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Antitrust Across the Atlantic: Analyzing Lina Khan and Margrethe Vestager's Big Tech Competition Strategies

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Abstract

The global operations of technology companies and the rising trend of consolidation within them has led to a renewed interest in antitrust law, specifically in how it applies to global firms. US Federal Trade Commissioner Lina Khan and the EU Commissioner for Competition Margrethe Vestager were committed to address these concerns and reign in "Big Tech" in their respective jurisdictions; however, due to differing strategic priorities and political support, the two leaders approached the application of antitrust law to Big Tech firms largely independently. While Khan emphasized post-acquisition review and platform dominance, Vestager established ex-ante digital regulation through the Digital Markets Act. Notably, Khan and Vestager held multiple US-EU Joint Technology Competition Policy Dialogues to discuss their strategies and potential cross-jurisdictional collaboration, which allowed for more effective enforcement and reduced the likelihood of conflicting decisions. To better address the dominance of a few Big Tech companies, this paper recommends that the US and EU recognize personal data as a consumer property right, by requiring firms to adopt an opt-in policy for data collection and creating a marketplace where users can choose to sell select data to firms for competitive prices. This policy would limit the ability of Big Tech firms to exploit data to create monopolies, while also empowering individuals to benefit from the economic value generated by their digital footprints.

Keywords: antitrust, Big Tech, data collection

1. Introduction

Very few issues unite the two major political parties in the United States. In 2021, however, President Biden's nomination of Lina Khan to serve as Chair of the Federal Trade Commission (FTC) generated rare bipartisan support. Notably, Senator Josh Hawley became one of her most vocal advocates, arguing that Khan represented a new era in American antitrust, in which Big Tech would finally be restrained in the public interest rather than allowed to pursue profit with minimal oversight.[1]

[1]Alford R, 'The Bipartisan Consensus on Big Tech' (2022) 71 Emory L.J. 893.

Preceding Khan by a decade was Margrethe Vestager, who served as the European Commission's Executive Vice President for the Digital Age and its Commissioner for Competition. Vestager became a central architect of the EU's modern competition policy. In her time as Commissioner for Competition, she frequently clashed with major US technology firms and became widely regarded as a leading global voice on digital competition policy.[2] Vestager played a pivotal role in advancing the Digital Markets Act (DMA), which created an ex ante regulatory framework for dominant "gatekeeper" platforms, namely, Alphabet (Google), Amazon, Apple, ByteDance, Meta, and Microsoft, among others.[3]

Khan and Vestager have collaborated regularly and held four formal meetings under the US-EU Joint Technology Competition Policy Dialogue initiative.[4] Their cooperation is strategic and necessary because while the US is home to most major technology companies, the EU has historically pursued more aggressive competition enforcement. As a result, Khan and Vestager have different levels of authority, but share overlapping concerns about companies such as Google, Meta, and Amazon. Although jurisdiction over these firms would traditionally fall primarily to US regulators, globalization and digital interdependence now allow multiple authorities, including the European Commission, to shape the market.

This paper will compare the antitrust strategies of Lina Khan and Margrethe Vestager in addressing Big Tech's market concentration, evaluate the impact of simultaneous antitrust actions in the US and EU on the effectiveness of global enforcement, and recommend policy measures that could strengthen cross-jurisdictional coordination. The analysis will examine specific cases brought by the FTC and the European Commission against Big Tech firms on the issue of antitrust. To support these case studies, the paper will draw on legal scholarship, joint statements, and official communications illustrating areas of cooperation and divergence between US and EU regulators.

2. The Antitrust Strategies of the US and EU

2.1 Lina Khan's Approach

As Chair of the Federal Trade Commission, Lina Khan advanced a unique neo-Brandeisian philosophy that moves antitrust enforcement away from the traditional price-effect analysis—which takes into account the effect of business practices on prices—towards addressing market structure, including a focus on economic welfare and reducing barriers to entry. Khan argues that antitrust law should address competitive market structure and the effects of concentrated economic power on consumers.[5] Her approach centers on preventing dominant platforms from further cementing their position in the market through

[2] Gary Clyde Hufbauer and Megan Hogan, 'The European Union Renews Its Offensive Against US Technology Firms' (2022) PB22-2.

[3] Gentjan Skara, Bojana Hajdini and Oriona Muçollari, 'Adapting the Competition Policy for the Digital Age: Assessing the EU's Approach' (2024) 13 Laws 64.

[4] 'EU-US Hold Fourth Joint Technology Competition Policy Dialogue' <https://www.ftc.gov/news-events/news/press-releases/2024/04/eu-us-hold-fourth-joint-technology-competition-policy-dialogue> accessed 17 November 2025

[5] Sean Norick Long, 'The Antitrust Stack: A Computational Analysis of Lina Khan's Legacy'.

practices that suppress innovation or intentionally harm consumers.[6]

A central component of this agenda is Khan's aggressive stance on mergers and acquisitions in the technology sector. Her FTC explicitly targeted "buy-and-bury" tactics, in which dominant platforms acquire emerging competitors to neutralize potential threats to their market position. In the agency's renewed action against Meta, the FTC argued that Facebook intentionally purchased Instagram and WhatsApp to insulate itself from possible competition. The FTC claims that this conduct violates Section 2 of the Sherman Antitrust Act, which declares that firms which "shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade" will be punished.[7] Since Meta had identified Whatsapp and Instagram as competition before acquiring the companies, Khan believed that Meta had engaged in an attempt to create a monopoly. Unlike prior enforcement tactics that often evaluated mergers solely at the time of acquisition, Khan's FTC has also emphasized post-acquisition review, seeking divestitures years after the initial deal when the resulting market structure is found to harm competition.

Khan has also prioritized cases addressing platform dominance, specifically where firms design marketplace rules to create or maintain their gatekeeping power. In *FTC v. Amazon*, the FTC alleges that Amazon penalizes third-party sellers who offer lower prices on other e-commerce platforms, which effectively force sellers into keeping prices artificially high on rival marketplaces while also facing rising fees on Amazon's own platform.[8] According to the complaint, these practices not only suppress sellers' margins, but also limit opportunities for ecommerce and ultimately reinforce Amazon's dominance by making it difficult for sellers to gain traction elsewhere.

The FTC's actions against Meta and Amazon during Chair Khan's leadership reflect her neo-Brandeis philosophy as she attempts to address the actions of dominant firms seeking to increase their dominance. By targeting these firms, Khan effectively expanded the scope of antitrust cases that the FTC can pursue and established the Federal Trade Commission as a force to be feared in Silicon Valley.

2.2 Margrethe Vestager's Approach

Similar to Khan, Margrethe Vestager has led a sweeping transformation of digital antitrust enforcement in the European Union; however, her tactics are anchored in an ex-ante regulation model. Her most influential achievement is the Digital Markets Act (DMA), which is widely regarded as the most significant development in contemporary EU antitrust policy. The DMA establishes preventative rules that apply before anticompetitive conduct occurs, marking a departure from the traditional ex-post litigation model.[9] Importantly, the law applies only to "gatekeepers," and any other 'firms that provide an

[6] Ibid [98]
[7] Sherman Act, 1890, 26 Stat. 209
[8] FTC v Amazon.com, Inc 2:23-cv-01495 (W.D. Wash), Document 114 (Filed Nov. 2, 2023).
[9] Meredith Broadbent 'The Digital Services Act, the Digital Markets Act, and the New Competition Tool' (2020) CSIS.

important gateway between businesses and consumers in relation to core platform services', as defined in Article 3 of the DMA. For these gatekeepers, the DMA prohibits specific unfair practices, including self-preferencing, leveraging dominance across markets, and restricting data portability.[10]

Vestager's merger enforcement decisions reflect her focus on eliminating concentrated market power. For example, the European Commission blocked the Booking/eTraveli merger because the acquisition would strengthen Booking's already dominant position in online travel markets and not because the deal would immediately foreclose rivals.[11] The European Commission concluded that the merger would also reduce market contestability, which is a reflection of Vestager's priority of market structure instead of only on short-term price effects.[12]

In contrast, the European Commission's Google Ads decision relied on more traditional antitrust theories. For context, the adtech industry relies on three key services to function: '(i) publisher ad servers used by publishers to manage the advertising space on their websites and apps; (ii) programmatic ad buying tools for the open web used by advertisers to manage their automated advertising campaigns; and (iii) ad exchanges where demand and supply meet in real time, typically via auctions, to buy and sell display adds'.[13] Since Google offers products that serve each of these three functions, according to the European Commission, Google leveraged its role as a dominant firm, as well as its easy access to data, to favor its own ad exchange, AdX. Therefore, Google's practices distorted competition throughout the ad-tech sector through foreclosure and discriminatory self-preferencing.[14]

The European Commission's actions against Booking and Google arise from the DMA's restrictions on gatekeepers. Together, these cases reveal Vestager's core regulatory philosophy that digital platforms that cater to both businesses and consumers require preventative, structural oversight that sets bright-line obligations for dominant actors before harm occurs. Her approach is a product of many critiques of purely reactive competition enforcement, and positions the EU as the global model for ex-ante digital regulation.

2.3 Cross-jurisdictional Collaboration

Historically, discrepancies in enforcement between the United States and the European Union have demonstrated the risks of uncoordinated antitrust action. One of the most notable examples is the proposed Honeywell and General Electric merger, which received conflicting rulings across jurisdictions.[15] According to the Assistant Attorney

[10] ibid

[11] Nicholas Levy, Matthew Day and Aleksandra Katolik, 'Commissioner Vestager's Legacy in Merger Control' (2024) 15 Journal of European Competition Law & Practice 444.

[12] ibid

[13] 'Commission fines Google €2.95 billion over abusive practices in online advertising technology' <https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1992> accessed 17 November 2025

[14] ibid

[15] Robert Brewington, 'A Case for Global Cooperation When Enforcing United States Antitrust and European Union Competition Laws Against Modern Technology Companies' (2014) 48 University of San Francisco Law Review 4.

General Charles E. James, despite "analyzing identical product and geographic markets and having access to the same facts," US enforcers approved the deal, while the European Commission blocked it.[16] The merger did not proceed, and, according to US officials, the decisions ultimately harmed consumers by creating regulatory uncertainty and inconsistent market outcomes.[17] This case became an early illustration of how disparities in antitrust decisions between the two systems can produce inefficiencies and undermine the goals of both enforcers.

These conflicts were rooted in deep legal discrepancies rather than political differences. The United States traditionally adopted a more laissez-faire approach, emphasizing market-making and efficiency-driven growth, whereas the European Union grounded its competition policy in a protectionism centered on safeguarding individuals and preserving market fairness.[18] Without cooperation, the agencies risked undermining trust between regulators. Both jurisdictions have increasingly acknowledged that global tech firms require global solutions. The rise of cross-border data flows and multinational firms has pushed the EU and US toward greater coordination in enforcement. This shift is reflected most clearly in the establishment of Joint Technology Competition Policy Dialogues, which explicitly identify the effects of digitalization and global reach, requiring a coordinated international response to antitrust enforcement.[19] These meetings marked an important step toward cooperation because they allow for early discussion of emerging cases and help minimize the risk of conflicting rulings that could disadvantage consumers or distort markets.

Today, this cooperation reflects that neither jurisdiction can effectively regulate dominant global platforms on its own. The EU's expertise in ex-ante digital regulation and the US's historically strong litigation-based enforcement model complement one another, creating a more robust and strategic transatlantic framework. By moving from disjointed enforcement to intentional collaboration, both systems aim to strengthen their capacity to address digital dominance and promote healthier global market competition.

3. Policy Recommendation

The exponential growth of technology and the emergence of a handful of dominant firms can be attributed, at least in part, to the fact that big data has become a structural barrier to competition, not merely a byproduct of online activity. Dominant technology firms increasingly rely on exclusive control of vast databases to, among other things, enrich their understanding of consumers' willingness to pay. To further consolidate their

[16] Charles E. James, US DOJ Assistant Attorney General, 'International Antitrust In The 21st Century: Cooperation And Convergence' (Before the OECD Global Forum on Competition, Paris, 17 October 2001) <https://www.justice.gov/archives/atr/speech/international-antitrust-21st-century-cooperation-and-convergence> accessed 19 November 2025.

[17] ibid

[18] Chad Damro, 'Competition Policy and Agent Discretion: Transatlantic Regulatory Cooperation in the Digital Economy' (2024) 46 Journal of European Integration 1035.

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

access to unique data streams and suppress emerging competitors, Big Tech often acquires smaller firms.[20] This practice undermines competitive market entry and reinforces a self-perpetuating cycle in which data-rich firms become even more dominant over time.[21]

Both the United States and the European Union have attempted to regulate the collection and use of personal data, but their current privacy policies do not adequately address the anticompetitive environment created by data consolidation. In the EU, the General Data Protection Regulation (GDPR) creates basic protections. Article 6 of the GDPR establishes that personal data may only be processed when a lawful basis exists, such as explicit consent, contractual necessity, compliance with legal obligations, performance of public interest tasks, or legitimate interest that does not override user rights.[22] While this structure improves individual privacy, it does not completely prevent dominant firms from accumulating and exploiting mass data, which harms competition, even if it is not processed immediately. The US, in contrast, has a more fragmented statutory legal framework. The most relevant law for the FTC is the Gramm-Leach-Bliley Act (GLBA), which requires financial institutions to allow consumers to opt-out of data sharing and protect sensitive consumer information.[23] Although the GLBA imposes important safeguards in the financial sector, the lack of a comprehensive digital privacy code creates potential loopholes and gaps in enforcement in overlooked sectors.

Given these limitations, it is recommended that both jurisdictions recognize personal data as a consumer property right, which shall be enforceable through explicit consent rules and contractual protections.

Estonia provides one of the clearest foundations for treating data as a form of protectable property. Because Estonia's legal system already recognizes property as a fundamental right, it is at least possible to argue that personal data could fall under this property-rights framework.[24] If interpreted this way, data protection would receive stronger legal backing and individuals could assert claims over the collection, use, and transfer of their personal information. Although the conceptual groundwork exists, the competitive applications remain limited because this framework has yet to be tested in the courtroom.[25]

The US and EU should thus go further by requiring that data collection be based on opt-in, and not opt-out consent, through legally binding contracts between firms and users. Opt-out models allow firms to collect data by default, so they exploit consumers' lack of attention and preserve the structures that fuel digital monopolization. An opt-in system, in contrast, ensures that consumers decide whether their data may be monetized. This opt-in

[20] Maurice Stucke and Allen Grunes, Big Data and Competition Policy (Oxford University 2016).
[21] ibid
[22] Ben Wolford, 'What Is GDPR, the EU's New Data Protection Law?' (*GDPR.eu*, 19 August 2025) <https://gdpr.eu/what-is-gdpr/> accessed 17 November 2025.
[23] Gramm-Leach-Bliley Act 1999, Pub L 106-102.
[24] Jeffery Ritter and Anna Mayer, 'Regulating Data as Property: A New Construct for Moving Forward' (2017) 16 Duke Law and Technology Review 2.
[25] ibid [237]

model has been implemented in Apple's iOS through a policy known as App Tracking Transparency (ATT). The ATT was introduced in iOS 14.5 and requires all iOS apps to obtain permission from users before tracking their activity.[26] According to a user study conducted with 950 participants, '96.1% of respondents currently running iOS 14.5 or higher reported opting-out of tracking on their personal device at least a few times'.[27] This research concluded that the ATT policy effectively allowed users to control their data, because when users must select a privacy policy before using the app, they become more likely to opt-out. However, simply adopting an opt-in model is not enough to overcome what the neo-Brandeis movement sees as users overpaying for supposedly free services with their data, collected by companies. To ensure that users understand the extent to which Big Tech companies monetize their personal data, it is crucial that governments create a policy that guarantees that users who opt in, and whose data helps generate that profit, are fairly compensated. This can be achieved through the creation of third-party platforms that act as marketplaces for users and firms to buy and sell data for competitive prices based on the user's demographics and the type of data.

This recommendation treats personal data as a property right, which shall be recognized in both jurisdictions. Under these rules, consumers would have the ability to control, restrict, or license their data and would retain the option to sell access to their information in exchange for financial compensation. This framework would limit the ability of Big Tech firms to acquire or exploit data in ways that create monopolies, while also empowering individuals to benefit from the economic value generated by their digital footprints. If the EU and US were to align around a shared property-rights approach to data, policymakers would be able to reinvigorate competition, reduce data-driven barriers to entry, and place meaningful power back into the hands of consumers.

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[26] Anzo Degiulio, Hanoom Lee and Eleanor Birrell, '"Ask App Not to Track": The Effect of Opt-In Tracking Authorization on Mobile Privacy' (Springer 2021).
[27] ibid [153]

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