# Wiki Doc R6

# 1NC

### 1NC – States CP

#### The fifty states and relevant territories should

#### uniformly establish a presumption against mergers and acquisitions among agribusiness firms.

* Expand public infrastructure spending in rural areas, create rural public works projects, and engage in public-private partnerships to create rural jobs in key industries
* expand tax cuts to non-agricultural corporations that create large amounts of new rural jobs

#### States solve better – local familiarity, institutional expertise, and compensation capacity

Calkins 3 [Stephen, Professor of Law, Wayne State University Law School. The author was General Counsel to the Federal Trade Commission from 1995–1997. “Perspectives on State and Federal Antitrust Enforcement” p. 679-680 <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1207&context=dlj>]

The most accepted roles for the states are ones derived from the states’ comparative advantages.33 Three advantages stand out: familiarity with local markets, familiarity with and representation of state and local institutions, and ability to send money to injured individuals.34 1. Familiarity with Local Markets. For all the talk about globalization of competition, antitrust enforcement is routinely concerned about competition in local markets. Almost half of the FTC’s merger complaints make allegations involving local markets,35 which should not be surprising given the number of challenges to mergers in groceries, gasoline retailing, construction, natural gas transportation, and health care.36 Intimate knowledge about local competitive conditions is essential to effective antitrust enforcement. State attorneys general have a clear comparative advantage in understanding local markets.37 It would make little sense for Washington-based enforcers trying to craft divestitures to remedy a grocery store merger, or debating about the viability of stores on different sides of some small town, not to consult with or involve a state enforcer who is more likely to be familiar with the history and current market dynamics of that area.38 Similarly, the Antitrust deficiencies. State partisans can boast of responsiveness to citizen views. See Lloyd Constantine, Antitrust Federalism, 29 WASHBURN L.J. 163, 182–83 (1990) (noting that state enforcement maximizes citizen participation). Judge Posner laments over-responsiveness to special interests. See POSNER, ANTITRUST LAW, supra note 1, at 281 (“[States] are excessively influenced by interest groups . . . .”). One side claims that state enforcement “promotes diversity and innovation in competition policy and enforcement.” Constantine, supra, at 183–84; see also Harry First, Delivering Remedies: The Role of the States in Merger Enforcement, 69 GEO. WASH. L. REV. 1004, 1036–39 (2001) (noting the role of states as an additional force in antitrust enforcement). Others complain of that same diversity and innovation. See Jonathan Rose, State Antitrust Enforcement, Mergers, and Politics, 41 WAYNE L. REV. 71, 115–26 (1994) (lamenting differences in federal and state antitrust standards); David A. Zimmerman, Comment, Why State Attorneys General Should Have a Limited Role in Enforcing the Federal Antitrust Law of Mergers, 48 EMORY L.J. 337, 346–66 (1999) (same). One side views state enforcers as essential fillers of enforcement “gaps”; others dispute the existence of any gap. See Deborah Platt Majoras, Antitrust and Federalism, Remarks Before the New York State Bar Association 16–17 (Jan. 23, 2003) (denying the existence of a federal enforcement void), at http://www.usdoj.gov/atr/public/speeches/200683.htm (on file with the Duke Law Journal). 35. Computed from FTC Bureau of Competition, Antitrust Enforcement Activities Fiscal Year 1999—Mar. 15, 2003 (2003) (on file with the Duke Law Journal). 36. See id. at 1–18 (listing FTC merger complaints and describing the outcomes). 37. See Robert B. Bell, Counterpoint: States Should Stay out of National Mergers, ANTITRUST, Spring 1989, at 37, 37 (“There is little doubt that states should take the lead in scrutinizing and challenging mergers that are purely local in scope.”); First, supra note 34, at 1034–36 (“[T]his understanding [of local markets] gives state antitrust enforcers a comparative advantage over federal antitrust enforcers.”). 38. The importance of state involvement in challenging localized mergers has prompted calls for allocating areas of primary responsibility. See, e.g., Robert H. Lande, When Should States Challenge Mergers: A Proposed Federal/State Balance, 35 N.Y.L. SCH. L. REV. 1047, 1072–89 (1990) (proposing a series of “‘federalism guidelines,’ which would allocate responsibility for enforcement between the DOJ and the FTC and the states, with certain categories of responsibility”). CALKINS.DOC 06/21/04 3:59 PM 2003] ANTITRUST ENFORCEMENT 681 Division has recognized that it can be logical for states to take the lead in challenging conspiracies in localized markets.39 2. Familiarity with Local Institutions. State attorneys general are more likely than federal enforcers to know and be known and be trusted by state and local government officials. They are thus uniquely situated to help prevent anticompetitive harm from being inflicted on or by government agencies.40 Government and nonprofit entities play major roles, even in the United States’ capitalist economy. A third of the gross domestic product (GDP) is government:41 Governments purchase huge quantities of good and services, including health care, education, and prison services. Government regulations affect where and how people live, how people are born, and how they die.42 State and local governments are critical points of focus for competition policy. Both government purchasers and government regulators are notoriously susceptible to anticompetitive manipulation.43 Although federal 39. See Protocol for Increased State Prosecution of Criminal Antitrust Offenses, 70 Antitrust & Trade Reg. Rep. (BNA) 362, 362 (1996) (announcing that the Division may transfer to state attorneys general the criminal prosecutorial responsibility “for offenses including, but not limited to, bid rigging and/or price fixing in localized markets”). 40. See Patricia A. Conners, State Antitrust Enforcement in Health Care: Recent Developments, Written Materials to Accompany Remarks by the Chair of the Multistate Antitrust Task Force before the ABA Section of Antitrust Law and the American Health Lawyers Association Program on Health Law 2 (May 15–16, 2003) (transcript on file with Duke Law Journal) (finding many attorneys general counsel state regulatory boards and thus have a “close relationship” with them). 41. Timothy J. Muris, Looking Forward: The Federal Trade Commission and the Future Development of U.S. Competition Policy, Remarks at the Milton Handler Annual Antitrust Review (Dec. 10, 2002), at http://www.ftc.gov/speeches/muris/handler.htm (on file with the Duke Law Journal). For instance, government payments represent 45 percent of U.S. health care spending. Ctrs. for Medicare & Medicaid Servs., Program Information on Medicare, Medicaid, SCHIP, and Other Programs 6 (June 2002), at www.cms.gov/charts/series/sec1.ppt (on file with the Duke Law Journal). 42. The growth of regulation is chronicled in countless works, including DENNIS C. MUELLER, PUBLIC CHOICE II 320–47 (1989). 43. See ROGER D. BLAIR & DAVID L. KASERMAN, ANTITRUST ECONOMICS 144 (1985) (government purchasers “are most susceptible to collusive pricing” because they reveal bidding information and thus discourage conspirators from “cheating” on a cartel); ROBERT H. BORK, THE ANTITRUST PARADOX 347 (1978) (“Predation by abuse of governmental procedures, including administrative and judicial processes, presents an increasingly dangerous threat to competition.”); John Shepard Wiley, Jr., A Capture Theory of Antitrust Federalism, 99 HARV. L. REV. 713, 728 (1986) (“[M]arket regulation has become the target of increasing criticism for being an instrument by which industry can exploit the public . . . .”). CALKINS.DOC 06/21/04 3:59 PM 682 DUKE LAW JOURNAL [Vol. 53:673 enforcers regularly engage in “competition advocacy,” as it is called,44 no Washington-based voice is likely to be listened to as carefully as the voice of the state attorney general.45 3. Compensating Individuals. State attorneys general recover money for injured individuals in two ways. First, states implicitly represent taxpayers by recovering overcharges exacted from state purchasing operations.46 Beyond that, state attorneys general are the only governmental officials specifically authorized by federal statute to recover monetary relief in treble damages for natural persons injured by Sherman Act violations.47 The Justice Department has no such power, and the FTC finds authority for a court to award consumer redress only by implication (and very rarely invokes the authority in antitrust cases).48 In 1976, the House Judiciary Committee declared an intention to promote deterrence and compensation of 44. Timothy J. Muris, Creating a Culture of Competition: The Essential Role of Competition Advocacy, Prepared Remarks Before the International Competition Network Panel on Competition Advocacy and Antitrust Authorities (Sept. 28, 2002), at http://www.ftc. gov/speeches/muris/020928naples.htm (on file with the Duke Law Journal). The FTC’s advocacy filings are collected at http://www. ftc.gov/be/advofile.htm (last visited Sept. 10, 2003). 45. Cf. 60 Minutes with Robert M. Langer, Assistant Attorney General, State of Connecticut, and Chair, NAAG Multistate Antitrust Task Force, 60 ANTITRUST L.J. 197, 214–15 (1991) (discussing the role attorneys general regularly play both in representing regulatory boards and counseling on antitrust). 46. See O’Connor, supra note 18, at 422 (“[V]irtually all states have the authority to recover direct damages on behalf of state agencies.”). 47. 15 U.S.C. § 15c (2000). Parens patriae authority was established by Title III of the HartScott-Rodino Antitrust Improvement Act of 1976, Pub. L. No. 94-435, § 301, 90 Stat. 1383, 1394 (1976) (codified at 15 U.S.C. § 15c (2000)). 48. Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b) (2000), authorizes the FTC to seek injunctive relief, and that authorization has been interpreted by the courts to permit the Commission also to obtain equitable remedies including disgorgement and consumer redress. See, e.g., FTC v. Amy Travel Serv. Inc., 875 F.2d 564, 572 (7th Cir. 1989) (“[T]he statutory grant of authority to the district court to issue permanent injunctions includes the power to order any ancillary equitable relief necessary to effectuate the exercise of the granted powers.”). Although the Commission routinely uses this authority in consumer protection cases, it very rarely uses it in competition cases. See FTC Policy Statement on Monetary Equitable Remedies in Competition Cases (July 25, 2003), at http://www.ftc.gov/os/2003/07/disgorgementfrn.htm (on file with the Duke Law Journal) (“[T]he commission has . . . used its monetary remedial authority [of disgorgement and restitution in the competition area] sparingly.”). In theory, the Justice Department could ask the courts to read the attorney general’s authorization to seek injunctions, 15 U.S.C. §§ 4, 25 (2000), as empowering courts to use equitable powers to award money, but it has never done so. The Sherman Act expressly authorizes forfeiture of property owned pursuant to an illegal conspiracy, 15 U.S.C. § 6 (2000), but the DOJ rarely invokes this power, ANTITRUST LAW DEVELOPMENTS, supra note 10, at 756 n.208. CALKINS.DOC 06/21/04 3:59 PM 2003] ANTITRUST ENFORCEMENT 683 consumers “by providing the consumer an advocate in the enforcement process—his State attorney general.”49 The problem of governmental remedies for antitrust violations is longstanding. Unlike the states, federal enforcers almost always choose between two remedies: criminal penalties (an option only for the Justice Department) and a prospective-only injunction of limited duration.50 Although criminal penalties are increasingly serious,51 they are appropriate only in a limited range of cases.52 Federal civil remedies are intended to be preventative, not punitive.53 If the only risk associated with disobeying antitrust laws is a requirement to obey those laws prospectively, deterrence is singularly missing; on the other hand, a heavy-handed, regulatory decree may harm consumers by chilling future competition and driving up future expenses. The Hart-Scott-Rodino Act anticipated that federal and state enforcers would work together so that, through the states’ use of their parens patriae authority, ill-gotten gains would be turned over to consumers and antitrust violations would be adequately deterred through monetary transfers rather than onerous decrees.54 49. H.R. REP. NO. 94-499, pt. 1, at 4 (1976), reprinted in 1976 U.S.C.C.A.N. 2572, 2574. 50. ERNEST GELLHORN & WILLIAM E. KOVACIC, ANTITRUST LAW AND ECONOMICS IN A NUTSHELL 450–52 (4th ed. 1994). 51. Donald I. Baker, The Use of Criminal Law Remedies to Deter and Punish Cartels and Bid-Rigging, 69 GEO. WASH. L. REV. 693, 699–702 (2001); see R. Hewitt Pate, The DOJ International Antitrust Program—Maintaining Momentum, Remarks before the ABA Section of Antitrust Law 2003 Forum on International Competition Law 2–3 (Feb. 6, 2003) (noting that in the past seven years, the Antitrust Division has obtained thirty-eight fines of $10 million or more and six fines of $100 million or more; in the past four years, thirty defendants have been sentenced to imprisonment of a year or more), available at http://www.usdoj.gov/atr/ public/speeches/20073.pdf (on file with the Duke Law Journal). 52. See DEPARTMENT OF JUSTICE, ANTITRUST DIVISION MANUAL § III-16 (3d rev. ed. 2002) (“In general, current Division policy is to proceed by criminal investigation and prosecution in cases involving horizontal, per se unlawful agreements such as price fixing, bid rigging and horizontal customer and territorial allocations.”), available at http://www.usdoj.gov/atr/foia/divisionmanual/ch3.pdf (on file with the Duke Law Journal). 53. See, e.g., FTC v. Ruberoid Co., 343 U.S. 470, 473 (1952) (“Orders of the Federal Trade Commission are not intended to impose criminal punishment or exact compensatory damages for past acts, but to prevent illegal practices in the future.”); cf. FTC v. Febre, 128 F.3d 530, 537 (7th Cir. 1997) (approving disgorgement because it was remedial and not punitive); DEPARTMENT OF JUSTICE, supra note 52, at IV-51 (“In general, adequate relief in a civil antitrust case is relief that will (1) stop the illegal practices alleged in the complaint, (2) prevent their renewal, and (3) restore competition to the state that would have existed had the violation not occurred.”), available at http://www.usdoj.gov/atr/foia/divisionmanual/ch4.pdf (on file with the Duke Law Journal). 54. H.R. REP. NO. 94-499, pt. 1, at 4, 17 (1976), reprinted in 1976 U.S.C.C.A.N. 2572, 2573– 74, 2586–87; cf. 15 U.S.C. § 15f (2000) (requiring the U.S. Attorney General to notify states of CALKINS.DOC 06/21/04 3:59 PM 684 DUKE LAW JOURNAL [Vol. 53:673 The states not only have the assignment and authority to transfer ill-gotten gains to consumers; they also have the experience. As is set out below in Section C.3, state attorneys general have used their parens patriae authority and state statutes to provide substantial monetary relief for consumers. States now have both the tools for delivering compensation to consumers, as well as the experience in using these tools.

### 1NC – Adv CP

#### The United States Department of Agriculture should:

* Reallocate 50% of Environmental Quality Incentives Program funding to pasture-based livestock, dairy, and poultry
* Prohibit issuance of Farm Service Agency loans to Concentrated Animal Feeding Operations and require full environmental review for all FSA loans.

#### The United States Environmental Protection Agency should:

* Require fertilizer producers to meet efficiency levels where more phosphorus and nitrogen is available to crops rather than lost to the environment.

#### The USDA props up factory farms through loans and funding—reversing support opens resources for independent farms

Lilliston 21 [Ben Lilliston, Director of Rural Strategies and Climate Change, "What the USDA could do on climate", 5/11/21, https://www.iatp.org/what-usda-could-do-climate]

In several ways, the USDA props up a damaging factory farm system of animal and dairy production, which the EPA has identified as a major source of rising agriculture sector emissions. Emissions related to manure management have risen 66% since 1990, and the majority of this increase is due to the shift toward larger dairy cattle and swine CAFOs, according to the EPA. These factory farms rely on heavily fertilized feed grains and the storage and application of liquified manure, while undercutting small and medium-sized producers in the market. EQIP was designed to provide cost-share and incentive payments to farmers to address natural resource concerns on their farms, and it has been used by hundreds of thousands of farmers nationwide to make environmental improvements that benefit the land, family farm operations and their communities. Unfortunately, the 2002 Farm Bill revised EQIP to allow CAFOs to access the program’s funding. USDA should reallocate the 50% of EQIP funding for livestock production to support more sustainable pasture-based livestock, dairy and poultry operations by providing technical assistance, outreach and more robust payments to producers seeking to initiate, improve or transition to grass-based operations.

Many CAFOs around the country would not exist without Farm Service Agency (FSA) guaranteed loan support. Loans supporting CAFOs have come at the expense of support for independent farmers and ranchers who are protecting rural waterways, air and the climate. USDA should explore approaches to limit or prohibit issuance of any direct or guaranteed farm ownership or operating loans for the construction or expansion of a specialized hog or poultry production facility. At a minimum, USDA should require a full environmental review under the National Environmental Policy Act, including implications for the climate, for any FSA loans for new or expanding mid-sized CAFOs.

#### CAFÉ style regulations solve—drive fertilizer efficiency improvements by targeting suppliers, not farmers

Kanter 19 [David Kanter, Assistant Professor of Environmental Studies, New York University, "A new way to curb nitrogen pollution: Regulate fertilizer producers, not just farmers", 1/17/19, https://theconversation.com/a-new-way-to-curb-nitrogen-pollution-regulate-fertilizer-producers-not-just-farmers-106291]

To understand what an industry-focused approach might look like, we turned to U.S. corporate average fuel efficiency (CAFE) standards. CAFE regulations, which were introduced in response to high gas prices during the 1973 Arab oil embargo, require motor vehicle manufacturers to meet rising fuel efficiency targets over time, measured in miles per gallon for new vehicles.

Instead of forcing over 200 million drivers to limit their mileage, this approach targets car manufacturers and ensures that the U.S. vehicle fleet becomes more fuel-efficient over time. The Trump administration is currently seeking to freeze CAFE standards instead of implementing an increase negotiated under President Obama, but it is not contesting the basic idea of making manufacturers responsible for vehicle fuel economy.

This approach could be applied to fertilizer in at least two ways. First, suppliers could be required to increase sales of more environmentally friendly fertilizers as a percentage of total sales. Second, their products could be required to achieve a specific performance level where more nitrogen is available to crops rather than lost to the environment.

Both approaches would share the burden of improving nitrogen management across farmers and the fertilizer industry. They also would give manufacturers incentive to develop more effective options.

Benefits for farmers, industry and the environment

We evaluated how such an approach could work on 25 million acres of U.S. corn farmlands where nitrogen application rates are especially excessive. To estimate potential impacts, we compared three policy scenarios that required farmers to use environmentally friendly forms of nitrogen for either 12, 30 or 50 percent of their total applications by 2030.

In our most ambitious scenario, we calculated that farmers’ fertilizer costs would rise. However, this increase would be more than offset by higher revenue from increased corn yields, leading to total nationwide gains of US$300 million by 2030. Industry profits would increase by over $150 million during the same period due to increased sales of more environmentally friendly fertilizers, which generate higher profit margins than traditional fertilizers. And the policy would produce $8 billion in environmental benefits by 2030 due to avoided damage costs from nitrogen pollution, dwarfing the impacts on farmers and industry.

### 1NC – Politics DA

#### Debt limit and government funding will pass now—everything else is delayed

BRESNAHAN 9/15 [JOHN BRESNAHAN, ANNA PALMER AND JAKE SHERMAN, Punchbowl News Legislataive Outlook 9/15, https://email.punchbowl.news/t/ViewEmailArchive/t/E48C6AF0C3714E452540EF23F30FEDED/C67FD2F38AC4859C/]

As we’ve been writing for you in Punchbowl News AM, we’re in the middle of the busiest legislative period in years. September has a stunning number of fiscal and legislative deadlines. The biggest of these, of course, is the end of the fiscal year on Sept. 30. This issue has become caught up in the debt-limit debate as Democrats plan to attach a debt-limit increase to a short-term funding bill. Republicans have vowed to oppose this move, raising the risk for the two sides to blunder into a government shutdown or debt crisis.

Suddenly, the Democrats’ $3.5 trillion reconciliation package and the $1 trillion bipartisan Senate infrastructure bill -- long the top priority in D.C. -- are taking a back seat to the meat and potatoes of governing. It now seems at least somewhat likely that the “Build Back Better” agenda -- made up of infrastructure and social safety net measures proposed by President Joe Biden -- could be delayed until later this fall.

One theory among Democrats is that Republicans will cave -- if not initially, then after a brief government shutdown or debt default scare during which the Democrats win the political argument that the GOP is an irresponsible partner in governing. Good luck getting someone to say that on the record, but it’s the reality we hear privately in the Capitol.

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#### The plan forces months of investigation and days of floor time. Unrelated gripes and poison pill amendments compound the link.

Brody 6-24, [Ben Brody (@ BenBrodyDC) is a senior reporter at Protocol, Sweeping tech antitrust bills advance, but opposition is louder too, 2021, https://www.protocol.com/theranos-trial-erika-cheung]

A House committee has advanced its sweeping tech antitrust package — and the political and corporate forces opposing it made clear they won't go quietly even as Congress wrestles with how to push back against consolidation.

During a two-day session that began Wednesday morning, went until dawn Thursday, and picked up again a few hours later, members of the House Judiciary Committee bickered about censorship and critical race theory, cited concerns about Chinese tech and scrambled traditional political alliances.

Despite opposition from both some Republicans and some Democrats on the panel, the committee eventually got around to sending all six of the bipartisan bills that emerged from its months-long investigation of Apple, Amazon, Facebook and Google to the House floor.

The package of bills is "going to make a real difference in the lives of small businesses, entrepreneurs, our economy broadly," said Rep. David Cicilline, who led the investigation and shepherded the bills as head of antitrust subcommittee.

For months, tech antitrust has been gaining new momentum in Washington, with a roster of Republicans and Democrats in an uneasy alliance to explore potential reforms. But since the introduction of the bills earlier in June, some members of Congress have stepped forward to say the new era of antitrust aimed at Big Tech is going too far. In some cases, the number of lawmakers could signal trouble for the bills, and the ongoing debates may yet shape the scope of the anti-monopoly moment.

The most aggressive of the six bills could force major tech companies to spin off certain business lines. Others would force Big Tech to share the data that can help upstarts compete, prompt the companies to deal more equitably with those rivals or slow the mergers that help the companies grow.

Throughout the marathon markup, four distinct sets of voices emerged: groups of Democrats in support and in opposition, and groups of Republicans likewise in both camps.

Core Democrats on the committee, including Cicilline, successfully pushed the bills through with help from a group of Republicans who often claim Big Tech silences conservatives and portray powerful companies as a threat to small businesses and consumers.

A bigger group of Republican members, led by Rep. Jim Jordan, expressed their party's traditional skepticism of expanded antitrust enforcement as a government power grab on innovation to push back unsuccessfully against the bills. They often sidelined the debate with claims of censorship, debates about Section 230 and attacks on critical race theory. They were joined in opposition by a small group of Democrats, mostly from California, who said they shared concerns about competition in tech, but disagreed with the bills.

"This bill would essentially, metaphorically, take a grenade and just roll it into the tech economy," Rep. Zoe Lofgren said on Thursday, referring to the bill that allows government enforcers to target "conflicts of interest" arising when Big Tech companies both operate platforms and also participate on them, such as Amazon competing with its own marketplace merchants. Lofgren, a Bay Area Democrat, repeatedly cited the jobs the companies provide as she sought to scale the bills back during the committee's slog through them.

Some moderate Democrats had already been echoing the companies' alarm in a way that could imperil the package in a House floor vote.

"The scope and impact of these bills could have a tremendous impact on the products and services many American consumers currently enjoy and the competitiveness of our innovation economy," said a letter from the leaders of the New Democrat Coalition, which represents nearly 100 lawmakers who adhere more to the political center.

It's not clear how many House Democrats fully agree with the letter, but Democrats control the House narrowly and can spare just a handful of votes before they start needing Republican votes to pass bills.

Big Tech firms and their Washington trade groups spent the days leading up the markup saying the bills would destroy conveniences such as Google Maps or Amazon Prime shipping. One group compared the bills to China's centralized, authoritarian economy. The U.S. Chamber of Commerce, Washington's largest pro-business trade group, warned of "dangerous consequences for America." And Apple CEO Tim Cook personally lobbied House Speaker Nancy Pelosi, she said on Thursday. He had told her they were rushed and would hurt consumers, according to the New York Times.

"If you have a substantive concern, put it forth as Congress works its will," Pelosi said she told Cook.

Tech or antitrust?

The scope of lawmakers' ongoing work on the bills is in some ways still up for debate. On the Senate side, despite similar bipartisan frustrations with Big Tech, the leaders of the antitrust subcommittee have aimed for more general reform of the competition laws. Although many proposals might particularly touch on tech, they come at a moment when advocates, lawmakers and others are also concerned about consolidation in health care, agriculture, airlines, telecommunications and other sectors.

The Senate approach seemed to dribble into some of House's debates on its tech-specific bills: Several times, skeptics suggested not that the bills should be more gentle, but that they should potentially be more broad.

"I think that all of us need to ask the question of, are we looking at too few companies?" said Rep. Darrell Issa, a California Republican, suggesting that the bill on data sharing should apply to Microsoft — after days of questions about whether the bills would, or should, apply to the software giant. (The markup began one day after Microsoft became the second U.S. company, after Apple, to pass $2 trillion in valuation.)

At one point, Republicans suggested Microsoft had written the definitions in a bill that excluded it from being covered. Later, Rep. Pramila Jayapal, the Washington state Democrat leading the separations bill, said the proposal does in fact did cover the company, which lies just outside her district.

Other lawmakers said they wanted the bills to apply even more broadly, voting for an amendment from Lofgren that would extend the data bill to a larger group of companies worth over $250 billion, including credit card companies, Walmart and other firms.

Lofgren denied that her amendment was a so-called poison pill aimed at killing the bill, although at least one lawmaker, Republican Rep. Chip Roy, said he believed it was. Outside groups supportive of Cicilline's bills also noted that broader bills would almost certainly attract even more corporate opposition and could give a broader range of lawmakers pause.

"It's a poison pill," said Sally Hubbard, director of enforcement strategy at Open Markets Institute. Hubbard, who has written about consolidation across the economy, worked with the House probe. She agreed the panel should "address the crisis of concentration across the entire economy" eventually, but said for now it should focus on the four companies it has already dug into.

#### Agenda change has a cascading effect

Joly 19, [Jeroen Joly is a Doctor Assistant at Universiteit Gent, Punctuated equilibrium theory and foreign policy, The research for this chapter was financially supported by the French Ministry of the Armed Forces, Directorate General for International Relations and Strategy (DGRIS), https://www.researchgate.net/profile/Jeroen\_Joly/publication/331073786\_Punctuated\_equilibrium\_theory\_and\_foreign\_policy/links/5c66ec3092851c1c9de446f2/Punctuated-equilibrium-theory-and-foreign-policy.pdf]

Further Theorization of Existing Concepts

Finally, agenda-setting scholars have continued to improve our understanding of some mechanisms and key concepts of PET. Several agenda-setting studies, for example, examined how friction and cascading contribute to the typical pattern of policy punctuations. Cascading is best understood as a self-reinforcing process of positive feedback whereby attention from one actor generates attention from another actor, which, again, draws even more attention from the initial actor, overthrowing the existing friction mechanisms (Jones and Baumgartner 2005; Walgrave and Vliegenthart 2010). Looking at mass media and parliament, Walgrave and Vliegenthart (2010) found friction and cascading to operate independently from each other to create punctuations, and showed under which conditions these mechanisms are more likely to occur.

The notion of cascading closely relates to the wider agenda-setting literature examining how attention from one actor influences that of another. We know, for example, that political parties heavily influence each other regarding the issues they focus on in parliament (Vliegenthart et al. 2011). Several studies have also confirmed the mutual influence between news media, parliament and government influence in the issues they focus on (for a comprehensive review of the literature on the media’s influence on parliament and government, see Van Aelst and Walgrave (2016) and Walgrave et al. (2006)), also for foreign policy issues (Edwards and Wood 1999; Wood and Peake 1998).

#### Debt default is the easiest way to wreck the US economy—ruins the US dollar and financial reputation

Egan 9/8 [Matt Egan is an award-winning reporter at CNN, covering business, the economy and financial markets across CNN's television and digital platforms, "'Financial Armageddon.' What's at stake if the debt limit isn't raised", 9/8/21, <https://www.cnn.com/2021/09/08/business/debt-ceiling-default-explained/index.html>]

The easiest way to spark a financial crisis and wreck the US economy would be to allow the federal government to default on its debt. It would be an epic, unforced error — and millions of Americans would pay the price.

And yet that unlikely situation is once again being contemplated. If Congress doesn't raise the limit on federal borrowing the federal government will most likely run out of cash and extraordinary measures next month, Treasury Secretary Janet Yellen warned lawmakers on Wednesday.

In short, a default would be an economic cataclysm. Interest rates would spike, the stock market would crater, retirement accounts would take a beating, the value of the US dollar would erode and the financial reputation of the world's only superpower would be tarnished.

"It would be financial Armageddon," Mark Zandi, chief economist at Moody's Analytics, told CNN. "It's complete craziness to even contemplate the idea of not paying our debt on time."

But it's a crazy world.

Lawmakers in Washington are again playing chicken with America's creditworthiness. And the path to raising the debt ceiling is not clear.

Even though Congress has in the past raised the debt ceiling with a bipartisan vote, Senate Minority Leader Mitch McConnell vowed in July that Republicans will not vote to raise the debt ceiling.

JPMorgan Chase (JPM) CEO Jamie Dimon urged lawmakers not to even think about going down this path again. During a hearing in May, Dimon said an actual default "could cause an immediate, literally cascading catastrophe of unbelievable proportions and damage America for 100 years."

'Irreparable damage'

In her letter to Congress, Yellen said history shows that waiting "until the last minute" to suspend or increase the debt limit "can cause serious harm" to business and consumer confidence, raise borrowing costs for taxpayers and hurt America's credit rating.

"A delay that calls into question the federal government's ability to meet all its obligations would likely cause irreparable damage to the U.S. economy and global financial markets," Yellen wrote.

A US default would undermine the bedrock of the modern global financial system.

"We pay our debt. That's what distinguishes the United States from almost every other country on the planet," Zandi of Moody's said.

Because of America's long track record of paying its debt, it's very cheap for Washington to borrow. But a default would force ratings companies to downgrade US debt and shatter that borrowing advantage. Markets plunged in 2011 when that debt ceiling standoff caused Standard & Poor's to downgrade America's credit rating.

Higher borrowing costs would make it much harder for Washington to borrow to pay for infrastructure, the climate crisis or to fight future recessions. And refinancing America's nearly $29 trillion mountain of existing debt would become that much more expensive. Interest expenses, which totaled $345 billion in fiscal 2020, would quickly rival what Washington spends on defense.

#### Extinction

Joshua Zoffer 20, Investor at Cove Hill Partners, Fellow at New America, JD Candidate at Yale University Law School, AB from Harvard University, “To End Forever War, Keep the Dollar Globally Dominant”, The New Republic, 2/3/2020, https://newrepublic.com/article/156417/end-forever-war-keep-dollar-globally-dominant

In early 2016, Obama Treasury Secretary Jack Lew cautioned that the dollar’s dominance as a global currency rested, in part, on the U.S. government’s reluctance to fully weaponize it. If foreign markets and governments “feel that we will deploy sanctions without sufficient justification or for inappropriate reasons,” he warned, “we should not be surprised if they look for ways to avoid doing business in the United States or in U.S. dollars.” Lew’s case stemmed from the more fundamental view that the dollar’s international role is “a source of tremendous strength for our economy, a benefit for U.S. companies and a driver of U.S. global leadership”—in other words, a role worth keeping. This view is emblematic of American financial governance since the Second World War. U.S. economic analysts, especially at the Treasury, have jealously guarded the dollar’s role and the many benefits it offers: the ability to run large deficits at low cost and disproportionate influence over the structure of the global economy, among others. Yet in their recent article in The New Republic, David Adler and Daniel Bessner argue the U.S. should abandon these advantages. In their view, the dollar’s role has encouraged American militarism and should be relinquished to curb such behavior. Dollar hegemony is not without cost, but to renounce it would be a profound mistake. Adler and Bessner’s view neglects the sizable economic benefits the dollar’s role confers on the U.S., as well as its possible use as an antidote to military adventurism. It ignores the enormous good that can be done with deficit spending, much of which has gone to the American military but could instead fund progressive programs. And it elides the inability of the U.S. and its global trading partners to shift away from dollar dominance without creating worldwide financial distress. Adler and Bessner are right that the U.S. has misused its privilege, but Washington should not abandon it; rather, American leaders should seek to transform it. Generations of American policymakers have been right to protect the dollar’s key currency role for economic reasons. Most notably, dollar hegemony affords the U.S. the ability to run large and prolonged budget and balance-of-payments deficits. The dollar represents 62 percent of allocated foreign exchange reserves, is used to invoice and settle roughly half of world trade, and accounts for 42 percent of global payments. Because governments, banks, and businesses worldwide need lots of dollars, the world market always stands ready to absorb new U.S.-dollar-denominated debt without charging higher interest rates. Adler and Bessner correctly point out that the rest of the world considers the dollar’s role as the world’s reserve currency to be an “exorbitant privilege,” a term coined in the 1960s by then French Finance Minister Valéry Giscard D’Estaing. The ability to spend beyond its means has enabled the U.S. to fund its impressive military might, whether one views that power as the fountainhead of Pax Americana or the source of illegitimate military adventurism. But these economic benefits go beyond just deficits. The demand for dollars also pushes up the dollar’s value against other currencies, enhancing American purchasing power and offering consumers access to imports on the cheap. The dollar’s role also means American firms rarely need to do business in foreign currencies, reducing transaction costs and exchange-rate risks. More broadly, America’s central economic role gives it outsize influence at crucial moments. At the height of the financial crisis that began in 2008, the Federal Reserve was able to inject vital liquidity into the global financial system by selectively offering dollar swap lines to trusted foreign central banks. Dollar hegemony enabled the U.S. to act swiftly, effectively, and on its own terms. In addition, the dollar’s role offers a potent alternative to kinetic military action as a means of pursuing foreign policy objectives. The dollar’s broad use means access to dollar liquidity—which in turn requires access to the U.S. financial system—is essential for foreign governments and businesses. For foreign banks, especially, being cut off from dollar access is essentially a death sentence. That makes sanctions that do so a powerful tool in the international arena. In 2005, for example, the U.S. used the dollar to strike a devastating blow against North Korea without firing a single shot or even formally enacting sanctions. Using authority provided by Section 311 of the Patriot Act, the Department of the Treasury crippled Banco Delta Asia, a bank accused of facilitating illegal activity by the North Korean government, by merely threatening to cut off its access to the American financial system. Deposit outflows began within days; within weeks the bank was placed under government administration to avoid a full collapse. Pyongyang was hit hard, as other banks ceased their business with it to avoid meeting the same fate. Similarly, though the Trump administration has worked hard to undo it, the Joint Comprehensive Plan of Action with Iran to limit the development of nuclear weapons was made possible, in part, by painful dollar sanctions that brought Iran to the table. Far from being a proximate cause of military conflict, the dollar’s central global role has often been used to contain adversaries without military intervention. Still, skeptics are right to point out that the dollar’s role has indirectly funded American interventionism and that dollar sanctions have been overused, provoking the ire of American allies. But these facts suggest we should use our dollar power to forge a more progressive U.S. order, not abandon the advantage altogether. America’s exorbitant privilege need not fund warships and missiles: The same low-interest borrowing could be used to fund a new universal health care system, expand access to higher education, or pursue any number of large-scale social policy objectives, including financing global public goods that no other country or consortium of countries is prepared to fund, such as climate change mitigation.

### 1NC – Agency Resources DA

#### Antitrust agencies are strapped now – every dollar counts – the aff triggers new litigation that tanks other efforts and makes enforcing the aff impossible

Nylen 20 [leah, covers antitrust and investigations for POLITICO Pro. Before joining POLITICO, Leah spent eight years covering antitrust at MLex. She has also worked for Bloomberg and Congressional Quarterly and was selected as an Abe Journalist Fellow in 2014 for a reporting project in Japan on price-fixing cartels and cartel deterrence policies. “FTC Suffering a Cash Crunch as it Prepares to Battle Facebook” https://www.politico.com/news/2020/12/10/ftc-cash-facebook-lawsuit-444468]

The agency that just launched a landmark antitrust suit to break up Facebook is so strapped for cash that its leaders have discussed shrinking their staff and warned against taking on more cases.

In a series of emails to all Federal Trade Commission staff, obtained by POLITICO, Executive Director David Robbins said the agency would face a period of “belt tightening” to cut costs — and that filing fewer cases and trimming litigation expenses must be on the table.

“[W]e will either need to bring fewer expert intensive cases or significantly decrease our litigation costs (e.g. experts, transcripts, litigation support contractors, etc.),” Robbins said in an Oct. 29 email.

The emails offer an increasingly dire portrait of the money woes facing the FTC, which has launched a record amount of litigation in the past year even as the pandemic has caused a sharp reduction in the corporate merger filing fees that normally supply about half its budget. The crunch also raises the possibility that the FTC may not have the cash it needs to win its case against Facebook, which is gearing up for an expensive fight, or to take on additional companies like Amazon.

The agency released the emails in response to a Freedom of Information Act request.

In a follow-up email on Nov. 17, Robbins told staff that the agency had frozen all promotions for the foreseeable future, along with hiring and the bonuses or additional time-off awards that the FTC normally gives out at the end of December. The FTC had asked the Office of Personnel Management — the human resources management policy shop for the federal civil service — for permission to offer buy-outs or early retirement options but was denied, he said.

“[I]t should be no secret that the agency will have to make some tough choices in an environment where we simply do not have the funds to do everything we might like to do,” Robbins said in his first email to staff about the budget situation on Sept. 29.

The FTC declined to comment Thursday on Robbins’ emails or its budget situation. But Edith Ramirez, who chaired the agency under President Barack Obama, said Robbins’ emails about the budget picture were “concerning.”

“It does not serve the public interest for the agency not to be able to bring the cases it believes should be brought because of budget limitations,” said Ramirez, now a partner at the law firm Hogan Lovells.

POLITICO reported last month that the agency brought in just $102 million in merger filing fees, or $39 million below what it had expected, during the budget year that ended Sept. 30. The FTC also received $179 million from Congress, but some Republicans have rejected Democrats’ suggestions for a sharp increase in funding to cope with the rising needs.

The FTC had an overall budget of $331 million in fiscal 2020. The government is now operating under a continuing resolution set to expire Friday, although the Senate is expected to vote to extend that deadline to Dec. 18. Those bills keep the FTC’s funding at the same level.

House and Senate negotiators are still ironing out details for a $1.4 billion omnibus spending bill to fund the government through the rest of the fiscal year.

The FTC sued Facebook in federal court Wednesday, alongside a coalition of 46 states plus Washington, D.C., and Guam. The twin complaints allege the company engaged in a “buy or bury” strategy, scooping up promising startups before they could grow into competitors and cutting off other potential rivals’ access to Facebook’s data in often successful efforts to stifle their growth.

Facebook denies the allegations and says it intends to vigorously contest the case. The company already has three high-powered D.C. law firms on retainer to aid in litigating the antitrust case: Covington & Burling and Davis Polk, both of which are well-known for their antitrust practices and boast former FTC leaders among their ranks, and the litigation powerhouse Kellogg Hansen.

The FTC would use its in-house lawyers to litigate the Facebook case, but both sides will also need to hire economic experts to help make their arguments. Those experts can charge as much as $1,350 an hour, ProPublica found in a 2016 investigation.

Facebook, which ranks 46th on Fortune’s list of the largest U.S. companies, has much deeper pockets: It brought in nearly $21.5 billion in the three months that ended on Sept. 30.

Worries about the economy or the pandemic haven’t kept the FTC from filing a record number of new cases, Chair Joseph Simons said in a speech last month, noting that the commission “had more merger enforcement actions in fiscal year 2020 than any other year in the past 20 years.” Simons, a Republican, had made bringing the Facebook case a major priority before his expected departure in the next month.

The FTC’s antitrust cases tend to require more money than its consumer protection ones because of the need for economic experts, said Ramirez, the former chair. And conduct cases require even more funds than merger challenges do, she said.

“Litigation can take years, and is typically very expensive, no question about that,” she said.

The budget crunch could hamper Democratic efforts to ramp up antitrust and privacy enforcement in President-elect Joe Biden’s administration. The FTC has spent the past year speaking to retailers that sell products on Amazon as part of an investigation into potential antitrust violations by the online retail giant, though the exact contours of its probe are unknown. The budget crunch could harm the agency’s ability to move forward with that probe if prosecutors decide a case is warranted.

Ramirez, though, said the FTC will probably find a way to press on with its work despite any budget problems.

“The agency will do its utmost to find ways to continue an active agenda despite its resource constraints,” she said.

#### Intervention in healthcare consolidation is key to innovation

Richman et. al 17 (Barak, Professor of Law, Duke University Law School; \* Elena Vidal, Professor of Strategic Management at University of Toronto, Will Mitchell, Rotman School of Business; Assistant Professor of Management, Baruch, and Kevin Schulman, College/CUNY, Zicklin School of Business; Professor of Medicine, Duke University Medical School. “Pharmaceutical M&A Activity: Effects on Prices, Innovation, and Competition” p. 798-799 <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=6441&context=faculty_scholarship>]

Perhaps even more important than the potential impact on prices, some observers and theorists suggest that M&A activity in the pharmaceutical sector might reduce innovative activity in the industry. Commentators not only worry that industry consolidation increases prices, but also that it reduces incentives to innovate.34 These commentators express concern that large pharmaceutical firms exhibited diminishing R&D productivity—producing fewer discoveries, generating less valuable discoveries, and creating discoveries that represent more incremental and duplicative innovations.35 In parallel, commentators suggest that the recent merger trend contributed to big pharma’s diminishing innovation, in part because mergers are often followed by layoffs in R&D personnel, changes in management and research priorities, and reductions in total R&D spending.36

#### Key to stop bioterror.

Poupard 11. (James Poupard received a BA in natural science from Temple University, an MS in clinical microbiology from Thomas Jefferson Medical College, and he started his PhD studies in the history of science at Bryn Mawr College and completed his PhD studies at the University of Pennsylvania. He was supervisor of clinical microbiology at the Hospital of the University of Pennsylvania and microbiology director of Bryn Mawr Hospital and later became associate professor of microbiology, pathology, and medicine at the Medical College of Pennsylvania. Pharmaceutical Industry. Encyclopedia of Bioterrorism Defense, 2nd Edition. 2011. Edited by Rebecca Katz and Raymond Zilinskas)

INTRODUCTION The pharmaceutical and biotechnology industries play an important role in providing anti-infective drugs, vaccines, and biologicals (a category of pharmaceutical products consisting not of chemical agents like drugs and not of vaccines but rather of products such as immunomodulators, interferons, and monoclonal antibodies, which are often produced in facilities similar to vaccine production lines since they are usually derived from tissue cultures or, in some cases, from organisms like modified Escherichia coli but are not classic vaccines) **for use in** responding to a bioterrorist attack. **Research, development, and production programs initiated by the pharmaceutical industry will play a key role in providing new therapeutic agents for use against potential bioterrorist threats,** and the industry will be an important element in determining future policies relating to bioterrorism defense.

#### Extinction.

Myhrvold 13 Bynathan Myhrvold, former Chief Technology Officer at Microsoft, MA and PhD from Princeton University, he held a postdoctoral fellowship at the University of Cambridge working under Stephen Hawking¶ Strategic Terrorism a Call to Action, The Lawfare Research Paper Series¶ research paper no. 2 – 2013¶ July 2013¶ <http://www.lawfareblog.com/wp-content/uploads/2013/07/Strategic-Terrorism-Myhrvold-7-3-2013.pdf>

¶ For the first time in human history, the curve of cost ¶ versus lethality has turned rapidly downward, falling ¶ many orders of magnitude in just a generation. Today, ¶ tremendously lethal technology is available on the cheap. ¶Anyone—even a stateless group—can have the deadliest weapons on earth. Several trends led to this inflection ¶ point. one is nuclear proliferation, which in recent years ¶ reached a tipping point at which access to nuclear weapons ¶ became impossible to control or limit in any absolute way. ¶ The collapse of the soviet Union scattered ex-soviet weapons across many poorly governed and policed states, and ¶ from there, the weapons may spread further into the hands ¶ of terrorists. At the same time, the set of ragtag countries ¶ that have developed homegrown nuclear devices is large ¶ and growing. The entrance to the nuclear-weapons club, ¶ once limited to a small number of sophisticated and stable ¶ countries, is now far more open.¶ It is only a matter of time before a nuclear bomb gets ¶ into the hands of a terrorist group, whether by theft or construction. A nuclear weapon smuggled into an American ¶ city could kill between 100,000 and 1,000,000 people, depending on the nature of the device, the location of ground ¶ zero, and the altitude of detonation. an optimist might say ¶ that it will take another decade for such a calamity to take ¶ place; a pessimist would point out that the plot may already ¶ be under way.¶ Chemical weapons, particularly nerve agents, are another new addition to the terrorist arsenal. Sarin, a frighteningly lethal poison discovered in 1938 and stockpiled ¶ (although never used) by the nazis, was produced and released in locations in the tokyo subway system in 1995 by ¶ aum shinrikyo, a Japanese religious cult. The attack injured ¶ nearly 3,800 people and killed 12. A botched distribution ¶ scheme in the tokyo subway spared many of the intended¶ victims; better dispersal technology would have resulted in ¶ a vastly higher death toll. ¶ Cult members had more morbid ambitions than a ¶ subway attack. They had gathered hundreds of tons of raw ¶ materials and had procured a Russian military helicopter ¶ to use in spraying the nerve agent over tokyo. Experts ¶ have estimated that aum shinrikyo had the ingredients to ¶ produce enough sarin to kill millions of people in an all-out ¶ attack. The civil war in syria, whose military is known to ¶ possess stockpiles of sarin and other chemical weapons, ¶ raises the prospect that these munitions could fall into the ¶ hands of extremists.¶ Frightening as such possibilities are, nuclear bombs ¶ and chemical agents pale in lethality when compared with ¶ biological weapons. indeed the term “weapon” is not entirely adequate because biological agents include not only ¶ pathogens that are controllable (in the traditional sense) ¶ but also those that are not.¶ even more so than with nuclear weapons, the cost ¶ and technical difficulty of producing biological arms has ¶ dropped precipitously in recent decades with the boom in ¶ industrial molecular biology. A small team of people with ¶ the necessary technical training and some cheap equipment can create weapons far more terrible than any nuclear ¶ bomb. Indeed, even a single individual might do so.¶ Ether, these trends utterly undermine the ¶ lethality-versus-cost curve that existed throughout all of ¶ human history. Access to extremely lethal agents—even to ¶ those that may exterminate the human race—will be available to nearly anybody. Access to mass death has been democratized; it has spread from a small elite of superpower ¶ leaders to nearly anybody with modest resources. Even the ¶ leader of a ragtag, stateless group hiding in a cave—or in a ¶ Pakistani suburb—can potentially have “the button.”

### 1NC – New Agency CP

#### The United States federal government should establish a purpose-built competition agency comprised of industry and subject matters experts. The agency should: -        Develop and enforce ex ante behavioral standards that establish a presumption against mergers and acquisitions among agribusiness firms. -        Enforce ex post prohibitions on that presumption

#### Only agile regulation solves the aff without undermining innovation

Wheeler 20 [Tom Wheeler, Brookings Visiting Fellow - Governance Studies, Center for Technology Innovation. Phil Verveer, Senior Fellow, Shorenstein Center on Media, Politics and Public Policy - Harvard Kennedy School. Gene Kimmelman, Senior Fellow, Shorenstein Center on Media, Politics and Public Policy - Harvard Kennedy School. “The need for regulation of big tech beyond antitrust.” 9/23/20. https://www.brookings.edu/blog/techtank/2020/09/23/the-need-for-regulation-of-big-tech-beyond-antitrust/]

The nation’s antitrust laws, developed in response to the industrial age, have become the focus of attention in the internet age. Hearings by the House Antitrust Subcommittee revealed substantial evidence of how Big Tech sustained and expanded their market dominance with anticompetitive practices. The Justice Department is reportedly preparing an antitrust action against Google. The Federal Trade Commission (FTC) is similarly reported to be preparing an action against Facebook.

Enforcement of the antitrust statutes is an important tool for the protection of competitive markets. Yet, it is a blunt instrument unable to reach many nuanced competition and consumer protection issues created by the digital economy. It is inherently uncertain in outcome, reliably lengthy in process, and an after-the-fact response rather than a broad-based set of rules.

Without a doubt, Big Tech has delivered wonderous new capabilities. However, the “move fast and break things” mantra of Silicon Valley has meant that digital companies move fast and make their own rules. Antitrust statutes reflect a time when markets were relatively stable because technology was relatively stable. Today, the rapid pace of digital technology means companies can move rapidly to advantage themselves by exploiting consumers and eliminating potential competition.

Regulation, done with agility, can be an important refinement to the blunt force of the antitrust laws while being able to protect competition and consumers alike. It is not enough, however, to re-task industrial era federal agencies to oversee the digital giants. These agencies are full of dedicated professionals, but they operate on precedents and procedures built for another era when technology and innovation moved at a slower pace. In place of such industrial era muscle memory, we need a purpose-built federal agency with digital DNA.

Congress has traditionally created new expert agencies to oversee new technology platforms. Whether the Interstate Commerce Commission (railroads), Federal Communications Commission (broadcasting), Federal Aviation Administration (air transport), Consumer Financial Protection Bureau (finance), or any other of the alphabet agencies, the precedent is clear: new technologies require specialized oversight. In our report, “New Digital Realities; New Oversight Solutions” we conclude such regulation in the digital era warrants creation of a Digital Platform Agency to establish public interest expectations that promote fair market practices while being agile enough to deal with the rapid pace of digital technology.

Such an agency should be governed by a new congressionally established digital policy built on three pillars:

Risk management rather than micromanagement: rigid industrial era utility-style regulation is incompatible with today’s rapid pace of technological change. Regulation should be based on risk-targeted remedies focused on market outcomes.

Restoration of common law principles: for hundreds of years common law has required those providing services to anticipate and mitigate harmful effects (a “duty of care”), as well as providing access to essential services (a “duty to deal”). Oversight of Big Tech need do nothing more than reinstate such expectations.

Agile regulation: in lieu of top-down dictates, the new agency should be the forum to involve the industry in developing enforceable behavioral standards similar to fire and building codes. Such codes introduce innovation-promoting agility to the oversight process while protecting consumers and competition.

The existing agencies of government are based on statutes and structures that reflect the relatively stable markets and relatively stable technology of the late industrial era. These policies and procedures, however, have been ambushed by the digital future.

The solution to the public interest challenges posed by Big Tech is to embrace its differences and enable subject matter experts to substitute the public interest for corporate interests. While antitrust enforcement is important, the companies can no longer be permitted to make their own rules. It is time for purpose-built federal oversight of the dominant force in our lives and our economy.

### 1NC – T

#### Interpretation---prohibit means to forbid a given practice---that’s distinct from restriction.

Kennard 93 – Judge, California Supreme Court

Joyce L. Kennard, THEODORE R. HOWARD et al., Plaintiffs and Appellants, v. GEORGE H. BABCOCK et al., Defendants and Respondents. No. S027061., Supreme Court of California, 1993, https://law.justia.com/cases/california/supreme-court/4th/6/409.html

As I pointed out earlier, the majority's conclusion is at odds with the great weight of authority. Also, in determining reasonableness based on the relationship between or among attorneys, the majority gives little regard to the relationship between the attorney and the client. Moreover, the majority fails to recognize that restrictive covenants are intended to and do restrict the practice of law. Rule 1-500 proscribes agreements that "restrict" the practice of law, not just those that prohibit "altogether" the practice of law. (Contra, Haight, Brown & Bonesteel v. Superior Court (1991) 234 Cal.App.3d 963, 969 [285 Cal.Rptr. 845] [rule 1-500 "simply provides that an attorney may not enter into an agreement to refrain altogether from the practice of law"].) To "restrict" means to restrain, to confine within bounds. (Webster's New Collegiate Dict. (9th ed. 1988) p. 1006.) To "prohibit" means to prevent, to [\*\*164] [\*\*\*94] forbid. (Id. at p. 940.) The terms are not synonymous.

#### Violation---exemptions based on the rule of reason means practices are not prohibited.

Skoczny 01 – Professor of law, Holder of the Jean Monnet Chair on European Economic Law at the Warsaw University Faculty of Management

Tadeusz Skoczny, “Polish Competition Law in the 1990s - on the Way to Higher Effectiveness and Deeper Conformity with EC Competition Rules,” European Business Organization Law Review, Vol. 2, Issue 3-4, September 2001, LexisNexis

Most importantly, the new Act departed from the relativity of the prohibition of dominant position abuses; as in Article 82 EC Treaty, it is now a general prohibition which does not allow for exemptions on the basis of a rule of reason. Also new is the prohibition of the abuse of dominant position by groups of undertakings, which will allow to effectively control the state and the development of competition on oligopolistic markets. The Act also eliminated the distinction between monopolistic and dominant position; in theory and in practice, it was difficult to justify the maintenance of this distinction. Therefore, the Act relates only to a dominant position, the definition of which however has been changed. According to the new Article 4 point 9, dominant position means a position "which allows [the undertaking] to prevent effective competition on the relevant market thus enabling [the undertaking] to act to a significant degree independently from its competitors, contracting parties and consumers". It is easy to notice that this definition is based on the United Brands and Hoffmann La-Roche standards. It must nevertheless be emphasised that such understanding of dominance was introduced by the AMC already in 1993; it considered dominance as the capacity to act "to a large extent independently of the competitors and clients, thus also the consumers". Thanks to the AMC's judgements also the relevant product and geographical markets are defined on the basis of the criteria of "close commodity substitutability" and "homogenous competition conditions".

#### That’s a voter for limits and ground---allowing exemptions on the rule of reason lets the aff straight turn core topic DAs and get advantages based off clarifying vague statutes.

## Environment

### 1NC—Turn

#### Small and organic farms are worse for the environment—habitat loss and nitrogen pollution.

Nordhaus 21 [Ted Nordhaus is a leading global thinker on energy, environment, climate, human development, and politics. He is the founder and executive director of the Breakthrough Institute and a co-author of An Ecomodernist Manifesto. Dan Blaustein-Rejto is the director of food and agriculture at the Breakthrough Institute, where he analyzes the economics and potential of sustainable agriculture policies and practices. He has conducted research with the Environmental Defense Fund, International Center for Tropical Agriculture, and Farmers Market Coalition. "Big Agriculture Is Best", 4/18/21, https://foreignpolicy.com/2021/04/18/big-agriculture-is-best/]

Many sustainable agriculture advocates tout the recent growth of organic agriculture as proof that an alternative food system is possible. But growing market share vastly overstates how much food is actually produced organically. In reality, organic production accounts for little more than 1 percent of total U.S. agricultural land use. Meanwhile, only a bit more than 5 percent of food sales come from organic producers, mostly because organic sales are overwhelmingly concentrated in high-value sectors of the market, namely produce and dairy, and fetch a premium from well-heeled consumers.

Moreover, organic farms, large and small, don’t actually outperform large conventional farms by many important environmental measures. Scale, technology, and productivity make good environmental sense and economic sense. Because organic farming requires more land for every calorie or pound produced, a large-scale shift to organic farming would entail converting more forest and other land to farming, resulting in greater habitat loss and more greenhouse gas emissions. And while organic farming doesn’t use synthetic pesticides or fertilizers, it often results in greater nitrogen pollution because manure is a highly inefficient way to deliver nutrients to crops.

Another benefit of large-scale U.S. farms is that because they are so efficient, economically and environmentally, they are also able to produce vastly more food than Americans can consume, making the country the world’s largest agricultural exporter as well.

That benefits the U.S. economy, of course, but it also comes with an environmental benefit for the world. In the contemporary environmental imagination, highly productive, globally traded agriculture is a bad thing—poisoning the land at home and undermining food sovereignty abroad. But in reality, a pound of grain or beef exported from the United States almost always displaces a pound that would have been produced with more land and greenhouse gas emissions somewhere else.

### Monoculture !D

#### Monoculture declining now

Neil C. Hansen 12 Associate Professor of Soil Science at Colorado State University with specialization in soil and water conservation in both dryland and irrigated crop production systems. “Research achievements and adoption of no-till, dryland cropping in the semi-arid U.S. Great Plains” Field Crops Research Volume 132, 14 June 2012, Pages 196–203

The semiarid U.S. Great Plains are a major production region for dryland wheat, with spring wheat as the dominant crop in the northern region and winter wheat in the central and southern regions. The traditional production system is a wheat–summer fallow rotation with conventional or stubble mulch tillage. No-till systems are being adopted together with more intensive crop rotations that reduce fallow frequency, increase precipitation use efficiency, reduce erosion, and improve soil properties. No-till adoption is greatest in the northern region of the Great Plains, where climate conditions are favorable for intensified, no-till crop rotations. Greater than 25% of cultivated land in the northern Great Plains is managed with no-till and adoption continues to increase. Inclusion of oilseed crops in continuous crop rotations without fallow is common. In the central Great Plains, about 20% of cultivated land is managed with no-till systems. In this area, no-till is generally associated with a 3-year rotation of winter wheat–summer crop–summer fallow (typical summer crops are maize, sorghum, sunflower, proso millet). There is much less adoption of no-till in the southern Great Plains, where production levels often fail to produce adequate crop residue to realize the benefits of no-till. In this region, tillage is often used to alleviate compaction from livestock grazing or to roughen the surface as a protection against wind erosion. However, some producers are adopting no-till systems and research suggests that potential crop yield advantages for no-till in the southern Great Plains may be of greater economic value than the value currently gained by grazing in the tilled systems. A major decision for dryland farmers in the Great Plains is whether to fallow or plant a crop. Research has evaluated relationships between stored soil moisture levels at the time of planting and the resulting crop yield as a tool to assist farmers with this decision. The relationships are useful, but they are best for crops with relatively short growing seasons. On-going research seeks to couple long-range weather forecasting with soil moisture assessments to improve the predicted yield potential for other crops. Alternative no-till crops and crop rotations are being evaluated for the potential to increase precipitation use efficiency, improve soil properties, reduced dependence on N fertilizers, adapt to climate change, and for develop alternative markets. Inclusion of pulses as green manures is of interest, but the potential benefits of these crops must be weighed together with the use of already limited water resources. Inclusion of annual forage crops can improve precipitation use efficiency and resilience to climate change in the Great Plains and these crops may help meet emerging markets for biomass based renewable energy. Sustaining crop production in the Great Plains is highly dependent on reducing soil erosion, maintaining soil organic matter, and economic profitability.

### 1NC—AT: Phosphorus

#### No phosphorus shortages—enough for 100s of years

Bennett 20 [CHRIS BENNETT, "Phosphorus Time Bomb for Agriculture? Myth and Reality", 8/25/20, https://www.agweb.com/news/crops/crop-production/phosphorus-time-bomb-agriculture-myth-and-reality]

Whether a question of Peak Oil or Peak Phosphorus, “Peak” debates revolve around a simplified, general premise: After half the supply of a given resource is gone, the remainder produces an economic melee. The advent of fracking booted Peak Oil proponents off center stage, and Peak Phosphorus advocates (most visibly financier Jeremy Grantham) have been countered by the International Fertilizer Development Center’s (IFDC) report and estimate of plentiful rock phosphate reserves capable of producing fertilizer for the next several hundred years.

Stephen Jasinski, USGS mineral commodity specialist, calls the reaction to Peak Phosphorus, “exaggerated,” and says, “There are no imminent shortages of phosphate rock. Media coverage seems to have slowed down over the past several years.”

Jasinski also describes global supply: “World consumption of marketable phosphate rock was about 240 million metric tons in 2019. U.S. consumption of phosphate rock in 2019 was about 25 million metric tons. World reserves are about 69 billion metric tons. World resources are about 300 billion tons.”

Further, a USGS Mineral Commodity Summary (January 2020) prepared by Jasinski is blunt: “There are no imminent shortages of phosphate rock.” Significantly, the Summary’s concluding text is equally blunt: “There are no substitutes for phosphorus in agriculture.”

### 1NC—AT: Bees

#### Bees are doing fine—viruses, not pesticides, are the largest threat

Hageman 20 [Markie Hageman, "Are honey bees endangered? Here’s the truth of the matter", 6/24/20, https://www.agdaily.com/crops/are-honey-bees-endangered/]

Although, the honey bee isn’t on the endangered list, many are still under the impression that they soon will go extinct. Since this species is known for its role in agriculture, the blame is often placed on the ag industry for Colony Collapse Disorder, specifically related pesticide use. This blame is misguided, however, according to many reports.

An extensive analysis done by The Washington Post and published in 2017 show bee numbers sitting at close to historical highs. The research showed that since 2006, when CCD was identified, the number of honeybee colonies has risen, from 2.4 million that year to 2.7 million in 2014.

While some loss in individual bee numbers over winter months is expected, The Washington Post’s report came on the heels of another major announcement related to Colony Collapse Disorder: The rate of loss among honey bee colonies reached its lowest point in years.

Data from the U.S. Department of Agriculture’s National Agricultural Statistics Service point to general strengths in honey bee colonies: “In 2017, the United States had 2.88 million honey bee colonies, down 12 percent from the record high 3.28 million colonies in 2012, but down less than 1 percent from 2007,” the agency said.

Adding context to the data compiled independently from The Washington Post and the USDA, the American Council on Science and Health has stated: “CCD, which lasted for about 3-5 years, is a sudden phenomenon in which the majority of worker bees mysteriously disappear. That problem, which showed up most dramatically in California, abated by 2011.”

Part of the reason public awareness of Colony Collapse Disorder was amplified was the start and alarming number of hives that were not surviving the winter in the mid- to late-2000s — a number that hovered around 60 percent.

According to the U.S. Environmental Protection Agency, “The number of hives that do not survive over the winter months — the overall indicator for bee health — has maintained an average of about 28.7 percent since 2006-2007 but dropped to 23.1 percent for the 2014-2015 winter. While winter losses remain somewhat high, the number of those losses attributed to CCD has dropped from roughly 60 percent of total hives lost in 2008 to 31.1 percent in 2013.”

Since that time, CCD is not even mentioned as a factor by the EPA in winter hive losses. There do not appear to be enduring declines in colony numbers.

Chronic bee paralysis

A growing threat to bees in some regions is chronic bee paralysis, a disease caused by a virus known as chronic bee paralysis virus (CBPV), where infected bees die within a week. This leads to piles of dead bees just outside honey bee hives and whole colonies are frequently lost to the disease.

Chronic bee paralysis symptoms include abnormal trembling, an inability to fly, and the development of shiny, hairless abdomens.

Researchers in the United Kingdom found that the number of honey bee colonies affected with chronic bee paralysis rose exponentially between 2007 and 2017. Data collected from visits to over 24,000 beekeepers confirmed that while chronic bee paralysis was recorded only in Lincolnshire in 2007, a decade later it was present in 39 of 47 English and six of eight Welsh counties. The scientists also found that clusters of chronic bee paralysis, where disease cases are found close together, were becoming more frequent.

### 1NC – Circumvention

#### Antitrust fails – history, resources, and political opposition

Jones 20 [Alison Jones, Professor of Law at King's and a solicitor at Freshfields Bruckhaus Deringer LLP. William E. Kovacic, George Mason University Foundation Professor at the George Mason University School of Law. “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy.” 2020. https://journals.sagepub.com/doi/pdf/10.1177/0003603X20912884]

The proponents of change have set out a breathtaking agenda for reform. The various papers and reports are powerfully reasoned and argued but devote relatively little attention to the question of how their proposals can be achieved successfully. Rather many of them seem to be predicated on the assumption that any legislative changes required can be introduced rapidly and that the new, more aspiring, program can be driven home straightforwardly by agencies led by courageous leaders and supported by a larger staff that shares the vision for fundamental change.

The discussion below, and history, seems to indicate, however, that more courage and more people will not necessarily overcome the implementation obstacles that stand in the way of a program that requires the rapid prosecution of a large number of complex cases against well-resourced and powerful companies. Indeed, the criticisms levied at the current system, the proposals for more effective enforcement and reform, and the scale of the action being demanded bear some resemblance to those that led to a more re-invigorated and aggressive antitrust enforcement policy in the 1960s and early 1970s. For example, at that time complaints that the FTC was in decay, was obsessed with trivial cases and failing to address matters of economic importance, anticompetitive conduct, and rising concentration,77 led the FTC to embark on a new, bold, and astoundingly broad enforcement program.78 In an effort to meet criticisms of it as a shambolic and failing institution, the FTC sought to upgrade its processes for policy planning, made concerted efforts to improve its human capital in management and case handling, and sought to improve substantive processes and the quality of its competition and consumer protection analysis.

In the end, FTC’s efforts to improve capability proved insufficient to support the expanded enforcement agenda, partly because the Commission failed to formulate an adequate plan to overcome the full range of implementation obstacles. The FTC seriously overreached because it did not grasp, or devise strategies to deal with, the scale and intricacies of its expanded program of cases and trade regulation rules, the ferocious opposition that big cases with huge remedial stakes would provoke from large defendants seeking to avoid divestitures, compulsory licensing, or other measures striking at the heart of their business, and the resources required to deliver good results. The Commission lacked the capacity to run novel shared monopoly cases that sought the break-up of the country’s eight leading petroleum refiners and four leading breakfast cereal manufacturers79 and simultaneously pursue an abundance of other high stake, difficult matters involving monopolization, distribution practices, and horizontal collaboration. The FTC also overlooked swelling political opposition, stoked by the vigorous lobbying of Congress, that its aggressive litigation program provoked.80

New legislation envisaged by reform advocates could ease the path for current government agencies seeking to reduce excessive levels of industrial concentration by arresting anticompetitive behavior of dominant enterprises (through interim and permanent relief) and by blocking mergers that pose incipient threats to competition. It seems clear, however, that such dramatic legislative proposals are likely to be fiercely contested through the legislative process and so will take time, and be difficult, to enact. Further, even if armed with a more powerful mandate, the DOJ and the FTC will still have to bring what are likely to be challenging cases applying the new laws (see Section F). The adoption, setting up, and bedding in of new legislation or regulatory structures and bodies is therefore unlikely to happen very quickly and is, consequently, unlikely to meet the demands of those seeking urgent and immediate action now.

These difficulties suggest that for the near future, at least, the agencies will have to achieve successful extensions of policy mainly through launching themselves into a number of lengthy, complex investigations and litigation based on the current regime. This means establishing violations under existing judicial interpretations of the antitrust laws and making a convincing case for the imposition of effective remedies, including structural relief.

### 1NC – I/D – Warming

#### Warming doesn’t trigger extinction

* peer-reviewed journal shows IPCC exaggeration
* history proves resilience
* no extinction- warming under Paris goals
* rock breaking strategy could offset warming

IBD 18 [Investors Business Daily, Citing Study from Peer reviewed journal by Lewis and Curry, “Here's One Global Warming Study Nobody Wants You To See”, 4/25/18, https://www.investors.com/politics/editorials/global-warming-computer-models-co2-emissions/]

Settled Science: A new study published in a peer-reviewed journal finds that climate models exaggerate the global warming from CO2 emissions by as much as 45%. If these findings hold true, it's huge news. No wonder the mainstream press is ignoring it.

In the study, authors Nic Lewis and Judith Curry looked at actual temperature records and compared them with climate change computer models. What they found is that the planet has shown itself to be far less sensitive to increases in CO2 than the climate models say. As a result, they say, the planet will warm less than the models predict, even if we continue pumping CO2 into the atmosphere.

As Lewis explains: "Our results imply that, for any future emissions scenario, future warming is likely to be substantially lower than the central computer model-simulated level projected by the (United Nations Intergovernmental Panel on Climate Change), and highly unlikely to exceed that level.

How much lower? Lewis and Curry say that their findings show temperature increases will be 30%-45% lower than the climate models say. If they are right, then there's little to worry about, even if we don't drastically reduce CO2 emissions.

The planet will warm from human activity, but not nearly enough to cause the sort of end-of-the-world calamities we keep hearing about. In fact, the resulting warming would be below the target set at the Paris agreement.

This would be tremendously good news.

The fact that the Lewis and Curry study appears in the peer-reviewed American Meteorological Society's Journal of Climate lends credibility to their findings. This is the same journal, after all, that recently published widely covered studies saying the Sahara has been growing and the climate boundary in central U.S. has shifted 140 miles to the east because of global warming.

The Lewis and Curry findings come after another study, published in the prestigious journal Nature, that found the long-held view that a doubling of CO2 would boost global temperatures as much as 4.5 degrees Celsius was wrong**.** The most temperatures would likely climb is 3.4 degrees.

It also follows a study published in Science, which found that rocks contain vast amounts of nitrogen that plants could use to grow and absorb more CO2, potentially offsetting at least some of the effects of CO2 emissions and reducing future temperature increases.

#### No modelling—industrialized ag is an ingrained part of US foreign and development policy. Everyone else has already adopted it or been forced out of the market

#### Chinese coal is a massive alt cause

Inskeep 19 [Steve Inskeep, Ashley Westerman, "Why Is China Placing A Global Bet On Coal?", 4/29/19, https://www.npr.org/2019/04/29/716347646/why-is-china-placing-a-global-bet-on-coal]

China, known as the world's biggest polluter, has been taking dramatic steps to clean up and fight climate change.

So why is it also building hundreds of coal-fired power plants in other countries?

President Xi Jinping hosted the Belt and Road Forum in Beijing over the weekend, promoting his signature foreign policy of building massive infrastructure and trade links across several continents.

The forum, attended by leaders and delegates of nearly 40 countries, came amid growing criticism of China's projects, including their effect on the environment.

Xi took the highly unusual step, for him, of meeting with international journalists, during which he repeated the slogan that he is committed to "open, clean and green development."

Yet China's overseas ventures include hundreds of electric power plants that burn coal, which is a significant emitter of the carbon scientifically linked to climate change. Edward Cunningham, a specialist on China and its energy markets at Harvard University, tells NPR that China is building or planning more than 300 coal plants in places as widely spread as Turkey, Vietnam, Indonesia, Bangladesh, Egypt and the Philippines.

Days before the forum with its "clean and green" theme, the latest Chinese-built coal plant opened in Pakistan.

The plants are significant investments at a time when most nations of the world, including China, have committed to fighting climate change. "When you put money down and put steel into the ground for a coal-fired power plant," says Cunningham, "it's a 40- or 50-year commitment."

In one sense, China's push for coal is not surprising: China knows how to build coal plants. It is the world's largest coal consumer, drawing more than 70 percent of its electricity from coal, according to the U.S. Energy Information Administration.

But facing overwhelming pollution levels, China has restrained the growth of its coal industry — at home.

For many years, four huge electric power plants burned coal within the capital city, Beijing, contributing to the city's choking smog. But within the past four years, all four stopped burning coal.

A visit by NPR on Saturday to one of the plants, the Huaneng Beijing thermal power station, showed that it now burns natural gas — still a contributor to climate change but overall considered cleaner.

"The air quality is much better than before," said Ma Fei, who owns Kelaicai restaurant near the power plant. "[It's] much better for my health."

While closing old plants, China's leaders have limited the building of new ones. The government has promoted wind and solar energy — it has produced so many solar panels that it has reduced prices for them worldwide, which analysts contend has contributed to the spread of solar energy in the United States.

But the Chinese engineers, metalworkers and laborers who built coal-fired power plants must be kept employed. And, Cunningham says, "many are going abroad." They are building energy projects for developing nations, largely as part of China's Belt and Road Initiative.

China has made more than $244 billion in energy investments abroad since 2000, much of it in recent years, according to a Boston University database. The bulk is in oil and gas, but more than $50 billion has gone toward coal. A report in January found that more than one-quarter of coal plants under development outside China have some commitment or offer of funds from Chinese financial institutions.

"China has done a very good job of emphasizing the target of greening the Belt and Road," said Courtney Weatherby, a Southeast Asia analyst at the Stimson Center in Washington, D.C. "But it's not clear when you look at the actual projects that China is funding that they are truly green."

The Huaneng Beijing Terminal Power Plant in Chaoyang district of the Chinese capital stopped burning coal in 2017. It went online in 1999 and, according to state-run media, had a capacity of 845,000 kilowatts.

## Farming

### 1NC—AT: Big Farms Bad

#### Food processors are the problem—not producers or landowners. The aff pushes out the only potential for continued American farming

* Processors—not producers are the problem because they take an outsized share of profits
* But—bigger farms are bigger. They have an incentive to invest in new tech which improves efficiency and lowers environmental harms. Small farms comparatively invest less
* Big ag also is better for the environment—they’re easier to target and responsive to consumer concerns. Deforestation pledges in Brazil prove.

Nordhaus 21 [Ted Nordhaus is a leading global thinker on energy, environment, climate, human development, and politics. He is the founder and executive director of the Breakthrough Institute and a co-author of An Ecomodernist Manifesto. Dan Blaustein-Rejto is the director of food and agriculture at the Breakthrough Institute, where he analyzes the economics and potential of sustainable agriculture policies and practices. He has conducted research with the Environmental Defense Fund, International Center for Tropical Agriculture, and Farmers Market Coalition. "Big Agriculture Is Best", 4/18/21, https://foreignpolicy.com/2021/04/18/big-agriculture-is-best/]

Much of the criticism of big agriculture focuses on the monopolistic power of food processors like Archer-Daniels-Midland and Tyson Foods. But the bigger problem is arguably that there is too little vertical integration of food processors with food producers and landowners. Today, big food processors are able to take an outsized share of the profits from the food system while pushing the economic risk onto those further down the supply chain. Many large farmers, meanwhile, lease rather than own much of the land they farm, with much of America’s farmland owned by absentee landowners.

The resulting economic arrangements are rife with what economists call principal-agent problems. Many farmers don’t have incentives to invest in the long-term productivity of the land they farm because they don’t own it nor do they have the means to invest in cutting-edge capital equipment and technology.

These problems are exacerbated by the fact that many farms are family-owned but have no prospect for generational succession, as children continue to choose to pursue greener non-pastures off the farm. So for farmers who don’t own the land they farm, don’t have heirs to pass the farm on to, or both, investing time and money in technology and practices to improve land productivity over the long term does not make sense.

The prospect that a few large corporations could ultimately not only process but own much of America’s farmland and grow much of its food will strike many as fundamentally wrong. But it is likely where we are heading one way or another, as farming has always been a tough business to stay in, much less get into, and fewer and fewer Americans have any interest

in doing so.

Vertical integration might bring significant benefits. Big agricultural corporations would have significantly greater incentive to invest resources into the long-term improvement of the land they own and farm, implement evidence-based farming practices, and spend on capital-intensive technology.

Large companies are also, counterintuitively, more responsive to demands for social responsibility, not less so. It is large, multinational corporations, not smaller regional operators, for instance, that have been willing to make zero-deforestation commitments in places like Brazil. That’s because, even though they can leverage their size and economic power to thwart reform, they are also easier to target, pressure, and regulate than more decentralized industries.

For these reasons, a food system that is bigger, more consolidated, and more vertically integrated might actually deliver better social and environmental outcomes than the one we have today. Either way, big farms and big agriculture are here to stay. They are a fundamental feature of global modernity, not a conspiracy by capitalists and corporations to poison people or the land.

Ultimately, improving the U.S. food system will require, first, appreciating it for the social, economic, and technological marvel that it is. It feeds 330 million Americans and many millions more around the world. It has liberated almost all of us from lives of hard agricultural labor and deep agrarian poverty. It has allowed forests to return across much of the United States while also sparing forests in many other parts of the world. It does all this while being extraordinarily efficient environmentally. A better food system will build on these blessings, not abandon them.

### 1NC – I/D – Food Resilient

#### Adaptation makes agriculture resilient

* plants are being modified to be successful in droughts
* ocean and island crops are resilient to rising sea levels and salinity
* livestock resistant to diseases
* livestock prepared for droughts

FAOUN 19 [FAO COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE @ UN, “THE STATE OF THE WORLD’s BIODIVERSITY FOR FOOD AND AGRICULTURE”, https://www.courthousenews.com/wp-content/uploads/2019/02/fao-report.pdf]

Maintaining, using and developing adapted genetic resources A number of countries note the significance of well-adapted species, varieties or breeds in terms of enhancing resilience to climate change. Several specific examples of how such components of BFA have been utilized in adaptation efforts are provided. For example, Papua New Guinea mentions the distribution to farmers of crop accessions identified in ex situ collections as being tolerant to salinity (taro and cassava varieties), drought (cassava, banana and aibika13 varieties) and flooding (taro and banana varieties). It notes that this activity proved very useful in sustaining food security during the drought that struck the country in 2015 and 2016,14 when 40 percent of the population was seriously affected. Panama reports that its criollo livestock breeds have a combination of characteristics

that are not found in any introduced breeds, including high fertility rates, longevity, resistance to parasites and diseases and good grazing abilities, including the ability to make use of poor-quality pastures. It notes, in particular, the potential of two locally adapted cattle breeds, the Guaymi and the Guabal^, in climate change adaptation. It also mentions, among its climate change adaptation measures, the development of maize varieties and hybrids that are tolerant of drought and diplodia rot (a fungal disease) and that grow well in soils with low nitrogen levels. With regard to choices at species level, Sudan reports that some of its livestock keepers have replaced cattle and sheep with dromedaries and goats, as the latter species are better suited to a climate change-affected environment that is more prone to droughts.

Some countries note the significance of participatory breeding programmes in the context of climate change. For example, Oman mentions that local wheat and barley landraces have been improved through such programmes to obtain varieties that have shorter growing seasons and can be managed more flexibly, especially during years with prolonged periods of extreme heat and limited water availability. Ensuring farmers have access to the adapted germplasm they need is another issue highlighted. Nepal, for example, mentions the role of community-based seed banks in providing farmers with immediate access to locally adapted germplasm that can be used in efforts to cope with climate change.

# 2NC

### New Agency CP

#### 2 – Antitrust regs are inconsistent and trade off with genuine industry regulation

Manne 18 [Geoffrey A. Manne is the founder and executive director of the International Center for Law & Economics (ICLE) and a distinguished fellow at Northwestern Law School’s Searle Center on Law, Regulation & Economic Growth. Justin (Gus) Hurwitz is Director of Law & Economics Programs at ICLE and an assistant professor of law and co‐​director of the Space, Cyber & Telecom Law program at the University of Nebraska College of Law. “Big Tech’s Big‐​Time, Big‐​Scale Problem.” May/June 2018. https://www.cato.org/policy-report/may/june-2018/big-techs-big-time-big-scale-problem]

The same high‐​tech, scale industries that are likely to evoke superficial big‐​is‐​bad antitrust concerns are also likely to raise important social, legal, and political questions. The telephone and the railroad reshaped society; the computer began a reshaping of society that the personal computer continued and that is still ongoing in today’s internet era.

Adapting to the changes wrought by these industries is one of the defining challenges of the 21st century. It could well be the case, as Mark Zuckerberg suggests, that it’s time to regulate all or part of these industries. If so, the shape and scope of that regulation is a matter for political debate and social response. But antitrust law is not the proper vehicle for addressing open‐​ended issues related to social and political values, disconnected from the economic effects of restraints on competition.

One major risk of addressing these concerns through antitrust law — and of weakening the consumer welfare standard in the process — is that applying antitrust law short‐​circuits the social and political processes that are better suited to addressing the concerns. Another risk is that such a standard‐​less antitrust law could be used to impose arbitrary market controls subject only to political whim. The earliest, worst impulses of American antitrust law catered to the would‐​be industrial planners of the early 20th century. Contemporary calls to weaken the consumer welfare standard are motivated by the demands of similar would‐​be planners to reshape American industry in their own idiosyncratic image. Regardless of whether that image for the American economy is good (it is not), such designs should be made through the legislative process, not by hollowing out the core of antitrust law and parasitically repurposing it for political purposes.

Today’s promoters of breaking up or strictly regulating Big Tech companies are primarily motivated by political concerns. These undeniably large and pervasive companies have social influence and economic power that rivals and therefore threatens would‐​be regulators who have spent their careers positioning themselves to wield the power of the state to advance what Thomas Sowell has dubbed the “vision of the anointed.” Thus, Amazon threatens to undermine an aesthetic vision of “local self‐​reliance;” Facebook and Google are “information gatekeepers” with the power to undermine preferred political narratives; Uber exploits workers, evades social regulation, and threatens to hasten the decline of labor unions (and their campaign contributions).

#### agencies can’t expand the scope

HLR 20 [Harvard Law Review, "Antitrust Federalism, Preemption, and Judge-Made Law", 6/10/20, https://harvardlawreview.org/2020/06/antitrust-federalism-preemption-and-judge-made-law/]

On the second point, the executive branch has played only a small role in fleshing out the antitrust statutes, leaving the lion’s share to judges. The FTC and DOJ are responsible for federal enforcement of antitrust law. But, unlike many regulatory areas, antitrust has not seen the promulgation of many binding regulations. Neither the Sherman Act nor the Clayton Act authorizes either agency to promulgate rules defining vague terms. Whether or not the FTC Act authorizes the FTC to promulgate rules defining unfair methods of competition (the presence of such authority is far from clear), the agency has not done so.

#### Severs “expand the scope”: agencies can’t do that.

Cook 95 – Judge, Illinois Appeals Court, Fourth District

Robert W. Cook, Springwood Assocs. v. Health Facilities Planning Bd., 269 Ill. App. 3d 944, Appellate Court of Illinois, Fourth District, March 1995, LexisNexis

With regard to the Board's position, we note that the regulations must control in the event of a conflict between the regulations and the application instructions. The regulations have the force and effect of law ( Union Electric, 136 Ill. 2d at 391, 556 N.E.2d at 239); the application and instructions do not. The application and instructions merely represent the Board's interpretation of the information which it needs in order to determine the need for a proposed project. While such an interpretation is entitled to some deference, it is not binding on a court. Further, an agency interpretation cannot expand or limit the scope of the relevant statute. ( Van's Material Co. v. Department of Revenue (1989), 131 Ill. 2d 196, 202-03, 545 N.E.2d 695, 699, 137 Ill. Dec. 42.) The regulation in question here required "market studies of the area indicating the characteristics of the population to be served." ( 77 Ill. Adm. Code § 1110.230(a)(1) (1992-93).) This is not the same as a memo of the facility's own internal experiences. Other interested parties cannot easily question the facility's own internal reports. The fact that many of a facility's present patients are from a given area does not necessarily predict the future population of the facility.

#### Ev doesn’t say expand the scope and only makes an argument that is should be applied that way – not accepted

Justin (Gus) Hurwitz 14, Assistant Professor of Law, University of Nebraska College of Law, “Administrative Antitrust,” 21 Geo. Mason L. Rev. 1191, Lexis

B. Antitrust in Courts Versus Agencies

Discussion of the relationship between antitrust and regulation has always implicitly recognized a dichotomy between agencies and courts: agencies are regulators and courts are enforcers of the law. Agencies and courts have maintained this basic dichotomy, although the courts may require agencies to consider antitrust issues as part of their regulatory decisionmaking. 65 But even where courts require agencies to consider antitrust questions in their analyses, enforcement of the antitrust laws is still reserved to the courts. The fact that an agency may incorporate antitrust concerns into its decisionmaking does not prevent the courts from subsequently considering the same concerns in the context of an antitrust suit. 66 This dichotomy is suspect and should be questioned - and this Article rejects it.

Courts do not have a monopoly on antitrust law. There is no reason that Congress could not delegate antitrust powers to an agency, or that an agency could not adopt antitrust principles through rulemaking. 67 Indeed, the Court has long held that regulatory agencies may need to take antitrust law into consideration as part of their decisionmaking process. 68 In NBC v. [\*1202] United States, 69 the Court held that an agency may consider antitrust concerns as part of its "public interest" standard. 70 And in United States v. FCC, 71 the D.C. Circuit explained that "agencies [must] consider antitrust policy as an important part of their public interest calculus." 72 On the other hand, starting in the early 1990s, and with increasing frequency today, commentators have recognized that court-enforced antitrust is itself a form of regulation. 73 [FOOTNOTE 73 BEGINS] See Farber & McDonnell, supra note 15, at 626-27. Antitrust had, of course, been previously discussed in the same breath, and as serving the same purposes, as regulation. But the point of the "antitrust is regulation" argument is to make clear that antitrust is subject to many of the same limitations as regulation. This is an important response to arguments that antitrust is preferable to regulation because regulation is subject to substantial limitations - most notably public choice and interest group concerns. [FOOTNOTE 73 ENDS] This is especially true where the enforcement of an antitrust decision requires continued oversight by a court, as with most consent decrees.

#### 1 – “Core” IS A TERM OF ART – requires FTC or DOJ enforcement

FTC ND [Federal Trade Commission. “FTC Fact Sheet: Antitrust Laws: A Brief History.” https://www.consumer.ftc.gov/sites/default/files/games/off-site/youarehere/pages/pdf/FTC-Competition\_Antitrust-Laws.pdf]

The U.S. Congress passed several laws to help promote competition by outlawing unfair methods of competition:

• The Sherman Act is the nation’s oldest antitrust law. Passed in 1890, it makes it illegal for competitors to make agreements with each other that would limit competition. So, for example, they can’t agree to set a price for a product—that’d be price fixing. The Act also makes it illegal for a business to be a monopoly if that company is cheating or not competing fairly. Corporate executives who conduct their business that way could wind up paying huge fines—and even go to jail!

• The Clayton Act was passed in 1914. With the Sherman Act in place, and trusts being broken up, business practices in America were changing. But some companies discovered merging as a way to control prices and production (instead of forming trusts, competitors united into a single company. The Clayton Act helps protect American consumers by stopping mergers or acquisitions that are likely to stifle competition.

• With the Federal Trade Commission (FTC) Act (1914), Congress created a new federal agency to watch out for unfair business practices—and gave the Federal Trade Commission the authority to investigate and stop unfair methods of competition and deceptive practices.

Today, the Federal Trade Commission’s (FTC’s) Bureau of Competition and the Department of Justice’s Antitrust Division enforce these three core federal antitrust laws. The agencies talk to each other before opening any investigation to decide who will investigate the facts and work on any case that might be brought. But each agency has developed expertise in certain industries. Every state has antitrust laws, too; they are enforced by each state’s attorney general. There’s an office in your state capitol that helps consumers or businesses who might be hurt when businesses don’t compete fairly.

#### The CP is distinct – it creates a new agency

– the ‘scope’ of ‘antitrust laws’ is encompassed by DOJ and FTC enforcement

Wheeler 21 [Tom Wheeler, Brookings Visiting Fellow - Governance Studies, Center for Technology Innovation. “A focused federal agency is necessary to oversee Big Tech.” 2/10/21. https://www.brookings.edu/research/a-focused-federal-agency-is-necessary-to-oversee-big-tech/]

Fill a void, don’t duplicate or replace

The new agency should be additive to the activities of existing agencies such as the FTC and Justice Department. The limitations these agencies face when dealing with the digital economy are matter of agency design, not desire or dedication. The 21st-century need is for a 21st-century agency, not the repurposing of an agency designed in another era for another goal.

Nothing, for instance, should interfere with or supersede the antitrust authority of the DOJ or FTC. Rather, activities of the new agency should deal with the issues that cannot be reached by those limited authorities.

Not only is the direct protection of many consumer rights beyond the scope of current antitrust laws, but also of equal importance is how effective antitrust remedies may be beyond the capacity of federal courts and prosecutors.

The success of the Justice Department’s suit to break up AT&T hinged on FCC-established regulations. The creation of rules for network interconnection and other behaviors, for instance, were well beyond the normal antitrust experience, requiring both technical expertise and ongoing oversight. Should the pending antitrust suits against Google and Facebook prove successful, the question will become: And then what? The courts will need the expertise and bandwidth of a focused expert agency to meaningfully implement a judicial decision.

Beyond antitrust enforcement, the FTC’s power to act against unfair or deceptive acts or practices proved insufficient for developing broad-based, industrywide requirements. The FTC may be able to levy a penalty on Facebook for deceiving its consumers about the use of their information, but such targeted enforcement against an individual company only reinforces the need for broad rules applicable to all companies to mitigate such behavior in the first place. While, for instance, the FTC should continue to prosecute an e-commerce company for tainted products or false advertising, the new digital agency could promulgate a general rule that allows consumers to have control over their digital information.

The new agency can fill the void created by current statutes and procedures. In addition, the new agency’s focused attention on digital marketplace behavior would overcome the risk that such oversight gets lost in having to compete for attention and resources with other oversight activities in the broader economy.

#### 2 – The CP’s regulation is ex ante – that’s legally distinct from the aff’s ex post regulation

Frison-Roche 14 [Marie-Anne Frison-Roche, professor of Economic Law at the Institut d'Etudes Politiques de Paris. She is a specialist in Regulatory Law. “EX ANTE / EX POST.” https://mafr.fr/en/article/ex-ante-ex-post2/]

The Ex Ante, the usual expression in Economic vocabulary, corresponds to the more traditional expression in Law of A priori, and refers to the apprehension of a situation before it is constituted. For example, a law or a regulation is an ex ante act, which will regulate situations after the adoption of the text, of the decision or general disposition adopted by an authority. There is no retroactivity. Conversely, Ex Post, the usual expression in Economics and which corresponds in Law to the A posteriori, refers to a reaction of an organism to a situation or a behavior observed. Thus all individual decisions on sanctions, or all dispute or mediation settlements, come under ex post. For example, judicial acts fall under ex post.

Competition Law is usually recognized in that it develops in the ex post, since the market is established and the competition authority reacts to anti-competitive practices, which may be sanctioned, ie in ex post . Conversely, because it is a question of building competition or of maintaining non-natural balances on a permanent basis in sectors, Regulation Law uses tools that could be called "blank pages", essentially regulations, that is to say ex ante. This explains why the English term of "regulation" express at the same time the regulatory system as a whole and the texts adopted, the regulations (in French "réglementation"), because this ex ante tool is so important, is to intimate with regulatory spirit and perfectly expresses this ex ante distinguishing Regulation Law from Competition Law.

#### That’s especially true in context of U.S. antitrust

Geradin 6 [Damien Geradin, founder of Geradin Partners, a Professor of Competition Law & Economics at Tilburg University and a visiting Professor of Law at University College London. J. Greogry Sidak, founder and chairman of Criterion Economics, Inc.. "European and American Approaches to Antitrust Remedies and the Institutional Design of Regulation in Telecommunications." 2006. https://www.criterioneconomics.com/antitrust-remedies-institutional-telecommunications-regulation.html

The difference between the legal and economic conceptions of remedy highlights another important distinction, namely, the difference between ex ante and ex post interventions in the market. Under the ex post approach, a remedy is imposed if and only if an illegal conduct is first proven. And it is the government or a private plaintiff that bears the burden of proving their case. This arrangement describes the operation of monopolization law under the US Sherman Act or the concept of abuse of a dominant position in the EU.

Ex ante remedies are generally imposed through sector-specific regulation, though such remedies may also be imposed on the basis of antitrust rules. This is, for instance, the case where remedies are imposed as a condition for clearance of a merger between telecommunications operators. In both the US and the EU, antitrust enforcement authorities have used merger control procedures as a way to extract significant concessions from the merging entities. As far as institutional design is concerned, remedies in network industries can thus come from two main sources: ex ante or ex post enforcement, and/or sector-specific regulation.

#### New agency doesn’t link to the tradeoff DA – shifting responsibility is key BUT the perm is dual responsibility

Wheeler 21 [Tom Wheeler, Brookings Visiting Fellow - Governance Studies, Center for Technology Innovation. “A focused federal agency is necessary to oversee Big Tech.” 2/10/21. https://www.brookings.edu/research/a-focused-federal-agency-is-necessary-to-oversee-big-tech/]

New economic activities have historically required new federal oversight. The first federal regulatory agency, the Interstate Commerce Commission (ICC), was created in 1887 as a countervailing force to the first high-speed network, the railroad, and the railroad companies’ abusive exercise of their economic power. Congress frequently determined that important oversight activities require a specialized agency populated with subject matter experts.

The creation of the FTC was, in its time, an example of the need for such specialized expertise. In 1903, Congress created the Bureau of Corporations in the Department of Commerce and Labor. By 1914, however, it saw the need for an agency that was not subsumed within another body and created the FTC with the power to prevent “persons, partnerships, or corporations, except banks and common carriers … from using unfair methods of competition in commerce.” That authority was subsequently expanded to include “unfair or deceptive acts or practices.”

It was a similar need for a focused agency rather than bolting on responsibility to an existing agency that resulted in the creation of the Federal Communications Commission (FCC). Back in 1912, when radio broadcasting technology was new, Congress assigned its oversight to the Department of Commerce and Labor. As the technology grew in importance and complexity, however, it became clear there was a need for a specialized agency with specific oversight expectations and authority. Thus, in 1927, broadcasting oversight was moved to a specialized Federal Radio Commission. Ultimately, in 1934, the FCC was created. As a further example of the need for an expert agency as opposed to repurposing an existing agency, the oversight of common carriers such as telephone and telegraph companies was transferred from its previous home in the ICC into the specialized communications agency, the FCC.

Because of the vast scope of its market oversight, the FTC has often been the agency to which Congress looked first for solutions. It is not unusual, however, for Congress to subsequently recognize the need for a new specialized agency. In 1934, for instance, FTC’s oversight of the securities market was transferred to the Securities and Exchange Commission (SEC). In the mid-1990s, amidst a concern about auto safety, Congress looked beyond the FTC to create a new National Highway Traffic Safety Administration. In response to the 2008 financial crash, Congress moved what had been the FTC’s authority in consumer financial markets to a newly created Consumer Financial Protection Bureau.

The proposal to create a new digital agency is a continuation of such precedents. The vast scope of the FTC’s present responsibilities—as diverse as funeral director practices, robocalls, and labeling hockey pucks—means that the oversight of digital platform regulation must compete with the agency’s existing diverse responsibilities and limited resources.[4] A new digital agency would also help assure that resources would not be withdrawn from the FTC’s traditional activities.

#### They have power in merger cases – links to aff

Jennifer Clapp 18, Professor and Canada Research Chair in Global Food Security and Sustainability at the University of Waterloo, 05/01/18, Mega-Mergers on the Menu: Corporate Concentration and the Politics of Sustainability in the Global Food System, Global Environmental Politics, Vol. 18, Issue 2, p. 12–33, https://doi.org/10.1162/glep\_a\_00454

Weak and Fragmented Regulatory and Institutional Frameworks

The nongovernance of the environmental effects of agribusiness mergers is also the product of weak and fragmented regulatory oversight of mergers and acquisitions across a range of disjointed institutions that might weigh in on the issue as it relates to agricultural sustainability. There is no global institution or set of rules governing competition policy that oversees mergers and acquisitions (M&As) on a global scale (Dimitrov et al. 2007). The Organisation for Economic Cooperation and Development (OECD) offers guidance to its member states regarding competition issues, and the UN Conference on Trade and Development (UNCTAD) has developed a model law on competition. But these are not formal governance arrangements, and decisions on mergers are left up to individual states. Regulatory authorities in the countries where the large agribusiness firms do business are looking at the mergers and can decide, based on their own analyses of the effects of the mergers in the domestic market, whether to allow them to proceed within their jurisdictions. Monsanto, for example, has had to file its merger intention with regulatory authorities in close to thirty different countries (Bartz and Roumeliotis 2016). Among the major countries reviewing the mergers are rich industrial countries or regions, such as the US, Europe, and Canada, and a number of developing countries, including India, China, South Africa, and Brazil, which are increasingly major markets for these firms.

Government regulators typically focus their analyses of M&A activity narrowly on the potential impact on market competitiveness, efficiency, and innovation in their domestic market. They use econometric models to evaluate the extent to which the merged firms will change the dynamics of the marketplace for the products they sell. If their models predict more efficient markets due to economies of scale, even if there are fewer suppliers in the market, then the deals might be viewed more positively (King 2001). The focus on competition effects is important, as it helps to uncover the ways in which mergers might result in higher prices or create barriers to entry for new firms and whether innovation will be stifled (Organisation for Economic Co-operation and Development 2007; Shapiro 2002). Indeed, independent economic analyses of the agribusiness mergers reveal that they will put several of the products that the firms sell within the anticompetitive range, according to the measures used by the competition authorities (Bryant et al. 2016; Maisashvili et al. 2016). Not surprisingly, some of the regulatory authorities have asked the resulting firms to spin off certain product lines to reduce potential negative market impacts.

At the same time, however, broader issues of “public interest,” including environmental considerations, get short shrift in the merger evaluation processes in most countries. As a recent OECD (2017, 3) report on public interest considerations in merger decisions notes, “the majority of OECD Member country competition authorities are not responsible for applying public interest considerations in reviewing mergers; the task is left to sector regulators or government departments.” The report goes on to note that evaluating mergers based on competition criteria versus public interest criteria could lead to different results and warns that those countries that consider public interest issues should be wary of the “risks to the certainty and predictability of their merger control system” (OECD 2017, 4). In other words, the OECD stresses the importance of predictability over public interest considerations, and this advice is widely followed. For example, there is nothing in the merger enforcement guidelines of the US, Canada, or the EU indicating that the potential environmental impact of corporate concentration is even considered in the vetting process (Canada Competition Bureau 2011; European Union 2004; US Department of Justice 2010).

Most governments work on the principle that other governance frameworks outside of the competition assessment process can address the public interest issues associated with mergers (Organisation for Economic Co-operation and Development 2017). There are indeed international environmental governance arrangements that broadly address questions of genetic diversity and chemical pesticides, namely, the Convention on Biodiversity, the International Treaty on Plant Genetic Resources, and the Rotterdam Convention. But these agreements have no authority over, and make no mention of, competition issues as drivers of the problems they seek to address. There has been more recognition of the problems associated with corporate concentration in the arena of global food governance. Civil society actors have raised the issue at the Committee on World Food Security (CFS), the main coordinating body for international food governance. But that body also has no capacity to coordinate or govern states on competition issues. At the annual CFS meeting in October 2016, the Civil Society Mechanism (CSM) proposed discussing the most recent agribusiness mergers as a matter of urgency in the plenary session. A number of governments, however, objected to having such a debate in the formal plenary setting. Instead, the body permitted an informal information discussion that was strictly billed as a CSM-sponsored event and not included in the formal meeting report (International Institute for Sustainable Development 2016). Again in 2017, the mergers were discussed in a side event organized by the CSM but not in the formal meeting.

Power Dynamics Favor Giant Agribusiness Firms

Power dynamics also play a role in explaining why it is so challenging to govern the environmental effects of agribusiness mergers at the international level. Given their privileged position in the food system, the firms engaged in the mergers are able to wield different kinds of power in ways that push against policies that may increase oversight over competition issues. One is their discursive, or ideational, power to shape the debate over the future sustainability of agriculture (see also Williams 2009). The large agricultural input firms have used their media and public outreach infrastructure to make the case that the mergers are necessary for advancing sustainable agriculture through digital farming solutions, as noted previously. Firms also have a second form of power that may have some influence in shaping the regulatory context: their market, or structural material power (Fuchs and Glaab 2011). The scale of these firms means that their business decisions have an enormous impact on national economies. In this context, policy makers cannot help but pay attention to their preferences.

Critics have also highlighted a third type of influence exerted by these firms: their lobbying power. In 2016, Monsanto spent US$ 4.3 million in lobbying the US government, while Syngenta spent US$ 1.4 million (Center for Responsive Politics 2015). In recent years, Monsanto has successfully lobbied against GM labeling and for the approval of Roundup Ready alfalfa and sugar beets. It also made the case for a congressional caucus on “modern agriculture,” which was formed in 2011 (Union of Concerned Scientists 2013). Similar lobby efforts have been launched by the Big Six firms in the EU. In 2015, the amounts these firms spent on lobbying efforts in Brussels were significant: nearly US$ 4.5 million by Dow, US$ 2.6 million by BASF, US$ 2.2 million by Bayer, and US$ 1.7 million by Syngenta (Pesticide Action Network Europe 2016). Critics are concerned that this kind of concentrated lobbying results in a favoring of the large-scale industrial agricultural model and that it will only become more pronounced once the mergers are completed. Critics also worry that the promotion of industrial agriculture reduces the responsiveness of these firms to farmer and consumer demand for more sustainable agriculture and food systems (Pesticide Action Network North America 2017).

More specifically, industry also lobbies governments directly. There are already signals that the competition review process in the US may be short-circuited due to agribusiness lobbying on the mergers. Although one of US president Donald Trump’s advisors expressed his disapproval of the proposed mergers, there are signs that other powerful voices may win out (Eller 2017). The CEOs of Bayer and Monsanto met privately with then president-elect Trump just before his inauguration in January 2017 and promised that the merged firm would create 3,000 new jobs in the US (Philpott 2017). The CEO of Dow also took part in a business leaders’ meeting with Trump several weeks later as part of an initiative to keep manufacturing jobs in the US.

#### Even new laws fail—courts refuse to enforce, including SCOTUS

Newman 19 [John Newman is a University of Miami School of Law professor and a former attorney with the U.S. Department of Justice Antitrust Division, "What Democratic Contenders Are Missing in the Race to Revive Antitrust", 4/1/19, https://www.theatlantic.com/ideas/archive/2019/04/what-2020-democratic-candidates-miss-about-antitrust/586135/]

But the federal courts represent a massive stumbling block for any progressive antitrust movement. Reformers have identified two paths forward; both lead eventually to the court system. The first is relatively moderate: appoint regulators who will actually enforce the laws already on the books. Warren’s plan rests in part on this straightforward idea. The second, more audacious path requires congressional action to amend and strengthen our current laws. Warren’s call for a new ban on technology companies’ buying and selling via their own platforms falls into this category. Klobuchar has also proposed new antitrust legislation that would make it easier to block harmful mergers and acquisitions.

But no matter its content, enforcing a law requires persuading a judge. When it comes to U.S. antitrust laws, federal judges—not Congress, and not regulatory agencies—are the ultimate arbiters. The Department of Justice Antitrust Division, one of our two public enforcement agencies, files all its cases in federal courts. And although the Federal Trade Commission (the other) can decide cases internally, the inevitable appeals eventually end up in court as well.

No matter how strongly worded a law may be, ideologically driven judges can usually find a way around enforcing it. The cyclical history of U.S. antitrust law is proof that judges wield nearly limitless institutional power in this area.

Soon after Congress passed the Sherman Act in 1890, a conservative Supreme Court began to chip away at its effectiveness. Congress reacted in 1914 with the Clayton Act, which sought to ban anticompetitive mergers. In 1936, at the height of the New Deal era, Congress passed the Robinson-Patman Act, which prohibits price discrimination (charging different prices to different buyers for the same product). These laws were actively enforced for decades.

But starting in the late 1970s, conservative judges began to erode the Clayton Act. Today, megamergers among competitors such as Bayer and Monsanto barely raise eyebrows. So-called vertical mergers, which combine suppliers and their customers, are now all but immune from antitrust enforcement—see the DOJ’s failed challenge to AT&T and Time Warner’s recent tie-up.

Under the business-friendly Roberts Court, the Robinson-Patman Act has similarly been eviscerated. By the 2000s, the ideas of the conservative Chicago School had become mainstream in antitrust circles. Robinson-Patman, a law intended to protect small businesses, was an easy target for Chicago School critics narrowly focused on efficiency and low consumer prices. Their attacks found a receptive audience in the federal judiciary. Among insiders, Robinson-Patman is now known as “zombie law.” It remains on the books, but regulators no longer bother trying to enforce it.

If Democrats want to change antitrust law, they will first and foremost need to change the judges who apply it. Yet none of the 2020 contenders championing antitrust reform have even mentioned the possibility of appointing progressive antitrust thinkers to the bench.

Conservatives, on the other hand, have long recognized the centrality of antitrust to broader questions about the apportionment of power in society. In his seminal work, The Antitrust Paradox, Robert Bork called antitrust a “microcosm in which larger movements of our society are reflected.” Battles fought in this arena, Bork wrote, “are likely to affect the outcome of parallel struggles in others.” Strong antitrust enforcement keeps powerful monopolies in check. Toothless antitrust allows the unlimited accumulation of corporate power.

Recognizing the high stakes, the Republican Party has gone to great lengths to appoint conservative antitrust experts to the federal judiciary. Bork was an antitrust professor at Yale Law School before becoming an appellate judge in 1982.\* Frank Easterbrook practiced and taught antitrust before donning the black robe in 1985. Douglas Ginsburg served as the head of the Justice Department’s Antitrust Division before he became a federal judge in 1986. None of the three managed to join the Supreme Court, but not for lack of trying. Reagan nominated both Bork and Ginsburg to serve as justices, though Ginsburg withdrew and Bork was famously rejected after a contentious Senate hearing.

And whom did the GOP select as its very first U.S. Supreme Court nominee during the Trump Administration? None other than Neil Gorsuch, who practiced antitrust law for more than a decade before joining the Tenth Circuit. Even as a judge, Gorsuch continued to teach a law-school course on antitrust until his confirmation to the Supreme Court in 2017.

Once upon a time, progressives demonstrated similar concern about judicial treatment of antitrust laws. Justice Stephen Breyer, for example, served as special assistant to the head of the DOJ Antitrust Division before his judicial appointment by President Jimmy Carter. Earlier still, Justice John Paul Stevens was an antitrust lawyer, scholar, and professor before his appointment to the bench.

Today’s Democratic 2020 hopefuls seem to have forgotten the lessons of history. Their antitrust proposals focus exclusively on appointing the right regulators and amending our current statutes. These are right-minded ideas, but they overlook the central role judges play in our political system.

There is an old saying in the legal community: “Hard cases make bad law.” That may be true, but it is just as often the case that bad judges make bad law. Real antitrust reform will require more than regulatory and legislative tweaks; it will require the right judges.

#### American corporations bought out judges and FTC

Root 19 [Danielle Root, director of voting rights and access to justice on the Democracy and Government Reform team at the Center for American Progress. Sam Berger, vice president of Democracy and Government Reform at the Center for American Progress. “Structural Reforms to the Federal Judiciary.” 5/8/2019. https://www.americanprogress.org/issues/courts/reports/2019/05/08/469504/structural-reforms-federal-judiciary/]

Discussions of the federal judiciary often focus on the substance of decisions made—which side wins and which side loses—and rightly so. These individual opinions are frequently of incredible importance, not just to the parties involved but in shaping the law more broadly. Yet this focus on substantive decisions has obscured deeper structural factors at play in the nation’s federal judiciary. Structural problems—such as lack of judicial diversity, ideologue judges, and lack of judicial accountability—undercut the courts’ legitimacy and have tangible negative effects on judicial decision-making. Instead of protecting everyday Americans by serving as a check on abuses of power, too often the federal courts have become a tool for carrying out the agendas of special interests and corporations.

Structural problems with the judiciary have always existed to varying degrees. But they have been exacerbated in recent years due to an ongoing campaign by conservatives to take control of the federal courts, often through procedural changes that have significant effects but garner little public attention. The problem has now reached a crisis point. Conservatives have shown a willingness to abandon any and all norms to undermine the judicial nominations process and pack the courts with judges who will help them realize political goals they cannot achieve through the political process. These judges have proven more than willing to carry out the task, supporting the most specious of legal claims in order to skew the system in favor of conservative interests and even prevent many Americans from accessing the courts at all.

#### Even if suits prevail, the Courts don’t rule with structural remedies – weak enforcement means markets don’t change

Jones 20 [Alison Jones, Professor of Law at King's and a solicitor at Freshfields Bruckhaus Deringer LLP. William E. Kovacic, George Mason University Foundation Professor at the George Mason University School of Law. “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy.” 2020. <https://journals.sagepub.com/doi/pdf/10.1177/0003603X20912884>]

Modern antitrust has, however, had less appetite for the use of antitrust to break up companies. Although the District Court in United States v Microsoft Corp 113 ordered, at the request of the DOJ, that Microsoft be broken into two parts, the Court of Appeals, despite affirming the violation of section 2, reversed and remanded the finding that Microsoft should be split into two. Setting out a high bar for structural relief,

the Court stressed that the lower court had not (1) held a remedies-specific hearing114 or (2) provided adequate reasons for the decreed remedies.115

A number of factors seem responsible for the trend away from structural remedies. First, the change in antitrust thinking that has evolved since the early 1970s, from a belief that antitrust intervention and structural remedies can improve performance116 to the current more laissez-faire one.117 Second, concerns about the effectiveness of previous attempts to deconcentrate industries,118 especially given the length of time that antitrust proceedings take.119 Third, the difficulty involved in constructing and overseeing a structural remedy effectively. Although in cases involving a merger or acquisition it may be relatively easy to structure such a remedy through disentangling assets that were once owned separately,120 outside of this situation, the question of how and what to divest might be much more speculative, seem much more risky and may in fact be complex and difficult to administer (involving significant restructuring, separation of physical facilities, and allocation of staff from integrated teams).121 These types of concern make it a challenge to persuade a court that a structural remedy is warranted and will be successful in achieving its objective.122

### Environment

#### They don’t understand markets – static view

Keating 21 [Raymond J. Keating, chief economist for the Small Business & Entrepreneurship Council and an adjunct professor in the MBA program at the Townsend School of Business at Dowling College. “The Treacherous Turn on Antitrust Regulation of U.S. Tech Companies.” https://sbecouncil.org/2021/02/24/the-treacherous-turn-on-antitrust-regulation-of-u-s-tech-companies/]

Insurmountable Challenges. From the perspectives of economics and market realities, antitrust law and regulation suffer from two challenges that are insurmountable. First, a static picture of the market currently is just that, i.e., static, and therefore, stands ignorant of the realities of market dynamism. Second, if elected officials, antitrust regulators and the courts were to recognize market dynamism, and also somehow guide antitrust enforcement by such dynamism, this would amount to nothing more than wild speculation about the future of existing and future industries. Each case would be dangerously disconnected from economic reality.

#### Enforcement is too slow – investigation, litigation, and appeals

Jones 20 [Alison Jones, Professor of Law at King's and a solicitor at Freshfields Bruckhaus Deringer LLP. William E. Kovacic, George Mason University Foundation Professor at the George Mason University School of Law. “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy.” 2020. <https://journals.sagepub.com/doi/pdf/10.1177/0003603X20912884>]

In the discussion above, we have been addressing the types of remedies that are imposed at the conclusion of a lawsuit. A problem in highly dynamic markets, however, is that the lag between the initiation of a case and a final order on relief may be so great that market circumstances have changed dramatically or the victim of allegedly improper exclusion may have left the market or otherwise lost its opportunity to expand and contest the position of the incumbent dominant firm. In this context, the antitrust cure arrives far too late to protect competition. The relatively slow pace of antitrust investigations and litigation (with appeals that follow an initial decision) has led some observers to doubt the efficacy of antitrust cases as effective policy-making tools in dynamic commercial sectors.

#### Lobbying and backlash undermine enforcement

Jones 20 [Alison Jones, Professor of Law at King's and a solicitor at Freshfields Bruckhaus Deringer LLP. William E. Kovacic, George Mason University Foundation Professor at the George Mason University School of Law. “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy.” 2020. <https://journals.sagepub.com/doi/pdf/10.1177/0003603X20912884>]

D. Political Backlash

As we have already indicated, the government’s prosecution of high stakes antitrust cases often inspires defendants to lobby elected officials to rein in the enforcement agency. Targets of cases that seek to impose powerful remedies have several possible paths to encourage politicians to blunt enforcement measures. One path is to seek intervention from the President. The Assistant Attorney General of the Antitrust Division serves at the will of the President, making DOJ policy dependent on the President’s continuing support. The White House ordinarily does not guide the Antitrust Division’s selection of cases, but there have been instances in which the President pressured the Division to alter course on behalf of a defendant, and did so successfully.125

The second path is to lobby the Congress. The FTC is called an “independent” regulatory agency, but Congress interprets independence in an idiosyncratic way.126 Legislators believe independence means insulation from the executive branch, not from the legislature. The FTC is dependent on a good relationship with Congress, which controls its budget and can react with hostility, and forcefully, when it disapproves of FTC litigation—particularly where it adversely affects the interests of members’ constituents. Controversial and contested cases may consequently be derailed or muted if political support for them wanes and politicians become more sympathetic to commercial interests. The FTC’s sometimes tempestuous relationship with Congress demonstrates that political coalitions favoring bold enforcement can be volatile, unpredictable, and evanescent.127 If the FTC does not manage its relationship with Congress carefully, its litigation opponents may mobilize legislative intervention that causes ambitious enforcement measures to the founder.

Imagine, for a moment, that the DOJ and the FTC launch monopolization cases against each of the GAFA giants. Among other grounds, these cases might be premised on the theory that the firms used mergers to accumulate and protect positions of dominance. The GAFA firms have received unfavorable scrutiny from legislators from both political parties over the past few years, but the current wave of political opprobrium is unlikely to discourage the firms from bringing their formidable lobbying resources to bear upon the Congress. It would be hazardous for the enforcement agencies to assume that a sustained, well-financed lobbying campaign will be ineffective. At a minimum, the agencies would need to consider how many battles they can fight at one time, and how to foster a countervailing coalition of business interests to oppose the defendants.

E. Opposition to Legislative Reform

Although statutory reform might at first sight appear to be a direct, effective solution to some of the impediments (such as entrenched judicial resistance to intervention), there are good reasons to expect that powerful business interests will also stoutly oppose any proposals for legislation to expand the reach of the antitrust laws or to create a new digital regulator.128 One can envisage the formidable financial and political resources of the affected firms will amass to stymie far-reaching legislative reforms. Legislative steps that threaten the structure, operations, and profitability of the Tech Giants and other leading firms are fraught with political risk. These risks are surmountable, but only by means of a clever strategy that anticipates and blunts political pressure. One element of such a strategy is to mobilize countervailing support from consumer and business interests to sustain an enabling political environment to enact ambitious new laws.

Even if successful, “[l]egislative relief from existing jurisprudential structures might take years to accomplish”;129 acts taken under new legislation—even with the establishment of presumptions that improve the litigation position of government plaintiffs—may still be relatively complex and difficult to prosecute. Rulemaking is an alternative to litigation, but it is no easy way out of the problem. On the contrary, promulgation and defense, in litigation, of a major trade regulation rule is liable to take as long as the prosecution of a Section 2 case. It can also be anticipated that a judiciary populated with many regulation skeptics will subject new rules or related measures to demanding scrutiny.

#### Agriculture inevitably has negative environmental impacts—switch to small farms won’t lower runoff or fertilizer excesses

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A reader could be excused for concluding from Matthew R. Sanderson and Stan Cox’s criticism of our recent essay, “Big Agriculture Is Best,” that virtually all environmental impacts associated with the production of food in the United States and globally can be laid at the feet of “industrial agriculture.” But it is a definitional sleight of hand, not “empirical evidence,” as they claim, that does most of the work here. Sanderson and Cox define “industrial agriculture” so capaciously as to be basically synonymous with “agriculture.”

In the United States, that is arguably true. Most agricultural output—and hence environmental impacts—comes from large-scale, industrial production. Globally, it is not true. In both cases, there is no free lunch. Agriculture, unavoidably, has environmental impacts for the simple reason that growing food requires the conversion of forests, grasslands, and other ecosystems into fields whose biocapacity is then monopolized to produce food for people.

As human populations have grown enormously over the last two centuries, from about a billion people globally in 1800 to nearly 8 billion today, and as those populations have become wealthier and able to eat higher on the food chain, the impacts associated with food production have grown as well. But that has little to do with the prevalence of industrial versus nonindustrial agriculture. Instead, it reflects the basic realities associated with scaling agriculture globally to meet those enormous new demands.

Consider the negative impacts that nitrogen pollution from the American corn belt has had on the Gulf of Mexico. Most of that runoff comes from industrial farms for the simple reason that large-scale, intensive production is the dominant form of agriculture across the region. Shifting production to organic practices, though, wouldn’t much change the situation. Organic farms are typically associated with higher rates of runoff per calorie of food produced, even as they require more land. So unless total production were very substantially scaled back, a corn belt dominated by organic farms rather than conventional ones would require more land while having similar or even greater impacts on waterways and biodiversity.

#### Retroactive mergers thump all internal links – Monsanto, Baer and other companies already dominate and leverage their market power against small farmers

Hannah Kass 19, master candidate in environmental studies at the University of Pennsylvania, 12/26/19, Breaking Up Big Ag Requires Reasonable Antitrust Enforcement, https://www.theregreview.org/2019/12/26/kass-breaking-up-big-ag-antitrust-enforcement/

In 2007, food sovereignty activists from around the world convened in Sélingué, Mali to write the Declaration of Nyéléni. That declaration asserts that activists should seek to democratize the flows of power, wealth, and resources that have moved predominantly toward the core industrialized countries and multinational corporate agribusinesses, and away from farmers all over the world.

The declaration aims to ensure that the food system protects those who produce and consume the world’s food supply: farmers and people, rather than corporate agribusinesses. Yet in the United States and elsewhere, the food system has a long way to go toward meeting the needs of both farmers and consumers.

Farmers are increasingly driven out of agriculture by the unequal distribution of market power. To ensure fair competition in the agri-food marketplace, it is imperative that the federal government provide the proper enforcement of antitrust regulations. Currently, corporate agribusinesses hold a disproportionate amount of market power in the agri-food economy. Farmers, on the other hand, are under economic pressure to compete in a growing global market, and often must rely on contracting with just a few processing companies to sell their products.

Many of these contracts contain conditions which force farmers to buy seeds and equipment from a small handful of input companies. Often, the big food companies are vertically integrated—that is, the same companies operate at various levels of the supply chain. At the end of the day, farmers only receive 14.8 cents per every dollar consumers spend on food—yet the costs of production amount to 80 cents per dollar. The majority of the revenue is realized by corporate agribusiness executives and shareholders.

In 2015, the four largest beef firms controlled 85% of the beef market. The four largest U.S. corn seed firms controlled 85% of the corn seed market, and the four largest U.S. soybean seed firms controlled 76% of that market. In 2017, after the Bayer–Monsanto and Dow–Dupont mergers, the four largest global herbicide and pesticide firms now own 84% of the market share.

The Federal Trade Commission (FTC) and Antitrust Division of the Department of Justice interpret and implement antitrust statutes. The Sherman Antitrust Act of 1890 renders price-fixing, restraint of trade, and excessive market monopolization illegal, and the Clayton Antitrust Act asserts that it is unlawful for any business to merge with or acquire any part of its industry in a manner that significantly damages that industry. Despite these laws, corporate agribusiness’ monopolization of the agricultural market continues to persist at the expense of farmers in the United States.

Over the past 40 years, corporate agribusinesses have benefited from the FTC and Antitrust Division’s lax interpretations of antitrust statutes. These agencies have permitted large corporate agribusinesses to merge and monopolize the market excessively, despite the fact that antitrust statutes were created explicitly to regulate monopolies and ensure fair market competition.

Admittedly, given that the Sherman Act makes it illegal to restrain trade, it might be said that only by allowing agribusinesses to merge, acquire other businesses, and monopolize the market is trade able to continue unrestrained. But that trade is unrestrained only for the big firms. Small farmers are unable to compete in the marketplace when the concentration of big firms continues unrestrained, particularly when mergers and acquisitions promote the monopolization of the market.

Consider how small farmers have fared under the consolidation of the meat packing industry. According to the Packers and Stockyards Act of 1921, price-fixing was supposedly rendered illegal, but even with this protection the plight of small farmers has been profound.

In 2004, for example, cattle farmer Henry Lee Pickett sued meat packer Tyson Foods when he noticed that Tyson was lowering prices in its marketing agreements with farmers. Pickett preferred to charge the cash market price to avoid being paid an unfair price. Even if farmers did not sell their products through marketing agreements like Tyson’s, often they still needed to lower their prices on the open market. Pickett was unable to provide evidence that Tyson’s market agreements were producing unfair competition practices, so he lost his case.

Separately, pork producers also unsuccessfully fought meat packer Smithfield Foods, citing illegal price-fixing under the Packers and Stockyards Act. The marketing agreements were seen by the judiciary as reasonable business practices because they cut costs to the agribusiness contractors.

In both of these cases, Tyson and Smithfield were protected by the “freedom of contract” principle, which declares that everyone is free to participate in, or opt out of, any contractual agreement. However, the share of this “freedom” in terms of food sovereignty is certainly asymmetrical. When the market price is controlled by an artificially low price created by a marketing agreement, farmers are not free from poverty. When marketing agreements are adopted by the majority of processors, and there are not alternative agreements offered, farmers are not free from opting out of unfair contracts. In effect, farmers are locked into receiving an unfair price for their product.

#### Genetical engineered seed has already taken over

NSAC 21, National Sustainable Agriculture Coalition, 07/09/21, FARMERS TRAPPED IN UNSUSTAINABLE CYCLE BY BIOTECHNOLOGY, SEED CONSOLIDATION, https://sustainableagriculture.net/blog/farmers-trapped-in-unsustainable-cycle-by-biotechnology-seed-consolidation/

Impact on farmers and communities

To many, the advent of the modern seed and biotechnology industry represents the pinnacle of benevolent ingenuity for our food system.

There are certainly conversations to have about the role genetically engineered crops play in increasing yields and boosting productivity of agricultural land per-acre through the reduction of crop loss. However, just as important but less present in mainstream conversations is a frank consideration about whether those gains can be justified given the adverse, long-term impacts that conventional farming has on people, animals, and the land.

When these conversations are better informed by the growing number of studies which point to the benefits of sustainable farming models, as well as its scaleable potential, we are compelled to ask: “Is the status quo worth defending?”

It could be, if the power imbalance between farmers, rural communities, and multinational corporations did not breed adverse consequences for the former. Recall that seed was once treated as public property and openly shared – not only in the 1800s, but for millennia on this continent by Indigenous people. In addition, integrated crop-livestock systems kept pests and weeds at bay while limiting soil disturbance to preserve the microbial community and prevent erosion, among other restorative benefits for soil health. No rising input costs or potentially dangerous chemicals were necessary, unlike today.

In 2019, U.S. farmers spent $118 billion to purchase seed and plants, fertilizers, animal feed, and agricultural chemicals. The cost of total farm input expenditures has increased almost $80 billion since 2009, a classic symptom of an industry that has become too concentrated. Bayer, Corteva, Limagrain, Chem-China, and BASF exclude competitors with control of at least 50 percent of the seed and agrochemicals markets by raising the price of inputs for farmers (including with a novel “technology fee”) without risking their own market dominance.

To strictly analyze the cost of seed, consider that corn farmers who paid $26.65 per planted acre of seed in 1990 paid $93.48 in 2019. This represents a dramatic increase of roughly 350 percent, beyond the rate of inflation, following the biotechnology merger-mania and the co-opting of the seed industry.

Health and human consequences compound this financial loss, with all such liabilities externalized by multinational corporations and placed upon farmers and consumers. In 2015, the International Agency for Research on Cancer classified the active ingredient in Bayer’s Roundup, glyphosate, as “probably carcinogenic to humans.” Farmers and farmworkers in proximity to glyphosate are potentially at-risk, as are consumers who consume GE food with glyphosate residue. Though glyphosate has since been banned or limited in dozens of countries, the Environmental Protection Agency re-approved Roundup to be used in the United States last year – even as lawsuits from 46,800 plaintiffs alleged personal injury from exposure to Bayer’s glyphosate-based products.

Bayer insisted that they would “defend the safety of glyphosate… vigorously.” Then, in February 2021 Bayer announced a $2 billion settlement to cover claims from individuals who developed cancer after being exposed to Roundup. This settlement, reached in private arbitration, is not an admission of guilt. Roundup not only remains on the market but is still the weedkiller favored by farmers. What else would conventional farmers use with their Roundup Ready seed?

Genetically engineered seed has indeed taken over. The Food and Drug Administration (FDA) reports that GE soybeans comprise a stunning 94 percent of all soybeans planted in the United States, GE cotton accounts for 94 percent of all cotton planted, and 92 percent of corn planted was GE corn. The multinational corporations that produce and market these GE seed varieties do not only place their products on the market but remove non-GE varieties of seed inherited from acquired seed companies. The result has been an alarming reduction in farmer choice  – despite the illusion of many unique seed brands – as well as the decimation of crop biodiversity.

In 1983, a report by the Rural Advancement Foundation International (RAFI-USA) revealed that the United States lost 93 percent of its agricultural genetic diversity in the twentieth century. That was before the consolidation of the seed and biotechnology industries in the mid-1990s, and nationally the trend has continued. This genetic uniformity poses a significant threat to the U.S. food supply. The more that the agriculture sector relies on a few uniform, patented seed varieties, the more susceptible these conventional farms become to epidemic pathogens or unexpected climate events. (We saw what happened during the Dust Bowl when traditional foodways were replaced with industrial, monocrop farming.)

Rather than elevating the long-term resilience and security of our food system, a 2019 AGree report notes that “the tendency for farmers to specialize production to only a few commodities presents risks in the event of any type of shock (e.g., extreme weather, disease or pest outbreaks, price cycles, market fluctuations, etc.).”

The corn problem

Let’s take a closer look at corn production to illustrate the vulnerabilities of monoculture systems eand how they were shaped by corporate interests at farmers’ expense. With more than 90 million acres of land planted to corn – almost 30 percent of the country’s 320 million acres of harvested cropland – it is the United States’ leading crop commodity.

Do Americans eat that much corn on the cob? No! The demand to produce this much corn did not come from consumers, but was artificially generated by private agribusiness interests.

If you drive through the American corn belt, you will see the degree to which U.S. agriculture has become dependent on just two commodities: corn and soybeans. Defenders of the corn monoculture system point to the wide array of products which contain corn as an integral ingredient – from sweeteners and biofuels to animal feed – as proof of what must have been an inevitable climb to occupy this position of primacy. Yes, the United States meets the climate, soil, and topographic conditions necessary to mass-produce corn, but that does not mean that it always will or that we should.

Corn is a resource intensive crop to grow. It demands copious amounts of water and nitrogen, and industrial farming practices to plant and harvest corn are beginning to erode carbon-rich soil in the Corn Belt. Despite attempts to boost nitrogen levels in the soil with synthetic fertilizer (runoff from which poses an environmental concern), these products cannot completely replace natural minerals. In addition, genetic uniformity increasingly exposes farmers throughout the Heartland to elevated market and weather risks, including drought and emerging patterns of climate change. The United States cannot continue to produce and rely on corn to the extent that we do today – it is not resilient long-term.

Jonathan Foley warns in his piece, It’s Time to Rethink America’s Corn System, that “given enough time, most massive monocultures fail, often spectacularly… A single disaster, disease, pest, or economic downturn could cause a major disturbance in the corn system.”

In fact, corn farmers are already losing nearly $3 billion per year in harvest yields per acre. It is fortunate, then, that so much corn is not inherently necessary to the functioning of a society and may be replaced as an input by several alternatives. To illustrate, biofuels can be produced from less-intensive, even regenerative plants, including hemp and switchgrass. In addition, nearly 95 percent of processed animal feed is made of corn and may be replaced with broader adoption of integrated crop-livestock systems and pasture grazing.

Why, then, does the production of and dependence on corn continue to grow? Because farmers lose real income, not agribusiness, in the same way that farmers receive a decreasing share of every dollar spent on food in the United States while the share of biotechnology, equipment, and food processing corporations rises. This relationship is imbalanced at best and at worst parasitic, but always framed as symbiotic.

It’s a trap!

To remain profitable, multinational agribusiness companies must generate and maintain a constant state, or at least a general trend, of overproduction and depressed commodity prices. Input suppliers, including biotechnology and seed corporations, can sell their patented products to a client (farmers) always seeking to expand their operations. Meanwhile, on the other end of harvest season, a concentrated number of food processors are able to purchase commodities for a price driven down by excess supply.

To illustrate the relationship, the following chart demonstrates that corn yields increased rapidly during the decades that these corporations amassed profit and influence – multiplying almost 600 percent since the mid-century dawn of the age of industrial agriculture and consolidation.

It is important to acknowledge that farmers may indeed experience lucrative years and rising commodity prices, often due to increased demand from international export markets. This is an exception, however; it is not a rule. While farmers win on occasion in this system, it is always as the industry collectively spirals downward.

Farmers who seek to permanently raise the price of commodities and otherwise elevate their share of the food dollar find themselves trapped. Realistically, corn farmers have few options to cut their input costs with an industry as consolidated as seed and biotechnology. They need to purchase the genetically engineered seed designed to withstand the herbicides, pesticides, and synthetic fertilizer which they have used for many growing seasons – but use of these chemicals and additional industrial practices, including mechanical tilling, erode soil nutrients until non-GE strands may no longer be able to maintain yields. The conventional farmer is not able to simply save and replant GE seed to save input costs either, for it is protected under utility patent law.

Similar to the biotechnology and seed industry, the farm equipment sector is highly consolidated. Four companies, chief among them John Deere, control at least 45 percent of global farm machinery sales. The farmer who decides to increase their yield to make up for lost income from falling prices may purchase new, productivity enhancing technologies from these companies. Because this decision is invariably made by thousands of farmers every planting season, with everyone reasonably aiming to stabilize their bottom line, a renewed downward pressure on prices is created. “The lower prices, in turn,” according to Darryl E. Ray in a 2003 University of Tennessee report, “become further incentives to adopt more cost-reducing technologies, and prices continue their slide.”

Unless farmers are able to adopt sustainable farming practices or radically alter their business models, they will continue to rely on these patented products year after year, sending half of the checks they write to increase the balance sheets of these corporations.

John Deere’s revenue growth consistently outperforms farm incomes, even as they rise and fall together. Large equipment manufacturers even use patents to prevent farmers from repairing their own heavy machinery (which is more damaging to soil health than previously thought) using independent repair technicians, or continuing to maintain equipment that is no longer supported by the manufacturer. This multiplies the profit streams for companies and perpetuates the need for farmers to continue to invest in the newest available equipment.

The imbalance does not stop there. In recent years, these industries have been acquiring data technology companies to create programs like Monsanto’s Climate View, now owned by Bayer. Farmers who participate in the program supply harvest field data through the sensors on combines manufactured by John Deere and AgCo, which together control 70 percent of the U.S. combine industry, and receive prescriptions sent back to the combine advising farmers which Bayer products to purchase to maximize their yields.

In his recent book, Perilous Bounty, Tom Philpott recounts an interview with an ex-Monsanto executive who “painted a future in which farmers would essentially outsource their decisions to Monsanto, or at least rely on the company to narrow their choices dramatically… This could empower farmers to make better decisions,” he continued, “but the farmers’ interests and the industry’s don’t necessarily align.”

Contrary to the vision of these corporate executives, basic economics instructs that limiting supply would cause commodity prices that farmers receive to rise. The industry, however, is unable to self-correct because no platform exists for all farmers – who are in competition with one another – to agree to cut production in a given year. Even if that scaled coordination were possible, farmers might be pressured to maintain or expand production to justify past investments in heavy machinery or other inputs, and to avoid furloughing staff and laborers. Further, the design of federal crop insurance and commodity programs currently incentivize the maintenance of conventional farming models and levels of production.

Federal crop insurance and commodity programs are designed to maximize yields, directly serving the interests of multinational agribusiness corporations who profit from maintaining a state of overproduction. These subsidies enable the biggest industrial operations to get bigger at the expense of smaller producers, as benefits are siphoned to a limited number of commodity crops and a relatively small number of farmers. The artificial absence of risk for these farmers, as well as bias against alternative operations from financial lending institutions, inhibits what motivation might otherwise exist to adopt diversified production systems as a risk management strategy.

That is why agribusiness lobbyists work to preserve federal support that reduces crop insurance premiums and prevents payment limitations to commodity subsidies. This arrangement maintains the incentive for farmers to overproduce, while also enabling these agribusinesses to signal that their relationship with farmers is indeed symbiotic, rather than parasitic. In reality, however, the public benefits of commodity programs are funneling potential resources away from farms and rural communities. Currently, any farmer or landowner – even multimillionaires and billionaires not actively engaged in farming – can receive unlimited premium subsidies.

As an added consequence, these programs have been fundamental to the acceleration of rural depopulation and the consolidation of farmland. This places small and mid-sized farms, or other low-resource, beginning, and BIPOC farmers, at a competitive disadvantage when it comes to buying land. According to a study by agricultural economists from Cornell University and the University of Illinois, crop insurance contributed to a four to nine percent increase in forage and rangeland values. Another study that looked only at the impacts of direct payments eliminated by the 2014 Farm Bill, found that those payments caused an increase of about $18 per acre in cropland value.

To demonstrate one facet of the impacts of farmland consolidation, 40 percent of farmland in the United States was rented from landowners in 2017. Farmers who do not own but only rent farmland are, sensibly, wary against sinking heavy investments into land which they may be asked to leave at the end of any contract period. This particularly affects small and mid-sized, BIPOC, and beginning farmers who do not have the resources to purchase land at inflated prices. This effectively traps the next generation of farmers and would-be innovators, limiting them to adhere to conventional and unsustainable practices supported by existing farm infrastructure, or only modest and transferable investments.

For more on farmland access issues, refer to the recent National Young Farmers Coalition (NYFC) report, Land Policy: Toward A More Equitable Farming Future, and this guest post authored by Holly Rippen-Butler, NYFC Land Access Program Director.

The trouble with opting out

Financial ruin generated by rising input costs and falling commodity prices (in addition to systemic discrimination against BIPOC producers within USDA) catalyzed the flight of farmers to cities in the twentieth century, particularly those farmers who did not industrialize.  That said, a minority of farmers were able to resist the shift to conventional farming or later embraced sustainable production when its comparable, long-term benefits became clear.

Dave Bishop, 70, a mid-sized farmer in Illinois, endured heavy crop loss and debt caused by a severe drought in 1988. “It was traumatic,” he expressed, “to watch something die a little at a time for months and months and months.” Bishop was farming conventionally at the time, but that experience motivated him to deviate from the “get big or get out” mantra of the time – ”get different.” Bishop began to diversify his operations and eventually farm organically. “We dealt with opting out of the system,” he said. “That is possible for farmers to do.”

Farming organically to supply local and regional markets may indeed be considered an almost separate industry to monoculture farming, with its emphasis on sustainable farming practices, values, and markets. These farmers generally rely on a consumer base that is willing and able to spend a bit more than conventional market price for locally produced food that they know will be free of synthetic pesticides, promote greater animal welfare, and avoid GE seed that can trap farmers in unsustainable cycles. Many organic producers adopt techniques with ancient roots that center diversified systems, including crop rotation and the use of composted animal manure, to replace the need for synthetic inputs.

Research suggests that organic farmers save money on seed (which are not patented and can be saved from season to season), improve soil health, sequester more carbon, and harvest higher yields per acre than previously thought. These diversified farm systems may even be considered a natural form of risk mitigation, as opposed to crop insurance: “The next severe drought was in 2012,” Bishop recalled, “which turned out to be our most profitable year to date.”

Despite the proven resilience of this farming model, less than 0.8 percent of farms are certified as organic operations with USDA. Farmers must adhere to strict regulations related to soil quality, animal raising practices, and pest and weed control to become certified organic. In addition, the certification process is expensive and may not yield immediate financial benefit. The National Organic Certification Cost Share Program (NOCCSP) helps to alleviate the costs of certification for small and mid-sized organic farm businesses, although obstacles to certification remain.

While Bishop notes that “certifying our vegetable crops has little to no impact on local sales,” where consumers are able to build a relationship with their farmer, the label does “give us access to larger markets like Chicago where shoppers may not recognize the farm name.” That means these lucrative markets are more difficult to access for small organic farmers without the means to attain organic certification, or whose practices may deviate from the standards.

This demonstrates that existing farm policies place an outsized burden on small and mid-sized organic growers to grow, market, and sell their produce. Meanwhile, no comparable certification or market obstacles exist for conventional farmers – even though industrial agriculture is inherently riskier. Instead, monopsonist dynamics rooted in extreme concentration mean agribusiness corporations, including food processors, are the guaranteed buyers for overproduced and devalued commodity inputs. This difference reflects the dominance of agribusiness, which continues to shape the food system in ways that impede the success of even those farmers who choose to “opt out” of the industrial model.

#### Warming doesn’t trigger extinction

* peer-reviewed journal shows IPCC exaggeration
* history proves resilience
* no extinction- warming under Paris goals
* rock breaking strategy could offset warming

IBD 18 [Investors Business Daily, Citing Study from Peer reviewed journal by Lewis and Curry, “Here's One Global Warming Study Nobody Wants You To See”, 4/25/18, https://www.investors.com/politics/editorials/global-warming-computer-models-co2-emissions/]

Settled Science: A new study published in a peer-reviewed journal finds that climate models exaggerate the global warming from CO2 emissions by as much as 45%. If these findings hold true, it's huge news. No wonder the mainstream press is ignoring it.

In the study, authors Nic Lewis and Judith Curry looked at actual temperature records and compared them with climate change computer models. What they found is that the planet has shown itself to be far less sensitive to increases in CO2 than the climate models say. As a result, they say, the planet will warm less than the models predict, even if we continue pumping CO2 into the atmosphere.

As Lewis explains: "Our results imply that, for any future emissions scenario, future warming is likely to be substantially lower than the central computer model-simulated level projected by the (United Nations Intergovernmental Panel on Climate Change), and highly unlikely to exceed that level.

How much lower? Lewis and Curry say that their findings show temperature increases will be 30%-45% lower than the climate models say. If they are right, then there's little to worry about, even if we don't drastically reduce CO2 emissions.

The planet will warm from human activity, but not nearly enough to cause the sort of end-of-the-world calamities we keep hearing about. In fact, the resulting warming would be below the target set at the Paris agreement.

This would be tremendously good news.

The fact that the Lewis and Curry study appears in the peer-reviewed American Meteorological Society's Journal of Climate lends credibility to their findings. This is the same journal, after all, that recently published widely covered studies saying the Sahara has been growing and the climate boundary in central U.S. has shifted 140 miles to the east because of global warming.

The Lewis and Curry findings come after another study, published in the prestigious journal Nature, that found the long-held view that a doubling of CO2 would boost global temperatures as much as 4.5 degrees Celsius was wrong**.** The most temperatures would likely climb is 3.4 degrees.

It also follows a study published in Science, which found that rocks contain vast amounts of nitrogen that plants could use to grow and absorb more CO2, potentially offsetting at least some of the effects of CO2 emissions and reducing future temperature increases.

### Farming

#### Can’t solve cities impact—your ev’s about unmanaged mega-cities in Africa and Asia, not the US. Zero modelling or spillover impact means you can ignore this scenario—cal’s blue

Liotta 12 – Dr. Peter H. Liotta, Professor of Humanities and Executive Director of the Pell Center for International Relations and Public Policy, Salve Regina University, and Dr. James F. Miskel, PhD from the State University of New York, Adjunct Professor at the Naval War College, Norwich University, and Long Island University, Senior Fellow at Homeland Security Management Institute, “Megacities: The Past, Present and Predictions for the Future”, UTNE Reader, September, https://www.utne.com/politics/megacities-ze0z1209zwar

By 2025, at least 27 cities will have populations greater than 10 million and more than 600 cities will have populations greater than one million. Specific megacities, intimately connected to globalization, pose the most significant security and environmental threat to our existence. Drawing on the authors’ three decades of international fieldwork and seasoned policy analysis, The Real Population Bomb (Potomac Books, 2012) by P.H. Liotta and James F. Miskel discusses the effects these underserved megacities have on foreign, military, environmental and economic policies. Explore the historical dilemmas of megacities and how these problems are shaping the global, economic and environmental landscape of our world. This excerpt is taken from Chapter 1, “Introduction: Welcome to the Urban Century.”

We live in the age of the city. The City is everything to us—it consumes us, and for that reason we glorify it. —Onookome Okome

There was a time when the city was the dominant political identity. Centuries and even millennia ago, the most advanced societies in the Mediterranean, the Near East, and South America revolved around cities that were either states in themselves or were the locus of power for larger empires and kingdoms. The time of the city is coming again, though now in a considerably less benign way.

-Advertisement-

With the rise of massive urban centers in Africa and Asia, cities that will matter most in the twenty-first century are located in less-developed, struggling states. A number of these huge megalopolises—whether Lagos or Karachi, Dhaka or Kinshasa—reside in states often unable or simply unwilling to manage the challenges that their vast and growing urban populations pose. There are no signs that their governments will prove more capable in the future. These swarming, massive urban monsters will continue to grow and should concern the world.

By 2015 there will be six hundred cities on the planet with populations of 1 million or more, and fifty-eight with populations over 5 million. By 2025, according to the National Intelligence Council, there will be twenty-seven cities with populations greater than 10 million—the common measure by which an urban population constitutes a “megacity.” If measures are not taken soon, some of these megacities will pose the most significant security threat in the coming decades. They will become havens for terrorists and criminal networks, as well as sources of major environmental depletion. They will serve as freakish natural laboratories where all the elements most harmful to international and human security are grown. If crowded masses within these unaccommodating spaces are left to their own devices by inept or uncaring governments, their collective rage, despair, and hunger will inevitably erupt. And when inhabitants tire of the lawlessness, poverty, and instability of the megacities, they will leave—those that can—bringing violence with them. In the face of rising expectations that globalization inevitably entails, these petri dishes of despair and danger will spill over municipal boundaries and international borders with rapidly spreading contagion.

# 1NR

## DA

### 1NR – Disease

#### Natural pandemics and lab release each cause extinction

Ord 20, [edited extract from The Precipice: Existential Risk and the Future of Humanity by Toby Ord, published by Bloomsbury, Why we need worst-case thinking to prevent pandemics, March 6, https://www.theguardian.com/science/2020/mar/06/worst-case-thinking-prevent-pandemics-coronavirus-existential-risk]

Our population now is a thousand times greater than it was for most of human history, so there are vastly more opportunities for new human diseases to originate. And our farming practices have created vast numbers of animals living in unhealthy conditions within close proximity to humans. This increases the risk, as many major diseases originate in animals before crossing over to humans. Examples include HIV (chimpanzees), Ebola (bats), Sars (probably civets or bats) and influenza (usually pigs or birds). We do not yet know where Covid-19 came from, though it is very similar to coronaviruses found in bats and pangolins. Evidence suggests that diseases are crossing over into human populations from animals at an increasing rate.

Modern civilisation may also make it much easier for a pandemic to spread. The higher density of people living together in cities increases the number of people each of us may infect. Rapid long-distance transport greatly increases the distance pathogens can spread, reducing the degrees of separation between any two people. Moreover, we are no longer divided into isolated populations as we were for most of the past 10,000 years.

Together these effects suggest that we might expect more new pandemics, for them to spread more quickly, and to reach a higher percentage of the world’s people.

But we have also changed the world in ways that offer protection. We have a healthier population; improved sanitation and hygiene; preventative and curative medicine; and a scientific understanding of disease. Perhaps most importantly, we have public health bodies to facilitate global communication and coordination in the face of new outbreaks. We have seen the benefits of this protection through the dramatic decline of endemic infectious disease over the past century (though we can’t be sure pandemics will obey the same trend). Finally, we have spread to a range of locations and environments unprecedented for any mammalian species. This offers special protection from extinction events, because it requires the pathogen to be able to flourish in a vast range of environments and to reach exceptionally isolated populations such as uncontacted tribes, Antarctic researchers and nuclear submarine crews.

It is hard to know whether these combined effects have increased or decreased the existential risk from pandemics. This uncertainty is ultimately bad news: we were previously sitting on a powerful argument that the risk was tiny; now we are not.

We have seen the indirect ways that our actions aid and abet the origination and spread of pandemics. But what about cases where we have a much more direct hand in the process – where we deliberately use, improve or create the pathogens?

Our understanding and control of pathogens is very recent. Just 200 years ago, we didn’t even understand the basic cause of pandemics – a leading theory in the west claimed that disease was produced by a kind of gas. In just two centuries, we discovered it was caused by a diverse variety of microscopic agents and we worked out how to grow them in the lab, to breed them for different traits, to sequence their genomes, to implant new genes and to create entire functional viruses from their written code.

This progress is continuing at a rapid pace. The past 10 years have seen major qualitative breakthroughs, such as the use of the gene editing tool Crispr to efficiently insert new genetic sequences into a genome, and the use of gene drives to efficiently replace populations of natural organisms in the wild with genetically modified versions.

This progress in biotechnology seems unlikely to fizzle out anytime soon: there are no insurmountable challenges looming; no fundamental laws blocking further developments. But it would be optimistic to assume that this uncharted new terrain holds only familiar dangers.

To start with, let’s set aside the risks from malicious intent, and consider only the risks that can arise from well-intentioned research. Most scientific and medical research poses a negligible risk of harms at the scale we are considering. But there is a small fraction that uses live pathogens of kinds that are known to threaten global harm. These include the agents that cause the Spanish flu, smallpox, Sars and H5N1 or avian flu. And a small part of this research involves making strains of these pathogens that pose even more danger than the natural types, increasing their transmissibility, lethality or resistance to vaccination or treatment.

In 2012, a Dutch virologist, Ron Fouchier, published details of an experiment on the recent H5N1 strain of bird flu. This strain was extremely deadly, killing an estimated 60% of humans it infected – far beyond even the Spanish flu. Yet its inability to pass from human to human had so far prevented a pandemic. Fouchier wanted to find out whether (and how) H5N1 could naturally develop this ability. He passed the disease through a series of 10 ferrets, which are commonly used as a model for how influenza affects humans. By the time it passed to the final ferret, his strain of H5N1 had become directly transmissible between mammals.

The work caused fierce controversy. Much of this was focused on the information contained in his work. The US National Science Advisory Board for Biosecurity ruled that his paper had to be stripped of some of its technical details before publication, to limit the ability of bad actors to cause a pandemic. And the Dutch government claimed that the research broke EU law on exporting information useful for bioweapons. But it is not the possibility of misuse that concerns me here. Fouchier’s research provides a clear example of well-intentioned scientists enhancing the destructive capabilities of pathogens known to threaten global catastrophe.

Of course, such experiments are done in secure labs, with stringent safety standards. It is highly unlikely that in any particular case the enhanced pathogens would escape into the wild. But just how unlikely? Unfortunately, we don’t have good data, due to a lack of transparency about incident and escape rates. This prevents society from making well-informed decisions balancing the risks and benefits of this research, and it limits the ability of labs to learn from each other’s incidents.

Security for highly dangerous pathogens has been deeply flawed, and remains insufficient. In 2001, Britain was struck by a devastating outbreak of foot-and-mouth disease in livestock. Six million animals were killed in an attempt to halt its spread, and the economic damages totalled £8bn. Then, in 2007, there was another outbreak, which was traced to a lab working on the disease. Foot-and-mouth was considered a highest-category pathogen, and required the highest level of biosecurity. Yet the virus escaped from a badly maintained pipe, leaking into the groundwater at the facility. After an investigation, the lab’s licence was renewed – only for another leak to occur two weeks later.

In my view, this track record of escapes shows that even the highest biosafety level (BSL-4) is insufficient for working on pathogens that pose a risk of global pandemics on the scale of the Spanish flu or worse. Thirteen years since the last publicly acknowledged outbreak from a BSL-4 facility is not good enough. It doesn’t matter whether this is from insufficient standards, inspections, operations or penalties. What matters is the poor track record in the field, made worse by a lack of transparency and accountability. With current BSL-4 labs, an escape of a pandemic pathogen is only a matter of time.

One of the most exciting trends in biotechnology is its rapid democratisation – the speed at which cutting-edge techniques can be adopted by students and amateurs. When a new breakthrough is achieved, the pool of people with the talent, training, resources and patience to reproduce it rapidly expands: from a handful of the world’s top biologists, to people with PhDs in the field, to millions of people with undergraduate-level biology.

The Human Genome Project was the largest ever scientific collaboration in biology. It took 13 years and $500m to produce the full DNA sequence of the human genome. Just 15 years later, a genome can be sequenced for under $1,000, and within a single hour. The reverse process has become much easier, too: online DNA synthesis services allow anyone to upload a DNA sequence of their choice then have it constructed and shipped to their address. While still expensive, the price of synthesis has fallen by a factor of 1,000 in the past two decades, and continues to drop. The first ever uses of Crispr and gene drives were the biotechnology achievements of the decade. But within just two years, each of these technologies were used successfully by bright students participating in science competitions.

Such democratisation promises to fuel a boom of entrepreneurial biotechnology. But since biotechnology can be misused to lethal effect, democratisation also means proliferation. As the pool of people with access to a technique grows, so does the chance it contains someone with malign intent.

People with the motivation to wreak global destruction are mercifully rare. But they exist. Perhaps the best example is the Aum Shinrikyo cult in Japan, active between 1984 and 1995, which sought to bring about the destruction of humanity. It attracted several thousand members, including people with advanced skills in chemistry and biology. And it demonstrated that it was not mere misanthropic ideation. It launched multiple lethal attacks using VX gas and sarin gas, killing more than 20 people and injuring thousands. It attempted to weaponise anthrax, but did not succeed. What happens when the circle of people able to create a global pandemic becomes wide enough to include members of such a group? Or members of a terrorist organisation or rogue state that could try to build an omnicidal weapon for the purposes of extortion or deterrence?

The main candidate for biological existential risk in the coming decades thus stems from technology – particularly the risk of misuse by states or small groups. But this is not a case in which the world is blissfully unaware of the risks. Bertrand Russell wrote of the danger of extinction from biowarfare to Einstein in 1955. And, in 1969, the possibility was raised by the American Nobel laureate for medicine, Joshua Lederberg: “As a scientist I am profoundly concerned about the continued involvement of the United States and other nations in the development of biological warfare. This process puts the very future of human life on earth in serious peril.”

In response to such warnings, we have already begun national and international efforts to protect humanity. There is action through public health and international conventions, and self-regulation by biotechnology companies and the scientific community. Are they adequate?

National and international work in public health offers some protection from engineered pandemics, and its existing infrastructure could be adapted to better address them. Yet even for existing dangers this protection is uneven and under-provided.

### 1NR – Bioterror

#### Bioterror is an immediate threat that outweighs nuclear strikes---terrorists have *capability* and *motive* to launch massive attacks on the US.

Vicinanzo 15. (Amanda Vicinanzo, Senior Editor at Homeland Secuity. Biological Terrorist Attack On US An 'Urgent And Serious Threat'. April 23, 2015. www.hstoday.us/single-article/biological-terrorist-attack-on-us-an-urgent-and-serious-threat/0ce6ebf3524d83c537b1f4f0cc578547.html)

In the wake of the recent Ebola crisis, the House Committee on Homeland Security’s Subcommittee on Emergency Preparedness, Response and Communications convened a hearing Wednesday to examine US preparedness for a bioterrorist attack. “The risk of a biological terrorist attack to America is an urgent and serious threat. A bioattack could cause illness and even kill hundreds of thousands of people, overwhelm our public health capabilities, and **create significant economic, societal and political consequences**,” said subcommittee chairman Martha McSally (R-Ariz). “**Our nation’s capacity to prevent, respond to, and mitigate the impacts of biological terror incidents is a top national security priority.”** Bioterrorist threat from ISIL and other terrorist organizations In her opening statement, McSally expressed concern over the possibility that the Islamic State of Iraq and the Levant (ISIL) and other jihadi terrorist organizations could conduct a biological attack on American soil. “ISIL is better resourced, more brutal, and more organized than any terrorist group to date,” McSally said. “We know that they have an interest in using chemical and biological weapons.” Last year, Director of National Intelligence James Clapper warned the Syrian government might have advanced beyond the research and development stage and may have a restricted capacity to manufacture weaponized disease agents. **Counterterrorism officials have worried for years** since the conflict in Syria began that ISIL may be able to get a hold of these biological weapons. Moreover, last year, a laptop belonging to a Tunisian jihadist reportedly recovered from an ISIL hideout in Syria contained a hidden trove of secret plans, including instructions for weaponizing the bubonic plague and a document discussing the advantages of a biological attack. “The advantage of biological weapons is that they do not cost a lot of money, while the human casualties can be huge,” stated a document found on the laptop. **In October, jihadists and supporters of ISIL stepped up discussions on jihadist social media websites about the possibility and ease of using Ebola, as well as other virulent pathogens and poisons, as weapons against the US** and the West, according to reports by the Middle East Media Research Institute. Jim Talent, former Senator from Missouri and former vice-chair of The Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism, testified that the threat of a bioattack is “one of the greatest and gravest” facing the nation. Talent said that at the end of 2008, the 9/11 Commission issued the report, World at Risk, which addressed the threat posed by nuclear and biological weapons. Talent and former Sen. Bob Graham (D-Fla.) gave the biothreat greater emphasis, knowing that terrorists have acquired bio-weapons in the past, and that **it’s** likely **easier for them to secure a bio-weapon than a nuclear weapon.** The report stated, “We accept the validity of current intelligence estimates about the current rudimentary nature of terrorist capabilities in the area of biological weapons but caution that the **terrorists are trying to upgrade their capabilities and could do so by recruiting skilled scientists**. In this regard, the biological threat is greater than the nuclear; the acquisition of deadly pathogens, and their weaponization and dissemination in aerosol form, would **entail fewer technical hurdles** than the theft of production of weapons-grade uranium or plutonium and its assembly into an improvised nuclear device.” In addition, **bio-weapons can be easily transported, stockpiled, can** *cause more deaths than a* ***tactical*** nuclear weapon, and, depending on the biological agent used, the terrorists could launch an attack and escape the area before the authorities even knew that an attack had occurred, according to Talent. And he's not alone. Seasoned and veteran counterterrorism officials agree **that jihadi organizations appear to have a greater interest in acquiring and using biological and radiological weapons**, and that Al Qaeda is known to have experimented with trying to weaponize a number of highly virulent pathogens. In 2005, Homeland Security Today first reported that Al Qaeda had worked on plans to send squads of "bio-martyrs" who would deliberately infect themselves with a human transmittable strain of bird flu once such a strain become a human contagion or a human transmissible form clandestinely bio-engineering to be easily passed between humans, and then to spread the virus as widely around the world as they could by traveling on one international flight after another, officials said at the time. During the height of the Ebola outbreak, intelligence surfaced indicating that jihadi organizations were discussing doing the same thing with the Ebola virus. With a long enough period of sanctuary where terrorists can plan, recruit and get together the necessary lab facilities and experts, they can isolate and weaponize. According to Talent, there are now areas, including in Iraq and Syria, where jihadists have the time and sanctuary to develop these weapons. Although an attack using biological agents or weapons is a **low probability, high consequence event**, “When you keep running risk and the risk continues to grow, even gradually, eventually the bullet is in the chamber,” Talent said.

#### Use is likely and they cause extinction---no more barriers, effective response is key.

Krstic 17. (Marko M. Krstic, Ministry of Internal Affairs of the Republic of Serbia. Published in the Military Techinical Courier--Vol 65, Issue 2--a multidisciplinary scientific journal of the Ministry of Defence of the Republic of Serbia. TENDENCY OF USING CHEMICAL, BIOLOGICAL, RADIOLOGICAL AND NUCLEAR WEAPONS FOR TERRORIST PURPOSES. 2017. scindeks-clanci.ceon.rs/data/pdf/0042-8469/2017/0042-84691702481K.pdf)

In the past 30 years, the use of CBRN weapons has become a major concern for many nations around the world. The public has become insensitive to traditional terrorist attacks that seem to be a less efficient way for terrorist organizations to achieve their goals. What causes shock and fear is actually presenting the properties of weapons which can be used by terrorist organizations to enhance their efforts and the effectiveness of attacks. CBRN terrorism is often a synonym for weapons of mass destruction, although this form of terrorism and related incidents do not require attacks and inflicting harm to large numbers of people - they do not even require deadly attacks at all. The number of studies on this type of terrorism is limited due to the lack of available data on this terrorism type. There is a very small number of databases of CBRN incidents, and even the existing ones have relatively little to do with them and they are compared to conventional terrorism (Jesse, 2012). Some experts emphasize the factors that promote such attacks and these factors include the availability of information and expertise, increased frustration of terrorists, demonization of the target population, as well as a millennial, apocalyptic or messianic vision. Experts also differ in opinion when it comes to possible perpetrators of CBRN incidents, and include religious fundamentalists and cults1 as possible perpetrators of such attacks, especially when these groups address to ethereal audience, emphasizing the hatred of unbelievers (Ivanova, Sandler, 2007). Concerns about super terrorism which involves the use of CBRN weapons are mainly focused on what terrorists can do in the context of our social reality, with an emphasis on terrorist motivations, initiatives and limitations. When considering which terrorist groups may be inclined to commit CBRN terrorism, it is important to recognize the spectrum of these acts, as well as to analyze the following categorization: (a) massive casualty events produced by conventional weapons; (b) CBRN scams; (c) conventional attack on a nuclear facility; (d) limited-scale chemical or biological attack or a radiological dispersion; (e) large scale chemical or biological attack or a radiological dispersion; and (f) CBRN strikes (super terrorism) that can lead to thousands of victims. In addition to the motivation and willingness to inflict mass casualties in any way, terrorists must have technical and financial capabilities to come into possession of material and acquire skills for these types of weapons and materials and carry out a successful attack. Chemical and biological weapons can pose a risk to terrorists thus deterring them from using such weapons (Post, 2005, pp.148-151). The possibility that terrorists use chemical or biological substances may increase over the next decade, according to US intelligence agencies. According to CIA2 , **an interest among non-state actors, including terrorists, for biological and chemical materials is real and growing, and the number of potential perpetrators is increasing**. The agency also noted that many of these groups had developed an international network and did not need to rely on state sponsors for financial and technical support. However, it is believed that it is less likely that terrorists would choose chemical and biological weapons over conventional explosives, because these weapons are difficult to control and their results are unpredictable (Condesman, Burke, 2001). **The risk of CBRN weapons is growing since terrorists are better acquainted with these agents and their potential for causing harm**3 . **These agents possess desirable characteristics as weapons of terror; they are** biologically invisible to the naked eye, **odorless and potentially lethal in the form of particles;** natural organisms are so readily available**, and can** be "camouflaged" in natural disasters **and used to spread fear and various diseases**. **Chemical agents quickly attack the critical physiological centers of the body, disabling or killing the victim**. Biological and chemical **weapons require the application of huge amounts of resources and result in different effects, causing fear and panic in the contaminated areas**. Often referred to as "weapons of mass destruction", but, in medical terms, they are weapons of potential mass casualties because they can lead to massive death toll in the absence of preventive measures and timely response (Meyer, Spinella, 2014, pp.645-656). "Bioterrorism is the intentional use of microorganisms or toxins derived from living organisms used for hostile purposes intended to cause disease or death in man, animals and plants, on which they depend". The threat of bioterrorist attacks is real, and **each individual is a potential terrorist**, **when terrorists are "invisible**" prior to an attack which also can be "invisible" in the form of causing infectious disea-ses or epidemics. Citizens who are not aware they are infected are potential safety hazard and so-called dangerous bodies (Mijalković, 2011). In the last ten years, the issue of CBRN weapons has attracted the attention of experts, but a list of priorities by the heads of states has never been established. Biological weapons almost became forgotten after they had been banned by the 1972 Convention on Biological Weapons. A significant attention was paid to them during the 90s of the last century. The important thing is that biological weapons attract much less attention than other similar weapons, but probably represent the greatest danger, and in addition to their use in war, they are available as instruments of terror in peace. Some countries showed willingness to use such weapons against defenseless populations to achieve strategic objectives, and in this regard, some analysts believe that those who attacked the World Trade Center in 1993 applied cyanide on their bombs (this was not confirmed, but a large amount of cyanide was found in possession of the perpetrators). Such a group will prove to be less inefficient, because if terrorists decide to shock and surprise the government by inflicting enormous damage, CBRN weapons will become more attractive and more accessible (Bettis, 1998). Motives and forms of behavior of individuals and groups who acquired or used CBRN weapons have existed since long ago and there is no doubt that modern society is vulnerable to such attacks (Tucker, 2000). Fear of biological terrorism is certainly greater than the fear of the conventional forms of terrorism; some of these fears are justified and some are often exaggerated. Some agents are really very contagious and deadly, and if used properly, have a potential to result in casualties similar to those in a nuclear attack. Perhaps the scariest aspect of biological weapons is that the body is attacked without warning, people are afraid of the threat as it is invisible, and cannot be heard or felt. The history of warfare, terrorism and crime involving biological agents in the last century is considerably less dangerous and more deadly than the history of conventional warfare (Parachini, 2001). Today, some states and some terrorist groups can more easily overcome technological barriers due to the increased flow of information and access to previously unavailable technologies. Along with nuclear and chemical weapons, biological weapons are part of an unholy trinity of weapons of mass destruction (Davis, Johnson-Winegar, 2000, pp.15-28). **The** society is now faced with the threat of an apocalyptic and asymmetric war scenario **in which kamikaze attackers are able to arm themselves with WMD4** without even having to have a "physical" weapon to create fear; they probably still prefer simple, proven methods: a stampede in an enclosed place, or just an explosive device, which will kill many people5 (Palmer, 2004, pp.3-9). Early detection and response to biological or chemical terrorism are crucial to solving this problem (U.S. Congress House, 2003, p.117).

### 1NR - UQ

#### Antitrust law enforcement has two areas of focus now: health care and big tech. Health care is under the radar.

Levine 8-25-2021, master’s degree from the Columbia University Graduate School of Journalism and a bachelor of arts in English from the University of Pennsylvania. She is also an alumna of the Fellowships at Auschwitz for the Study of Professional Ethics, a program in Germany and Poland that explores the ethics of reporting on politics, war and genocide (Alexandra, “How Biden's tech trustbuster could change health care,” *Politico*, <https://www.politico.com/newsletters/future-pulse/2021/08/25/how-bidens-tech-trustbuster-could-change-health-care-797333>)

Lina Khan’s Federal Trade Commission has its eyes on health care. The agency known for efforts to rein in Big Tech companies like Facebook and Amazon is also enmeshed in high-stakes health care and health tech battles that extend well beyond Silicon Valley. Case in point: The FTC trial that kicked off yesterday examining monopoly concerns in the market for cancer screening technology. (More on that below.) That closely watched antitrust case — involving the giant Illumina and startup Grail — predates Khan’s confirmation as FTC chair. But it underscores how health issues are looming over the agenda, particularly heading into the pandemic's second year. The way health care companies and consumer health apps handle sensitive data “is an area that I'm sure [Khan’s] very, very interested in,” said Jessica Rich, former director of the FTC’s consumer protection bureau, adding that the Biden administration's FTC will also be closely scrutinizing hospital mergers. “I expect her and the commission to take a very bold approach to what constitutes harm for both,” Rich said. “I expect her to pay close attention to algorithms and potential discrimination in health care, both denials and pricing issues which the FTC's laws can address.” The FTC’s jurisdiction touches nearly the entire health economy. While its competition bureau looks at health care mergers like the Illumina-Grail deal, its consumer protection side is focused on health privacy and data security issues, as well as fighting bogus medical claims on everything from weight loss to Covid cures. When Congress passed the Covid-19 Consumer Protection Act last year, the agency was granted new authority to police Covid scams. Although Khan hasn't spoken publicly about her health care agenda, she's likely to take issue with health apps and companies whose business models maximize, incentivize and monetize data collection. Of particular concern is how firms disclose what they’re doing with consumers’ data — and whether it may still be deceptive or unfair.

#### Health care enforcement is coming now---but it could be triaged in the case of overstretch

Galvin 9-10-2021 (Gaby, “Hospitals, Other Health Care Players Are Seeing ‘the Bar of Scrutiny’ Raised by Biden Regulators,” *Morning Consult*, <https://morningconsult.com/2021/09/10/health-care-antitrust-biden-administration/>)

When President Joe Biden tapped vocal critics of big tech companies for key antitrust roles, companies like Amazon.com Inc. went on high alert. But he’s pledged to crack down on anticompetitive behavior across sectors — including “unchecked mergers” in health care, and former officials and industry watchers say hospitals and other groups should tread carefully. Officials like Lina Khan, who was sworn in as chair of the Federal Trade Commission in June, and Tim Wu of the White House’s National Economic Council, haven’t gone public with how they plan to tackle health care consolidation. But early action from the administration points to hospital price transparency and heightened merger scrutiny as top priorities. “This administration is going to take a stronger approach to any antitrust enforcement than we’ve previously seen,” said Alexis Gilman, an antitrust lawyer at Crowell & Moring who worked in the FTC’s competition bureau, primarily during the Obama administration. “The bar of scrutiny does seem to have been raised.” Biden laid out his broad antitrust agenda in an executive order in July that singled out rural hospital closures and higher hospital prices in markets with little competition as reasons to support stronger FTC guidelines for health care mergers. Now, Gilman said the FTC appears to be taking more time to review details on proposed mergers that may have otherwise been cleared quickly or seen as “non-problematic.” The FTC’s public stances so far “reflect an agency that believes that prior enforcement has been a bit lax, and they’re going to tighten that up,” Gilman said. Health systems feeling the heat Industry watchers are taking cues from Sutter Health’s $575 million antitrust settlement, which received final approval from a federal judge in late August after a yearslong legal battle over allegations that the nonprofit health system in California engaged in price gouging. Notably, Health and Human Services Secretary Xavier Becerra sued Sutter Health in 2018 when he was California’s attorney general, and before joining the Biden administration, he said in March that he would continue to promote health care competition so patients “aren’t left holding the bag when big players dominate the market.” Given Becerra’s involvement, the case could offer a roadmap for health care competition policy in the Biden era at both the state and federal levels, said Elizabeth Mitchell, president and chief executive of the Purchaser Business Group on Health, which helped bring together employers and unions to file the lawsuit against Sutter Health. “I think it is very important that some of what we achieved in the Sutter case is applied more broadly,” Mitchell said. That includes efforts to promote hospital price transparency, a priority left over from the Trump administration. Meanwhile, Gilman points to the Sutter Health case and a federal settlement with North Carolina-based Atrium Health in 2018 as signs that health systems should “be a bit more cautious” when drawing up contracts that could be seen as anti-competitive, such as those that include measures that ban insurers from “steering” patients toward less expensive medical care or revealing pricing information. “I think there is — as a result of those two enforcement actions — increased risk, at the least for the largest systems that have meaningful shares in their local markets,” Gilman said. Provider groups are readying their defenses. In August, the American Hospital Association sent a letter to antitrust officials calling for more reviews of health insurance companies, saying payers have “largely escaped close scrutiny for conduct and practices that adversely impact both consumers and providers.” The group declined an interview request. David Maas, an antitrust lawyer at Davis Wright Tremaine LLP who works with health care providers, noted that ramped-up scrutiny on hospitals could hurt smaller physician groups or rural hospitals that are the only option for care in some communities. “We already have aggressive enforcement in that space, and it often is good and leads to more competitive marketplaces,” Maas said. “But just in the interest of being more aggressive, to push for even more enforcement in health care, I think could lead to some unfortunate outcomes, because a lot of health care providers are struggling.” Hospital mergers have slowed this year, with 27 deals completed in the first half of 2021 compared with 43 in the same time period last year, according to a Kaufman Hall analysis. While the number of deals has fallen, revenue is on par with previous years as health systems focus more on regional partnerships in new markets rather than acquiring smaller independent hospitals, the analysis said. Other health industries in regulatory crosshairs Hospitals aren’t the only health care groups getting a closer look in the Biden era. The FTC has also signaled interest in vertical mergers, when companies that don’t compete directly consolidate, and is looking to unwind life science company Illumina Inc.’s $7.1 billion acquisition of Grail Inc., which was finalized last month despite a lack of clearance from the FTC or European regulators. In Sept. 2 letters to GOP lawmakers who questioned the agency’s stance, Khan said the FTC is at a “crossroads” and has taken an “unduly permissive” approach in the past that’s allowed for massive companies to form across industries. Antitrust lawyers are closely watching the Illumina-Grail case, which will be “the first vertical merger case the FTC litigates in decades,” Gilman said. Another key deal to watch: Michigan-based Beaumont Health and Spectrum Health said last week they’re proceeding with a merger that would give the combined health system control of 22 hospitals, an outpatient business and a health plan covering 1 million people. If approved, the merger is expected to be finalized this fall. Collaborations between payers and providers — forming so-called “payviders” — have become increasingly common, with hospital systems launching their own health plans and health insurance giants such as UnitedHealth Group Inc. moving into health care delivery in recent years. “In the coming years, the for-profit insurers will start following United’s lead in acquiring, or effectively acquiring, more and more providers,” Maas said. Some analysts are skeptical of the Biden administration’s ability to meaningfully rein in such deals. “The idea that now Biden is going to direct the FTC to pay closer attention to health care mergers is a lot like closing the barn door after the horses have run out,” said Michael Abrams, co-founder and managing partner at health care consultancy Numerof & Associates. But “when you combine the payer and the provider, it’s the consumer who, more than ever, needs protection.” RELATED: Pharmacy Benefit Managers Are Feeling a Push From States to ‘Turn the Lights on’ to Their Business Practices Regulators picking their battles Going forward, Gilman said he expects agencies to “be less likely to either clear or settle vertical merger transactions” right away, which “could have some chilling effect.” But regulators will also have to “triage” top priority cases, given the FTC said it is being hit with a “tidal wave” of merger filings.

#### Law enforcement will be focused on health care now

Shryock 21, analyst @ Medical Economics (Todd, “Hospital consolidations in crosshairs of Biden administration,” *Medical Economics*, <https://www.medicaleconomics.com/view/hospital-consolidations-in-crosshairs-of-biden-administration>)

As part of a sweeping executive order, President Biden addressed hospital mergers and their sometimes negative effects on patients and the health care system. The order specifies that the Justice Department and Federal Trade Commission review and revise their merger guidelines to ensure patients are not harmed by the mergers. The administration points out that hospital consolidation has hit rural areas especially hard, leaving many patients without good options for convenient and affordable health care services. Since 2010, 139 rural hospitals have shuttered, including a high of 19 last year during the pandemic.

#### FTC enforcement solves every warrant---prevents consolidation and increases access.

Gustafsson & Blumenthal 21, \*Lovisa Gustafsson is an assistant vice president at the Commonwealth Fund. She previously consulted for investor and industry clients on health policy and strategy issues. \*David Blumenthal, MD, is president of the Commonwealth Fund. He previously served as the National Coordinator for Health IT in the Obama Administration. (March 9th, 2021, “The Pandemic Will Fuel Consolidation in U.S. Health Care”, [https://hbr.org/2021/03/the-pandemic-will-fuel-consolidation-in-u-s-health-care#](https://hbr.org/2021/03/the-pandemic-will-fuel-consolidation-in-u-s-health-care))

Concentration in the U.S. health care sector has been on the rise over the past two decades. Starting with horizontal consolidation, it has spread to vertical mergers and acquisitions and megamergers of national players at multiple levels of the supply chain. Given the financial difficulty that many providers have suffered during the pandemic, this trend is likely to [continue](https://www.healthcarefinancenews.com/news/ma-activity-expected-surge-independent-health-systems-look-partners), reducing competition and increasing prices. In light of this danger, Congress and regulators should take steps now to [more fully assess the impact](https://www.urban.org/research/publication/addressing-health-care-market-consolidation-and-high-prices/view/full_report) and curb those combinations that adversely impact payers and patients.

Studies to date tend to rebut the argument that acquisitions improve efficiencies, reduce costs, and lead to better care coordination. Instead, they show that consolidation increases prices and fails to improve the quality of care. For example, hospitals’ acquisitions of physicians’ practices in California has been linked to higher prices for primary care and specialist services and to increases in insurance premiums.

There is some help on the way. In January, the Federal Trade Commission (FTC) [issued orders](https://www.ftc.gov/news-events/press-releases/2021/01/ftc-study-impact-physician-group-healthcare-facility-mergers) to six large insurers (Aetna, Anthem, Florida Blue, Cigna, Health Care Service Corporation, and UnitedHealthcare) to provide commercial claims data for hospital inpatient and outpatient and physician services in 15 states from 2015 to 2020. These directives aim to provide more detailed evidence about how mergers of physician practice and hospitals’ acquisitions of physician practices affect competition. And this potentially opens the door for oversight at the state and federal level

### 1NR - Link

#### Enforcement – its expensive and time-consuming – the aff is a massive resource drain

Galston & Hendrickson 18 [William, Senior Fellow at the Brookings Institute, served from 1993 to 1995 as Deputy Assistant to President Clinton for Domestic Policy, Saul Stern Professor and Acting Dean at the School of Public Policy, University of Maryland, and Clara, researcher at the Brookings Institution in Washington, D.C. and a freelance reporter for national and local outlets, does PolitiFact fact checking at the Detroit Free Press. “A policy at peace with itself: Antitrust remedies for our concentrated, uncompetitive economy” https://www.brookings.edu/research/a-policy-at-peace-with-itself-antitrust-remedies-for-our-concentrated-uncompetitive-economy/]

Reduce the costs of antitrust enforcement

Enforcing antitrust laws is typically slow and expensive. Individual cases, such as the Justice Department’s Microsoft and AT&T investigations, can last for a decade and consume an outsize share of an agency’s resources. In these circumstances, the government is understandably reluctant to initiate actions against large firms with deep pockets.

Prior to 1974, the rules allowed automatic appeals of district courts’ antitrust decisions to the Supreme Court, bypassing an entire level of appellate review. In light of the enforcement experience since this rule was repealed in 1974, the case for legislation that reinstates this rule is strong. This is particularly true for anti-monopoly cases arising under Section 2 of the Sherman Act. The longer monopoly abuses are allowed to persist, the more entrenched offenders become, and the more unlawful rents they can extract from consumers. Forcing firms to disgorge these ill-gotten gains after the fact is difficult at best, and there is no way of compensating potential entrepreneurs whom monopolistic firms deterred from starting new businesses.[42]

#### Litigation alone is expensive and trades off with other initiatives

Skadden 21 [international law firm with a focus on antitrust, tax, and financial litigation. “Lina Khan’s Appointment as FTC Chair Reflects Biden Administration’s Aggressive Stance on Antitrust Enforcement” <https://www.skadden.com/-/media/files/publications/2021/06/linakhansappointmentasftcchairreflectsbidenadminis.pdf>]

Second, like all antitrust enforcers, Ms. Khan and the FTC will face resource constraints. Bringing antitrust litigation is an expensive and laborious process, often requiring millions of dollars for expert fees and a large army of FTC staff attorneys and taking many months or even years to accomplish. Typically, the FTC can only litigate a handful of antitrust matters at a time. It seems likely that Congress will provide more funding to the FTC in the current environment, but even with these extra resources, the FTC will still have to pick its cases carefully and cannot challenge every deal or every instance of alleged unlawful conduct.

#### Fiat – the plan is studied and reviewed – that’s a huge drain

Khan 20 (Lina, Chair of the Federal Trade Commission. “THE CASE FOR UNFAIR METHODS OF COMPETITION RULEMAKING” https://awards.concurrences.com/en/awards/2020/academic-articles/the-case-for-unfair-methods-of-competition-rulemaking]

"A key feature of antitrust today is that the law is developed entirely through adjudication. Evidence suggests this exclusive reliance on adjudication has failed to deliver a predictable, efficient, or participatory antitrust regime. Antitrust litigation and enforcement is protracted and expensive, requiring extensive discovery and costly expert analysis. In theory, this approach facilitates nuanced and fact-specific analysis of liability and well-tailored remedies. But in practice, the exclusive reliance on case-by-case adjudication has yielded a system of enforcement that generates ambiguity, drains resources, privileges incumbents, and deprives individuals and firms of any real opportunity to participate in the process of creating substantive antitrust rules. It is difficult to quantify this harm.

### 1NR – Link – M&A

#### M&A antitrust overstretches the regulator

Kennedy 20 [Joe Kennedy, Senior Fellow, Information Technology and Innovation Foundation. For almost 30 years, he has worked as an attorney and economist on a wide variety of public policy issues. His previous positions include chief economist with the U.S. Department of Commerce and general counsel for the U.S. Senate Permanent Subcommittee on Investigations. He is president of Kennedy Research, LLC, and the author of Ending Poverty: Changing Behavior, Guaranteeing Income, and Transforming Government (Rowman & Littlefield, 2008). “Monopoly Myths: Is Big Tech Creating “Kill Zones”?” 11/9/20. https://itif.org/publications/2020/11/09/monopoly-myths-big-tech-creating-kill-zones]

Regulatory Limits on Acquisitions Should Be Light Touch

Policymakers have proposed several solutions to the purported problems of kill zones and killer acquisitions. One option is to increase the requirements for when a company must give regulators notice of its intent to purchase a company. This gives the government time to review the prospective acquisition and either oppose it or attach conditions to its approval. However, lowering the threshold for notification or scrutiny of an acquisition merger may overburden a regulator unless it receives a significant increase in resources.

#### Expanding reviewed acquisition forces tradeoff

Kennedy 20 [Joe Kennedy, Senior Fellow, Information Technology and Innovation Foundation. For almost 30 years, he has worked as an attorney and economist on a wide variety of public policy issues. His previous positions include chief economist with the U.S. Department of Commerce and general counsel for the U.S. Senate Permanent Subcommittee on Investigations. He is president of Kennedy Research, LLC, and the author of Ending Poverty: Changing Behavior, Guaranteeing Income, and Transforming Government (Rowman & Littlefield, 2008). “Monopoly Myths: Is Big Tech Creating “Kill Zones”?” 11/9/20. https://itif.org/publications/2020/11/09/monopoly-myths-big-tech-creating-kill-zones]

A dramatic expansion in the scope of review would be problematic. Without additional resources, a significant increase in noticed deals could overwhelm the regulator. Significantly raising the bar for acquisitions could also prove ineffective in protecting entrants. Companies are allowed to obtain a monopoly through legitimate competition. If an incumbent firm were prevented from purchasing a promising innovation, it could try to copy it instead. This is relatively easier to do in digital markets than it is in other industries. This could result in roughly the same increase in profits and market share as an acquisition would—but it would provide less of an incentive for venture capitalists.

The antitrust agencies already have the powers they need to stop problematic acquisitions. But that does not mean they will always get it right. Their odds increase when their decisions are based on a detailed understanding of the markets in question, including current and future sources of innovation, and are guided by the goal of increasing social welfare.

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### CP

#### About corporate capture now

Pat Mooney et al. 17, founder of the ETC group, October 2017, TOO BIG TO FEED, http://www.ipes-food.org/\_img/upload/files/Concentration\_FullReport.pdf

IMPACT 8 Setting the terms of debate and shaping policies and practices Ultimately, consolidation not only enables dominant companies to increase their market share and potentially their profits, but also provides them with the means to set the terms of debate and thus to defend the status quo. Indeed, dominant firms have succeeded in shaping the innovation climate, convincing the public and regulators alike that scale is necessary for innovation and technological progress, and making themselves synonymous with innovation. They have also normalized the shifting of costs onto - and value away from - farmers and small-scale operators. In other words, they have succeeded in shaping dominant worldviews in “politics, society and culture” (Di Muzio, 2013, p.6). A November 2016 report by ProPublica revealed that, in the US, university-affiliated economists specializing in anti-trust are frequently hired by corporations to convince government regulators that proposed mega-mergers do not threaten competition. However, their recommendations are offered as independent expertise rather than as lobbying work. The scholars use complex economic forecasts to predict the effects of mergers. But the reports are not made public, and after a merger is approved, the U.S government no longer has access to the companies’ proprietary data, making it ever more difficult to verify these forecasts. As mentioned by Seth Bloom, former general counsel of the US Senate Anti-trust Subcommittee, “there are few government functions outside the CIA that are so secretive as the merger review process” (Eisinger & Elliott, 2016). However, the power and influence of corporate actors in shaping government policies is long-standing, and goes far beyond lobbying against anti-trust measures. Agribusiness interests are well represented not only in the G7 capitals but throughout the G20 and beyond, while also using discourse (e.g. public relations campaigns, media, etc.) to influence public views more broadly (see Clapp & Fuchs, 2009; Corporate Europe Observatory & Friends of the Earth, 2017). Since 1979, the number of employees in the US government responsible for giving legislators unbiased fact-based evidence has declined by 40% (The Economist, 2017b). Incoming policy-makers in particular are heavily reliant on lobbyists for information, grossly diminishing the possibility for independent, unbiased, decision-making (Drutman & Teles, 2015). In 2015, the combined spending for all agribusiness lobbying in Washington reached $130 million, exceeding the lobbying expenditure of the defense industry (Open Secrets, 2016). Lobbying power is also brought to bear at the state and local levels. Since 2013, US and foreign-owned food, farming, and biotech industries have spent over $192.8 million to influence GMO labelling legislation, statebased referenda on GMO labelling laws, and other issues relating to consumer access to information (EWG, 2016). Yet, numerous polls show that Americans are in favor of mandatory GMO labelling. The top six contributors, Coca-Cola, PepsiCo, Kellogg’s, Kraft Heinz Co., Land O’Lakes and General Mills, spent over $20.6 million in 2015 just to lobby against GMO labelling, helping to contribute to the narrow defeat of bills in three states (ibid). Agribusiness consolidation also paves the way for extending political influence to new regions of the world. For example, the ChemChina-Syngenta deal may have major implications for the future of Africa’s agricultural development. Already, ChemChina has major operations in South Africa through its subsidiary company, Adama/Makhteshim-Agan – the largest agrochemical supplier in the state. In some cases, excessive power has paved the way for long-term collusive relationships between dominant firms and regulators. For example, the recent release of the ‘Poison Papers’ revealed 50 years of scientific studies, internal memos, testimonies and correspondence between the US chemical industry and US federal agencies dating back to the 1920s. The papers demonstrated decades of erroneous scientific data used to approve the use of certain chemicals and pesticides on the market, despite understanding of its hazards (Poison Papers, 2017). More recently, the world’s largest meat processor, JBS, and the world’s largest poultry exporter, Brasil Foods/BRF (both Brazilian), were among 21 companies immersed in a tainted meat scandal. In 2017, Brazil charged meat exporters for bribing 1,829 politicians, regulators and inspection authorities and accessing state regulators’ computers to grant themselves export licenses without inspection (Leahy, 2017). Brazil exports $12.6 billion worth of meat to countries including Japan, China, Canada, Chile, the EU and Egypt. The scandal sparked temporary bans on Brazilian meat by a number of major importers including China, the European Union, Chile, Egypt, Saudi Arabia and South Korea (ibid). Brazil’s agriculture minister attributed JBS’s ability to bribe officials to its dominant size in the Brazilian marketplace, criticizing BNDES, Brazil’s state development bank and major financing agent for national development, in particular for facilitating high levels of industry concentration in the country (Mano, 2017). Concentration of power also allows corporations to exert major influence on the global governance of food systems - and particularly international trade policies and agreements (McNeill et al., 2017; Murphy et al., 2012). The investor-state dispute settlement systems (ISDS) written into bilateral investment treaties have allowed companies to sue foreign governments should changes in national policies affect company profits, including future profits. Investor-state trials most frequently benefit large businesses. While there were only three cases fled for ISDS in 1995, by January 2016 there had been over 700 lawsuits, with a record of 70 fled in 2015 alone. To date, 72% of ISDS cases have been fled against developing and emerging economies (Corporate Europe Observatory, 2016). By the end of 2015, 72 % of the decisions on jurisdiction, and 60 % of cases decided on the merits were won by investors (Mann, 2015). This is alleged to reflect the small number of arbitrators of ISDS cases, predominantly private practice lawyers, who just as frequently serve as corporate counsels (EPRS, 2014; Corporate Europe Observatory, 2012). Foreign companies have also been able to leverage investment protection chapters of trade agreements, when regulations represent obstacles to their growth. For instance, in 2009, the Corn Products International (US) vs. Mexico trial awarded $58.4 million to the American company for a government tax levied on beverages sweetened with high fructose corn syrup (HFCS), by invoking clauses within NAFTA to claim that the tax proved a hidden form of protectionism. The same year, Cargill (US) was awarded $90.7 million by Mexico after challenging the same tax (Government of Mexico, 2009). In some cases, the threat of a lawsuit may be sufficient to exact favourable outcomes for businesses. The specter of legal action is seen to have played a role in sparking shifts in the legislative agenda, including Canada dropping anti-smoking policies following threats of dispute from major tobacco companies (Greider, 2001) or the dilution of German environmental standards following an investment treaty claim made by Vatttenfall, a leading Swedish energy company (Bernasconi, 2009). In other cases, government priorities are alleged to have been shaped by powerful and increasingly consolidated corporate interests. A political economy analysis found that Thailand, like many countries in the global South, has internalized the priorities set by corporate actors and international regulators like the WTO to support further industrialization of food systems, becoming complicit in the dispossession of their farmers and rural communities and ignoring the long-term costs (Chiengkul, 2017). Intellectual property rules have been identified as a key entry point for this reprioritization of national interests, namely through the national application of the WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights. These place mounting pressures on governments in the global South to develop both IPR and nonIPR regulations (e.g. standards for seed marketing and exchange). Though farmers’ rights were established under the FAO International Treaty on Plant Genetic Resources for Food and Agriculture in 2004, IP rules have often worked in contradiction to them – putting local, traditional, and indigenous seed systems at risk (Wattnem, 2016).  Major agri-food industry players have also sought to influence the international climate agenda, often via public private partnerships with large but not diversified membership (see Box 8). In brief, consolidation is shifting the locus of food system governance away from local and national governments and into the hands of a limited number of increasingly dominant multinational firms, allowing imperatives to be aligned with private proft-driven interests, fundamentally undermining decision-making for the public good.

### DA

#### M&A overload ev just says they have to be strategic about cases – our uq ev bakes it in

Tara Lachapelle 21, staff writer at Bloomberg, “Wall Street Is Ready to Put Lina Khan’s FTC to the Test,” Bloomberg, 8-25-2021, https://www.bloomberg.com/opinion/articles/2021-08-25/wall-street-is-ready-to-put-lina-khan-s-ftc-to-the-test

1. An overburdened U.S. Federal Trade Commission is warning acquirers that if they get impatient and close any deals without the agency’s permission, it just might slap them with a lawsuit. Dealmakers won’t hold their breath.
2. As President Joe Biden pushes for more aggressive antitrust enforcement — an effort spearheaded by legal scholar Lina Khan, his controversial pick to lead the FTC — the agency is running up against practical limitations. It’s working with very limited resources for a very large number of deals. How large? So far this year, nearly 10,000 U.S. companies agreed to be acquired for a combined deal value of $1.25 trillion, data compiled by Bloomberg show. That’s already surpassed last year’s sum and may even be on track for a record. Not all of those tie-ups will require regulatory approval but in July alone, 343 transactions filed premerger notifications and are awaiting review, compared with 112 in July 2020, according to the FTC.
3. Chart, bar chart, histogram

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4. These filings start a 30-day clock for regulators to decide whether to further investigate a deal. If that waiting period expires without any action, a company would typically take that to mean that it’s free to complete the transaction. But now the FTC says it can’t get to its backlog fast enough and that inaction on its part doesn’t signal permission to proceed. In warning letters sent to filers this month, the agency said companies that go ahead anyway do so at their own risk because the FTC might later decide a deal violates antitrust laws and sue to undo it — and what a mess that would create for buyers and sellers. And yet, if the agency thought such an aggressive move might discourage mergers, it was wrong.
5. “To my mind, it is a completely hollow threat and makes the agency look weak,” Joel Mitnick, a partner in the antitrust and global litigation groups at law firm Cadwalader, Wickersham & Taft LLP, said in a phone interview. “They’re saying they’re going to ignore the statutory time limits on them whenever they feel like it and continue to investigate transactions until they’re satisfied. But it’s very difficult for the agency to sue to unwind the transaction once the eggs are scrambled.”
6. Merger reviews traditionally involve some give and take. Companies will often give regulators more time if they think it will increase the odds of winning approval. If that cooperative attitude is being tossed out the window, though, dealmakers are ready to reassess and embrace a more adversarial process.
7. For M&A lawyers, it’s a disturbance to an equilibrium that existed under other administrations, and they fear a reversion to the merger-hostile environment of the 1960s. Of course, folks in Khan’s camp would say it wasn’t an equilibrium at all, but rather an often overly cozy relationship between regulators and companies that were given too much leeway in recent years.
8. In any case, businesses are understandably frustrated by what would seem to be an unreasonable ask. Waiting indefinitely to close a deal is costly and full of risks. At least one acquirer isn’t having it. Last week, Illumina Inc. finalized an $8 billion purchase of cancer-testing startup Grail even though U.S. and European authorities haven’t completed their probes. Even as the FTC began this week its attempt to unwind the deal, other dealmakers may decide they like their chances, too.
9. The FTC “better be ready to litigate,” said David Wales, a partner in the antitrust and competition group at law firm Skadden, Arps, Slate, Meagher & Flom LLP and former acting director of the agency’s Bureau of Competition. “I’ve seen first-hand the resource constraints at the FTC,” he said. “They can’t sue everybody. They can’t block every deal. They will have to be strategic about it.”
10. Already, regulators have two major cases sucking up resources. The FTC last week refiled its monopoly lawsuit against Facebook Inc., alleging its takeovers of Instagram