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**Transatlantic Perspectives on Digital
Platform Governance and Competition
Policy in the European Union and the
United States**

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Abstract

This paper assesses the evolving landscape of digital platform governance and competition policy in the European Union ('EU') and the United States ('US'), highlighting their diverging regulatory approaches and the potential for convergence. It evaluates how recent measures in the EU, particularly the Digital Services Act and the Digital Markets Act, contrast with the US patchwork of federal and state initiatives. It examines core issues such as market concentration, content moderation obligations, and the tension between consumer protection and platform innovation. Drawing on legal doctrines and policy frameworks, the paper identifies emerging enforcement challenges posed by complex platform structures, cross-border data flows, and fragmented legislative standards. It investigates whether a harmonized transatlantic approach could mitigate regulatory gaps and reduce compliance burdens on technology companies. By reviewing case studies of platform interventions in diverse market sectors, the paper underscores the difficulties of balancing economic growth, consumer welfare, and fundamental rights. The paper proposes practical strategies for policymakers and legal practitioners in the EU and US, suggesting collaborative rulemaking and shared enforcement instruments to address platform-related concerns whilst preserving each jurisdiction's legal traditions.

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1. Introduction

The governance of digital platforms has become one of the defining regulatory challenges of the twenty-first century. A small number of technology companies, principally Alphabet (Google), Amazon, Apple, Meta, and Microsoft, operate services that serve as essential intermediaries for billions of users and millions of businesses worldwide.¹ These firms exercise considerable influence over how information circulates, how commerce is conducted, and how personal data is collected and processed. Their market positions raise questions that cut across competition law, consumer protection, data privacy, and fundamental rights. Policymakers on both sides of the Atlantic have responded to these questions, but they have done so through markedly different institutional and doctrinal frameworks.

The European Union ('EU') has pursued a comprehensive ex ante regulatory model. In 2022, it adopted two landmark instruments: the Digital Services Act ('DSA'),² which establishes obligations concerning content moderation, transparency, and systemic risk management; and the Digital Markets Act ('DMA'),³ which imposes specific behavioural requirements on designated 'gatekeeper' platforms. These instruments build upon an established tradition of competition enforcement under Article 102 of the Treaty on the Functioning of the European Union ('TFEU') and the General Data Protection Regulation ('GDPR'). The United States ('US'), by contrast, has relied principally on ex

¹ For a broader discussion of the concentration of power in the digital economy, and the competing regulatory models that shape it, see Anu Bradford, *Digital Empires: The Global Battle to Regulate Technology* (OUP 2023).

² Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) [2022] OJ L277/1.

³ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) [2022] OJ L265/1.

post antitrust enforcement through the Sherman Act of 1890 and the Clayton Act of 1914, supplemented by the broad intermediary liability protection of Section 230 of the Communications Decency Act of 1996.⁴ Despite several legislative proposals, Congress has not enacted comprehensive platform governance legislation.

This divergence has attracted considerable scholarly attention. Expert reports commissioned in the EU and the UK identified the limitations of existing competition frameworks in addressing digital market dynamics.⁵ Anu Bradford's influential account of the 'Brussels Effect' describes how EU regulations can become de facto global standards through market mechanisms, a dynamic with particular relevance to platform regulation.⁶ At the same time, the US has pursued high-profile antitrust cases against Google, Meta, and Apple, testing the capacity of century-old statutes to address contemporary platform power. The outcomes have been mixed: the Department of Justice ('DOJ') secured a landmark monopoly finding against Google in 2024, whilst the Federal Trade Commission ('FTC') lost its case against Meta in 2025.

The scale of market concentration in digital platform markets provides the factual backdrop to these regulatory efforts. For example, Google holds approximately 90 per cent of global search engine traffic across all devices.⁷ These levels of concentration are sustained by powerful network effects, economies of scale and scope in data collection,

⁴ Communications Decency Act of 1996”) (47 U.S.C. 230).

⁵ See Jacques Crémer, Yves-Alexandre de Montjoye and Heike Schweitzer, *Competition Policy for the Digital Era: Final Report* (Publications Office of the European Union 2019); and Jason Furman and others, *Unlocking Digital Competition: Report of the Digital Competition Expert Panel* (HM Treasury 2019).

⁶ Anu Bradford, *The Brussels Effect: How the European Union Rules the World* (OUP 2020) 7-24.

⁷ Google held 90.01 per cent of global search engine market worldwide (Statcounter Global Stats, 'Search Engine Market Share Worldwide' <<https://gs.statcounter.com/search-engine-market-share>> accessed 27 March 2026).

and high switching costs for both consumers and business users.⁸ The Draghi Report on European competitiveness observed that the EU has not produced any technology company with a market capitalisation exceeding EUR 1 trillion, whilst the US has produced six.⁹ This asymmetry shapes the political economy of transatlantic digital governance: US regulators act against domestic companies that generate significant economic value, whilst EU regulators act against foreign firms whose dominance raises both competition and sovereignty concerns.

The scholarly debate on platform regulation has evolved considerably in recent years. The 'New Brandeis' movement in US antitrust scholarship, associated with Lina Khan and Tim Wu, challenged the consumer welfare standard that had dominated antitrust analysis since the 1980s, arguing that concentration itself, rather than demonstrated consumer harm, warrants regulatory intervention.¹⁰ In the EU, the expert report identified the inadequacy of existing competition tools for addressing the specific characteristics of digital markets, including tipping, data advantages, and ecosystem effects, and recommended the development of ex ante regulatory instruments.¹¹ The Stigler Center report in the US reached similar conclusions, recommending the creation of a specialist digital authority.¹² These reports provided the intellectual foundation for the DMA and for the legislative proposals that Congress has considered but not enacted.

⁸ For further discussion of network effects and tipping in digital markets, see Ariel Ezrachi and Maurice E Stucke, *Virtual Competition: The Promise and Perils of the Algorithm-Driven Economy* (Harvard University Press 2016).

⁹ Mario Draghi, *The Future of European Competitiveness* (European Commission, September 2024), 6.

¹⁰ Lina Khan, 'The New Brandeis Movement: America's Antimonopoly Debate' (2018) 9(3) *Journal of European Competition Law & Practice* 131; and Tim Wu, *The Curse of Bigness: Antitrust in the New Gilded Age* (Columbia Global Reports 2018).

¹¹ Jacques Crémer, Yves-Alexandre de Montjoye and Heike Schweitzer, *Competition Policy for the Digital Era: Final Report* (Publications Office of the European Union 2019).

¹² Stigler Center Committee on Digital Platforms, *Final Report* (University of Chicago Booth School of Business 2019).

This paper proceeds as follows. Section 2 examines the EU regulatory framework, focusing on the DSA and DMA and their relationship with existing competition and data protection law. Section 3 analyses the US enforcement landscape, including Section 230, federal antitrust litigation, and state-level initiatives. Section 4 offers a comparative analysis of the two jurisdictions' regulatory philosophies, with particular attention to the distinction between *ex ante* and *ex post* approaches and to content moderation. Section 5 addresses cross-border data flows and the recurring instability of transatlantic data transfer arrangements. Section 6 presents enforcement case studies concerning Google, Meta, and Apple. Section 7 considers prospects for transatlantic convergence, including the role of the EU-US Trade and Technology Council and multilateral initiatives. Section 8 concludes with recommendations for policymakers and practitioners.

2. The European Union's Regulatory Framework

2.1 The Digital Services Act

The DSA, which became fully applicable to all intermediary services on 17 February 2024, establishes a graduated system of obligations for online intermediaries based on their role and scale.¹³ It replaced the e-Commerce Directive 2000/31/EC as the principal framework governing intermediary responsibility in the EU internal market. The regulation distinguishes among four categories of service provider: intermediary services generally, hosting services, online platforms, and very large online platforms

¹³ European Commission, 'DSA starts applying to all online platforms in the EU' (Press release IP/24/881, 15 February 2024) <https://ec.europa.eu/commission/presscorner/detail/en/ip_24_881> accessed 27 March 2026.

('VLOPs') and very large online search engines ('VLOSEs'). Each successive category inherits the obligations of the preceding one and faces additional requirements tailored to its particular capacity for systemic impact.

VLOPs and VLOSEs, defined as services reaching 45 million or more monthly active users in the EU, bear the heaviest obligations.¹⁴ In April 2023, the Commission designated 17 VLOPs and 2 VLOSEs, including Facebook, Instagram, YouTube, TikTok, X, Amazon Store, Google Search, and Bing.¹⁵ These designated services must conduct systemic risk assessments identifying risks to fundamental rights, public security, electoral processes, and the wellbeing of minors.¹⁶ They must implement proportionate risk mitigation measures, submit to independent annual audits, maintain publicly accessible advertising repositories, and provide data access for vetted researchers. The DSA also requires that users be offered the option to receive recommendations that are not based on profiling, a provision that directly addresses algorithmic personalisation practices.

Enforcement operates on two levels. The European Commission directly supervises VLOPs and VLOSEs and may impose fines of up to six per cent of worldwide annual

¹⁴ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) [2022] OJ L277/1, article 33.

¹⁵ European Commission, 'Digital Services Act: Commission designates first set of Very Large Online Platforms and Search Engines' (Press release IP/23/2413, 25 April 2023) <https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_23_2413/IP_23_2413_EN.pdf> accessed 27 March 2026; and European Commission, 'Commission designates Shein as Very Large Online Platform under the Digital Services Act' (26 April 2024) <<https://digital-strategy.ec.europa.eu/en/news/commission-designates-shein-very-large-online-platform-under-digital-services-act>> accessed 27 March 2026.

¹⁶ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) [2022] OJ L277/1, articles 34-35.

turnover. Since August 2023, the Commission has opened 14 formal proceedings, beginning with proceedings against X in December 2023.¹⁷ At the national level, Digital Services Coordinators ('DSCs') in each Member State oversee and enforce the DSA within their territories, coordinated through the European Board for Digital Services. This dual enforcement architecture draws upon the precedent established by the GDPR, under which national supervisory authorities share enforcement responsibilities with cross-border coordination mechanisms. Both the ambition and the complexity of this institutional design, observing that the Commission's direct supervisory role over VLOPs marks a departure from the decentralised enforcement model that characterises most EU regulatory frameworks.

A distinctive feature of the DSA is its emphasis on transparency as a regulatory mechanism. Article 24 requires platforms to publish detailed reports on their content moderation activities, and the Commission has established a publicly accessible DSA Transparency Database that records all content moderation decisions reported by designated platforms.¹⁸ This approach treats information disclosure as a tool of accountability, enabling civil society, researchers, and regulators to scrutinise platform practices without the state directly prescribing moderation outcomes. The distinction is significant: the DSA does not tell platforms what content to remove, but it requires them to explain, in a structured and verifiable manner, what they have removed and why. This process-oriented approach has been described as a form of procedural regulation that

¹⁷ It is the first DSA enforcement action against a designated VLOP (European Commission, 'Commission sends preliminary findings to X for breach of DSA' (Press release IP/24/3761, 11 July 2024) <https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3761> accessed 27 March 2026)

¹⁸ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) [2022] OJ L277/1, article 24; and European Commission, 'DSA Transparency Database: Home' <<https://transparency.dsa.ec.europa.eu/>> accessed 27 March 2026.

seeks to improve the quality of private decision-making rather than replacing it with public decision-making. It has been argued that through the DSA, the EU is positioning itself as a global regulator of the internet, setting procedural standards that platforms adopt worldwide for reasons of operational efficiency rather than legal compulsion.¹⁹

2.2 The Digital Markets Act

The DMA adopts a different approach from the DSA by targeting not content governance but market structure. It imposes *ex ante* behavioural obligations on designated 'gatekeepers', undertakings that provide core platform services constituting important gateways between business users and end users.²⁰ Gatekeeper status is determined through quantitative thresholds (annual EU turnover of EUR 7.5 billion or market capitalisation of EUR 75 billion, with 45 million monthly active end users and 10,000 yearly active business users in the EU) or through a qualitative assessment by the Commission.²¹ In September 2023, the Commission designated six gatekeepers: Alphabet, Amazon, Apple, ByteDance, Meta, and Microsoft.²² Booking.com was designated in May 2024.²³ These designations cover 22 core platform services across

¹⁹ Ioanna Tourkochoriti, 'The Digital Services Act and the EU as the Global Regulator of the Internet' (2023) 24(1) *Chicago Journal of International Law* 129, 133-136.

²⁰ Pierre Larouche and Alexandre de Stree, 'The European Digital Markets Act' (2021) 12(7) *Journal of European Competition Law & Practice* 542, 546. It has been noted that '[m]uch of EU competition law is really *ex ante*, from merger control to the use of guidelines, notices, block exemptions, etc., up to and including many Article 102 TFEU cases, which are decided before the impugned conduct has fully produced its actual effects. Similarly, as the DMA proposal itself indicates, economic regulation tends to respond to observed or perceived undesirable behaviour or other form of market failure already identified from past experience'.

²¹ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) [2022] OJ L265/1, article 3 (2).

²² European Commission, 'Commission designates six gatekeepers under the Digital Markets Act' (6 September 2023) <https://digital-markets-act.ec.europa.eu/commission-designates-six-gatekeepers-under-digital-markets-act-2023-09-06_en> accessed 27 March 2026.

²³ European Commission, 'Commission designates Booking as a gatekeeper and opens a market investigation into X' (Press release, 13 May 2024) <<https://digital-markets-act.ec.europa.eu/commission->

categories including online intermediation, search engines, social networking, video-sharing, operating systems, web browsers, and advertising services.

The obligations imposed on gatekeepers under Articles 5 to 7 of the DMA are prescriptive and self-executing, meaning that gatekeepers must comply without awaiting individual enforcement action.²⁴ They include a prohibition on combining personal data across the gatekeeper's different services without the user's consent; a prohibition on preventing business users from offering products or services at different prices or conditions through third-party channels (the 'anti-steering' provision); a requirement to allow users to uninstall pre-installed applications and to sideload applications from third-party sources; a prohibition on self-preferencing in ranking results; data portability rights for end users; and interoperability obligations for messaging services. The DMA further contains anti-circumvention provisions under Article 13, which prohibit practices that undermine effective compliance with these obligations.²⁵ The DMA could be described as a regulatory instrument that borrows from competition law's substantive concerns but dispenses with the procedural requirements of establishing dominance and anticompetitive effects through adversarial proceedings.²⁶

designates-booking-gatekeeper-and-opens-market-investigation-x-2024-05-13_en> accessed 27 March 2026.

²⁴ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) [2022] OJ L265/1, articles 5-7.

²⁵ *ibid*, article 13.

²⁶ For further discussion, see Friso Bostoën, 'Understanding the Digital Markets Act' (2023) 68(2) *The Antitrust Bulletin*; and Natalia Moreno Beloso and Nicolas Petit, 'The EU Digital Markets Act (DMA): A Competition Hand in a Regulatory Glove' (2023) 48 *European Law Review* 391.

The DMA's enforcement record is already substantial. In March 2024, the Commission opened five non-compliance proceedings against Alphabet, Apple, and Meta.²⁷ Preliminary findings followed against Apple in June 2024 and Meta in July 2024.²⁸ On 23 April 2025, the Commission issued its first non-compliance decisions, fining Apple EUR 500 million for violating anti-steering requirements and Meta EUR 200 million for its pay-or-consent advertising model.²⁹ These fines, imposed roughly one year after compliance obligations took effect, demonstrate the speed advantage of ex ante regulation over traditional competition proceedings. For systematic non-compliance, the DMA provides for structural remedies including divestiture under Article 18, a provision that has no direct parallel in the existing competition enforcement toolkit.³⁰ The availability of these escalating remedies, combined with the possibility of penalties reaching 10 per cent of worldwide annual turnover (and 20 per cent for repeat offences), provides the Commission with enforcement leverage that significantly exceeds what is available under Article 102 TFEU.³¹ However, that the DMA's effectiveness will depend on the Commission's willingness to pursue structural remedies in practice and on the courts' willingness to uphold them.

²⁷ European Commission, 'Commission opens non-compliance investigations against Alphabet, Apple and Meta under the Digital Markets Act' (25 March 2024) <https://digital-markets-act.ec.europa.eu/commission-opens-non-compliance-investigations-against-alphabet-apple-and-meta-under-digital-markets-2024-03-25_en> accessed 27 March 2026.

²⁸ European Commission, 'Commission sends preliminary findings to Apple and opens additional non-compliance investigation against Apple' (24 June 2024) <https://digital-markets-act.ec.europa.eu/commission-sends-preliminary-findings-apple-and-opens-additional-non-compliance-investigation-2024-06-24_en> accessed 27 March 2026; and European Commission, 'Commission sends preliminary findings to Meta over its "Pay or Consent" model for breach of the Digital Markets Act' (1 July 2024) <https://digital-markets-act.ec.europa.eu/commission-sends-preliminary-findings-meta-over-its-pay-or-consent-model-breach-digital-markets-act-2024-07-01_en> accessed 27 March 2026.

²⁹ European Commission, 'Commission finds Apple and Meta in breach of the Digital Markets Act' (23 April 2025) <<https://digital-strategy.ec.europa.eu/en/news/commission-finds-apple-and-meta-breach-digital-markets-act>> accessed 27 March 2026.

³⁰ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) [2022] OJ L265/1, article 18.

³¹ *ibid*, article 30.

The DMA's interoperability obligation for messaging services under Article 7 merits particular attention, as it represents a form of regulatory intervention without clear precedent in competition law.³² The provision requires gatekeepers operating number-independent interpersonal communication services to allow interoperability with third-party messaging providers. The obligation extends first to basic one-to-one text and image messaging and will progressively cover group messaging and voice and video calling in the future. This obligation raises technical questions about encryption standards (since end-to-end encryption must be maintained across interoperable services), commercial questions about the allocation of costs between the gatekeeper and smaller providers, and policy questions about the appropriate level of regulatory intervention in product design. The DMA's approach, mandating interoperability without specifying the technical standard, illustrates a broader tension in ex ante platform regulation: the need to set clear obligations that platforms can implement whilst avoiding specifications that become obsolete or create unintended consequences.

2.3 Competition Enforcement and the GDPR

The DMA and DSA operate alongside, rather than in place of, the EU's established competition enforcement framework. The Commission has pursued a series of landmark cases against digital platforms under Article 102 TFEU, beginning with the Google (Shopping) decision of 2017, in which the Commission found that Google abused its dominant position by systematically favouring its own comparison-shopping service in

³² *ibid*, article 7.

search results.³³ The EUR 2.42 billion fine was upheld by the General Court in 2021³⁴ and by the Court of Justice in September 2024.³⁵ The Court of Justice's judgment drew a significant doctrinal distinction between passive refusals of access (which require the strict conditions of the Bronner essential facilities test) and active self-preferencing (which is subject to a less demanding standard). This distinction has important implications for the interplay between ex ante DMA obligations and ex post Article 102 enforcement, since the DMA's prohibition on self-preferencing under Article 6(5) now supplements the competition law framework with a self-executing regulatory obligation.³⁶

The Google Android decision of 2018, imposing a fine of EUR 4.34 billion (later reduced to EUR 4.125 billion on appeal), addressed tying and bundling practices in the mobile operating system market.³⁷ The Google AdSense decision of 2019, by contrast, was annulled by the General Court in September 2024, which found that the Commission had failed to consider all relevant circumstances in setting the fine.³⁸ In the Apple Music Streaming case, the Commission imposed a EUR 1.8 billion fine in March 2024 for anti-steering provisions that prevented music streaming developers from informing users about cheaper subscription options outside the App Store.³⁹ The Commission also accepted binding commitments from Amazon in December 2022 regarding the use of seller data and discriminatory Buy Box and Prime eligibility

³³ *Google Search (Shopping)* (Case AT.39740) Commission Decision C(2017) 4444 final of 27 June 2017.

³⁴ Case T-612/17 *Google and Alphabet v Commission (Google Shopping)* ECLI:EU:T:2021:763.

³⁵ Case C-48/22 P *Google and Alphabet v Commission* ECLI:EU:C:2024.

³⁶ See Christophe Samuel Hutchinson and Diana Treščáková, 'Tackling Gatekeepers' Self-Preferencing Practices' (2022) 18(3) *European Competition Journal* 567.

³⁷ *Google Android* (Case AT.40099) Commission Decision of 18 July 2018.

³⁸ Case T-334/19 *Google and Alphabet v Commission* ECLI:EU:T:2024:634.

³⁹ *Apple – App Store Practices (music streaming)* (Case AT.40437) Commission Decision of 4 March 2024.

criteria,⁴⁰ and from Apple in July 2024 regarding access to near-field communication ('NFC') technology for third-party mobile wallet developers.⁴¹

The intersection of competition law and data protection received doctrinal clarification in the Court of Justice's landmark ruling in *Meta Platforms v Bundeskartellamt*. The Court held that competition authorities may take account of a dominant undertaking's compliance with the GDPR as a relevant factor in assessing whether its data processing practices constitute an abuse of dominance.⁴² The ruling established that the existence of a dominant position does not, in itself, prevent valid user consent under the GDPR, but that the imbalance of power inherent in dominance is a relevant consideration in assessing whether consent was freely given. This judgment has been described as forging a new link between the two bodies of law, enabling competition authorities to treat data protection violations as evidence of exploitative conduct.⁴³

The cumulative effect of this multi-layered enforcement framework is considerable. A single company may face parallel proceedings under Article 102 TFEU, the DMA, the GDPR, and national competition laws. Meta, for example, has been subject to enforcement actions under all four frameworks simultaneously. Colangelo has argued that this convergence between competition and data protection law creates risks of regulatory overreach, as conduct that may be lawful under one framework is challenged

⁴⁰ *Amazon Marketplace and Amazon Buy Box* (Cases AT.40462 and AT.40703) Commission Decision of 20 December 2022.

⁴¹ *Apple Pay (mobile payments)* (AT.40452).

⁴² Case C-252/21 *Meta Platforms Inc v Bundeskartellamt* ECLI:EU:C:2023:537.

⁴³ For further discussion of the intersection between data protection and competition law in this context, see Or Brook and Magali Eben, 'Another Missed Opportunity? Case C-252/21 *Meta Platforms v Bundeskartellamt* and the Relationship between EU Competition Law and National Laws' (2024) 15(1) *Journal of European Competition Law & Practice* 25.

under another.⁴⁴ It could also be argued that the overlapping frameworks reflect the multi-dimensional nature of platform power, which affects market competition, consumer privacy, and fundamental rights in ways that no single legal instrument can adequately address. Balasingham has further observed that the Commission's Google decisions expanded the concept of abuse of dominance to encompass forms of exclusionary innovation, in which a dominant firm redesigns its products in ways that foreclose competition.⁴⁵ The doctrinal implications of this expansion remain contested, but the practical effect is clear: digital platforms operating in the EU face a regulatory environment of considerable breadth and depth, in which multiple enforcement instruments can be deployed against the same conduct from different legal angles.

3. The United States Regulatory Landscape

3.1 Section 230 and Content Moderation

The US approach to platform governance differs from the EU model in both structure and substance. The foundational statute is Section 230 of the Communications Decency Act of 1996, which provides two forms of immunity for interactive computer services.⁴⁶ Under Section 230(c)(1), platforms cannot be treated as publishers or speakers of information provided by another content provider.⁴⁷ Under Section 230(c)(2), platforms are immune from liability for good-faith content moderation decisions.⁴⁸ These

⁴⁴ Giuseppe Colangelo, 'The Privacy/Antitrust Curse: Insights from GDPR Application in Competition Law Proceedings' (2024) 70(1) *The Antitrust Bulletin* 113, 113-140.

⁴⁵ Baskaran Balasingham, 'Exclusionary Innovation in the European Commission's Decisions Against Google' (2022) 18(3) *European Competition Journal* 631, 631-657.

⁴⁶ Communications Decency Act of 1996 47 USC §230.

⁴⁷ *ibid.*, §230(c)(1).

⁴⁸ *ibid.*, §230(c)(2).

provisions have operated as the legal bedrock of the US internet economy, enabling platforms to host and curate user-generated content without incurring publisher liability. Exceptions exist for federal criminal law, intellectual property, sex trafficking (under the FOSTA-SESTA amendments of 2018), and the Electronic Communications Privacy Act.

The Supreme Court had the opportunity to reconsider the scope of Section 230 in *Gonzalez v Google LLC* but declined to do so.⁴⁹ The Court vacated the Ninth Circuit's decision and remanded the case in light of the companion ruling in *Twitter, Inc v Taamneh*,⁵⁰ which held that operating a generally available internet service, including one that employs recommendation algorithms, does not constitute aiding and abetting terrorism under the Anti-Terrorism Act. The Court characterised platform algorithms as 'agnostic as to the nature of the content', effectively declining to distinguish between passive hosting and active algorithmic amplification.⁵¹ Reform proposals remain active but fragmented, reflecting the bipartisan but divergent dissatisfaction with the statute. Republicans have generally sought to limit platforms' ability to moderate political speech, whilst Democrats have focused on enhancing platforms' accountability for harmful content. No comprehensive reform has been enacted, though the TAKE IT DOWN Act was signed into law in May 2025, criminalising non-consensual intimate images and requiring platform removal within 48 hours.

⁴⁹ *Gonzalez v. Google LLC*, No. 21-1333, 598 U. S. ____ (May 18, 2023).

⁵⁰ *Twitter, Inc. v. Taamneh*, No. 21-1496, 598 U. S. ____ (May 18, 2023).

⁵¹ *ibid*, 5.

3.2 Federal Antitrust Enforcement

Federal antitrust enforcement against digital platforms has produced a mixed record. The DOJ's case against Google concerning its search monopoly represents the most significant success. In August 2024, Judge Mehta found that Google holds approximately 90 per cent of desktop search queries and 95 per cent of smartphone search queries and that it maintained this monopoly through exclusive distribution agreements paying approximately USD 26.3 billion annually to Apple, Samsung, and other device manufacturers.⁵² The remedies phase, however, proved less favourable for the DOJ. Judge Mehta rejected the government's proposal to force divestiture of the Chrome browser, instead imposing a six-year behavioural framework that prohibited exclusive distribution agreements and required Google to share search index metadata with qualified competitors.⁵³ Both sides have appealed. A separate DOJ case concerning Google's advertising technology business resulted in a finding of liability in April 2025, with the court concluding that Google monopolised both the publisher ad server market (holding approximately 90 per cent share) and the ad exchange market.⁵⁴

The FTC's monopolisation case against Meta, by contrast, ended in defeat. Filed in December 2020, the case alleged that Meta maintained monopoly power in 'personal social networking services' through its acquisitions of Instagram in 2012 and WhatsApp in 2014 and through anticompetitive interoperability restrictions.⁵⁵ After a six-week bench trial, Judge Boasberg ruled in November 2025 that the FTC failed to demonstrate

⁵² *United States v. Google, LLC*, 2024 WL 3647498 (D.D.C. Aug. 5, 2024).

⁵³ *United States v Google LLC* (Remedies Decision), No 20-cv-3010 (DDC, 2 September 2025).

⁵⁴ *United States v Google LLC*, No 1:23-cv-108 (E.D.Va, 17 April 2025). See Dina Srinivasan, 'Why Google Dominates Advertising Markets: Competition Policy Should Lean on the Principles of Financial Market Regulation' (2020) 24(1) *Stanford Technology Law Review* 55.

⁵⁵ *FTC v Meta Platforms, Inc.*, No 20-cv-3590 (DDC, 18 November 2025), 20.

current monopoly power. The court held that the relevant market must include TikTok and YouTube, platforms that had transformed the competitive landscape since the acquisitions.⁵⁶ Under Section 13(b) of the FTC Act, the FTC was required to demonstrate a current violation, not merely monopoly power at the time of the challenged conduct. This ruling exposed a structural limitation of the US antitrust framework: the difficulty of challenging consummated mergers in dynamically evolving technology markets, where market definitions shift over time. It has been noted that the traditional tools of merger review are poorly suited to markets characterised by rapid innovation and network effects.⁵⁷

The DOJ's antitrust suit against Apple, filed in March 2024, alleges that Apple monopolised or attempted to monopolise the US smartphone market through a range of exclusionary practices, including suppressing cross-platform messaging quality, blocking 'super apps', limiting third-party smartwatch functionality, and restricting cloud gaming services.⁵⁸ The court denied Apple's motion to dismiss in June 2025, allowing all claims to proceed to discovery. Trial is not expected before 2027. This case, along with the Google litigation, illustrates the US preference for ex post enforcement through adversarial judicial proceedings, a process that, as these cases demonstrate, can extend over many years from filing to resolution.

3.3 State-Level Initiatives and Congressional Proposals

⁵⁶ *ibid.*

⁵⁷ See Lina M. Khan, 'Amazon's Antitrust Paradox' (2017) 126 *Yale Law Journal* 710; and Herbert Hovenkamp, 'Antitrust and Platform Monopoly' (2021) 130 *Yale Law Journal* 1952.

⁵⁸ *United States v Apple Inc*, No 2:24-cv-04055 (DNJ, 30 June 2025).

In the absence of comprehensive federal legislation, state-level initiatives have partially filled the regulatory gap. The California Consumer Privacy Act ('CCPA'), as amended by the California Privacy Rights Act ('CPRA'), represents the most comprehensive US state-level data protection framework, establishing consumer rights concerning access, deletion, and opt-out of data sales, alongside the California Privacy Protection Agency as a dedicated enforcement body.⁵⁹ State-level content moderation statutes in Texas and Florida sought to prohibit platforms from moderating content on the basis of viewpoint, but these efforts were checked by the Supreme Court's decision in *Moody v NetChoice, LLC*, which vacated both the Fifth Circuit and Eleventh Circuit rulings and remanded for proper First Amendment analysis.⁶⁰ Justice Kagan's majority opinion established that platforms' content curation and moderation activities constitute protected editorial discretion under the First Amendment, and that the government cannot interfere with these choices by asserting an interest in 'balancing' the marketplace of ideas. This ruling has significant implications for any future attempt to impose European-style content moderation obligations through US legislation.

Congressional proposals for platform-specific legislation have repeatedly failed to advance. The American Innovation and Choice Online Act ('AICOA'), which would have prohibited covered platforms from self-preferencing and from using non-public business user data to advantage their own products, advanced through the Senate Judiciary Committee in January 2022 but never received a floor vote.⁶¹ The ACCESS Act, which would have required large platforms to maintain interoperability interfaces

⁵⁹ California Consumer Privacy Act of 2018 (Cal Civ Code §§ 1798.100–1798.199.).

⁶⁰ *Moody v NetChoice, LLC*, 603 US _ (2024).

⁶¹ American Innovation and Choice Online Act, S. 2992, 117th Congress (2021–2022). The Bill advanced through the Senate Judiciary Committee in January 2022 but did not receive a floor vote.

and data portability tools, likewise stalled after committee approval.⁶² The Open App Markets Act, which would prohibit app store operators from requiring exclusive use of their payment systems and would mandate sideloading, has been re-introduced in the 119th Congress but faces uncertain prospects.⁶³ The failure of these proposals reflects a combination of lobbying pressure, ideological disagreement about the proper scope of government intervention in technology markets, and the constitutional constraints identified in *Moody v NetChoice*.⁶⁴ As a result, the US continues to rely on antitrust litigation rather than legislation to address platform market power, a reliance that the mixed outcomes of the Google and Meta cases have called into question.

4. Comparative Analysis: Regulatory Philosophies

4.1 Ex Ante Regulation versus Ex Post Enforcement

The most fundamental distinction between the EU and US approaches lies in their regulatory methodology. The EU's DMA and DSA establish obligations before harm occurs. Designated gatekeepers must comply with specific behavioural requirements from the date of designation, and VLOPs must implement systemic risk management from the date of their designation. Enforcement proceeds through administrative investigation and decision-making by the Commission, with judicial review available before the General Court and the Court of Justice. The US, by contrast, proceeds through ex post litigation: the government must file a complaint, establish market definition,

⁶² Augmenting Compatibility and Competition by Enabling Service Switching Act of 2021, HR 3849, 117th Congress.

⁶³ Open App Markets Act, S 2710, 117th Congress (2021–2022). Re-introduced as S 2153 in the 119th Congress (2025–2026).

⁶⁴ *Moody v NetChoice, LLC*, 603 US _ (2024).

prove dominance (or monopoly power), and demonstrate anticompetitive effects through adversarial proceedings before a federal court. These procedural differences produce starkly different timelines. The DMA produced non-compliance findings and fines within approximately one year of obligations taking effect. The DOJ's search monopoly case against Google required over four years from filing to a finding of liability, and the remedies remain under appeal. The FTC's case against Meta consumed five years of litigation before ending in defeat. The OECD has observed that 'ex-post competition policy appears not to be able to address these challenges in their entirety and with the necessary speed'.⁶⁵

These institutional differences reflect deeper constitutional and cultural divergences. As Bradford has argued, the EU follows a 'rights-driven' regulatory model, in which the state assumes an active role in protecting citizens from market failures and corporate power, grounded in the EU Charter of Fundamental Rights.⁶⁶ The US follows a 'market-driven' model, in which competition and innovation are presumed to generate consumer welfare, and government intervention requires specific justification.⁶⁷ Constitutional frameworks reinforce these tendencies: the EU Charter (Articles 7, 8, and 11) provides an affirmative foundation for data protection and privacy regulation, whilst the US First Amendment creates significant constraints on governmental regulation of platform speech. Yet this dichotomy should not be overstated. Young has argued that transatlantic regulatory differences have been 'rooted in politics rather than principled differences'

⁶⁵ Giuseppe Nicoletti, Christina Vitale and Clarisse Abate, 'Competition, Regulation and Growth in a Digitized World: Dealing with Emerging Competition Issues in Digital Markets' (OECD Economics Department Working Papers No 1752, OECD Publishing 2023) <<https://doi.org/10.1787/1b143a37-en>> accessed 30 March 2026.

⁶⁶ Anu Bradford, 'The False Choice Between Digital Regulation and Innovation' (2024) 119 *Northwestern University Law Review* 377, 392.

⁶⁷ *ibid*, 386.

and that, until recently, these differences 'almost never led to conflict'.⁶⁸ The deterioration of the transatlantic relationship on digital governance since early 2025, marked by the dormancy of the EU-US Trade and Technology Council and by US sanctions against former EU Commissioner Thierry Breton, represents a departure from this pattern of accommodation.

4.2 Content Moderation: Obligations versus Liberty

The divergence between the EU and US approaches to content moderation is particularly pronounced. The DSA imposes graduated obligations on platforms to address illegal content, maintain transparent content policies, provide internal complaint-handling mechanisms, and, for VLOPs, conduct systemic risk assessments and implement mitigation measures. These obligations do not prescribe specific moderation outcomes but require platforms to maintain processes and structures for managing content-related risks. The US framework, shaped by the First Amendment and Section 230, treats content moderation as a matter of private editorial discretion. The Supreme Court's ruling in *Moody v NetChoice* confirmed that platforms' curation and moderation activities are protected speech, subject to First Amendment scrutiny if the government seeks to compel or restrict them.⁶⁹ This creates a structural asymmetry: the EU can impose legal obligations on platforms to address systemic risks arising from content, whilst the US constitutional framework limits governmental capacity to impose equivalent requirements. The tension has become geopolitically salient. In 2025, the US

⁶⁸ Alasdair R Young, 'Governing the Digital Economy: Transatlantic Accommodation and Cooperation' (2024) 46(7) *Journal of European Integration* 973, 973.

⁶⁹ *Moody v NetChoice, LLC*, 603 US _ (2024).

State Department characterised the DSA's content moderation requirements as a potential vehicle for censorship, and the House Judiciary Committee released a report describing the DSA as a 'foreign censorship threat'.⁷⁰ Nunziato has argued that the DSA may nonetheless exert a 'Brussels Effect' on content moderation globally, as platforms adopt uniform policies rather than maintain jurisdiction-specific systems, effectively extending EU standards to US users.⁷¹

The practical implications of this asymmetry extend beyond the legal texts. Major platforms are global services, and most operate under a single set of content policies worldwide. When the EU imposes transparency or risk assessment obligations, platforms typically implement these measures globally rather than maintaining separate systems for EU and non-EU users. The same dynamic applies in reverse: when US courts confirm that content moderation is protected editorial discretion, platforms gain confidence to resist foreign governmental demands for content removal. The result is a form of regulatory competition in which both jurisdictions exert extraterritorial influence through different channels: the EU through binding legal obligations that raise the baseline of platform governance, and the US through constitutional principles that shield platform autonomy from governmental direction. For companies operating in both jurisdictions, navigating these competing demands requires careful calibration. A platform that aggressively moderates content to comply with DSA obligations may face criticism in the US for suppressing speech; a platform that takes a permissive approach

⁷⁰ Staff of the House Committee on the Judiciary, *The Foreign Censorship Threat: How the European Union's Digital Services Act Compels Global Censorship and Infringes on American Free Speech* <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/202507/DSA_Report%26Appendix%2807.25.25%29.pdf> accessed 30 March 2026

⁷¹ Dawn Carla Nunziato, 'The Digital Services Act and the Brussels Effect on Platform Content Moderation' (2023) 24(1) *Chicago Journal of International Law* 115, 120-123.

to content may face enforcement action under the DSA for inadequate risk mitigation. This tension is unlikely to resolve in the near term, as it reflects deep constitutional differences that no bilateral agreement can overcome.

5. Cross-Border Data Flows and the Privacy Dimension

The governance of cross-border data flows between the EU and US has been marked by recurring legal instability. The Court of Justice invalidated the Safe Harbor framework in *Schrems I*⁷² and the Privacy Shield framework in *Schrems II*,⁷³ in both cases on the basis that US surveillance practices did not provide a level of data protection 'essentially equivalent' to that guaranteed by the GDPR and the EU Charter. The practical consequences were significant: Meta was fined a record EUR 1.2 billion in May 2023 for continuing transatlantic data transfers in reliance on standard contractual clauses after *Schrems II* had cast doubt on their adequacy.⁷⁴

The EU-US Data Privacy Framework ('DPF'), adopted by the Commission in July 2023 through an adequacy decision, sought to resolve this instability.⁷⁵ The DPF is grounded in US reforms introduced by Executive Order 14086, signed by President Biden, which established a Data Protection Review Court and binding safeguards limiting intelligence

⁷² Case C-362/14 *Maximillian Schrems v Data Protection Commissioner (Schrems I)* ECLI:EU:C:2015:650.

⁷³ Case C-311/18 *Data Protection Commissioner v Facebook Ireland and Maximillian Schrems (Schrems II)* ECLI:EU:C:2020:559.

⁷⁴ European Data Protection Board, '1.2 billion euro fine for Facebook as a result of EDPB binding decision' (22 May 2023) <https://www.edpb.europa.eu/news/news/2023/12-billion-euro-fine-facebook-result-edpb-binding-decision_en> accessed 30 March 2026

⁷⁵ Commission Implementing Decision (EU) 2023/1795 of 10 July 2023 pursuant to Regulation (EU) 2016/679 on the adequate level of protection of personal data under the EU-US Data Privacy Framework [2023] OJ L231/118.

access to data deemed necessary and proportionate.⁷⁶ The framework survived its first judicial challenge in September 2025, when the General Court dismissed an action by French parliamentarian Philippe Latombe, finding that the US reforms provide adequate judicial redress for EU data subjects.⁷⁷ However, the applicant appealed to the Court of Justice in October 2025,⁷⁸ and NOYB (the organisation founded by Max Schrems) has signalled its intention to bring a broader challenge. The framework's long-term durability remains uncertain for two reasons. First, Executive Order 14086 could be revoked by a subsequent US president without congressional action, removing the legal basis for the adequacy finding. Second, the Court of Justice has historically been more sceptical than the General Court regarding transatlantic data transfer arrangements, having invalidated both prior frameworks. For technology companies operating in both jurisdictions, this uncertainty imposes significant compliance costs and strategic risks, as business models predicated on transatlantic data flows remain contingent upon an executive order that lacks the permanence of legislation.⁷⁹

The data transfer question intersects with platform governance in concrete ways. The DMA's prohibition on combining personal data across services without consent assumes that data is processed within a framework that provides adequate protection. The GDPR's requirement that cross-border data transfers provide essentially equivalent protection to that available within the EU constrains the technical and organisational

⁷⁶ United States Department of State, Bureau of Intelligence and Research, 'Executive Order 14086 – Policy and Procedures' (Other Release, 3 July 2023) <<https://www.state.gov/executive-order-14086-policy-and-procedures>> accessed 30 March 2026.

⁷⁷ Case T-553/23 (General Court, 3 September 2025)

⁷⁸ Case C-703/25 P: Appeal brought on 31 October 2025 by Philippe Latombe against the judgment of the General Court (Tenth Chamber, Extended Composition) delivered on 3 September 2025 in Case T-553/23, *Latombe v Commission*.

⁷⁹ See Filippo Maria Lancieri, 'Digital Protectionism? Antitrust, Data Protection, and the EU/US Transatlantic Rift' (2019) 7(1) *Journal of Antitrust Enforcement* 27.

arrangements that platforms may use for their global operations. When these requirements are combined with the DSA's systemic risk assessment obligations, which require consideration of risks to data protection as a fundamental right, the result is a complex web of overlapping requirements that shape how platforms design, deploy, and operate their services. US platforms operating in the EU must therefore satisfy not only the substantive requirements of each instrument but also the procedural obligations that each imposes, including transparency reports, risk assessments, compliance audits, and data access arrangements for researchers and regulators.

6. Enforcement Case Studies

6.1 Google: Parallel Enforcement, Divergent Remedies

Google provides the clearest illustration of parallel transatlantic enforcement against a single company. In the EU, the Commission imposed confirmed fines exceeding EUR 6.5 billion across the Google Shopping and Google Android cases (with the AdSense case still under appeal), addressing self-preferencing and tying as abuses of dominance under Article 102 TFEU. The Court of Justice's September 2024 judgment in Google Shopping is of particular doctrinal significance, as it established that active self-preferencing by a dominant undertaking does not require the strict conditions of the Bronner essential facilities test, thereby lowering the evidentiary threshold for this category of abuse.⁸⁰ In the US, the DOJ secured a monopoly finding in August 2024, focused on exclusive distribution agreements for default search placement.

⁸⁰ Case C-48/22 P *Google and Alphabet v Commission* ECLI:EU:C:2024.

The remedies, however, diverged significantly. The EU relied on fines and behavioural orders, now supplemented by DMA ex ante obligations requiring Google to refrain from self-preferencing in search results and to allow users to change default applications. The US court rejected structural remedies, including the proposed divestiture of the Chrome browser, and instead imposed a six-year behavioural framework prohibiting exclusive distribution agreements and requiring data sharing with competitors.⁸¹ The separate US advertising technology case may prove more consequential: Judge Brinkema's finding that Google monopolised both the publisher ad server and ad exchange markets through acquisitions and product tying may support structural remedies, including the divestiture of Google's ad exchange.⁸² Taken together, these proceedings demonstrate that both jurisdictions have reached the same substantive conclusion, namely that Google wields monopoly power in search, but have pursued different remedial strategies reflecting their institutional traditions. Geradin and Katsifis suggest that the limitations of ex post antitrust enforcement in fast moving digital markets, especially its slowness and ad hoc nature, support complementing competition law with sector specific ex ante regulation, an approach that the EU had begun to pursue more clearly than the United States.⁸³

6.2 Meta: Outcome Divergence

The Meta cases illustrate the starkest transatlantic divergence in enforcement outcomes. In the US, the FTC's monopolisation case collapsed in November 2025 when the court found that the FTC had not established current monopoly power in personal social

⁸¹ *United States v Google LLC* (Remedies Decision), No 20-cv-3010 (DDC, 2 September 2025).

⁸² *United States v Google LLC*, No 1:23-cv-108 (E.D.Va, 17 April 2025).

⁸³ Damien Geradin and Dimitrios Katsifis, 'Strengthening Effective Antitrust Enforcement in Digital Platform Markets' (2022) 18(2) *European Competition Journal* 356.

networking.⁸⁴ The court's insistence on including TikTok and YouTube in the relevant market rendered Meta's share insufficient for a finding of monopoly. Under the FTC Act, the agency was required to demonstrate a present violation, not merely monopoly power at the time of the challenged acquisitions over a decade earlier. This ruling exposed the practical difficulty of challenging consummated technology mergers through ex post litigation, particularly where market boundaries have shifted since the acquisitions occurred.

The EU has pursued Meta through multiple regulatory instruments simultaneously. Under the DMA, Meta was fined EUR 200 million in April 2025 for its pay-or-consent advertising model.⁸⁵ Under the GDPR, the Irish Data Protection Commission has imposed fines exceeding EUR 2 billion against Meta Ireland for various violations, including the record EUR 1.2 billion fine for unlawful transatlantic data transfers.⁸⁶ Under competition law, the Court of Justice's ruling in *Meta Platforms v Bundeskartellamt* confirmed that competition authorities may consider GDPR compliance when assessing abuses of dominance, opening a further enforcement avenue.⁸⁷ This multi-instrument approach, combining ex ante regulation, data protection enforcement, and traditional antitrust, enables the EU to address platform power from multiple angles, compensating for the limitations of any single instrument. The contrast with the US single-instrument antitrust model is instructive: where the FTC's case depended entirely on proving current monopoly power in a single proceeding, the EU

⁸⁴ *FTC v Meta Platforms, Inc*, No 20-cv-3590 (DDC, 18 November 2025), 20.

⁸⁵ European Commission, 'Commission finds Apple and Meta in breach of the Digital Markets Act' (23 April 2025) <<https://digital-strategy.ec.europa.eu/en/news/commission-finds-apple-and-meta-breach-digital-markets-act>> accessed 27 March 2026.

⁸⁶ European Data Protection Board, '1.2 billion euro fine for Facebook as a result of EDPB binding decision' (22 May 2023) <https://www.edpb.europa.eu/news/news/2023/12-billion-euro-fine-facebook-result-edpb-binding-decision_en> accessed 30 March 2026

⁸⁷ Case C-252/21 *Meta Platforms Inc v Bundeskartellamt* ECLI:EU:C:2023:537.

distributed its enforcement efforts across complementary frameworks, reducing the consequence of any individual setback.

6.3 Apple: Converging Pressure

Apple faces enforcement pressure in both jurisdictions that, unusually, appears to be converging in substance if not in form. In the EU, the DMA produced a EUR 500 million non-compliance fine for anti-steering violations in April 2025, whilst the Apple Music Streaming antitrust fine of EUR 1.8 billion remains under appeal.⁸⁸ The Court of Justice's confirmation of the EUR 13 billion state aid recovery in September 2024 added further financial pressure.⁸⁹ In the US, the DOJ's antitrust suit survived dismissal in June 2025 and proceeds to discovery, whilst *Epic Games v Apple* produced a finding of wilful civil contempt for Apple's attempts to circumvent anti-steering injunctions.⁹⁰ The convergence of EU regulatory action and US judicial proceedings creates compounding compliance pressures on Apple's integrated ecosystem model. Both jurisdictions have identified the same core practices as problematic: restrictions on alternative app distribution, limitations on competing payment systems, and anti-steering provisions that prevent developers from directing users to cheaper alternatives. The difference lies in the mechanism: the EU addresses these practices through self-executing DMA

⁸⁸ Case C-465/20 *P Commission v Ireland and Apple* ECLI:EU:C:2024:724.; and see European Commission, 'Commission finds Apple and Meta in breach of the Digital Markets Act' (23 April 2025) <<https://digital-strategy.ec.europa.eu/en/news/commission-finds-apple-and-meta-breach-digital-markets-act>> accessed 27 March 2026; and *Apple – App Store Practices (music streaming)* (Case AT.40437) Commission Decision of 4 March 2024.

⁸⁹ European Parliamentary Research Service, 'State aid assessment: Final judgment on Apple' <[https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA\(2025\)769501](https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA(2025)769501)> accessed 30 March 2026.

⁹⁰ *Epic Games, Inc. v. Apple Inc.*, No. 4:2020cv05640 - Document 118 (N.D. Cal. 2020).

obligations, whilst the US does so through individual lawsuits that must establish each element of an antitrust violation through adversarial proceedings.

7. Towards Transatlantic Convergence

The question of whether the EU and US can develop a coordinated approach to digital platform governance is both pressing and politically fraught. The EU-US Trade and Technology Council ('TTC'), established at the June 2021 summit, offered the most promising institutional framework for transatlantic coordination. Over six ministerial meetings between September 2021 and April 2024, the TTC facilitated dialogue on technology standards, artificial intelligence governance, platform accountability, and international standards. However, the TTC has been effectively dormant since January 2025, and no new ministerial meetings have been scheduled. The confrontational posture of the current US administration towards EU digital regulation, including characterising the DMA and DSA as unfair trade barriers, has severely diminished prospects for continued cooperation through this channel.

Multilateral forums offer an alternative pathway. For instance, the OECD has produced substantial analytical work on competition policy in digital markets, including a 2024 report examining how ex ante regulation and ex post antitrust enforcement complement each other across G7 jurisdictions.⁹¹ These multilateral processes lack the binding authority of bilateral agreements but serve an important norm-setting function,

⁹¹ Organisation for Economic Co-operation and Development, Competition Policy in Digital Markets (OECD Publishing 2024) <https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/10/competition-policy-in-digital-markets_554eb7d5/80552a33-en.pdf> accessed 30 March 2026

establishing shared analytical frameworks that may inform future legislative and enforcement convergence. The concept of a 'Digital Stability Board', modelled on the Financial Stability Board created after the 2008 financial crisis, has been proposed as a mechanism for ongoing multilateral coordination on platform governance. Such an institution could facilitate information sharing, coordinate enforcement actions, and develop common standards for issues such as algorithmic transparency and interoperability.

Practical opportunities for convergence remain, notwithstanding the current political difficulties. Both jurisdictions have identified the same companies and the same practices as problematic. Both have concluded that Google holds monopoly power in search. Both are pursuing Apple's App Store practices. The substantive overlap between the DMA's prohibitions and the relief sought in US antitrust cases is considerable: the DMA's anti-steering provisions address the same conduct at issue in *Epic Games v Apple* and the *Apple Music Streaming* case;⁹² the DMA's prohibition on self-preferencing mirrors the theory of harm in *Google Shopping* and the DOJ's search monopoly case. This convergence in substance suggests that shared enforcement instruments, such as mutual recognition of compliance frameworks or coordinated remedies in parallel proceedings, could reduce duplication and compliance costs without requiring either jurisdiction to abandon its institutional traditions.

A further dimension of convergence operates not through bilateral agreement but through the unilateral diffusion of EU regulatory standards. Bradford's account of the

⁹² *Epic Games, Inc. v. Apple Inc.*, No. 4:2020cv05640 - Document 118 (N.D. Cal. 2020); and *Apple – App Store Practices (music streaming)* (Case AT.40437) Commission Decision of 4 March 2024.

'Brussels Effect' describes how EU regulations become de facto global norms through market mechanisms: because major technology companies serve the EU market, they often adopt EU-compliant practices globally rather than maintaining separate systems for different jurisdictions.⁹³ This dynamic is already visible in the platform governance context. Several countries and regions have adopted or proposed legislation modelled on the DMA, including Japan, South Korea, and the United Kingdom (through the Digital Markets, Competition and Consumers Act 2024). The UK's Digital Markets Unit, established within the Competition and Markets Authority, shares the DMA's focus on ex ante obligations for designated firms with 'strategic market status'.⁹⁴ In the US, the substantive content of the DMA's obligations is being replicated through judicial remedies: the behavioural restrictions imposed on Google in the search monopoly remedies decision, including the prohibition on exclusive distribution agreements and the requirement for data sharing with competitors, correspond to obligations that the DMA already imposes on Google as a designated gatekeeper. This pattern suggests that, even in the absence of formal transatlantic cooperation, the EU's regulatory choices are shaping the terms of platform governance globally, including within the US market itself.

8. Conclusion

The EU and the US have reached broadly similar conclusions about the market power wielded by major digital platforms but have pursued markedly different strategies for

⁹³ Anu Bradford, *The Brussels Effect: How the European Union Rules the World* (OUP 2020) 7-24.

⁹⁴ UK Government, Department for Business and Trade, 'Digital Markets Unit' <<https://www.gov.uk/government/collections/digital-markets-unit>> accessed 30 March 2026

addressing it. The EU has constructed a comprehensive regulatory architecture, the DMA and DSA supplementing traditional Article 102 TFEU enforcement and the GDPR, that enables rapid, multi-instrument action against platform power. The first non-compliance fines under the DMA arrived within roughly one year of obligations taking effect. The US, relying on ex post antitrust enforcement, has produced landmark judicial findings but has also experienced the limitations of this approach, most starkly in the FTC's failed case against Meta.

Three conclusions emerge from this analysis. First, the EU's multi-instrument approach generates more consistent compliance pressure than the US single-instrument antitrust model. The simultaneous application of DMA obligations, GDPR enforcement, and competition law decisions against the same companies creates compounding incentives that no single US antitrust case can replicate. Second, US constitutional constraints on content regulation create a structural asymmetry that institutional cooperation cannot bridge. The First Amendment and the EU Charter of Fundamental Rights embody different conceptions of the relationship between the state, the platform, and the individual. This does not preclude all cooperation, but it sets limits on the areas in which convergence is achievable. Third, the substantive overlap between EU regulatory requirements and US antitrust theories of harm provides a foundation for practical coordination. Both jurisdictions target the same practices: self-preferencing, anti-steering, exclusionary distribution agreements, and discriminatory data use. This convergence in substance suggests that shared enforcement instruments and mutual recognition of compliance frameworks could reduce the duplication and cost that currently burden both regulators and regulated entities.

For policymakers, the path forward requires balancing ambition with pragmatism. The revival of the EU-US Trade and Technology Council or the establishment of an equivalent bilateral forum would provide institutional infrastructure for ongoing dialogue, even where agreement on specific regulatory approaches proves difficult. Multilateral mechanisms through the OECD and G7 can facilitate the development of shared standards for algorithmic transparency, data portability, and interoperability. For legal practitioners, the current landscape demands fluency in both EU regulatory frameworks and US antitrust doctrine, as compliance with one jurisdiction's requirements does not guarantee compliance with the other's. The challenge for both jurisdictions is to develop a regulatory environment that constrains the exercise of platform power without stifling the innovation and economic dynamism that digital platforms have enabled. Whether they will succeed in doing so, individually or together, remains the central question of digital governance for the decade ahead.