# 1AC

Same as r3

# 2AC Prep v Kentucky AK

## Case

### 2AC - Adv

#### All metrics show the US tech innovation is falling behind.

Kersten ’21 [Alexander; 4/14/21; Director of the Renewing American Innovation Project @ Center for Strategic and International Studies; Master of Arts in Law and Diplomacy from the Fletcher School of Law and Diplomacy @ Tufts University; “Why Renewing American Innovation? The “Endless Frontier Act” and Biden’s Bid for Maintaining U.S. Global Competitiveness”; https://www.csis.org/analysis/why-renewing-american-innovation-endless-frontier-act-and-bidens-bid-maintaining-us-global; AS]

The China Challenge

China today poses both a technological and security threat to the United States that no country has in modern history. U.S. companies operating under free market rules struggle to compete against state-backed Chinese firms that can ignore a poor quarter while enjoying one of the largest, most-protected markets in the world. With the support of the central government, key Chinese firms are free to innovate and compete in the global market without financial worries while Chinese scientists can focus on research and development instead of seeking grants for their university or research institution. According to Tulane University professor and former Aspen Institute CEO Walter Isaacson in 2019, China has modeled its approach along the lines of U.S. scientist Vannevar Bush’s 1945 report Science: The Endless Frontier, which, besides being the inspiration behind the name of the proposed legislative package, promoted government funding of basic research together with universities and industry—a priority of the Franklin D. Roosevelt administration. As the Chinese government sets long-term strategic goals like Made in China 2025, which was part of China’s 13th Five-Year Plan of 2016-2020, the United States needs to return to its post-World War II values of equating leadership in science and technology with national security and prosperity.

Today, U.S. companies locked in close competition lack the incentives to maintain in-house capabilities for innovation, like they did in the mid-century era of AT&T’s Bell Labs, DuPont’s central R&D unit, Xerox PARC, and others. Heightened competition, shareholder pressures, and new incentives pushed firms to cut these in-house research units back in the 1980s. Since then, the share of applied research in total corporate R&D expenditures fell from 30 percent in 1985 to below 20 percent in 2015—all well below the peak of almost 40 percent in the 1950s. Of course, the Harvard Business Review in 2014 famously suggested that, despite being the source of great inventions throughout history, China today is a “land of rule-bound rote learners” where breakthroughs are rare. Because of this, some argue the Chinese are not great innovators and China’s state-backed system could itself breed complacency and come back to bite it in the near future. However, even by then, experts warn, the United States will have missed the train on many important technologies and will be struggling to catch up.

Despite Silicon Valley and the millennial generation’s supposed penchant for innovative disruption, U.S. total factor productivity has been slowing since the 1970s. Productivity today is the lowest in more than a century. Innovation, historically a clear driver of U.S. productivity, means the creation of ideas and inventions that are translated into practical value and improve the quality of people’s lives directly or via their ability to grow the economy. Whether measured in terms of triadic patents (patents filed in the United States, Europe, and Japan), most available measures of productivity, or even startup company creation, the United States’ trademark innovative spirit has been gradually dampening for decades. And if not for China’s meteoric rise this century, the United States might still be sleepwalking—optimistically but without a serious plan—instead of waking up to the need for a coherent national strategy.

U.S. Complacency, and How We Got There

Noted George Mason University economist Tyler Cowen and other experts have recognized a growing “complacency” in American life as the indicator of a societal shift from the United States’ early dynamism. From the turn of the twentieth century until roughly the moon landing of 1969, the breakneck pace of groundbreaking technologies that directly affected the quality of life and the structure of U.S. society was simply astounding. Yet, since the first moon landing in 1969, only the internet and its application to more and more parts of our lives can claim to have made any meaningful impact—meaning that physically the world of 1969 is much more like that of 2021 than 1969 was of the early twentieth century. This, of course, is not meant to discredit the great advances in medicine and human genomics made in the last few decades, for example, but to show how the rate of society-changing innovations has not maintained the pace that existed from the mid-nineteenth century until roughly 1969.

In the developed world, this slowdown has unfortunately contributed to wage stagnation, the shrinking of the middle class, and greater political polarization domestically. Coinciding with the waning days of the Soviet Union’s power in the 1980s, the U.S. innovation decline was masked at home. Further, the Soviets of that period no longer posed a technological threat to the United States. Japan on the other hand, posed a great technological threat in the 1980s but was and is a staunch U.S. ally, and not a security threat. Unchallenged abroad and riding the dual-edged optimism of the internet boom of the 1990s and the victory over communism, the United States missed the ways in which it was giving up the advantages that made it such a powerhouse in the mid-twentieth century.

Industry experts have also suggested that the United States put its position up for grabs when it began to outsource important production—which President Biden alluded to during the signing of a February 2021 executive order aimed at reducing supply chain bottlenecks. Starting in the 1970s and 1980s, the United States began to outsource production of semiconductors and displays mostly to Taiwan and South Korea, which today account for almost half of all semiconductor manufacturing capacity in the world. Further, adding in mainland China and Japan shows that a whopping three-quarters of all semiconductor manufacturing capacity comes from East Asia—a sharp departure from 1990, when the United States still provided about 50 percent of all global manufacturing capacity. Removing itself from the production process means the United States misses out on important chances for innovating as well as for developing a strong high-tech manufacturing workforce.

## T Immunities

### 2AC – T Immunities

W/M – we bar an immunity to antitrust created by circuit courts for refusals to deal, rate hikes, etc

#### ‘Expand’ extends.

Murphy ’47 [Loren E; September 18; Chief Justice on the Supreme Court of Illinois; Westlaw, “Fed. Elec. Co. v. Zoning Bd. of Appeals of Vill. of Mt. Prospect,” 398 Ill. 142]

The question is squarely presented as to whether the placing of the neon signs on the towers expanded the use to which the property had been previously devoted. The restrictive part of the ordinance which prohibits expansion refers to the nonconforming \*\*362 use of the property. Literally, it provides that the use may be continued but it cannot be \*146 expanded. Webster's International Unabridged Dictionary defines the word ‘expand,’ to extend, to enlarge. The application of such definition to the word ‘expanded’ as contained in section 10 would mean that the use that was being conducted on the premises at the time of the adoption of the ordinance could not be extended or enlarged. The placing of the neon signs on the towers did not expand or enlarge the use to which the property was devoted. It may have been installed for advertising purposes, hoping that it would result in a gain of its business, but there is nothing in the record which indicates that such advertising would be followed by any expansion or enlargement of the laboratory experiments that were being conducted on the property. Zenith had the right to continue its nonconforming use and the right to advertise that use and the products it was handling, so long as it did not expand the use to which the property was devoted when the ordinance was adopted.

#### ‘Scope’ means the law’s breadth.

Parsons ’14 [Honorable Donald F Jr; February 18; Vice Chancellor of the Court of Chancery of Delaware; Westlaw, “Vichi v. Koninklijke Philips Electronics, N.V.,” 85 A.3d 725]

As an initial matter, I reject the proposition that the determination of who can invoke a choice of law provision must precede the analysis of the provision's validity and scope. The “scope” of a choice of law provision refers to how broadly or narrowly that provision applies and includes the question of whether the provision created enforceable rights in third parties.310 The only case Philips N.V. cites in support of its assertion that Delaware law should govern whether it can invoke the choice of law clause merely stands for the proposition that a Delaware court will apply its own conflict of laws rules to determine which jurisdiction's substantive law will govern the claims before it.311 As noted previously, under Delaware conflict of laws rules, the scope of a valid choice of law provision is determined by the law of the selected jurisdiction—in this case, England.

#### ‘Core antitrust laws’ are court interpretations of the Big Three.

OECD ’8 [Organization for Economic Co-operation and Development; November 20; Directorate for Financial and Enterprise Affairs Competition Committee, “Annual Report on Competition Policy Developments in the United States of America,” https://www.ftc.gov/system/files/documents/reports/2008-report/08annualrptoecd.pdf]

8. In April 2007, following three years of hearings and deliberations, the Antitrust Modernization Commission (AMC) issued its Report and Recommendations. Among the principal conclusions of the AMC’s Report were the following:

* Free-market competition should remain the touchstone of United States economic policy.
* The core antitrust laws—Sherman Act sections 1 and 2, Clayton Act section 7, and FTC Act section 5—and their application by the courts and federal enforcement agencies are sound and appropriately safeguard the competitiveness of the U.S. economy.
* New or different rules are not needed for industries in which innovation, intellectual property, and technological change are central features. Unlike some other areas of the law, the core antitrust laws are general in nature and have been applied to many different industries to protect free-market competition successfully over a long period of time despite changes in the economy and the increasing pace of technological advancement. One of the great benefits of the Sherman and Clayton Acts is their adaptability to new economic conditions without sacrificing their ability to protect competition.

#### Expand the scope of antitrust law requires that it can be enforced in new, anticompetitive situations – prefer our interp

Rogers 79 [C. Paul, Assistant Professor of Law, Loyola University of Chicago. Member of the Pennsylvania Bar. “Decision to Prosecute: Organization and Public Policy in the Antitrust Division”. October 1979. https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=3036&context=vlr]

Similarly, the division's prosecutorial self-concept may limit the reach of policy and its exercise of discretion. The staff views itself as professional, not political, and strives to maintain its image as the "cream" of the profession." As prosecutors, the staff believes they should take their cases as given, based upon the evidence of illegality at hand.1 They do not want to bring cases which might embarrass them in court and harm their reputations. The eagerness to prosecute is thus tempered by the reality of litigation. The institution of policy or "theory" cases faces the same constraints since the criteria upon which the decision to prosecute rests remains legalistic.

According to Professor Weaver, however, these limitations do not intimate that the division is unprogressive. The prosecutors indeed attempt to expand the scope of antitrust law to new situations which are deemed anticompetitive, but such expansion is undertaken in practice only if the chain of command is convinced that the legal argument is sound and is supported by sufficient evidence for ultimate success.

## Multilat CP

### 2AC – Multilat CP – Top

#### Should doesn’t mean certain

Encarta 5 [Encarta World English Dictionary. 2005. http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861735294]

expressing conditions or consequences: used to express the conditionality of an occurrence and suggest it is not a given, or to indicate the consequence of something that might happen ( used in conditional clauses )

#### EU says no and waters it down

Gottlieb 20 [Clearly Gottlieb, Globally Renowned Law Firm, “Our Analysis of the Ninth Circuit Panel Decision Reversing FTC v. Qualcomm”. https://www.clearygottlieb.com/-/media/files/alert-memos-2020/20200827-our-analysis-of-the-ninth-circuit-panel-decision-reversing-ft-pdf.pdf]

The panel’s opinion, on its own, has no effect outside the US. For instance, the European Court of Justice has held that EU competition law applies to refusals to license SEPs to willing licensees.65 Nonetheless, courts in EU member states have also lately moved to limit the impact of these past decisions. For example, the recent German Supreme Court judgment in Sisvel v Haier, and the Mannheim judgment in Nokia v Daimler, both applied high standards to be considered a “willing licensee.”66 The UK Supreme Court in Unwired Planet v Huawei broadened SEP owners’ discretion to discriminate between implementers.67 The European Commission’s “Expert Group” on FRAND matters68 will likely issue its report in Late September or early October this year, and given the group’s composition we expect that report to be hostile to antitrust playing any meaningful role.

We may therefore see further movement away from the use of antitrust to resolve SEP licensing in the near future, even though, due to differences in the underlying regimes, we do not expect it to directly influence pending proceedings elsewhere, for instance in the Korean Supreme Court (Qualcomm v KFTC). 69

#### So does China – they believe in state power and its deeply bureaucratic

Sokol 16 [Daniel, full-time law professor at the USC Gould School of Law with a secondary appointment at the USC Marshall School of Business, who serves part-time as Senior Advisor at White & Case, top 10 most cited antitrust law professor in the world. Wentong Zheng, University of Florida Research Foundation Professor & University Term Professor. “FRAND (And Industrial Policy) in China”. 5/5/16. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2776235]

The most important standard-setting activities in China take place at the national and sector levels. At the national level, the key government agency charged with standard-setting is the Standardization Administration of China (“SAC”) under the General Administration of Quality Supervision, Inspection & Quarantine (“AQSIQ”) of the State Council. All national standards have to be registered and approved by the SAC.31 The SAC is supported by two other governmental organizations: the China National Institute of Standardization (“CNIS”), a research institute charged with standardization-related research and drafting, and the China Association for Standardization, a trade association engaged in standardization promotion and training. In conjunction with sector ministries, the SAC oversees about 450 national technical committees and 600 subcommittees composed of approximately 40,000 experts from industry, academia, and government (Ping 2010).

At the sector level, a standardization department within each government ministry is responsible for making sector standards in the respective sector. For sectors that are not overseen by a government ministry, standard-setting is handled by the Ministry of Industry and Information Technology (“MIIT”). The sector ministries also run various standardization research institutes whose responsibilities are to support sector standard-setting agencies through research and drafting.

What is clear from this institutional design for standard-setting is that the Chinese government wants to ensure that standard-setting decisions ultimately rest with the state. Although private interests could certainly influence the standard-setting processes in China through their representation on the various technical committees or sub-committees, their inputs would not be incorporated into a final standard unless they are adopted by the government standard-setting agencies. This institutional design creates additional opportunities for China to take into account industrial policy considerations in its standard-setting processes.

#### Their ev says no follow on and it fails to establish certainty or coop

Dr. Daniel Francis 21, Climenko Fellow and Lecturer on Law at Harvard Law School, Doctorate of Laws Degree from the NYU School of Law, Master of Laws Degree from Harvard University, JD from Trinity College at Cambridge University, Former Deputy Director of the Federal Trade Commission, “Choices and Consequences: Internationalizing Competition Policy after TPP”, in Megaregulation Contested: The Global Economic Order After TPP, Ed. Kingsbury, Revised 8/26/2021, p. 40-48

B. Between Contracts and Networks: Frameworks

Another dichotomy that dominates the integration of competition policy pertains to the forms of internationalization, which in the competition policy space have generally been dominated by contract-style treaties on the one hand and by open networks on the other.166 Between these two models lies what seems to be an under-utilized alternative, which I call a “framework for contingent cooperation.”

[FOOTNOTE] 166 This binary view dominates the literature. See, e.g., Edward M. Graham, “Internationalizing” Competition Policy: An Assessment of the Two Main Alternatives, 48 Antitrust Bull. 947, 949 (2003) (“[M]echanisms [for antitrust internationalization] range from bilateral treaties creating arrangements for cooperation between or among national competition law enforcement agencies to informal working arrangements among agencies.”); Eleanor M. Fox, International Antitrust and the Doha Dome, 43 Va. J. Int’l L. 911, 912 (2003) (contrasting “horizontalism” with “globalism”); Anu Piilola, Assessing Theories of Global Governance: A Case Study of International Antitrust Regulation, 39 Stan. J. Int'l L. 207, 247 (2003) (“Rather than drafting overarching multilateral agreements on antitrust laws, cooperation efforts in the immediate future are more likely to succeed in managing existing diversity and promoting voluntary convergence based on approximation of domestically applied standards. Networks of antitrust authorities are well-suited to facilitate this process of cooperation and voluntary convergence.”). [END FOOTNOTE]

A “framework” in the sense that I am using that term is a facilitative arrangement that does not constitute a treaty under international law,167 and which does not carry the charge of international legal obligation, but which involves an exchange of specific and reciprocally contingent commitments by participant jurisdictions to engage in mutually beneficial conduct. Specifically, each party states that it will extend certain benefits to each other party so long as each other does likewise; the parties may also create supplementary mechanisms to monitor and/or adjudicate compliance with these commitments.168

A framework of this kind is not a treaty: it is what Kal Raustiala calls a “pledge,”169 and what Charles Lipson calls an “informal” agreement,170 involving no legal obligation, and it involves no commitment of the parties’ reputation for law-abiding behavior.171 On the other hand, it differs from an open, information-sharing network because it precisely specifies behavioral commitments, and because each of the parties shares an understanding that concrete consequences will promptly follow—exclusion from the benefits provided by others—if its behavior materially deviates from the terms of the commitment.172 A framework is therefore essentially a specific declaration of intention to engage in conduct that benefits others, contingent upon parallel behavior by other participating states, without obligatory status under international law.

This is, in some sense, the direct opposite of the approach typically taken in competition policy chapters in trade agreements. The provisions of competition policy chapters partake of the substance of treaty law, but are generally framed in broad terms rather than specifics, and generally do not reflect a shared understanding that specific consequences will attend breach. By contrast, frameworks do not bind in international law, are framed in specific terms than aspirational generalities, and reflect an understanding that the benefits of cooperation will be withdrawn in the event of violation.

Contingent cooperation thus depends for its effectiveness primarily upon three important dynamics. The first and most important of these is the rationality of strategic cooperation. A familiar mainstream view holds that to a significant extent states behave in international society in ways that rationally serve their interests.173 And when cooperation over a series of interactions is overall in the interests of each member of a group, but when each member faces a rational incentive to defect from the terms of cooperation in individual cases, familiar economic theory teaches that a strategic cooperative equilibrium can be maintained among the parties.174 In contingent cooperation, each party understands that if it defects materially from the terms of the framework, the other participants will withdraw the excludable benefits of cooperation, and this provides the incentive to comply.175

Contingent cooperation can be made more stable by the introduction of certain structures designed to monitor compliance (just as with a cartel among private companies).176 This might among other things involve the creation of a central “facilitator” that is responsible, in a general sense, for obtaining, collecting, and processing information necessary to sustain a cooperative equilibrium.177 Depending on the purpose and scope of the cooperation project, this could include (for example): reviewing the text of laws, regulations, and policy documents for consistency with the terms of the framework; conducting peer-review-style evaluations and certifications; hosting voluntary dispute resolution processes, including mediation and/or arbitration, to determine whether and when the framework has been violated; or even receiving and handling complaints of violations ombudsman-fashion (i.e., receiving the complaint, giving the subject of the complaint an opportunity to respond, and publishing findings and conclusions). A central facilitator could also go beyond a policing function and offer a common forum for certain forms of cooperation and information sharing. The nature of such broader functions, and the extent to which they would be useful or desirable, would depend on the nature and purpose of the cooperation.

The second dynamic that powers contingent cooperation is the normative appeal of the project itself. The point here is not unlike what Gráinne de Búrca calls “mission legitimacy”: the normative force of the underlying purpose of a cooperative project, and specifically the power of that normativity to secure the acceptance and cooperation of those who participate.178 Parties joining projects of contingent cooperation can be expected to be in some sense self-selecting: they join such endeavors because, in part, they are genuinely committed to promoting and achieving the ends that the project represents, and they embrace the project of cooperation as worthwhile.179 It may sound a little naïve to suggest that a project of cooperation may be more likely to “stick” if it has some normative appeal to the participating polities, but legal scholarship has long recognized that states do what they undertake to do more often than strictly rational analysis would predict.180 And I think the proposition that genuine commitment to a goal can contribute to compliance is in truth somewhat less naïve than the converse idea that compliance is just as likely without it.

The third source of a framework’s effectiveness is to be found in the acculturative and socializing effects of interaction in an environment in which values and practices are shared and reinforced as normative, and in which attention is paid to the existence and nature of violations. There is a rich and complex literature on the ways in which states, state actors, and the individuals within them may be “socialized” or “acculturated” by repeated engagement with others through common institutions and shared environments of normativity, eventually contributing to the emergence of obligations with genuine normative force.181 Jutta Brunnée and Stephen Toope have pointed out ways in which the force of legal obligation itself arises from shared communities of practice grounded in social reality and shared understandings, not formal commitments.182 As they put it, “[s]tability may be aided by explicit articulation of a norm in a text, but it is ultimately dependent upon [an] underlying shared understanding and a continuous practice of legality.”183

Participation in an endeavor of contingent cooperation may help to engender the development of such understandings and practices, and these may contribute to the effectiveness of the framework. In the longer term, this may even result in the creation of a legal instrument. But this progression is not necessary for acculturation to exert a reinforcing effect: for, as Anu Bradford accurately notes, there is no reason to think that “the pathway from nonbinding to binding rules” is an inevitable or even a natural one.184

The distinctive value of a framework is that it provides a low-cost way for jurisdictions to explore and participate in possible arrangements of mutual benefit that depend upon shared concrete understandings regarding future behavior, but without bearing the burden of an obligation under international law, without running the reputational risk of having to break a treaty, and without facing the domestic hurdles (or political scrutiny) that a treaty would necessitate.185 Use of such a framework may help to reduce the concerns grounded in political morality that might otherwise attend inter-jurisdictional action in sensitive areas:186 to use a term I have coined elsewhere, as contingent practices from which states could withdraw at any time, frameworks would benefit from considerable resources of “exit legitimacy.”187

Frameworks are not suited to every application. They seem particularly apt for types of international cooperation that generate excludable benefits for other participants and can be reasonably well monitored: in the sphere of competition policy, for example, this would include commitments to provide nondiscriminatory access to procurement markets as well as many forms of antitrust cooperation (including cooperation with one another’s investigations, coordination of enforcement activity, the operation of joint filing systems for merger review and cartel leniency programs, and so on). Certain guarantees of nondiscriminatory treatment by SOEs could also be extended on a selective basis. On the other hand, contingent cooperation is much less suitable for projects that **require strong and highly credible guarantees** of commitment from the participants (in which case a traditional treaty-contract would seem more appropriate188) or groups of parties still lacking the prerequisite agreement on the terms and ambit of desirable cooperation. Nor is it suitable in the **absence of sufficient confidence** in the ability or incentive of other parties **to deliver on their commitments**: in these cases, open dialogue and information exchange through a network would seem preferable. Nor, obviously, is it a good fit for projects in which the benefits of cooperation are non-excludable.189 To pick an obvious example, contingent cooperation would not recommend itself as a natural choice for an international project to introduce SOE discipline: the benefits are non-excludable (there is no obvious way to withdraw them selectively in the event of defection) and compliance is very difficult to monitor, so the use of a framework is unlikely to make much of a contribution.190

#### Multilateral convergence fails – distributional conflicts, domestic politics, and data challenges

Bradford 12 [Anu Bradford, Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School, expert in international trade law, the author of The Brussels Effect: How the European Union Rules the World. “Antitrust Law in Global Markets.” 2012. <https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2977&context=faculty_scholarship>]

B Why Attempts to Negotiate International Antitrust Rules Have Failed

1 Disagreement on optimal rules

Section IIB explored the possibility that the risk of defection inherent in the prisoner’s dilemma would impede states from pursuing international antitrust cooperation. However, some scholars have questioned this premise. They argue that the greatest impediment for international cooperation does not stem from the possibility of defection but from the difficulty of reaching the right set of rules in the first place. States prefer convergence to nonconvergence; they just cannot agree on optimal rules to converge on. Bradford, for instance, has argued against the widespread existence of PD-incentives,193 asserting instead that the collective action problem underlying international antitrust cooperation resembles a ‘coordination game’ where the distributional consequences of various forms of coordination impede states’ ability to settle on any given set of international rules.194 This theory assumes that different antitrust rules are optimal for different states. The costs and the benefits of a harmonized antitrust regime would therefore be unevenly distributed among states, creating a distributional conflict. This distributional conflict impedes states’ ability to agree on the focal point of coordination.

The most prominent distributional conflict exists between the United States and the EU. Despite the increasing alignment of the US and EU antitrust laws over the last decade, some key differences persist, as discussed above in section IC.196 These enduring differences explain why the United States and the EU have competed against each other to direct international convergence towards their respective antitrust laws.197 Even if both entities recognize that increased international coordination would lead to greater efficiency, each would prefer to internationalize their respective domestic antitrust regimes.

This type of strategic situation is known as a coordination game with distributional consequences (CGDC) or a ‘battle of the sexes’.199 In a CGDC, both states prefer a coordinated outcome to a noncoordinated outcome, even though both also favor coordinating at their respective preferred equilibrium. For instance, the United States and the EU might both prefer coordination to noncoordination given that their antitrust laws today are increasingly similar; neither the United States nor the EU would incur significant adjustment costs if they were to coordinate to each other’s preferred equilibrium. Still, it is reasonable to assume that, given the choice, both players would favor their own respective regimes as the focal point of convergence. The challenge is to choose between the focal point the United States prefers (US antitrust law) and the focal point the EU prefers (EU antitrust law).

Similar distributional conflict exists between developed countries and developing countries.200 Developed countries want any international antitrust regime to reduce multinational corporations’ (MNCs’) transaction costs of operating on global markets. They also seek to ‘level the playing field’ by enhancing MNCs’ access to the developing country markets.201 In contrast, developing countries resist the idea of a level playing field, asserting that their small domestic corporations require protection to be able to compete against MNCs.202 Developing countries struggling with capacity constraints also fear that an international antitrust agreement would impose unduly burdensome obligations on them. Both developed countries and developing countries would benefit from coordination, but they disagree on whether to coordinate around the focal point preferred by the former or the latter.

Even the proponents of an international antitrust agreement concede that the unequal distributional consequences of any international agreement would present a challenge for cooperation.203 This has led them to propose ways to overcome the distributional conflict. Eleanor Fox, for instance, invokes the spirit of cosmopolitanism as a solution to the existing disagreements among antitrust jurisdictions on optimal law and policy.204 Fox calls on countries to bar government actions ‘where the harm [the action] causes to world welfare perceptibly outweighs the benefit to the nation’s citizens’.205 However, critics have pointed out that this approach raises practical and moral concerns. On the practical level, data measuring ‘world’ and ‘domestic’ welfare would be hard to obtain and, once obtained, would remain controversial; it would also be difficult for countries in the WTO to agree when ‘perceptible’ net losses to world welfare have occurred. On an even more fundamental level, Fox’s approach raises concern on whether ‘world welfare’ is the appropriate standard to use in the first place. As Marsden argues, the national government’s obligations should lie with its national constituency.

Andrew Guzman similarly recognizes that net-exporters and net-importers disagree on the optimal content of an international antitrust regime, the former seeking lax rules and the latter strict rules.207 To overcome the distributional conflict between net-importers and net-exporters, Guzman proposes that states resort to transfer payments via the WTO.208 This way, winners can compensate losers and thereby overcome their resistance to the agreement. Others have questioned the feasibility of transfer payments in the case of WTO antitrust negotiations. Bradford, for instance, argues that the costs and the benefits arising from an international antitrust agreement are likely to be diffuse, case- specific, and difficult to forecast. As long as states remain unable ex ante to identify the winners and losers under an agreement, they do not know who should compensate whom and by how much. As a result, transfer payments would be difficult to negotiate.209 Moreover, Trebilcock and Iacobucci have noted that, even if such transfer payments were feasible, they might be normatively objectionable because some countries would have to adopt antitrust laws that would decrease their domestic welfare.2

Absent linkages, states are likely to be forced to negotiate compromises that lead to shallow international obligations.211 The United States has resisted the WTO antitrust agreement precisely because of the fear that a binding international agreement would weaken antitrust laws throughout the world. Conflicting regulatory priorities would inevitably lead to a watered-down compromise, weakening antitrust laws worldwide.212 At worst, the WTO antitrust agreement would merely codify the lowest common denominator among its broad and diverse membership.213 Diane Wood similarly predicts that efforts to reach a compromise in the midst of vast disagreement would merely lead to international rules riddled with exceptions.214 Proponents of the WTO antitrust agreement may respond that initially weak antitrust commitments could deepen with time as a result of voluntary convergence and gradual alignment of states’ preferences.215 However, the WTO does not generally lend itself well to the idea of ‘gradualism’. Frequent revision of WTO obligations would call for new negotiations among over 150 states. These negotiations would inevitably be slow and costly, producing, at best, an uncertain outcome.

#### Manne goes aff – even executive agreements are overridden and the CP can’t solve US blockage of broader harmonization

Geoffrey A. Manne 13, Lecturer in Law at Lewis & Clark Law School, Executive Director of the International Center for Law & Economics, JD from the University of Chicago Law School, Former Olin Fellow at the University of Virginia School of Law, and Dr. Seth Weinberger, PhD and MA in Political Science from Duke University, MA in National Security Studies from Georgetown University, AB from the University of Chicago, Associate Professor in the Department of Politics and Government at the University of Puget Sound, “International Signals: The Political Dimension of International Competition Law”, The Antitrust Bulletin, Volume 57, Number 3, Last Revised 7/18/2013, p. 497-503

The last principle, of positive comity, is undoubtedly the most important. By operation of this principle the OECD recommendation seeks to limit the extraterritorial application of a state’s antitrust laws by suggesting deference to another state’s. 67 Similarly, the principle of positive comity also limits a state’s discretion not to enforce its own antitrust rules against potentially anticompetitive behavior within its own jurisdiction when that behavior has extraterritorial anticompetitive effects and another jurisdiction seeks enforcement. 68 And not surprisingly, then, the United States has entered into positive comity arrangements with only the EU and Canada, certainly the two least revisionist international entities with which it has cooperation agreements. 69

From the U.S. perspective, at least, these agreements have limited, though not insubstantial authority. Because they are not treaties they do not override any inconsistent provisions of U.S. domestic law. 70 Although it is true that entry into such agreements is authorized by the U.S. State Department, and they are formal, binding “executive agreements” that limit the exercise of discretionary authority vested in U.S. enforcement agencies, 71 this is of only limited effect. The United States’ decentralized enforcement apparatus permits both private plaintiffs and state attorneys general to enforce U.S. antitrust laws without regard for these agreements.

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Most recently, where the terms of these agreements would violate U.S. domestic law, Congress has seen fit to amend U.S. law in order to accommodate them. The International Antitrust Enforcement Assistance Act of 1994, for example, permits the Justice Department and the Federal Trade Commission to share otherwise confidential antitrust evidence with foreign antitrust agencies and to use their investigative powers to collect information for use by foreign antitrust agencies pursuant to bilateral mutual assistance agreements.

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But these agreements do not seriously effect a harmonization of antitrust laws between the signatories. Rather, they enable coordination of efforts, most notably in the sharing of information between jurisdictions. The comity principles recommended by the OECD and adopted by some of the agreements does effect a kind of second-order harmonization, by reducing the likelihood of dual review of potentially anticompetitive behavior by different enforcement authorities implementing different antitrust laws and by encouraging conciliation between enforcement agencies in order to secure compliance. But little has occurred in the way of actual, substantive harmonization.

Undoubtedly, one source of blame for the failure of past harmonization efforts is the United States, which, although in certain international environments has led the way toward multilateral agreements, has repeatedly backed away from them when they threatened U.S. interests. 74 Even the most recent—and perhaps most powerful—initiative to incorporate international antitrust standards into the WTO has met with opposition from the United States. Instead the United States has taken a fairly firm position against the internationalization of antitrust law and in favor of the extraterritorial application of its own (and other nations’) domestic antitrust laws, tempered by the tenets of positive comity.

## Guidance CP

### 2AC – Guidance

#### Antitrust guidance fails AND no follow on.

Baer ’20 [Bill; October 1; Visiting Fellow in Governance Studies, former Assistant Attorney General for Antitrust at the U.S. Department of Justice and Director of the Bureau of Competition at the Federal Trade Commission, J.D. from Stanford University; Testimony Before the United States House of Representatives, “Proposals to Strengthen the Antitrust Laws and Restore Competition Online,” <https://www.brookings.edu/wp-content/uploads/2020/05/Bill-Baer-10.1.20-Testimony-to-House-Antitrust-Subcommittee.pdf>]

So where do we go from here? One strategy has the antitrust enforcers developing new policy guidance in areas such as vertical mergers, standard essential patents, and high tech platforms to nudge the courts towards a less skeptical view of the need for assertive enforcement. The joint DOJ/FTC Horizontal Merger Guidelines have, as I noted earlier, over time increasingly been relied on by the courts as providing a framework for determining whether the combination of two rivals risks harm to consumers and to competition.

There are at least two reasons to doubt whether reliance on that strategy will be sufficient. First, it took years for the courts to embrace the soundness of the merger guidelines—indeed more than a decade. Can we afford to wait that long? Second, there is no guarantee that the courts will embrace that new guidance. The mindset that antitrust enforcers are more likely to be wrong than right, and that as a result, we should at all costs avoid the risk of over-enforcement, is pretty well-entrenched in antitrust jurisprudence. Absent some further direction from Congress, those biases are unlikely to change.

## Cap K

### 2AC - Cap

#### Alt can’t spillover

* Constant pro-growth messages in media and politics make it the most effective frame—alt must fiat mindset shift to solve, which should be rejected
* The alt’s strategy fails—creates resistance and unifies the pro growth camp
* Prefer—sociological studies demonstrate difficulties creating a unified, successful anticap movement

Drews 16 [Stefan Drews, Institute of Environmental Science and Technology, Universitat Autònoma de Barcelona, Miklós Antal, Institute of Social Relations, Eötvös Loránd University, "Degrowth: A “missile word” that backfires?", June 2016, https://www.sciencedirect.com/science/article/pii/S0921800915305516?casa\_token=MdngnyoLsRYAAAAA:rfo3ysm8jZPC3m992fZng2HQB7iKrhE69yQO3WOSVoAwtO2aUeguS-9p0w-irLYI7jF\_54UBqcQ#!]

When thinking about economic growth, most people will make connections to positive ideas such as prosperity, employment, development, economic and social improvement, higher wages, and well-being (Mohai et al., 2010), which makes it a very effective frame in politics (GSG, 2015). How much these positive connections are justified by evidence is debatable, but most ordinary people will see economic growth as something good. Very few people would think about environmental unsustainability, resource/energy limits, or social limits to growth (Mohai et al., 2010). Again, the mass media plays an important role in shaping these associations simply by the constant repetition of explicit pro-growth messages.

Degrowth, on the other hand, may evoke thoughts about crisis, recession, spending cuts, lower salaries, and job losses. The reason for this is straightforward. In economic parlance, growth generally means GDP growth, which is a main policy goal. People who are not familiar with the term degrowth—i.e. the vast majority—may simply, and often unconsciously, negate that meaning and understand degrowth as economic contraction or an intentional reduction of the GDP. As past and current periods of GDP decline have been socially and psychologically painful (De Neve et al., 2015), the first spontaneous conscious reactions to the idea of degrowth will be generally negative. The retrieval of such negative conscious associations is facilitated by the initial affective judgment of degrowth. Clearly, losses loom larger than gains in the degrowth frame (see also Davey, 2014).

Therefore, attacking growth head on is a strategy that will inevitably create a lot of resistance and—if it ever becomes more influential—may even activate and unify the growth camp. Winning the battle seems unlikely as long as in most countries economic growth really is correlated with important short-term goals such as lower unemployment, better public finances, and higher social stability (Antal and van den Bergh, 2013). Furthermore, changing initially negative opinions about degrowth will be difficult because people are generally more reluctant to change their prior beliefs than to develop new and positive opinions about an issue (Lord et al., 1979). In addition, an abstract slogan like degrowth communicated by the far left is problematic because convincing an audience whose political positions differ from the speaker's is more effective with concrete messages (Menegatti and Rubini, 2013). If repoliticizing environmental issues is the way to go, then it should be done in a way that creates a more favorable starting position in the debate.

#### Innovation reduces costs of climate action --- that creates a feedback loop where each innovation spurs political will

**Azevedo et. al 20** [INÊS AZEVEDO is Associate Professor of Energy Resources Engineering at Stanford University, “The Paths to Net Zero, How Technology Can Save the Planet”, https://www.foreignaffairs.com/articles/2020-04-13/paths-net-zero]

These political hurdles are formidable. The good news is that technological progress can make it much easier to clear them by driving down the costs of action. In the decades to come, innovation could make severe cuts in emissions, also known as “deep decarbonization,” achievable at reasonable costs. That will mean reshaping about ten sectors in the global economy—including electric power, transportation, and parts of agriculture—by reinforcing positive change where it is already happening and investing heavily wherever it isn’t.

In a few sectors, especially electric power, a major transformation is already underway, and low-emission technologies are quickly becoming more widespread, at least in China, India, and most Western countries. The right policy interventions in wind, solar, and nuclear power, among other technologies, could soon make countries’ power grids far less dependent on conventional fossil fuels and radically reduce emissions in the process.

Technological progress in clean electricity has already set off a virtuous circle, with each new innovation creating more political will to do even more. Replicating this symbiosis of technology and politics in other sectors is essential. In most other high-emission industries, however, deep decarbonization has been much slower to arrive. In sectors such as transportation, steel, cement, and plastics, companies will continue to resist profound change unless they are convinced that decarbonization represents not only costs and risks for investors but also an opportunity to increase value and revenue. Only a handful have grasped the need for action and begun to test zero-emission technologies at the appropriate scale. Unless governments and businesses come together now to change that—not simply with bold-sounding international agreements and marginal tweaks such as mild carbon taxes but also with a comprehensive industrial policy—there will be little hope of reaching net-zero emissions before it’s too late

#### Transition wars zero solvency

Crownshaw et al 18 [Timothy Crownshaw, Economics for the Anthropocene (E4A) 2Department of Natural Resource Sciences, McGill University, Canada, Caitlin Morgan, Food Systems Graduate Program at the University of Vermont, Alison Adams, Rubenstein School of the Environment, University of Vermont, Martin Sers, Faculty of Environmental Studies, York University, Natalia Britto dos Santos, Alice Damiano, Laura Gilbert, Gabriel Yahya Haage, Daniel Horen Greenford, "Over the horizon: Exploring the conditions of a post-growth world", 2018, https://journals.sagepub.com/doi/pdf/10.1177/2053019618820350?casa\_token=\_O1GadWsXLwAAAAA:YjDaSmPLmQU5qV6fMt0lozJqG465r9ipDqM2Z9DqmXnjNTNfixx\_OFr4mEuXoCEiiLBfnRp6YZHX6Q]

Conflict in various forms is likely to increase significantly in frequency and severity in a post-growth world, driven by various factors such as migration, poverty, and population pressures, rising unemployment (particularly among young men), ecological degradation, climate change impacts, scarcity of natural resources (particularly food and energy), and geopolitical tensions (Ahmed, 2017; Brzoska and Fröhlich, 2016; Homer-Dixon, 1991, 2001; Myers, 2005; Omer and Dan, 2014; Rees, 2015). This conflict may occur at all levels – between states, communities, and individuals – although the incidence of conflict in specific locales will be highly unpredictable and subject to many emergent factors. Clearly, major wars between nations or blocs have the potential to disrupt adaptation to the end of growth and may significantly worsen and accelerate many post-growth challenges. Under these circumstances, attempts at conflict resolution will likely see mixed success and will depend critically on levels of inter- and intra-state economic inequality, political responses to violence, and the presence of existing social, religious, or ethnic tensions (Acemoglu et al., 2010; Horowitz, 1993; Karl, 2000).

#### Climate models are wrong- we can adapt

* peer-reviewed journal shows IPCC exaggeration
* historical records are wrong- using physically realistic measures proves decreased impact
* climate cost estimates are inflated by neglecting adaptation

Lau 18 [Matthew Lau, contributing writer to Canadians for Affordable Energy, citing peer reviewed studies from journal nature climate change and Journal of Climate, “Climate change data is wildly overestimated”, 8/14, https://torontosun.com/opinion/columnists/guest-column-climate-change-data-is-wildly-over-estimated]

A study last year by Thorsten Mauritsen and Robert Pincus in the journal Nature Climate Change and another one this year by Nicholas Lewis and Judith Curry in the Journal of Climate, produced median estimates suggesting that a doubling in atmospheric carbon dioxide would increase global temperatures by only about half of what Intergovernmental Panel on Climate Change (IPCC) models predict.

Recently, two Heritage Foundation scholars and Canadian economist Ross McKitrick re-estimated the social cost of carbon dioxide emissions using earlier empirical estimates from Lewis and Curry, instead of relying on simulated estimates of the sensitivity of temperature to carbon dioxide concentration in the atmosphere. In one model, the social cost of carbon fell 40-50% and in another the costs dropped a staggering 80%.

In addition to future warming and its associated costs likely being over-predicted by climate models, historical warming might also be less than what most temperature records suggest. That is because some techniques for producing temperature records systematically display more warming than actually occurred.

According to Patrick J. Michaels and Ryan Maue, scientists with the Cato Institute, one of the most reliable temperature data sets is from the Japan Meteorological Office. This record also shows the least amount of warming. “The fact of the matter is,” the Cato researchers write, “that what should be the most physically realistic measure of global average surface temperature is also our coolest.”

Not only is the amount of warming often exaggerated, but climate cost estimates are often inflated by assuming that humans will not adapt to the warmer climate. This assumption makes no sense when we consider how long the warming is supposed to take and how creative our society is when it comes to solving complex problems.

Adding all this up suggests that climate change probably won’t be anywhere near as disastrous as many people imagine. This has profound policy implications – it means that the drastic and expensive tax and regulatory actions taken by governments in the name of saving the climate are increasingly difficult to justify.

## Aerojet DA

### 2AC – aerojet

#### Tons of antitrust now

Jon Swartz 12-28, Senior Reporter for MarketWatch, “Big Tech Heads for ‘A Year of Thousands of Tiny Tech Papercuts,’ But What Antitrust Efforts Could Make Them Bleed?”, MarketWatch, 12/28/2021, https://www.marketwatch.com/story/big-tech-heads-for-a-year-of-thousands-of-tiny-tech-papercuts-but-what-antitrust-efforts-could-make-them-bleed-11640640776

Antitrust enforcement of Big Tech is expected to take place on a scale never before seen in 2022, following years of escalating rhetoric from Washington.

So far, Wall Street has shrugged as the five companies under the microscope — Google parent Alphabet Inc. GOOGL, -0.92% GOOG, -0.91%, Facebook parent Meta Platforms Inc. FB, -2.33%, Apple Inc. AAPL, -0.35%, Amazon.com Inc. AMZN, -1.14%, and, yes, Microsoft Corp. MSFT, -0.88% — have been targeted by governments and rivals across the globe. Despite a steady drumbeat of negative headlines, tech’s quintet of heavy hitters boasted a cumulative market value of nearly $10 trillion as 2021 neared an end, after producing a collective $2.4 trillion in revenue over the past two years of pandemic misery.

The stock prices of tech companies have only been “minorly impacted because investors do not tend to make decisions based on the mere possibility of legislation,” Ashley Baker, director of public policy at the Committee for Justice, told MarketWatch.

Many investors have simply looked back on history and shrugged, according to one Silicon Valley venture capitalist.

“There is more antitrust noise, but investment people remember the Microsoft and IBM IBM, -0.19% [antitrust investigations] in which waves of innovation followed those investigations and proved they did not own the industry,” Alexandra Sasha Johnson, president of Global Tech Symposium, a Silicon Valley investment conference, told MarketWatch. “Until the Big Tech companies buy each other, this is not a problem.”

For more: Big Tech was built by the same type of antitrust actions that could now tear it down

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This could finally change in 2022 as it did in the late 1990s, when some tech companies struck a cautious stance during the Justice Department’s investigation of Microsoft for monopolistic practices, Syed said.

“The difference is that we’re talking about interconnected companies that own an industry versus just one company [with Microsoft],” she said. “And there is bipartisan support, which makes it easier politically.”

More on the antitrust challenges facing Big Tech in 2022

Amazon has mostly avoided antitrust scrutiny, but that may change in 2022

Possible Justice Department lawsuit looms over Apple, which is facing scrutiny worldwide

Google enters 2022 battling antitrust actions on multiple fronts — with more likely to come

Facebook’s acquisitions of Instagram and WhatsApp are antitrust targets, but its metaverse mergers may be the victims

Microsoft has avoided U.S. antitrust scrutiny, but Europe is a different matter

With more than a dozen pieces of anti-tech legislation, a plethora of lawsuits and regulatory fines escalating in the U.S. and abroad, as well as the Biden administration rounding out Big Tech’s nightmare team of government agency heads, 2022 is shaping up as a seminal year for tech regulation after decades of inaction.

In rapid succession this year, Biden named and nominated an antitrust team of Tim Wu (to the newly created position of head of competition policy at the National Economic Council), Lina Khan (chair of the Federal Trade Commission) and Jonathan Kanter (head of the antitrust division of the Justice Department). Each is a heralded anti-monopolist advocate who has written extensively on the topic or represented companies making antitrust claims against Big Tech.

The trio have been referred to as members of a “New Brandeis movement,” named after Supreme Court Justice Louis Brandeis, whose decisions limited the power of big business in the early 20th century. With the New Brandeis trifecta in place, and Congress evaluating more than dozen possible anti-tech bills, next year is “shaping up to be the year of Tech Takedown,” Bhaskar Chakravorti, dean of global business at the Fletcher School at Tufts University, told MarketWatch.

More troubling for tech CEOs, he said, are the “many tiny actions at the FTC, Justice Department and Congress that will continue to keep feeding the news cycles with a steady stream of actions” that add up to a “a year of thousands of tiny tech papercuts.”

Big Tech’s treacherous path to antitrust enforcement has three potentially damaging roads: federal agencies challenging acquisitions and mergers; legislation tailored to stimulate competition and curtail the influence of tech’s dominant platforms; and federal and state lawsuits.

Closer scrutiny of M&A activity

The biggest immediate impact from the Biden administration’s all-out assault could be a cooling-off period of frenzied mergers and acquisitions by the biggest players. Regulators have been empowered with examining past deals and more strenuously inspecting tech’s latest purchases.

Major movement is already happening on the M&A front because, as lawyers and executives told MarketWatch, the FTC and Justice Department have new leadership empowered to more closely review and approve mergers while they await legislation and court actions. A non-binding presidential executive order largely seen as aimed at Big Tech announced a policy of greater scrutiny of mergers over the summer, and the FTC and Justice Department each would receive $500 million in new funding to boost staff working on antitrust enforcement as part of the House-passed reconciliation bill awaiting Senate action.

The FTC is signaling greater oversight over deals, requiring affirmative consent on certain transactions, which may prolong uncertainty on merger agreements. The agency has already sued to block the largest semiconductor deal ever — Nvidia Corp.’s NVDA, -0.59% proposed $40 billion acquisition of U.K.-based chip-design provider Arm Ltd., saying the deal would “distort Arm’s incentives in chip markets and allow the combined firm to unfairly undermine Nvidia’s rivals.”

Another FTC antitrust probe, into Meta’s plan to acquire VR fitness app Supernatural for $400 million, is underway, according to a report by The Information.

The Justice Department’s direction is less clear at this point, but signals from Kanter’s confirmation hearing point to “vigorous enforcement” of antitrust laws.

“Personnel is policy. With the trifecta of Khan, Kanter and Wu, there is a new sheriff in town,” Luther Lowe, senior vice president of public policy at Yelp Inc. YELP, -0.66%, told MarketWatch. “Efforts by Amazon and Facebook to recuse Khan, and Google’s attempt to recuse Kanter, is like arsonists asking for firefighters to be removed from a fire.”

#### Plan popular & bipartisan

Muris 17 [Timothy, Foundation Professor of Law at George Mason University’s Antonin Scalia Law School and Senior Counsel at Sidley Austin LLP. “Bipartisan Patent Reform and Competition Policy”. May 2017. https://www.aei.org/wp-content/uploads/2017/05/Bipartisan-Patent-Reform-and-Competition-Policy.pdf]

Finally, I have outlined how antitrust law can assist contract and patent law in limiting holdup. Under Republicans and Democrats, the antitrust agencies have pursued anticompetitive conduct. Despite disagreement on particular cases and on the underlying theory under which cases should proceed, there is widespread agreement on the importance of the issue and its suitability as an appropriate subject for antitrust enforcement. Further attention to patent holdup in the Trump administration is warranted and would continue the bipartisan focus on this vital issue.

#### Weisberger

Marcus Weisgerber 21, Global Business Editor at Defense One, “Lockheed’s Proposed Aerojet Rocketdyne Purchase Sets Early M&A Test for Biden”, Defense One, 3/21/2021, https://seniordownsizingsolutions.com/rs1kstuq/frank-kendall-northrop-grumman

The Biden administration’s approval — or disapproval — of Lockheed Martin’s planned $4.4 billion acquisition of rocket engine maker Aerojet Rocketdyne could shape defense industry consolidation for years to come.

If approved, the deal would mean the absorption of the last independent American weapons-grade rocket maker. All U.S. rockets would be produced by Northrop, which bought Orbital ATK in 2018, and Lockheed, the world’s largest defense contractor. It would also turn Lockheed into a key supplier of Raytheon Technologies, its major rival in the missiles sector.

Lockheed executives told investors on a Monday morning call that the acquisition would allow the company to deliver weapons to the military faster and cheaper than it can today.

“This helps position us for even greater growth, in hypersonics, missile defense and space, which are key elements of the national defense strategy,” Lockheed CEO Jim Taiclet said.

Taiclet, who became Lockheed’s CEO in June, also cited flat U.S. defense spending projections as a reason for the sale.

“They're going to be asked to do more in these areas with a flattening budget,” Taiclet said. “Having a more efficient supplier and a more robust supplier ... in uncertain economic times is a positive for the Department of Defense and for NASA.”

The proposed deal — which is expected to close in late 2021 — comes two years after Northrop Grumman acquired rocket maker Orbital ATK, a deal stoked industry consolidation fears. The Federal Trade Commission put conditions on the deal that Northrop had to supply solid rocket motors to competitors.

“Our overall expectation is that that may be the same lens through which this particular transaction is viewed because of the similarities there,” Taiclet said.

Still, Boeing claimed Northrop’s buying Orbital ATK prevented it from entering a bid for an $85 billion contract to build new intercontinental ballistic missiles. That left Northrop as the only bidder.

Orbital ATK, now part of Northrop, and Aerojet Rocketdyne are the only two U.S. makers of the solid rocket motors used in ICBMs and missile interceptors.

“The proposed purchase of Aerojet Rocketdyne (AJRD) by Lockheed Martin (LMT) is the first test of the Biden Administration and its views on defense sector consolidation and structure,” Capital Alpha Partners analyst Byron Callan said in a Monday note to clients. “It may take weeks and months before those views are known.”

Loren Thompson, a consultant and defense industry analyst with the Lexington Institute, said Lockheed’s acquisition of Aerojet would create more competition for solid rocket motors.

“Aerojet Rocketdyne will now have the same kind of financial resources to draw on as Orbital did when it joined Northrop, assuring that both domestic suppliers of large solids can remain active in military and civilian markets,” Thompson wrote Monday in Forbes.

A number of government organizations — including the Defense Department — are involved in the regulatory approval process. When Lockheed acquired helicopter-maker Sikorsky in 2015, Frank Kendall, who served as the Pentagon’s top weapons buyer during the Obama administration, expressed concerns that the deal would reduce competition. Kendall is reportedly under consideration to become Biden’s deputy defense secretary.

#### Nickles

Don Nickles 21, Chairman and CEO of The Nickles Group LLC, Former United States Senator, Former Director of Chesapeake Energy and Valero Energy, Degree in Business Administration from Oklahoma State University, “Why Lockheed's Acquisition of Aerojet Will Be A 'Boon for U.S. Innovation'”, Politico, 3/22/2021, https://www.politico.com/news/2021/03/22/lockheed-aerojet-acquisition-477491

Don Nickles, an Oklahoma Republican, served in the U.S. Senate from 1981–2005. He is CEO of The Nickles Group, a government consulting group in Washington, D.C., representing U.S. companies including Aerojet.

#### Approved other corporations for glide phase defense—happy with or without the merger

Judson 11/20 [Jen Judson is the land warfare reporter for Defense News, "Here are the three companies selected to design hypersonic missile interceptors for MDA", 11/20/21, https://www.defensenews.com/pentagon/2021/11/20/heres-the-three-companies-selected-to-design-hypersonic-missile-interceptors-for-mda/]

The Missile Defense Agency has chosen Lockheed Martin, Northrop Grumman and Raytheon Missiles and Defense to design the Glide Phase Interceptor (GPI) for regional hypersonic missile defense, the agency announced Nov. 19.

The agency awarded other transactional agreements for an “accelerated concept design” phase of the program, according to the statement.

The interceptors are intended to counter a hypersonic weapon during its glide phase of flight, a challenge as the missiles can travel more than five times the speed of sound and can maneuver, making it hard to predict a missile’s trajectory.

The interceptors will be designed to fit into the U.S. Navy’s current Aegis Ballistic Missile Defense destroyers. It will be fired from its standard Vertical Launch System and integrated with the modified Baseline 9 Aegis Weapon System that detects, tracks, controls and engages hypersonic threats, the statement notes.

“We are pleased to have these contractors working with us to develop design concepts for the GPI,” Rear Adm. Tom Druggan, MDA’s Sea-based Weapon Systems program executive, said in the statement. “Multiple awards allow us to execute a risk reduction phase to explore industry concepts and maximize the benefits of a competitive environment to demonstrate the most effective and reliable Glide Phase Interceptor for regional hypersonic defense, as soon as possible.”

The initial development phase “will focus on reducing technical risk, rapidly developing technology, and demonstrating the ability to intercept a hypersonic threat,” according to a Nov. 19 Raytheon statement.

#### 1 merger doesn’t affect anything and hypersonics aren’t escalatory

Axe 18 [David Axe serves as Defense Editor of the National Interest. He is the author of the graphic novels War Fix, War Is Boring and Machete Squad. "Why Russia Being 'First' In Hypersonic Weapons Might Be a Bad Thing." https://nationalinterest.org/blog/buzz/why-russia-being-first-hypersonic-weapons-might-be-bad-thing-40042]

But foreign military planners probably shouldn't panic. The Kremlin might be exaggerating the effectiveness and usefulness of its new weapon.

On Dec. 26, 2018, Russian president Vladimir Putin announced that the Russian military had tested the Avangard hypersonic glide vehicle in order to "successfully verify all of its technical parameters," state-owned TASS news agency reported. "On my instructions the industrial enterprises and the defense ministry have prepared for and carried out the final test of this system," Putin said, according to TASS. "The test was completely successful: all technical parameters were verified." Avangard is what the U.S. military calls a “hypersonic glide vehicle.” Propelled to high speed by the same kind of rocket that boosts a satellite or a intercontinental-range nuclear warhead, a hypersonic glide vehicle follows a different kind of flight path than other payloads do. Anything faster than five times the speed of sound qualifies as "hypersonic." Staying relatively close to Earth — around 300,000 feet up, approximately where the atmosphere ends and space begins — a hypersonic vehicle glides toward its target at many times the speed of sound, potentially performing small maneuvers en route. In theory a hypersonic glide vehicle can carry a conventional explosive warhead, a nuclear warhead or no warhead at all, instead relying on sheer kinetic force to destroy its target. Its low altitude and high maneuverability compared to a traditional intercontinental ballistic missile could make it harder to intercept. "We don't have any defense that could deny the employment of such a weapon against us," Gen. John Hyten, commander of U.S. Strategic Command, told the Senate Armed Services Committee in March 2018. But ICBMs already are capable of blasting through normal defenses. The United States and Russia both possess missile-interceptors they claim can hit incoming ICBMs, but experts question the interceptors’ effectiveness against such fast targets. The U.S. Army's Ground-Based Midcourse Defense missiles in Alaska and California represent America's main defense against nuclear-armed ballistic missiles. But the GMD rockets lack the speed, maneuverability and accuracy to hit an ICBM, which in its final phase of flight can reach a velocity 20 times the speed a sound.

The U.S. Missile Defense Agency claimed the GMD system intercepted a "complex, threat-representative ICBM target" during a May 2017 test. But experts claimed the test was unrealistic. "The Missile Defense Agency simplified the test to enhance its chances of succeeding," said Laura Grego, a missile expert with the Union of Concerned Scientists in Massachusetts.

If American defenses can't hit an ICBM, they probably also would fail to hit a Russian hypersonic glide vehicle. But that might not matter, if Moscow intends to deploy Avangard or another hypersonic vehicle as a strategic weapon carrying a nuclear warhead.

No country has ever possessed a reliable defense against a long-range strategic weapon. Instead, nuclear states count on the threat of atomic counterattack -- "mutual assured destruction" is the Cold War term -- in order to deter a nuclear attack.

Avangard could become just another strategic weapon that that United States counters with strategic weapons of its own. "Our response would be our deterrent force, which would be the triad and the nuclear capabilities that we have to respond to such a threat," Hyten said.

Hypersonic weapons might be more useful, and more effective, if they do not carry nuclear warheads. In July 2018, Michael Griffin, the U.S. Defense Department's undersecretary of defense for research and engineering, warned about the "tactical capability that these sorts of weapons bring to theater conflicts or regional conflicts." Griffin characterized hypersonic vehicles as "very quick response, high speed, highly maneuverable, difficult to find and track and kill." Putin claimed Russian forces would deploy Avangard as early as 2019, potentially making Russia the first country to field, on an operational scale, a practical, non-nuclear hypersonic weapon. China and the United States continue to develop hypersonic weapons of their own, but so far have declined to issue the weapons to front-line forces. In rushing to be first, Russia could end up fielding an unreliable weapon. In July 2018, Griffin asserted that the United States remained the world leader in hypersonic-weapons research. The Pentagon determined there was no need to hurry up and equip troops with an unrefined weapon. "We didn’t see a need for it." America's hypersonic weapons would mature "through the 2020s," Griffin said. “You’re going to see our testing pace stepping up, and you’re going to see capability delivery from the early '20s right through the decade."

Griffin also cast doubt on the Kremlin's bold claims regarding its own super-fast weapons. "How close they are to operational, I just don’t know."

## Trade

### 2AC – Trade DA – Top

#### Normal means is purely domestic reach AND it’ll be tailored to avoid foreign concerns.

OECD ’17 [Organization for Economic Cooperation and Development; December 1; Intergovernmental organization with thirty-eight member states, citing FTC guidelines; Working Party No. 3, “Roundtable on the Extraterritorial Reach of Competition Remedies - Note by the United States,” https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/et\_remedies\_united\_states.pdf]

2. The Agencies’ Standard for Extraterritorial Remedies: Section 5.1.5 of the Antitrust Guidelines for International Enforcement and Cooperation

4. The U.S. Agencies require relief sufficient to eliminate identified anticompetitive harm that has the requisite connection to U.S. commerce and consumers, even if this means reaching assets or conduct in a foreign jurisdiction.7 For example, in the merger context, a company may be required to divest a manufacturing plant outside of the U.S. in order to help preserve competition in the U.S. At the same time, Section 5.1.5 of the International Guidelines sets out a balanced standard for the Agencies’ reliance on extraterritorial remedies that “limits overly broad extraterritorial reach, while recognizing and allowing for effective enforcement.” 8 To this end, the International Guidelines provide that:

The Agencies seek remedies that effectively address harm or threatened harm to U.S. commerce and consumers, while attempting to avoid conflicts with remedies contemplated by their foreign counterparts. An Agency will seek a remedy that includes conduct or assets outside the United States only to the extent that including them is needed to effectively redress harm or threatened harm to U.S. commerce and consumers and is consistent with the Agency’s international comity analysis.9

5. This statement sets out a number of important guiding principles. First, the Agencies always look first to resolve anticompetitive concerns through domestic remedies.

6. Second, the Agencies will seek an extraterritorial remedy only when: (1) the extraterritorial remedy is needed to address harm or threatened harm to U.S. commerce and consumers, and (2) such a remedy is consistent with the Agency’s comity analysis. Thus, the Agencies’ general practice is to seek an effective remedy that is restricted to the United States, which the Agencies believe is the best approach. Only when a domestic remedy cannot effectively redress the harm or threatened harm to U.S. commerce or consumers will the Agencies consider broader remedies that have extraterritorial effect.

7. The International Guidelines explain that comity can be a consideration in the Agencies’ remedy determinations. Comity “reflects the broad concept of respect among co-equal sovereign nations and plays a role in determining ‘the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation.’”10 The U.S. Supreme Court has held that no conflict exists for purposes of international comity analysis if a person subject to regulation by two nations can comply with the laws of both.11 In addition, even where there is no direct conflict, “the Agencies will assess the articulated interests and policies of a foreign sovereign beyond whether there is a conflict with foreign law.” 12 Comity has not been a significant factor in the Agencies’ remedy determinations involving more than one sovereign because of the high degree of international convergence in competition law and policy. Convergence has reduced the number of direct conflicts, including on remedies.

8. Third, the Agencies seek to avoid conflicts with remedies contemplated by their foreign counterparts, notably through cooperation. The International Guidelines specifically provide that the Agencies “may cooperate with other authorities, to the extent permitted under U.S. law, to facilitate obtaining effective and non-conflicting remedies.”13 Cooperation “can improve substantive analyses and ensure that investigations and remedies are as consistent and predictable as possible, which improves outcomes, and reduces uncertainty and expense to firms doing business across borders.”14 Divergent remedies have the potential to impair firms’ abilities to compete globally and can undermine competition enforcement efforts. In many cases, particularly those involving extraterritorial remedies, cooperation and coordination are important to an effective outcome and improve understanding of each of the cooperating authorities’ needs and proposed decisions. 15 Information exchange among enforcers investigating the same conduct enables the Agencies to understand each other’s decisions in a case and any impact on U.S. commerce. 16 Cooperation has also facilitated informal and practical approaches to limiting duplication, including by one authority’s closing of its investigation without remedies after taking another authority’s remedy into account. 17

9. Consequently, if an extraterritorial remedy is contemplated in a particular case, these principles, as provided in the International Guidelines, allow the Agencies to ensure that the remedy is appropriately tailored to address the identified competitive harm to U.S. commerce and consumers without unnecessarily conflicting with the laws, policies, or remedies of foreign jurisdictions.

#### Countries won’t backlash

---no retaliation---every historical example of the US applying antitrust abroad caused the foreign state to embrace competition and enforcement of international cartels

**First and Bush 19** [Harry First is the Charles L. Denison Professor of Law, New York University School of Law and Darren Bush is the Leonard B. Rosenberg Professor of Law, University of Houston Law Center, “Antitrust Analysis of NOPEC Legislation”, Volume 32, Issue 1, Article 4 of Loyola Consumer Law Review, https://lawecommons.luc.edu/cgi/viewcontent.cgi?article=2044&context=lclr]

In the past, **foreign countries** have **not always** been **happy** about the **U**nited **S**tates **applying** its **antitrust laws** to **cartels formed** or operated in their **countries**. Early **efforts to resist** that enforcement, however, **have largely given way to foreign countries embracing competition**, **engaging in** law **enforcement against international cartels**, **and** even **accepting** the **imprisonment** of their **nationals** in **U.S. jails**. **While** asymmetric **retaliation** from foreign countries outside the competition law system is certainly **possible**, **there is no history of** such **retaliation against U.S. antitrust enforcement**, even in the context of the private litigation brought directly against OPEC and state-owned oil companies. **Consequently**, **concerns** with **retaliation** as a **result of antitrust action** by the United States **are misplaced.**

#### EU thumps the link

Ryu 16 – Jae Hyung, B.A., Yale University, New Haven, Connecticut. J.D. Candidate, Washington University School of Law. “DETERRING FOREIGN COMPONENT CARTELS IN THE AGE OF GLOBALIZED SUPPLY CHAINS”, Wake Forest Journal of Business and Intellectual Property Law,

Yet, the European counterpart is already expansively employing its antitrust laws in the context of import commerce. In 2010, the European Commission, facing the same cartel faced by the Motorola court, fined the LCD manufacturer cartel for fixing prices. 147 These panels were manufactured and incorporated into televisions, computer monitors, and notebooks in Asia. 148

#### No trade impact.

Joel Einstein 17. Australian National University. 01-17-17. “Economic Interdependence and Conflict – The Case of the US and China.” E-International Relations. <http://www.e-ir.info/2017/01/17/economic-interdependence-and-conflict-the-case-of-the-us-and-china/>

In 1913, Norman Angell declared that the use of military force was now economically futile as international finance and trade had become so interconnected that harming the enemy’s property would equate to harming your own.[1] A year later Europe’s economically interconnected states were embroiled in what would later become known as the First World War. Almost a century later Steven Pinker made a similar claim. Pinker argues, “Though the relationship between America and China is far from warm, we are unlikely to declare war on them or vice versa. Morality aside, they make too much of our stuff and we owe them too much money.”[2] His argument rests upon the liberal assumption that high levels of trade and investment between two states, in this case the US and China, will make war unlikely, if not impossible. It is this assumption that this essay seeks to evaluate. This essay is divided into three sections. The first briefly outlines the theory that economic interdependence results in a reduced likelihood of conflict, breaking the theory down into smaller components that can be examined. In the second section, this essay suggests that the premise ‘more trade equals less conflict’ is simplistic. It does not take into account many of the variables that can influence the strength of economic interdependence’s conflict reducing attributes. Within this section, the essay considers: the extent to which conflict cuts off trade, theories arguing that how and what a state trades matters, Copeland’s theory of trade expectations and the differences between status quo and revisionist states. The final section deals with the realist perspective, concentrating on arguments pertaining to the primacy of strategic interests and arguments that economic interdependence will increase the likelihood of conflict owing to a reduction of deterrence credibility. Each section will be related back to the US-China relationship with a view to assessing Pinker’s claim. The essay will conclude that economic interdependence does reduce the likelihood of conflict but is insufficient on its own to completely prevent it. To calculate the likelihood of conflict correctly one would need to factor in the nature of the economic interdependence alongside the strength of the strategic interests at stake. Economic Interdependence and Conflict The theory that increased economic interdependence reduces conflict rests on three observations: trade benefits states in a manner that decision-makers value; conflict will reduce or completely cut-off trade; and that decision-makers will take the previous two observations into account before choosing to go to war. Based on these observations, one should expect that the higher the benefit of trade, the higher the cost of a potential conflict. After a certain point, the value of trade may become so high that the state in question has become economically dependent on another. Proponents of this theory argue that if two states have reached this point of mutual dependence (interdependence), their decision-makers will value the continuation of trade relations higher than any potential gains to be made through war.[3] It is on this argument that Pinker rests his statement that the economic relationship between the US and China precludes war. One can see evidence of this when analysing US views on China as trade rises. A 2014 Chicago Council on Global Affairs survey indicates that only a minority of Americans see China as a critical threat, compared to a majority in the mid-1990s. This number is even higher when analysing Americans who directly benefit from trade with China.[4] As compelling as this argument may be, high levels of economic interdependence have not always resulted in peace. The decades preceding WW1 saw an unprecedented growth in international trade, communication, and interconnectivity but needless to say, war broke out.[5] This instance alone is not enough to disprove Pinker’s logic. War may become very unlikely but began nonetheless.[6] Let us take two hypothetical scenarios, one in which the chances of war is 80% and the other in which trade has reduced the likelihood of war to 10%. Just knowing that war did indeed take place does not tell us which scenario was in play. Similarly, the fact that WW1 took place gives us no information about whether economic interdependence made war unlikely or not. In fact, evidence even exists to suggest that economic linkages prevented a war from breaking out during the sequence of crises that led up to WW1.[7] However, the fact that a war as detrimental as WW1 could break out despite a supposed reduction of the likelihood of conflict gives us an impetus to examine whether this reduction does take place. Additionally, if this is the case, what variables can weaken this pacifying effect? Does Conflict Cut off Trade? Economic interdependence theory makes the assumption that conflict will reduce or cut-off trade. This assumption appears to be logical, as one would expect that the moment two states are officially adversaries, fear of relative gains would ensure that policy makers want to completely cut-off trade. However, there are many historical examples of trade between warring states carrying on

during wartime, including strategic goods that directly affect the ability of the enemy to carry out the war.[8] For example, in the Anglo-Dutch Wars, British insurance companies continued to insure enemy ships and paid to replace ships that were being destroyed by their own army.[9] Even during WW2, there are numerous examples of American firms continuing to trade strategic goods with Nazi Germany.[10] Barbieri and Levy argue that these examples and their own statistical analysis suggest that the outbreak of war does not radically reduce trade between enemies, and when it does, it often quickly returns to pre-war levels after the war has concluded.[11] In response to this result, Anderton and Carter conducted an interrupted time-series study on the effect war has on trade in which they analysed 14 major power wars and 13 non-major power wars. Seven of the non-major power wars negatively impacted trade (although only four of these reductions were significant), but in the major war category, all results bar one showed a reduction of trade during wartime and a quick return to pre-war levels at its conclusion.[12] Accompanying this contradictory finding one must take into account that even if war does not radically reduce trade, if a state believes that it does then potential opportunity cost would still figure in their calculations. Variables that Impact the Pacifying Effect of Economic Interdependence The purpose of this section is to demonstrate that the pacifying effect of economic interdependence is not constant. It achieves this via a discussion of the effect of changes in a number of variables pertaining to how and what a state trades. Once it is established that changes in such variables may alter the effect of economic interdependence on the likelihood of conflict, Pinker’s statement (that the level of trade between the US and China makes conflict unlikely) can be considered to be an over-simplification. One variable is the relative levels of economic dependence. Some argue that asymmetry of trade can increase the chances of conflict if the trade is more important to one state than it is to the other; their resolve would not be reduced by the same degree. The less dependent state would be far more willing than its adversary to initiate a conflict.[13] An example is the possibility of the prevalent idea in China that ‘Japan needs China more than China needs Japan’ leading to China becoming more assertive in Senkaku/Diaoyu islands dispute.[14] It is important to recognize that all trade is asymmetric in one fashion or another. It is radical asymmetry that one has to fear, which at the moment does not appear to be the case in the China-Japan or US-China case. Another variable is the specifics of what is being traded. A study by Dorussen suggests that the pacifying effect of trade is less evident if the trade consists of raw materials and agriculture but stronger if the trade consists of manufactured goods. Even within the category of manufactured goods there are differences in effect. Mass consumer goods yield the strongest pacifying results whilst high-technology sectors such as electronics and highly capital-intensive sectors such as transport and metal industries tend to have a relatively weak effect.[15] If it is a sector with alternative trade avenues then embargos and boycotts as a result of conflict will have far less effect.[16] The rule is that the more inelastic the import demand, the higher the opportunity cost and the smaller the probability of conflict.[17] According to these studies, trade still generally reduces the likelihood of conflict however it is by no means homogeneous in its effects. Additionally, the opportunity costs are not the same for importers and exporters. Dorussen’s study suggests that increased trade in oil tends to make the exporters more hostile and the importers friendlier in relations to their foreign policy.[18] Taking this framework into account, in 2014 China’s top five exports to the US (computers, broadcasting equipment, telephones and office machine parts) all fell under the category of electronics,[19] whilst the US’s top five exports to China (air and/or spacecraft, soybeans, cars, integrated circuits and scrap copper) were all either high-capital intensive sectors or raw materials and agriculture.[20] According to Dorussen’s study, these exports should not yield the strongest possible conflict reducing results, which could impact the validity of Pinker’s statement. Copeland presents another variable, namely expectations of trade. Copeland argues that if a highly dependent state expects future trade to be high, decision makers will behave as many liberals predict and treat war as a less appealing option. However if there are low expectations of future trade, then a highly dependent state will attach a low or even negative value to continued peaceful relations and war would become more likely.[21] As an example, he points out that despite high levels of trade in 1914 German leaders believed that rival great powers would attempt to undermine this trade in the future, so a war to secure control over raw materials was in the interests of German long-term security.[22] Via this framework, if the US began to believe that in future years they would be less dependent on China’s economy, or if it became apparent that a US-China trade war was about to take place, there would be a sharp rise in the probability of conflict. The final variable this essay will discuss relates to the differences between status quo and revisionist states. Most empirical analyses of economic interdependence tend to group together states as different as the United States, Pakistan, Australia, Germany and China and assume that variations in their behaviour would be the same.[23] Papayoanou on the other hand, argues that when analysing the effects of economic interdependence it is useful to differentiate the effects on great power states and states with revisionist aspirations.[24] If a status quo power has strong economic ties with revisionist state there will be interest groups who advocate engagement and who believe that confrontational stances will threaten the political foundation of economic links. This will constrain the response of the status quo state.[25] One can see evidence of such an interest group in the US, a group Friedberg describes as the Shanghai coalition, who he argues advocate engagement with China at the expense of balancing.[26] A study by Fordham and Kleinberg backs up this argument as they find that US business elites who benefit from trade with China tend to see little benefit in limiting the growth of Chinese power.[27] A 21st Century revisionist power is far less likely to be a democracy, and therefore, interest groups will influence the leadership far less. This means an authoritarian revisionist power will be working under fewer constraints and will be able to take a more aggressive stance.[28] This appears to be the case in China where rather than having domestic constraints on taking an aggressive stance against Japan, one of their biggest trading partners, grassroots nationalism has made explicit cooperation a domestically risky option.[29] There are many indicators to suggest that China is a revisionist power willing to wage war. Lemke and Werner argue that an extraordinary growth of military expenditures’ reveals when a state is dissatisfied with the status quo.[30] Data provided by the Stockholm International Peace Research Institute certainly indicates that China qualifies as its military expenditure has nominally increased by 1270% between 1995 and 2015.[31] Additionally, the military modernization appears to be aimed at capabilities to contest US primacy in East Asia.[32] Much like German strategists recognized that Britain was operating under significant domestic constraints, China could realize the same of the US.[33] This is not to say that Chinese decision-makers would be cavalier about making a decision that would be to the detriment its economy. A crash in the Chinese economy due to the loss of exports to the US could potentially undermine the legitimacy of the Chinese Communist party and endanger the regime. However, the view that China is a revisionist power indicates that good trade relations alone will not result in a low probability of conflict. Realist Arguments Pertaining to Dominance of Strategic Interests Having established that if the pacifying effect of trade does exist, it can rise or fall depending on changes in a series of variables this essay proceeds to deal with realist theories arguing that trade has a negligible or even negative effect on the likelihood of conflict. Buzan argues that noneconomic factors contribute far more to major phenomena than liberal theorists usually cite to support their theory.[34] There is evidence of the primacy of strategic interests in Masterson’s 2012 study on the relationship between China’s economic interdependence and political relations with its neighbours. The study concluded that as economic interdependence with neighbouring states increased the likelihood of conflict did indeed decrease, but that the impact was minimal when compared to the impact of relative power capabilities. In other words, political and military issues dominated interstate relations. Growth in power disparities were associated with decreases in dyadic political relations that were greater than the increase caused by economic interdependence.[35] If the pacifying effect of trade can rise and fall so can the provocative effect of strategic interests. It is important to distinguish between the existence of a strategic interest and a situation of unbearable strategic vulnerability. China and the US have many opposing strategic interests, but neither is in a strategically vulnerable position. For example, China shares many borders, but none present the same threat of invasion that Tsarist Russia did to Imperial Germany as none of the current maritime tensions between China, Japan, and the US equate to a matter of national survival.[36] This is crucial as some believe that for a crisis to escalate to a major war an actor who is isolated and believes that history is conspiring against them is needed. Only this actor would take an existential risk to try and offset their strategic vulnerability.[37] Imperial Germany fit this description, but neither China nor the US does. This is largely due to the geography of the region. The tension between the US, China and Japan are over maritime regions. Maritime issues still relate to national interests but, as Krause points out, “Land armies are still the only forces that can conquer and hold territory.”[38] Taking this into account one can argue that the benefits of US-China trade are, for each state, currently greater than the benefits of pursing strategic benefits via force, but this situation will only remain as long as the situation does not become one of unbearable strategic vulnerability. Realist Arguments Pertaining to the Undermining of Deterrence Having established that scenarios exist where strategic interests and vulnerabilities have a greater effect on the likelihood of war than economic interdependence, this essay will now evaluate arguments that economic interdependence can increase the likelihood of conflict through the undermining of deterrence. The argument proceeds as follows: if economic interdependence constrains the ability or willingness of a state to use its military, security is lowered as the state now has a weakened ability to engage in deterrence and defensive alliances. Deterrence relies on the ability of a state to make credible threats and defensive alliances rely on credible promises to protect one’s allies.[39] Credibility is defined as the product of the operational capability to follow through with a threat and the communication of resolve to use force.[40] What is at risk here is that if economic interconnectivity interferes with the communication of resolve to use force then states may end up with a way that neither side expected or wanted. Some argue that it was such a failure to communicate resolve that resulted in the beginning of WW1. Indeed, Jolly claims that: “The Austrians had believed that vigorous actions against Serbia and a promise of German support would deter Russia: the Russians had believed that a show of strength against Austria would both check the Austrians and deter Germany. In both cases, the bluff had been called and the three countries were faced with the military consequences of their actions.”[41] The risk in the US-China case would be that the interest groups described earlier would prevent the US from effectively communicating its resolve to use force if China were to cross a redline. The flaw in this argument lies in the fact that whilst interest groups might push back against public statements outlining redlines; the US has many less overt options available to it to communicate resolve. Modern technology and the forms of interconnectivity have resulted in many more lines of communication between China and the US than adversaries had access to in 1914. Private meetings, electronic communication and numerous other methods of communication have the capability to be candid without being visible to interest groups. It is for this reason that this essay discounts the theory that Sino-American economic interdependence results in a reduction of deterrence and therefore increases the likelihood of conflict. Conclusion This essay has shown that the strength of the pacifying effect of economic interdependence is subject to change depending on a series of dynamic variables. It has also demonstrated that the strength of the conflict provoking effects of strategic interests can change depending on whether the strategic interest amounts to a situation of unbearable strategic vulnerability. It has discounted the theory that interdependence leads to a higher chance of conflict through an erosion of credibility. To sum up, trade does seem to reduce the likelihood of conflict but should not be seen as a deterministic factor as strategic interests, and vulnerabilities also have a large effect. There is no hard rule as to what will be the driving factor as the nature of economic interdependence and of strategic factors impact their relative values. Accordingly, Pinker’s statement that the trade between the US and China makes war exceptionally unlikely is simplistic and misleading because it fails to account for a wide array of variables that can radically change the likelihood of a Sino-American war. An intellectually honest thesis would insist upon a comprehensive approach in which the level of economic activity is simply one of many variables that is required.

### 2AC – No retal

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# 1AR

## T

### 1AR – Interp + Theirs

#### Scope’ refers to activity at the present time, not the abstract potential application of law.

Clement ’16 [Frank; March 3; Judge on the Tennessee Court of Appeals; Court of Appeals of Tennessee at Nashville, “Hamer v. Southeast Res. Group, Inc,” Lexis 176]

When interpreting a contract, ordinary words typically have their ordinary meanings unless there is evidence [\*13] that the parties intended for the words to have a special meaning. Madson v. Madson, 636 So. 2d 759, 761 (Fla. Dist. Ct. App. 1994). The ordinary meaning of a word is often described as its meaning in the dictionary. See Siegle v. Progressive Consumers Ins. Co., 788 So. 2d 355, 360 (Fla. Dist. Ct. App. 2001); Beans v. Chohonis, 740 So. 2d 65, 67 (Fla. Dist. Ct. App. 1999). The ordinary meaning of a word or phrase is also described as "a natural meaning or the meaning most commonly understood when considered in relation to the subject matter and circumstances." See J.N. Laliotis Eng'g Constr. v. Mastor, 558 So. 2d 67, 68 (Fla. Dist. Ct. App. 1990) (quoting Granados Quinones v. Swiss Bank Corp., 509 So. 2d 273, 275 (Fla. 1987)).

If parties wish to depart from the ordinary meaning of common words and assign uncommon meanings to them, they must do so explicitly. See Madson, 636 So. 2d at 761. "One who would ascribe an exotic meaning to a term in a contract which otherwise has perfectly ordinary connotations must take pains to define the term either expressly or by express reference." E. Ins. Co. v. Austin, 396 So. 2d 823, 825 (Fla. Dist. Ct. App. 1981); see Russ v. State, 832 So. 2d 901, 907 (Fla. Dist. Ct. App. 2002) ("[W]here a statute does not specifically define words of common usage, such words are construed in their plain and ordinary sense." (alteration in original)); Koplowitz v. Imperial Towers Condo., Inc., 478 So. 2d 504, 505 (Fla. Dist. Ct. App. 1985) ("Whether they appear in a statute or in a declaration of condominium, words of common usage should be construed in their plain and ordinary sense.").

Here, this dispute exists because the parties' agreement does not define "scope" or "scope and purpose." Furthermore, the agreement does not identify the point in time when the "scope" of [\*14] Action's business is to be determined. Southeast contends that "scope and purpose" is ambiguous because it is susceptible to multiple reasonable interpretations. According to Southeast, "scope and purpose" means "at a minimum any business opportunity to be marketed to credit union members, including the telemedicine opportunity." However, the entirety of the parties' agreement and the "inconvenience, hardship, or absurdity" that would result from Southeast's proposed interpretation demonstrate that the agreement is not ambiguous and that the parties intended for the words "scope and purpose" to have their ordinary meanings. See Branscombe, 76 So. 3d at 948.

"Scope" and "purpose" are commonly-used words with commonly-understood meanings. Therefore, if the parties intended to ascribe an uncommon meaning to "scope" or "scope and purpose," they should have explicitly defined those terms. See E. Ins. Co., 396 So. 2d at 825. Instead of explicitly stating that these words have an uncommon definition, the agreement provides that its terms, covenants, and provisions "shall be construed simply and according to [their] fair meaning[s] . . . ." Consequently, the failure to specify a unique meaning for "scope and purpose" and the inclusion of the above-quoted section [\*15] indicate that the parties intended for these words to have their ordinary meanings. See id.; see also Russ, 832 So. 2d at 907; Koplowitz, 478 So. 2d at 505.

Under Southeast's interpretation, Plaintiff agreed to disclose and make available every business opportunity "to be marketed to credit union members." Such a broad definition appears to encompass every product or service imaginable, whether they have anything to do with Action or not. Under this interpretation, Plaintiff would be required to disclose an opportunity to sell cars to credit union members even though Action's business is not related to cars at all. The inconvenience, hardship, or absurdity that would result are weighty evidence that the parties did not intend for "scope and purpose" to have this meaning, especially when interpreting the agreement based on the ordinary meaning of "scope" avoids these difficulties. See Branscombe, 76 So. 3d at 948 HN9 ("The inconvenience, hardship, or absurdity of one interpretation of a contract or its contradiction of the general purpose is weighty evidence that such meaning was not intended when the language is open to an interpretation which is neither absurd nor frivolous and is in agreement with the general purpose of the parties.").

HN10 The ordinary meaning of words is found in the dictionary and is the most commonly understood meaning in relation to the subject matter of the parties' agreement. See Siegle, 788 So.2d at 360; Beans, 740 So. 2d at 67; J.N. Laliotis, 558 So. 2d at 68. According to one dictionary, "scope" means "1. The range of one's perceptions, thoughts, or actions. 2. Breath or opportunity to function. 3. The area covered by a given activity or subject." The American Heritage College Dictionary 1222 (3d ed. 1997). The operating agreement is concerned with the relationship of Action's members to each other and to Action, and the subject matter of section 6.6 is the duty to make certain business opportunities available to Action in order to avoid competition between Action and its members. [\*18] Based on the dictionary and the subject matter of the parties' agreement, "scope" most naturally refers to the range or breadth of the business that Action is engaged in at the relevant time.

Southeast contends this interpretation renders "purpose" redundant because "by definition, scope would always be within the purpose." We respectfully disagree. Contrary to Southeast's contentions, "scope" and "purpose" refer to different concepts. "Purpose" is aspirational and refers to what Action is capable of doing in the future (i.e. all lawful business for limited liability companies). In contrast, "scope" refers to what Action actually is doing or has done at the relevant point in time. Thus, an opportunity might be within Action's scope but not its purpose if, for example, Action had been organized for a limited purpose (e.g. to acquire real estate in Florida) but was in fact also engaged in the business of selling disposable mobile phones to college students. In this example, a business opportunity to sell mobile phones to college students would be within Action's scope but not its purpose.

Therefore, under the ordinary meaning of "scope," a member is required to disclose a business opportunity [\*19] if that opportunity (1) is within Action's aspirational goal — its purpose; and (2) is within the area that Action's business has or is actually covering at the relevant point in time. As a result, interpreting "scope" according to its ordinary meaning does not render any part of the agreement redundant.

Having concluded that "scope" refers to the breadth of the business Action is or has engaged in, we must turn our attention to determining when Action's "scope" should be assessed. The agreement does not specify whether Action's scope is to be determined as of the date of the agreement, the date of the discovery of an opportunity, or some other date. After reviewing the agreement, we conclude that the parties intended for Action's scope to be determined at the time when a member seeks to pursue the business opportunity in question.

#### Scope is legal application.

Parsons ’14 [Honorable Donald F Jr; February 18; Vice Chancellor of the Court of Chancery of Delaware; Westlaw, “Vichi v. Koninklijke Philips Electronics, N.V.,” 85 A.3d 725]

As an initial matter, I reject the proposition that the determination of who can invoke a choice of law provision must precede the analysis of the provision's validity and scope. The “scope” of a choice of law provision refers to how broadly or narrowly that provision applies and includes the question of whether the provision created enforceable rights in third parties.310 The only case Philips N.V. cites in support of its assertion that Delaware law should govern whether it can invoke the choice of law clause merely stands for the proposition that a Delaware court will apply its own conflict of laws rules to determine which jurisdiction's substantive law will govern the claims before it.311 As noted previously, under Delaware conflict of laws rules, the scope of a valid choice of law provision is determined by the law of the selected jurisdiction—in this case, England.

#### Prohibitions just entail disallowing specific actions.

Blackmun ’92 [Harry Andrew, Anthony McLeod Kennedy, and David H Souter; Justices on the Supreme Court of the United States; Lexis, “Cipollone v. Liggett Group,” 505 U.S. 504]

Although the plurality flatly states that the phrase “no requirement or prohibition” “sweeps broadly” and “easily encompass[es] obligations that take the form of common-law rules,” ante, at 2620, those words are in reality far from unambiguous and cannot be said clearly to evidence a congressional mandate to pre-empt state common-law damages actions. The dictionary definitions of these terms suggest, if \*536 anything, specific actions mandated or disallowed by a formal governing authority. See, e.g., Webster's Third New International Dictionary 1929 (1981) (defining “require” as “to ask for authoritatively or imperatively: claim by right and authority” and “to demand as necessary or essential (as on general principles or in order to comply with or satisfy some regulation)”); Black's Law Dictionary 1212 (6th ed. 1990) (defining “prohibition” as an “[a]ct or law prohibiting something”; an “interdiction”).

#### Bledsoe goes aff – only about arbitration and is about availability

Louis A. Bledsoe 19 III, Chief Business Judge on the North Carolina Business Court, “Rickenbaugh v. Power Home Solar, LLC”, North Carolina Superior Court, Mecklenburg County, 2019 NCBC LEXIS 109, 12/20/2019, Lexis

The question thus is whether the parties' agreement, through the incorporation of the AAA Construction Rules (and by that incorporation, the Supplementary Rules), that an arbitrator would decide the "scope" of the arbitration proceeding constitutes an agreement that the arbitrator would determine whether class arbitration is available in that proceeding. Giving the word "scope" its plain and ordinary meaning and considering it in the context [\*23] in which it is used in the AAA Rules, the Court concludes that it does. Other courts have agreed. See, e.g., JPay, 904 F.3d at 931 ("Formally, the question whether class arbitration is available will determine the scope of the arbitration proceedings."); Reed, 681 F.3d at 635-36 ("The parties' consent to the Supplementary Rules . . . constitutes a clear agreement to allow the arbitrator to decide whether the party's agreement provides for class arbitration."); Burkett, 2014 U.S. Dist. LEXIS 148442, at \*22 (holding that a rule vesting an arbitrator with authority to decide the scope of his or her own jurisdiction includes "the issue of 'who decides' class arbitrability").

### 1AR – WM

#### 1nc ev says exemptions can be statutory and non-statutory AND include pre-emption which Qualcomm does to undermine state application of antitrust in FRAND

Layne E. Kruse 19, Co-Chair, Melissa H. Maxman, Co-Chair, Vittorio Cottafavi, Vice Chair, Stephen M. Medlock, Vice Chair; David Shaw, Vice Chair; Travis Wheeler, Vice Chair; Lisa Peterson, Young Lawyer Representative; all on the Exemptions and Immunities Committee of the ABA Antitrust Section, “Long Range Plan, 2018-19,” American Bar Association, 3/18/2019, https://www.americanbar.org/content/dam/aba/administrative/antitrust\_law/lrps/2019/exemptions-immunities.pdf

The Committee’s current charter accurately characterizes its purview—that is, addressing the scope of the antitrust laws. That scope, of course, is defined primarily in terms of exemptions and immunities (both statutory and non-statutory). The Committee, however, has dealt with other doctrines, such as preemption and primary jurisdiction. These areas may not necessarily be viewed as traditional exemptions or immunities, but they nonetheless directly affect the application and extent of the antitrust laws. In addition, the Committee expends significant efforts to address international issues, including statutory exclusions from the U.S. antitrust laws, including the FTAIA; the related doctrines of act of state, sovereign immunity, and foreign sovereign compulsion; and industry-specific exemptions and exclusions from non-U.S. antitrust laws, including blocking exemptions.

#### Qualcomm exempted authority – we’re green for their yellow

Sullivan 20 [Sullivan & Cromwell LLP, Leading Firm in Business Law “Ninth Circuit Holds That Qualcomm’s Patent Licensing Program Does Not Violate U.S. Antitrust Law”. 8/12/20. https://www.sullcrom.com/files/upload/sc-publication-ninth-circuit-holds-qualcomm-patent-licensing-program-does-not-violate-us-antitrust-law.pdf]

The Ninth Circuit’s decision, unless modified by the Supreme Court, affirms Qualcomm’s SEP licensing model for OEMs (and its refusal to license rival chipmakers), at least with respect to any challenge under U.S. antitrust laws. Because Qualcomm’s model has driven the cellular modem licensing and sale landscape for chip suppliers and handset makers alike, the court’s decision will likely quiet concerns on the part of some that the district court’s decision would upend that market, although it perhaps makes it less likely that the market will see increased competition or that chip prices will drop as may have been the case if Judge Koh’s injunction had been upheld.

Although the court confirmed that an SEP holder has no antitrust duty to deal with rivals outside the limited Aspen Skiing exception, the Ninth Circuit left open the possibility that an SEP holder’s FRAND commitments may obligate it to deal with its rivals.39 Importantly, however, the Ninth Circuit clarified that a company’s breach of its FRAND commitments does not amount to anticompetitive conduct in violation of the Sherman Act. Instead, the remedy for such conduct lies in contract law. Moreover, the court’s decision to vacate as moot the district court’s summary judgment decision—which found that Qualcomm was required by its FRAND commitments to license rival chipmakers—removes what some had considered to be persuasive judicial authority in the U.S. supporting a claim that FRAND requires licensing at all levels of a product distribution chain which implement a standard. This is noteworthy for SEP holders because it returns U.S. jurisprudence to the status quo, and at least one court in the Eastern District of Texas interpreted a comparable FRAND commitment as not requiring a SEP holder to license all comers at any level of the supply chain. This issue continues to be litigated in the U.S., notwithstanding the Department of Justice Antitrust Division general view that the market, not FRAND, should determine license structures.

### 1AR – AT: Limits

#### Don’t solve limits – interp includes both statutory and non-statutory immunities which aren’t defined and include court cases about rule of reason AND pre-emption which is always included because state action is always pre-empted

Layne E. Kruse 19, Co-Chair, Melissa H. Maxman, Co-Chair, Vittorio Cottafavi, Vice Chair, Stephen M. Medlock, Vice Chair; David Shaw, Vice Chair; Travis Wheeler, Vice Chair; Lisa Peterson, Young Lawyer Representative; all on the Exemptions and Immunities Committee of the ABA Antitrust Section, “Long Range Plan, 2018-19,” American Bar Association, 3/18/2019, https://www.americanbar.org/content/dam/aba/administrative/antitrust\_law/lrps/2019/exemptions-immunities.pdf

The Committee’s current charter accurately characterizes its purview—that is, addressing the scope of the antitrust laws. That scope, of course, is defined primarily in terms of exemptions and immunities (both statutory and non-statutory). The Committee, however, has dealt with other doctrines, such as preemption and primary jurisdiction. These areas may not necessarily be viewed as traditional exemptions or immunities, but they nonetheless directly affect the application and extent of the antitrust laws. In addition, the Committee expends significant efforts to address international issues, including statutory exclusions from the U.S. antitrust laws, including the FTAIA; the related doctrines of act of state, sovereign immunity, and foreign sovereign compulsion; and industry-specific exemptions and exclusions from non-U.S. antitrust laws, including blocking exemptions.

#### But their interp doesn’t solve – list of ABA is just sections the book is talking about, not defining anything

Christopher L. Sagers 15, James A. Thomas Distinguished Professor of Law and Faculty Director of the Cleveland-Marshall Solo Practice Incubator at the Cleveland-Marshall College of Law, Cleveland State University, “Table of Contents,” Handbook on the Scope of Antitrust, American Bar Association, Section of Antitrust Law, 2015, <https://www.americanbar.org/content/dam/aba-cms-dotorg/products/ecd/ebk/140535931/5030623-TOC.pdf>

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