefit from remedies, a consistent approach to remedy design in the EU and United States could lower costs and allow innovative firms to scale faster. Securing consistent approaches to remedies between the EU, the United States, and third countries such as the United Kingdom could therefore have widespread benefits. There is acceptance that past remedies in tech antitrust cases have sometimes not been very effective, and that innovation seems to have played more of a role than antitrust remedies in promoting competition in digital markets. Both sides seem to be learning from these past experiences, but they have adopted different lessons. The EU has sought to front-end tougher remedies in the DMA while, in the US Google Search case, the judge adopted a narrower set of remedies and instead put more faith in possibilities for AI to disrupt online search markets. Both European and US authorities can benefit from robust and transparent evaluations of past remedies, learning from successes and failures to design more effective interventions in the future.

Thirdly, the EU and United States also take different approaches to the merits of ex ante digital competition regulation. Europe's DMA has few influential friends among the current US administration. Trump has implied he sees the law as an attack on "the growth or intended operation of United States companies," and FTC Chair Andrew Ferguson has described the DMA as a "tax on American companies" and one which is "overly rigid," despite most of the beneficiaries of the DMA being US firms.⁴ The EU's objectives with the DMA were to foster a competitive and fair digital market, creating opportunities for challenger firms from both Europe and the United States, and supporting the West's global technological leadership. From a European perspective, there is no appetite to rescind or water down the DMA; Commissioner Teresa Ribera has signaled the European Commission would take a "brave" approach to enforcement and has fined Apple and Meta for noncompliance.⁵ However, there is a widespread perception that the commission is tailoring its enforcement approach to reflect the current environment. For example, the Apple and Meta fines came only after the commission missed its own self-imposed deadlines, seemingly to avoid torpedoing EU-US trade talks.⁶

There is also a question of how European and US regulatory authorities can best cooperate and coordinate in practice, given the different timeframes and processes of their respective cases and concerns in the United States about Europe taking the lead on antitrust matters. Ferguson, for example, has argued, "If we think that Americans are suffering from anticompetitive conduct at home,

³ "Judgment of the Court (Grand Chamber) of 25 February 2025: *Alphabet Inc. and Others v Autorità Garante della Concorrenza e del Mercato*," European Union, February 25, 2025, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62023CJ0233>.

⁴ "Defending American Companies and Innovators From Overseas Extortion and Unfair Fines and Penalties," White House, February 21, 2025, <https://www.whitehouse.gov/presidential-actions/2025/02/defending-american-companies-and-innovators-from-overseas-extortion-and-unfair-fines-and-penalties/>.

⁵ Francesca Micheletti, "Trump's Antitrust Agency Chief Blasts EU Digital Rules as 'Taxes on American Firms,'" *Politico*, April 2, 2025, <https://www.politico.eu/article/trumps-antitrust-agency-chief-blasts-eu-digital-rules-as-taxes-on-american-firms/>.

⁶ Francesca Micheletti and Jacob Parry, "Big Tech Fines Just Got Political, Whether the Commission Likes It or Not," *Politico*, April 14, 2025, <https://www.politico.eu/article/big-tech-fines-digital-markets-act-political-european-commission-meta-apple-donald-trump-tariffs/>.



we should address it here at home . . . I don't want the Europeans doing it for us.”⁷ The EU and United States have a positive comity agreement, which allows one party affected by anticompetitive behavior originating in the other party to request that said party address the conduct. But this agreement has never been used in practice. Under the Trump presidency, the European Commission has shown a desire to allow the United States to take the lead. For example, in the Google AdTech case, the European Commission has found that Google breached competition law. However, the US federal court also considered remedies in its case regarding the same conduct. The commission has therefore delayed a final decision on remedies, stating that it wanted to “ensure that Google puts in place an effective remedy on both sides of the Atlantic . . . It is in everyone's interest to achieve a joint outcome, including for Google itself, and for citizens worldwide.”⁸ While in principle such an approach might lead to harmonization, and would provide the EU with political cover, it poses the risk of delaying the imposition of remedies or encouraging the EU to accept remedies that might prove ineffective in the European context.

The broader political backdrop remains challenging. Trump has challenged the independence of numerous public authorities, including the FTC—and there is a risk of the president seeking to change the direction of US digital antitrust policy in the future. On the European side, while the EU secured a trade deal with the United States without needing to change its digital antitrust or digital regulation, the European Commission's enforcement of the DMA and competition law—both procedurally and substantively—already appears to have been influenced by fears of triggering retaliation by the United States. It is difficult to see how the EU can adopt a rigorous and independent approach while remaining dependent on the United States for its security.

These challenges suggest several lessons for competition enforcers.

- The European Commission and national competition authorities should continue cooperating with the US federal agencies and strengthen their cooperation with US state attorneys general, given their important role in US digital antitrust cases.
- To effectively learn from each other's experience with remedies, and to enhance mutual learning and correct remedies when needed, competition agencies in both the EU and the United States should have a robust evidence-based assessment of how their remedies have performed.
- The European Commission needs to improve its communication strategy when pursuing antitrust cases. Antitrust enforcement must be closely linked to consumer welfare, competitiveness, and economic growth. Enhancing its legitimacy can help ensure European competition enforcers withstand any political pressure.
- Europe needs to better highlight how open and competitive markets foster innovation instead of protection of national champions. Tools to open competition are therefore important ways to support US and European global technological leadership.

⁷ Micheletti, “Trump's Antitrust Agency Chief Blasts EU Digital Rules as ‘Taxes on American Firms.’”

⁸ “Statement by Executive Vice-President Ribera on the Adoption of the Google Adtech Decision,” European Commission, September 4, 2025, https://ec.europa.eu/commission/presscorner/detail/en/statement_25_2034.



Merger policy and innovation

The discussion on antitrust enforcement naturally leads to questions about how merger policy can also protect innovation and competition in digital markets. Both EU and US approaches to competition policy are evolving to better tackle the role of innovation in digital markets. In particular, there is growing unease that competition authorities need to improve how they approach the impacts of a merger on innovation.

Reflecting these concerns, the United States updated its merger guidelines in 2023 after a two-year process. Merger guidelines are traditionally intended to describe the FTC and DOJ practices to the public, businesses, and courts—such as setting out important questions to which the agencies seek answers during the review process, including what type of evidence they are looking for and how that evidence is typically analyzed. However, the updated guidelines have been perceived by some as a more political document and a statement of the agencies’ intent to toughen merger policy, with more mergers likely to be presumed anticompetitive and the introduction of novel theories of harm. These guidelines remain in place for now, despite changes of leadership at the DOJ and FTC.⁹

The European Commission is still in the process of updating its merger guidelines, a process that it aims to finalize in 2027. Recently, both Mario Draghi and Commission President Ursula von den Leyen have pushed for the process to speed up. Much of the debate has centered on the importance of scale. Draghi’s report on European competitiveness—often interpreted as reigniting discussion about the merits of allowing EU firms to merge to create more innovative “European champions”—also proposed an innovation defense to allow mergers that would otherwise be prohibited. While some consider the report to be misunderstood, Draghi’s subsequent speeches have contributed to the perception that he is arguing for a loosening of merger policy. However, the extent to which new guidelines will (or can) represent a significant evolution in approach is unclear.

- First, in Europe, different stakeholders have vastly different objectives when they argue that innovation (and other factors such as resilience) should play a bigger role in merger review. For enforcers, taking innovation into account might imply being able to intervene in more mergers; it is difficult to argue that EU merger policy has been too lax given that only a tiny proportion of mergers have ever been prohibited. For other stakeholders, the objective of giving innovation a stronger role in merger policy is to allow more deals. It is unclear how the guidelines can promote European champions while preventing foreign competitors from engaging in similar large-scale mergers.
- Second, the recommendations in Draghi’s report are modest. His report has been understood to propose relaxing EU competition law constraints on mergers of major industrial companies. In fact, he acknowledges that a dominant firm would still be precluded from making use of the innovation defense, which would make it inapplicable in almost all cases in which a merger is blocked today. It would also be accompanied by strict safeguards and investment commitments by the merging parties. If Draghi’s proposal is adopted, there might not be much difference from today’s efficiency defense, which has never changed the outcome of a merger review process in Europe (though that might be, in part, because so few mergers are

⁹ “Chairman Ferguson Memo re Merger Guidelines,” US Federal Trade Commission, February 18, 2025, <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/chairman-ferguson-memo-re-merger-guidelines>.



challenged in the first place or because the efficiency defenses have not been clearly articulated or sufficiently convincing). Therefore, there is a significant gap between some of the political rhetoric surrounding the review and the technical reality.

- Third, the EU's existing merger guidelines have already been superseded by changes in the commission's practices, so the urgency of a new set of guidelines can be overstated. In reality, the guidelines should not be a statement of intent but, rather, a description of current practices and approaches. This means they might not fundamentally change case-specific analysis.
- Fourth, it is difficult to see how changes in merger review alone will significantly alter the EU's innovation trajectory. In the absence of further development of the single market, and greater availability of venture capital, highly innovative European firms will remain more likely to move to the United States or be acquired by foreign companies rather than remain European.

This might mean that—despite the call for a fundamental change in approach in Europe—the EU and the United States will stay relatively aligned.

One area in which divergence remains a risk is adopting predictable approaches to assessing the impact of a merger on capabilities and incentives to innovate, particularly in relation to disruptive innovation. Competition authorities have pursued theories of harm based on how a merger might impact innovation, even in the absence of immediate impacts on price or quality in particular markets. For example, innovation and innovative capabilities (or access to assets considered essential for innovations) featured heavily in cases such as Dow-DuPont, Amazon-iRobot, Facebook-Giphy (in the UK), and Google-FitBit. However, these cases have often (but not exclusively) focused on sustaining innovation rather than disruptive innovation. Where competition authorities have taken disruptive innovation into account (such as the UK authority in Facebook-Giphy) or examined markets for research and development (as the US and EU authorities did in the Illumina/Grail merger) they were highly criticized for making the results of merger reviews unpredictable.

Authorities will need to make decisions when the evolution of markets is not fully certain. An insistence on only acting when the anticompetitive outcome is undeniable will, on the whole, lead to less competition. On one hand, this suggests authorities should be humble. Sources of disruptive innovation are hard to identify beforehand, which suggests some firms might have more vulnerable positions than static markers of market power might imply. On the other hand, if authorities take the need to protect possibilities for disruptive innovation seriously, this might help illuminate previously under-identified types of anticompetitive effects, such as mergers that stymie potentially disruptive firms even if they appear to be in an unconnected market. This might require defining markets for innovation or focusing more on firms' capabilities, their management practices, and their strategies in merger review.¹⁰ While the outcomes might not always be predictable, EU and US authorities could work together to try to ensure more transatlantic consistency when identifying the impact of a merger on innovation and incentives to innovate. This could increase certainty about the process and framework that competition authorities will adopt.

A second area of potential conflict is whether competition authorities should seek to promote certain types of innovation over others. In line with the Trump administration's broader deregulatory

¹⁰ Giulio Federico, Fiona Scott Morton, and Carl Shapiro, "Antitrust and Innovation: Welcoming and Protecting Disruption," *Innovation Policy and the Economy* (2019), <https://www.journals.uchicago.edu/doi/full/10.1086/705642?af=R>; David J. Teece, *Dynamic Capabilities and Strategic Management: Organizing for Innovation and Growth* (Oxford, UK: Oxford University Press, 2009).



approach, US competition authorities appear to be taking an agnostic and free-market approach to this question. In contrast, European authorities have emphasized how merger control can contribute to innovation in the area of sustainability and protect incentives for green innovation.¹¹ This includes reflecting customer and government preferences for sustainable products when defining markets. For example, when the European Commission prohibited the Hyundai-Daewoo merger in 2022, it took into account the parties' incentives to invest in lower-emission liquefied natural gas (LNG) vessels.

A third area of divergence risk relates to politicization of the merger process in both the EU and United States. More than ever, there is a perceived risk of US merger policy and practice being influenced by industry lobbying and top-down political influence. The lack of an institutionally independent competition regulator at the EU means this also remains a risk in Europe. Industry capture could happen at the level of guidelines—where there is a risk of helping today's largest European companies rather than promoting the growth of disruptive and innovative firms—or on a case-by-case basis. There have been previous merger cases in which the formal technical analysis did not align well with the final decision reached. In this respect, updating the EU's merger guidelines—by reducing the European Commission's room for maneuver in response to political pressure—could provide significant cover for taking difficult decisions.

Lessons for merger review authorities include the following.

- EU and US authorities should develop consistent guidelines setting out how they will assess the impacts of a merger on innovation capabilities (such as chips and computing power, skills, data, and risky and patient capital) and incentives to innovate. A pro-innovation merger control should promote the new innovators and not protect the old ones.
- DG-Comp should aim to identify and adopt positive aspects of the revised US merger guidelines and US authorities' recent practices to inform the EU's current exercise of revising its own guidelines. For example, adopting the US approach by combining horizontal guidelines (which signal how a competition authority examines mergers between direct competitors) and vertical guidelines (which signal the approach to mergers between players at different points in the supply chain) would prove useful to ensure the European Commission thinks holistically about the impact of mergers on innovation, including in digital ecosystems in which horizontal and vertical concerns can be closely related. On the other hand, the EU guidelines still need to follow and reflect DG-COMP's practices and should avoid becoming politically charged or signaling major changes to the EU approach.

As with antitrust remedies, competition authorities in both the EU and the United States must be honest and clear about how their merger remedies have performed, so different authorities can become better by learning from each other's successes and mistakes. This will be especially important if there is increasing use of long-term investment commitments as a merger remedy (as in the UK with the Vodafone-O2 merger, and as recommended by Draghi). Such an approach can help ensure authorities across the Atlantic can work with each other. DG-COMP's previous retrospective studies on remedies are an excellent starting point.

¹¹ Catherine Ellwanger, et al., "EU Green Mergers & Acquisitions Deals—How Merger Control Contributes to a Sustainable Future," *Competition Merger Brief*, September 2023, https://competition-policy.ec.europa.eu/system/files/2023-09/kdal23002enn_mergers_brief_2023_2.pdf.



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Providing high-quality studies and dissemination activities, the Centre on Regulation in Europe (CERRE) is a not-for-profit think tank. It promotes robust and consistent regulation in Europe's network, digital industry, and service sectors. CERRE's members are regulatory authorities and companies operating in these sectors, as well as universities.

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The Atlantic Council's Europe Center conducts research and uses real-time analysis to inform the actions and strategies of key transatlantic decision-makers in the face of great-power competition and a geopolitical rewiring of Europe. The center convenes US and European leaders to promote dialogue and make the case for the US-EU partnership as a key asset for the United States and Europe alike. The center's Transatlantic Digital Marketplace Initiative seeks to foster greater US-EU understanding and collaboration on digital policy matters and makes recommendations for building cooperation and ameliorating differences in this fast-growing area of the transatlantic economy.



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