Submission to California Law Revision Commission

Google is a homegrown California technology company, and grateful for the opportunity to contribute to the Commission's deliberations. For more than half a century, California has been a global epicenter of technology, supported by policies that encourage innovation to benefit consumers. The pipeline of new California technology firms shows no sign of slowing, with "35 of the world's 50 leading AI companies" based here. Now questions are being asked whether different approaches would solve perceived problems, potentially reshaping California's world-leading tech economy.

In our view, interventions come with trade-offs. Measures to improve the prominence of one group of businesses (or alleviate competitive pressures that they perceive to be "unfair") may harm others, decreasing overall economic output. Well-meaning principles like "fairness" might result in less certainty for businesses and worse outcomes for consumers. And rigid rules that restrict useful product designs would have knock-on effects on a wide range of small, independent businesses.

To illustrate these trade-offs, we urge the Committee to consider the evidence. (1) California's technology sector is thriving under the existing antitrust regime; (2) new *ex ante* regulation – rigid product design rules that do not consider harms or benefits – creates trade-offs, risking negative outcomes for consumers and small businesses; and (3) the Digital Markets Act (DMA) in Europe remains a global outlier.

We believe that current well-established antitrust laws have fostered positive overall outcomes, helping a wide range of consumers and business customers, while prohibiting anti-competitive, anti-consumer conduct. Rigid *ex ante* rules, on the other hand, risk causing unintended consequences, benefiting a handful of intermediaries at the expense of a much larger number of affected businesses and consumers. There are sound policy reasons not to follow this path.

(1) Existing competition law and policy have enabled enormous innovation

California's robust antitrust laws provide strong safeguards. Indeed, notably absent from the comments advocating for changes to California's rulebook is evidence that current business practices have led to reduced competition, higher consumer prices, or decreased innovation that could not already be addressed by antitrust laws.

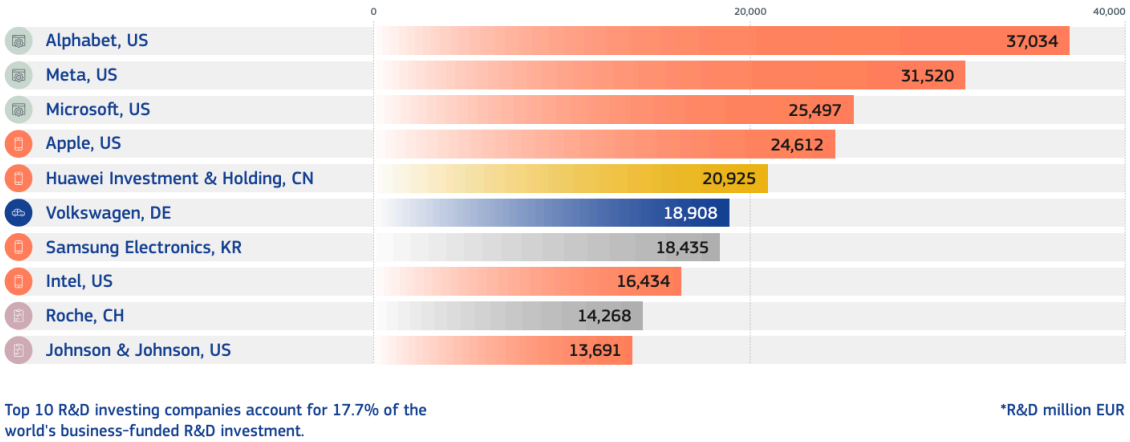
Were existing laws incapable of keeping markets competitive and serving the public interest, we would expect to see that reflected in market outcomes, including higher prices and slower

innovation. But the data on the tech industry's growth, investment, innovation, and value-creation says the opposite. The sector is likely the most competitive part of California's economy, with free or falling prices, rapid innovation, and extensive new firm formation. Competition is robust.

Growth. The growth of the technology industry in California has been spectacular. The roots of modern day Silicon Valley can be traced back to the semiconductor industry in the 1950s. Globally recognized California companies like Apple, Cisco, Dolby, eBay, Google, Meta, Netflix, OpenAI, PayPal, Qualcomm, and Salesforce followed this early success, leading technology transformations from semiconductors to software to the internet to mobile to AI. This has had a profound impact on California's economy. Today, Google alone employs around 180,000 people, with 52,000 of our employees based in California. Last year, Google helped provide more than $166 billion of economic activity for hundreds of thousands of California businesses, non-profits, publishers, creators, and developers. And we've invested over $4 billion in California-based startups.

Investment. US technology companies invest relentlessly in research and development, outstripping their peers in other countries and industries. Last year, Google spent over $45 billion in R&D (up 15% from the prior year). Research by the European Commission confirms that US tech firms, including Google, lead the way in R&D investments. In 2022, they were the top four R&D investing firms globally. Out of the world's top 2,500 R&D-investing companies, over 40% are based in the US. Information technology companies far outstrip other industries in R&D intensity. Investment is costly and risky, with no guarantees of success; Google has launched unsuccessful products as have other tech companies. The existing antitrust framework provides a stable basis for firms to take risks and pursue returns on those products that *do* succeed, even if it means accepting a certain number of failures along the way.

European Commission, Industrial R&D Investment Scoreboard
(Investment figures for 2022)



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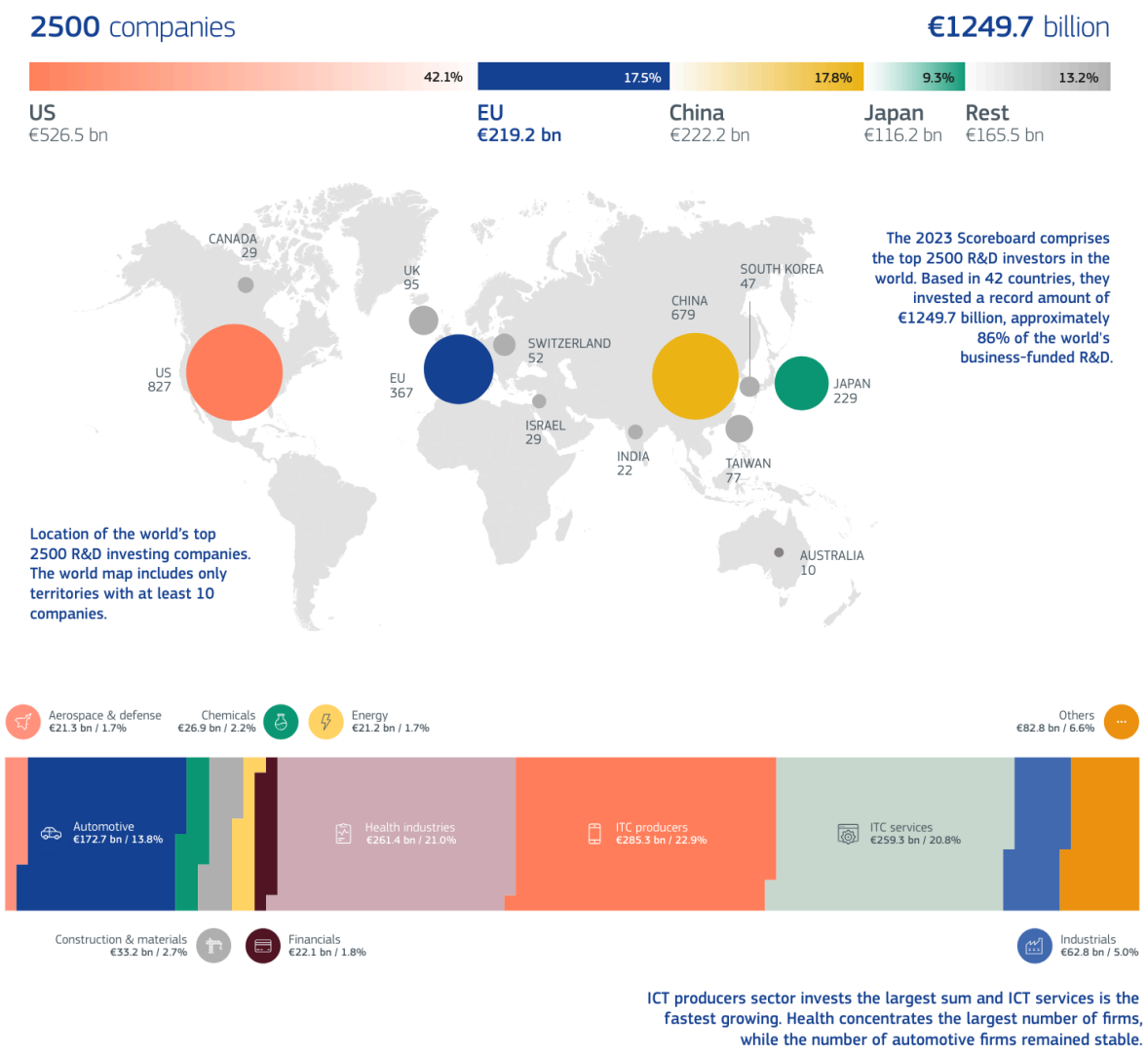
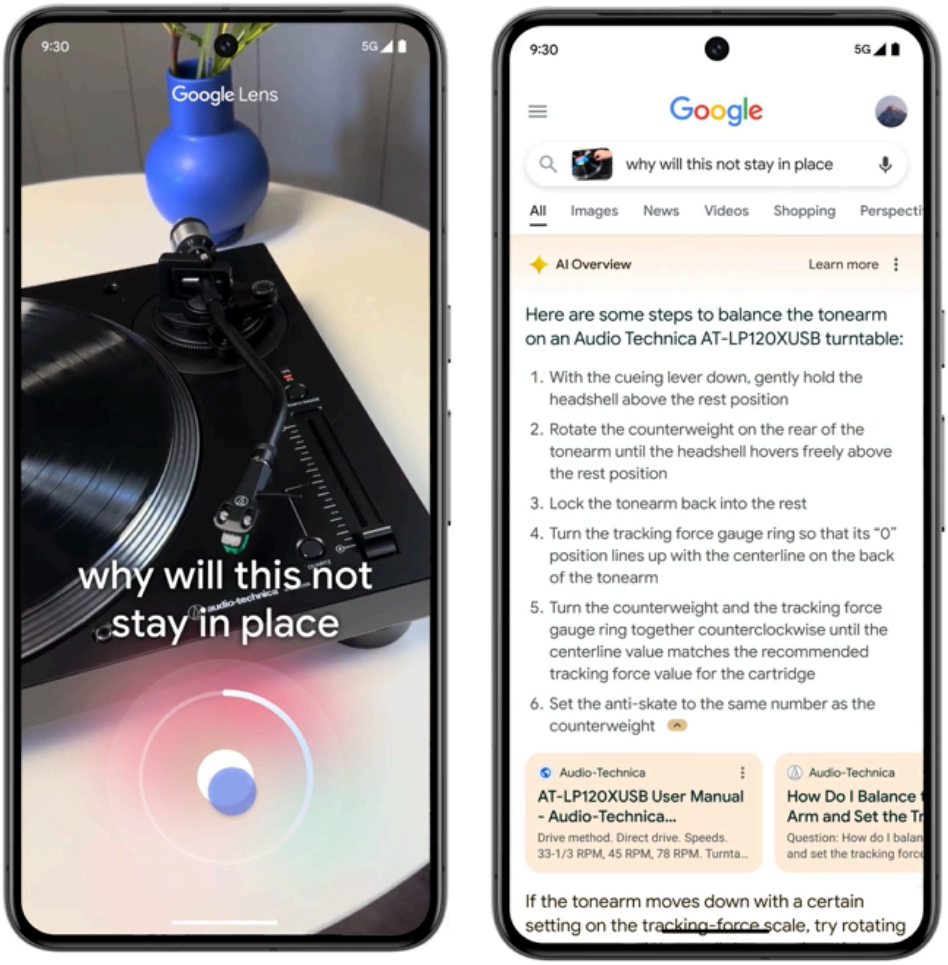


Innovation. The pace of innovation by California companies has been staggering. Pioneering semiconductor development has come from Intel, Nvidia, Broadcom, and Qualcomm. Internet routing advances have been led by companies like Cisco and Juniper Networks. Meta, Oracle, Salesforce, Adobe, Intuit, Agilent, among numerous others, are leaders in software. Netflix, Paramount+, and Disney stream entertainment to the world. Our groundbreaking Google Search product has enabled people to find what they need to on the sprawling World Wide Web quickly – and at no cost to consumers.

The trend in innovation is exemplified by the rapid development of AI in recent years. We've developed and rolled out fresh products to enable new AI solutions, as have numerous competitors, large and small. And once again, California is the heart of technological innovation in this exciting new field, with many of the leading innovators in AI models and the semiconductors and other infrastructure needed to bring them to consumers and businesses being founded and centered here. Google's own core products and services are going

through fundamental changes and improvements to harness the capabilities that AI offers. Many instances of AI integration were announced at Google I/O in May 2024. For example:

- Google Search has traditionally been associated with words in a textbox; now, people will be able to pose questions by recording a video of the problem they want Google to solve. Say you bought a record player at a thrift shop, but it's not working when you turn it on due to the metal arm not staying in place. Searching with video saves the time and trouble of finding the right words to describe this issue, providing an AI Overview with steps and resources to troubleshoot.



- On Android, we are testing a new AI fraud protection feature. Using Gemini Nano, this feature aims to provide real-time alerts during a call if it detects conversation patterns commonly associated with scams – such as a "bank representative" asking for an urgent transfer of funds, payment with a gift card, or PINs or passwords.

Value. The value of goods and services offered by large technology firms is vast; yet many of those products come at no cost to the businesses and consumers who use them. Nobody has to pay – for example – to use Google Search, YouTube, Maps, Android, and many other popular products and services. In California alone, more than 2.15 million California businesses used Google's free tools to receive phone calls, bookings, reviews, requests for directions, or other direct connections to their customers last year.

(2) *Ex ante* regulation risks hurting consumers and small businesses

If the performance dashboard is bright green in California, how does the situation compare to Europe? The EU has enacted novel *ex ante* regulation with the DMA, which includes a list of dos and don't focused on the largest technology firms? It's still early days, with most new legal obligations only having come into force in March 2024. That said, early indications underscore the trade-offs that should be considered in any proposals for similar regulation.

Worse user experience. Any *ex ante* regulation – rigid product design rules that do not consider impact on consumers – risks worse outcomes for consumers. Take, for example, changes that Google has implemented to Search in the EU to address complaints from large intermediaries who are pushing for more prominence in our results than previous designs that highlighted direct suppliers like airlines, restaurants, and hotels:

- The increased friction of looking up places or businesses has led to public complaints by users and requests to 'opt back in' to the prior product design.[1] Developers have even started building browser extensions to replicate the experience that users see outside the EU (*i.e.,* to restore fast access to Maps results).
- We have removed useful Google Search features for flights, hotels, and local businesses. This means that if you search for a flight in Europe, we can no longer show a full array of information about carriers, flight times, and prices. This benefits a small number of large travel intermediaries, but harms a wider range of airlines, hotel operators and small firms who now find it harder to reach customers directly.[2]

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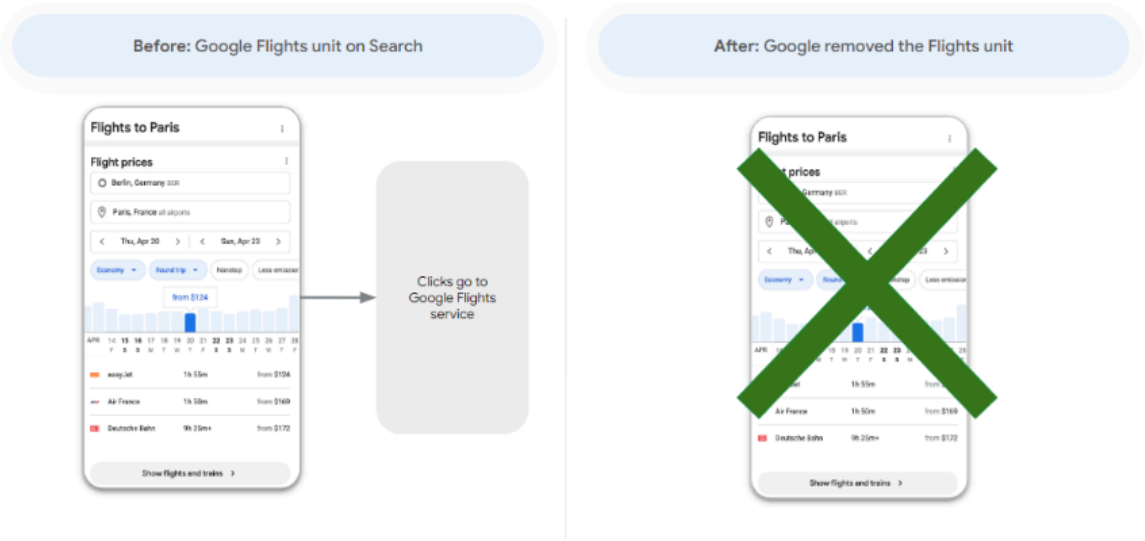
1 *See, e.g.*, user comments on the Google Search help forum (2 March 2024). *See also* Reddit thread: Why doesn't maps show up under Google searches anymore? and Liberation, Mais t'es où: Pourquoi Google Maps ne fonctionne plus directement dans la recherche Google (5 March 2024).

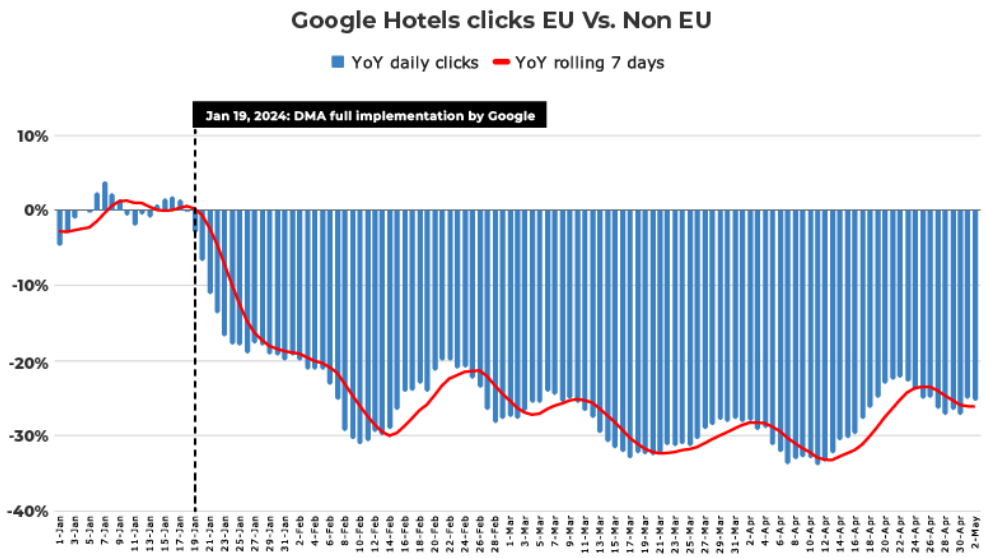
2 *See* Google's The Keyword, New competition rules come with trade-offs (5 April 2024).

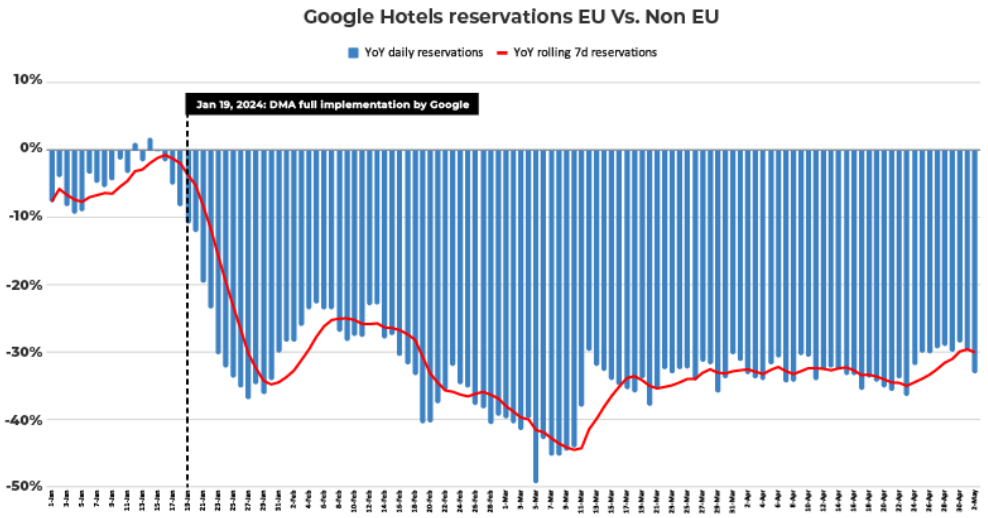


- We introduced these types of Google Search features to help consumers, making it easier for people to access accurate information. We developed Google Images to show a photo instead of just a link to a photo. We launched Google Maps to help people go directly to a local business, not just websites that mention its address. Hundreds of millions of consumers enjoy these free innovations. *Ex ante* rules that do not consider consumer benefits or competitive effects risk rolling back these innovations.

- Our metrics suggest consumers interacting with products subject to *ex ante* regulation are having more difficulty finding what they are looking for. As an example, these changes led to an increase in manual refinements for Search queries, where users re-enter or refine their query.

Damaging small businesses. *Ex ante* regulation risks giving a small number of online intermediaries disproportionately large exposure relative to consumers. The intermediaries benefiting from the reengineering of web traffic are often quite large themselves. If regulation redirects traffic from direct suppliers, including small, local businesses, to large intermediaries, this harms direct suppliers and increases user friction, making it more difficult for people who are looking for direct suppliers. For example, hotel technology company Mirai reports that hotel booking clicks are down as much as 30% since Google's DMA compliance changes were implemented; direct bookings have dropped even further, thereby "*increasing hotel dependence on intermediaries, which seriously damages their profitability*".





Reduced and delayed launches. We can already observe how uncertainties around the implementation of the new rules and associated compliance costs have resulted in loss of access to new products for European consumers. Google has delayed the roll-out of some of our most advanced AI products and we have observed that other companies have similarly delayed, withdrawn, or reduced the functionality of their products in Europe.

High burden on resources. Compliance measures can absorb thousands of employees, vast engineering hours, and substantial financial resources that could otherwise be dedicated to competing with new and improved products. What's more, new European regulation may increasingly draw companies' focus from solving commercial and engineering problems to addressing legal ones. The President of the EU General Court, Marc van der Woude,

presciently described the legislation as follows in 2023: "*Probably the end of this year, beginning of next year we might see the first cases and I don't think it will stop […] if I might call it like this, it will be a lawyer's paradise*". Having to second-guess each product decision for fear of litigation will slow the pace of innovation.

(3) An *ex ante* approach with no consumer safeguards remains a global outlier

The EU's new regulatory approach is unique. As the DMA states – and as enshrined in the underlying EU Treaty provision – it is explicitly not concerned with competition or antitrust policy. Instead, it pursues goals of fairness, contestability, and aligning market rules and conditions throughout the European Union. It is not calibrated to address matters of antitrust policy nor employ the rigorous, evidence-based standards used in existing California and federal law. And it does not consider consumer welfare, product quality, or the need to avoid benefiting a few intermediaries at the expense of the many more merchants and businesses who sell their own products and services.

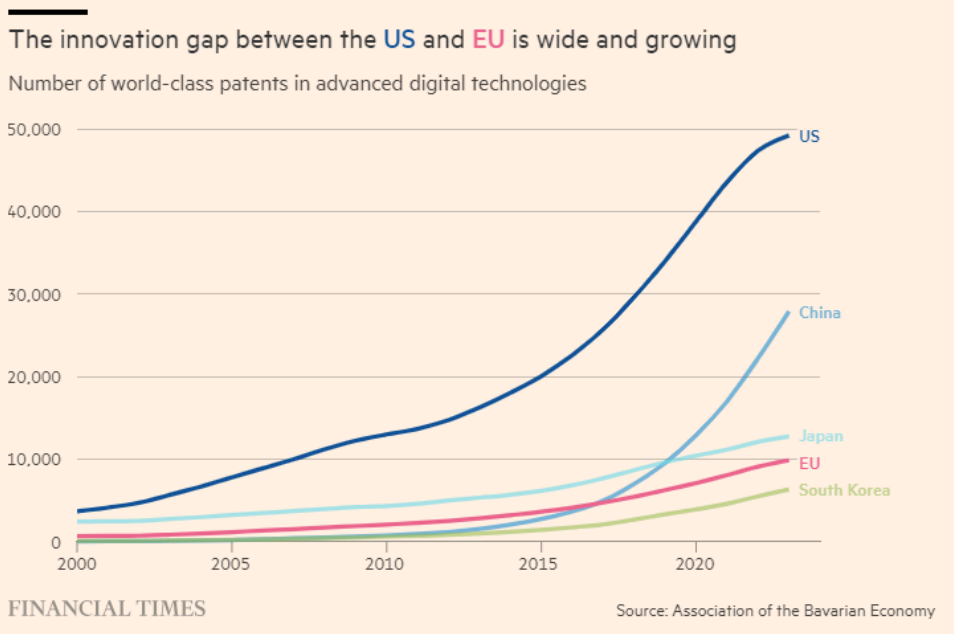
These problems may explain why other countries have not copy-pasted the European legislation into their own rulebooks. Even regimes looking into new approaches to regulation – such as the UK – are adopting different regulatory designs. In Japan, new legislation borrows some ideas from Europe, but with safeguards around consumer benefits and product utility.

These considerations should be important to the whole of the US and California in particular, where stable antitrust rules, freedom of contract, and robust property rights have provided the foundations for a leading tech sector.

California should be wary that importing Europe's regulatory approach may also end up importing its economic challenges. In stark contrast to the innovation and global reach of California's robust technology industries, there is a dearth of European tech companies with similar levels of success. As Christine Lagarde, President of the European Central Bank, noted in April this year: "*It's just mind boggling that productivity [growth] in the United States between 2019 and now has been 6%. In Europe, 0.6%.*" This is reflected in recent data, with *The New York Times* reporting that "A 'competitiveness crisis' is raising alarms for officials and business leaders in the European Union, where investment, income and productivity are lagging."

In this regard, two articles from the *Financial Times* last month are worth noting. The first declares that "*The great American innovation engine is firing again*", calling out public policies and private sector investment. The second asks "*Can Europe's economy ever hope to rival the US again?*". Citing an executive of the European Central Bank, it noted that "*many European companies are too small and constrained by regulation to fully exploit new technology*". It also reported a major innovation gap between the two sides of the Atlantic (see also recent comments from Slovenia's Former Minister of Digital Transformation ("Europe's at risk of losing

the global tech race" and Scott Marcus (suggesting that legislators "reflect as much as possible a pause in new legislation, and a focus on correct implementation of the many laws that were just put in place.").



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In conclusion, a few points are clear. First, the market outcomes of California's tech industry are enviably positive. Existing policy frameworks have enabled enormous innovation and consumer benefits. Second, recent experience suggests that *ex ante* regulation comes with significant trade-offs, which could deliver worse outcomes for consumers and smaller businesses. Third, the EU's new approach remains an unusual regulatory model and a global outlier, part of a European policy framework and economy characterized by much heavier regulation than the dynamic economy in the US. All of this recommends caution when considering importing similar rules to California.