



July 12, 2024

The Antitrust Division  
Department of Justice  
450 5th St NW # 8700  
Washington, DC 20530

**Re: Department of Justice, *Workshop on Promoting Competition in Artificial Intelligence***

On behalf of Chamber of Progress—a tech industry association supporting public policies to build a more inclusive country in which all people benefit from technological advances—we appreciate the opportunity to share this response to the Department of Justice’s recent Workshop on Promoting Competition in Artificial Intelligence (AI) at Stanford.

The United States is the global leader in AI. As the Department considers its approach to AI, it should prioritize preserving America as the epicenter of AI innovation. Overly stringent regulations stifle innovation by creating high barriers for startups and smaller firms, limiting their ability to compete and innovate. The Department should support open access, encourage innovation, and avoid excessive constraints, thereby supporting a vibrant, competitive AI ecosystem.

**The EU AI Act is an ineffective blueprint for US AI regulation**

The European Union Artificial Intelligence Act (the “Act”)<sup>1</sup> may significantly deter competition within the AI industry.<sup>2</sup> We must disagree with Vice President Věra Jourová’s contention that the Act “gives providers of AI systems a predictable operating environment... and encourages companies to develop new products easier.”<sup>3</sup> On the contrary, companies may avoid pursuing AI projects due to the fear of non-compliance and the associated penalties. For example, violations of the Act can result in fines of up to 35 million euros or 7% of a company’s global annual turnover.<sup>4</sup> Measures like these

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<sup>1</sup> Council of the EU, *Artificial intelligence (AI) act: Council gives final green light to the first worldwide rules on AI*, European Union (May 2024).  
<https://www.consilium.europa.eu/en/press/press-releases/2024/05/21/artificial-intelligence-ai-act-council-gives-final-green-light-to-the-first-worldwide-rules-on-ai/>

<sup>2</sup> Pascale Davies, *Potentially disastrous for innovation: Tech sector reacts to the EU AI Act saying it goes too far*, Euronews (Dec. 2023).  
<https://www.euronews.com/next/2023/12/15/potentially-disastrous-for-innovation-tech-sector-says-eu-ai-act-goes-to-far>

<sup>3</sup> Stanford Graduate School of Business, *Promoting Competition in AI*, Dept. of Justice (May 2024).  
<https://www.youtube.com/watch?v=y-IJPY0iJMk>

<sup>4</sup> EU Artificial Intelligence (AI) Act FAQs, Winston & Strawn LLP (Apr. 2024).  
[https://www.winston.com/en/insights-news/eu-artificial-intelligence-ai-act-faqs#:~:text=What%20Are%20the%20Penalties%20of,for%20violations%20of%20its%20terms.&text=Companies%20that%20are%20noncompliant%20with,turnover%20\(whichever%20is%20higher\).](https://www.winston.com/en/insights-news/eu-artificial-intelligence-ai-act-faqs#:~:text=What%20Are%20the%20Penalties%20of,for%20violations%20of%20its%20terms.&text=Companies%20that%20are%20noncompliant%20with,turnover%20(whichever%20is%20higher).)

already deter companies from bringing products to market in the EU. For example, Apple is withholding its new AI system, Apple Intelligence, from the European Union, citing concerns about industry regulations.<sup>5</sup> Additionally, the Act will have an impact on competition enforcement across the European Union including broad procedural powers provided to relevant supervisory agencies, which include examining evidence and accessing data and documents that can be transferred to national competition authorities and enhanced transparency of AI systems that necessitate the sharing of important information between companies.<sup>6</sup>

Following the EU's approach domestically would be similarly counterproductive. High regulatory burdens, excessive scrutiny of venture capital investment and a presumption against mergers would send investment and innovation abroad, including to geopolitical rivals like China. This exodus would only weaken the competitive landscape, directly harming the American tech workforce and concentrating market power in foreign entities.

### **An abundance of foundation models promotes competition**

An abundance of foundation models, both open and closed, is vital for maintaining competition in the technology sector. Policy should encourage the proliferation of models - since models have different use cases depending on their size, design, etc. Additionally, fostering open source models will provide a base for researchers and developers to build upon.<sup>7</sup> Burdening foundation model development with excessive licensing requirements, rigorous mandatory compliance audits, or high financial penalties would create significant barriers for smaller firms and startups, limiting their ability to innovate and compete. By leveraging foundation models, startups can accelerate their development processes, reduce costs, and bring new products and services to market.

The prospect of civil penalties creates significant apprehension among venture capitalists, deterring investment in AI startups.<sup>8</sup> Instead, we need to focus on providing more academic resources and investment in competition. Industry is leading the way. Anthropic already offers an application programming interface (API) called Claude that provides access to advanced AI models designed for researchers to integrate into their projects and explore new applications.<sup>9</sup>

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<sup>5</sup> Ivana Saric, *Apple says it won't roll out AI features in Europe due to regulatory concerns*, Axios (Jun. 2024). <https://www.axios.com/2024/06/21/apple-ai-features-europe>

<sup>6</sup> *AI Challenges in Competition Law, How Are Regulators Responding?*, Thomson Reuters (Apr. 2024). [https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2024/04/ai-challenges-in-competition-law\\_mar24.pdf%3Frev=55168f8e10a64e458c3fc1ac7af179df](https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2024/04/ai-challenges-in-competition-law_mar24.pdf%3Frev=55168f8e10a64e458c3fc1ac7af179df)

<sup>7</sup> *What are foundation models?*, Amazon (2024). <https://aws.amazon.com/what-is/foundation-models/>

<sup>8</sup> Michael Masnick, *Don't Shoot The Message Board*, The Copia Institute (June 2019) ("finding that venture capitalists are more likely to invest in U.S. startup companies due to its intermediary friendly regulatory environment."). <https://copia.is/wp-content/uploads/2019/06/DSTMB-Copia.pdf>.

<sup>9</sup> *Introducing the Next Generation of Claude*, Anthropic (Mar. 2024). <https://www.anthropic.com/news/claude-3-family>

We agree with Professor Percy Liang that policymakers should take a measured approach. Rather than solely focusing on the potential misuse of AI tools by bad actors, we should consider these technologies' broad implications and benefits.<sup>10</sup> As Professor Liang noted, much of the putative harmful content created with Generative AI is already available on the broader internet. Accordingly, a measured, thoughtful approach is called for.<sup>11</sup>

Lastly, we must consider the marginal risk of a future technology concerning what actually exists to make a meaningful determination of risk.<sup>12</sup> Suppose a new AI technology introduces a marginally higher risk than existing systems. In that case, regulators should focus on targeted measures that address these specific risks rather than imposing broad regulations that could hinder the overall competitive landscape. For example, to the extent that generative AI models may pose additional risks related to information integrity, we should focus on interventions that address that directly.

Formal policy making may not be the optimal intervention. Instead, voluntary action by social media platforms and fact-checking by the media are likely preferable. Rather than implementing blanket regulations that stifle innovation, regulators should focus on targeted measures such as transparency and promoting best practices for content verification where appropriate. This approach would address specific risks while allowing companies to continue developing and deploying advanced AI technologies, thus maintaining a competitive edge and fostering innovation.

### **Improving access to key inputs - chips and compute - will improve the AI supply chain**

Finally, Senator Klobuchar stated, “We can’t make the same mistakes with AI that we did with prior technologies by allowing markets to consolidate and turning a blind eye to exclusionary conduct [and] that is why we need to look out for anti-competitive behavior all the way down the AI supply chain.” The health of the AI supply chain is surely important.

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<sup>10</sup> Stanford Graduate School of Business, *Promoting Competition in AI*, Dept. of Justice (May 2024).

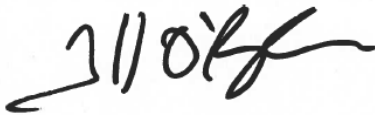
<https://www.youtube.com/watch?v=y-IJPY0iJMk>

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

Currently, the biggest bottleneck in the AI supply chain is the access to computing resources. Congress took a critical first step by passing the Chips and Science Act, but more must be done. To deliver on the promise of the Creating Helpful Incentives to Produce Semiconductors and Science Act (CHIPS Act), Congress must take the next step and streamline permitting and environmental review of facilities receiving CHIPS Act funding. Congress should also pass the CREATE AI Act to fully fund and make permanent the National Artificial Intelligence Research Resource to ensure researchers have adequate access to computing resources.

Sincerely,

A handwritten signature in black ink, appearing to read "T O'Boyle", with a stylized flourish at the end.

Todd O'Boyle  
Senior Director, Technology Policy  
Chamber of Progress