# Wiki Doc 1 Rutgers RR

## 1NC

### 1NC – Trade DA

#### Antitrust expansion opens the floodgates of protectionism – that ends free trade

Murray 19 [Allison Murray, Loyola Law, Judicial Law Clerk for U.S. Bankruptcy Courts. Edited by Loyola Law Professor David Kesselman and the ILR team of editors and staff. “Given Today’s New Wave of Protectionism, is Antitrust Law the Last Hope for Preserving a Free Global Economy or Another Nail in Free Trade’s Coffin?” 2/28/2019. https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1785&context=ilr]

Although a system of truly free world trade has never been perfected, past world leaders have eliminated most of the protectionist trade mechanisms that once ran rampant in the international economy. They did so by implementing multilateral and bilateral trade agreements. These webs of agreements have bolstered decades of support for free trade, or at least some version of it. By and large, tariff policies and other forms of protectionism were either eliminated or dramatically reduced. Now, as we have seen in the media, when a government imposes a tariff, it becomes a rather extreme political statement which sends a shockwave of significant global consequences.

Protectionism did not end when the age of overbearing tariff policies did, despite then-leaders’ best efforts to vilify it. Rather, the end of the tariff era forced nations to achieve protectionist goals through more subtle trade vehicles, like antitrust law.3 So, the recent resurgence of protectionist rhetoric should mean that these subtle trade vehicles, including antitrust law, will be relied on more heavily. It is a fear of many that antitrust law may become overused and inequitably applied to achieve and combat protectionist aims.

Notwithstanding the recent uptick in tariff threats, it is unlikely that all Western leaders will revamp or terminate the trade agreements set forth by their predecessors and bring back the kinds of tariff policies that once existed in their place. Although in the United States (“U.S.”), President Trump recently imposed tariffs on steel imports, it appears that his intent is to limit this behavior to a specific industry rather than institute a widespread policy favoring the use of tariffs generally.4 To remedy bad behavior in a specialized set of industries is not to instigate a global paradigm shift. This purpose is underscored by his use of the national security exemption, which is largely interpreted as being used for individual situations rather than general policy schemes.5 Many still hope that his course of action will be retracted and is merely a strong negotiation tactic. However, there is no doubt that Trump is far more comfortable than past leaders with subverting the status quo on trade relations.

Trump is not the only high-profile leader flirting with staunch protectionism. Western leaders in the E.U. appear to be growing more comfortable than their predecessors with considering similar policies. However, Western lawmakers themselves do not seem as persuaded by the statements of their leadership. The general sentiment among international policymakers is that there has been too much political wherewithal spent on loosening international trade barriers to take actions that could counteract that progress.6 Presidential actions taken because of dissatisfaction with current global trade relations aside, a complete overhaul of trade agreements may be too daunting and difficult a task, especially absent ample political support in legislative bodies.

Given the anticipated continuation of cooperative trade agreements and the proliferation of protectionist rhetoric as the new norm of public opinion, leaders will be forced to rely on existing avenues to meet protectionist aims. Again, we find ourselves relying squarely on antitrust law, the more subtle and widely accepted mechanism of restricting trade, to address perceived inequities. In the words of the World Trade Organization (“WTO”), “once formal trade barriers come down, other issues become more important.”7 Among the important issues lies antitrust law. Antitrust and competition laws can form a subtle trade barrier resulting in the imposition of tariff-like measures.

Antitrust law can be enforced to reach protectionist aims and to combat them. It is a tool that allows nations to achieve individual protectionist aims without undermining the future of trade between countries and the cooperative framework underpinning the relatively delicate global free trade enjoyed today. However, the perception of enforcement of antitrust laws as an abusive and solely protectionist mechanism may cause the death of even the smallest semblance of international free trade that remains in the international marketplace today.

#### Nuke war

Oppenheimer 21 [Dr. Michael F. Oppenheimer, Clinical Professor at the Center for Global Affairs at New York University, Senior Consulting Fellow for Scenario Planning at the International Institute for Strategic Studies, Former Executive Vice President at The Futures Group, Member of the Council on Foreign Relations, The Foreign Policy Roundtable at the Carnegie Council on Ethics and International Affairs, and The American Council on Germany, “The Turbulent Future of International Relations”, in The Future of Global Affairs: Managing Discontinuity, Disruption and Destruction, Ed. Ankersen and Sidhu, p. 23-30]

Four structural forces will shape the future of International Relations: globalization (but without liberal rules, institutions, and leadership)1; multipolarity (the end of American hegemony and wider distribution of power among states and non-states2); the strengthening of distinctive, national and subnational identities, as persistent cultural differences are accentuated by the disruptive effects of Western style globalization (what Samuel Huntington called the “non-westernization of IR”3); and secular economic stagnation, a product of longer term global decline in birth rates combined with aging populations.4 These structural forces do not determine everything. Environmental events, global health challenges, internal political developments, policy mistakes, technology breakthroughs or failures, will intersect with structure to define our future. But these four structural forces will impact the way states behave, in the capacity of great powers to manage their differences, and to act collectively to settle, rather than exploit, the inevitable shocks of the next decade.

Some of these structural forces could be managed to promote prosperity and avoid war. Multipolarity (inherently more prone to conflict than other configurations of power, given coordination problems)5 plus globalization can work in a world of prosperity, convergent values, and effective conflict management. The Congress of Vienna system achieved relative peace in Europe over a hundred-year period through informal cooperation among multiple states sharing a fear of populist revolution. It ended decisively in 1914. Contemporary neoliberal institutionalists, such as John Ikenberry, accept multipolarity as our likely future, but are confident that globalization with liberal characteristics can be sustained without American hegemony, arguing that liberal values and practices have been fully accepted by states, global institutions, and private actors as imperative for growth and political legitimacy.6 Divergent values plus multipolarity can work, though at significantly lower levels of economic growth-in an autarchic world of isolated units, a world envisioned by the advocates of decoupling, including the current American president. 7 Divergent values plus globalization can be managed by hegemonic power, exemplified by the decade of the 1990s, when the Washington Consensus, imposed by American leverage exerted through the IMF and other U.S. dominated institutions, overrode national differences, but with real costs to those states undergoing “structural adjustment programs,”8 and ultimately at the cost of global growth, as states—especially in Asia—increased their savings to self insure against future financial crises.9

But all four forces operating simultaneously will produce a future of increasing internal polarization and cross border conflict, diminished economic growth and poverty alleviation, weakened global institutions and norms of behavior, and reduced collective capacity to confront emerging challenges of global warming, accelerating technology change, nuclear weapons innovation and proliferation. As in any effective scenario, this future is clearly visible to any keen observer. We have only to abolish wishful thinking and believe our own eyes.10

Secular Stagnation

This unbrave new world has been emerging for some time, as US power has declined relative to other states, especially China, global liberalism has failed to deliver on its promises, and totalitarian capitalism has proven effective in leveraging globalization for economic growth and political legitimacy while exploiting technology and the state’s coercive powers to maintain internal political control. But this new era was jumpstarted by the world financial crisis of 2007, which revealed the bankruptcy of unregulated market capitalism, weakened faith in US leadership, exacerbated economic deprivation and inequality around the world, ignited growing populism, and undermined international liberal institutions. The skewed distribution of wealth experienced in most developed countries, politically tolerated in periods of growth, became intolerable as growth rates declined. A combination of aging populations, accelerating technology, and global populism/nationalism promises to make this growth decline very difficult to reverse. What Larry Summers and other international political economists have come to call “secular stagnation” increases the likelihood that illiberal globalization, multipolarity, and rising nationalism will define our future. Summers11 has argued that the world is entering a long period of diminishing economic growth. He suggests that secular stagnation “may be the defining macroeconomic challenge of our times.” Julius Probst, in his recent assessment of Summers’ ideas, explains:

…rich countries are ageing as birth rates decline and people live longer. This has pushed down real interest rates because investors think these trends will mean they will make lower returns from investing in future, making them more willing to accept a lower return on government debt as a result.

Other factors that make investors similarly pessimistic include rising global inequality and the slowdown in productivity growth…

This decline in real interest rates matters because economists believe that to overcome an economic downturn, a central bank must drive down the real interest rate to a certain level to encourage more spending and investment… Because real interest rates are so low, Summers and his supporters believe that the rate required to reach full employment is so far into negative territory that it is effectively impossible.

…in the long run, more immigration might be a vital part of curing secular stagnation. Summers also heavily prescribes increased government spending, arguing that it might actually be more prudent than cutting back – especially if the money is spent on infrastructure, education and research and development.

Of course, governments in Europe and the US are instead trying to shut their doors to migrants. And austerity policies have taken their toll on infrastructure and public research. This looks set to ensure that the next recession will be particularly nasty when it comes… Unless governments change course radically, we could be in for a sobering period ahead.12

The rise of nationalism/populism is both cause and effect of this economic outlook. Lower growth will make every aspect of the liberal order more difficult to resuscitate post-Trump. Domestic politics will become more polarized and dysfunctional, as competition for diminishing resources intensifies. International collaboration, ad hoc or through institutions, will become politically toxic. Protectionism, in its multiple forms, will make economic recovery from “secular stagnation” a heavy lift, and the liberal hegemonic leadership and strong institutions that limited the damage of previous downturns, will be unavailable. A clear demonstration of this negative feedback loop is the economic damage being inflicted on the world by Trump’s trade war with China, which— despite the so-called phase one agreement—has predictably escalated from negotiating tactic to imbedded reality, with no end in sight. In a world already suffering from inadequate investment, the uncertainties generated by this confrontation will further curb the investments essential for future growth. Another demonstration of the intersection of structural forces is how populist-motivated controls on immigration (always a weakness in the hyper-globalization narrative) deprives developed countries of Summers’ recommended policy response to secular stagnation, which in a more open world would be a win-win for rich and poor countries alike, increasing wage rates and remittance revenues for the developing countries, replenishing the labor supply for rich countries experiencing low birth rates.

Illiberal Globalization

Economic weakness and rising nationalism (along with multipolarity) will not end globalization, but will profoundly alter its character and greatly reduce its economic and political benefits. Liberal global institutions, under American hegemony, have served multiple purposes, enabling states to improve the quality of international relations and more fully satisfy the needs of their citizens, and provide companies with the legal and institutional stability necessary to manage the inherent risks of global investment. But under present and future conditions these institutions will become the battlegrounds—and the victims—of geopolitical competition. The Trump Administration’s frontal attack on multilateralism is but the final nail in the coffin of the Bretton Woods system in trade and finance, which has been in slow but accelerating decline since the end of the Cold War. Future American leadership may embrace renewed collaboration in global trade and finance, macroeconomic management, environmental sustainability and the like, but repairing the damage requires the heroic assumption that America’s own identity has not been fundamentally altered by the Trump era (four years or eight matters here), and by the internal and global forces that enabled his rise. The fact will remain that a sizeable portion of the American electorate, and a monolithically pro- Trump Republican Party, is committed to an illiberal future. And even if the effects are transitory, the causes of weakening global collaboration are structural, not subject to the efforts of some hypothetical future US liberal leadership. It is clear that the US has lost respect among its rivals, and trust among its allies. While its economic and military capacity is still greatly superior to all others, its political dysfunction has diminished its ability to convert this wealth into effective power.13 It will furthermore operate in a future system of diffusing material power, diverging economic and political governance approaches, and rising nationalism. Trump has promoted these forces, but did not invent them, and future US Administrations will struggle to cope with them.

What will illiberal globalization look like? Consider recent events. The instruments of globalization have been weaponized by strong states in pursuit of their geopolitical objectives. This has turned the liberal argument on behalf of globalization on its head. Instead of interdependence as an unstoppable force pushing states toward collaboration and convergence around market-friendly domestic policies, states are exploiting interdependence to inflict harm on their adversaries, and even on their allies. The increasing interaction across national boundaries that globalization entails, now produces not harmonization and cooperation, but friction and escalating trade and investment disputes.14 The Trump Administration is in the lead here, but it is not alone. Trade and investment friction with China is the most obvious and damaging example, precipitated by China’s long failure to conform to the World Trade Organization (WTO) principles, now escalated by President Trump into a trade and currency war disturbingly reminiscent of the 1930s that Bretton Woods was designed to prevent. Financial sanctions against Iran, in violation of US obligations in the Joint Comprehensive Plan Of Action (JCPOA), is another example of the rule of law succumbing to geopolitical competition. Though more mercantilist in intent than geopolitical, US tariffs on steel and aluminum, and their threatened use in automotives, aimed at the EU, Canada, and Japan,15 are equally destructive of the liberal system and of future economic growth, imposed as they are by the author of that system, and will spread to others. And indeed, Japan has used export controls in its escalating conflict with South Korea16 (as did China in imposing controls on rare earth,17 and as the US has done as part of its trade war with China). Inward foreign direct investment restrictions are spreading. The vitality of the WTO is being sapped by its inability to complete the Doha Round, by the proliferation of bilateral and regional agreements, and now by the Trump Administration’s hold on appointments to WTO judicial panels. It should not surprise anyone if, during a second term, Trump formally withdrew the US from the WTO. At a minimum it will become a “dead letter regime.”18

As such measures gain traction, it will become clear to states—and to companies—that a global trading system more responsive to raw power than to law entails escalating risk and diminishing benefits. This will be the end of economic globalization, and its many benefits, as we know it. It represents nothing less than the subordination of economic globalization, a system which many thought obeyed its own logic, to an international politics of zero-sum power competition among multiple actors with divergent interests and values. The costs will be significant: Bloomberg Economics estimates that the cost in lost US GDP in 2019- dollar terms from the trade war with China has reached $134 billion to date and will rise to a total of $316 billion by the end of 2020.19 Economically, the just-in-time, maximally efficient world of global supply chains, driving down costs, incentivizing innovation, spreading investment, integrating new countries and populations into the global system, is being Balkanized. Bilateral and regional deals are proliferating, while global, nondiscriminatory trade agreements are at an end.

Economies of scale will shrink, incentivizing less investment, increasing costs and prices, compromising growth, marginalizing countries whose growth and poverty reduction depended on participation in global supply chains. A world already suffering from excess savings (in the corporate sector, among mostly Asian countries) will respond to heightened risk and uncertainty with further retrenchment. The problem is perfectly captured by Tim Boyle, CEO of Columbia Sportswear, whose supply chain runs through China, reacting to yet another ratcheting up of US tariffs on Chinese imports, most recently on consumer goods:

We move stuff around to take advantage of inexpensive labor. That’s why we’re in Bangladesh. That’s why we’re looking at Africa. We’re putting investment capital to work, to get a return for our shareholders. So, when we make a wager on investment, this is not Vegas. We have to have a reasonable expectation we can get a return. That’s predicated on the rule of law: where can we expect the laws to be enforced, and for the foreseeable future, the rules will be in place? That’s what America used to be.20

The international political effects will be equally damaging. The four structural forces act on each other to produce the more dangerous, less prosperous world projected here. Illiberal globalization represents geopolitical conflict by (at first) physically non-kinetic means. It arises from intensifying competition among powerful states with divergent interests and identities, but in its effects drives down growth and fuels increased nationalism/populism, which further contributes to conflict. Twenty-first-century protectionism represents bottom-up forces arising from economic disruption. But it is also a top-down phenomenon, representing a strategic effort by political leadership to reduce the constraints of interdependence on freedom of geopolitical action, in effect a precursor and enabler of war. This is the disturbing hypothesis of Daniel Drezner, argued in an important May 2019 piece in Reason, titled “Will Today’s Global Trade Wars Lead to World War Three,”21 which examines the pre- World War I period of heightened trade conflict, its contribution to the disaster that followed, and its parallels to the present:

Before the First World War started, powers great and small took a variety of steps to thwart the globalization of the 19th century. Each of these steps made it easier for the key combatants to conceive of a general war. We are beginning to see a similar approach to the globalization of the 21st century. One by one, the economic constraints on military aggression are eroding. And too many have forgotten—or never knew—how this played out a century ago.

…In many ways, 19th century globalization was a victim of its own success. Reduced tariffs and transport costs flooded Europe with inexpensive grains from Russia and the United States. The incomes of landowners in these countries suffered a serious hit, and the Long Depression that ran from 1873 until 1896 generated pressure on European governments to protect against cheap imports.

…The primary lesson to draw from the years before 1914 is not that economic interdependence was a weak constraint on military conflict. It is that, even in a globalized economy, governments can take protectionist actions to reduce their interdependence in anticipation of future wars. In retrospect, the 30 years of tariff hikes, trade wars, and currency conflicts that preceded 1914 were harbingers of the devastation to come. European governments did not necessarily want to ignite a war among the great powers. By reducing their interdependence, however, they made that option conceivable.

…the backlash to globalization that preceded the Great War seems to be reprised in the current moment. Indeed, there are ways in which the current moment is scarier than the pre-1914 era. Back then, the world’s hegemon, the United Kingdom, acted as a brake on economic closure. In 2019, the United States is the protectionist with its foot on the accelerator. The constraints of Sino-American interdependence—what economist Larry Summers once called “the financial balance of terror”—no longer look so binding. And there are far too many hot spots—the Korean peninsula, the South China Sea, Taiwan—where the kindling seems awfully dry.

### 1NC – States CP

#### The 50 states and relevant sub-federal entities should

* substantially increase prohibitions on private sector conduct that is more restrictive of competition than reasonably necessary to enable creation of information technology standards
* hold monetary incentives in binding escrow for Standard Essential Patent holders and release them if and only if they license their patents on terms that are not more restrictive of competition than reasonably necessary to enable creation of information technology standards
* require that all standard essential patent licensing contracts and terms between licensees and licensers be put on file with state regulatory agencies for review

#### The United States federal government should do the last two planks.

#### It solves AND is binding and verifiable.

Escrow ‘6 [Escrow; carbon dated to March 15; Third-party service mediating financial transactions; Escrow, “What is Escrow? How Does Escrow Work?” <https://www.escrow.com/what-is-escrow>; RP]

What is Escrow?

An escrow is a financial arrangement where a third party holds and regulates payment of the funds required for two parties involved in a given transaction. It helps make transactions more secure by keeping the payment in a secure escrow account which is only released when all of the terms of an agreement are met as overseen by the escrow company.

Escrows are very useful in the case of a transaction where a large amount money is involved and a certain number of obligations need to be fulfilled before a payment is released like in the case of a website being built where the buyer might want confirmation of the quality of work being done before making a full payment, and the seller doesn’t want to extend a massive amount of work without any assurance that he or she will receive payment. While traditional escrow service is quite difficult and must be obtained through banks and lawyers, Escrow.com provides online escrow services at affordable rates. While the payment is 'In Escrow' the transaction can be safely carried out without risk of losing money or merchandise due to fraud. This eliminates all legal jargon and allows for secure transactions and confident buyers and sellers.

### 1NC – Biz Con DA

#### Growth up – businesses are confident

Minikoff 12/31 [Yoel Minikoff, Seeking Alpha News Editor. “Will the U.S. economic recovery continue into 2022?” 12/31/21. https://seekingalpha.com/news/3784335-will-the-us-economic-recovery-continue-into-2022]

Opportunity: The Conference Board, a non-profit research group of more than 1,000 public and private corporations, still forecasts that the U.S. economy will grow by 3.5% in 2022. Take for example the solid growth seen last quarter, despite a rise in coronavirus cases across the U.S., as well as a solid season of corporate earnings. There is also the trend for each successive wave of COVID-19 to having a smaller impact on the economy, while consumers are keeping up robust spending amid improving labor market conditions.

"Supported by the expectation of continued healthy financial market conditions, increased production to restock lean inventories, further gains in the consumption of services as consumer and business travel picks up, and a resilient housing market, continued above-trend growth is likely GDP growth in 2022," read a forecast from Kevin Kliesen, economist at the Federal Reserve Bank of St. Louis. "At this point, the most probable outcome is 3% to 4% real."

#### Changing the legal standards of antitrust spills over to crush otherwise surging growth.

Thierer ’21 [Adam; February 25; Senior Research Fellow with the Mercatus Center at George Mason University; The Hill, “Open-ended antitrust is an innovation killer,” <https://thehill.com/opinion/technology/540391-open-ended-antitrust-is-an-innovation-killer>]

Unfortunately, the calls for more bureaucracy and regulation emanating from all corners of the political world could have an unintended consequence: discouraging the sort of vibrant innovation and consumer choice that made America’s tech companies household names across the globe.

Sen. [Amy Klobuchar](https://thehill.com/people/amy-klobuchar) (D-Minn.) is leading one charge. Klobuchar, who chairs the Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, [recently introduced](https://www.klobuchar.senate.gov/public/_cache/files/e/1/e171ac94-edaf-42bc-95ba-85c985a89200/375AF2AEA4F2AF97FB96DBC6A2A839F9.sil21191.pdf) the “Competition and Antitrust Law Enforcement Reform Act.” This sweeping measure seeks to expand the powers and budgets of antitrust regulators at the Federal Trade Commission and the Department of Justice. It also includes new filing requirements and potentially hefty civil fines.

The most important feature is the proposed change to the legal standard by which regulators approve business deals. It would allow the government to stop any deal that creates an “appreciable risk of materially lessening competition,” and it also defines exclusionary behavior as, “conduct that materially disadvantages one or more actual or potential competitors.”

These may sound like simple, semantic tweaks, but – much like some of the other policy ideas currently circulating – they would upend decades of settled law and create a sea change in U.S. antitrust enforcement. This change could undermine business dynamism, innovation and investment in ways that inhibit the global competitiveness of U.S. businesses.

Critics of merger and acquisition (M&A) activity by large tech firms include not only Sen. Klobuchar but also Republicans such as Sen. [Josh Hawley](https://thehill.com/people/joshua-josh-hawley) (R-Mo.). Hawley recent [offered an amendment](https://www.axios.com/josh-hawley-big-tech-merger-ban-1467081d-216c-45a2-9d09-9416dfbde330.html) to a budget bill that would preemptively prohibit mergers and acquisitions by dominant online firms. Klobuchar and Hawley believe that M&A skews the market in favor of today’s largest firms, entrenching their market power and discouraging innovation.

History teaches a different lesson. Consider DirecTV and Skype, both once considered innovative market leaders in their respective fields of satellite TV and internet telephony. Both firms stumbled, however, and they might not even be with us today without creative business deals. DirecTV has been partially or fully controlled by Hughes Electronics, News Corp., Liberty Media and now AT&T. Skype has swapped hands multiple times, moving from eBay, to a private investment firm and now to Microsoft.

These were complex deals, and some didn’t work, leading to divestitures. But each was a learning experience that illustrated how dynamic media and technology markets can be with firms constantly searching for value-added arrangements that serve their customers and shareholders. If we make this type of activity presumptively illegal, we’re imagining that government bureaucrats are better suited to make these calls than businesspeople and the consumers who choose whether or not to buy the product.

Worse yet, legal tests like those Klobuchar proposes – “conduct that materially disadvantages potential competitors” – are remarkably open-ended and could be easily abused. The system will be gamed by opponents of deals for business reasons. They will claim that their own failure to attract investors or customers must all be the fault of more creative rivals. That’s a recipe for cronyism and economic stagnation.

Those who worry about today’s largest tech giants becoming supposedly unassailable monopolies should consider how similar fears were expressed not so long ago about other tech titans, many of which we laugh about today. Just 14 years ago, headlines [proclaimed](https://www.technewsworld.com/story/55185.html) that “MySpace Is a Natural Monopoly,” and [asked](https://www.theguardian.com/technology/2007/feb/08/business.comment), “Will MySpace Ever Lose Its Monopoly?” We all know how that “monopoly” ceased to exist.

At the same time, pundits [insisted](https://www.marketwatch.com/story/apple-should-pull-the-plug-on-the-iphone) “Apple should pull the plug on the iPhone,” since “there is no likelihood that Apple can be successful in a business this competitive.” The smartphone market of that era was viewed as completely under the control of BlackBerry, Palm, Motorola and Nokia. A few years prior to that, critics lambasted the merger of AOL and TimeWarner as a new [corporate “Big Brother”](http://www.ojr.org/ojr/workplace/1017966109.php?__cf_chl_jschl_tk__=67a5f6a101935b8e3586ca48216d31ba6d4e03de-1612467283-0-AXvbGCtUx-p_N4T-8_2m8OHezQUhQ9kelg9-pVuD6IzKvFfXrllJujU9ERvjqjyIsAeCovUw9bfZqq75_NYasBM87SnQT_027hDJOhjXeowzK1QQH_7vcmr1tS4XgCGC_NNx6UGbAvVgcJNFhSkqkVKKeRJ-BjdDA7Vus-gwmr7wQXcS7KKfTtHyqxdRfureL9alpZHU2IJcbbdYaZpTjTrfcJHCKa8pIZcdiScjaRJmON9X1Ip20Vuv7tyDHbZSvcrn88WrY_9N_qBpKvZhQ4PAe90w5Fx5iHjjNIzoNMKSpToTFGLbPdqawgge9PVubSQbkS7xXDXxCBMA2Sh-Y_U) that would decimate digital diversity and online competition.

Today, we know these tales of the apocalypse ended up instead becoming case studies in the continuing power of “creative destruction.” New innovations and players emerged from many unexpected quarters, decimating whatever dreams of continued domination the old giants once had.

Today’s biggest players face similar pressures, and it’s better to let rivalry and innovation emerge organically, not through the wrecking ball of heavy-handed antitrust regulation.

#### Decline cascades---nuclear war.

Dr. Mathew Maavak 21, PhD in Risk Foresight from the Universiti Teknologi Malaysia, External Researcher (PLATBIDAFO) at the Kazimieras Simonavicius University, Expert and Regular Commentator on Risk-Related Geostrategic Issues at the Russian International Affairs Council, “Horizon 2030: Will Emerging Risks Unravel Our Global Systems?”, Salus Journal – The Australian Journal for Law Enforcement, Security and Intelligence Professionals, Volume 9, Number 1, p. 2-8

Various scholars and institutions regard global social instability as the greatest threat facing this decade. The catalyst has been postulated to be a Second Great Depression which, in turn, will have profound implications for global security and national integrity. This paper, written from a broad systems perspective, illustrates how emerging risks are getting more complex and intertwined; blurring boundaries between the economic, environmental, geopolitical, societal and technological taxonomy used by the World Economic Forum for its annual global risk forecasts. Tight couplings in our global systems have also enabled risks accrued in one area to snowball into a full-blown crisis elsewhere. The COVID-19 pandemic and its socioeconomic fallouts exemplify this systemic chain-reaction. Onceinexorable forces of globalization are rupturing as the current global system can no longer be sustained due to poor governance and runaway wealth fractionation. The coronavirus pandemic is also enabling Big Tech to expropriate the levers of governments and mass communications worldwide. This paper concludes by highlighting how this development poses a dilemma for security professionals.

Key Words: Global Systems, Emergence, VUCA, COVID-9, Social Instability, Big Tech, Great Reset

INTRODUCTION

The new decade is witnessing rising volatility across global systems. Pick any random “system” today and chart out its trajectory: Are our education systems becoming more robust and affordable? What about food security? Are our healthcare systems improving? Are our pension systems sound? Wherever one looks, there are dark clouds gathering on a global horizon marked by volatility, uncertainty, complexity and ambiguity (VUCA).

But what exactly is a global system? Our planet itself is an autonomous and selfsustaining mega-system, marked by periodic cycles and elemental vagaries. Human activities within however are not system isolates as our banking, utility, farming, healthcare and retail sectors etc. are increasingly entwined. Risks accrued in one system may cascade into an unforeseen crisis within and/or without (Choo, Smith & McCusker, 2007). Scholars call this phenomenon “emergence”; one where the behaviour of intersecting systems is determined by complex and largely invisible interactions at the substratum (Goldstein, 1999; Holland, 1998).

The ongoing COVID-19 pandemic is a case in point. While experts remain divided over the source and morphology of the virus, the contagion has ramified into a global health crisis and supply chain nightmare. It is also tilting the geopolitical balance. China is the largest exporter of intermediate products, and had generated nearly 20% of global imports in 2015 alone (Cousin, 2020). The pharmaceutical sector is particularly vulnerable. Nearly “85% of medicines in the U.S. strategic national stockpile” sources components from China (Owens, 2020).

An initial run on respiratory masks has now been eclipsed by rowdy queues at supermarkets and the bankruptcy of small businesses. The entire global population – save for major pockets such as Sweden, Belarus, Taiwan and Japan – have been subjected to cyclical lockdowns and quarantines. Never before in history have humans faced such a systemic, borderless calamity.

COVID-19 represents a classic emergent crisis that necessitates real-time response and adaptivity in a real-time world, particularly since the global Just-in-Time (JIT) production and delivery system serves as both an enabler and vector for transboundary risks. From a systems thinking perspective, emerging risk management should therefore address a whole spectrum of activity across the economic, environmental, geopolitical, societal and technological (EEGST) taxonomy. Every emerging threat can be slotted into this taxonomy – a reason why it is used by the World Economic Forum (WEF) for its annual global risk exercises (Maavak, 2019a). As traditional forces of globalization unravel, security professionals should take cognizance of emerging threats through a systems thinking approach.

METHODOLOGY

An EEGST sectional breakdown was adopted to illustrate a sampling of extreme risks facing the world for the 2020-2030 decade. The transcendental quality of emerging risks, as outlined on Figure 1, below, was primarily informed by the following pillars of systems thinking (Rickards, 2020):

• Diminishing diversity (or increasing homogeneity) of actors in the global system (Boli & Thomas, 1997; Meyer, 2000; Young et al, 2006);

• Interconnections in the global system (Homer-Dixon et al, 2015; Lee & Preston, 2012);

• Interactions of actors, events and components in the global system (Buldyrev et al, 2010; Bashan et al, 2013; Homer-Dixon et al, 2015); and

• Adaptive qualities in particular systems (Bodin & Norberg, 2005; Scheffer et al, 2012) Since scholastic material on this topic remains somewhat inchoate, this paper buttresses many of its contentions through secondary (i.e. news/institutional) sources.

ECONOMY

According to Professor Stanislaw Drozdz (2018) of the Polish Academy of Sciences, “a global financial crash of a previously unprecedented scale is highly probable” by the mid- 2020s. This will lead to a trickle-down meltdown, impacting all areas of human activity.

The economist John Mauldin (2018) similarly warns that the “2020s might be the worst decade in US history” and may lead to a Second Great Depression. Other forecasts are equally alarming. According to the International Institute of Finance, global debt may have surpassed $255 trillion by 2020 (IIF, 2019). Yet another study revealed that global debts and liabilities amounted to a staggering $2.5 quadrillion (Ausman, 2018). The reader should note that these figures were tabulated before the COVID-19 outbreak.

The IMF singles out widening income inequality as the trigger for the next Great Depression (Georgieva, 2020). The wealthiest 1% now own more than twice as much wealth as 6.9 billion people (Coffey et al, 2020) and this chasm is widening with each passing month. COVID-19 had, in fact, boosted global billionaire wealth to an unprecedented $10.2 trillion by July 2020 (UBS-PWC, 2020). Global GDP, worth $88 trillion in 2019, may have contracted by 5.2% in 2020 (World Bank, 2020).

As the Greek historian Plutarch warned in the 1st century AD: “An imbalance between rich and poor is the oldest and most fatal ailment of all republics” (Mauldin, 2014). The stability of a society, as Aristotle argued even earlier, depends on a robust middle element or middle class. At the rate the global middle class is facing catastrophic debt and unemployment levels, widespread social disaffection may morph into outright anarchy (Maavak, 2012; DCDC, 2007).

Economic stressors, in transcendent VUCA fashion, may also induce radical geopolitical realignments. Bullions now carry more weight than NATO’s security guarantees in Eastern Europe. After Poland repatriated 100 tons of gold from the Bank of England in 2019, Slovakia, Serbia and Hungary quickly followed suit.

According to former Slovak Premier Robert Fico, this erosion in regional trust was based on historical precedents – in particular the 1938 Munich Agreement which ceded Czechoslovakia’s Sudetenland to Nazi Germany. As Fico reiterated (Dudik & Tomek, 2019):

“You can hardly trust even the closest allies after the Munich Agreement… I guarantee that if something happens, we won’t see a single gram of this (offshore-held) gold. Let’s do it (repatriation) as quickly as possible.” (Parenthesis added by author).

President Aleksandar Vucic of Serbia (a non-NATO nation) justified his central bank’s gold-repatriation program by hinting at economic headwinds ahead: “We see in which direction the crisis in the world is moving” (Dudik & Tomek, 2019). Indeed, with two global Titanics – the United States and China – set on a collision course with a quadrillions-denominated iceberg in the middle, and a viral outbreak on its tip, the seismic ripples will be felt far, wide and for a considerable period.

A reality check is nonetheless needed here: Can additional bullions realistically circumvallate the economies of 80 million plus peoples in these Eastern European nations, worth a collective $1.8 trillion by purchasing power parity? Gold however is a potent psychological symbol as it represents national sovereignty and economic reassurance in a potentially hyperinflationary world. The portents are clear: The current global economic system will be weakened by rising nationalism and autarkic demands. Much uncertainty remains ahead. Mauldin (2018) proposes the introduction of Old Testament-style debt jubilees to facilitate gradual national recoveries. The World Economic Forum, on the other hand, has long proposed a “Great Reset” by 2030; a socialist utopia where “you’ll own nothing and you’ll be happy” (WEF, 2016).

In the final analysis, COVID-19 is not the root cause of the current global economic turmoil; it is merely an accelerant to a burning house of cards that was left smouldering since the 2008 Great Recession (Maavak, 2020a). We also see how the four main pillars of systems thinking (diversity, interconnectivity, interactivity and “adaptivity”) form the mise en scene in a VUCA decade.

ENVIRONMENTAL

What happens to the environment when our economies implode? Think of a debt-laden workforce at sensitive nuclear and chemical plants, along with a concomitant surge in industrial accidents? Economic stressors, workforce demoralization and rampant profiteering – rather than manmade climate change – arguably pose the biggest threats to the environment. In a WEF report, Buehler et al (2017) made the following pre-COVID-19 observation:

The ILO estimates that the annual cost to the global economy from accidents and work-related diseases alone is a staggering $3 trillion. Moreover, a recent report suggests the world’s 3.2 billion workers are increasingly unwell, with the vast majority facing significant economic insecurity: 77% work in part-time, temporary, “vulnerable” or unpaid jobs.

Shouldn’t this phenomenon be better categorized as a societal or economic risk rather than an environmental one? In line with the systems thinking approach, however, global risks can no longer be boxed into a taxonomical silo. Frazzled workforces may precipitate another Bhopal (1984), Chernobyl (1986), Deepwater Horizon (2010) or Flint water crisis (2014). These disasters were notably not the result of manmade climate change. Neither was the Fukushima nuclear disaster (2011) nor the Indian Ocean tsunami (2004). Indeed, the combustion of a long-overlooked cargo of 2,750 tonnes of ammonium nitrate had nearly levelled the city of Beirut, Lebanon, on Aug 4 2020. The explosion left 204 dead; 7,500 injured; US$15 billion in property damages; and an estimated 300,000 people homeless (Urbina, 2020). The environmental costs have yet to be adequately tabulated.

Environmental disasters are more attributable to Black Swan events, systems breakdowns and corporate greed rather than to mundane human activity.

Our JIT world aggravates the cascading potential of risks (Korowicz, 2012). Production and delivery delays, caused by the COVID-19 outbreak, will eventually require industrial overcompensation. This will further stress senior executives, workers, machines and a variety of computerized systems. The trickle-down effects will likely include substandard products, contaminated food and a general lowering in health and safety standards (Maavak, 2019a). Unpaid or demoralized sanitation workers may also resort to indiscriminate waste dumping. Many cities across the United States (and elsewhere in the world) are no longer recycling wastes due to prohibitive costs in the global corona-economy (Liacko, 2021).

Even in good times, strict protocols on waste disposals were routinely ignored. While Sweden championed the global climate change narrative, its clothing flagship H&M was busy covering up toxic effluences disgorged by vendors along the Citarum River in Java, Indonesia. As a result, countless children among 14 million Indonesians straddling the “world’s most polluted river” began to suffer from dermatitis, intestinal problems, developmental disorders, renal failure, chronic bronchitis and cancer (DW, 2020). It is also in cauldrons like the Citarum River where pathogens may mutate with emergent ramifications.

On an equally alarming note, depressed economic conditions have traditionally provided a waste disposal boon for organized crime elements. Throughout 1980s, the Calabriabased ‘Ndrangheta mafia – in collusion with governments in Europe and North America – began to dump radioactive wastes along the coast of Somalia. Reeling from pollution and revenue loss, Somali fisherman eventually resorted to mass piracy (Knaup, 2008).

The coast of Somalia is now a maritime hotspot, and exemplifies an entwined form of economic-environmental-geopolitical-societal emergence. In a VUCA world, indiscriminate waste dumping can unexpectedly morph into a Black Hawk Down incident. The laws of unintended consequences are governed by actors, interconnections, interactions and adaptations in a system under study – as outlined in the methodology section.

Environmentally-devastating industrial sabotages – whether by disgruntled workers, industrial competitors, ideological maniacs or terrorist groups – cannot be discounted in a VUCA world. Immiserated societies, in stark defiance of climate change diktats, may resort to dirty coal plants and wood stoves for survival. Interlinked ecosystems, particularly water resources, may be hijacked by nationalist sentiments. The environmental fallouts of critical infrastructure (CI) breakdowns loom like a Sword of Damocles over this decade.

GEOPOLITICAL

The primary catalyst behind WWII was the Great Depression. Since history often repeats itself, expect familiar bogeymen to reappear in societies roiling with impoverishment and ideological clefts. Anti-Semitism – a societal risk on its own – may reach alarming proportions in the West (Reuters, 2019), possibly forcing Israel to undertake reprisal operations inside allied nations. If that happens, how will affected nations react? Will security resources be reallocated to protect certain minorities (or the Top 1%) while larger segments of society are exposed to restive forces? Balloon effects like these present a classic VUCA problematic.

Contemporary geopolitical risks include a possible Iran-Israel war; US-China military confrontation over Taiwan or the South China Sea; North Korean proliferation of nuclear and missile technologies; an India-Pakistan nuclear war; an Iranian closure of the Straits of Hormuz; fundamentalist-driven implosion in the Islamic world; or a nuclear confrontation between NATO and Russia. Fears that the Jan 3 2020 assassination of Iranian Maj. Gen. Qasem Soleimani might lead to WWIII were grossly overblown. From a systems perspective, the killing of Soleimani did not fundamentally change the actor-interconnection-interaction adaptivity equation in the Middle East. Soleimani was simply a cog who got replaced.

### 1NC – FTC DA

#### The FTC has shifted from tech mergers to gas consolidation---that solves energy concentration and hikes.

Botts ‘9/1/21 [Baker Botts is an international law firm of approximately 700 lawyers practicing throughout a network of 13 offices around the globe. Based on our experience and knowledge of our clients' industries, we are recognized as a leading firm in the technology, energy, and life sciences sectors. "FTC Chair Turns Antitrust Attention to Energy Industry." https://www.bakerbotts.com/thought-leadership/publications/2021/september/ftc-chair-turns-antitrust-attention-to-energy-industry]

For the energy sector, one silver lining of the increasingly aggressive rhetoric from antitrust regulators has been their singular focus on “big tech.” It seemed, for a time, that oil & gas had finally abdicated its long-held position as the industry most likely to be on the receiving end of heightened antitrust scrutiny. Any such hope evaporated last week, when Lina Khan, the new chair of the Federal Trade Commission, sent a letter to the White House, making clear that she has the energy industry squarely within her sights.

This renewed focus on the energy industry comes at an already sensitive time. If gas prices rise in the wake of Ida, there will be loud calls for an investigation, as was the case after Hurricanes Katrina and Rita in 2005. Similar to those storms, Ida amounted to a direct hit on the industry, barreling through the Gulf Coast and Louisiana, leaving more than 1 million without power. While it remains to be seen what will ultimately happen with fuel prices, there were already calls for an investigation after prices rose through the summer, even before the hurricane was on the horizon.

I. Ms. Khan’s Letter

The letter, sent on August 25, came in response to a request from Brian Deese, Director of the National Economic Council, for the FTC to investigate elevated gas prices. In his August 11 letter, Deese noted, “During this summer driving season, there have been divergences between oil prices and the cost of gasoline at the pump.” He asked the FTC to investigate. Khan’s response went far beyond Deese’s straightforward request, outlining a three-part enforcement plan, tightly focused on the energy industry.

First, Khan stated, she plans to “identify additional legal theories” to challenge retail fuel station mergers “where dominant players are buying up family-run businesses.” This remarkably specific initiative, possibly untethered to traditional concerns about customer impacts, could mean longer and less predictable reviews for deals involving the sale of independent gas stations.

Second, Khan indicated she would be “taking steps to deter unlawful mergers in the oil and gas industry.” While she again made clear that she is focused on retail fuel deals, she clearly left the door open for a broader industry focus. Specifically, Khan referred to a July decision to rescind a prior FTC policy that limited requirements for parties to any merger ultimately deemed unlawful to obtain prior approval from the agency for any future transactions. In her letter from last week, Khan stated: “we will impose ‘prior approval’ requirements to deter those who propose illegal mergers, including in retail gas markets.”

Finally, Khan wrote that she “will be asking our staff to investigate abuses in the franchise market.” She hypothesized that “large national chains” might be forcing their “franchisees to sell gasoline at higher prices, benefitting the chain at the expense of the franchisee’s convenience store operations.” Khan then signed off, stating, “I will continue to assess how the FTC can use its tools to police unlawful business practices in oil and gas markets.”

All of this adds up to a notably focused promise to create new hurdles for proposed transactions in the energy industry and to find new reasons to investigate a variety of conduct.

II. Pricing Investigations

Whether triggered by Hurricane Ida or by letters from concerned officials such as Mr. Deese, any FTC gas pricing investigation would bring significant discovery burdens for industry participants. The post-Katrina report, released in May 2006, explained: “Since August 2005, the Commission has expended substantial resources on this investigation, including the full-time commitment of a significant number of attorneys, economists, financial analysts, paralegals, research analysts, and other support personnel with specialized expertise in the petroleum industry.” Specifically, FTC staff conducted 65 interviews, issued 139 Civil Investigative Demands (similar to subpoenas), and 99 orders seeking profitability and tax expenditure information. Staff identified more than 105 retailers accused of price gouging.

Despite the deep dive, the Commission uncovered very little evidence of wrongdoing. While finding that seven refiners, two wholesalers, and 24 single-location retailers had higher average gasoline prices that were not substantially attributable to higher costs during the relevant period, the report ultimately concluded: “additional analysis…showed that other factors, such as regional or local market trends, appeared to explain the pricing of these firms in nearly all cases.”

This prior failure to find illegal conduct is unlikely to dissuade the current slate of enforcers from pursuing a similar investigation. Aggressive antitrust enforcement has rapidly become a central cause of the current administration. Biden’s antitrust appointees, including Khan, are clearly intent on implementing an elevated level of antitrust scrutiny.

#### The plan causes case cutting---it overburdens the agency.

Hoofnagle, et al, 19—Adjunct Professor of Information and Law, University of California, Berkeley (Chris, with Woodrow Hartzog, Professor of Law and Computer Science, Northeastern University, and Daniel J. Solove, John Marshall Harlan Research Professor of Law, George Washington University Law School, “The FTC can rise to the privacy challenge, but not without help from Congress,” <https://www.brookings.edu/blog/techtank/2019/08/08/the-ftc-can-rise-to-the-privacy-challenge-but-not-without-help-from-congress/>, dml)

Resources are the FTC’s greatest constraint. It is a small agency charged with a broad mission in competition and consumer protection. It carries out this mission with a budget of just over $300 million and a total staff of about 1,100, of whom no more than 50 are tasked with privacy. In comparison, the U.K.’s Information Commissioner’s Office (ICO) has over 700 employees and a £38 million budget for a mission focused entirely on privacy and data protection. In addition, for much of modern history, Congress has kept the FTC on a short leash. In 1980, Congress punished the agency for being too aggressive, causing it to shut down twice. Congress has held authorization over the agency’s head and used oversight power to scrutinize what members of Congress perceive as the expansive use of FTC legal authority, including its interpretation of privacy harm.

Given these constraints, FTC attorneys make pragmatic choices in their case selection. At any given time, line attorneys are investigating many companies and weighing decisions on where to target limited enforcement resources. The FTC can only bring actions against a small fraction of infringers, and it has chosen cases wisely to make loud statements to industry about how to protect privacy.

#### Extinction.

Koranyi ’16 [David; 2016; Chief Advisor of City Diplomacy for the Mayor of Budapest, former Director of the Atlantic Council's Eurasian Energy Futures Initiative; Atlantic Council Strategy Paper, “A US Strategy for Sustainable Energy Security,” <https://espas.secure.europarl.europa.eu/orbis/sites/default/files/generated/document/en/AC_SP_Energy.pdf>]

The United States should work toward a global energy system that is characterized by the reduction of excessive price volatility on global energy markets and the minimization of the impact of geopolitical upheavals. This requires the introduction of more competition, transparency, liquidity, better rules and regulations for energy trade, and the stabilization of global energy trading routes in concert with other key stakeholders. The liberalized global energy trade would be coupled with transparent and efficiently functioning global and regional markets. This necessitates energy market integration and interconnections in Europe, Asia, Africa, and Latin America alike to enhance regional synergies and create markets. This integration process should be supported by US experience and technical assistance.

It is of utmost importance to ensure that competition is not distorted, with special regard to cartelization in the regional and global gas markets. The United States should promote global principles for competition in the energy markets to reduce the risk of cartelization and price setting, cripple the disruptive ability of irresponsible players on the market, enhance security of supplies, and promote open and efficiently functioning markets.

Monitoring the implementation of global and regional climate agreements; promoting dialogue and cooperation between consumer and producer countries; introducing and enhancing dispute resolution mechanisms; increasing transparency and reducing volatility on the international energy markets; and devising international standards of physical and cyber energy infrastructure protection will be at the center of the US international energy governance agenda. Therefore, international institutions that serve US national interests need to be strengthened further with special regard to the International Energy Agency (IEA), the United Nations Sustainable Energy for All Initiative (SE4All,) the International Renewable Energy Agency (IRENA), and the Energy Charter Treaty. In particular, the IEA’s mandate, organization, and budget should be reinforced to allow the organization to conduct a global energy dialogue with all key stakeholders, and to play a robust role in facilitating the exchange of best practices in green technology deployment, energy efficiency, and other key issues in the context of the Paris Climate Agreement.

As the energy sector undergoes a fundamental transformation, new global actors emerge and play a decisive role in how to produce and consume energy and control the climate. The new ‘lateral energy regime’ vastly widens the circle of interested and invested actors and influencers.58 This new paradigm requires a fundamentally different approach to governance on all levels: local, national, and international. The United States should invest in the empowerment and inclusion of constructive new actors to co-govern the energy space, while depowering spoiler actors, such as terrorist organizations that target energy infrastructure. Designing a new model for public-private-people-partnerships (PPPP) is essential to managing the complex interplay between the traditional and new producers, transporters, and consumers of energy—municipal and regional governments and civil society actors.

Conclusion

The first of the Atlantic Council Strategy Paper Series, Dynamic Stability: US Strategy for a World in Transition, identified the protection of global commons by the United States as critically important for both material and moral reasons. It rightly argued that “it is important to include climate in the definition of global commons.”59 That paper defined ‘dynamic stability’ as the key conceptual framework to deal with a fast-changing ‘Westphalian-Plus’ world and argued for “harnessing change to preserve the liberal international order.”60

Harnessing change in the energy sector expeditiously is an existential issue for all humanity. Dynamic stability in the US energy sector would mean leveraging the unique natural bounty and technological prowess of the United States and using the very momentum created by the unconventional hydrocarbon revolution to gradually pivot away from fossil fuels. Leaving the current system unreformed and unmodernized will threaten the security and well-being of American citizens, hurt the US economy at home, and isolate the United States internationally. By compromising on market-friendly public policy measures and leveraging the low oil price environment, the United States can introduce the right incentives into the energy system to shepherd an accelerated energy transition into a more modern, low-carbon energy era that still relies heavily on natural gas—particularly during the transition—and nuclear power to provide baseload generation and counter seasonal intermittency.

### 1NC – Politics DA

#### FY 22 appropriations will pass now if Congress maintains bipartisanship—otherwise, yearlong CR ruins defense industrial base and military modernization

Gould 1/21 [Joe Gould is senior Pentagon reporter for Defense News, “Defense industry frets as funding talks crawl”, 1/21/2022, https://www.defensenews.com/congress/budget/2022/01/21/defense-industry-frets-as-funding-talks-crawl/]

Despite repeated warnings from uniformed Pentagon leaders and lawmakers of both parties that a full-year continuing resolution will hurt national security, some defense industry advocates are still worried about an impasse.

On Thursday, both chambers of Congress left town on recess until the week of Jan. 31, after making scant progress on a deal for an omnibus federal spending package. Amid partisan divisions over funding levels and policy provisions, House Speaker Nancy Pelosi, D-N.Y., warned that a full-year CR would create a national security crisis ― in an effort to pressure Republicans.

“It is a national security issue of the highest priority, with the threats that exist out there. To go to a continuing resolution instead of a decision-making omnibus bill is to weaken our security and our stability,” Pelosi told reporters Thursday. “The Republicans should know that, so we hope we will be able to bring that legislation to the floor before [the current CR] expires.”

With fiscal 2022 spending bills four months overdue, lawmakers and the Pentagon have warned against a yearlong CR that would freeze defense spending at the level of 2021 appropriations. CRs continue funding at the previous year’s level, preventing the Pentagon from starting new acquisition programs and ramping up production quantities.

And without a 2022 spending deal to set a new baseline, the president’s budget submission is in limbo and expected to come months late, which is sowing uncertainty for the military and its vendors.

President Joe Biden signed a defense policy bill that boosts his $753 billion national defense budget request for FY22 to $778 billion, a 3% increase. But Republicans have said they want more for defense, less than the 16% increase proposed by Democrats and an agreement on some politically charged policy riders.

By the reckoning of National Defense Industrial Association Chairman Arnold Punaro, lawmakers could meet somewhere in the middle with 8% increases for both defense and nondefense, but that’s far from a certainty. Democrats have raised fears some Republicans see budget gridlock as an advantage heading into midterm elections and don’t want a deal at all.

“We’re still in budget chaos,” Punaro told Defense News this week. “China’s on the march, Russia’s on the move and North Korea’s on the advance, and yet Congress is sitting on their duff, not passing a spending bill. It’s disgraceful.”

The lack of a 2022 deal as a baseline for defense amid escalating inflation presents a huge challenge for Pentagon planners crafting the FY23 budget request, Punaro said. He worried the administration could make a flat budget request, potentially costing the Pentagon billions of dollars in buying power.

Meanwhile, a full-year CR would yield $11 billion of lost growth, while 7% inflation would mean another $50 billion in lost buying power, according to defense consultant Jim McAleese, the founder of McAleese & Associates.

Though the current CR runs out on Feb. 18., recent negotiations in Congress have sparked some optimism.

Lead appropriators in the Senate met Jan. 13 with Senate Majority Leader Chuck Schumer and Senate Minority Leader Mitch McConnell to set the guidelines for negotiations. From there, lead House and Senate appropriators met to kick off talks, and Pelosi has said she’s been in discussions with House Appropriations Committee Chairwoman Rosa DeLauro, D-Conn.

Asked Thursday whether it’s realistic to get an agreement by Feb. 18, as Congress was about to leave town Senate Appropriations Committee Vice Chairman Richard Shelby, R-Ala., said: “That’s a good question. It’d be hard to get it by the 18th, but if we can make huge progress, we can probably get done soon.”

It’s unclear whether looming international crises with Russia and Ukraine, China and Taiwan, and North Korean missile tests would add pressure to pass defense spending. When asked about Pelosi’s comments, Shelby seemed to dig in.

“She’s right on that, but to underfund defense as some people would like to do, that would be a bigger challenge,” he said.

At a House Appropriations Committee hearing Jan. 12 about the effects of a potential full-year CR, the top officers of the Army, Navy, Air Force, Marine Corps and Space Force warned such a move would sabotage the military’s efforts to compete with China by stalling new weapons like hypersonic missiles.

“CRs effectively prevent modernization at speed,” said Marine Corps Commandant Gen. David Berger. “We actually stand to be outpaced by China — not because of their speed but because of our failure to comply with our own budgetary processes.”

The president and CEO of the Aerospace Industries Association, Eric Fanning, has warned that budget unpredictability is inefficient for the defense industry, which has to idle while the Pentagon waits for its projects to be funded. Amid the Capitol Hill activity, Fanning said he is “hopeful that the momentum continues.”

“The hearing painted a concerning picture of additional and unnecessary costs, as well risks to capabilities and to the industrial base in the short and long-terms. There was bipartisan agreement on how devastating a year-long CR could be,” Fanning said in a statement Thursday. “Over the last few days, there are positive signs that the message is getting through and the top appropriators from both parties are coming to the table.”

Lead Pentagon officials have talked for years about the need to harness the innovation of small tech firms. But CRs stifle those efforts, an executive at one of those firms, Anduril Industries, wrote in an essay this week.

#### Antitrust ruins bipart—Republicans link it to other partisan disputes

Ghaffary 20 [Shirin Ghaffary, "Republicans showed why Congress won’t regulate the internet", 7/29/20, https://www.vox.com/recode/2020/7/29/21347128/big-tech-antitrust-hearing-facebook-zuckerberg-amazon-bezos-apple-cook-google-pichai]

Allegations that social media platforms have an anti-conservative bias has for years been a rallying cry of President Trump and the Republican party. And leading up to Wednesday, Republicans attacked the focus of the Democrat-run House Judiciary subcommittee hearing — calling on it to focus more on anti-conservative bias and for Twitter CEO Jack Dorsey to appear. Twitter is a small company compared to, say, Facebook, but it has recently taken measures to moderate President Trump’s posts for violating policies around misinformation and hate speech, enraging Republicans.

Democrats, meanwhile, tried to steer the conversation back to issues more directly relevant to antitrust, like if and how these companies intimidate their competition, such as when Facebook acquired its then-rival Instagram in 2012; or whether these companies exploit their users’ privacy, like how Google tracks individuals’ online browsing across the web with cookies; or if Apple is shutting out its competitors by taking an unreasonable cut of profits coming in from independent app developers in its App Store.

What really matters here is whether these companies’ business practices are ultimately harming consumers, most of whom have no choice but to use Big Tech in one way or another if they want to do basic things online like search the web, order goods, or stay in touch with their friends.

In an earlier era, Republicans and Democrats on the committee might have come together to try to focus on what’s been seen as an area of relative bipartisan agreement: protecting the free market. That didn’t happen at today’s hearing. Instead, it was a display of partisan divides.

#### Impact’s cyber and deterrence crash

Manchester ’19, [Josh, Founder of Champion Hill and General Partner at Foundation Capital, Venture-backed Startups Will Build the Defense Technology the Free World Needs Right Now, https://medium.com/@joshmanchester/venture-backed-startups-will-build-the-defense-technology-the-free-world-needs-right-now-d2cefa2b2196]

With U.S. defense spending exceeding $700 billion per year, how could the United States be on the brink of a national security emergency? Simply put, America’s national security competitors are outflanking an Industrial-Age U.S. military machine that, like a lumbering dinosaur, is not adapting fast enough to its changing environment. The Pentagon desperately needs rapid innovation. Yet the current defense industry structure is not compatible with U.S. venture capital and high-growth technology industries for several reasons: · The U.S. military’s industrial base is centered on a few huge oligopoly suppliers known within the Beltway as “the Primes” — Lockheed Martin, Boeing, Raytheon, General Dynamics, and Northrop Grumman. These companies, ancient by tech startup standards, have optimized themselves to sustain a 20th century Industrial Age World War II-style force structure which supports the political decision-makers across the country who appropriate the funding that industrial base receives. The Primes are great at building very large platforms that cost billions of dollars and take 15–30 years to field. The Primes are also historically heavy on hardware talent and much lighter on software talent. · The Primes receive the vast majority of defense spending. Defense budgets have historically not unlocked for startups. While a defense private equity industry exists to aggregate small companies and flip them downstream to the Primes, venture capital investors, who have a much higher return threshold, know that it’s hard to have venture outcomes (in other words, to make money) when a company can’t win large market share or survive as a stand-alone business. · Venture-backed tech industries have matured as an asset class in peacetime and most mainstream U.S. venture firms in existence today do not have institutional cultures or histories that include defense innovation, apart from cybersecurity. · Major tech companies, like the FAANGs (Facebook, Apple, Amazon, Netflix, Google and Microsoft too), are generally unwilling to work on defense related projects, and sometimes must deal with employee protests when they do. · Many observers perceive this as an indicator that software engineers generally don’t want to work on defense-related innovation. · Finally, in a bizarre set of twists, some of the organizations that comprise the Limited Partners of venture capital firms (the blue chip endowments and foundations of the U.S. Eastern establishment, often founded on the fortunes of great American industrialists from decades ago, along with public pension funds throughout the country) are [sometimes accidentally funding Chinese defense technology](https://www.buzzfeednews.com/article/ryanmac/us-money-funding-facial-recognition-sensetime-megvii) while often restricting their U.S. venture managers from making defense investments. Foundations and endowments in particular often have negotiated Limited Partnership Agreements with the venture firms they finance precluding them from investing in anything that could have military usage. The irony is that these same tax-exempt pools of capital are frequently investors in Chinese venture funds which provide software to make smarter and more deadly Chinese weapons and to the advanced surveillance systems that have turned China’s Xinjiang province into a virtual Uighur prison camp and a human rights disaster. No single individual or entity has caused this state of events to transpire; it is simply the accumulation of various cultural aspects of the capital formation process of the venture industry and its portfolio companies. Fortunately, we believe that almost all these characteristics will rapidly change over the next few years. But first let’s discuss some additional background. Venture capital has come of age in a time of unprecedented peace The U.S. venture capital industry is about 100 years old. Bessemer Ventures was formed in 1911 and originally had just the family fortune of Henry Phipps Jr., a co-founder of Carnegie Steel, as its sole limited partner. Despite these deep roots, the U.S. venture industry has only institutionalized as an asset class since the mid-1990s. Until then it was extremely clubby and very small. Sequoia Capital, KPCB, Charles River Ventures, and NEA were all founded in the 1970s and Accel Partners in the 1980s. But it has really only been since the mid-1990s (Benchmark Capital was founded in 1995, as was my own former firm, Foundation Capital) that the industry has institutionalized and grown substantially, first in the desktop computing and internet boom, and second during the combination of platform shifts over the last ten years that have given us mobile computing, social media, e-commerce, cloud computing, software-as-a-service and all of their associated new business models. For a quarter of a century, the institutional, mainstream venture investing ecosystem, at the startup, venture firm and limited partner levels, developed business processes, mental models, networks, and expertise in certain technical areas and heuristics — in aggregate, an industry culture — that have created one of the most dynamic parts of the U.S. economy. The U.S. tech industry is also one of the most unique aspects of American life — and a powerful, difficult-to-replicate form of “soft power,” featuring an inclusivity for aspirational immigrant founders — a feature perhaps unequalled in human history. From a long-term U.S. historical viewpoint, it is striking that the venture industry’s maturation has occurred during a unique period in American history when the United States had no major great power competitor, either ideologically or technologically. The Cold War ended in 1991, the Soviet Union dissolved, and Russia was in disarray for the next 15 years. This period of peace was not without its own unique trials, but the security challenges associated with terrorism, counterinsurgency, and lower-intensity military activity have not required the sort of Herculean societal and political efforts that were drawn upon during the Cold War or World War II. We should all be grateful every day that this has been the reality of the last 25 years. A useful analogy might be made with gold. In 1933, President Roosevelt made it illegal for U.S. citizens to own gold. In 1934, Benjamin Graham published the first edition of Security Analysis. In January 1975 it became legal to own gold again. Graham died in 1976. It was therefore illegal to own gold during key years of the development of modern security analysis. From this gap came gold bugs — the weirdos who seemed to always talk about nothing else, and didn’t get invited to key social events. No analogies are perfect but this captures some of the similarities between venture and defense today. Cybersecurity investors understand the cybersecurity parts of U.S. defense. But most mainstream Silicon Valley venture firms do not spend time on other parts of defense due to the industry’s institutionalization during this recent period of relative peace and American dominance — which has also been a time when the lion’s share of defense spending has gone to the Primes, as discussed. Sadly, peace is ahistorical. Great power competitions are a feature of humanity, not a bug. Periods of time when a major power, or superpower, are not challenged in some profound fashion by one or more other powers, regardless of whether they are driven by fear, prestige, economic interest, or ideology — are, in short, rare when looking back on the sojourn of homo sapiens on planet earth. The period when the free world had a monopoly on power has now ended. The tech-defense status quo is inverting The only previously delineated area where we don’t expect much change is from the FAANGs. These massive companies are best viewed as small nation-states themselves with global stakeholders. For example, many of their employees are not U.S. citizens and may not want their employers engaged in U.S. defense work. We think everything else will invert. · We believe defense budgets will begin unlocking for young startups. Many key national security decision-makers in Washington are now seeking better, faster alternatives to the byzantine Pentagon acquisitions process. Thought leaders like Will Roper, in charge of the U.S. Air Force’s $40 billion annual research and acquisition budget, are [eagerly welcoming the contributions that smaller, nimble venture-capital funded entrepreneurs can make](https://federalnewsnetwork.com/dod-reporters-notebook-jared-serbu/2019/03/air-force-looks-to-build-big-idea-pipeline-to-expand-its-industrial-base/). Roper, and others in the Pentagon, are reforming their practices to make it easier for genuine innovators to compete against the legacy defense oligopoly. When recently asked at a conference what problem keeps him up at night, Roper replied, “The industrial base.” · Given the hardware roots of the Primes, they are ill-suited to provide solutions to many of the most pressing problems today. The Defense Department will increasingly allocate resources to startups solving software problems for which the Primes have no existing stock of machine learning engineers. · As this happens some venture firms will experience cultural shifts toward more defense investing. As venture capitalists see that startups are receiving large purchase orders from various Defense Department units, they will develop strategies to deploy capital toward defense innovation. A good example is [last week’s award by the Air Force of $121 million to Pivotal Software in San Francisco](https://dod.defense.gov/News/Contracts/Contract-View/Article/1861753/source/GovDelivery/). · Institutional limited partners as a group will likely slowly allocate away from any China-based manager who could be investing in Chinese military technologies. Some LPs with the freedom to do so may remove restrictions on defense investing from limited partnership agreements. · We believe it is a myth that software engineers do not want to work on defense. This is a classic case of preference falsification, the social phenomenon in which people do not speak their true minds about a given topic, though their actions often indicate otherwise. We believe that talented engineers are often very attracted to defense-related work because it often offers the hardest problems to solve. An enormous opportunity therefore exists for startups: to hire the engineers who don’t want to work for ancient and outdated Primes, and who aren’t very welcome at the FAANGS, but who wish to create the technologies that an increasingly eager democratic government needs to defend itself and its allies. Companies in our own portfolio, like [SpaceX](https://www.spacex.com/), [Rigetti Computing](https://www.rigetti.com/), [Anduril Industries](https://www.anduril.com/), and [Umbra Lab](https://umbralab.com/) are executing this strategy. The hardest technical problems today are defense-related How can data from satellites, drones, land-based radar, ships, and other sources be stitched together, in real time, to find long-range missiles on mobile transporters, hiding among the background in cities, forests, and mountains? How can friendly troops, who have separated into very small units in order to hide and survive, be connected to each other electronically, and be resupplied from historically long ranges? How and to what degree and in what conditions should an adversary’s sensor networks be spoofed? What type of false electronic picture can be painted? The aggregation of targeting data for an air wing takes 72 hours today and has a heavy human component. Can this complex optimization problem be solved autonomously, such that the targeting list for pilots is developed in 15 minutes? How does a deployed force of perhaps 50,000 personnel, with planes, ships, and land forces, continue to fight when satellite links have been knocked out, and “reachback” to the U.S., for data processing, is no longer possible? Can deep learning be used for crisis diplomacy? Put another way, since DeepMind’s AlphaZero can teach itself to move pieces forward on a board to win a game, can it learn to move them backwards, to de-escalate a crisis? These problems, and many others, are asking to be solved by entrepreneurs. Phase change There is a looming breakdown in deterrence. If the U.S. defense establishment is unable to adapt to the new great power competitive environment, then adversaries will be tempted to grab for a fait accompli, with war the result. This has been the pattern since Homer wrote The Iliad; there is no evidence to conclude human behavior is different in the 21st Century. We believe the prevention of this scenario involves rapid technical innovation. The defense environment is more favorable now for upstart firms than anytime in the past several decades. If you are a founder building technology to ensure the survival of government by consent, our firm would like to talk to you.

### 1NC – T Exemptions

#### ‘Scope’ is the extent of the area covered by the core laws

Oxford 22 – Oxford English Dictionary, ‘scope’, https://www.lexico.com/en/definition/scope

1 The extent of the area or subject matter that something deals with or to which it is relevant.

*‘we widened the scope of our investigation’*

#### It’s bounded by exemptions and immunities

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

D. Top 3 Accomplishments Since Last Long Range Plan in 2015

(1) Publications. In addition to our Annual ALD Updates, we are set to publish an update to the Noerr-Pennington Handbook, which should be out in 2019. We also published a new version of the State Action Handbook in 2016. The Handbook on the Scope of the Antitrust Laws was published in 2015.

(2) Commentary on Legislative and Regulatory Proposals. The Committee has been very active in supporting Section commentary on proposed legislation, regulations, and other policy issues.

For instance, in March 2018, the E&I Committee assisted former E&I Chair John Roberti in composing his article, “The Role and Relevance of Exemptions and Immunities in U.S. Antitrust Law”, presented to the DOJ Antitrust Division Roundtable on behalf of the ABA Antitrust Section.

In January 2018, in response to a request from the Section Chair, we submitted Section comments along with the Legislative and State AG Committees, addressing the proposed Restoring Board Immunity Act legislation that would impact the post-NC Dental exemptions and immunity climate. Previously, we commented on the Professional Responsibility Act.

(3) Spring Meeting Programs. We have sponsored or co-sponsored a program at every Spring Meeting since our last long range plan. In 2019 we will chair Sham Litigation after FTC v. AbbVie The FTC v. AbbVie decision – calling for the disgorgement of $448 million on the basis of sham patent litigation. In addition, we will co-sponsor in 2019 with the Trade, Sports & Professional Associations Committee, a program on “Antitrust Law's Anomalous Treatment of Sports,” addressing how US courts have shown broad deference to the "rules of the game," including near-immunity status for concepts such as "amateurism."

II. Major Competition/Consumer Protection Policy or Substantive Issues Within Committee’s Jurisdiction Anticipated to Arise Over Next Three Years

A. Issue #1: Will Certain Exemptions Be Eliminated or Expanded?

A goal of the current DOJ Antitrust Division is to streamline antitrust laws, and in particular, take a hard look at exemptions and immunities. This is in the wheelhouse of our Committee’s fundamental policy issue: How much of the economy has opted out of our antitrust system? Is that a problem or are ad hoc exemptions acceptable ways to fine tune the application of the antitrust laws?

We anticipate, therefore, that efforts to enact or to repeal existing statutory exemptions and immunities will continue. In recent years, there have been efforts to repeal the exemptions for railroads and (at least in part) the McCarran-Ferguson insurance exemption. The Section and the Committee has generally supported efforts to repeal statutory exemptions. Given that repeal issues are very political it is unlikely that we will see many exemptions actually repealed.

On the other hand, proposals for new exemptions and immunities will continue to be introduced in Congress. The Committee will improve on a template for use in assisting the Section in drafting comments to Congress on newly proposed exemptions and immunities.

One development that may continue in the health care area are issues over a "COPA" or "Certificate of Public Advantage" at the state level. A COPA is a state statutory mechanism that provides certain collaborations in the health care community with immunity from private or government actions under the antitrust laws by invoking the state action doctrine. The FTC has generally opposed such efforts at the state level, but several states have used them to immunize health care mergers. This is a major development that should be monitored.

Through programs, newsletters, and Connect entries, the Committee intends to educate its members about Congressional and other efforts to repeal, or introduce new, exemptions and immunities, as well as the application of existing statutory exemptions and immunities in the courts. The Committee’s Handbook on the Scope of Antitrust Law, published in 2015, addresses developments in the statutory immunities area. It built on the prior publication, Federal Statutory Exemptions from Antitrust Law Handbook in 2007. Our Scope book will need to be updated within the next three years.

B. Issue #2: Will There Be Legislative Solutions to State Action Issues at State and Federal Levels?

The FTC’s case against the North Carolina Board of Dental Examiners put the "active supervision" prong of the state action test front and center. North Carolina State Board of Dental Examiners v. Federal Trade Commission, 135 S.Ct. 1101 (2015). The Court agreed with the FTC’s position that state occupational licensing boards comprised of market participants must satisfy the active supervision requirement. This spurred additional suits against other types of state boards involving regulated professionals. Moreover, every State had to reassess its boards to determine if there is "active supervision." Courts and state legislatures are addressing those issues. We also expect the proper framing of the clear articulation prong of the state action doctrine will be addressed. The Supreme Court spoke to the clear articulation test in FTC v. Phoebe Putney Health System, Inc., 133 S.Ct. 1003 (2013), narrowing the foreseeability test to cover only situations in which the anticompetitive conduct is the “inherent, logical, or ordinary result of the exercise of authority delegated by the state legislature.” How this test has played out in the lower courts will be of particular interest to the Committee and its membership. The COPA issues, at the state level, as previously mentioned, will impact this area.

The Committee expects to address these issues through updates to Connect, newsletters, Spring Meeting programs, committee programs, its contributions to the Annual Review of Antitrust Law Developments. The State Action Practice Manual addresses these issues, as well as the Committee’s Handbook on the Scope of Antitrust Law.

C. Issue #3: Will Noerr Be Restricted or Expanded?

The Noerr-Pennington doctrine is an exemption issue that is frequently litigated. In particular, the most likely area of further development is in the pharma industry. Alleged misrepresentations to government agencies has caught the attention of some courts. In addition, there may be more development on the pattern exception, which raises the issue of whether each act of petitioning in a pattern must satisfy the objectively and subjectively baseless requirements for sham petitioning. The Committee’s new Handbook on Noerr (forthcoming) and its earlier Handbook on the Scope of Antitrust Law addresses developments in the Noerr law.

III. Specific Long Term Plans to Strengthen Committee

The Committee provides important services to the membership of the Section through publications, drafting ABA Antitrust Section comments to proposed regulation and international competition proposed immunities, and programming. The goals of the Committee include: (1) to provide policy comments on key questions about the scope of the antitrust laws for legislation and policy-making; (2) produce a mix of publications and programming that provides relevant and useful information to our members; (3) to ensure that the Committee remains valuable to our members’ practices; and (4) to make the most productive use of electronic communications to deliver the Committee’s work product.

A. Potential Modifications to Charter: What is the Role of this Committee?

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

#### ‘Expand’ means to make greater, not clarify its current state by applying it differently

Terry J. Hatter 90 Jr., United States District Judge, California Central District, In re Eastport Assoc., 114 B.R. 686, 690, 1990 U.S. Dist. LEXIS 6308, \*10-11 (C.D. Cal. March 20, 1990), 3/20/1990, Lexis

Second, Eastport asserts that the presumption against retroactivity does not apply because the amendment was intended only as a clarification of existing law. HN7 Where an amendment to a statute is remedial in nature and merely serves to clarify existing law, no question of retroactivity is involved and the law will be applied to pending cases. City of Redlands v. Sorensen, 176 Cal. App. 3d 202, 211, 221 Cal. Rptr. 728, 732 (1985). The evidence in this case, however, does not support the conclusion that the amendment to section 66452.6(f) was simply a clarification of preexisting law. The Legislative Counsel's Digest specifically states that "the bill would *expand* the definition of development moratorium." Senate Bill 186, Stats. 1988, ch. 1330, at 3375 (emphasis added). Since the Legislative Counsel is a state official required by law to analyze pending legislation, it is reasonable to presume that the Legislature amended the statute with the intent and meaning expressed in the Counsel's digest. People v. Martinez, 194 Cal. App. 3d 15, 22, 239 Cal. Rptr. 272, 276 (1987). By its ordinary meaning, the term "expand" indicates a change in the law, rather than a restatement of existing [\*\*11] law. In light of the Counsel's comment, Eastport's argument is unpersuasive.

#### The aff intensifies the application of antitrust to already covered activities---it does not curtail an exemption or immunity.

#### Vote neg:

#### Eliminating exemptions provides a limited and predictable basis for prep and focuses debates on the balance between antitrust and regulation, ensuring conceptual unity.

### 1NC – Core PIC

#### The United States federal government should:

* uniformly and adequately apply the doctrines of contract and patent law to curtail private sector conduct that is more restrictive than reasonably necessary to enable the creation of information technology standards when evaluating whether SEPs violate the FRAND commitments made to become standard-essential;
* establish treble damages and private rights of action in the corresponding areas of law to enforce the regulations.
* and, adequately provide competition-specific expertise to the relevant subdivisions of the appropriate enforcement agencies.

#### The counterplan alone solves patent holdup and avoids chilling innovation or business confidence.

Randi Brown, 2L @ NYU Law, ’18, “Always a Monopoly, Never a Monopolist: Why Antitrust is the Wrong Regulatory Scheme for Protecting Competition in Technical Standards” *NYU Law Proceedings, https://proceedings.nyumootcourt.org/2018/04/always-a-monopoly-never-a-monopolist-why-antitrust-is-the-wrong-regulatory-scheme-for-protecting-competition-in-technical-standards/*

The best approach for looking at these SEP monopolies, is to look at them through the framework of the values behind patent law, rather than antitrust law or unfair trade practice law. Patent law is intended to reward innovation, to compensate for the research and development that leads to such innovation, and to allow such innovation to benefit the public at large.12 These values are reflected in our systems for awarding patents, and in the fact that we recognize intellectual property at all. Private industry derives significant value in intellectual property, and that value comes about as a result of the competitive advantage gained from the right to exclude others from using the fruits of their intellectual labors.13 Standardization, however, largely diminishes these rights.

The right to exclude others still exists for SEP holders, but is lessened by the commitments they make to license their patents on Fair, Reasonable, and Non-Discriminatory (“FRAND”) terms. This commitment is akin to a contractual obligation between the SEP holders and the SSOs, under which implementers of SEP technology are third-party beneficiaries. Because this is a contractual obligation, contract law, which does not police based on market power, is an adequate remedy when SEP holders engage in anticompetitive conduct.14 The Court in Verizon Commc’ns Inc. v. Law Offices of Curtis V. Trinko, LLP noted that “when there exists a regulatory structure designed to deter and remedy anticompetitive harm, the additional benefit to competition provided by antitrust enforcement will tend to be small, and it will be less plausible that the antitrust laws contemplate such additional scrutiny.”15 Here, contract obligations strike the right balance between protecting competition and avoiding overdeterrence.16 In particular, modification of FRAND commitments is workable under contract law as a matter of efficiency, unlike in antitrust where such efficient actions may be deemed patent holdup, a competition violation. Further, even a breach of FRAND commitments may be efficient and benefit competition, and such efficient breaches are deterred under added antitrust scrutiny.

Further, patent law rightly governs the actions of a SEP holder which fall outside of the FRAND commitments. Where there is no applicable FRAND commitment, a SEP holder has the right to refuse to license or deal, which protects intellectual property rights.17 This right of exclusion is the very right conferred through patent, and it is what gives patent holders the ability to extract profits from their innovations, encouraging such innovation in the first place. Patent law can protect SEP holders from abuses by would-be-licensees who infringe on their rights, and can protect SEP implementers by creating a discrete and coherent property right they can license at the value of the technology.

The use of contract and patent law to correctly balance competitive aims and our value of innovation is perfectly acceptable within antitrust law due to the net procompetitive effect of standardization. Looking to anticompetitive conduct alone fails to account for the economic benefits passed on to consumers.18 There will be remedies for breaches of FRAND under contract law which contemplate these economic efficiencies and sanction conduct to the degree which most benefits consumers.19 Even if there is some anticompetitive conduct which would not be addressed by contract law, it is best to err on the side of protecting patent rights, which promote innovation and participation in standards.

Protecting SEP holders from increased scrutiny leads to benefits felt downstream by consumers. This is true because standards facilitate interoperability by establishing a uniform set of building blocks for a given technology. Customers feel the benefits of lowered costs, increased consumer choice, efficiency, and highly valued technology.20 By protecting SEP holders from unneeded antitrust scrutiny, we recognize the value of the patent deemed standard-essential, and reward participation in the standard by patent holders who have innovated. Given the benefits conferred by standards, it is crucial that courts make participation in these standards profitable and elevate the values of patent protection, rather than imposing antitrust remedies. Patents are the right to exclude others from your technology.21 With FRAND commitments, we remove significant benefits to that right. Trying to protect competition through a conventional antitrust scheme has the potential to eliminate the remaining benefits, without adequately recognizing the importance of innovation.

In addition, looking to the market power held by SEP holders in the SEP fails to recognize the downstream competition benefiting consumers. For example, one standard in the tech world is JPEG. JPEG is a method of compressing digital images without losing picture quality. The JPEG standard defines how an image is compressed and decompressed, but not the file format itself.22 Despite standardization, multiple downstream file formats exist and can compete with one another. JPEG itself stands for Joint Photographic Experts Group, which is made up of a cross-section of members of two standard-setting organizations, ISO and ITU.23 JPEG is a great example of both consumer benefits and encouraged innovation. Because of the uniformity of JPEG as a format, photos compressed in this way are able to be opened by hundreds if not thousands of types of software. Consumers can take and save JPEG images and open them with Photoshop, Windows Picture Viewer, Snapseed, and so forth. Further, innovation has not been stymied in the standard itself. One fear with standardization is that a lack of competition in the SEP will result in stagnation in that space. Instead, because technology progresses and innovation downstream can encourage or even require standards to innovate, JPEG has innovated on a number of occasions and is in the process of doing so today.24

Notably, the United States recently moved to an approach that focuses on imposing antitrust liability on implementers and SSOs, rather than SEP holders. Current United States Assistant Attorney General for the Antitrust Division, Makan Delrahim, expressed the view in a speech this past November, that the risk of anticompetitive conduct is greater from implementers than from SEP holders.25 This is because, as a result of the FRAND commitments, buyers are able to hold out for lower prices. Moreover, he noted that the SSOs would also be scrutinized more closely, as these organizations are made up of competitors who have the power to collude and devalue the intellectual property rights.26 Perhaps most importantly, he noted that “patent holders can’t violate the antitrust laws by properly exercising the rights that patents confer.”27 In this, he included the right to refuse to license, calling the FRAND commitments contractual in nature rather than an aspect of competition law.28

Viewing the monopoly that exists in all SEPs as posing antitrust problems results in three negative consequences. First, it discourages standard participation, as antitrust scrutiny can be incredibly costly to innovators. This is especially true for startups and young companies who are able to get a foothold through standardization but may not be able to afford a fight against the weight of the FTC. In addition, standard participants will risk doubly losing value in their patents, as FRAND commitments represent a significant decrease in bargaining power on their own and potential for antitrust liability increases the costs for SEP holders meaningfully.29 Second, antitrust scrutiny above and beyond a contract remedy is inefficient as it doesn’t recognize what may be an efficient denial of a license. Contract law recognizes what is known as “efficient breach,” whereby a participant may breach a contractual obligation so long as they pay for it because the overall net costs are less than the costs of the breach.30 A breach of FRAND may be efficient, and thus should be allowed so long as a contract remedy exists. Third, by adding scrutiny for SEP holders, the value of the underlying technology and patent rights decreases. IP rights are founded on the basic view that creation should result in an ability to exclude.31 Calling the SEP holder a monopolist would diminish if not eliminate this right, as exclusion would be deemed anticompetitive.32 A system which rewards patent holders rather than sanctioning their basic rights reflects the value of innovation in society. Patents reward innovators by allowing them to profit from their inventions. Without profitability, companies will not invest the huge amounts of capital necessary to the research and development process.

\* \* \* \* \*

Standard-Essential Patents may be monopolies by default, but those who hold them should not be deemed monopolists without added anticompetitive effect downstream. Because standards result in more competition downstream, contract and patent law effectively prevent harm to competition without deterring innovation or failing to remunerate research and development. In order to protect the IP rights of innovators and encourage their participation in technical standards, courts should apply the doctrines of contract and patent law rather than antitrust law in evaluating SEPs and the FRAND commitments made to become standard-essential.

## Innovation Adv

### 1NC – Innovation Turn

#### U.S. innovation is high and globally dominant---big business is key.

Wolf ’21 [Martin; April 27; Chief Economics Commentator, M.A. in Economics from Oxford University; Financial Times, “China is wrong to think the US faces inevitable decline,” <https://www.ft.com/content/8336169e-d1a8-4be8-b143-308e5b52e355>]

The Chinese elite are convinced that the US is in irreversible decline. So reports Jude Blanchette of the Center for Strategic and International Studies, a respected Washington-based think-tank. What has been happening in the US in recent years, particularly in politics, supports this perspective. A stable liberal democracy would not elect Donald Trump — a man lacking all necessary qualities and abilities — to national leadership. Nevertheless, the notion of US decline is exaggerated. The US retains big assets, notably in economics.

For one and half centuries, the US has been the world’s most innovative economy. That has been the basis of its global power and influence. So how does its innovative power look today? The answer is: rather good, despite competition from China.

Stock markets are imperfect. But the value investors put on companies is at least a relatively impartial assessment of their prospects. At the end of last week, 7 of the 10 most valuable companies in the world and 14 of the top 20, were headquartered in the US.

If it were not for Saudi Arabian oil, the five most valuable companies in the world would be US technology giants: Apple, Microsoft, Amazon, Alphabet and Facebook. China has two valuable technology companies: Tencent (at seventh position) and Alibaba (at ninth). But those are China’s only companies in the top 20. The most valuable European company is LVMH at 17th. Yet LVMH is just a collection of established luxury brands. That ought to worry Europeans.

When we look only at technology companies, the US has 12 of the top 20; China (with Hong Kong but excluding Taiwan) has three; and there are two Dutch companies, one of which, ASML, is the largest manufacturer of machines that make integrated circuits. Taiwan has the Taiwan Semiconductor Manufacturing Company, the world’s biggest contract computer chipmaker, and South Korea has Samsung Electronics.

Life sciences are another crucial sector for future prosperity. Here there are seven European companies (with Switzerland and the UK included) in the top 20. But the US has seven of the top 10, and 11 of the top 20. There is also one Australian and one Japanese company, but no Chinese businesses.

In sum, US companies are globally dominant and nearly all the most valuable non-US firms are headquartered in allied countries.

#### The plan cause patent holdout that destroys innovation and productivity

Manne 20 [Geoffrey, president and founder of the International Center for Law and Economics (ICLE). “The Deterioration of Appropriate Remedies in Patent Disputes” https://fedsoc.org/commentary/publications/the-deterioration-of-appropriate-remedies-in-patent-disputes]

Property rights are an essential economic institution. As the great UCLA economist Harold Demsetz famously argued, property rights spur specialization, investment, and competition, which in turn increase productivity, innovation, and wealth throughout the economy.[1]

The same holds true for intellectual property rights, including patents, which are no less important than their traditional counterparts in facilitating innovation and the efficient organization of productive economic activity, particularly in the modern, high-tech economy.[2] A wealth of literature indicates that much, if not most, of the value of innovation is passed on to consumers in the form of lower prices and higher quality goods and services.[3] Indeed, as Nobel Laureate William Nordhaus finds, even in the presence of patents to facilitate the appropriability of the value of innovation by inventors, “only a miniscule fraction of the social returns from technological advances over the 1948-2001 period was captured by producers, indicating that most of the benefits of technological change are passed on to consumers rather than captured by producers.”[4] Thus, although measurement problems plague such research, there is strong evidence that nations with greater levels of patent protection have historically achieved significantly higher innovative output than those with lower levels of patent protection.[5]

Nevertheless, a significant body of academic and policy work has argued—with very real policy success—that patent rights in the U.S. have been too strong.[6] The past two decades have witnessed a significant weakening of patent protection in the U.S. as courts, legislators, and several private organizations have progressively chipped away at some of the key features of patent protection. This includes the availability of injunctions, the amount of damages awarded to victims of patent infringement, and other, more subtle changes, such as curbs on fee-shifting between parties to patent litigation.

Behind many of these changes lies a powerful intellectual movement, alleging that excessive patent protection is holding back western economies. These critics chiefly fear that the owners of the standard essential patents (“SEPs”) crucial to much of modern technology are charging their commercial partners too much for the rights to use their patents—referred to as patent holdup and royalty stacking[7]—and that so-called patent trolls (“patent-assertion entities” or “PAEs”) are deterring innovation by small startups by employing “extortionate” litigation tactics.[8] Oversimplifying, the argument is that, by selecting certain winning technologies, standardization artificially weakens implementers’ bargaining position vis à vis patent holders. Accordingly, critics argue that the royalties charged by SEP holders should not exceed those that they could have obtained before their technology was included in a standard. However, there is little evidence beyond occasional anecdotes to support the first of these concerns, and a growing body of empirical research points in the opposite direction.[9] And the latter concern, while real, is complex, and the optimal policy response should address these complexities more than typical proposals do. Yet despite the limited evidence and complexities, policymakers have been quick to act on them.

It may even be the case that the policy changes that have been made are impeding the ability of owners of SEPs to enforce their rights to such an extent that they are now being under-rewarded. Most notably, there is at least some evidence to suggest that the looser enforcement of IP rights is resulting in holdout behavior (i.e., situations where would-be licensees avoid concluding a license agreement because they know that they are shielded from legal repercussions for infringement).[10]

While this does not appear to have resulted in a marked decrease in innovative output so far, there is certainly a risk of that happening, especially if lawmakers continue to alter the legal regime in ways that systematically disadvantage patent holders. Indeed, although the causes are unclear, already there are concerns about secular stagnation and the slowdown in productivity growth.[11] In that context, policies that weaken incentives to innovate seem like the height of folly. Moreover, since many important innovations bear fruit only many years after the initial investment in research and development, any subsequent change of course may have few short-term benefits and might even have short-term costs, making it politically difficult if not impossible to change course once more significant adverse effects on innovation start to appear.

### 1NC – AT: Patent Holdup

#### ‘Patent holdups’ are a lie. Antitrust policies are a greater threat.

Barnett ’18 [Jonathan, Ronald A. Cass, Richard A. Epstein, Douglas H. Ginsburg, Gus Hurwitz, David J. Kappos, Paul Michel, Adam Mossoff, Kristen Osenga, David J. Teece, and Joshua D. Wright; February 22; Professor at the USC Gould School of Law; Dean Emeritus of the Boston University School of Law; Law Professor at New York University; Senior Circuit Judge, United States Court of Appeals for the District of Columbia Circuit, Law Professor at George Mason University; Law Professor at the University of Nebraska; Former Under Secretary of Commerce and Director of the United States Patent & Trademark Office; Retired Chief Judge of the United States Court of Appeals for the Federal Circuit; Law Professor at George Mason University; Professor at the University of Richmond School of Law; Thomas W. Tusher Professor in Global Business at the University of California at Berkeley; Former Commissioner of the Federal Trade Commissioner, Law Professor at George Mason University; IP Watchdog, “Apply Evidence-based Approach to Antitrust Law Equally to Innovators and Implementers,” https://www.ipwatchdog.com/2018/02/22/evidence-based-application-antitrust-law/id=93755/]

As judges, former judges and government officials, legal academics and economists who are experts in antitrust and intellectual property law, we write to express our support for your recent announcement that the Antitrust Division of the Department of Justice will adopt an evidence-based approach in applying antitrust law equally to both innovators who develop and implementers who use technological standards in the innovation industries.

We disagree with the letter recently submitted to you on January 24, 2018 by other parties who expressed their misgivings with your announcement of your plan to return to this sound antitrust policy. Unfortunately, their January 24 letter perpetuates the long-standing misunderstanding held by some academics, policy activists, and companies, who baldly assert that one-sided “patent holdup” is a real-world problem in the high-tech industries. This claim rests entirely on questionable models that predict that opportunistic behavior in patent licensing transactions will result in higher consumer prices. These predictions are inconsistent with actual market data in any high-tech industry.

It bears emphasizing that no empirical study has demonstrated that a patent-owner’s request for injunctive relief after a finding of a defendant’s infringement of its property rights has ever resulted either in consumer harm or in slowing down the pace of technological innovation. Given the well understood role that innovation plays in facilitating economic growth and wellbeing, a heavy burden of proof rests on those who insist on the centrality of “patent holdup” to offer some tangible support for that view, which they have ultimately failed to supply in the decade or more since that theory was first propounded. Given the contrary conclusions in economic studies of the past decade, there is no sound empirical basis for claims of a systematic problem of opportunistic “patent holdup” by owners of patents on technological standards.

Several empirical studies demonstrate that the observed pattern in high-tech industries, especially in the smartphone industry, is one of constant lower quality-adjusted prices, increased entry and competition, and higher performance standards. These robust findings all contradict the testable implications of “patent holdup” theory. The best explanation for this disconnect between the flawed “patent holdup” theory and overwhelming weight of the evidence lies in the institutional features that surround industry licensing practices. These practices include bilateral licensing negotiations, and the reputation effects in long-term standards activities. Both support a feed-back mechanism that creates a system of natural checks and balances in the setting of royalty rates. The simplistic models of “patent holdup” ignore all these moderating effects.

Of even greater concern are the likely negative social welfare consequences of prior antitrust policies implemented based upon nothing more than the purely theoretical concern about opportunistic “patent holdup” behavior by owners of patented innovations incorporated 2 into technological standards. For example, those policies have resulted in demands to set royalty rates for technologies incorporated into standards in the smartphone industry according to particular components in a smartphone. This was a change to the longstanding industry practice of licensing at the end-user device level, which recognized that fundamental technologies incorporated into the cellular standards like 2G, 3G, etc., optimize the entire wireless system and network, and not just the specific chip or component of a chip inside a device.

### 1NC – AT: Smart Cities

#### No smart cities AND they fail.

Smith ‘17 [Kendra; November 17; writer @ wired; Scientific American, “The Inconvenient Truth about Smart Cities,” [https://blogs.scientificamerican.com/observations/the-inconvenient-truth-about-smart-cities]](https://blogs.scientificamerican.com/observations/the-inconvenient-truth-about-smart-cities%5d)

A big reason for the disconnect between smart city potential and reality is the fact that smart cities are where the digital world blends, but can also collide, with the non-digital world. Non-digital issues such as legacy governance, social justice, politics, ideology, privacy and financial elements that are not so smart, efficient or resilient when smart-city planning starts can become large factors. Any one of these elements can pose a challenge in and of itself and grow to monstrous proportions when combined with other longstanding problems in a city. Imagine the entanglements that existing public and private industries must go through to implement a single smart city project, let alone numerous projects such as smart lighting, smart transportation, smart buildings and the like to actually make a more complete smart city. Bill Gates’ effort is notable because Belmont is a blank slate to be built from the ground up.

### 1NC – Bauer

#### Bauer goes neg – says current international disputes and harmonization failure necessitate uncertainty

Bauer et al. 17, \*Matthias Bauer is Senior Economist at ECIPE; \*Fredrik Erixon is a Swedish economist and writer. He has been the Director of the European Centre for International Political Economy (ECIPE) ever since its start in 2006; (October 2017, “Standard Essential Patents and the Quest for Faster Diffusion of Technology”, https://ecipe.org/publications/standard-essential-patents/)

Standard-essential patents (SEPs) have been critical to the ICT revolution. SEPs have allowed for the fast rates of innovation diffusion that the world has witnessed in the past 25 years. Yet the SEP system is under pressure. It suffers from a smoldering crisis of confidence as costly legal disputes across several international jurisdictions have caused unpredictable frictions in the markets for standardized technologies. Regulators in several parts of the world are now considering actions that seek to overcome obscurities in the SEP system. Asymmetric information is at the very heart of current problems in the market for SEPs, and all too often resembles a market dominated by a “confusopoly” with little transparency about products, quality and prices. In this paper, we will discuss ideas and concepts for what could be done to maintain a balanced and trusted system that supports technological innovation and at the same time conforms to economic efficiency.

### 1NC – AT: Growth !

#### Hegemony is high and resilient – no growth impact

Beckley 18 Michael Beckley, International Relations Professor at Tufts University, PhD at Columbia. [Unrivaled: Why America Will Remain the World's Sole Superpower, an addition to the series Cornell Studies in Security Affairs, edited by Robert J. Art, Robert Jervis, and Stephen M. Walt, Cornell University Press]

By most measures, the United States is a mediocre country. It ranks seventh in literacy, eleventh in infrastructure, twenty-eighth in government efficiency, and fifty-seventh in primary education. 1 It spends more on healthcare than any other country, but ranks forty-third in life expectancy, fifty-sixth in infant mortality, and first in opioid abuse. 2 More than a hundred countries have lower levels of income inequality than the United States, and twelve countries enjoy higher levels of gross national happiness. 3 Yet in terms of wealth and military capabilities—the pillars of global power—the United States is in a league of its own. With only 5 percent of the world’s population, the United States accounts for 25 percent of global wealth, 35 percent of world innovation, and 40 percent of global military spending. 4 It is home to nearly 600 of the world’s 2,000 most profitable companies and 50 of the top 100 universities. 5 And it is the only country that can fight major wars beyond its home region and strike targets anywhere on earth within an hour, with 587 bases scattered across 42 countries and a navy and air force stronger than that of the next ten nations combined. 6 According to Yale historian Paul Kennedy, “Nothing has ever existed like this disparity of power; nothing.” The United States is, quite simply, “the greatest superpower ever.” 7 Why is the United States so dominant? And how long will this imbalance of power last? In the following pages, I argue that the United States will remain the world’s sole superpower for many decades, and probably throughout this century. We are not living in a transitional post–Cold War era. Instead, we are in the midst of what could be called the unipolar era—a period as profound as any epoch in modern history. This conclusion challenges the conventional wisdom among pundits, policymakers, and the public. 8 Since the end of the Cold War, scholars have dismissed unipolarity as a fleeting “moment” that would soon be swept away by the rise of new powers. 9 Bookstores feature bestsellers such as The Post-American World and Easternization: Asia’s Rise and America’s Decline; 10 the U.S. National Intelligence Council has issued multiple reports advising the president to prepare the country for multipolarity by 2030;11 and the “rise of China” has been the most read-about news story of the twenty-first century. 12 These writings, in turn, have shaped public opinion: polls show that most people in most countries think that China is overtaking the United States as the world’s leading power. 13 How can all of these people be wrong? I argue that the current literature suffers from two shortcomings that distort peoples’ perceptions of the balance of power. First, the literature mismeasures power. Most studies size up countries using gross indicators of economic and military resources, such as gross domestic product (GDP) and military spending. 14 These indicators tally countries’ resources without deducting the costs countries pay to police, protect, and provide services for their people. As a result, standard indicators exaggerate the wealth and military power of poor, populous countries like China and India—these countries produce vast output and field large armies, but they also bear massive welfare and security burdens that drain their resources. To account for these costs, I measure power in net rather than gross terms. In essence, I create a balance sheet for each country: assets go on one side of the ledger, liabilities go on the other, and net resources are calculated by subtracting the latter from the former. When this is done, it becomes clear that America’s economic and military lead over other countries is much larger than typically assumed—and the trends are mostly in its favor. Second, many projections of U.S. power are based on flawed notions about why great powers rise and fall. Much of the literature assumes that great powers have predictable life spans and that the more powerful a country becomes the more it suffers from crippling ailments that doom it to decline. 15 The Habsburg, French, and British empires all collapsed. It is therefore natural to assume that the American empire is also destined for the dustbin of history. I argue, however, that the laws of history do not apply today. The United States is not like other great powers. Rather, it enjoys a unique set of geographic, demographic, and institutional advantages that translate into a commanding geopolitical position. The United States does not rank first in all sources of national strength, but it scores highly across the board, whereas all of its potential rivals suffer from critical weaknesses. The United States thus has the best prospects of any nation to amass wealth and military power in the decades ahead.

### 1NC – GMU Defense

#### Aff cards are a liberal conspiracy to take over higher education.

WSJ ’18 [Editorial Board; May 11; Wall Street Journal, “The Trashing of George Mason University,” https://www.wsj.com/articles/the-trashing-of-george-mason-university-1526079531]

Progressives dominate all but a few corners of American academia, but apparently they want it all. Witness the political and media assault on George Mason University, an island of intellectual diversity in Northern Virginia that has committed the sin of accepting money from conservative donors.

A public university with some 36,000 students, George Mason has made a mark in economic debates through its Mercatus Center. This has caught the attention of an outfit called UnKoch My Campus, which claims that donors like Charles and David Koch inappropriately influence university decisions. The demand is for “transparency” but the real goal is to silence conservative views.

George Mason recently released hundreds of pages of public records in response to requests by Transparent GMU, the local UnKoch affiliate. They include contracts and correspondence related to a $30 million donation in 2016, the largest in school history. Ten million dollars came from the Koch Foundation, and $20 million from an anonymous donor represented by attorney Leonard Leo. Mr. Leo is also a vice president of the Federalist Society, the non-secret network of conservative lawyers.

Cue the outrage. Among the horrors supposedly uncovered by UnKoch is that one condition of these gifts was that George Mason rename its law school after Antonin Scalia. UnKoch wants everyone to know that the Great Scalia was “one of the most ideological and polarizing Supreme Court Justice [sic] in history.” OMG, as the kids say. The New York Times ran a nearly full-page story on the documents.

The truth is that the naming request and decision went through normal university channels that included a vote by the university’s Board of Visitors, as well as the State Council on Higher Education for Virginia. Liberal Justice Ruth Bader Ginsburg, a Scalia friend, also approved.

UnKoch has also hyped correspondence between George Mason’s law school and the Federalist Society as something nefarious. The emails include Mr. Leo’s recommendation of a prospective student and discussion of candidates for professorships. UnKoch is aghast that a law professor and Mr. Leo would discuss federal clerkships for alumni who are current Federalist Society members. Don’t universities want their graduates to succeed?

UnKoch has also seized on now-obsolete gift agreements between the Mercatus Center and George Mason’s economics department. Signed between 2003 and 2011, they gave the Koch Foundation a minority role on committees that make recommendations about candidates for George Mason professorships and for Mercatus Center positions funded by its gifts.

This non-scandal gets worse. A 2009 gift agreement between George Mason and the Mercatus Center outlined the terms for a Koch-funded chair, and it states that “the objective of the Professorship is to advance the understanding, acceptance and practice of those free market processes and principles which promote individual freedom, opportunity and prosperity, including the rule of law, constitutional government, private property and the laws, regulations, organizations, institutions, and social norms upon which they rely.”

We should hope so. Donors are committing no crime in trying to judge if their philanthropy is fulfilling its purpose. The Kochs, God bless them, believe in supporting academics who believe in the principles of liberty and market economics. While they can’t and shouldn’t dictate what any professor writes, professors who believe in free markets will tend to support those principles.

The contracts explicitly stipulate that “the final say in all faculty appointments lies in specified GMU procedures, involving academic approval and final approval by the Board of Visitors.” But if George Mason chose to hire academics like the prolific Donald Boudreaux because he believes in advancing free-market ideas, so much the better.

\*\*\*

All of this UnKoch nonsense is part of the left’s attempt to stifle conservative ideas in the guise of an attack on “dark money.” The Kochs are so “dark” that the progressives decided to use their name. And speaking of dark money, UnKoch My Campus isn’t a nonprofit and doesn’t file regular financial disclosures.

Researchers from Stanford, Harvard and the University of Chicago Law School found last year that only 15% of American law school professors are conservative. We’re surprised it’s that many. The good people at George Mason should go on taking money from the Kochs and anyone else it wants, and tell the UnKochs to harass somebody who deserves it, like that progressive icon, Eric Schneiderman.

### 1NC – AT: Climate Change

#### No impact.

Kerr et al. ’19 [Amber, Daniel Swain, Andrew King, Peter Kalmus, Richard Betts, and William Huiskamp; June 4; Energy and Resources PhD at the University of California-Berkeley, known agroecologist, former coordinator of the USDA California Climate Hub; Climate Science PhD at UCLA, climate scientist, a research fellow at the National Center for Atmospheric Research; Earth Sciences PhD, Climate Extremes Research Fellow at the University of Melbourne; Physics PhD at the University of Colombia, climate scientist at NASA’s Jet Propulsion Lab; Professor and Chair in Climate Impacts at the University of Exeter, a lead author on the Fourth Assessment Report of the Intergovernmental Panel on Climate Change in Working Group 1; Paleoclimatology PhD at the Climate Change Research Center, climate scientist at the Potsdam Institute for Climate Impact Research; Climate Feedback, “Claim that human civilization could end in 30 years is speculative, not supported with evidence,” <https://climatefeedback.org/evaluation/iflscience-story-on-speculative-report-provides-little-scientific-context-james-felton/>]

There is no scientific basis to suggest that climate breakdown will “annihilate intelligent life” (by which I assume the report authors mean human extinction) by 2050.

However, climate breakdown does pose a grave threat to civilization as we know it, and the potential for mass suffering on a scale perhaps never before encountered by humankind. This should be enough reason for action without any need for exaggeration or misrepresentation!

A “Hothouse Earth” scenario plays out that sees Earth’s temperatures doomed to rise by a further 1°C (1.8°F) even if we stopped emissions immediately.

Peter Kalmus, Data Scientist, Jet Propulsion Laboratory:

This word choice perhaps reveals a bias on the part of the author of the article. A temperature can’t be doomed. And while I certainly do not encourage false optimism, assuming that humanity is doomed is lazy and counterproductive.

Fifty-five percent of the global population are subject to more than 20 days a year of lethal heat conditions beyond that which humans can survive

Richard Betts, Professor, Met Office Hadley Centre & University of Exeter:

This is clearly from Mora et al (2017) although the report does not include a citation of the paper as the source of that statement. The way it is written here (and in the report) is misleading because it gives the impression that everyone dies in those conditions. That is not actually how Mora et al define “deadly heat” – they merely looked for heatwaves when somebody died (not everybody) and then used that as the definition of a “deadly” heatwave.

North America suffers extreme weather events including wildfires, drought, and heatwaves. Monsoons in China fail, the great rivers of Asia virtually dry up, and rainfall in central America falls by half.

Andrew King, Research fellow, University of Melbourne:

Projections of extreme events such as these are very difficult to make and vary greatly between different climate models.

Deadly heat conditions across West Africa persist for over 100 days a year

Peter Kalmus, Data Scientist, Jet Propulsion Laboratory:

The deadly heat projections (this, and the one from the previous paragraph) come from Mora et al (2017)1.

It should be clarified that “deadly heat” here means heat and humidity beyond a two-dimension threshold where at least one person in the region subject to that heat and humidity dies (i.e., not everyone instantly dies). That said, in my opinion, the projections in Mora et al are conservative and the methods of Mora et al are sound. I did not check the claims in this report against Mora et al but I have no reason to think they are in error.

1- Mora et al (2017) Global risk of deadly heat, Nature Climate Change

The knock-on consequences affect national security, as the scale of the challenges involved, such as pandemic disease outbreaks, are overwhelming. Armed conflicts over resources may become a reality, and have the potential to escalate into nuclear war. In the worst case scenario, a scale of destruction the authors say is beyond their capacity to model, there is a ‘high likelihood of human civilization coming to an end’.

Willem Huiskamp, Postdoctoral research fellow, Potsdam Institute for Climate Impact Research:

This is a highly questionable conclusion. The reference provided in the report is for the “Global Catastrophic Risks 2018” report from the “Global Challenges Foundation” and not peer-reviewed literature. (It is worth noting that this latter report also provides no peer-reviewed evidence to support this claim).

Furthermore, if it is apparently beyond our capability to model these impacts, how can they assign a ‘high likelihood’ to this outcome?

While it is true that warming of this magnitude would be catastrophic, making claims such as this without evidence serves only to undermine the trust the public will have in the science.

Daniel Swain, Researcher, UCLA, and Research Fellow, National Center for Atmospheric Research:

It seems that the eye-catching headline-level claims in the report stem almost entirely from these knock-on effects, which the authors themselves admit are “beyond their capacity to model.” Thus, from a scientific perspective, the purported “high likelihood of civilization coming to an end by 2050” is essentially personal speculation on the part of the report’s authors, rather than a clear conclusion drawn from rigorous assessment of the available evidence.

## Cyber Adv

### 1NC – Court Circumvention

#### Courts are bought out – circumvents enforcement

Crane ‘21 [Daniel A Crane. Frederick Paul Furth, Sr. Professor of Law, University of Michigan. I am very grateful for many helpful comments from Tom Arthur, Jonathan Baker, Steve Calkins, Dale Collins, Eleanor Fox, Rebecca Haw, Hiba Hafiz, Jack Kirkwood, Bob Lande, Christopher Leslie, Alan Meese, Steve Ross, Danny Sokol, and other participants at the University of Florida Summer Antitrust Workshop. "ANTITRUST ANTITEXTUALISM." https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4952&context=ndlr]

This view is so widely entrenched in the legal profession’s understanding of the antitrust laws—including, it must be admitted, this author’s—that it seems presumptuous to claim that the conventional wisdom is wrong, or at least significantly overstated. But it is. While the antitrust statutes may be lacking in some important particulars, they present a readily discernable meaning on many others. As Daniel Farber and Brett McDonnell have argued, “For the conscientious textualist, the statutory texts [of the antitrust laws] have considerably more specific meaning than the conventional wisdom would suggest.”5 And it is not simply the case that the meaning of the statutory texts could be rendered through ordinary methods of statutory interpretation but the courts have failed to see it. Rather, the courts frequently acknowledge that the statutory texts have a plain meaning, and then refuse to follow it.

But it gets worse. The courts have not merely abandoned statutory textualism or other modes of faithful interpretation out of a commitment to a dynamic common-law process. Rather, they have departed from text and original meaning in one consistent direction—toward reading down the antitrust statutes in favor of big business. As detailed in this Article, this unilateral process began almost immediately upon the promulgation of the Sherman Act and continues to this day. In brief: within their first decade of antitrust jurisprudence, the courts read an atextual rule of reason into section 1 of the Sherman Act to transform an absolute prohibition on agreements restraining trade into a flexible standard often invoked to bless large business combinations; after Congress passed two reform statutes in 1914, the courts incrementally read much of the textual distinctiveness out of the statutes to lessen their anticorporate bite; the courts have read the 1936 Robinson-Patman Act almost out of existence; and the Celler-Kefauver Amendments of 1950, faithfully followed in the years immediately after their promulgation, have been watered down to textually unrecognizable levels by judicial interpretation and agency practice. It is no exaggeration to say that not one of the principal substantive antitrust statutes has been consistently interpreted by the courts in a way faithful to its text or legislative intent, and that the arc of antitrust antitexualism has bent always in favor of capital.

#### Fiating through is a voting issue for predictability AND NEG ground.

Michael D. Moberly 14, B.B.A., J.D., University of Iowa; Shareholder, Ryley, Carlock & Applewhite, “Contemplating The Recognition of a Common Law Tort for Wrongfully Refusing to Hire Bankruptcy Debtors,” 22 Am. Bankr. Inst. L. Rev. 431, Lexis

To the extent the Wenners court addressed this "adequate alternative remedy" issue, 216 which is occasionally referred to as preclusion 217 (and also, somewhat misleadingly, 218 as another form of preemption), 219 the court concluded that the plaintiff's common law claim was not barred because section [\*466] 525 provides no remedy for employment terminations that are prohibited by the Bankruptcy Code. 220 [FOOTNOTE 220 BEGINS] See Wenners v. Great State Beverages, Inc., 663 A.2d 623, 625 (N.H. 1995) ("While a plaintiff may not pursue a common law remedy where the legislature intended to replace it with a statutory cause of action . . . here, there has been no clear statutory intent to supplant the common law cause of action . . . 'Section 525(b) itself provides no remedy for violation by a private employer.'" (quoting In re Hicks, 65 B.R. 980, 984 (Bankr. W.D. Ark. 1986))); see also Weeden v. Sears, Roebuck & Co., No. 98-435, 1999 WL 1209494, at \*3 n. 2 (D. N.H May, 25 1999) ("[T]he Wenners court found dispositive the fact that although a federal prohibition of employment termination existed, federal law provided no remedy for violations of the prohibition and no procedures for pursuing a violation."). [FOOTNOTE 220 ENDS] In contrast to its analysis of the federal preemption issue, 221 this aspect of the Wenners court's opinion is unpersuasive. 222 While section 525 provides no specific remedy for the bankruptcy-based discrimination that it prohibits, 223 section 105(a) of the Bankruptcy Code authorizes courts to enforce other provisions of the Code, 224 as the Robinette court recognized. 225 Several courts have invoked this authority to fashion remedies for violations of the antidiscrimination provision. 226

### 1NC – AT: Cyber

#### No cyber impact – attribution, restraint, and capabilities.

Lewis ’20 [James Andrew; 8/17/20; senior vice president and director of the Strategic Technologies Program at the Center for Strategic and International Studies; "Dismissing Cyber Catastrophe," https://www.csis.org/analysis/dismissing-cyber-catastrophe]

More importantly, there are powerful strategic constraints on those who have the ability to launch catastrophe attacks. We have more than two decades of experience with the use of cyber techniques and operations for coercive and criminal purposes and have a clear understanding of motives, capabilities, and intentions. We can be guided by the methods of the Strategic Bombing Survey, which used interviews and observation (rather than hypotheses) to determine effect. These methods apply equally to cyberattacks. The conclusions we can draw from this are:

Nonstate actors and most states lack the capability to launch attacks that cause physical damage at any level, much less a catastrophe. There have been regular predictions every year for over a decade that nonstate actors will acquire these high-end cyber capabilities in two or three years in what has become a cycle of repetition. The monetary return is negligible, which dissuades the skilled cybercriminals (mostly Russian speaking) who might have the necessary skills. One mystery is why these groups have not been used as mercenaries, and this may reflect either a degree of control by the Russian state (if it has forbidden mercenary acts) or a degree of caution by criminals.

There is enough uncertainty among potential attackers about the United States’ ability to attribute that they are unwilling to risk massive retaliation in response to a catastrophic attack. (They are perfectly willing to take the risk of attribution for espionage and coercive cyber actions.)

No one has ever died from a cyberattack, and only a handful of these attacks have produced physical damage. A cyberattack is not a nuclear weapon, and it is intellectually lazy to equate them to nuclear weapons. Using a tactical nuclear weapon against an urban center would produce several hundred thousand casualties, while a strategic nuclear exchange would cause tens of millions of casualties and immense physical destruction. These are catastrophes that some hack cannot duplicate. The shadow of nuclear war distorts discussion of cyber warfare.

State use of cyber operations is consistent with their broad national strategies and interests. Their primary emphasis is on espionage and political coercion. The United States has opponents and is in conflict with them, but they have no interest in launching a catastrophic cyberattack since it would certainly produce an equally catastrophic retaliation. Their goal is to stay below the “use-of-force” threshold and undertake damaging cyber actions against the United States, not start a war.

This has implications for the discussion of inadvertent escalation, something that has also never occurred. The concern over escalation deserves a longer discussion, as there are both technological and strategic constraints that shape and limit risk in cyber operations, and the absence of inadvertent escalation suggests a high degree of control for cyber capabilities by advanced states. Attackers, particularly among the United States’ major opponents for whom cyber is just one of the tools for confrontation, seek to avoid actions that could trigger escalation.

The United States has two opponents (China and Russia) who are capable of damaging cyberattacks. Russia has demonstrated its attack skills on the Ukrainian power grid, but neither Russia nor China would be well served by a similar attack on the United States. Iran is improving and may reach the point where it could use cyberattacks to cause major damage, but it would only do so when it has decided to engage in a major armed conflict with the United States. Iran might attack targets outside the United States and its allies with less risk and continues to experiment with cyberattacks against Israeli critical infrastructure. North Korea has not yet developed this kind of capability.

### 1NC – AT: NC3

#### NC3 impacts are nonsense.

Dr. Andrew Futter 16, Associate Professor of International Politics and Director of Research for Politics and International Relations at the University of Leicester, “War Games Redux? Cyberthreats, US–Russian Strategic Stability, and New Challenges for Nuclear Security and Arms Control”, European Security, Volume 25, Issue 2, p. 171-172

It is of course highly unlikely that either the USA or Russia has plans – or perhaps more importantly, the desire – to fully undermine the other’s nuclear command and c

ontrol systems as a precursor to some type of disarming first strike, but the perception that nuclear forces and associated systems could be vulnerable or compromised is persuasive. Or as Hayes (2015) puts it, “The risks of cyber disablement entering into our nuclear forces are real”. While the growing possibility of “cyber disablement” should not be overstated (notions of a “cyber-Pearl Harbor” (Panetta 2012) or “cyber 9–11” (Charles 2013) have done little to help understand the nature of the challenge), cyberthreats are nevertheless an increasingly important component of the contemporary US–Russia strategic context. This is particularly the case when they are combined with other emerging military-technical developments and programmes. The net result, especially given the current downturn in US–Russian strategic relations, and the way cyber is exacerbating the impact of other problematic strategic dynamics, is that is seems highly unlikely that either the USA or Russia will make the requisite moves to de-alert nuclear forces that the new cyber challenges appear to necessitate, or for that matter to (re)embrace the “deep nuclear cuts” agenda any time soon.

Assessing the options for arms control and enhancing mutual security

Given the new challenges presented by cyber to both US and Russian nuclear forces and to US–Russia strategic stability, it is important to consider what might be done to help mitigate and guard against these threats, and thereby help minimise the risks of unintentional launches, miscalculation, and accidents, and perhaps create the conditions for greater stability, de-alerting, and further nuclear cuts. While there is unlikely to be a panacea or “magic bullet” that will reduce the risk of cyberattacks on US and Russian nuclear forces to zero – be they designed to launch nuclear weapons or compromise the systems that support them – there are a number of options that might be considered and pursued in order to address these different types of threats and vulnerabilities. None, of these however, will be easy.

The most obvious and immediate priority for both the USA and Russia is working (potentially together) to harden and better protect nuclear systems against possible cyberattack, intrusion, or cyber-induced accidents. In fact, in October 2013 it was announced that Russian nuclear command and control networks would be protected against cyber incursion and attacks by “special units” of the Strategic Missile Forces (Russia Today 2014). Other measures will include better network defences and firewalls, more sophisticated cryptographic codes, upgraded and better protected communications systems (including cables), extra redundancy, and better training and screening for the practitioners that operate these systems (see Ullman 2015). However, and while comprehensive reviews are underway to assess the vulnerabilities of current US and Russian nuclear systems to cyberattacks, it may well be that US and Russian C2 infrastructure becomes more vulnerable to cyber as it is modernised and old analogue systems are replaced with increasingly hi-tech digital platforms. As a result, and while nuclear weapons and command and c

ontrol infrastructure are likely to be the best protected of all computer systems, and “air gapped”14 from the wider Internet – this does not mean they are invulnerable or will continue to be secure in the future, particularly as systems are modernised or become more complex (Fritz 2009). Or as Peggy Morse, ICBM systems director at Boeing, put it, “while its old it’s very secure” (quoted in Reed 2012).

# 2NC

### States CP

#### The perm causes uncertainty for biz con

Monning & FEKETEKUTY 2 – Bill, current US Senator, JD and former professor of Law, Geza, President, International Commercial Diplomacy Project; Distinguished Professor of Commercial Diplomacy, Monterey Institute for International Studies., https://www.scribd.com/document/137304250/InternationalTradeNegotiations)

It is of critical importance in negotiations for a team that may be composed of several members, to communicate and reflect a unified position at all times. Nothing will undermine a negotiating team’s credibility more than an aura of disunity, disagreement, or other forms of dissension. If disunity or disagreement is observed by a counterpart negotiator, that negotiator will move to exploit those differences or will simply be confused by the team’s inability to present a unified and coherent proposal or response.

### Core PIC

#### The counterplan alone avoids the biz con DA. Including antitrust law causes perception across the board but the CP is limited to one area

Thomas Nachbar 19, Professor of Law at the University of Virginia School of Law, JD from the University of Chicago Law School, AB in History and Economics from the University of Illinois, “Book Review: Heroes and Villains of Antitrust”, The Antitrust Source, 18-6 Antitrust Src. 1, June 2019, Lexis

Since Adam Smith, the argument of so-called free-market intellectuals has not been that markets are perfect but rather that they are comparatively better at solving problems than governments. Part of the argument is that, in most cases, market forces will drive a firm that has adopted an inefficient practice to shift to a more efficient one, lest it lose more business than it gains from the practice. But if antitrust law outlawed a practice, there is no potential for the market to correct--the practice once outlawed would remain outlawed. n54 And because antitrust law applies to all industries, a practice outlawed for one firm or industry would be outlawed for all firms in all industries, or be interpreted as such by risk-averse firms and their risk-averse lawyers--not to mention the treble damages that the liable antitrust defendant would have to pay.

[FOOTNOTE] n55 See Credit Suisse Sec. (USA) LLC v. Billing, 551 U.S. 264, 284 (2007) ("In sum, an antitrust action in this context is accompanied by a substantial risk of injury to the securities markets and by a diminished need for antitrust enforcement to address anticompetitive conduct."); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 546 (2007) ("It is one thing to be cautious before dismissing an antitrust complaint in advance of discovery, but quite another to forget that proceeding to antitrust discovery can be expensive.") Verizon Commc'ns, Inc. v. Law Offices of Curtis V. Trinko, LLP, 540 U.S. 398, 414 (2004) ("Mistaken inferences and the resulting false condemnations 'are especially costly, because they chill the very conduct the antitrust laws are designed to protect.'") (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 594 (1986)). [END FOOTNOTE]

#### The counterplan PICS out of “core antitrust law” because it doesn’t the three federal “core antitrust laws” – prefer contextual evidence defining conjunctive phrases. Severance is a voting issue for neg ground.

Sonia Kuester Pfaffenroth et al, Justin Hedge and Monique N. Boyce Arnold & Porter, ‘21 “ A Comparison Of Proposed Antitrust Legislation In 2021: Federal And New York State”

At the federal level, there are three core antitrust laws: (1) the Sherman Act, in which Section 1 outlaws "every contract, combination, or conspiracy in [unreasonable] restraint of trade," and Section 2 outlaws any "monopolization, attempted monopolization, or conspiracy or combination to monopolize";1 (2) the Federal Trade Commission Act, which prohibits "unfair methods of competition" and "unfair or deceptive acts or practices";2 and (3) Section 7 of the Clayton Act, which prohibits mergers and acquisitions where the effect "may be substantially to lessen competition, or to tend to create a monopoly."3 Criminal violations of the Sherman Act carry a maximum penalty of a $100 million fine for corporations, and a maximum penalty of 10 years in prison and a $1 million fine for individuals. A prevailing plaintiff in a civil suit can recover treble damages and attorneys' fees. But federal law currently does not provide for civil penalties when the government brings an antitrust case, only injunctive relief.

#### 2. Their definition of “scope” is unlimiting and would allow affs to expand CFIUS, the 14th amendment, or any regulatory prohibition as a topical mechanism. A more limiting definition of scope refers only to the total number of prohibited business practices.

Keith N. Hylton, Professor of Law, Boston University, and Fei Deng, and Consultant, NERA Economic Consulting, ‘7, “ANTITRUST AROUND THE WORLD: AN EMPIRICAL ANALYSIS OF THE SCOPE OF COMPETITION LAWS AND THEIR EFFECTS” Antitrust Law Journal [Vol. 74 2007] https://www.jstor.org/stable/pdf/27897550.pdf?refreqid=excelsior%3A424f12ccaeba1aa8d4150377ebe7192d

We turn our attention now to dominance law – or, in the language of American antitrust specialists, monopolization law. The Dominance Score is an attempt to measure the number of types of conduct specified in a country's competition law as unlawful abuse of a dominant position. For those familiar with American law, the dominance measure is an attempt to measure the scope of laws equivalent to Section 2 of the Sherman Act. One can think of the Dominance Score as the size of the net specifically designed to capture dominant firms that engage in anticompetitive con duct.3

#### 3. Antitrust and patent law are conceptually and legally distinct.

Feldman 8 - Arthur J. Goldberg Distinguished Professor of Law and Director of the Center for Innovation at UC Hastings. (Robin, "Patent and antitrust: Differing shades of meaning." Va. JL & Tech. 13 (2008): 1. <https://web.stanford.edu/dept/law/ipsc/pdf/feldman-robin.pdf>) //S.He

The relationship between patent law and antitrust law has challenged legal minds since the emergence of antitrust law in the late 19th century. In reductionist form, the two concepts pose a natural contradiction: One encourages monopoly while the other restricts it. The inherent tension can be framed in the following manner: Can a body of case law that grants monopoly opportunities be reconciled with a body of case law that curtails monopolization.2

To avoid uncomfortable dissonance, the trend across time has been to try to harmonize patent and antitrust law. Since the 1930s, for example, the Supreme Court has ruled that antitrust law operates only when patent holders reach beyond the boundaries inherent in the patent grant. 3

It is an inspired attempt at reconciling the two bodies of case law. Unfortunately, no one has been able to determine what boundaries are inherent in the patent grant, a confusion that has spawned almost a century of consternation and conflict over what exercise of power lies within the patent grant and what lies outside. In recent decades, harmonization efforts have led Congress and the courts to engage in a series of attempts, some aborted and some half-formed, to graft antitrust doctrines onto patent law. 4 In addition, many scholars have advocated various harmonization approaches. 5

These efforts, too, have failed to resolve the conflicts. This piece argues that the deviations between patent law and antitrust law run far deeper than courts and commentators recognize. The problem isn't just that one encourages monopoly while the other limits it. Rather, patent law and antitrust law often use the same concepts and terminology with differing meanings and contexts. In other words, it may appear that they are talking about the same things, and yet, they are not.

Our tendency to assume parallel meanings threatens any attempt to reconcile the two bodies of law. Most importantly, ignoring asymmetries can lead to both underprotection and overprotection of patent rights, as well as the improper application of antitrust laws. To highlight the problem, this piece explores a number of examples of differing meanings in hopes of promoting a more subtle understanding of the patent/antitrust terrain.

The relationship between patent and antitrust is particularly important at this moment in time. Patent law is experiencing a moment in the sun, both in the courts and in the public eye. In particular, after accepting relatively few patent cases over the last decade, the Supreme Court accepted a record number of patent cases last term and this term, including ones that touch on the boundaries of the exercise of power permitted to patent holders6 . The Supreme Court also has accepted an unusually large number of antitrust cases. As both patent and antitrust law enjoy the spotlight of focus, it is particularly important to develop a more nuanced understanding of the shades of meaning in patent law and how those differ from antitrust.

#### Patent law solves alone

Lim ’14 [Daryl; Assistant Professor, The John Marshall Law School; 2014; “Patent Misuse and Antitrust: Rebirth or False Dawn?”; <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1191&context=mttlr>; Michigan Telecommunications and Technology Law Review; accessed 10/28/21; TV]

The prevailing zeitgeist favors certainty. Until the Supreme Court decides to speak further on misuse, Windsurfing will remain the controlling precedent on the law of misuse in the lower courts. The Federal Circuit should explain why Windsurfing’s formulation makes sense and how its antitrust scaffold will provide better guidance to stakeholders.

Antitrust law has moved in recent years from a per se to a rule of reason analysis.371 But Chief Justice Roberts in Actavis warned that antitrust law’s rule of reason was “amorphous”, going so far as to write “[g]ood luck to the district courts that must, when faced with a patent settlement, weigh the ‘likely anticompetitive effects, redeeming virtues, market power, and potentially offsetting legal considerations present in the circumstances.’”372

Alan Greenspan suggests that one reason for the vagueness of antitrust law stems from the economics underpinning it. Commenting on the state of antitrust policy in the 1960s, he observed that “[t]he entire structure of antitrust statutes in this country is a jumble of economic irrationality and ignorance. It is the product of (a) a gross interpretation of history, and (b) of rather na¨ıve, and certainly unrealistic, economic theories.”373 This observation may have arisen because, although the articulated goal of modern antitrust is the promotion of market efficiency, the antitrust laws were used for socio-political goals such as promoting small business interests.374

Another reason for that vagueness is the lack of statutory guidance. One judge interviewed noted that, whereas patent law was bound more strictly by detailed statutory provisions, antitrust law gave judges more room to maneuver because antitrust legislation was extremely vague and terse.375 Antitrust statutes are vague because “Congress apparently did not want to get involved in articulating a specific definition of competition or in determining which practices might promote or undermine it. Rather it enacted a few general principles derived from the common law, and left it largely to the courts to determine what practices violate them.”376

Commenting on the rule of reason, Merges observed that: “[n]ot only is [it] a notoriously difficult standard for an antitrust plaintiff to meet, it is also a standard that is very difficult to apply. Thus, it is ironic that advocates of greater certainty in the law of patent misuse would propose a unified rule of reason approach when this is arguably one of the least certain legal rules ever propounded.”377 Congress twice considered and rejected revisions to a patent misuse law that would have required a successful showing of an antitrust violation, despite the law’s proponents arguing that antitrust law provided greater certainty.378

The tributaries of antitrust law are carved out and filled in by the ideologies flowing from the wellspring deep within the recesses of the judge’s own views of patents, economic monopolies, and market competition in general.379 Although people generally agree that a competitive market structure fosters competition in product markets, “[t]here is not yet a universally accepted consensus as to the kind of market structure that best facilitates innovation.”380

Those favoring visible competition from rivals advocate antitrust intervention to dilute the patentees’ influence on the relevant market, whereas those who favor protecting the incentives of patentees resist the incursion of antitrust law’s reliance on the market and internal regulation to correct any imbalances. Modern antitrust may be grounded in economic theory, but the chain of succession from the Harvard to Chicago to post-Chicago Schools of antitrust over the years nonetheless makes the assertion that antitrust provides a clearer and more stable vehicle than misuse suspect. Similarly, those advocating the Windsurfing formulation of misuse will find themselves dealing with an equally amorphous framework.

### Biz Con DA

#### The link alone turns case---alternative frameworks are unenforceable and vague, but breadth produces false positives that distort marketplace effects.

Newman ’19 [John; 2019; Assistant Professor at the University of Memphis Cecil C. Humphreys School of Law; Indiana Law Journal, “Procompetitive Justifications in Antitrust Law,” vol. 94]

B. Competitive Process

The competitive-process approach purports to distinguish between pro-and anticompetitive restraints via their effects not on welfare or efficiency, but on "competition itself' or on the "competitive process." In other words, if a challenged restraint somehow benefits the competitive process, the defendant may avoid antitrust liability. Multiple antitrust scholars argue that "competitive process" is the prevailing and appropriate approach. 97 Others, while conceding that it has fallen out of favor, nonetheless call for its resurrection. 98

Footnote 97:

97. E.g., Werden, supra note 9; see also Barak Orbach, How Antitrust Lost Its Goal, 81 FORDHAM L. REv. 2253, 2256 (2013). Here and elsewhere, Orbach offers a convincing argument to the effect that the "consumer welfare" standard does not offer as much clarity as its proponents generally assume. While that may be so, it does not follow that the "competitive process" (or "competition") standard fares any better. In fact, the latter standard appears to offer even less clarity—unless it means simply that defendants always lose, in which case it offers a great deal of clarity but also (likely) an overly high likelihood of false positives. Orbach's historical account concludes that "competition" was the sole standard for the roughly seven decades between the passage of the Sherman Act and the release of Bork's The Antitrust Paradox. Orbach, supra, at 2277. This account does not, however, discuss Chicago Board of Trade.

End of Footnote 97.

But the actual content of the competitive-process approach remains mercurial, a cipher. The scholarly arguments in favor of it never seem to identify what, exactly, constitutes the "competitive process." More than a half-century has passed since the Court first clearly invoked the competitive process approach to condemn a restraint of trade, yet terms like "competition" and "competitive process" are still "wonderfully ill-defined." 99

Whatever the competitive process may be, it apparently can be harmed. A plaintiff carries its initial burden by showing such harm.100 If (or, perhaps more accurately, when) the plaintiff succeeds, the burden then shifts to the defendant to demonstrate some offsetting benefit.1 " 101 If it is unclear what constitutes harm to the competitive process, it is even less clear what might qualify as a benefit. But, at least in theory, a defendant who succeeds in proving such a benefit may escape liability. 102

A permissible reading of the relevant precedent suggests that the overriding concern does not lie with marketplace effects, placing this approach at loggerheads with the rest of modem antitrust law. 103 Instead, the competitive-process approach derives from a group of rather vaguely defined rights. These include, but are not limited to, the right of a "single merchant" to compel a "group of powerful businessmen" to supply him with "the goods he needs to compete effectively," 10 4 the "right" of traders to be "free" from various nonstandard contractual provisions,105 and a more general right of "freedom of action."106

Given the lack of clarity in the area, one is left free (or, less charitably, forced) to speculate as to the source and content of these rights. Perhaps they derive from Lochnerian freedom of contract. Certain early U.S. Supreme Court antitrust decisions-which happen to lie squarely in the heart of the Lochner Era-do speak of antitrust-related "rights." Thus, for example, the Court in 1914 identified a single retailer's "unquestioned right to stop dealing with a wholesaler for reasons sufficient to himself."10 But by 1945, after the end of the Lochner Era,10 8 the Court was retreating from that hardline stance, referring to it as "true" only "in a very general sense." 109

#### Failed recovery snowballs into depression---causes cyber, China, and Russia war.

Engelke ’20 [Peter and Matthew Burrows; July 2020; Deputy Director and Senior Fellow within the Atlantic Council’s Scowcroft Center for Strategy and Security, Ph.D. in History from Georgetown University, M.A. from the Walsh School of Foreign Service; Director of the Atlantic Council’s Strategic Foresight Initiative, Ph.D. in European History from the University of Cambridge; Atlantic Council, “What World Post-COVID-19?” <https://www.atlanticcouncil.org/wp-content/uploads/2020/07/What-World-Post-COVID-19.pdf>]

The developing world is even more hard hit economically despite the fact that the worst forecasts of large-scale deaths in Africa and Latin America never come true. Death tolls resemble those in the West. The virus weakened as its moved south and the youthful populations—many of whom suffered minor symptoms— diminished the contagion. With the major economic powers hard hit, recovery is extremely difficult. Commodity prices remain low, hurting those developing countries that are dependent on the export of minerals, oil, etc. Chinese investments help, but CPC leaders are wary of providing much assistance largesse for fear the Chinese public is angered while conditions remain hard at home. Popular discontent against the CPC rises with China’s faltering domestic economy.

As during the Great Depression, there are many false starts, giving the illusion that the corner is about to be turned, justifying governments’ stubbornness in persevering with failing policies. Unlike in the 1930s, there is enough of a social safety net that discontent is contained despite slowly sinking standards of living in much of the world. The other is always to blame. Sino-American tensions escalate to an all-time high. The United States takes strong protectionist measures against China and Russia for their “disinformation,” deciding finally to erect a firewall against the two. Observers think the United States is preparing for a cyber war against China and Russia.

By the mid-2020s, deglobalization is speeding up, yielding slow economic growth everywhere. Poverty levels are rising in the developing world and there is the potential for open conflict between the United States and a China-Russia alliance.

#### Migration waves cause extinction.

Klare ’20 [Michael; 2020; Professor Emeritus of Peace and World Security Studies Hampshire College, Senior Visiting Fellow at the Arms Control Association, Ph.D. from the Graduate School of the Union Institute; All Hell Breaking Loose: The Pentagon's Perspective on Climate Change, “A World Besieged,” Ch. 1]

Mass Migration Events

Whenever U.S. security analysts have considered the risks of climate change, a perpetual concern has been that extreme events and prolonged droughts could trigger a massive flight of desperate people seeking refuge in other locales, provoking chaos and hostility wherever they travel. This anxiety was evident in some of the analysts’ earliest public statements on the national security implications of warming, and it has remained a major theme to the present day. In its initial 2007 report on climate change, for example, the CNA Corporation warned that severe climate effects “can fuel migrations in less developed countries, and these migrations can lead to international political conflict.”59 Defense Secretary Hagel sounded a similar note in his 2014 address to the Conference of the Defense Ministers of the Americas. “Drought and crop failures can leave millions of people without any lifeline, and trigger waves of mass migration,” he declared.60

In talking about the risk of mass migrations, U.S. security analysts are typically discussing long-term pressures—such as prolonged drought and coastal erosion—that deprive people of their livelihoods and force them to move elsewhere in search of jobs and income. “When water or food supplies shift or when conditions otherwise deteriorate (as from sea level rise, for example), people will likely move to find more favorable conditions,” the CNA explained.61 The ongoing relocation of impoverished farmers from scorched inland areas to urban centers, for instance, fits this pattern. But American analysts also worry about sudden-onset climate events that would spark rapid, large-scale movements of people from one country to another, setting off a political firestorm. Such destabilizing events, which could become more frequent as global warming advances, are akin to the other types of climate shock waves discussed in this chapter.

A migratory shock wave of this type could be ignited by various kinds of climate events, such as a cluster of severe hurricanes or crop failures. If, under these circumstances, local governments prove unable to provide adequate emergency assistance or collapse entirely, vast numbers of people may simultaneously choose to move to adjacent (or even distant) countries in search of refuge and a new start in life. Some environmentalists are predicting that the numbers of such “climate refugees,” as they have sometimes been termed, could reach into the hundreds of millions as global warming advances; others have cautioned against such predictions, saying the evidence for them is still inconclusive. Whatever the exact numbers, the arrival of large groups of outsiders—many, if not most, in need of substantial assistance—is bound to generate unease and, in all likelihood, hostility in the destination countries. The fact that the newcomers often differ in their race and religion from the natives only adds to the risk of antagonism.62

A foretaste of what this might look like was provided by the migratory surges from North Africa and the Middle East into southern Europe following the Arab Spring of 2011, as desperate residents of battleground countries such as Libya and Syria sought to escape the fighting and accompanying decline in economic conditions. The situation in Libya was particularly fraught for migrant workers from the Sahel region and sub-Saharan Africa, who made up as much as 10 percent of Libya’s population prior to the revolt against Gadhafi. Those workers (mostly young men) had already fled their own countries because of drought, desertification, and joblessness, seeking low-level positions in various state-backed enterprises in Libya under the old regime. After Gadhafi’s removal, they lost their jobs and faced intense hostility from native Libyans, who viewed them as interlopers and Gadhafi loyalists. Reluctant to return to their own impoverished countries, huge numbers of these migrant workers sought to move farther north, fleeing in rickety ships across the Mediterranean to Europe—where, if they survived the journey, they usually encountered fresh animosity.63

An even greater number of people sought to flee the fighting and abysmal living conditions in Syria. Beginning in 2012, and reaching a flood tide in 2015, vast multitudes of desperate Syrians sought to reach the relative security of Europe, mostly by traveling by raft from southwestern Turkey to Lesbos and other Greek islands in the Aegean Sea; from there they sought passage to wealthier European countries farther north, especially Germany, Austria, and Norway. Although welcomed at first by sympathetic Europeans (most notably German chancellor Angela Merkel), the Syrian refugees started arriving in such massive numbers that many residents of the receiving nations turned hostile, embracing measures such as fencing off their borders and using armed police to repel the migrants—steps taken by Hungary in 2015 as hundreds of thousands of refugees moved north from Greece.64 With anti-refugee sentiment growing throughout the region, European officials were forced to adopt ever more stringent means to stem the flow, including mobilizing NATO’s naval fleets to patrol waters of the Aegean Sea and assist the Greek coast guard in blocking migrant vessels from Turkey.65

When examining the causes of the massive migrant flood that overwhelmed Europe in 2015, most analysts have concluded that the principal driving forces were the ongoing violence in Syria and the lack of meaningful economic opportunities both there and in transit countries such as Jordan, Lebanon, and Turkey. Nevertheless, some analysts believe that climate change had a contributing role in sparking the migratory shock wave, largely by causing a severe drought in 2007–10 that decimated Syrian agriculture and drove impoverished farmers into overcrowded urban centers, where they helped launch the anti-Assad rebellion.66 “Syria’s drought has destroyed crops, killed livestock and displaced as many as 1.5 million Syrian farmers,” observed John Wendle in Scientific American. “In the process, it touched off the social turmoil that burst into civil war,” impelling millions of people to flee.67 Other analysts discount the role of climate change in provoking the Syrian civil war and resulting migratory impulse, insisting on the primarily political nature of the conflict.68 But even if warming’s role was relatively modest in this case, the events of 2012–15 provide an indication of what we might expect from future migratory shock waves as temperatures rise, farming becomes untenable in vast areas of the planet, and masses of people move about in search of new ways to survive.

While Europe—given its proximity to climate-sensitive areas of Africa and the Middle East—is expected to prove the principal objective of many of these migratory surges, North America is also considered a likely destination for future mass migrations. The CNA Corporation, for example, has suggested that the greatest climate-related threat to American security—other than its direct impacts on the U.S. homeland itself—would arise from the migratory implications of climate disasters occurring in nearby countries, especially in Central America and the Caribbean. As warming advances, it noted, severe climate events will afflict many of these areas, destroying entire habitats and impelling millions of people to head north in search of refuge and employment opportunities.69

General John F. Kelly, while serving as commander of the U.S. Southern Command, spoke of such occurrences as “mass migration events,” and emphasized the importance of taking steps to prevent future climate refugees from entering the United States. With that goal in mind, he told the Senate Armed Services Committee in 2014, “We regularly exercise our rapid response capabilities in a variety of scenarios, including responding to a natural disaster [and a] mass migration event.”70 In one such exercise, Southcom revealed, Kelly’s staff established a Joint Task Force-Migrant Operations (JTF-MIGOPS) at Naval Station Guantánamo Bay to oversee a mock crisis-response mission. According to Rear Admiral Jon G. Matheson, deputy Joint Task Force commander of JTF-MIGOPS in 2013, this allowed Southcom to “flesh-out some of the processes and resources we would need if a mass migration were to occur.”71

Southcom conducted another iteration of these exercises two years later, with Fort Sam Houston, Texas, serving as the host of a reconstituted JTF-MIGOPS. The 2015 exercise, a Pentagon reporter noted, “anticipated the mass migration of people from multiple Caribbean islands after a series of hurricanes devastate the area.” With this in mind, “the goal of the exercise scenario was to effectively interdict and repatriate the migrants at sea who were attempting to enter the United States.” In other words, the military services are practicing to do whatever might be needed to prevent large numbers of disaster-driven refugees from gaining access to U.S. territory.72 As participants in the exercise explained, this means stopping migrant-laden ships at sea and transporting the migrants to the U.S. Navy base at Guantánamo, where they would be detained in giant tent camps until they can be ferried back to their home country.73

Whether originating in Africa, the Middle East, Latin America, or the Caribbean, mass migration events are destined to become more common in the years ahead as global warming takes an ever greater toll on the livelihoods and living conditions of people in highly exposed areas. As the European migrant crisis of 2015 demonstrates, moreover, such events are likely to prove highly disruptive and to trigger military-type responses. The construction of fortified border walls and fences is one expression of this, as are the preparations being undertaken by Southcom to house vast numbers of detained migrants at Guantánamo Bay. Wherever and whenever such events occur, the outcome is almost certain to prove wrenching and violent.

When Systems Collapse

For American military and intelligence analysts, the implications of all this are hard to escape: as global warming advances, one climate shock after another will ricochet across the planet, leaving chaos and misery in their wake. Try to picture a food-price crisis occurring at more or less the same time as a major pandemic and a mass migration event: the resulting chaos, distress, and contention are almost unimaginable. The most likely consequence of such a multi-shock calamity would be the failure of fragile states and resulting anarchy—with the failures occurring not one at a time, as in some less fearsome scenarios, but one right after another, as during the Arab Spring. But it will not be just fragile states in the developing world that will suffer from the impacts of these shocks, but all nations, as the global networks on which we all rely for essential goods and services begin to break down.

The potential for systemic collapse of this sort was given close attention by the Fourth National Climate Assessment, released in November 2018. Like the NRC study before it, the Fourth Assessment highlights the world’s growing reliance on global networks and the ways these systems have become inextricably linked—and so have become vulnerable to unexpected shocks. “A long history of research on complex systems,” it noted, “has shown that systems that depend on one another are subject to new and often complex behaviors.… These behaviors, in turn, raise the prospect of unanticipated, and potentially catastrophic risks. For example, failures can cascade from one system to another.” Climate change, it observed, is likely to provide exactly the sort of external jolt that could trigger such a cascade of failures, sowing havoc across the planet.74

#### Growth up – projections

Reuters 1/21 [Reuters. “U.S. leading economic indicator rises strongly in December.” 1/21/22. https://www.reuters.com/business/us-leading-economic-indicator-rises-strongly-december-2022-01-21/]

A gauge of future U.S. economic activity increased solidly in December, suggesting the expansion would continue despite challenges from the COVID-19 pandemic and anticipated interest rate increases from the Federal Reserve to tame high inflation.

The Conference Board said on Friday its Leading Economic Index rose 0.8% last month after advancing 0.7% in November. Last month's increase was in line with economists' expectations.

"The U.S. LEI ended 2021 on a rising trajectory, suggesting the economy will continue to expand well into the spring," said Ataman Ozyildirim, senior director of economic research at the Conference Board in Washington.

"For the first quarter, headwinds from the Omicron variant, labor shortages and inflationary pressures, as well as the Fed's expected interest rate hikes, may moderate economic growth."

The Conference Board estimated that gross domestic product growth would slow to a 2.2% annualized rate in the first quarter. It is forecasting growth of 3.5% this year.

#### Its non binding

Holding et al. ’21 [Christopher, Paul Jin, Andrew Lacy, Arman Goodwin; July 15; Experts at JD Supra, a daily source of legal intelligence on all topics business and personal, distributing news, commentary, and analysis from leading lawyers; JD Supra, “Biden Executive Order Calls for Heightened Antitrust Scrutiny,” <https://www.jdsupra.com/legalnews/biden-executive-order-calls-for-7783960/>]

Key Implications

Revised horizontal and vertical merger guidelines are expected, which will likely implement a much more aggressive approach to deals. Note, however, that agency merger guidelines are not binding on courts and merger challenges under more aggressive theories may be met with skeptical courts;

Anticipate delays in HSR review especially for deals in industries singled out by the Order (e.g., tech, pharma, healthcare, among others), even if competitive overlaps are minimal;

Deals not subject to HSR filing requirements, even when purchase prices are relatively low, should be reviewed by antitrust specialists to assess risk, especially in the sectors identified in the Order;

#### The counterplan is the opposite---it resolves fears by signaling that regulated industries are the exception.

Dr. Babette E.L. Boliek 14, Ph.D. in Economics from the University of California, Davis, J.D. from the Columbia University School of Law, Professor of Law at Pepperdine University, “Antitrust, Regulation, and the "New" Rules of Sports Telecasts”, Hastings Law Journal, 65 Hastings L.J. 501, February 2014, Lexis

I. The Current Relationship of Antitrust, Regulation, and Sports Broadcast

As noted, antitrust and industry-specific regulation are two distinct means to achieve much the same social goal - to protect consumers and encourage efficiencies in production and distribution. 38 However, the two regimes are by no means interchangeable, and the choice between them is itself imbued with certain social policy preferences. 39

[FOOTNOTE] As then-Chief Judge Stephen Breyer stated, while regulation and the antitrust laws "typically aim at similar goals - i.e., low and economically efficient prices, innovation, and efficient production methods," regulation looks to achieve these goals directly "through rules and regulations; [but] antitrust seeks to achieve them indirectly by promoting and preserving a process that tends to bring them about." Town of Concord, Mass. v. Bos. Edison Co., 915 F.2d 17, 22 (1st. Cir. 1990). [END FOOTNOTE]

Antitrust law is an enforcement regime that preserves competition across all private industries by condemning anticompetitive conduct only after it occurs. 40 In contrast, industrial regulation is inherently a social admission that, in a given industry, market forces are too weak to produce the consumer benefits that are realized in competitive markets. 41 Therefore, regulated industries are an exception to the economy at large and are subject to preemptive, regulatory rule that may actively engineer industry conduct far beyond that permitted under antitrust law. 42

#### Only antitrust threatens to morph into economy-wide national policy.

Geoffrey A. Manne 18, President and Founder International Center for Law & Economics, “Why US Antitrust Law Should Not Emulate European Competition Policy,” ICLE, A Comparative Look at Competition Law Approaches to Monopoly and Abuse of Dominance in the US and EU Before the United States Senate Committee on the Judiciary Subcommittee on Antitrust, Competition Policy, and Consumer Rights, 12/19/18, https://www.judiciary.senate.gov/imo/media/doc/Manne%20Testimony.pdf

A. The European approach to Facebook and Google as cautionary tale

The question of whether technology platforms should be regulated (and why) is a contentious one. But whatever the political, economic, or social rationale impelling regulation, it remains a crucial question whether antitrust — or competition policy implemented through other laws — is the proper regulatory lever. Despite many claims that European authorities, through their competition laws, have adopted a “better” approach toward regulating technology platforms, these claims are generally based on an a priori preference for the outcome — not on a careful assessment of the underlying legal interpretation and its broader implications.

Indeed, Europe’s recent (and ongoing) experience with applying antitrust to both Facebook and Google presents a cautionary tale, not a model. As these examples show, moving towards a more open-ended enforcement of antitrust law (potentially converging with EU competition law) entails significant risks.

1. Facebook

The German Bundeskartellamt’s (Federal Cartel Office, or “FCO”) ongoing Facebook investigation, for which an infringement decision is said to be in the pipeline,28 is a stark case of the unprincipled extension of antitrust to attempt to reach a politically favored result. Indeed, in contrast to the European Commission — which at least often mentions economic analysis in its decisions — the FCO did not include any economic analysis or an attempt to gauge the actual effects of the complained-of conduct on users in its preliminary assessment. The FCO’s investigation thus bears all the traits of consumer protection enforcement (which, in Europe at least, tends to rely upon bright-line rules and little analysis of effects) rather than competition scrutiny (which nominally entails at least some inquiry into to the economic effect of firms’ conduct). The crux of the case concerns Facebook’s collection of users’ personal data outside its site — data that is then merged with Facebook’s user profiles.29 The German competition agency asserts in its preliminary assessment that Facebook (which it “assumes… is dominant”) is “abusing this dominant position by making the use of its social network conditional on its being allowed to limitlessly amass every kind of data generated by using third-party websites and merge it with the user’s Facebook account.” 30 Note that the allegation on its face is not that Facebook forecloses other sites from amassing this external data, nor that its data collection amounts to anticompetitive harm (e.g., supracompetitive prices) to consumers. Rather, its allegation is that Facebook’s terms of service authorizing this data collection are simply not good for consumers, regardless of their acceptance of the terms, and thus constitute an abuse of dominance. “In the authority’s assessment, consumers must be given more control… and Facebook needs to provide [consumers] with suitable options to effectively limit this collection of data.” 31 The German competition authority is thus attempting to use its antitrust authority to impose on consumers (and Facebook) its idiosyncratic political preferences, in this case with regard to privacy. But turning voluntary contract terms that are not, in and of themselves, anticompetitive into an antitrust violation requires a remarkable and unprecedented sleight of hand. To begin with, the FCO asserts that this data — data collected from outside of Facebook — is “essential” for other social networks to compete with Facebook. But, despite asserting that its assessment is not based on how Facebook uses internal data collected from users’ interactions with Facebook directly, the FCO appears to convert this external data into an essentiality by condemning Facebook’s superior ability to combine it with its own internal data: Facebook has superior access to the personal data of its users and other competitionrelevant data. Because social networks are data-driven products, access to such data is an essential factor for competition in the market. The data are relevant for both[] the product design and the possibility to monetise the service. If other companies lack access to comparable data resources, this can be an additional barrier to market entry.32 The effect of this is to condemn Facebook’s success — and even, perhaps, to end up demanding that Facebook share its internal data — without saying so outright. The reference to “comparable data resources” is an unmistakable nod to the essential facilities doctrine, which can require access to a firm’s competition-relevant inputs where comparable inputs cannot be obtained elsewhere. Here the FCO appears to be asserting that competitors’ effective use of external data is thwarted if they do not have comparable internal data with which to combine it. But, of course, Facebook has this data only as a result of its success in bringing users to its platform. And it would be the height of unmoored antitrust enforcement to demand that other social networks, which do not operate through Facebook (in contrast, say, to advertisers, who do reach consumers via Facebook), must have access to Facebook’s internal data simply to give them a leg up in competing with a more successful rival. And yet, that is precisely what the authority seems to be suggesting — just indirectly by purporting to rest its claim on access to external data (which, like Facebook, competing social networks certainly do try to use). Of course, lack of access to a successful company’s resources is a form of barrier to entry in every case where a challenger wishes to enter a market where existing firms are long established. The same argument that the FCO makes with respect to Facebook and data could be applied to any firm that has a strong reputation, significant brand value, substantial customer loyalty, or even large real estate holdings or an established line of credit with a bank. For antitrust to require competitor access to these resources would be to undermine completely the competitive market forces that antitrust is supposed to support. And yet the FCO does not — and cannot — distinguish these valuable types of capital from that of access to a large pool of self-generated consumer data. The FCO also alleges that Facebook’s “exploitative business terms”33 constitute an antitrust violation because “[t]he damage for the users lies in a loss of control: they are no longer able to control how their personal data are used.” 34 But the allegedly exploitative nature of this loss of control is a function of European data protection laws, not antitrust law. The FCO appears to convert the alleged data protection law violation into an antitrust offence because, [a]ccording to the authority’s preliminary assessment, when operating this business model Facebook, as a dominant company, must consider that its users cannot switch to other social networks. Participation in Facebook’s network is conditional on registration and unrestricted approval of its terms of service. Users are given the choice of either accepting the “whole package” or doing without the service.35 But because of the essentiality of Facebook’s internal data, this choice is alleged to be a false one. And thus consumers “have no option to avoid the merging of their data” 36 — a violation, the FCO asserts, of data protection law. In this way the FCO uses data protection law as a foothold to build a convoluted antitrust case that really amounts to nothing more than the condemnation of Facebook’s size and success.

This is exactly the sort of uneasy merging of general social policy and the tools of competition policy that is so corrosive to the rule of law. Using the language of antitrust, the FCO is basically making a case that Facebook should be subject to competition law penalties for possessing more data than the FCO thinks is appropriate. Perhaps there are violations under other laws — data security or privacy laws, e.g. — but nothing in the FCO’s discussion of its preliminary assessment suggests anything recognizable in the economic literature as an abuse of dominance.

The FCO’s approach would dramatically expand the scope of German (and possibly European) competition law. As some commentators have observed, any dominant company that infringes any legal obligation aimed at protecting consumers — regardless of whether the violation actually results from the absence of competition, results in cognizable anticompetitive effects, or extends the company’s dominance — could be found to infringe competition law.37

Although particularly egregious here, the FCO’s efforts to reach beyond the limited constraints of competition law are not new. Starting in 2017, the FCO has been progressively urging for expansion of its powers into a broader consumer protection set of tools.38 Thus, even if it is unsuccessful in building its case under the current state of the law, the FCO is laying the foundations for convincing the German legislature why it needs vast new powers to combine consumer protection and competition into a single regulatory authority. Notably, even the US Federal Trade Commission (FTC) — which has both consumer protection and competition mandates — treats these missions separately, and regards competition cases to arise only under competition law, and not from the violation of specific consumer protection rules.

The implications of this approach are obvious. If competition law is unconstrained on its own terms — that is, it unmoored from a set of subject-specific constraints imposed by courts and legislatures — it threatens to become a large, sprawling, economy-wide set of regulations that resembles more closely a national industrial policy. The merits or demerits of actually having an economywide industrial policy aside, it is unquestionably a bastardization of antitrust law to facilitate the imposition of policies from law and regulation outside of competition policy, in ways that of necessity will promote other polices at the very expense of competition.

And, although this is a German case, its antecedents in the prevailing orthodoxy of EU law are not hard to recognize. Though the Commission frequently makes noises about conducting an economic analysis, as I discuss below, the EU’s competition process is, at root, a political one. As such, a tremendous amount of leeway is afforded to EU competition regulators. This makes sense, on its own terms: the Commission is, after all, a policy-making body directly responsive to the policy preferences of the President of the European Commission.39 While the Commission may sometimes cite to economics in its decisions, it fundamentally structures its activities in a way that affords it a large degree of policy-making discretion.

The Bundeskartellamt’s action, although specific to Germany, makes (unfortunate) sense against this backdrop. Where, unlike in the US, antitrust enforcement is viewed as a political function of the state, regulators administering competition policy can surely be relied upon to turn it into a general regulatory apparatus, as much as possible. While this is precisely what some advocates seem to want for US antitrust, doing so entails enormous risk and the potential agglomeration of massive political power outside of our democratically elected branch of government.

#### 3---Uncertainty---abrupt expansion of antitrust generates major uncertainty that disrupts business planning.

Alden F. Abbott 21, Senior Research Fellow at the Mercatus Center of George Mason University, J.D. from Harvard Law School and M.A. in Economics from Georgetown University, “Competition Policy Challenges for a New U.S. Administration: Is The Past Prologue?”, Concurrences: Antitrust Publications & Events, February 2021, https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

12. But recent suggestions put forth in an October 2020 House Judiciary Subcommittee on Antitrust majority report (HJSMR) [12] and in a November 2020 report by the Washington Center for Equitable Growth (WCEGR) [13] (coauthored by various prominent critics of Trump administration antitrust enforcement who served in the Obama administration) would go far beyond application of existing antitrust law to big digital platforms. In particular, the HJSMR proposes taking a highly regulatory approach to digital platforms, including imposing “[s]tructural separations and prohibitions of certain dominant platforms from operating in adjacent lines of business.” [14] The WCEGR also endorses the use of rulemaking (and, in particular, FTC rulemaking) to tackle significant problems of competition. [15] Rushing into rulemakings on platforms (especially without a clear showing of market failure) poses major risks, however, including, in particular, the creation of disincentives to invest in platform-specific innovation; and the interference with potential efficiency-seeking transactions by platform operators and suppliers of complements (in light of inevitable government second-guessing of platform-related business decision-making). The JBA antitrust team may wish to keep such potential costs in mind in setting competition policy vis-à-vis digital platforms.

13. To address the perceived growth and abuse of market power that are said to afflict the American economy, the HJSMR and WCEGR have also proposed to amend and thereby “toughen” the core antitrust statutes, to alter burdens of proof in litigation, and to bestow a substantial increase in resources on federal antitrust enforcers. [16] The problem of scarce agency resources has long been highlighted by enforcement agency leadership, and certainly merits attention. The call for dramatic systemic change in antitrust enforcement norms, however, should be approached cautiously, with a jaundiced eye. In our common-law-based antitrust system, a major disruption to long-familiar statutory schemes would generate major uncertainty regarding antitrust enforcement principles and substantially disrupt business planning for an indeterminate amount of time. Many welfare-enhancing transactions could be sacrificed. The harm to consumer and producer welfare due to lost socially beneficial business initiatives would be hard (if not impossible) to measure, but nonetheless real. It is certainly possible that such losses would outweigh (perhaps substantially) whatever welfare gains might flow from statutory enforcement “reform.” In other words, it should not casually be assumed that “more and different” antitrust would be an unalloyed benefit. As in all other areas of law enforcement, likely costs as well as purported benefits should be central to the antitrust public policy calculus. (Costs would include, of course, the likelihood and magnitude of “false positives” under the new enforcement regime, not just the reduction in socially beneficial transactions.)

### Cyber

#### 1) DETERRENCE---firms will flout if they believe detection and litigation are unlikely

William Rogerson 20, the Charles E. and Emma H. Morrison Professor of Economics at Northwestern University; and Howard Shelanski, Professor of Law at Georgetown University, June 2020, “Antitrust Enforcement, Regulation, and Digital Platforms,” Pennsylvania Law Review, 168 U. Pa. L. Rev. 1911

In the United States, most adjudicative bodies do not select the cases that come before them. To be sure, courts have jurisdictional limitations that prevent them from hearing certain kinds of cases, and doctrines exist that allow courts to reject weak or poorly conceived complaints. Beyond those mechanisms, however, independent parties decide when and whether to pursue litigation as method of relief. One potential virtue of this separation between decisionmaking and case selection is that the market can drive the focus of judicial attention. Assuming the most widespread and most troublesome anticompetitive conduct will receive the greatest investment of litigation resources, that conduct will in turn receive the most adjudication and doctrinal development.

Unfortunately, the separation between adjudication and case selection will not necessarily lead to an efficient match between judicial attention and the most pressing antitrust violations. In practice, even conduct that is clearly prohibited can persist when offenders think detection is difficult; one only has to look at the consistently high number of civil and criminal price fixing cases that wind up in court, even though that conduct has clearly been illegal per se for nearly a century.33 The most widespread anticompetitive conduct might not therefore be the conduct most in need of doctrinal development--it can be just the opposite, as the persistence of cartels demonstrates.34 Moreover, if the courts develop doctrine that needs revisiting, but that deters the government or private plaintiffs from filing cases,35 then the market for judicial attention to antitrust conduct will not work well dynamically; once doctrine is settled, there may be no mechanism outside of legislation or regulatory intervention to drive doctrinal change. We return to this issue below.

#### 2) DELAY---even if enforcement orders are ultimately entered, each case takes too long to prosecute---that means remedies come too late to create competition.

Alison Jones & William E. Kovacic 20, Jones is a professor at King’s College London; Kovacic is Global Competition Professor of Law and Policy, The George Washington University Law School, “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy,” The Antitrust Bulletin, vol. 65, no. 2, SAGE Publications Inc, 06/01/2020, pp. 227–255

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.

#### I’ll finish

Lewis ’20 [James Andrew; 8/17/20; senior vice president and director of the Strategic Technologies Program at the Center for Strategic and International Studies; "Dismissing Cyber Catastrophe," https://www.csis.org/analysis/dismissing-cyber-catastrophe]

More importantly, there are powerful strategic constraints on those who have the ability to launch catastrophe attacks. We have more than two decades of experience with the use of cyber techniques and operations for coercive and criminal purposes and have a clear understanding of motives, capabilities, and intentions. We can be guided by the methods of the Strategic Bombing Survey, which used interviews and observation (rather than hypotheses) to determine effect. These methods apply equally to cyberattacks. The conclusions we can draw from this are:

Nonstate actors and most states lack the capability to launch attacks that cause physical damage at any level, much less a catastrophe. There have been regular predictions every year for over a decade that nonstate actors will acquire these high-end cyber capabilities in two or three years in what has become a cycle of repetition. The monetary return is negligible, which dissuades the skilled cybercriminals (mostly Russian speaking) who might have the necessary skills. One mystery is why these groups have not been used as mercenaries, and this may reflect either a degree of control by the Russian state (if it has forbidden mercenary acts) or a degree of caution by criminals.

There is enough uncertainty among potential attackers about the United States’ ability to attribute that they are unwilling to risk massive retaliation in response to a catastrophic attack. (They are perfectly willing to take the risk of attribution for espionage and coercive cyber actions.)

No one has ever died from a cyberattack, and only a handful of these attacks have produced physical damage. A cyberattack is not a nuclear weapon, and it is intellectually lazy to equate them to nuclear weapons. Using a tactical nuclear weapon against an urban center would produce several hundred thousand casualties, while a strategic nuclear exchange would cause tens of millions of casualties and immense physical destruction. These are catastrophes that some hack cannot duplicate. The shadow of nuclear war distorts discussion of cyber warfare.

State use of cyber operations is consistent with their broad national strategies and interests. Their primary emphasis is on espionage and political coercion. The United States has opponents and is in conflict with them, but they have no interest in launching a catastrophic cyberattack

since it would certainly produce an equally catastrophic retaliation. Their goal is to stay below the “use-of-force” threshold and undertake damaging cyber actions against the United States, not start a war.

This has implications for the discussion of inadvertent escalation, something that has also never occurred. The concern over escalation deserves a longer discussion, as there are both technological and strategic constraints that shape and limit risk in cyber operations, and the absence of inadvertent escalation suggests a high degree of control for cyber capabilities by advanced states. Attackers, particularly among the United States’ major opponents for whom cyber is just one of the tools for confrontation, seek to avoid actions that could trigger escalation.

The United States has two opponents (China and Russia) who are capable of damaging cyberattacks. Russia has demonstrated its attack skills on the Ukrainian power grid, but neither Russia nor China would be well served by a similar attack on the United States. Iran is improving and may reach the point where it could use cyberattacks to cause major damage, but it would only do so when it has decided to engage in a major armed conflict with the United States. Iran might attack targets outside the United States and its allies with less risk and continues to experiment with cyberattacks against Israeli critical infrastructure. North Korea has not yet developed this kind of capability.

#### Resilience solves.

Lewis ’20 [James Andrew; 8/17/20; senior vice president and director of the Strategic Technologies Program at the Center for Strategic and International Studies; "Dismissing Cyber Catastrophe," https://www.csis.org/analysis/dismissing-cyber-catastrophe]

One major failing of catastrophe scenarios is that they discount the robustness and resilience of modern economies. These economies present multiple targets and configurations; they are harder to damage through cyberattack than they look, given the growing (albeit incomplete) attention to cybersecurity; and experience shows that people compensate for damage and quickly repair or rebuild. This was one of the counterintuitive lessons of the Strategic Bombing Survey. Pre-war planning assumed that civilian morale and production would crumple under aerial bombardment. In fact, the opposite occurred. Resistance hardened and production was restored.1

# 1NR

### Innovation

#### Tech innovation and investment high now and will continue throughout 2022

Mary Dawson, Union Square Advisors, 1/20, 2022 [PR Newswire https://www.prnewswire.com/news-releases/union-square-advisors-releases-2022-outlook-report-the-power-of-resilience-technology-is-well-positioned-for-2022-301465006.html]

Union Square Advisors forecasts that 2022 will be another strong and successful year for technology deal making, as technology proved to be resilient despite the ongoing impacts of the pandemic and divided U.S. political climate. Technology demonstrated an indispensable ability to bolster companies with innovation, while delivering strong returns for investors in the process. While 2022 brings with it additional headwinds (e.g., COVID variants, inflation, interest rate hikes and supply chain constraints), the firm believes that the abundance of available capital and the ability to finance technical innovation will enable the sector to continue its momentum in 2022.

In addition to the firm's broad industry outlook, the report addresses the following trends within technology, capital markets and financing:

Technology M&A: Record Year All Around: The pervasiveness of the technology sector translated into a frenzy for acquisitions with TMT 2021 M&A volume at $1,037.8B, representing a 70% increase over 2020's volume of $611.9B. In 2022, barring regulatory scrutiny of large transactions from the current administration, Union Square Advisors forecasts that the industry will continue to see M&A and financings transactions for companies as they scale to be more competitive, adopt the latest technologies, pursue strategies to strengthen their supply chain relationships and address any prolonged impacts of the pandemic.

Risk Management in the Post-COVID Era: The pandemic accelerated digital transformation that revolutionized key segments of the enterprise landscape. Union Square Advisors believes that the areas of technology that help companies keep pace with a fast-changing regulatory landscape, ESG assessment of third-party vendor relationships, compliance and data privacy, will continue to generate intense demand in 2022.

Private Equity: A Record Year for Deals: Buyers with money to spend, low interest rates, a strong post-COVID economic recovery and buoyant equity markets proved to be the perfect storm for a record year for private equity. Looking ahead to 2022, Union Square Advisors expects to see intensifying interest in growth equity, changes in deal structure, appetite for acquiring strong "platform" assets and a renewed focus on ESG continuing to drive activity.

Credit markets: Where Investors Can Find Yield: The past year proved to be a rare time in history where there was a combination of both robust growth and ultra-low interest rates. In 2022, Union Square Advisors expects investors to continue to hunt for alternatives in the technology sector to capture yields given its ability to lend into growth.

Technology that Drives Transparency, Consolidation and Predictive Analytics Will Transform Real Estate in 2022 and Beyond: Technology platforms proved to be the key to upending a historically opaque and disjointed real estate industry. As Union Square Advisors looks ahead to 2022, it predicts that unprecedented data transparency, the increased consolidation of services, and the rapid rise of predictive analytics will transform the real estate industry and drive investments in the technology to record levels.

Enterprise Software Growth Continues to Accelerate: 2021 forced companies to invest in information technology-related services and solutions as they pivoted to new models including digitized sales and marketing lead generation, customer service interaction and business communications. Union Square Advisors expects IT services and software to continue to be red hot solutions in 2022 as companies seek ways to automate and create a seamless, easy experience for their employees, customers and vendors.

Cloud-Native Technology Evolution Empowers Businesses in New Ways: As cloud-native infrastructure demonstrated how it could help companies address inherent in-building and running applications, as well as develop data management infrastructure, Union Square Advisors sees this technology presenting numerous opportunities for investors and those who can develop these next-gen solutions. In 2022, infrastructure software valuations will remain elevated, especially for companies that have effectively scaled and grown rapidly.

AIoT is a Spot to Watch: The confluence of IoT and AI (AIoT) proved it could deliver tangible ROI in the form of analytics-generated process and yield optimization, cost savings and a reduction of wasted materials in sectors such as manufacturing. Union Square Advisors anticipates AIoT to be a breakout technology for companies to invest in 2022.

"In 2021, the technology sector demonstrated a resilience that we believe positions companies to see more growth in the coming year," said Carter McClelland, Chairman and Co-Founder, Union Square Advisors. "The verticals we're focused on, like digital transformation, enterprise software, cloud computing, real estate tech and more, are positioned well for success in 2022."

Ted Smith, President and Co-Founder agreed, saying, "We remain optimistic about technology continuing its role as one of the bright spots in the U.S. economy. Our outlook for 2022 is positive, and we expect our clients to remain active when it comes to deal making in the year ahead."

#### Hendrickson’s about changes in world order – obviously countries aren’t just staring at growth figures, they’re watching the military – military power checks

1AC Henricksen 17, \*Thomas H., emeritus senior fellow at the Hoover Institution; (March 23rd, 2017, “Post-American World Order,” Hoover Institution, <http://www.hoover.org/research/post-american-world-order>)

What Is To Be Done?

The first marching order is to dodge any kind of perpetual war of the sort that George Orwell outlined in  “1984,” which engulfed the three super states of Eastasia, Eurasia, and Oceania, and made possible the totalitarian Big Brother regime. A long-running Cold War-type confrontation would almost certainly take another form than the one that ran from 1945 until the downfall of the Soviet Union.

What prescriptions can be offered in the face of the escalating competition among the three global powers? First, by staying militarily and economically strong, the United States will have the resources to deter its peers’ hawkish behavior that might otherwise trigger a major conflict. Judging by the history of the Cold War, the coming strategic chess match with Russia and China will prove tense and demanding—since all the countries boast nuclear arms and long-range ballistic missiles. Next, the United States should widen and sustain willing coalitions of partners, something at which America excels, and at which China and Russia fail conspicuously.

There can be little room for error in fraught crises among nuclear-weaponized and hostile powers. Short- and long-term standoffs are likely, as they were during the Cold War. Thus, the playbook, in part, involves a waiting game in which each power looks to its rivals to suffer grievous internal problems which could entail a collapse, as happened to the Soviet Union.

Some Chinese and Russian experts predict grave domestic problems for each other. They also entertain similar thoughts about the United States, which they view as terminally decadent and catastrophically polarized over politics, ethnicity, and the future direction of the country. So, the brewing three-way struggle also involves a systemic contest, which will test the competitors’ economic and political institutions.

At this juncture, the world is entering a standoff among the three great and several not-so-great powers. Averting war, while defending our interests, will prove a challenge, calling for deft policy, political endurance, and economic growth, as well as sufficient military force to keep at bay aggressive states or prevail over them if ever a war breaks out.

### Trade DA

#### Trade turns and solves the case---foreign competition is better than antitrust

Anu Bradford 19, Henry L. Moses Professor of Law and International Organization at Columbia Law School, LLM from Harvard Law School, Master of Laws from University of Helsinki, JD from Harvard Law School, and Dr. Adam S. Chilton, University of Chicago, Professor of Law and the Walter Mander Research Scholar at the University of Chicago Law School, MA in Political Science from Yale University, JD and PhD in Political Science from Harvard University, “Trade Openness and Antitrust Law”, Journal of Law & Economics, Volume 62, Number 1, 62 J. Law & Econ. 29, February 2019, Lexis

2.1. Trade and Antitrust Law as Substitutes

Many scholars suggest that trade liberalization may make adopting an anti trust regime unnecessary (Bhagwati 1968; Helpman and Krugman 1989; Blackhurst 1991; Neven and Seabright 1997; Melitz and Ottaviano 2008). According to this view, free trade is an effective way to ensure that markets remain competitive because facilitating entry checks market power (Baumol, Panzar, and Willig 1982). For example, when an economy is open to trade, monopolists refrain from abusing their market power because low external barriers ensure that competitors can enter the market and contest any such abusive practices. In this way, trade liberalization renders an anti trust intervention into monopolistic practices superfluous. Exports fueled by trade liberalization should also enhance market competition. New opportunities in export markets ensure that more firms can reach an efficient scale of production, which further spurs competition and reduces the need for an anti trust regime (Bartók and Miroudot 2008).

Relying on trade liberalization to safeguard market competition could have several advantages. First, foreign producers must incur certain fixed costs and variable trade costs to enter a new market that domestic producers do not incur. If foreign firms are able to enter and effectively compete even after incurring those costs, they are presumably more efficient and hence may act as an even more effective discipline on the market than domestic firms (Bartók and Miroudot 2008). Second, choosing free trade over anti trust regulation eliminates the need to rely on government bureaucracies. Many who remain skeptical of governmental intervention favor free trade and thus prefer to have imports discipline [\*33] anticompetitive behavior. This argument may gain all the more force today considering the complexities associated with antitrust regulators from over 130 countries all applying different rules in an effort to regulate the global marketplace. Finally, although trade openness may "act as an effective antitrust policy" (Pomfret 1992, p. 11), an effective antitrust policy does not act as an effective trade policy. For example, if the United States were to impose a 30 percent tariff on foreign producers today, foreign firms would likely not enter no matter how competitive the markets are behind the border. Domestic antitrust laws thus may do little to facilitate market entry in the presence of highly protectionist trade policy.

#### Recent, robust studies

Julian Adorney 20, Contributing Writer at the Hinrich Foundation, Young Voices Advocate, Senior SEO Analyst for Colorado SEO Pros, Writing Appeared at The Federalist, Fox Nation, The Hill, and the Mises Institute, BA from the University of Colorado, Boulder, “Want Peace? Promote Free Trade”, Hinrich Foundation for Advancing Sustainable Free Trade, 9/10/2020, https://www.hinrichfoundation.com/research/tradevistas/sustainable/trade-and-peace/

Why does protectionism lead to conflict and why does free trade help prevent it? Learn about the connection between peace and free trade.

Frédéric Bastiat famously claimed that “if goods don’t cross borders, soldiers will.”

Bastiat argued that free trade between countries could reduce international conflict because trade forges connections between nations and gives each country an incentive to avoid war with its trading partners. If every nation were an economic island, the lack of positive interaction created by trade could leave more room for conflict. Two hundred years after Bastiat, libertarians take this idea as gospel. Unfortunately, not everyone does. But as recent research shows, the historical evidence confirms Bastiat’s famous claim.

To trade or to raid

In “Peace through Trade or Free Trade?” professor Patrick J. McDonald, from the University of Texas at Austin, empirically tested whether greater levels of protectionism in a country (tariffs, quotas, etc.) would increase the probability of international conflict in that nation. He used a tool called dyads to analyze every country’s international relations from 1960 until 2000. A dyad is the interaction between one country and another country: German and French relations would be one dyad, German and Russian relations would be a second, French and Australian relations would be a third. He further broke this down into dyad-years; the relations between Germany and France in 1965 would be one dyad-year, the relations between France and Australia in 1973 would be a second, and so on.

Using these dyad-years, McDonald analyzed the behavior of every country in the world for the past 40 years. His analysis showed a negative correlation between free trade and conflict: The more freely a country trades, the fewer wars it engages in. Countries that engage in free trade are less likely to invade and less likely to be invaded.

Trading partners

The causal arrow

Of course, this finding might be a matter of confusing correlation for causation. Maybe countries engaging in free trade fight less often for some other reason, like the fact that they tend also to be more democratic. Democratic countries make war less often than empires do. But McDonald controls for these variables. Controlling for a state’s political structure is important, because democracies and republics tend to fight less than authoritarian regimes.

McDonald also controlled for a country’s economic growth, because countries in a recession are more likely to go to war than those in a boom, often in order to distract their people from their economic woes. McDonald even controlled for factors like geographic proximity: It’s easier for Germany and France to fight each other than it is for the United States and China, because troops in the former group only have to cross a shared border.

The takeaway from McDonald’s analysis is that protectionism can actually lead to conflict. McDonald found that a country in the bottom 10 percent for protectionism (meaning it is less protectionist than 90 percent of other countries) is 70 percent less likely to engage in a new conflict (either as invader or as target) than one in the top 10 percent for protectionism.



#### b) Empirics

Cary Huang 18, Senior Writer and Veteran Columnist at the South China Morning Post, Former China Editor for The Standard, “Trade Wars Cause World Wars, History Shows. Will This Time Be Different?”, South China Morning Post, 7/17/2018, https://www.scmp.com/comment/insight-opinion/united-states/article/2155565/trade-wars-cause-world-wars-history-shows-will

History provides ample evidence that trade problems have heightened tensions among nations. Such fights lead to economic crises, and trigger political and social crises and, finally, trigger wars.

A full-blown trade war often features the combination of a tariff war and currency war. In practice, exporting countries will, in response to imposed tariffs, resort to currency manipulation, moving to cheapen their money to offset the impact of the tariffs.

But a competitive devaluation among trade partners makes a currency war meaningless. Once countries realise that currency wars do not work, they resort to all the tools available to set up barriers to block trade. This seems evident amid the escalating US-China trade feud. The slump in the renminbi in past few months is stoking fears in markets that China’s policymakers are deliberately pushing the currency’s depreciation in an effort to offset the US tariff hikes.

Trump staring down barrel of yuan devaluation in trade war

Before the first world war, most countries accepted the classical gold standard of pegging their currencies to gold as an effort to anchor smooth trade. However, from 1913, countries began to suspend or abandon the system as they devalued their currencies to compete for export markets in the ongoing tariff war.

The end of the first world war sparked the first worldwide currency war, starting in Weimar Germany in 1921, followed by France in 1925. In the end, all the major economies scrambled to devalue their currencies – sterling, the franc and the US dollar – throughout the 1930s.

In 1930, US president Herbert Hoover signed into law the Smoot-Hawley Tariff Act, which intensified the currency war and deepened the Great Depression. The protectionist law raised tariffs on more than 20,000 imported products and triggered retaliation from many US trade partners.

Trade wars stoke nationalism and hatred among people and finally trigger wars, as evidenced by the breakout of the second world war: the Japanese invaded Manchuria in 1931, and the whole of China in 1937; the Germans invaded Poland in 1939, then the rest of Europe; and the Japanese attacked Pearl Harbour in 1941.

Could Trump’s trade war turn into a third world war?

A quote often attributed to the 19th-century French economist, Frédéric Bastiat, goes: “When goods do not cross frontiers, armies will.” It is obvious that the current US-China trade war is stoking geopolitical tensions between the world’s two largest economies and chief political adversaries, as they become more confrontational over their discord on maritime issues in the South and East China seas and over Taiwan.

History often repeats itself if we do not learn from it. The two full-blown trade wars some 80 and 100 years ago helped to ignite the two world wars. Could such a catastrophe happen again?

#### c) Forecasting---the current environment is uniquely primed for global escalation---trade’s key

Dr. Christopher M. Dent 20, Professor in Economics and International Business at Edge Hill University, PhD in International Political Economy, University of Hull, MA in Economics from the University of Leeds, “Brexit, Trump and Trade: Back to a Late 19th Century Future?”, Competition & Change, Volume 24, Issue 3-4, p. 338-339

Introduction

The global economy and system are entering a critical phase. Populist nationalism is on the rise, fuelled largely by discontent over globalization’s distributional impacts and failure of conventional politics and markets to deliver on their promises (Kyle and Gultchin, 2018). An emerging economic superpower is disrupting the global order and its long incumbent power structures. Multilateralism is under threat, trade protectionism and tariff wars are escalating, many economies are struggling in the lingering aftermath of a severe global recession and the global system is under pressure generally from short- and longer-term crises (Guillen, 2015). World GDP and trade growth are slowing and there are predictions of greater political economic turbulence to come (World Bank, 2019; World Trade Organisation, 2019a). Worst still, the world may be on the brink of a major great power conflict. This scenario not only applies today but also to the late 19th century world. The eventual outcome of events in this period was escalating conflict that culminated in the outbreak of World War 1 (WW1). Whilst such an outcome was not necessarily inevitable by the 1890s it was a retrospectively proven possibility. Hence, avoiding a late 19th century world scenario is, at the very least, desirable.

Trade is central to understanding the political economies of the early 21st and late 19th centuries, making it a suitable empirical prism to make a comparative historical analysis (CHA) of the two periods. What follows is a trade political economy study that will examine various connections between the domestic and the international, focusing also on two significant cases that provide important comparative analytical insights. The result of Britain’s 2016 Brexit referendum and election of Donald Trump as US President in the same year have become emblematic of contemporary populism, economic nationalism and associated resistance against forms of internationalism and globalization.1

#### Trade incentivizes climate abatement---improves countries relative economic position.

Markusen 17 (James Markusen is at the University of Colorado, Boulder, and is an affiliate of the NBER, CEPR, and CESifo. “An Alternative Base Case for Modeling Trade and the Global Environment” JAERE, volume 4, number 3. © 2017 by The Association of Environmental and Resource Economists)

5. SUMMARY AND CONCLUSIONS The purpose of the paper is to offer an alternative base-case model for trade and the environment. I move away from a focus on differing pollution intensities across sectors and Pigouvian taxes and tariffs. The focus is on per capita income and a resource-using abatement activity as determinants of cooperative and noncooperative international trade policy. The setting is a world with a global environmental externality such as CO2 pollution and consumers who have a high income elasticity of demand for environmental quality. While some of the results are not surprising, there are a number of interesting subtleties than may have gone unnoticed. A couple of basic results are that (a) environmental quality will exhibit a U-shape with respect to per capita income, an example of an environmental Kuznets curve. (b) Noncooperative outcomes will involve “policy leakage”: an increase in one country’s abatement effort improves the world environment and hence leads the other country to reduce its effort. (c) Border taxes are unhelpful: they just make your trading partner poorer and reduce its abatement effort. (d) Free trade is good for the environment because (1) it raises welfare and thus leads to a higher abatement effort and (2) it allows a country to pass on more of the costs of abatement to the other country (in the noncooperative case), thus raising its abatement effort.

But the bulk of the paper focuses on countries with different per capita incomes. I show that a poorer country will have a lower abatement effort in both a noncooperative outcome and in a Nash bargaining outcome using the noncooperative equilibrium as a disagreement outcome. It may be that the poor country makes no abatement effort in a noncooperative outcome and, beginning from that equilibrium, it may be that there are no gains to bargaining when abatement taxes are the only instrument available to the countries. When per capita income differences are very large, the poor country can be worse off in a noncooperative outcome than when neither country does any abatement. Some of the unambiguity of these results is due to an assumption which neutralizes the production features that drive much of the traditional literature: here pollution is proportional to all economic activity so that there is no (relatively) dirty sector and no comparative advantage in clean versus dirty goods. When a country withdraws resources from production to abate, it effectively shrinks its economy, and this will move the world terms of trade in its favor. Thus it passes on part of the cost of abatement to the nonabating country. While some other papers have a similar terms-of-trade effect, it is ambiguous because it depends on whether or not the export sector is the clean or dirty sector, and it also must be true that for one country abatement improves its terms of trade while it must deteriorate the terms of trade for the other country. Here abatement by either country improves that country’s terms of trade. The final section of the paper allows countries to set tariffs as well as abatement taxes and focuses on the case where the rich country is large and so has both a high tariff and a high abatement tax. Part of the advantage of the numerical model, using the relatively new MPEC solver in GAMS, is that we can compute a Nash equilibrium in four instruments. Then using this as a disagreement outcome, we can compute bargaining outcomes for linked or unlinked negotiations. Results are interesting, but my (superficial) knowledge of bargaining theory suggests that general results (e.g., is it better to link) are unlikely to be found. In the area of understanding how we got to where we are, the results here may help explain why the high-income countries often seem to give up more than they get in international negotiations (some will surely dispute this assertion), such as the Kyoto Protocol. While this may indeed be all or in part due to altruism or ideology, some of our results here suggest that this is also predicted by standard economic theories of cooperative and noncooperative behavior. Specifically, with environmental quality a high-income-elasticity good, conventional self-interest predicts a high abatement effort by high-income countries.

#### No individual risk can be tied to a specific probability or temperature increase, and most climate risks are small modifications to fundamental societal risks that we’ve dealt with for millennia

Their 1AC cards just laundry-list scary things, but most are examples of societal vulnerabilities that warming only marginally alters, the probability of which is unquantifiable

Judith Curry 17, President of Climate Forecast Applications Network (CFAN), previously Professor and Chair of the School of Earth and Atmospheric Sciences at the Georgia Institute of Technology, 1/29/17, “The ‘threat’ of climate change,” https://judithcurry.com/2017/01/29/the-threat-of-climate-change/

I think that use of these words mislead the public debate on climate change — any damages from human caused climate change are not imminent, we cannot quantify the risk owing to deep uncertainties, and any conceivable policy for reducing CO2 emissions will have little impact on the hypothesized damages in the 21st century. ‘Threats’ or ‘reasons for concern’? I do not question that the possibility of adverse impacts from human caused climate change should be under consideration. However, the human caused impacts of climate change have been overhyped from the beginning — the 1992 UNFCCC treaty on avoiding dangerous human interference on the climate. This implied warming was dangerous before any work had actually been done on this. Some much needed clarification is presented in a recent article published in Nature: IPCC reasons for concern regarding climate change risks. This article provides a good overview of the current IPCC framework for considering dangerous impacts. A summary of the main concerns: The reasons for concern (RFCs) reported in AR5 are: Risks to unique and threatened systems (indicated by RFC1) Risks associated with extreme weather events (RFC2) Risks associated with the distribution of impacts (RFC3) Risks associated with global aggregate impacts (RFC4) Risks associated with large-scale singular events (RFC5) The eight overarching key risks are: Risk of death, injury, ill-health, or disrupted livelihoods in low-lying coastal zones and small island developing states and other small islands due to storm surges, coastal flooding, and sea-level rise. Risk of severe ill-health and disrupted livelihoods for large urban populations due to inland flooding in some regions. Systemic risks due to extreme weather events leading to breakdown of infrastructure networks and critical services such as electricity, water supply, and health and emergency services. Risk of mortality and morbidity during periods of extreme heat, particularly for vulnerable urban populations and those working outdoors in urban or rural areas. Risk of food insecurity and the breakdown of food systems linked to warming, drought, flooding, and precipitation variability and extremes, particularly for poorer populations in urban and rural settings. Risk of loss of rural livelihoods and income due to insufficient access to drinking and irrigation water and reduced agricultural productivity, particularly for farmers and pastoralists with minimal capital in semi-arid regions. Risk of loss of marine and coastal ecosystems, biodiversity, and the ecosystem goods, functions, and services they provide for coastal livelihoods, especially for fishing communities in the tropics and the Arctic. Risk of loss of terrestrial and inland water ecosystems, biodiversity, and the ecosystem goods, functions, and services they provide for livelihoods.” I think that qualitatively, these are the the appropriate risks to consider. Where I don’t find this analysis particularly convincing is their links of ‘undetectable’, ‘moderate’, ‘high’, ‘very high’ to specific levels of temperature increase.

The confounding societal effects on all of these risks are overwhelming, IMO, and very likely to be of greater concern than actual temperature increase. Apart from (vii) and (viii) related to ecosystems, these risks relate to vulnerability of social systems. These vulnerabilities have put societies at risk for extreme weather events throughout recorded history — adding a ‘delta’ to risk from climate change does not change the fundamental underlying societal vulnerabilities to extreme weather events. The key point IMO is one that I made in a previous post Is climate change a ‘ruin’ problem? The short answer is ‘no’ — even under the most alarming projections, human caused climate change is not an existential threat on the timescale of the 21st century.

### FTC DA

#### Market collusion shocks domestic energy production

**Gray 20** [Mr. Gray has served as White House counsel, U.S. ambassador to the European Union, and as U.S. special envoy to Europe for Eurasian energy, “Banks' Energy Boycott Is an Antitrust Problem,” 15 July 2020, The Wall Street Journal, Factiva]

America's largest financial institutions are picking winners and losers in the energy sector for political reasons -- even while the Covid-19 crisis has reduced global oil demand and a price war between Russia and Saudi Arabia has flooded global markets with crude. Under pressure from environmental activists, banks are withholding desperately needed capital from oil and gas companies. In doing so, they put millions of jobs at risk and may even be violating federal antitrust law.

To protect consumers, antitrust laws prohibit unreasonable agreements in restraint of trade. Anticompetitive conduct enriches the few -- members of the cartel -- at the expense of everyone else, especially the consumers who end up paying higher prices. Agreements among competitors to fix prices, divide markets or engage in certain forms of group boycott prevent competition and are therefore illegal.

Normally, banks compete to lend to corporate customers. That competition ensures that worthwhile projects can gain access to capital and use it to bring products to consumers at affordable prices. But Citibank, Goldman Sachs, JPMorgan Chase, Morgan Stanley and Wells Fargo have started moving in parallel to cut off liquidity and capital to America's energy sector. More specifically, these ostensible competitors have announced promises to stop lending money in support of Arctic oil drilling and coal mining.

BlackRock, the world's largest investment firm, announced in January that it would divest from companies deriving more than 25% of their revenue from thermal coal and has joined a pact called "Climate Action 100+" with more than 450 global investors. "Banks are increasingly using environmental, social and governance factors when underwriting corporate borrowing," Barron's reports, such that according to one survey, "half the lending assets covered by 182 banks" were screened for ESG risks.

These announcements look a lot like invitations to collude on a boycott of a critical segment of the U.S. economy. The Federal Trade Commission has maintained that such invitations -- even if they go unheeded -- can violate federal antitrust law. As the FTC and the Department of Justice reiterated in April, "Even absent a collusive agreement," antitrust enforcers may "pursue a civil enforcement action against companies and individuals that invite others to collude." If made with an intent to invite or signal competitors to join a group boycott, these announcements could violate the law.

Federal antitrust law also prohibits boycott agreements instigated by a third party to prod firms that compete with each other into unreasonably restraining market competition. In these "hub and spoke" conspiracies, competitors may violate the law without communicating with each other, and even though the relevant agreements they make are with a third party, not a competitor.

Pressure campaigns by activist groups (possible hubs) -- followed by the pattern of announcements and parallel conduct by banks (possible spokes) -- present more evidence of potential conspiracies. For example, Green America proclaims it "is pressuring banks world-wide to stop funding fossil fuels" as part of the "Fossil Banks, No Thanks" campaign, which aims "to stop large commercial banks from financing the fossil fuel industry." The Sierra Club shares the same goal and even reports that it has "met with representatives from major banks to discuss . . . why action by the financial industry is necessary." As a result, five of the six largest banks in the United States will no longer finance oil and gas drilling in the Arctic National Wildlife Refuge. Bank of America is the lone holdout.

Activist investors have also joined the pressure campaign, encouraged by business leaders' embrace of "stakeholders" over shareholders. Any of this third-party activity could be the hub for tacit collusion between the spokes -- i.e., banks collectively boycotting certain energy projects.

The U.S. does a lot for its banks, which have long been heavily subsidized and backed by government interventions. The Federal Deposit Insurance Corp. guarantees deposits, and other programs have been set up whenever banks face a crisis. The Covid-19 pandemic is no exception: Congress routed its Cares Act relief efforts to businesses through banks, which are rewarded with fat fees. Meanwhile, bank executives are turning their backs on the very companies that keep the lights on.

When America's financial industry starves the energy sector of capital, that isn't fair, free-market competition. It's a subsidized industry barreling toward collusion at the invitation of radical third-party intermediaries -- and inviting billions of dollars in antitrust liability.

#### That causes leadership decline and hot wars

**Lippold 16** [Kirk S. Lippold, President of Lippold Strategies, LLC, a consulting firm that specializes in leadership, crisis management, and national security policy, spent 26 years in the Navy, where he was a Surface Warfare Officer serving on five different ships, including guided missile cruisers and destroyers to protect U.S. national security interests across the globe, “Re: Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018,” July 11, 2016, U.S. Environmental Protection Agency Attention Docket ID No. EPA-HQ-OAR-2016-0004 EPA Docket Center]

Since 2010, the U.S. has undergone a significant energy renaissance in which U.S. production of oil and gas has skyrocketed. Such a rapid rise in natural gas and oil production from shale and other tight oil resources has been brought about by the maturation of hydraulic fracturing, improved detection capabilities, and horizontal extraction technology, as well as newfound access to previously unavailable oil reserves. As a result, the U.S. has become and will continue to be a net exporter of oil. This new reality has altered the fundamental justification for hasty investment in costly and unproven fuels as originally envisioned with the creation of the RFS. In light of this reality, the U.S. should carefully consider whether the RFS should continue to be hailed as a keystone American energy policy. While the RFS had good intentions at its inception, with the current energy production status in the U.S., serious consideration to terminate the program must be considered if it no longer confers the intended national security benefits to the American consumers or our economy.

The U.S. is already the world's largest producer of oil and natural gas combined and is on track to become the world's top oil producer by 2020. The effects of America's renaissance have been to decrease demand for foreign oil, reduce trade imbalances and contribute a whopping 8 percent to the total U.S. GDP. The true scope of growth in American energy resources cannot be overstated. Notably, the non-partisan Congressional Budget Office (CBO) explains that the U.S. now produces approximately 3.5 million barrels of tight oil per day and about 9.5 trillion cubic feet of shale gas per year. It too expects that there will be increasing levels of production - with attendant profound market and economic effects - in the years to come. In April 2015, U.S. oil production reached its highest level in 45 years, hitting 9.7 million barrels per day. Large production volumes are being generated by new oil and gas discoveries in Texas, North and South Dakota and Pennsylvania. Against this new economic backdrop, no longer are costly fuels needed to effectively secure American energy independence. The U.S. would instead benefit from consolidating and building upon the energy resurgence in its efforts to preserve and stabilize the international order.

Such a consolidation allows the U.S. to share our newfound wealth of resources with other nations, thereby allowing the U.S. to exert greater influence on the world stage. No longer must the U.S. be fully subject to the whims of unstable or hostile international actors, but it can credibly marshal and exert energy diplomacy in a manner that directly contributes to greater global security. The U.S. can also indirectly gain influence at the expense of our competitors by 'offsetting' their oil exports with our own.

#### US energy dominance solves Russia, China and Middle East war

**Ladislaw 19** [Sarah Ladislaw is senior vice president and director and senior fellow of the Energy Security and Climate Change Program, where she leads CSIS’s work in energy policy, market, and technology analysis, Nikos Tsafos is a senior fellow with the Energy Security and Climate Change Program at the Center for Strategic and International Studies, “Energy Spheres of Influence,” September 13, 2019, <https://www.csis.org/analysis/energy-spheres-influence#:~:text=Influence%20is%20a%20multifaceted%20and,because%20we%20assume%20it%20does>]

For several decades, energy security has been defined and pursued in a multilateral world with relatively open markets and technology transfer, where energy relations have become increasingly commodified. But that world may soon disappear—energy relationships might become more political, open trade might give way to friction, and great powers might leverage energy relations or energy technology to gain an edge over each other. For decades the United States has promoted a rules-based, multilateral order, supported by shared gains from free trade and deeper economic and political integration within and among countries. Energy security, the ability to secure affordable and reliable supplies of energy, has been widely recognized as common good promoted by this system. As the world’s largest consumer and importer of energy, it was squarely in the United States’ national interest to support this approach through domestic and international energy policy as well as foreign policy. Today, this multilateral order is being challenged. The world is experiencing a new era of competition for greater geographic and economic power driven by the shifting center of gravity of the global economy, the realignment of relationships between and among countries, and rapid technological change. Energy is poised to play an important role in this upheaval and will be affected by these changes. The United States is no longer the largest consumer or importer of energy. Instead, it is now the largest producer of oil and natural gas and will soon be a net exporter of energy. The energy world also is changing rapidly, with renewable energy resources like solar and wind making up the fastest growing and largest source of new supplies and global imperatives like climate change challenging the role of status quo fuels. These changes have heralded a reexamination of the United States’ national interest regarding energy in this changing global system. The United States has important decisions to make about its position in this new environment. Can energy play an influential role in achieving U.S. foreign policy objectives in various regions of renewed geopolitical competition? Is any country or group of countries poised to dominate a given energy market or fuel and might that negatively affect U.S. national security interests? How does this changing global dynamic in which countries are vying for greater geographic and economic spheres of influence affect our approach to global energy security? Will the energy sector become fundamentally more mercantilist, and will the United States be competitive if it does? Greater insight about each of these questions is a prerequisite to the formulation of U.S. foreign and energy policy. So far, the United States has grappled with these questions by pursuing “energy dominance,” a strategy in which energy represents (1) a tool for gaining geopolitical influence in a given region and (2) an area of competitive and strategic economic advantage for the United States. But other global powers, like China and Russia, pose strong competition for this U.S. strategy. Energy features prominently in the economic, foreign, and national security strategies of all three countries but in different ways. And although all three recognize the importance of maintaining affordable and reliable energy supplies for the good of the global economy as well as their own economic well-being, they also recognize the influence of energy in the execution of foreign policy at the global and regional level. The issue for the international energy community is whether the multilateral approach to shared energy security, supported by the promotion of free and integrated markets, is breaking down into regional and economic spheres of influence more mercantile in nature—and if so, how the United States should respond. Shifting Balance of Power Power structures within and among nation-states are shifting. A decade ago, Zbigniew Brzezinski foreshadowed the upheaval as the result of a “global political awakening” in which “for the first time in history almost all of humanity is politically activated, politically conscious and politically interactive” and the result is a “quest for cultural respect and economic opportunity in a world scarred by memories of colonial or imperial domination.”1 Much of this awakening is enabled by technology, which has connected and informed society in ways previously not possible. Today, this struggle is playing out at multiple levels, including the great power politics of nation-states. In 2016, Henry Kissinger spoke about the nature of the changing world order, saying that for the first time in decades: “Practically all the actors in the Middle East, China, Russia, and to a certain extent Europe are facing major strategic decisions. . . . to settle some fundamental directions of their policies. China, about the nature of its place in the world. Russia, about the goals of its confrontations. Europe, about its purpose, through a series of elections. America, about giving a meaning to its current turmoil in the aftermath of the election.”2 The balance of power is shifting, the global order is being renegotiated. The culmination of both has led to an era of intense competition. Within countries, political competition has brought new parties to power. Widespread displeasure over inequality and an unlevel playing field threaten to disrupt the global trading regime and have led to intensified economic competition among firms and strategic economic competition among states. The advent of new technological horizons and the rise of developing countries have sparked new frontiers of competition. Against this backdrop, great powers are looking to expand their reach and refresh their strategies to achieve geostrategic gains. As countries look to expand their spheres of influence, energy can play a role as both a target and tool of that expansion. Although much of the world’s energy development and trade occurs in the sphere of normal commerce, energy infrastructure, investment, and control over resources can also play a role in establishing or challenging the relationships between and among countries. For the first time since the end of the Cold War, there is genuine strategic rivalry among the world’s great powers. China’s rise has created a web of economic and political relationships in all continents. Russia is reasserting itself in places from which it had retreated. The United States is aggressively renegotiating its existing relationships with allies and adversaries. New areas of strategic competition have opened up in resource-rich areas like the Arctic and the emerging economies of Africa.

#### Speegle is about rulemaking, not the aff – but if it is, it gets shredded and triples the link

Speegle 12, \*Adam Speegle, J.D., (May 2012, “Antitrust Rulemaking as a Solution to Abuse on the Standard-Setting Process Setting Process”, <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1128&context=mlr>)

Another concern regards the political implications of the FTC invoking its antitrust rulemaking authority. One of the benefits often cited by proponents of rulemaking is that the rulemaking process, through notice and comment procedures, often brings important topics to Congress's attention. 159 There is, however, a corresponding risk that Congress may grow concerned about the FTC's increasing intervention in the technology sector. In the 1970s and 1980s, the FTC experienced backlash from Congress due to its activism in the consumer protection arena. 160 As a result, the FTC's authority and resources were curtailed, and procedures for promulgating rules under the consumer protection prong of Section 5 became so burdensome that they rendered FTC-initiated consumer protection rulemaking an impractical and rarely used tool. 61 With an approach based on the "unfair methods of competition" prong, there may be a concern that FTC intervention in the technology sector could trigger a similar response from Congress.

\*\*KANSAS STARTS\*\*

This too is not fatal to the approach. The proposed rule uses a light touch in that it only buttresses rules established by SSOs. Because the rule would support actions by the private sector to manage their own activities rather than introducing additional agency oversight, Congress would be unlikely to react the way it did when the FTC's activism in the consumer protection arena evoked fears of excessive government intervention.

One final concern with the approach is that it will demand more of the FTC in a regulatory capacity than the FTC is capable of handling. For example, under any rule where the FTC would be called upon to enforce RAND terms, the FTC might fall into the role of license-rate regulator, determining which licensing fees are reasonable and which are unreasonable. But the FTC is a relatively small institution with limited resources.1 62 Some are concerned that under such a scenario the Commission would have to bring on new staff with expertise in the technology sector to monitor the reasonableness of licensing terms arising from SSO commitments.163

This concern is unlikely to be serious under the proposed formulation. As to the problem of determining "reasonableness," the FTC has already developed expertise in this area and, in fact, recently authored a report putting forth workable solutions to the problem of calculating "reasonableness" in the context of RAND commitments. 64 Further, the FTC would not need to establish itself as a monitoring body and would not incur the related costs of increases in staff and resources. Rather, enforcement of the proposed rule would operate similarly to the FTC's enforcement of its consumer protection rules. Under that regime, companies and individuals report fraudulent activity that violates one of the FTC's rules, which the Commission then investigates and, at its discretion, prosecutes. 16 Because the burden would be on the private sector to report in such a regime, the FTC would not need to monitor SSO activity. And as with consumer protection enforcement, a small number of decisive enforcement actions against abusive firms should act as a deterrent sufficient to decrease the FTC's litigation workload. 166 Thus, despite some legitimate concerns with the approach of enforcement by rule, those concerns are not fatal to the strategy. Moreover, the next Section demonstrates that there are also general benefits to enforcement by rule that weigh in favor of the approach.

#### 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.

#### SEP thumper is wrong – Morris just says they investigated holdup in the past, not that they are going after it, absolutely distinct from expanding the scope, and the resolutions aren’t about cases just fact finding – cal inserts blue

Morris 9/17/21, \*Angela Morris, Deputy editor at IAM Media; (September 17th, 2021, “The FTC creates a potential new US headache for SEP owners”, https://www.iam-media.com/frandseps/the-ftc-creates-potential-new-us-headache-sep-owners)

SEP owners that may already be wary of potential Biden Administration regulatory changes now have a new threat to keep them up at night.

Over the summer the Federal Trade Commission [announced an expanded view](https://www.jdsupra.com/legalnews/the-ftc-expands-section-5-enforcement-7020931/) of its standalone enforcement authority to curb anti-competitive misconduct; and [now the agency has made it clear](https://www.ftc.gov/news-events/press-releases/2021/09/ftc-streamlines-investigations-in-eight-enforcement-areas) that priority targets include “abuse of intellectual property” and “monopolistic practices”.

The agency’s description of the “anticompetitive and deceptive conduct” it seeks to curtail in the technology sector most likely will encompass alleged misconduct by standards essential patent (SEP) owners and their commitments to licensing on FRAND terms, according to IP and antitrust attorney Tim Syrett.

“The FTC has previously conducted two investigations where it found that SEP holders seeking injunctions against licensees was anti-competitive and presented a threat to innovation,” Syrett, who is a partner in Wilmer Hale in Washington DC, explains via email. “That may be an area where the FTC wants to continue to devote resources and is certainly an area where there can be harm to competition because of the hold-up power of SEPs.”

He adds that investment-backed patent assertion entities and patent aggregation organisations may also have reason to fear ITC investigations.

“Investment-backed patent assertion entities can obscure information about who actually owns or has an interest in patents that can harm both licensing and litigation,” says Syrett. “Further, we have seen a concerning rise of patent assertions where the incentives of investors to obtain outsized returns from patents trump any reasonable valuation of the patents’ worth, which can harm competition in the licensing of patents.”

IP owners in the pharmaceutical, technology and gasoline refining industries should also take note of the development, since the commission indicated that it would investigate potential abuses of IP rights that create anti-competitive and deceptive conduct in those spaces.

Big Tech companies and other large businesses would be advised to pay attention as well, given that another stated FTC aim is to target alleged abuses of their market power that stop entrepreneurs from competing.

The two resolutions were among a group of eight that a divided commission passed this month on a 3-2 vote, as the agency seeks to handle increased workload from high merger filings. Both resolutions, effective for 10 years, direct the agency to use its compulsory processes to obtain documents and testimony through either demands or subpoenas to investigate allegations that would be a violation of Section 5 of the FTC Act.

#### The FTC has historically stayed out of patent holdup cases, which ensures the aff requires resources

Elizabeth A. N. Haas et al. 18. Partner at Foley & Lardner, 10/10/18. “DOJ and FTC Signal Shifts in Antitrust Enforcement of Essential Patent Disputes.” https://www.foley.com/en/insights/publications/2018/10/doj-and-ftc-signal-shifts-in-antitrust-enforcement

McSweeny noted that FTC challenges to hold-up on antitrust grounds have been relatively rare,6 with only seven significant actions since 1996 across both Republican and Democratic administrations. She also said that they have been important to protecting the integrity of the standard-setting process and concluded by writing that it is “imperative that the FTC continue to take hold-up seriously and not abdicate its antitrust enforcement mission.”

Conclusion

The New Madison Approach has been reported as representing a dramatic change to the enforcement of patent hold-up disputes, but its application remains to be seen. The agencies recognize that a claim for breach of contract may arise but intend to focus on the presence of market power or monopoly power before concluding that an antitrust claim arises. Further, both Delrahim and Simons have suggested a potential role for their agencies in supporting the rights of SEP-holders against SSOs in some situations. How the FTC litigates future matters concerning SEPs and FRAND commitments will merit close watching for any signals it sends regarding changing enforcement priorities, as will any intervention by either agency on behalf of SEP-holders.