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AI & COMPETITION POLICY A GLOBAL COMPARATIVE ANALYSIS

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Artificial intelligence has rapidly ascended to the top of competition law agendas worldwide. This edition of the Competition Law Review examines the emerging global framework or, more precisely, the fragmented collection of frameworks through which regulators across the United States, European Union, United Kingdom, China, and beyond are grappling with the competitive implications of AI. For practitioners advising clients at the intersection of technology and antitrust, the stakes have rarely been higher.

I. The Structural Problem: Why AI Challenges Existing Competition

Doctrine

Competition law was designed, largely, for markets where inputs are tangible, dominance is measurable, and harm to consumers is discernible. Artificial intelligence particularly the generative variety upends each of these assumptions. To understand the regulatory responses surveyed in this newsletter, one must first appreciate the structural competition risks that make AI a distinctive challenge for antitrust doctrine.

A. Control of Key Inputs

Three categories of inputs are critical to AI development: **specialised semiconductor chips (primarily GPUs), proprietary training data, and cloud computing infrastructure**. The concentration of each in the hands of a small number of incumbent firms has become a primary concern for competition authorities globally. The OECD's 2025 roundtable paper on AI infrastructure flagged that the structure of AI supply chains from chip fabrication to model deployment is susceptible to competition concerns precisely because control over any one layer can confer leverage across the entire value chain.¹

Training large foundation models is extraordinarily resource-intensive. Costs of training large foundation models alone are widely estimated to reach into the millions of dollars and continue to rise.² This creates structural barriers to entry that no nascent competitor can easily surmount, regardless of the quality of its algorithms.

Concentrated control of GPUs, cloud compute, and training data can entrench incumbent advantage long before any formal abuse of dominance can be established and remedied.

B. Vertical Integration and Self-Preferencing

Incumbent technology platforms are not passive observers of the AI race. Their established user bases, financial reserves, and existing data repositories allow them to move rapidly across the AI supply chain — from hardware, to cloud services, to foundation model development, to consumer-facing AI applications. By controlling data and computational resources, incumbents raise entry barriers, leverage advantages to favour their own AI services, and drive significant vertical integration across the AI supply chain, thereby entrenching their market dominance.³ This raises concerns that have already prompted enforcement action in several jurisdictions.

C. Investment Partnerships and the 'Acqui-hire' Problem

A defining feature of the current AI market is the prevalence of investment partnerships between large cloud providers and AI developers — structures that have attracted significant regulatory attention. Rather than outright acquisitions (which would trigger merger notification thresholds), incumbents have deployed minority stakes, preferential cloud credits, and commercial exclusivity arrangements to secure de facto influence over frontier AI developers. The FTC's January 2025 report on cloud–AI partnerships flagged concerns including lock-in through contractual terms, technical barriers to cloud switching, and the risk that cloud providers may acquire sensitive strategic information about their AI developer partners.⁴

PRACTITIONER ALERT: Three Competition Risks Identified Globally (DOJ/FTC/CMA/EC Joint Statement, July 2024)

- ▶ Concentrated control of key inputs — specialised chips, computing power, and technical expertise
- ▶ Ability of large incumbent digital firms to entrench or extend power in AI-related markets
- ▶ Arrangements among key players that might reduce competition and steer market outcomes in their favour

See: DOJ/FTC/CMA/EC Joint Statement on Competition in Generative AI Foundation Models and AI Products (July 2024).

II. A Jurisdiction-by-Jurisdiction Overview

A. The United States: Enforcement Without a Dedicated Framework

The US remains the jurisdiction with the most active conduct-based enforcement, yet also the one that has most deliberately resisted creating AI-specific competition legislation. The Trump administration's 2025 AI Action Plan and a series of executive orders have consistently prioritised American AI dominance framing competition policy as a tool of industrial strategy rather than consumer protection.⁵

US antitrust enforcement in 2025 paired continued pressure on Big Tech conduct with a more pragmatic stance on transactions, particularly in AI and innovation-driven markets. Senior officials increasingly framed antitrust as "traditional law enforcement grounded in traditional theories of harm" — a deliberate narrowing of the enforcement aperture that has significant implications for clients assessing deal risk. That shift was reflected in the absence of challenges to prominent tech, AI, and vertical deals.⁶

The Google Search monopolisation case produced its remedies order in September 2025, with the District Court for the District of Columbia acknowledging generative AI as a 'nascent competitive threat' but declining to impose the structural remedies sought by the DOJ. The court focused instead on data-sharing requirements and expressly included generative AI firms as beneficiaries of that remedy a signal that courts are attentive to competitive dynamics in the AI layer without being prepared to structurally restructure incumbents to address it.⁷

Algorithmic pricing has emerged as a parallel enforcement priority. DOJ Assistant Attorney General Gail Slater warned in August 2025 that firms should perform due diligence on shared algorithmic inputs and functionality to prevent collusion, and anticipated that algorithmic pricing probes would increase.⁸ Class actions alleging that AI-powered pricing algorithms constitute unlawful price coordination have proliferated across the hotel, residential rental, student housing, and healthcare sectors with mixed judicial outcomes but substantial discovery exposure.

ADVISORY

US practitioners should advise clients that even in the absence of express agreements, shared use of third-party AI pricing tools may attract DOJ scrutiny. Internal documentation of independent pricing rationale is essential.

B. The European Union: Structural Regulation and Exploratory Enforcement

The EU has adopted the most structurally ambitious regulatory response to digital market concentration, anchored by the **Digital Markets Act (DMA)**, which imposes ex-ante

obligations on designated 'gatekeepers.' The critical open question whether foundation model providers or AI-enabled services could be designated as gatekeepers was brought into sharp focus by the DMA's first public consultation in mid-2025, with several respondents favouring the inclusion of cloud services and AI within the DMA's scope.⁹

The Commission's enforcement posture has been aggressive on AI-adjacent conduct. In 2025, it imposed a EUR 2.95 billion fine on Google for self-preferencing in the advertising technology sector, confirming its willingness to order both behavioural and structural remedies to address vertical integration.¹⁰ Separately, the Italian competition authority (AGCM) initiated an investigation into Meta's pre-installation of Meta AI on WhatsApp, subsequently extending it to include changes to business terms that allegedly exclude competing AI chatbots, and adopted interim measures.¹¹

Of particular doctrinal significance is the Commission's investigation into Google's use of web publisher content and YouTube videos for training its AI models. The Commission's theory of harm — that these practices constitute **exploitative conduct** under Article 102 TFEU by imposing unfair terms — has attracted criticism from commentators who argue it extends competition enforcement beyond exclusionary conduct into the regulation of commercial terms between private parties, raising concerns about transatlantic friction during a period of intensifying techno-economic competition.¹²

WATCH

The EU's revised Merger Guidelines, expected Q4 2027, will move beyond static market-share analysis toward dynamic, forward-looking frameworks accounting for innovation potential. EU deal teams should begin stress-testing transactions against this anticipated shift.

C. The United Kingdom: A Pivot Toward Growth

The UK's approach to AI competition regulation underwent a significant recalibration in 2025. The sudden replacement of CMA Chair Marcus Bokkerink with Doug Gurr in January, and the government's subsequent 'pro-Growth Agenda,' marked a deliberate pivot away from the activist stance the CMA had previously taken on AI partnerships and investments.¹³ For 2026, practitioners should expect the CMA to adopt a 'wait-and-see' posture on global AI transactions absent UK-specific concerns. The CMA is expected to take a broader, more flexible approach enabled by the DMCCA's 'Strategic Market Status' regime.¹⁴

The UK's **Digital Markets, Competition and Consumers Act (DMCCA)**, which came into force on 1 January 2025, provides the CMA with considerable flexibility through its 'Strategic

Market Status' (SMS) designation regime allowing tailored conduct requirements and pro-competitive interventions. The CMA has already designated Google under this regime, making it among the first firms subject to the new framework. How the CMA applies SMS obligations to AI-related conduct will be an important indicator of how the UK seeks to balance competition enforcement with its growth agenda.¹⁵

D. China: Regulation as Industrial Strategy

China's approach is distinctive: its **Interim Measures for the Management of Generative AI Services** applicable to publicly available generative AI services introduces broadly framed rules addressing data sourcing, training data quality, and content safety. While not a traditional competition instrument, these measures affect the market structure of AI services available within China's jurisdiction. Chinese authorities have adopted a broadly cautious stance on investigating abusive practices, consistent with the state's interest in nurturing domestic AI champions.¹⁶

For multinational clients, China's regulatory framework presents a compliance layer that intersects with but does not align with Western antitrust frameworks. Practitioners advising on cross-border AI partnerships should anticipate that data-sharing arrangements acceptable in the EU may face different scrutiny in China, and vice versa.

III. Mergers and Strategic Investments in the AI Space

Deal activity in AI has accelerated substantially, and the nature of that activity has evolved. Recognising that conventional acquisitions attract merger notification obligations and heightened scrutiny, incumbent technology firms have increasingly turned to minority investments, commercial partnerships, and talent arrangements to secure influence over frontier AI developers. Academic analysis of the AI supply chain cautions that these structures can lead to 'winner-take-most-or-all' dynamics, where a few powerful firms distort innovation paths and chill disruptive competition.¹⁷

Nvidia's announced acquisition of AI chip startup Grog at approximately USD 20 billion its largest deal to date exemplifies the consolidation dynamic at the semiconductor layer of the AI stack. Separately, OpenAI and Nvidia announced a partnership in September 2025 whereby Nvidia would invest up to USD 100 billion in computing infrastructure for OpenAI. Antitrust agencies have shown strong interest in such investment structures but have not challenged them directly, reflecting the tension between regulatory concern and the evidentiary difficulty of

proving harm in nascent markets.¹⁸

Google's acquisition of Wiz illustrates how AI-era deal reviews now routinely examine the interoperability of acquired products across competing cloud platforms. Anticipating these concerns, Google committed to Wiz's products remaining available and functional across all major cloud platforms a 'platform neutrality' commitment that may become a template for remedying AI-adjacent transactions.¹⁹

DEAL RISK MATRIX: Key Questions for AI Transactions

- ▶ Does the target control any critical input layer (compute, data, talent) that the acquirer could leverage for foreclosure?
- ▶ Does the transaction involve minority investment or partnership structures designed to avoid notification thresholds?
- ▶ Will the combined entity's products remain interoperable across competing platforms post-closing?
- ▶ Has the target been trained on data from dominant platforms — and could the acquirer use that leverage to restrict rivals' training access?
- ▶ What is the jurisdictional profile? US, EU, UK, China, and India may each require separate notification and substantive analysis.

IV. The Open-Source Debate: Democratisation or False Comfort?

The emergence of high-performance open-source AI models most notably those from Meta, Mistral, and Chinese developers including DeepSeek has generated considerable debate about whether open-source releases can serve as a structural remedy for AI market concentration.

Proponents argue that open-source models lower barriers to entry and give downstream developers access to foundation model capabilities without dependence on proprietary API providers. However, competition regulators have expressed scepticism. The concern is 'strategic open-sourcing': releasing models as open-source to capture market share during a growth phase, followed by a shift to closed, proprietary models once network effects are established at which point switching costs for dependent developers may be prohibitively high.²⁰ Similarly, the lack of interoperability between open and proprietary AI systems creates a form of soft lock-in that may undermine the competitive benefits of open-source releases.

For legal practitioners, the open-source debate is not merely academic. Clients deploying open-source AI models in commercial workflows should assess their contractual exposure if the licensor subsequently restricts the licence or migrates to a closed model. Competition counsel

advising AI developers should also consider how open-source strategy might interact with market definition and dominance assessments in future enforcement proceedings.

V. Market Definition in AI: An Evolving Doctrine

Perhaps no doctrinal question is more consequential — or more contested — than how competition authorities should define the relevant market for AI products and services. Traditional market definition tools, developed for markets with stable product characteristics and observable price competition, are poorly suited to AI markets characterised by rapid technological change, multi-sided platform dynamics, and zero-price consumer interfaces.

The EU's investigation into alleged dominance in AI foundation models has attracted criticism from commentators who argue that any claim of dominance in a market for AI foundation models should raise eyebrows, given the AI space is characterised by rapid entry, heavy investment, and technological churn, with multiple well-capitalised competitors. This reflects a genuine methodological difficulty: static market share analysis may systematically overstate or understate competitive constraints in markets where the technology, and thus the relevant substitutes, are evolving on a quarterly basis.²¹

The Commission's revised Merger Guidelines, expected in 2027, are anticipated to move explicitly toward dynamic, forward-looking frameworks that account for innovation potential, future market developments, and the strategic importance of AI infrastructure. Practitioners should begin preparing for a world in which market definition evidence in AI transactions includes prospective economic modelling rather than historical market share data.²²

DOCTRINAL NOTE The 'nascent competitor' doctrine — which allows authorities to take account of competition that does not yet exist in the market — is likely to play an increasing role in AI enforcement, particularly in merger reviews where the target is a pre-revenue AI developer with significant technological potential.

See also: European Commission, Guidance on Article 22 Referrals (2021); Goodwin Law, Year in Review 2025.

VI. Implications for Practice: Compliance and Advisory Considerations

The regulatory landscape surveyed in this newsletter creates a complex compliance environment for clients operating at the intersection of AI and competition law. The following considerations are presented for practitioners advising in this space.

Deal Structuring and Merger Control

The distinction between formal acquisitions and investment partnerships has become a primary site of regulatory attention. Practitioners should advise clients that minority investments, commercial tie-ups, and talent arrangements in the AI sector are not merger-control-safe harbours they attract scrutiny from competition agencies in their own right, and may be treated as de facto acquisitions where the economic substance warrants. In the EU, Article 14 DMA requires gatekeepers to notify concentrations involving digital service providers irrespective of whether standard notification thresholds are met.²³

Algorithmic Pricing and Collusion Risk

The proliferation of AI-powered pricing algorithms across industries creates a new class of cartel risk that does not require express communication between competitors. Legal teams should ensure that any AI pricing tool deployed in markets with competitor overlap is subjected to rigorous legal review, with particular attention to whether the tool uses non-public competitor data. Documentation of independent pricing rationale separate from any algorithmic output is a critical compliance safeguard.²⁴

Data Agreements and Training Data Licences

Exclusive data-sharing agreements and restrictive training data licences are becoming flashpoints for competition enforcement. The EU's investigation into Google's content-use policies for AI training reflects a broader regulatory concern about whether dominant platforms can condition access to their data on terms that disadvantage rival AI developers. Practitioners should review the competition law implications of data agreements in both directions as acquirers of training data and as data providers to AI developers.²⁵

Talent and No-Poach Arrangements

The competition for AI talent is intense, and regulators have increasingly treated hiring restraints including no-poach agreements ancillary to commercial partnerships as potential hardcore infringements. Only narrowly tailored, objectively necessary no-poach provisions ancillary to legitimate collaborations are likely to be defensible.²⁶ Legal and HR teams should be trained on these boundaries, and any collaboration agreement with a potential competitor should receive careful antitrust review of its personnel provisions.

VII. Looking Ahead: Regulatory Convergence or Fragmentation?

The central question for competition practitioners over the next two to three years is whether the current divergence in regulatory approaches US enforcement through traditional antitrust doctrine; EU structural regulation through the DMA; UK flexibility through the SMS regime; China's state-directed model will converge toward a shared global framework, or entrench into a fragmented multi-regime compliance challenge.

Present signals suggest fragmentation will persist. Transatlantic tensions over technology policy, divergent views on the appropriate relationship between competition enforcement and industrial strategy, and the different political economies of AI regulation in each jurisdiction militate against rapid harmonisation. For practitioners advising global clients, this means that a transaction, partnership, or commercial practice that is permissible in one jurisdiction may require material restructuring or may be prohibited altogether in another.

The one area of potential convergence is in monitoring and information-gathering. Competition authorities globally have recognised that effective enforcement in AI markets requires sustained market monitoring, access to technical expertise, and the ability to act swiftly in nascent markets before anticompetitive structures become entrenched. The OECD's 2025 report emphasised that effective competition relies on authorities closely monitoring market developments and responding with a balanced mix of enforcement and advocacy a posture now widely endorsed, even if the substantive content of 'balanced' differs markedly by jurisdiction.²⁷

CONCLUSION

Artificial intelligence is not merely a new subject matter for competition law it is a stress test for the foundational assumptions of competition doctrine. Market definition, dominance assessment, merger control, and collusion theory are all under pressure from the structural features of AI markets: concentrated control of critical inputs, vertical integration across the value chain, investment partnerships designed to replicate acquisitions without triggering notification, and algorithmic intermediaries capable of coordinating competitor behaviour without express communication.

For competition law practitioners, the priority must be to develop deep technical fluency in AI markets not because competition doctrine requires reinvention, but because its application requires a level of factual and economic understanding of AI supply chains that cannot be assumed. The regulatory landscape is volatile, the enforcement risk is real, and the window for proactive compliance planning has never been more valuable.

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