

Top Competition Enforcers in the US, EU, and UK Release Joint Statement on AI Competition – AI: The Washington Report

August 01, 2024 | | By **Bruce Sokler, Alexander Hecht, Christian Tamotsu Fjeld**, Matthew Tikhonovsky

- On July 23, 2024, the leading competition enforcers in the US, EU, and UK released a **Joint Statement on Competition in Generative AI Foundation Models and AI products**.
- The statement outlines risks to competition that are present in the AI ecosystem and shared principles for fostering and protecting competition in this space.
- The statement is silent on specific enforcement actions, but the release of the statement suggests potential future activity and increased scrutiny of AI competition by the enforcers.

On July 23, the top competition enforcers at the US Federal Trade Commission (FTC) and Department of Justice (DOJ), the UK Competition and Markets Authority (CMA), and the European Commission (EC) released a **Joint Statement on Competition in Generative AI Foundation Models and AI products**. The statement outlines risks in the AI ecosystem and shared principles for protecting and fostering competition.

While the statement does not lay out specific enforcement actions, the statement's release suggests that the top competition enforcers in all three jurisdictions are focusing on AI's effects on competition in general and competition within the AI ecosystem—and are likely to take concrete action in the near future.

A Shared Focus on AI

The competition enforcers did not just discover AI. In recent years, the top competition enforcers in the US, UK, and EU have all been examining both the effects AI may have on competition in various sectors as well as competition within the AI ecosystem. In September 2023, the CMA released a **report** on AI Foundation Models, which described the “significant impact” that AI technologies may have on competition and consumers, followed by an updated April 2024 **report** on AI. In June 2024, French competition authorities released a **report** on Generative AI, which focused on competition issues related to AI. At its January 2024 Tech Summit, the **FTC examined** the “real-world impacts of AI on consumers and competition.”

AI as a Technological Inflection Point

In the new joint statement, the top enforcers described the recent evolution of AI technologies, including foundational models and generative AI, as “a technological inflection point.” As “one of the most significant technological developments of the past couple decades,” AI has the potential to increase innovation and economic growth and benefit the lives of citizens around the world.

But with any technological inflection point, which may create “new means of competing” and catalyze innovation and growth, the enforcers must act “to ensure the public reaps the full benefits” of the AI evolution. The enforcers are concerned that several risks, described below, could undermine competition in the AI ecosystem. According to the enforcers, they are “committed to using our available powers to address any such risks before they become entrenched or irreversible harms.”

Risks to Competition in the AI Ecosystem

The top enforcers highlight three main risks to competition in the AI ecosystem.

1. **Concentrated control of key inputs** – Because AI technologies rely on a few specific “critical ingredients,” including specialized chips and technical expertise, a number of firms may be “in a position to exploit existing or emerging bottlenecks across the AI stack and to have outside influence over the future development of these tools.” This concentration may stifle competition, disrupt innovation, or be exploited by certain firms.

- 2. Entrenching or extending market power in AI-related markets** – The recent advancements in AI technologies come “at a time when large incumbent digital firms already enjoy strong accumulated advantages.” The regulators are concerned that these firms, due to their power, may have “the ability to protect against AI-driven disruption, or harness it to their particular advantage,” potentially to extend or strengthen their positions.
- 3. Arrangements involving key players could amplify risks** – While arrangements between firms, including investments and partnerships, related to the development of AI may not necessarily harm competition, major firms may use these partnerships and investments to “undermine or coopt competitive threats and steer market outcomes” to their advantage.

Beyond these three main risks, the statement also acknowledges that other competition and consumer risks are also associated with AI. Algorithms may “allow competitors to share competitively sensitive information” and engage in price discrimination and fixing. Consumers may be harmed, too, by AI. As the CMA, DOJ, and the FTC have consumer protection authority, these authorities will “also be vigilant of any consumer protection threats that may derive from the use and application of AI.”

Sovereign Jurisdictions but Shared Concerns

While the enforcers share areas of concern, the joint statement recognizes that the EU, UK, and US’s “legal powers and jurisdictions contexts differ, and ultimately, our decisions will always remain sovereign and independent.” Nonetheless, the competition enforcers assert that “if the risks described [in the statement] materialize, they will likely do so in a way that does not respect international boundaries,” making it necessary for the different jurisdictions to “share an understanding of the issues” and be “committed to using our respective powers where appropriate.”

Three Unifying Principles

With the goal of acting together, the enforcers outline three shared principles that will “serve to enable competition and foster innovation.”

- 1. Fair Dealing** – Firms that engage in fair dealing will make the AI ecosystem as a whole better off. Exclusionary tactics often “discourage investments and innovation” and undermine competition.
- 2. Interoperability** – Interoperability, the ability of different systems to communicate and work together seamlessly, will increase competition and innovation around AI. The enforcers note that “any claims that interoperability requires sacrifice to privacy and security will be closely scrutinized.”
- 3. Choice** – Everyone in the AI ecosystem, from businesses to consumers, will benefit from having “choices among the diverse products and business models resulting from a competitive process.” Regulators may scrutinize three activities in particular: (1) company lock-in mechanisms that could limit choices for companies and individuals, (2) partnerships between incumbents and newcomers that could “sidestep merger enforcement” or provide “incumbents undue influence or control in ways that undermine competition,” and (3) for content creators, “choice among buyers,” which could be used to limit the “free flow of information in the marketplace of ideas.”

Conclusion: Potential Future Activity

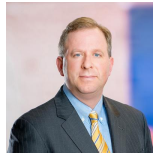
While the statement does not address specific enforcement tools and actions the enforcers may take, the statement’s release suggests that the enforcers may all be gearing up to take action related to AI competition in the near future. Interested stakeholders, especially international ones, should closely track potential activity from these enforcers. We will continue to closely monitor and analyze activity by the DOJ and FTC on AI competition issues.

Authors

Bruce Sokler

Bruce D. Sokler is a Mintz antitrust attorney. His antitrust experience includes litigation, class actions, government merger reviews and investigations, and cartel-related issues. Bruce focuses on the health care, communications, and retail industries, from start-ups to Fortune 100 companies.

Alexander Hecht, Executive Vice President & Director of Operations



Alexander Hecht is Executive Vice President & Director of Operations of ML Strategies, Washington, DC. He's an attorney with over a decade of senior-level experience in Congress and trade associations. Alex helps clients with regulatory and legislative issues, including health care and technology.

Christian Tamotsu Fjeld, Senior Vice President



Christian Tamotsu Fjeld is a Vice President of ML Strategies in the firm's Washington, DC office. He assists a variety of clients in their interactions with the federal government.

Matthew Tikhonovsky

Matthew is a Mintz Senior Project Analyst based in Washington, DC.