# Wiki Doc 1

## 1NC

### 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 – CWS CP

#### The United States federal government should pass a revised CALERA that does not include changes to the Consumer Welfare Standard

And, using the standards defined in CALERA

* Expand merger enforcement against healthcare companies
* Expand funding for the FTC and DOJ
* Create rigorous standards of review and increase scrutiny against healthcare mergers, including shifting the burden of proof to make scrutiny easier
* Reduce common law defenses for healthcare companies against anticompetition laws
* Create whistleblowing incentives for healthcare companies

#### CP does everything except CWS changes and targets healthcare only

LW 21 [Latham & Watkins Antitrust and Competition Practice. "US Senate Bill Would Reshape Antitrust Enforcement and Litigation." 2/18/21. https://www.lw.com/thoughtLeadership/US-Senate-Bill-Would-Reshape-Antitrust-Enforcement-and-Litigation]

CALERA would increase scrutiny for mergers and acquisitions Lower threshold for prohibited mergers One of CALERA’s most notable provisions would replace the current standard for prohibited mergers from those that are demonstrated to “substantially lessen competition” to those that “create an appreciable risk of materially lessening competition.” CALERA defines “materially” to mean “more than de minimis,” but the other terms, including “appreciable risk,” are not defined. The reduced standard would almost certainly mean increased scrutiny for deals, longer and more rigorous review procedures to obtain clearance, and a higher relative rate of blocked deals.

Shifted burden of proof

Under current law, the US government bears the burden to prove that a proposed merger would “substantially lessen competition.” For many transactions, CALERA would shift the burden to merging parties to prove by a preponderance of the evidence that the transaction met the new “appreciable risk” standard. The types of transactions that would be subject to the shifted burden of proof include:  Mergers that would “lead to a significant increase in market concentration in any relevant market” Latham & Watkins February 18, 2021 | Number 2859 | Page 3

 Mergers in which either party has a market share of 50% or more or “otherwise has significant market power,” and the merger involves actual or potential competitors

 Mergers that involve competitors, one of which is a “maverick” or “disrupting” firm

 Mergers that would allow for the exercise of anticompetitive effects, such as the exercise of market power or coordination among competitors in a relevant market

 Mergers that are valued at US$5 billion or more, or those in which the acquirer has “assets, net annual sales, or a market capitalization” of more than US$100 billion and makes an acquisition of

US$50 million or more

This shift in burden would have practical effects on merging companies, which would bear both the cost of making the new showing and the risk that close calls would be decided in favor of the party without the burden (the government). What remains unclear and would likely be the source of significant uncertainty is whether the government or the merging parties would bear the burden of proving that a merger met the conditions for the shifted burden of proof (e.g., whether one of the merging parties had “significant market power” or was a “maverick” or whether the merger would “allow for the exercise of anticompetitive effects”).

Redefined “market power”

The bill introduces a definition of “market power” that is broader than the prevailing common law definition and could expose more companies and transactions to antitrust scrutiny. Specifically, CALERA would define market power as “the ability of a person, or a group of persons acting in concert, to profitably impose terms or conditions on counterparties, including terms regarding price, quantity, product or service quality, or other terms affecting the value of consideration exchanged in the transaction, that are more favorable to the person or group of persons imposing them than what the person or group of persons could obtain in a competitive market.”

CALERA would increase antitrust enforcement and private actions

Widen scope of anticompetitive conduct

In addition to broadening the definition of market power and lowering the standard for prohibited mergers, CALERA would add a new prohibition on “exclusionary conduct that presents an appreciable risk of harming competition.” “Exclusionary conduct” is defined by CALERA as conduct that “materially disadvantages one or more actual or potential competitors,” or “tends to foreclose or limit the ability or incentive of one or more actual or potential competitors to compete.” This prohibition would lead to an increase in claims, and novel allegations of anticompetitive conduct, as litigants would likely try to take advantage of these broad and undefined terms and shape the precedent.

CALERA would implement a rebuttal presumption that “exclusionary conduct” creates an appreciable risk of harming competition when a merging company has a market share of 50% or more or “otherwise has significant market power in the relevant market.” The presumption can be rebutted by a preponderance of the evidence showing any of the following:

 Distinct pro-competitive benefits in the relevant market that eliminate the risk of harming competition

 New entrants or an expanded presence in the market that eliminates the risk of harming competition

 No appreciable risk of harm to competition

Fewer common law defenses for single-firm conduct

CALERA would explicitly undo certain requirements for proving certain “monopolization” and “attempted monopolization” antitrust violations. For instance, the bill would not require a plaintiff alleging an anticompetitive refusal to deal to show that the defendant “altered or terminated a prior course of dealing,” as currently required under common law precedent. Such violations would also no longer require a showing that, among other things (1) a defendant’s conduct “makes no economic sense,” (2) the risk of harm to competition has been quantified, or (3) a defendant’s prices are set “below any measure of the costs to the defendant.” The drafters’ intent to alter this common law defense to a predatory pricing claim is emphasized in the bill’s findings, which note the “flawed assumption” that “above-cost pricing cannot harm competition.”

Meaningful and expensive obstacles for antitrust plaintiffs

The bill would explicitly prohibit courts from requiring plaintiffs to define a relevant antitrust market when the plaintiff can show “direct evidence” of the required level of harm. CALERA would also eliminate the requirement that plaintiffs (in most cases) define a relevant market to establish antitrust liability, but would not prohibit courts from considering market definition evidence in the absence of direct evidence. Market definition is a complicated, expert-intensive, and expensive step for antitrust plaintiffs, and a common basis for defense victories. Removing this requirement would reduce the barriers to plaintiffs in bringing cases (e.g., less expenditure on economic experts, fewer hurdles in bringing cases against defendants who lack significant market share). The result would likely be more complaints filed and more actions surviving early motions to dismiss and proceeding to costly discovery.

More resources for antitrust enforcement agencies

CALERA would significantly increase funding for the FTC and the DOJ, allocating US$300 million in additional funding to each agency. This funding would support a new Office of the Competition Advocate within the FTC, which would have subpoena power over any company that has ever made a merger filing. The Competition Advocate would be empowered to require reporting to allow it to “assess[ ] competition and its impact on the United States, local geographic areas, and different demographic and socioeconomic groups.”

The Competition Advocate would also oversee a new Division of Market Research, which would study evolving market conditions and effects of past mergers — much like the “sector inquiries” carried out by the European Commission — which would most certainly lead to increased investigations and other enforcement activity.

Incentivized whistleblowing

The bill would incentivize reporting of potential antitrust violations by extending anti-retaliation protections to civil whistleblowers, and by providing for a significant monetary award (up to 30% of the collected criminal fines) for whistleblowers who satisfy certain requirements. The potential for a significant personal benefit would not only motivate potential whistleblowers, but could counteract the potential negative impacts of coming forward.

### 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."

#### CALERA shreds CWS

Rozga 21 [Kaj, “Making sense of the sweeping antitrust reform bills in Congress.” 6/25/21. https://techlawdecoded.com/making-sense-of-the-sweeping-antitrust-reform-bills-in-congress/]

Finally, another implication of CALERA which would have a major impact on monopolization claims is to expand the type of anti-competitive harm that is actionable under antitrust laws so that it goes beyond the half-century-in-the-making consumer welfare standard to include a wider range of harms to competition which were endorsed by the Antitrust House Report and reform-minded commentators. Such things could include harm to sellers (for example, in labor markets) and restrictions on innovation, quality, and choice.

#### Changin the consumer welfare standard creates a crisis in antitrust – creates a chilling effect for business confidence, raises prices, and discourages innovation

Wright 19 – Joshua D. Wright, University Professor and Executive Director of the Global Antitrust Institute at George Mason University, “Requiem for a Paradox: The Dubious Rise and Inevitable Fall of Hipster Antitrust,” *Arizona State Law Journal*, 2019, 51 Ariz. St. L.J. 293

Opponents of the modern approach to antitrust law and policy have called for nothing less than the complete dismantling of the consumer welfare standard and the consensus that has been built over the last nearly fifty years through vigorous debate among antitrust practitioners, enforcers, and academics from across the political spectrum about how best to promote competition. It is no exaggeration to say that what these critics desire is an anti-economics revolution that untethers the antitrust laws from a coherent and consistent framework and replaces consumer welfare with vague social and political standards that ultimately would once again plunge antitrust into crisis. 268

In the current debate about the appropriate framework for antitrust analysis, the most often cited replacement for the consumer welfare model is either the "public interest" or "citizen interest" standard.269 The "public" and "citizen" interest standards would purportedly capture a much broader range of potential effects emanating from a challenged transaction or business practice, including: the availability of services, the openness of markets, the stability of global supply chains and financial systems, and the ability of rivals to compete.2 0 Of course, there is reason to believe that any new antitrust standard might also be broad enough to capture other noncompetition factors touted by proponents of consumer welfare reform, such as income inequality,21 undue political influence, and perceived conflicts of interest between firms in a vertical relationship.

Abandoning the consumer welfare standard and embracing the "public" or "citizen" interest standard (or a similar approach) would have significant adverse costs on competition policy. It would again force antitrust to serve multiple masters, many of which have inconsistent interests. The inevitable confusion and lack of unified approach also would create uncertainty in the business community that ultimately would have a chilling effect on procompetitive conduct and encourage new efforts by firms to influence antitrust outcomes through political pressure and agency rent-seeking. This is not mere speculation. Indeed, the history of the Federal Communication Commission (FCC), which employs a similar public interest standard, serves as a prime example of the deleterious effects of vague enforcement standards that are not rooted in economic evidence.2 2

A. Replacing Consumer Welfare with an Incoherent and Inconsistent Approach

Replacing the well-established consumer welfare standard would necessarily require courts to trade off some amount of consumer welfare for some other set of values, thereby throwing open the door to uncertainty and to exploitative behavior. As has been discussed above, decades of debate and case law has worked to refine the precise contours of the consumer welfare standard and to bring consensus about the types of evidence that are indicative of harm to competition and consumers.2"3 The consumer welfare standard employs a variety of economic tools to evaluate the effect transactions and business practices may have on consumers in the form of increased prices, reduced output, reduced innovation. By using current economic theory and empirical evidence as the starting point for creating liability rules and subsequently conducting an evidence-based inquiry into the welfare effects of a particular practice, the consumer welfare model offers a tractable method for weighing procompetitive and anticompetitive effects.

If consumer welfare were to be replaced by some other set of values, the result explicitly would be for courts and enforcers to elevate other factors above consumer welfare and to reach different conclusions about liability. Under a "public interest" or "citizen interest" approach, a transaction that would reduce prices to consumer, increase output, or spur innovation may be prohibited under the antitrust laws for failing to satisfy any number of other vague factors, including failing to leave some arbitrary number of competing firms in the market despite the clear presence of competition or create a more efficient albeit consolidated supply chain. Even more dramatically, a new standard also may result in a transaction that increases prices, reduces output, or stifles innovation to not necessarily run afoul of the antitrust laws if a court concludes that such consumer harm can be tolerated to satisfy other aspects of the multidimensional standard, such as income equality. In light of these very real concerns, a subjective, multiprong antitrust standard untethered from economics offers nothing beyond speculative benefits. Accordingly, it would be imprudent to abandon the consumer welfare standard.

#### The plan spills over, decimating business confidence and overall economic recovery

Trace Mitchell 21, Policy Counsel at NetChoice, JD from the George Mason University, Antonin Scalia Law School, Former Research Associate at the Mercatus Center at George Mason University, BA in Political Science and Government from Florida Gulf Coast University, “Weaponizing Antitrust to Attack Big Tech Is a Bad Idea”, Morning Consult, 3/3/2021, https://morningconsult.com/opinions/weaponizing-antitrust-to-attack-big-tech-is-a-bad-idea/

From the House Judiciary report calling for dramatic antitrust reform to federal antitrust regulators and state attorneys general initiating lawsuits against Facebook and Google, government officials are once again calling for more aggressive antitrust enforcement to go after America’s tech businesses.

And while critics from all sides are reaching for any and all tools to go after “Big Tech,” weaponizing antitrust will only end up harming American consumers and the American economy at a time when we’re still trying to keep our heads above water.

Using antitrust to go after American tech won’t stop at Silicon Valley. Every sector of our economy will be at risk of politically motivated antitrust enforcement. And that won’t just hurt consumers searching for information on Google or shopping for products on Amazon — America’s economy could lose its global competitiveness amid a global pandemic.

In fact, the recent cases against Google from the Department of Justice and state attorneys general are a great example of just how this misuse of antitrust could harm Americans across the country and halt innovation in its tracks.

These suits conveniently forget how consumers benefit from Google’s suite of products in attempts to claim that Google unfairly monopolized the search and search advertising markets. Even worse, by claiming consumer harm, the government fails to truly grasp what consumers actually want.

You see, under the consumer welfare standard, antitrust enforcement is built to focus on what consumers want and whether consumers benefit. When the government argues Google is harming Americans because its products are preinstalled and even the default search engine on Apple, the government forgets that American consumers don’t think this is a problem.

The vast majority of search users prefer Google to its competitors. And through preinstallation, we get free-to-use products, quick searches and near-limitless information in an integrated system with the click of a mouse. It isn’t a problem; it’s a time saver. Further, because Google can reinvest in developing more user-friendly tech in a preinstalled ecosystem, we get interoperable apps that make our experience that much more convenient and intuitive. And even if consumers do want a different app, they can fix this problem with no heavy leg work or travel — just the swipe of a finger.

But if the government gets its way, the message could be disastrous for innovation: Even if your business benefits Americans and improves the user experience, the government can still put a target on your back. Not to mention, the government would be more likely to put a target on your back if you’re large and politically disfavored. Consumers across the internet and the American economy would be hurt and left without more accessible and more affordable technology as options.

We should be working to reward, not punish, innovation. Otherwise, the next Google may just decide it isn’t worth the time and effort.

Similarly, the Federal Trade Commission’s recent case against Facebook also puts the wants of policymakers above the actual interests of consumers.

Here, the government claims that Facebook harms consumers by acquiring and then integrating services like Instagram and WhatsApp. So harmful, the Federal Trade Commission says, that Facebook must divest from these services, even if that would harm American consumers, innovation and entrepreneurship for decades to come.

But this is not a case of consumer harm or bad behavior — Facebook’s acquisition of Instagram and WhatsApp helped ensure that consumers’ desires were prioritized. Through millions of investment dollars into research and development, Facebook turned good services into great services that consumers actively keep coming back to.

Through relentless product improvement, WhatsApp became a free-to-use platform and Instagram became one of the most successful photo-sharing social media apps in the world. In both cases, consumers benefited from convenient and state-of-the-art advancements. No longer do we have to pay to use messaging or search through multiple results to shop our influencer feed.

As it stands, the Federal Trade Commission case could splinter one successful tech company into multiple, less efficient organizations, setting a precedent that could affect every American industry. Consumers would not only lose Facebook’s free-to-use services but also potentially the next big clothing brand or the next hit microbrewed beer.

By impeding mergers, the sheer fear of potential antitrust enforcement would shutter the doors on small businesses from all sectors of the economy. So much investment in innovation is built on the possibility of being acquired by a larger player. Entrepreneurs and innovators from manufacturing, automotive and tech alike would be left with an unfortunate takeaway — succeed and benefit consumers, but not too much.

And with an economy still struggling to recover, the absolute last thing we need is to leave consumers without innovative and affordable choices, small businesses without key investment opportunities and our economy without a competitive edge globally.

But by weaponizing antitrust, we’ll get neither thoughtful intervention nor consumer benefits. Instead, the United States will lose ground to foreign competitors and American consumers will ultimately pay the price.

#### 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 – States CP

#### The 50 states and relevant sub-federal entities should substantially increase prohibitions on anticompetitive business practices outlined in CALERA

#### The United States federal government should not preempt it.

#### That solves

Juan A. Arteaga 21, Partner at Crowell & Moring LLP, Former Senior Official in the Antitrust Division of the US Department of Justice, JD from Columbia Law School, and Jordan Ludwig, Counsel in the Antitrust Group at Crowell & Moring LLP, JD from Loyola Law School, “The Role of US State Antitrust Enforcement”, Private Litigation Guide – Second Edition, Global Competition Review, 1/28/2021, https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement

Prior to the enactment of the first federal antitrust law – the Sherman Act – in 1890, state antitrust enforcement was quite robust in the United States because at least 26 states had already enacted some form of antitrust prohibition.[2] In addition, state enforcers had often used general corporation law and common law restraint of trade principles to regulate anticompetitive business practices and transactions.[3] This well-established state antitrust enforcement infrastructure – coupled with the fact that the Antitrust Division and FTC had only recently been created – permitted state attorneys general to continue playing a leading enforcement role for the first 30 years after the Sherman Act’s passage.[4] Indeed, state attorneys general successfully prosecuted a number of the most consequential antitrust enforcement actions during this period.[5]

In the early 1920s, however, state antitrust enforcers began playing a less prominent role because ‘the national dimension of the most important trusts, . . . as well as their ability to restructure in order to evade problematic state laws’, made clear that the federal government needed to step forward in order to adequately protect consumers and the competitive process.[6] As a result, the DOJ and FTC – whose national jurisdiction and greater resources enabled them to tackle the most pressing competition issues of the time – displaced state attorneys general as the primary source of government antitrust enforcement within the United States.[7] This largely remained true until the mid-1970s when Congress, in response to the DOJ and FTC’s perceived inactivity, passed two laws that expanded the authority of state attorneys general to enforce the federal antitrust laws and provided them with financial resources to do so.[8]

In 1976, Congress passed the Hart-Scott-Rodino Antitrust Improvement Act, which, among other things, authorised state attorneys general to bring *parens patriae* suits (i.e., legal actions brought on behalf of natural persons residing within their states) seeking monetary (treble damages) and injunctive relief for Sherman Act violations.[9] Congress also passed the Crime Control Act of 1976, which, among other things, provided state attorneys general with tens of millions in federal grants as ‘seed money’ for the creation of antitrust bureaus within their offices.[10] These laws had their intended effect of reinvigorating state antitrust enforcement.

During the 1980s, for example, state attorneys general once again emerged as vigorous antitrust enforcers, especially with respect to the prosecution of resale price maintenance practices and other vertical restraints.[11] The rise in the level and prominence of state antitrust enforcement during this period was largely due to a perceived enforcement void at the federal level, where the DOJ and FTC had mostly limited their focus to ‘prohibiting cartels and large horizontal mergers’.[12] No longer content with ceding antitrust enforcement to federal enforcers, state attorneys general expanded their antitrust dockets from prosecuting purely ‘local matters, such as bid-rigging on state contracts’, to actively investigating and litigating matters with multistate and national implications.[13] To help ensure that they had a larger seat at the antitrust enforcement table, state attorneys general also increased the coordination of their enforcement efforts and competition advocacy through organisations such as the National Association of Attorneys General (NAAG), which created a Multistate Antitrust Task Force and issued state Vertical Restraints and Horizontal Merger Guidelines during this period.[14]

Since the reawakening of state antitrust enforcement nearly 30 years ago, state attorneys general have continued to play an important role in the enforcement of both state and federal antitrust laws. During periods of lax federal antitrust enforcement, state attorneys general have often ramped up their enforcement activity in order to protect consumers from anticompetitive transactions and business practices.[15] During periods of vigorous federal antitrust enforcement, they have often served as strong partners for the DOJ and FTC by, among other things, offering valuable insights about competitive dynamics in local markets, assisting with obtaining information from key market participants (including state governmental entities that are direct purchasers of goods and services), and helping develop and implement litigation strategies for cases being tried before federal judges presiding in their states.[16]

Since January 2017, state attorneys general have increasingly played a leading and independent antitrust enforcement role. State antitrust enforcers have significantly increased their enforcement activity and willingness to act separately from their federal counterparts because many of them believe that there has been ‘under-enforcement’ by the DOJ and FTC.[17] State antitrust enforcers have also been able to enhance their influence over key competition policy issues and the antitrust enforcement agenda within the United States because there appears to have been a significant decline in the coordination and relationship between the DOJ and FTC.[18]

In once again flexing their enforcement muscle, state attorneys general have shown a willingness to publicly disagree with the DOJ and FTC on both policy and enforcement decisions, and have also sought to pressure their federal counterparts into more aggressively policing certain industries. Recent examples of the increased independence and assertiveness of state antitrust enforcers include:

* The DOJ, FTC and several state attorneys general have been actively investigating and prosecuting ‘no-poach’ agreements (i.e., where competitors for employees agree not to recruit or hire each other’s employees) in recent years. However, the DOJ and state attorneys general have taken directly opposing positions in private litigation challenging the legality of ‘no-poach’ clauses in corporate franchise agreements. The DOJ has argued that courts should review these clauses under the rule of reason whereas various state attorneys general have argued that these clauses should be deemed per se unlawful.[24]
* In their joint investigation into the T-Mobile/Sprint merger, nearly 20 state attorneys general sued to block the transaction in September 2019 even though the DOJ, along with seven state attorneys general, approved the deal after securing certain structural and behavioural remedies.[19] After the DOJ announced its proposed settlement with the companies, the Attorney General for New York, who led the states’ challenge to the merger, issued a press release dismissing the adequacy of the remedies negotiated by the DOJ: ‘The promises made by [the divestiture buyer] and [the merging companies] in this deal are the kinds of promises only robust competition can guarantee. We have serious concerns that cobbling together this new fourth mobile [phone] player, with the government picking winners and losers, will not address the merger’s harm to consumers, workers, and innovation.’[20] Thereafter, the DOJ opposed the states’ enforcement action by, among other things, moving to disqualify the private counsel hired by the states to represent them[21] and filing submissions that argued against the states’ requested injunction.[22] Ultimately, the state attorneys general were unsuccessful in their bid to block the deal.[23]
* None of the more than 20 state attorney general offices that actively investigated the AT&T/Time Warner merger joined the DOJ’s unsuccessful challenge to the transaction despite the DOJ’s concerted effort to secure their support.[25] In fact, nine state attorneys general filed an amicus brief opposing the DOJ’s appeal of the trial court’s decision.[26]
* After the FTC declined to seek any Colorado-related remedies in connection with Optum’s acquisition of DaVita Medical Group, the Attorney General for Colorado required the merging companies to lift the exclusivity provisions in contracts with certain healthcare providers and to extend their existing contracts with certain health insurers. In announcing this settlement, the Colorado Attorney General stated: ‘I recognize that this case marks an important step in state antitrust enforcement . . . . I am committed to protecting all Coloradans from anticompetitive consolidation and practices, and will do so whether or not the federal government acts to protect Coloradans.’[27]

After voicing displeasure with federal antitrust enforcement in the technology sector, numerous state attorneys general launched their independent investigations into ‘Big Tech’ companies even though the DOJ and FTC have ongoing investigations into these companies.[28]

### 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 – Single Payer CP

#### The United States federal government should establish single-payer health insurance in the United States.

#### Solves health care inequality

David A. ANSELL 9/13, a professor of internal medicine, senior vice president for community health equity at Rush University Medical Center in Chicago [“I watched my patients die of poverty for 40 years. It’s time for single-payer,” *The Washington Post*, September 13, 2017, https://www.washingtonpost.com/news/posteverything/wp/2017/09/12/i-watched-my-patients-die-of-poverty-for-40-years-its-time-for-single-payer/?hpid=hp\_no-name\_opinion-card-d%3Ahomepage%2Fstory&utm\_term=.13fb72716174]

My experiences also reflect the observations of Princeton economist Angus Deaton, who noted that the United States virtually has an apartheid health-care system. As structural racism has concentrated black and brown poverty into certain Zip codes, the hospitals and clinics serving minority neighborhoods often face severe resource challenges compared with those serving affluent neighborhoods of concentrated advantage. This inequity is only magnified by the way health insurance has been distributed across America. But it not just the poorest who are at risk. Our current multi-payer for-profit health insurance system perpetuates premature death by putting many people at an extreme disadvantage when it comes to affording care. Those who have better health insurance policies can access better care. However, even patients with insurance cards face skyrocketing co-pays, deductibles and pharmaceutical prices that keep them from seeking care. Last year, 27 percent of Americans said they had postponed or avoided getting care they needed because of the cost; 23 percent said they had skipped a recommended test or treatment due to cost; and 21 percent said they had chosen not to fill prescriptions for medication because they couldn’t afford it.

Death rates tell the same story. Since 1980, there have been dramatic gains in life expectancy for the top 20 percent of U.S. earners. At the same time, the poorest 20 percent have seen their life expectancy plummet. While access to health insurance is not the only cause, it certainly contributes to the life expectancy gap. In Canada, with its single-payer health insurance, the life expectancy gap between the rich and the poor narrowed during the same period.

There are three fundamental problems with the patchwork U.S. health insurance landscape that a Medicare-for-all system would resolve. First, our current reliance on for-profit insurance forces working families to pay increasingly burdensome prices for health services and prescription drugs. The Affordable Care Act was never a viable solution, because it relies on the for-profit insurance industry, which is geared to maximize shareholder returns rather than high-quality, low-cost care for all. Meanwhile, taxpayers have funneled billions of dollars to support premiums for individuals and subsidies for insurance companies. Second, Medicaid, the health insurance program for the poor, shares many of these same flaws. The quality of the program varies by state and is a major burden on state budgets. Finally, the current system is inequitable for low-income or uninsured patients. Every day, people such as Sarai die when they could have been saved.

The best solution is a national solution; one that has been implemented by nearly every other developed nation. Medicare, the popular insurance program for those over 65 and people with disabilities, has a 90 percent satisfaction rate. Under a Medicare-for-all program, every worker and business in America would pay into the system through a combination of payroll and other taxes and fees, just as we pay taxes and fees for schools, water and the military. There would be no complex health insurance payments to navigate, no prohibitive co-pays and deductibles, no corporate welfare to boost insurance company profits. Untangling health care from employment would not only free workers to change jobs or start new businesses, but would also eliminate the largest and most stealthy tax loophole in the U.S. tax code: the $250 billion annual tax-free subsidy of employer-based health insurance.

Medicare for all would solve the problems of health-care access for the poor and rural. Such a system would allow hospitals and clinics to survive at a time when many of them — often the largest employers in their communities — are threatened with extinction. Moreover, it creates the opportunity for America to eliminate health inequities and improve life expectancy because, by design, everyone will be in and no one will be left out.

#### And innovation

**Merelli 15** (Annalisa, reporter at Quartz, 9/25, “The way to fix outrageous drug pricing in the US is simply to do what all other rich countries do,” https://qz.com/509344/the-way-to-fix-outrageous-drug-pricing-in-the-us-is-simply-to-do-what-all-other-rich-countries-do/)

When news broke that the price of Daraprim, a 62-year-old life-saving drug often prescribed to AIDS patient, had been raised from $13.50 a tablet to $750, outrage ensued. The steep rise was announced on Sept. 20 by Turing Pharmaceuticals, a startup that, according to the New York Times, acquired the rights to the medication in August, and immediately after increased its price by over 5,500%. Turing’s CEO, former hedge fund manger Martin Shkreli, publicly defended his decision to raise the drug price saying that the new profit would be invested in further research and the drug’s new cost was more in line with that of other life-saving drugs. But he eventually gave in and announced a price revision. While insults of all kinds have been thrown at “Pharma Bro,” he is not the real villain but rather someone trying to do his job, which is to make a profit. The villain is the system. A privately funded healthcare system, as the one at work in the US, sets all the conditions that allow Shkreli’s actions. What’s more, they seem perfectly justifiable if viewed from the perspective of entrepreneurship. Health is arguably the most valuable of goods, and if you let the market determine its price without regulation, well, suppliers will always try and get the highest price they can. It’s the market, stupid Americans pay far more than any other country for prescription drugs. In fact, Americans overpay for every aspect of healthcare: procedures and services are the most expensive in the world, because efficiency plays no role in rewarding the healthcare providers. As Dr. Stephen Ondra—who works as chief medical officer for customer-owned health insurance company Health Care Service Corporation—told Quartz, “right now inefficiency is rewarded, the more you do to get an outcome, the more you make.” There is a common denominator behind all of this: the free, unregulated market. The US is an outlier among industrialized nation: it’s the only rich country that does not offer a publicly funded health system, relying instead largely on private insurance. This affects the pricing of drugs in several ways that are independent from the actual regulations imposed on pharmaceutical companies. First, and perhaps most importantly, the power in setting the price for drugs is skewed toward drug manufacturers. Unlike countries where universal health coverage is in place, the negotiating is left to individual care providers rather than being in the hand of a large, publicly funded buyer that’s able to negotiate since it purchases most (if not all) of the drugs. For those with health insurance, high drug prices result in higher premiums, but it’s hard to notice the price increases directly. This means consumers lack awareness of the actual medication prices, and consequently, any pressure to keep them under control. Plus, the costs of bringing a drug into the US market are higher, partially because of marketing expenses. The US is one of only two countries (the other being New Zealand) that allows direct-to-consumer advertisement of prescription drugs, while elsewhere promotion is limited to medical professionals. This raises the already steep marketing bill of drugs manufacturers. As Robert Yates, former World Health Organization senior health economist told Quartz, “the amount [pharmaceutical companies] spend on marketing is massively more than they do on research and development.” Finally, pharmaceutical companies can count on tens of billions of dollars in revenue, at higher margins than most other sectors (with the sole exception of software). So they make the most of the opportunity to advertise directly to the customer in the world’s only rich market that’s unregulated. With more advertising come more requests of specific brand names, which in turn can cause higher volumes of prescriptions, overmedication, and price hikes.

### 1NC – FDI DA

#### FDI’s rebounding but highly competitive – policy certainty is key

Kusek 21 [Peter Kusek, Senior Economist and Global Lead, World Bank. Caroline Freund, Dean of the UC San Diego School of Global Policy and Strategy. Abhishek Saurav, Senior Economist with the Global Investment Climate Unit of the World Bank Group’s Finance, Competitiveness & Innovation Global Practice. “Foreign investors cautiously see brighter skies ahead after pandemic shock.” 5/3/21. https://blogs.worldbank.org/psd/foreign-investors-cautiously-see-brighter-skies-ahead-after-pandemic-shock]

The outlook for foreign investment is beginning to look a bit brighter after more than a year of severe shock from COVID-19. The pandemic affected output and trade, and caused global foreign direct investment (FDI) flows to fall by more than 40 percent. While global trade rebounded in the second half of 2020, FDI remained weak. But with the global economy expected to grow by 4 percent in 2021, foreign investors may be ready to plan for future expansion—with caution.

Results from the latest World Bank’s quarterly Global Pulse Survey of multinational enterprises (MNEs) in developing countries show a stabilizing investment outlook for MNEs compared with earlier rounds of the survey in 2020. Three-quarters of respondents surveyed in the fourth quarter (October-December) expected to maintain their current level of investment and very few expected to reduce investment. MNEs also reported limited plans for a significant reorganization of investment locations, business models, or supply chain structures.

Still, uncertainty over the course of the economic recovery remains. Foreign direct investment has the potential to support recovery by creating jobs and boosting productivity. To realize this potential, it is critical for countries to have in place the right FDI policies to enhance their competitiveness and give firms the confidence to invest.

Lingering pandemic effects

Despite the gradual improvement overall, the survey showed that the adverse effects of the pandemic were still felt in the fourth quarter of 2020. More than 90 percent of respondents reported being adversely affected in at least one business dimension in both the third and fourth quarters of last year.

MNEs in the manufacturing sector continued to be more negatively affected than those in services, a trend largely driven by weak demand and lingering supply chain disruptions. The sample in the service sector included mainly companies in IT, finance, professional, and logistics services. A higher share of manufacturing firms (71 percent) reported reduced output, compared to 55 percent of service sector firms.

Figure 1: Effects of the pandemic were still being felt in Q4, although the situation is improving

Stabilizing foreign direct investment

After a steep decline in FDI in 2020, investors are still largely waiting on sidelines. FDI data indicate that the pipeline for greenfield investment is limited. The value of new greenfield FDI announcements in developing countries plunged in 2020 and remained more than 50 percent below 2019 levels in the fourth quarter.

However, survey data suggested that the near-term outlook for foreign investment is stabilizing. In the previous survey round (third quarter of 2020), 39 percent of respondents indicated that their parent company planned to invest less. In the current round this share dropped to about 1 percent, suggesting MNEs’ earlier negative outlook may have been driven by short-term investment plans.

Nonetheless, few MNE affiliates are planning to expand investment in the next one to three years. Three quarters of firms reported that investment levels were expected to remain the same (up from 46 percent in the third quarter), while 17 percent expected investment to increase (up slightly from 13 percent in the third quarter).

Figure 2: Cautious optimism amid uncertainty—the investment outlook in the next 1-3 years is stabilizing

Policies, Growth, and Costs Remain Key to Competitiveness

Survey data confirm what literature has consistently shown about the importance of FDI policies in shaping the attractiveness of countries as investment destinations. Among MNE affiliates that expect their parents to invest more in the host economy in the coming years, nine out of ten identify expected or realized changes in the investment policy environment as a driver of their expansion plans.

Figure 3: New investments are driven by FDI regulations, growth markets, and low cost (n = 56)

New investments graph

With prospects of global recovery expected to be uneven, multinational companies are also significantly driven by shifts toward countries that offer larger markets or faster-growth opportunities. Four in five businesses cited this motivation. As always, cost competitiveness of host economies remains a major driver of investment plans. Three in five cited this motivation. To a lesser degree, some investment decisions could be driven by diversifying production locations and adjustments in global value chains aimed at nearshoring or reshoring.

The near-term outlook for foreign investment may be stabilizing, but it will remain highly competitive. Countries should use the crisis as an opportunity to reform trade and investment policies, boost investor confidence, so they can attract foreign investment capital needed to underpin recovery.

#### The plan decks FDI – risk aversion, information asymmetries, protectionist application

Clougherty 21 [Joseph A. Clougherty, Gies College of Business, University of Illinois at Urbana-Champaign, Nan Zhang College of Business Administration, California State University Stanislaus, "Foreign investor reactions to risk and uncertainty in antitrust: U.S. merger policy investigations and the deterrence of foreign acquirer presence", April 2021, Journal of International Business Studies, https://experts.illinois.edu/en/publications/foreign-investor-reactions-to-risk-and-uncertainty-in-antitrust-u]

The concept of risk goes back to Knight’s (1921) fundamental insights, where he considered risk to be a known probability distribution over a set of events; for example, flipping a coin involves risk, but with known odds. In moving from the concept of risk to its application in IB political risk, Kobrin (1979) observes that risk is at play when managers have knowledge regarding the possibility and probability of different political outcomes via either calculations or past experience statistics. While the relevant information is available with political risk, and observers generally agree with respect to the probabilities of different outcomes, foreign investors are often considered to be at a disadvantage as compared to domestic investors due in part to inherent information asymmetries (Gehrig, 1993; Gordon & Bovenberg, 1996; Liesch et al., 2011). As Gehrig (1993: 98) makes clear, “information may have to be interpreted in the light of the legal conventions and business culture of a particular community, which may be difficult for foreigners to assess”. Thus, domestic investors are better informed and better able to interpret the relevant probabilities as compared to foreign investors, and, as a result, foreign managers tend to overestimate the risks and underestimate the benefits involved with host-country investment activities (Liesch et al., 2011). Simply put, the lack of information, knowledge, and experience with respect to the intricacies of host-country activities accentuates the perceptions of risk when considering foreign investments. A great deal of the political risk literature accordingly focuses on the probabilistic estimates of different policy outcomes and how increased risk leads to decreased foreign investment activities. With the above as a backdrop, we consider how the policy risk involved with merger control might disproportionately affect foreign investors considering participating in the local markets for corporate control.

First, the presence of a host-country merger policy involves transaction costs that foreign investors must factor when deciding upon whether – and to what extent – to make a cross-border acquisition. Navigating the host-nation’s merger review process also involves several direct costs – e.g., legal, transaction filing, and advisory services fees – in order to clear the transaction (Hemphill, 2010). In addition, acquiring firms face internal organizational costs that require in-house legal expertise as well as managerial time and commitment due to the presence of host-nation merger policies. Importantly, the direct costs and transaction costs involved with the merger review process are particularly salient for foreign acquirers as compared to domestic acquirers. For one, foreign investors will be generally unfamiliar with the institutions, values, norms, and networks that are embedded within the host-nation’s antitrust institutional environment (Jorde & Teece, 1990). For example, General Electric exhibited unfamiliarity with European Commission (EC) regulatory procedures in offering concessions to EC officials for the proposed Honeywell acquisition that would have been more appropriate in the U.S. institutional context (Desai, Villalonga, & Veblen, 2005; The Economist, 2001). As such, acquiring firms often enter negotiations with antitrust officials in order to come to a negotiated settlement with respect to the conditions and remedial actions necessary for successful resolution of antitrust concerns (Farrell, 2003). Yet, as Grosse and Behrman (1992) highlight, multinational firms are at a distinct bargaining disadvantage when the host-country institutions are strong and when the multinational lacks salient information about the institutional environment. As a result, the policy risk involved with greater degrees of merger policy enforcement will lead to disproportionate deterrence of foreign acquirer activities as compared to domestic acquirer activities, due to foreign acquirers being more likely to incur costly and inappropriate regulatory efforts that do not ultimately deliver successful antitrust approval.

Second, foreign acquirers will tend to be more risk averse as compared to domestic acquirers when factoring the costs involved with greater degrees of merger policy risk. As George, Chattopadhyay, Sitkin, and Barden (2006) point out, risky behavior is more likely when managers perceive a sense of mastery or control over a particular domain; thus, higher degrees of merger policy risk will not be experienced by foreign investors with the same sense of control over the review process as experienced by domestic investors. In fact, Kobrin (1979) highlights that perceptions of risk are a function of the available information and previous experiences – qualities which are both less likely to characterize foreign acquirers as compared to domestic acquirers. Liesch et al. (2011: 856) summarize the above well when they state “many firms have been found to be lacking in information and knowledge about, and experience in … the practicalities of international activity” thereby accentuating perceptions of political risk. As a result, the policy risk involved with greater degrees of merger policy enforcement will lead to disproportionate deterrence of foreign acquirer activities as compared to domestic acquirer activities due to the inherent differences in risk tolerance exhibited by foreign and domestic investors.

Third, the application of merger policy might disproportionately target the acquisitions undertaken by foreign investors as compared to the acquisitions undertaken by domestic investors. Vadlamannati (2012: 115) outlines how a substantial amount of political risk derives from the fact that governments often “buckle under lobbying pressure from local firms seeking preferential treatment vis-à-vis the foreign firms”. Antitrust agencies are ostensibly independent from political influence; yet, in very few instances are such institutions fully independent of politics. In fact, a number of scholars (e.g., Coate, Higgins, & McChesney, 1990; Faith, Leavens, & Tollison, 1982; Mehta, Srinivasan, & Zhao, 2020; Neven, Papandropoulos, & Seabright, 1998) consider antitrust outcomes to be – at least partially – subject to political pressure. Yet, foreign firms suffer from a liability of foreignness when attempting to influence national authorities, as they are simply less capable and legitimate as compared to domestic firms in terms of employing the political economic mechanisms that yield privileges via corporate political strategy (Boddewyn, 1988; Grosse, 2005; Hymer, 1976 [1960]; Kindleberger, 1969; Zaheer, 1995). Accordingly, antitrust authorities face political pressure to provide some leniency that favors domestic investors (Rodriguez & Menon, 2010). In line with these priors, the Chinese (Horton, 2016; Zhang & Zhang, 2010) and EC antitrust authorities (Aktas et al., 2007; Dinc & Erel, 2013) have been reported to protect indigenous firms by treating domestic acquisitions more leniently than foreign acquisitions. As a result, the policy risk involved with greater degrees of merger policy enforcement will lead to disproportionate deterrence of foreign acquirer as compared to domestic acquirer activities due to foreign acquirers receiving greater antitrust scrutiny.

Summarizing the above, merger policy risk likely involves a larger deterrence effect with respect to foreign acquirer activities as compared to domestic acquirer activities in local M&A markets due to the presence of three mechanisms. First, merger policy involves costs that acquiring firms must incur while navigating the merger review process, and foreign investors disproportionately experience these costs due to their inherent liabilities and information asymmetries. Second, foreign investors tend to be more risk averse as compared to domestic investors which in turn generates more cautious investment behavior. Third, antitrust agencies potentially scrutinize the acquisition activities undertaken by foreign investors more than the acquisition activities undertaken by domestic investors. These three mechanisms negatively impact foreign acquisitions of indigenous firms and deter future foreign investors who refrain from cross-border acquisitions due to the presence of these realities (Dinc & Erel, 2013). Based on the above reasoning, our first theoretical prior can be formulated as follows:

#### Great power war

Bussman 10 [Margit Bussman, Professor of International Relations, University of Greifswald. “Foreign direct investment and militarized international conflict.” March 2010. https://www.jstor.org/stable/25654551]

Abstract

Liberals claim that countries avoid conflict in order not to disrupt economically beneficial exchange. The statement that economic integration reduces the likelihood of conflict is largely based on the effects of trade. A similar rationale can be applied to economic interdependence in the form of international capital exchange. A state is expected to avoid political risk, especially severe forms such as militarized disputes, in order not to deter investors. This study tests, on the dyadic and monadic levels of analyses, whether the liberal peace proposition holds when economic integration is operationalized as foreign direct investment (FDI) stocks, inflows, and outflows. The results for the years 1980-2000 indicate that inflows and stock of foreign investment reduce the risk of an outbreak of a fatal dispute, regardless of whether they are tested in a single equation or a simultaneous equation model. Thus, reverse causality does not bias the pacifying effect of foreign investment inflows and stock. The results also support the underlying notion of the commercial peace that militarized conflicts inhibit foreign investment. The onset of a fatal conflict reduces FDI inflows, and, if tested in a two-stage instrumental variable approach, FDI stock, the most complete measure of economic integration through foreign investment. Accounting for endogeneity seems particularly important when analyzing the link between the onset of fatal disputes and the outflow of FDI.

Introduction

The notion that economically integrated states are less likely to be involved in militarized disputes attracts widespread attention in the peace research community. However, the focus is on one aspect of economic integration: trade of goods. Other forms of economic exchange do not receive the same consideration. This is a shortcoming, especially with regard to the growing nature of the exchange of international production. From 1980 to 2002, foreign direct investment (FDI) stock increased tenfold, with a particularly drastic rise in developing countries in the 1990s, when the growth of FDI stock exceeded the growth of world exports (UNCTAD, 1995, 2003). As with trade, foreign investment could be an important factor in promoting peace. States might avoid violent conflict in order not to deter foreign investors.

In turn, the presence or anticipation of armed conflicts plays a potentially crucial role in disrupting not just trade flows (Long, 2008) but also foreign investment. Location decisions of investors are driven not only by the economic policy of the host country but also by the political risk involved. There are several providers that offer political risk assessments to governments and private companies, such as the Economist Intelligent Unit or the Political Risk Services Group that account, among others, for international disputes as a risk factor in the political environment. The importance of war for foreign investment decisions is also reflected in various national investment guarantee programs that insure against political risk. For example, the US government, through the Overseas Private Investment Corporation, or the German government, through PwC Deutsche Revision, permit coverage against expropriation risk, currency inconvertibility risk, and war risk (Wells, 1998). War risk includes hostile actions taken by national or international forces, civil war, revolution, insurrection, or terrorism. By avoiding conflicts and ensuring political stability, host countries can thus create an environment that is favourable to FDI. This study tests whether the liberal peace proposition holds when economic interdependence is operationalized as foreign direct investment inflows, outflows, and stock.

The results indicate that FDI inflows and stock reduce the risk of an onset of a fatal dispute. Endogeneity does not seem to bias this finding. Instead, reverse causality might impede the analysis of the effect of conflict on FDI. The finding that the onset of a fatal conflict reduces FDI inflows, outflows, and stock is significantly supported only if we estimate the relationship in a two-stage model. The results underline the importance of properly accounting for endogeneity when testing the relationship of conflict and economic integration. The endogenous character seems especially crucial for the analysis of the link between outflowing capital and conflict.

Economic interdependence and international conflict

Classical liberal theory states that the existence and spread of free trade regimes reduce the likelihood of conflict. Economically interdependent states are reluctant to become involved in militarized disputes out of fear that conflict disrupts trade and foreign investment and thus induces costs on the opponents. Suspending trade and investment would decrease the income for many industries and reduce economic growth. By creating higher interdependence among countries, mutually beneficial trade encourages states to look for peaceful solutions to conflicts. It is not in a country's interest to go to war with a state with which its private economic agents maintain an extensive exchange of goods and capital (Russett & Oneal, 2001). Hence, the cost-benefit calculations keep states from getting involved in a militarized conflict out of fear of deterring foreign investment. Companies invest in a foreign country because they want to earn higher profits. Benefits depend largely on the size of the market and its potential for development (e.g. Schneider & Frey, 1985). An additional component in the cost-benefit calculations of enterprises is the assessment of economic and political risks. Militarized disputes are such a political risk that investors take into account. If the costs associated with this risk are higher than the expected benefits, corporations might decide against the investment, unless the country is affected by conflict to a small extent so that the risk for investors is minor or non-existent.

Recent theoretical developments qualify the cost-benefit calculations of trade and introduce information as an important component in the explanation of the pacifying aspect of economic interdependence. Through trade and other forms of economic interaction, states reveal information, and thus relations become more transparent and reduce uncertainty. Increased interdependence not only raises the costs of a conflict, but also improves the information about the estimated costs a conflict might impose on its opponents and how these costs are distributed (Reed, 2003). If informational asymmetry is an important cause of conflict, methods, other than war, that reduce uncertainty by sending costly signals can promote peace (Fearon, 1995). Globalization facilitates costly signaling by making communication credible and talk costly. It becomes more difficult for leaders to act politically without considering the economic costs. Thus, global markets act as a forum to signal resolve (Gartzke & Li, 2003; Gartzke, Li & Boehmer, 2001).

### 1NC – Regs CP

#### The United States federal government should establish and enforce regulations that curtail anticompetitive business practices outlined in CALERA

#### Solves best

Wu 17 [Tim Wu, legal scholar and professor of law at Columbia University. Also is now official in the Biden White House with responsibility for Technology and Competition policy. “Antitrust via Rulemaking: Competition Catalysts.” 2017. https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3057&context=faculty\_scholarship]

In its March 26, 2016 issue, The Economist magazine announced that “America needs a giant dose of competition.”1 Its study of industry concentration and profits suggested that, after decades of consolidation, competition had decreased across a broad range of the American economy.2 An April 2016 issue brief by the Council of Economic Advisors reached similar conclusions, stating that “competition appears to be declining” due to “increasing industry concentration, increasing rents accruing to a few firms, and lower levels of firm entry and labor market mobility.”3

The promotion of competition in the American economy is a task that has traditionally fallen to the enforcement agencies at the federal and state level, relying on the main antitrust statutes. 4 However, the challenge of declining competition has also prompted interest in the use of regulatory alternatives to antitrust to “catalyze” competition.5 The strategy involves using industry-specific statutes, rulemakings, or other tools of the regulatory state to achieve the traditional competition goals associated with the antitrust laws.6 Hence, “antitrust via rulemaking.”

While conducting competition policy outside of the main antitrust laws is not entirely new, it came into some prominence through an April 15, 2016 Executive Order issued by the White House.7 In that order, the President charged the executive agencies as follows:

Executive departments and agencies with authorities that could be used to enhance competition (agencies) shall, where consistent with other laws, use those authorities to promote competition, arm consumers and workers with the information they need to make informed choices, and eliminate regulations that restrict competition without corresponding benefits to the American public.

In the field of administrative law, there is a longstanding debate over the relative merits of rulemaking and adjudication.9 Beginning in the 1960s there was a decisive shift among most agencies toward rulemaking. 10 However, with exceptions (most of which are described here), the promotion of competition – the antitrust regime – remains rooted in an adjudication model, and might even be described as stuck there. More effective and widespread promotion of competition may require more widespread and effective use of pro-competitive rulemaking by a broader variety of agencies.

### 1NC – FTC DA

Tradeoff 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.

## Adv 1

### 1NC – Fails

#### No internal link – Mccarran Ferguson was removed – here’s the 1AC internal that says it’s important – Cal inserts yellow [they read it too, for reference]

**OMI 17** {Open Markets Institute, Anti-Monopoly Basics Health Insurance and Monopoly https://www.openmarketsinstitute.org/learn/health-insurance-monopoly}

When Americans buy health insurance they typically findtheyhave fewer andfewer choices. In some states,such as Alabama,a single insurancecompany has anear totalmonopoly. **In half of** all **metro areas,** just **two** health **insurers divide**[**two-thirds**](https://www.brookings.edu/research/making-health-care-markets-work-competition-policy-for-health-care/)**of the market.** This high degree of concentration has been building for years. **A**[**study**](http://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.102.2.1161) published in the *American Economics Review*in 2012 **found** that the share of U.S. communitiesinwhich health **insurance markets had become “highly concentrated”** (using the standard deployed by Federal anti-trust regulators) **increased** **from 68** in 1998 **to 99 percent** in 2006. The same study concluded that this increase in concentration had caused a seven percentage point increase in premiums over the period. Today, **monopolization extends to all forms of health insurance**, from policies purchased by individuals on “Obamacare” exchanges to group plans purchased by employers and Medicare Advantage plans purchased by retirees. The Kaiser Family Foundation [estimates](http://www.kff.org/slideshow/insurer-participation-in-the-2017-individual-marketplace/) that by the end of 2017, 22 percent of people purchasing health care insurance on the exchanges created by the Affordable Care Act will find that only a single company is offering policies in their community.   Another 21 percent will find that the exchanges in their community carved up by a duopoly of just two insurers. Meanwhile, the latest available data show that the percentage of the Medicare Advantage market controlled by the top four largest insurers increased from [48 to 61 percent](http://www.commonwealthfund.org/~/media/files/publications/issue-brief/2015/nov/1845_dafny_impact_hlt_ins_industry_consolidation_ib.pdf) nationwide between 2007 and 2015. For individual and group policies, the increase in the market share of the top four firms when went from 74 percent in 2006 to [83 percent in 2014](http://www.commonwealthfund.org/~/media/files/publications/issue-brief/2015/nov/1845_dafny_impact_hlt_ins_industry_consolidation_ib.pdf). Some observers defend health insurermergers by arguing that they help to restrain the cost of health care. When a health insurer has lots of market power in a community it is usually able to negotiate for lower prices with local health care providers, including hospitals, doctors, and labs. Providers know that if a locally dominant insurer doesn’t include them in its network they will lose many or even most of their patients, and so these providers agree to discounts. Just as Wal-Mart is able to squeeze its suppliers for price concessions, so to can large health insurers, using what economists call the power of [monopsony](http://foreignpolicy.com/2013/04/29/the-case-for-breaking-up-walmart/). But there is no guarantee that insurerswill pass alongthese savings totheircustomersand indeed, ashealth insurance markets become increasingly monopolized, they have little orno reason to doso. Thus, for example, whenAetna and Prudential merged in 1999, asubsequent [study](https://www.aeaweb.org/articles?id=10.1257/aer.102.2.1161) showed that this did indeed lead to less income for hospitals and doctors in communities where the combined company gained high market share, but also to an increase in premiums.Today, most of the cost of health insurance derives from the price and volume of medical services, but it also reflects the increasing monopoly rents of consolidating insurance companies. These monopoly rents are reflected in the fact that the **cost of** health **insurance continues to**[**grow faster**](https://www.brookings.edu/research/making-health-care-markets-work-competition-policy-for-health-care/)**than the cost of** medical **treatments.** They are also reflected in the fact that the CEOs the eight largest publicly traded health insurers are among the most highly compensated executives in the world, taking home a combined [$171.8 million in total compensation](http://www.modernhealthcare.com/article/20170427/NEWS/170429877) in 2016. That is equivalent to the cost of providing approximately 60,000 people with the most popular health insurance plan offered on the HealthCare.gov federal marketplace that year. Monopolistic health **insurers** also **abuse their** market **power** by **insisting** that **hospitals sign** contracts withso-called **“**[**most favored nation**](http://sourceonhealthcare.org/legislative-topics-favored-nation-clauses/)**”** **clauses** under whichhospitals must promise to never give equal or more favorable prices to any other healthcare plan. In some instances, **a** dominant insurer will **collude** with a hospital **to fix prices** high but **i**nsist that the hospital charge other health care plans still more. Thesemarket manipulations, which are outlawed in some states but are not per se illegal under federal law, can **have** many [**other anti-competitive effects**](https://www.justice.gov/atr/chapter-6-competition-law-insurers#4a)**including** placing **barriers to entry** for new insurance companies **and facilitating** **cartel pricing.** Another effect of increasing concentration among insurers is increasing monopoly among providers. Hospitals are merging **and absorbing doctors’ practices** at a rapid pace for many reasons, but these include the need to match the growing market power of insurers in contract negotiations. Insurers in turn, see the growing monopoly power of providers in many markets as a reason why they must defensively combine into ever more giant entities, **setting off a cycle of mergers** leading to an ever less competitive health care sector marked by ever rising medical price inflation. Unlike with transportation, communications, retailing, and the industrial sectors of the economy, **the** **U**nited **S**tates **does not** **have a** long **tradition of using anti-trust laws** and other competition policies **to insure competition in health insurance** markets. One reason is that health insurance is a comparatively new phenomenon. As recently as the early 1940s, only 9 percent of the population had health insurance, and it mostly came in the form of prepaid medical plans organized by non-profits, trade, and fraternal organizations. Within the health care sector, anti-trust prosecutions instead tended to focus in this era on collusion among doctors and hospitals. In a case that drew much attention at the time, for example, the Department of Justice [sued](https://journals.ku.edu/amerstud/article/view/2475/2434) the American Medical Association in 1938 for conspiring to undermine the creation of what we today would call a health maintenance organization, which the AMA feared would undermine doctors’ autonomy and income. By contrast**, federal competition policy actually encouraged cooperation** among insurance companies. In 1945, for example, Congress passed **the**[**McCarran-Ferguson Act**](http://www.npr.org/templates/story/story.php?storyId=123421684), which **offered insurers** partial **exemptions from anti-trust laws** by **allowing them to share data** on claims and losses. By the 1970s, **the** private health insurance **industry** had grown and **consolidated enormously**, becoming the dominant means of financing American health care**,** but by then anti-trust **enforcement was** under deep ideological attack and was **in retreat** across the board. Only in recent years have regulators begun to scrutinize the high degree of concentration that has emerged in private market for health insurance. Late in the Obama administration, for example, the Department of Justice filed lawsuits to block mega merger deals between [Aetna](http://topics.nytimes.com/top/news/business/companies/aetna_inc/index.html?inline=nyt-org) and [Humana](http://topics.nytimes.com/top/news/business/companies/humana_inc/index.html?inline=nyt-org) and Anthem and [Cigna](http://topics.nytimes.com/top/news/business/companies/cigna_corporation/index.html?inline=nyt-org). Yet **the U.S.** still **lacks a comprehensive policy for balancing** the rising market power of insurers with the **rapid consolidation** and integration that is occurringamong doctors, hospitals and the health care sectoras a whole. In many cases, **large corporate hospital chains are acquiring** their own health insurance **companies, and** vice a versa. On current course both the health care finance system and the health care delivery system are becoming akin to two [giant Sumo wresters](https://www.judiciary.senate.gov/imo/media/doc/09-22-15%20Slover%20Testimony.pdf) who rather than competing with each other**, agree to combine** their powers **to crush all smaller players**, whether they be patients or the few remaining independent doctors, hospitals and clinics.

#### It was removed - Reject all internal links from before 2021 – the CHIRA solved health insurance monopolies

Katie Keith, Jan 19 2021 [JD, MPH, provides “Following the ACA” rapid response analysis for Health Affairs Forefront and is the director of the Health Policy and the Law Initiative at the O’Neill Institute for National and Global Health Law at Georgetown University Law Center where she teaches a course on the Affordable Care Act. https://www.healthaffairs.org/do/10.1377/forefront.20210119.670140/full/]

On January 13, 2021, President Trump signed the Competitive Health Insurance Reform Act of 2020 into the law. The bipartisan legislation was passed by voice vote in the U.S. House of Representatives in September 2020 and by unanimous consent in the U.S. Senate in late December 2020. The legislation was sponsored by Rep. Peter DeFazio (D-OR) and Sens. Steve Daines (R-MT) and Patrick Leahy (D-VT).

Brief Background

The new law amends the McCarran-Ferguson Act of 1945, which has long exempted insurers from federal antitrust laws. The McCarran-Ferguson Act was passed in response to a Supreme Court decision in 1944 known as United States v. South-Eastern Underwriters Association. In that case, the Court held that the business of insurance, when conducted across state lines, was interstate commerce and could thus be regulated under the Commerce Clause. As a result, the federal Sherman Act, an antitrust law, applied to insurers. (An earlier Supreme Court decision from 1869, Paul v. Virginia, had reached the opposite conclusion on the Commerce Clause, leaving the regulation of insurance to the states.)

The year after South-Eastern Underwriters Association, Congress—urged on by the National Association of Insurance Commissioners (NAIC)—adopted the McCarran-Ferguson Act to essentially override the Court’s decision. The law affirmed that state officials are the primary regulators of insurance and ensured that federal statutes do not preempt state insurance law unless Congress makes clear that its legislation specifically relates to the business of insurance. The law also expressly exempted insurers from federal antitrust laws (such as the Sherman Act, the Clayton Act, and the Federal Trade Commission Act) so long as states regulate the business of insurance.

The New Law

The Competitive Health Insurance Reform Act maintains the McCarran-Ferguson Act but eliminates the federal antitrust exemption for health and dental insurers. In particular, the new law amends 15 U.S.C. § 1013 to state that nothing in the McCarran-Ferguson Act prevents federal antitrust laws from applying to the business of health insurance, which includes the business of dental insurance and limited-scope dental benefits. The bill does not apply to life insurance (including annuities), property or casualty insurance, or excepted benefits (which is defined by reference to current law and includes, for instance, workers’ compensation insurance, long-term care benefits, fixed indemnity coverage, or specified disease insurance).

With this exemption now gone, the Department of Justice and the Federal Trade Commission can more easily investigate antitrust concerns and enforce federal laws, even though antitrust regulation had previously been left to the states. The legislation makes clear that parts of the Federal Trade Commission Act apply to all health insurers, including those that are not for-profit companies. The bill is explicit on this point because the Federal Trade Commission Act defines “corporation” in a way that references profit-generating entities. The Competitive Health Insurance Reform Act effectively states that a health insurer’s for-profit status (or not) is irrelevant for purposes of applying the Federal Trade Commission Act, notwithstanding the definition of “corporation.”

#### But, new merger antitrust fails and stifles pharma innovation – turns the impact

Radu 7/13 [Sintia Radu, communications director at the Information Technology and Innovation Foundation. "Blocking Pharma Mergers Will Reduce Drug Innovation and Harm Patients, Says ITIF." 7/13/21. <https://itif.org/publications/2021/07/13/blocking-pharma-mergers-will-reduce-drug-innovation-and-harm-patients-says>]

In response to a hearing in the U.S. Senate Subcommittee on Competition Policy, Antitrust, and Consumer Rights, which focused on preventing pharmaceutical mergers in an attempt to reduce drug prices, the Information Technology and Innovation Foundation (ITIF), the leading think tank for science and technology policy, released the following statement from Aurelien Portuese, director of ITIF’s Schumpeter Project on Competition Policy:

Blocking pharma mergers will not lower drug prices, but it could stifle innovation. More competition is generally good and incentivizes innovation, but too much competition has the opposite effect. Instead of thinking about creating new and innovative drugs, companies operating in those conditions will focus on cutting the prices of existing treatments in a bid to stay competitive in the near term. That dries up revenues they would otherwise use to make longer-term investments in new research and development.

This is not an outcome we want. If antitrust laws disincentivize innovation, patients will eventually stop benefitting from the innovative treatments they need.

#### They don’t have an internal – its about public health surveillance and an alt cause

Shaikh et al 15 (Affan T. Shaikh, Prof – Emory School of public health Lisa Ferland, Robert Hood-Cree, Loren Shaffer, and Scott J. N. McNabb, September 23rd 2015, **“**Disruptive Innovation Can Prevent the Next Pandemic**”** NCBI [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4585064/](about:blank))

Considering the Global Health Security Agenda and **facing emerging** and reemerging **infectious disease threats, evolving environmental and behavioral risks, and ever changing epidemiologic trends**, PHS must transform. Embracing **disruptive innovation** in the structures and processes of PHS can be unpredictable. However, it is necessary to strengthen and unlock the potential to prevent, detect, and respond. Introduction Fifty-two years ago, Alexander Langmuir articulated our modern understanding of public health surveillance (PHS) – the systematic collection, consolidation and evaluation, and dissemination of data (1). In this workflow process, public health provides epidemiologic intelligence to assess and track conditions of public health importance, define public health priorities, evaluate programs, and conduct public health research (2). However, amid this rapidly changing world, PHS has remained sluggish and hindered by the impediments of siloed, vertical (outcome-specific) systems, inadequate training and technical expertise, different information and communication technology (ICT) standards, concerns over data sharing and confidentiality, poor interoperability, and inadequate analytical approaches and tools (3–7). Gaps and impediments in PHS have become increasingly evident to the world in the wake of the largest Ebola epidemic ever – in which these challenges impacted our ability to prevent, detect, and respond. Under the looming threat of MERS-CoV, leishmaniasis, influenza, multidrug-resistant tuberculosis, and plague, the global public health community now realizes the urgent need to address shortcomings in PHS. Properly **preparing for the next** major **outbreak hinges on** **our willingness to transform**; the consequences of not doing so are dire. Transforming PHS to meet the needs of the twenty-first century requires novel approaches**.** A helpful concept to understand and chart this future is **disruptive innovation** – a term first introduced by Clayton Christensen to describe innovations **in techn**ology and processes that disrupt existing markets (8). Disruptive innovations occur when advances in technologies or processes create markets in existing industries. This **differs from sustaining innovations, where** existing **practices are incrementally improved** **to meet** the **demands of existing customers**; in contrast, newly introduced **innovations with disruptive potential** (typically unrefined, simple, and affordable in character) **target lower-end market needs or create entirely new market segments.** As sustaining innovations improve disrupting technologies or processes, these new innovations will meet increasingly greater needs, capture greater market share, and eventually reshape the industry. Christensen uses the example of increasingly smaller disk sizes in the hard disk drive industry, the introduction of hydraulic technology in the mechanical excavator industry, and the rise of minimills in the steel industry to demonstrate the impact of disruptive innovations (8).

### 1NC – Environment

#### No individual risk can be tied to a specific probability or temperature increase, and most climate and environment 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.

### 1NC – ABR D

#### No impact to ABR.

Sepkowitz 13 [Kent Sepkowitz (Professor of Medicine @ Weill Cornell Medical School, head of Memorial Sloan Ketterings’s infection control program), “Why I’m Not Worried About Dying From a Superbug, and You Shouldn’t Be, Either,” 3-8-13, <http://www.thedailybeast.com-/articles/2013/03/08/why-i-m-not-worried-about-dying-from-a-superbug-and-you-shouldn-t-be-either.html>]

There’s a scary new superbug showing up in hospitals, resistant to all but one aging antibiotic. But Dr. Kent Sepkowitz says your chances of infection are microscopic, and shouldn’t keep you from getting care you need. Pity the poor public-health official: in the midst of an epidemic, he must adopt a soothing avuncular tone of near-boredom, a “we’ve seen this, not to worry” sort of yawn to calm people who otherwise seem ready to run screaming into the streets. But on the other hand, in this day of sequestered public-health funding, he has to raise a major ruckus about some other problem that might happen, swearing that the earth may end soon if we don’t wake up now and face the music. The cavalcade of past get-ready-for-the-big-one hits includes drug-resistant TB, avian flu, swine flu, and drug-resistant gonorrhea among others, each introduced with shrill press releases and snapshots of grim faces peering through microscopes. It is no surprise, therefore, to see the CDC roll out the heavy artillery this week by proclaiming the dangers of the latest superbug. This one is ugly for sure, a resistant-to-almost-everything bacteria that preys on the hospitalized patient. Called carbapenem-resistant Enterobacteriaceae, or CRE, to denote the class of antibiotics (carbapenems) to which it is resistant, and the group of bacterial organisms—Enterobacteriaceae, bacteria that reside in the gut—to which it belongs, CRE is being seen increasingly in hospitals across the U.S. Unheard of before 2001, CRE now is in 181 (4.6 percent) U.S. acute-care hospitals, affecting hundreds of patients. In August 2012, the NIH Clinical Center had a widely reported outbreak from a CRE that killed six of 18 patients, the mortality rate seen in most series. The CDC and other public-health officials are particularly alarmed by this latest wrinkle because the carbapenem class was the last thoroughly modern group of antibiotics with predictable activity against gut bacteria. With the carbapenem hegemony now wobbling, the next (and last) antibiotic is an oldie from the 1960s, pulled from the market then because of concerns about toxicity, but now being used in many hospitals and ICUs to treat CRE infection. If and when CRE becomes resistant to this old-timer, the cupboard is truly bare. This sort of progressive resistance to antibiotics is standard operating procedure for bacteria exposed to high doses of potent antibiotics over time; resistance can and must occur according to the most basic principle of evolution: survival of the fittest. If a billion bacteria are exposed to an antibiotic and just one bacterium, because of a chance mutation, is resistant to the antibiotic while the other near-billion are not, that single organism will survive while the others will die off. The resistant organism will then have the run of the place with enough nutrition to support the billion now-absented brethren, allowing the resistant clone to take root and get in position to spread. We have been here before of course: methicillin-resistant Staphylococcus aureus (MRSA) played through the hospitals and the headlines (and even the National Football League) last decade, alarming the public and spurring new regulations to contain it as well as the application of money, sort of, to develop new weapons. Perhaps because of all the hubbub, MRSA now seems almost quaint and surely not a headline-screaming scourge: mostly contained, a nuisance, a problem, but being dealt with at the right place by the right people. In other words, it has assumed its proper proportion in the world of threats and dangers. The same likely will happen with CRE. More cases will occur, hospitals will make the necessary adjustments suggested by the CDC, specialists will learn their way around the diseases, and eventually the threat and the excitement around it will flatten out. And then the next red-hot development on some other front will emerge rendering the acronym to oblivion. The problem though is this: the mix of steady CDC concern about a real issue that requires attention, a world with infinite capacity for both news and “news,” and a perverse public enjoyment of being frightened has succeeded in little other than scaring the crap out of people who might need medical care. Indeed, hospitals seem to occupy the same imagined place as the Overlook Hotel, the cavernous inn Jack Nicholson prowled in The Shining—the last place on earth a sane person would go. Health care in general and hospitals specifically are viewed these days by just about everyone as a veritable killing field, the place where the two inevitabilities—death and taxes—meet daily as people are fleeced then killed.

## Adv 2

### 1NC – Antitrust Fails – Laundry List

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

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

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

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

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

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

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

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### T

#### Federal courts have decided 4,278 rule of reason cases.

--WestLaw search for “adv: antitrust & (Rule +2 Reason)”

--this is the search used by Carrier 9 to capture all rule of reason cases, but without the date limiter because Carrier was updating an older article with post-1999 data

--FYI

Michael A. Carrier 9, Professor at Rutgers University School of Law-Camden, “The Rule of Reason: An Empirical Update for the 21st Century,” George Mason Law Review, Vol. 16, Iss. 4, pp 827-837

I. METHODOLOGY

This survey is based on a Westlaw search of all federal cases decided between February 2, 1999, and May 5, 2009. I located the cases by searching broadly for all rule of reason cases: “DA(aft 2/2/1999) & antitrust & (Rule +2 Reason).”

Such a search is designed to pick up every instance in which a court applied rule of reason analysis. I assumed that any court conducting such analysis would at least mention the phrase “rule of reason.” This would appear to be a reasonable assumption given the importance of labels in antitrust. A court applying rule of reason analysis—as opposed to, say, per-se or quick-look analysis—should naturally refer to the concept. And I include “antitrust” as one of my search terms to restrict the universe of cases to antitrust cases, a helpful limitation given the prevalence of the phrase “rule of reason” in other settings such as environmental, patent, and criminal law.9

#### Defendants won 95% of those.

Sandeep Vaheesan 17, Regulations Counsel at the Consumer Financial Protections Bureau, “Resurrecting “A Comprehensive Charter of Economic Liberty”: The Latent Power of the Federal Trade Commission,” University of Pennsylvania Journal of Business Law, Vol. 19, Iss. 3, pp 645-699

In adopting the rule of reason, the FTC practically guaranteed that it would be able to bring few, if any, Section 5 cases. The statistics demonstrate, in practice, that the rule of reason means that the plaintiff almost always loses. A leading study found that, between 2000 and 2009, defendants received a favorable court ruling in more than ninety-five percent of antitrust cases implicating the rule of reason.146

#### Nearly all of those are dismissed based on a substantive finding of ‘no anticompetitive effect’---reversing any one of those would be T! Insert this chart.

Michael A. Carrier 9, Professor at Rutgers University School of Law-Camden, “The Rule of Reason: An Empirical Update for the 21st Century,” George Mason Law Review, Vol. 16, Iss. 4, pp 827-837

Table

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#### ‘Scope’ is whether antitrust law is available, not how it’s applied

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

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

#### There’s a two-step process: first, ‘scope’, which determines whether claims can be heard, and second, the application of a particular legal standard once the question of scope has been decided. The plan only affects the latter.

Lise A. Barrera 96, J.D. from Wayne State University Law School, “Is the Courtroom the New Front for the Resolution of Publishing Disputes?,” The Wayne Law Review, Volume 42, Summer 1996, Lexis

It is important to note the distinction between the expansion of the scope of section 43(a) and the standard that courts apply in granting relief to claims under this section. The scope of section 43(a) allows plaintiffs to claim the section provides them with protection and thus should grant them relief. The expansion of the scope allows a much broader range of claims to be brought legitimately under section 43(a). Once the scope of the statute allows the claim to be brought, the courts apply a standard to the claim in order to determine whether a plaintiff should be granted relief.22 The standard applied is also the product of years of judicial interpretation. While the scope of section 43(a) is expanding, however, the standard for relief seems to be becoming higher and harder to meet.

#### Our evidence is from the ABA Antitrust Section’s Committee on Exemptions and Immunities, which literally wrote an authoritative text called “Handbook on the Scope of Antitrust!” It’s the T evidence gold standard.

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, 3/18/19, https://www.americanbar.org/content/dam/aba/administrative/antitrust\_law/lrps/2019/exemptions-immunities.pdf

I. Current State of Exemptions and Immunities Committee

Even though we are a relatively small Committee, we address important policy issues that might not otherwise be addressed by the Antitrust Section. While we often work on issues alongside the Legislation Committee, our scope reaches judicial, as well as statutory exemptions. Our Committee is the one place within the Section that focuses on the concerns that may lead Congress or the courts to carve out certain conduct from traditional antitrust proscriptions.

In the 2017-2018 program year, we drafted and submitted four in-depth Section Comments at the request of the Council; produced six committee programs; published three newsletters; completed one ABA Handbook and are well underway on a second one; cosponsored two Spring Meeting Programs; co-sponsored one podcast; and participated in a Women in Leadership videoconference.

In the 2018-19 program year, we will chair an approved Spring Meeting Program; are cosponsoring a second approved Program; and we have been asked to revisit one of the Comments that we produced in the previous year. We are also working on committee programs, podcasts, and publications.

Perhaps most importantly, we are proud of our diversity achievements. In 2017-18, one of the E&I Co-Chairs was a woman for the first time, and our Young Lawyer Representative was LGBTQ for the first time. This year, we continue with a woman Co-Chair, a woman YLR, and we have added the first Vice Chair from the state of South Carolina on any Section Committee.

A. Scope of Charter: What is Role of Committee?

The Exemptions and Immunities Committee is chartered to address judicially created immunities from the antitrust laws, such as the Noerr-Pennington doctrine, state action, implied immunities, and filed rate doctrines, as well as statutory exemptions, including, among others, the McCarran-Ferguson and Capper-Volstead Acts. The Committee also addresses international issues, such as the Foreign Trade Antitrust Improvements Act (“FTAIA”), and other doctrines, such as antitrust preemption and primary jurisdiction, that affect the application and extent of the antitrust laws. The Committee strives to be the first and best resource for information on the fundamental question of defining the scope of the antitrust laws.

However, another key function of this Committee is an administrative role, rather than as a programming committee. This Committee serves as the de facto institutional memory before legislators and agencies for the Section's position on exemptions and immunities. The Section needs to have one place to look for what it has said in the past on exemption proposals, as well as commentary on DOJ or FTC attempts to narrow or expand exemptions. We believe this Committee has already served in that role and should serve in that role in the future. We want to improve on this function for the Section. We should have a Vice Chair designated as the point person to track prior comments and catalog the specific issues that have been raised. At the same time, we could develop a more standardized response. A related project would be a retrospective study of exemptions and their impact. We would join with International Task Force in its study of the impact of exemptions in other countries.

In short, the Committee should standardize the analysis of exemption proposals and reach out on the international front to catalog the differences in exemptions in different areas of the world.

B. Description of Reflective Evaluation of Membership Levels, Diversity, and Growth

The Committee currently has nearly 300 members, a 20% increase in membership in the last two years. Our members include government antitrust officials, private practitioners, corporate counsel and academics, and some practitioners based outside the United States. This variety of members ensures diverse views on the scope, applicability and appropriateness of antitrust exemptions and immunities.

Although other committees are larger, our Committee tends to include lawyers who specialize in specific antitrust issues. As most members of the Committee are members of other Section committees, the Committee may not be the primary committee that draws members into the Section. We believe that tracking the key issues surrounding the scope of the antitrust laws draws members of broader committees to also join E&I, and thus must continue to be a high priority for the Section.

#### They’re premier in the field

Jonathan B. Baker 19, Research Professor of Law at the American University Washington College of Law, “Market Power in an Era of Antitrust,” The Antitrust Paradigm: Restoring a Competitive Economy, 2019, pp. 11–31

Antitrust norms, especially the objection to collusive conduct, are consistently endorsed and upheld by enforcers and courts, regardless of political affiliation.12 These norms have spread throughout the world, particularly since the 1990s, with the aid of a growing global antitrust community. Annual attendance at the spring meeting of the American Bar Association’s Section of Antitrust Law—the premier gathering in the field—now exceeds 3,000, a threefold increase over the low ebb in the late 1980s. Several new academic journals dedicated to antitrust law, economics, and policy were launched in the last decade.

#### It must be a change in kind, not merely magnitude

Jeffrey S. Ross 18, Judge on the California Superior Court, San Francisco County, “People v. Lawson,” 2018 Cal. App. Unpub. LEXIS 8132, Lexis

To prove the aggravated kidnapping allegation, there must be nonconsensual movement of the victim that is not merely incidental to the commission of the underlying crime, and the movement must substantially increase the risk of harm over and above that necessarily present in the underlying crime itself. (Martinez, supra, 20 Cal.4th at pp. 232-233.) The requirements of substantial movement and substantial increase in risk are separate, but interrelated, and are determined by consideration of the totality of the circumstances in a qualitative rather than quantitative evaluation. (People v. Dominguez (2006) 39 Cal.4th 1141, 1152, 47 Cal. Rptr. 3d 575, 140 P.3d 866 (Dominguez).)

### Adv 1

#### Killer acquisitions are key to investment in innovation

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

Acquisitions Provide a Needed Exit Route

The knowledge of possibly being acquired can also spur entrepreneurial activity and investment. As the report for the European Commission notes:

Simultaneously, the chance for start-ups to be acquired by larger companies is an important element of venture capital markets: it is among the main exit routes for investors and it provides an incentive for the private financing of high-risk innovation.43

This argument was echoed by James Pethokoukis of the American Enterprise Institute:

Not every founder starts a company intending for it become Amazon. Often future acquisition is the goal. Then the entrepreneur can go on to start another firm or become an investor in other aspirational startups working on risky new ideas. Same goes for the investors in the acquired firm. What’s more, these purchases are often “acquisition-by-hire” situations where the prize is talent rather than the Next Big Thing. And when an upstart firm has a valuable idea, acquisition can be the fastest way to get it to users.44

#### Here's another card – killer acquisitions are insignificant, not in insurance, and current antitrust solves problematic ones

Portuese 6/5 [Aurelien Portuese, director of antitrust and innovation policy at ITIF. "Comments to the FTC on Pharmaceutical Consolidation and Competition.", 6/25/21. https://itif.org/publications/2021/06/25/comments-ftc-pharmaceutical-consolidation-and-competition]

But does the killer acquisition theory materialize in business reality? Do incumbents ever discontinue the acquired firm’s products for anticompetitive reasons? At least one study finds a similar share as Cunningham et al. and suggests that approximately 95 percent of pharma mergers are not “killer acquisitions.” And within the five percent that are allegedly problematic, any discontinuation of products requires balancing against counterfactuals absent the merger. Would discontinuation of the drug have occurred irrespective of the merger due to changing market circumstances or due to different corporate strategies? The authors of the killer acquisition theory assume that these five allegedly problematic percent are all anticompetitive acquisitions. In fact, this number could very well be less. Madl qualifies the very notion of killer acquisition stating that:

The mechanism of action used in the Cunningham, Ederer, and Ma study to identify cases of overlap is not mutation-specific, meaning that two drugs targeting the same enzyme and having the same net effect (e.g., inhibition) may not treat the same patients. Accordingly, purchasing the second drug could expand the acquirer’s market, rather than cannibalize sales.

In other words, Cunningham et al. overlook the possible positive effects on competition and innovation of these acquisitions. The notion of killer acquisitions overly emphasizes Kenneth Arrow’s concept replacement effect of innovation and overlooks the Schumpeterian aspect of innovation. In other words, the tenets of the notion of killer acquisitions rest upon the assumption that a dominant firm would acquire a rival to avoid the rival’s product “cannibalizing” the dominant firm’s profits. However, the acquiring firm may seek to create complementarities, thereby opening new markets. Schumpeter indeed wrote that entering new markets (through organic growth or mergers) “incessantly revolutionizes the economic structure from within, incessantly destroying the old one, incessantly creating a new one. This process of Creative Destruction is the essential fact about capitalism.”

Moreover, killer acquisitions suggest that the phenomenon of buying up nascent competitors is new and has not been addressed by antitrust agencies. The recent Illumina-Grail debacle proves the contrary: the desired acquisition of Grail by Illumina following its spinoff four years ago would generate considerable innovation and progress in the field of multi-cancer early detection tests. The merger aims at providing Grail with the regulatory and organizational capabilities necessary to commercialize its breakthrough inventions given Grail’s near zero revenue. Grail is a nascent company, but not a nascent competitor to Illumina as the theory of killer acquisitions would have it. Yet, because the competitive effects of such acquisitions arguably are positive, the FTC asked a federal judge to dismiss the lawsuit, because of the high probability the federal judge would approve this beneficial merger. Beyond the antitrust agency’s’ regrettable “gamesmanship,” one cannot reasonably conclude that the FTC is unable to block acquisitions of nascent companies. Current antitrust rules fully equip the FTC with such capability, although this ability may result in applying a misguided theory of killer acquisition to a pro-competitive enabler-acquisition.

More generally, antitrust enforcers and commentators have historically considered the acquisition of potential competitors. Indeed, in their study of pharma mergers, Balto and Mongoven consider that “an acquired firm’s disappearance can have a negative impact on competition, regardless of whether or not it was producing in the market. Potential competitors also wield market power.” Antitrust agencies have traditionally considered potential competitors—referred to as “nascent competitors” in the killer acquisition’s rhetoric—as part of the merger review. For instance, in Zeneca where Zeneca could acquire Astra, the consent order required Zeneca to transfer and surrender all of its rights and assets relating to levobupivacaine to the firm Chiroscience within 10 business days. Zeneca was not an actual competitor to the long-acting local anesthetics, but it was a potential competitor by virtue of its agreement with Chiroscience. The FTC thus required a spinoff to address the competition concerns raised by such potential competition.

Another case is Hoechst. The German pharmaceutical company acquired MMD in 1995, thereby creating the third-largest pharmaceutical company. Dominant in four product markets (i.e., hypertension, angina, arteriosclerosis, and tuberculosis), the merged entity needed to divest either the current line of business or the potential new product to a buyer who could market the drugs. More specifically, Hoechst owned the patent for the only drug that at the time was approved by FDA for intermittent claudication, but MMD had one of the few drugs in development that could compete with Hoechst’s drug. The consent order protected potential competition by requiring Hoechst to divest its drug for intermittent claudication. The settlement also required Hoechst to maintain its research and development (R&D) efforts.

Against that backdrop, should the FTC introduce novel theories of harm for reviewing pharma mergers specifically? There is no need to introduce novel theories of harm, especially if the concern is allegedly excessive drug prices. Concerning higher drug prices, antitrust authorities have seminally stated that increases in drug prices are not illegal under U.S. antitrust laws. Indeed, as recently as 2018, the FTC and the DOJ wrote for the Organisation for Economic Co-Operation and Development that “excessive pricing in pharmaceuticals by itself is not an antitrust violation under U.S. antitrust law, although soaring prices may be indicative of anticompetitive conduct.”

Although excessive prices may support the finding of anticompetitive conduct, increasing prices per se may actually reflect innovation in the sense of the ability to develop a unique patented drug before any other competitors. U.S. antitrust agencies identify drug shortages, regulatory factors, and unilateral conducts other than antitrust violations as potential explanations for increased drug prices absent anticompetitive conduct. Moreover, there is strong scholarly research showing that increased drug company revenues spur more funding on research and development.

Novel theories of harm appear to constitute a way for the FTC to block mergers otherwise lawful under current antitrust laws because they are pro-competitive and pro-innovative (as illustrated in the recent case of Illumina-Grail). Indeed, under current laws, anticompetitive mergers can not only be investigated but most importantly blocked whenever they are anticompetitive. In other words, it appears regrettable that the FTC wants to break its adequate compass for the sake of reaching the detrimental ends it seeks to achieve. Namely, blocking lawful and pro-competitive acquisitions in the pharma industry. To paraphrase the Supreme Court, the FTC’s desire to alter its merger review (and only regarding pharmaceutical companies) is a regrettable attempt to make the government “always wins” in challenging mergers. Such inconsistent policy is both detrimental—for consumer benefits and innovation purposes—and regrettable—for representing a discriminatory stance against pharma mergers without legal consistency.

Novel theories of harm can be appealing and coherent only if the diagnosis of pharma markets underpinning those proposals is correct. Unfortunately, such diagnosis is not. We demonstrate how a misguided diagnosis may lead to costly novel theories of harm.

#### I’ll finish

Sepkowitz 13 [Kent Sepkowitz (Professor of Medicine @ Weill Cornell Medical School, head of Memorial Sloan Ketterings’s infection control program), “Why I’m Not Worried About Dying From a Superbug, and You Shouldn’t Be, Either,” 3-8-13, <http://www.thedailybeast.com-/articles/2013/03/08/why-i-m-not-worried-about-dying-from-a-superbug-and-you-shouldn-t-be-either.html>]

There’s a scary new superbug showing up in hospitals, resistant to all but one aging antibiotic. But Dr. Kent Sepkowitz says your chances of infection are microscopic, and shouldn’t keep you from getting care you need. Pity the poor public-health official: in the midst of an epidemic, he must adopt a soothing avuncular tone of near-boredom, a “we’ve seen this, not to worry” sort of yawn to calm people who otherwise seem ready to run screaming into the streets. But on the other hand, in this day of sequestered public-health funding, he has to raise a major ruckus about some other problem that might happen, swearing that the earth may end soon if we don’t wake up now and face the music. The cavalcade of past get-ready-for-the-big-one hits includes drug-resistant TB, avian flu, swine flu, and drug-resistant gonorrhea among others, each introduced with shrill press releases and snapshots of grim faces peering through microscopes. It is no surprise, therefore, to see the CDC roll out the heavy artillery this week by proclaiming the dangers of the latest superbug. This one is ugly for sure, a resistant-to-almost-everything bacteria that preys on the hospitalized patient. Called carbapenem-resistant Enterobacteriaceae, or CRE, to denote the class of antibiotics (carbapenems) to which it is resistant, and the group of bacterial organisms—Enterobacteriaceae, bacteria that reside in the gut—to which it belongs, CRE is being seen increasingly in hospitals across the U.S. Unheard of before 2001, CRE now is in 181 (4.6 percent) U.S. acute-care hospitals, affecting hundreds of patients. In August 2012, the NIH Clinical Center had a widely reported outbreak from a CRE that killed six of 18 patients, the mortality rate seen in most series. The CDC and other public-health officials are particularly alarmed by this latest wrinkle because the carbapenem class was the last thoroughly modern group of antibiotics with predictable activity against gut bacteria. With the carbapenem hegemony now wobbling, the next (and last) antibiotic is an oldie from the 1960s, pulled from the market then because of concerns about toxicity, but now being used in many hospitals and ICUs to treat CRE infection. If and when CRE becomes resistant to this old-timer, the cupboard is truly bare. This sort of progressive resistance to antibiotics is standard operating procedure for bacteria exposed to high doses of potent antibiotics over time; resistance can and must occur according to the most basic principle of evolution: survival of the fittest. If a billion bacteria are exposed to an antibiotic and just one bacterium, because of a chance mutation, is resistant to the antibiotic while the other near-billion are not, that single organism will survive while the others will die off. The resistant organism will then have the run of the place with enough nutrition to support the billion now-absented brethren, allowing the resistant clone to take root and get in position to spread. We have been here before of course: methicillin-resistant Staphylococcus aureus (MRSA) played through the hospitals and the headlines (and even the National Football League) last decade, alarming the public and spurring new regulations to contain

it as well as the application of money, sort of, to develop new weapons. Perhaps because of all the hubbub, MRSA now seems almost quaint and surely not a headline-screaming scourge: mostly contained, a nuisance, a problem, but being dealt with at the right place by the right people. In other words, it has assumed its proper proportion in the world of threats and dangers. The same likely will happen with CRE. More cases will occur, hospitals will make the necessary adjustments suggested by the CDC, specialists will learn their way around the diseases, and eventually the threat and the excitement around it will flatten out. And then the next red-hot development on some other front will emerge rendering the acronym to oblivion. The problem though is this: the mix of steady CDC concern about a real issue that requires attention, a world with infinite capacity for both news and “news,” and a perverse public enjoyment of being frightened has succeeded in little other than scaring the crap out of people who might need medical care. Indeed, hospitals seem to occupy the same imagined place as the Overlook Hotel, the cavernous inn Jack Nicholson prowled in The Shining—the last place on earth a sane person would go. Health care in general and hospitals specifically are viewed these days by just about everyone as a veritable killing field, the place where the two inevitabilities—death and taxes—meet daily as people are fleeced then killed.

### Adv 2

#### First card is about racial discrimination of the laws – cites conservative courts, labor laws which CALERA doesn’t change

Vaheesan 20 {Sandeep--legal director at the Open Markets Institute and previously served as a regulations counsel at the Consumer Financial Protection Bureau. He has published articles and essays on a variety of topics in antimonopoly law and policy. HOW ANTITRUST PERPETUATES STRUCTURAL RACISM Sep 16, 2020 https://theappeal.org/how-antitrust-perpetuates-structural-racism/}

Congress enacted the **antitrust laws** to check corporate power, but **today** these laws **maintain the corporate domination of people of color.** **Corporations,** which are **overwhelmingly**[**owned**](https://www.ssa.gov/policy/docs/workingpapers/wp95.html)**and**[**run**](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/center-for-board-effectiveness/us-cbe-missing-pieces-report-2018-board-diversity-census.pdf)**by whites,** exploit and **control** Black and brown **workers and** business **proprietors, thanks**, in part, **to conservative reinterpretations and applications of antitrust.** White workers and business owners suffer similar injuries too. But **like** so **many nominally race-neutral laws**, policies, and practices in American society, antitrust appears to inflict a disparate impact on people of color, **from** college athletes and Rocky Mountain shepherds left at the mercy of colluding employers to **fast-food** franchisees dominated by multinational chains **to Uber** drivers thwarted from forming unions.Antitrust law is not destined to remain a tool of racial injustice. Its present **perpetuation of hierarchy is a product of** the conservativetakeover of the federal judiciary and executive branch that began in the 1970s. Supreme Court justices and antitrust officials appointed by Presidents Nixon, Ford, and Reagan **reoriented antitrust law** to focus on [“consumer welfare”](https://supreme.justia.com/cases/federal/us/442/330/) and, to advance this aim, loosened various restrictions on corporatebehavior—legal and policy choices that the Clinton and Obama administrations accepted. What judges and technocrats did, the American public can reverse. A **reconstructed antitrust** **would** control the size and discretion of corporations and permit workers and independent firms to build power. It would serve as an important weapon against corporate hegemony over the working and small proprietor classes and **advance the freedom of people of color in the United States.** Take the exploitative system of collegiate sports. College basketball and football players generate billions in annual revenues for their colleges and universities but receive a small fraction of this wealth. College basketball’s March Madness and football’s playoff are among the most popular events in American sports. Operating collectively through the National Collegiate Athletic Association (NCAA), colleges capped the compensation of players at [the cost-of-attendance](https://www.kansascity.com/article86062792.html). The [Supreme Court](https://supreme.justia.com/cases/federal/us/540/02-682/) called such collusion among rivals “the supreme evil of antitrust.” In practice, players, including the stars, receive around $40,000 of in-kind annual compensation. If colleges competed for players by offering wages and salaries, basketball and football players would earn an [estimated $140,000 or more](https://www.ncpanow.org/studies-and-revenue/study-the-6-billion-heist-robbing-college-athletes-under-the-guise-of-amateurism) on average. The racial injustice of the system is clear: Some members of the [mostly white college coaching ranks](http://www.ncaa.org/about/resources/research/ncaa-demographics-database) make millions of dollars annually while the [disproportionately Black athletes](http://www.ncaa.org/about/resources/research/ncaa-demographics-database) subsist. A May 2020 court decision preserved this system of economic and racial exploitation. Current and former basketball and football players challenged the NCAA’s collusion in an antitrust suit. At [trial](https://drive.google.com/file/d/1L9ZWKklU02adLfTLlvD5_CM6oMxZnM2X/view) and on [appeal](https://cases.justia.com/federal/appellate-courts/ca9/19-15566/19-15566-2020-05-18.pdf?ts=1589821264), two federal courts declined to strike down the NCAA’s wage-fixing cartel. (The Open Markets Institute filed [an amicus brief](https://static1.squarespace.com/static/5e449c8c3ef68d752f3e70dc/t/5eaa1b99525cf600be56805f/1588206498946/OMI-et-al-Brief-in-Alston-v.-NCAA-FILED.pdf) in support of the players on appeal.) They invalidated one piece of the NCAA system—limits on payments related to education—but left the rest intact. Elevating the interests of consumers over workers, the judges reasoned that some fans value watching athletes who are not paid like professionals for their talents and hard work. In other words, two courts sacrificed the players’ interest in the name of catering to viewers’ taste for labor exploitation. Shepherding in the Rocky Mountains is a demanding and thankless job performed by a captive workforce. [Ranchers](https://www.hcn.org/issues/48.3/far-from-home-the-wests-foregin-sheepherders-get-a-pay-raise) in Colorado, Wyoming, and other Western states recruit shepherds from Peru on guest-worker visas. The terms of the visa bind the shepherds to the ranch that employs them, and the workers live under the constant threat of deportation for any or no reason at all. The laws ensure a supply of low-wage, powerless workers for ranchers. Until recently, these shepherds made [less than the standard federal minimum wage](https://www.wsj.com/articles/sheepherders-are-set-to-get-a-raise-1444776966) and endure the harsh elements of the Rockies [without basics](https://www.nytimes.com/2009/02/22/us/22wyoming.html) such as electricity, running water, or a toilet. Ranchers view the [shepherds](https://www.reuters.com/article/us-usa-sheep-lawsuit-idUSKCN0R30B520150903) as “indentured servants who should be subject to even criminal sanction if they refuse to work.” While the shepherds work under exceptionally harsh conditions, their employment relationships are quite representative of work arrangements in agriculture: [Farm sector employers](https://foodchainworkers.org/wp-content/uploads/2012/06/Hands-That-Feed-Us-Report.pdf) hire guest workers, mainly from Latin America, with few rights and pay them appallingly low wages. Last year, the federal judiciary dismissed the shepherds’ efforts to modestly improve this system through litigation. A group of shepherds alleged that the ranchers had conspired through two hiring associations to all offer the same lowest possible legal wage for job openings in their state. In the absence of this wage-fixing, the shepherds might have earned an hourly wage of $10 or more instead of [$4.50](https://www.law360.com/articles/753255/shepherds-fight-ranchers-bid-to-nix-wage-fixing-suit). [A trial court](https://www.jdsupra.com/legalnews/colorado-court-sends-shepherds-wage-11646/) and [court of appeals](https://www.ca10.uscourts.gov/opinions/17/17-1113.pdf) in Colorado tossed the shepherds’ suit, concluding that the shepherds had failed to show collusion among the ranchers even though the ranchers had set the wage through collective action. (The Open Markets Institute [supported](https://www.openmarketsinstitute.org/s/OMI-Brief-in-Llacua-v-WRA-FINAL.pdf) the shepherds’ unsuccessful petition for a rehearing.) As in the NCAA litigation, a mostly white class of actors (ranchers) was permitted to collude and profit at the expense of workers of color. Reports indicate wage-fixing occurs in other food and agricultural sectors too. Fast-food franchises are an important source of work and income for people of color, especially immigrants. [Minorities](https://www.usatoday.com/story/money/usaandmain/2020/02/11/franchises-african-american-small-business-success/2617860001/) are more likely to own a franchise business than a non-franchise business. [Certain chains](https://csnews.com/indian-researcher-suggests-south-asians-dominate-us-c-store-market) are so heavily dependent on South Asians that they have become associated with the community in popular media. Dunkin’, McDonald’s, Subway, and other chains present franchising as a straightforward path to becoming an independent businessperson, exercising autonomy that employees do not enjoy.  The reality is quite different. Under a franchise arrangement, the parent company exercises [tight control](https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4918&context=lcp) over franchisees, dictating virtually everything in the franchisee’s operation, including menu, prices, store layout, and hours of operation, and conducting regular audits. Franchisees can lose their business for any or no reason at all, and they continue at the whims of the franchisor and its managers. At the same time as they have little independence, a Subway franchisee, for example, bears the economic loss if their restaurant fails. [Subway](https://www.nytimes.com/2019/06/28/business/subway-franchisees.html) keeps the power but transfers the risk. The present franchising system is a direct result of judicial reinterpretations of antitrust law. Economist Brian Callaci has studied the legal changes that produced the franchising model in fast food and described the franchising system as [“control without responsibility.”](https://economics.utah.edu/antitrust-conference/session_material/callaci_control.pdf) Due to [a 1977 Supreme Court decision](https://supreme.justia.com/cases/federal/us/433/36/) and [subsequent](https://supreme.justia.com/cases/federal/us/522/3/) [rulings](https://supreme.justia.com/cases/federal/us/551/877/) building on it, firms can control trading partners (distributors, suppliers, franchisees) through contract. They can mandate what a franchisee purchases and sells and on what terms, among other requirements. Franchisors, by depriving franchisees of reasonable margins and discretion over virtually everything except wages, have forced franchisees to rely on a high-turnover, low-wage workforce. Before the 1970s, a firm that wanted to exercise such authority had to directly employ the workers and provide the rights and benefits that come with employment. A firm could not control independent businesses and workers through contract.

Unfortunately, exploitative relationships between nominally independent workers and dominant firms have exploded in the new “gig economy.” Low-paid and precarious gig workers are disproportionately people of color. A [study](https://transform.ucsc.edu/wp-content/uploads/2020/05/OnDemand-n-OntheEdge_MAY2020.pdf) of ride-hailing drivers and delivery workers in San Francisco found that more than 60 percent were Asian, Black, or Latino. This is in line with national data: A [survey](https://newsroom.uber.com/wp-content/uploads/2015/01/BSG_Uber_Report.pdf) commissioned by Uber in 2015 reported that about 50 percent of drivers are people of color. Among other anti-worker policies and practices in the sector, Uber and Doordash drivers and Instacart deliverers do not have the right to organize and form unions. The National Labor Relations Act grants a legally enforceable right to unionize to workers in traditional employment relationships. Because Uber and other gig economy firms (mis)classify their workers as independent contractors, however, these workers do not have the right to build collective power. Even as [they](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2933177) attempt to monopolize taxi markets around the world through below-cost pricing and flouting labor laws and taxi regulations, Uber and Lyft have used antitrust law to ensure that their drivers remain atomized and powerless. After the City of Seattle enacted an ordinance granting drivers in the city the right to form unions, the U.S. Chamber of Commerce, on behalf of its members Uber and Lyft, filed a suit alleging that the city was authorizing an antitrust violation. Their theory was that organizing among drivers would constitute a restraint of trade. The Chamber [triumphed](http://cdn.ca9.uscourts.gov/datastore/opinions/2018/05/11/17-35640.pdf) on appeal and ultimately [forced Seattle to revise its ordinance](https://www.geekwire.com/2020/uber-seattle-u-s-chamber-end-legal-dispute-union-law-city-plans-minimum-wage-drivers/) and deny drivers the right to bargain over the central term of employment—wages.

The Chamber and Uber and Lyft had an important ally in their legal fight—the federal government. In November 2017, the Department of Justice (DOJ) and Federal Trade Commission (FTC) filed a [joint amicus brief](https://www.ftc.gov/system/files/documents/amicus_briefs/chamber-commerce-united-states-america-rasier-llc-v-city-seattle-et-al/seattle_17-35640_-_ftcdoj_amicus_11317.pdf) arguing that Seattle did not have the authority to enact the ordinance and that the drivers’ potential unionization and collective bargaining would violate antitrust law. This anti-worker deployment of antitrust law has a [long, ugly history](https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=3832&context=mlr), dating back to the early years of the Sherman Act. **The FTC has brought numerous antitrust suits** against [independent](https://www.ftc.gov/enforcement/cases-proceedings/131-0168/professional-skaters-association-inc-matter) [contractor](https://www.ftc.gov/enforcement/cases-proceedings/131-0118/music-teachers-national-association-inc-matter)s [and](https://www.ftc.gov/enforcement/cases-proceedings/151-0159/american-guild-organists) [professional](https://supreme.justia.com/cases/federal/us/493/411/)s for [organizing](https://caselaw.findlaw.com/us-5th-circuit/1029674.html)—**targeting workers** outside traditional employment relationships. **While the DOJ and the FTC have allowed powerful corporations to** **take over** **and** dominate entire markets, they **crush attempts by** independent workers and **small firms to challenge that power.** Considering these four case studies, Americans fighting for racial and economic justice might simply conclude that repealing the antitrust laws is the right course—they appear impotent against corporate power and are unleashed against workers’ collective power. But this would be a mistake. Present-day antitrust dates only to the [late 1970s](https://harvardlpr.com/wp-content/uploads/sites/20/2017/02/HLP110.pdf). Starting in that decade, the Supreme Court, joined by the DOJ and the FTC of the Reagan administration in the 1980s, rolled back rules on corporate monopolies, mergers, and coercive practices. This intellectual and legal attack on the antitrust of the New Deal and postwar era was [bankrolled by big businesses](http://tuvalu.santafe.edu/~snaidu/papers/ash-chen-naidu-2020-07v4.pdf) and succeeded in creating market rules extraordinarily favorable to the Fortune 500. **Antitrust law, which was once a top line cause of populist and progressive movements fighting for a fair and democratic society, did control corporate authority in the past and can do so again.** Imagine **laws that** stopped employers from fixing wages, prevented franchisors from dominating independent franchisees through contract, **prohibited firms** like Uber from burning through billions of dollars in a **campaign** **to monopolize markets**, **and protected** the **rights** of workers **and independent firms** to organize. These rules **would break the economic and political dominance of corporate executives** and rentiers. **Such an antitrust enforcement system**, backed by a popular movement, **would redistribute power** downward from a class of mostly white economic royalists **to the multiracial majority** in American society.

#### Second card is about practices of insurers excluding mental health – profit incentives to prescribe drugs, legal complexities, and challenges to appeal all take out the aff

Bennett 19 [William E. Bennett Jr. is an associate professor of pediatrics at the Indiana University School of Medicine. “Insurance companies aren’t doctors. So why do we keep letting them practice medicine?” 10/22/19. https://www.washingtonpost.com/opinions/2019/10/22/insurance-companies-arent-doctors-so-why-do-we-keep-letting-them-practice-medicine/]

Insurance companies know that many patients don’t bother to appeal at all. A smaller fraction ask for an internal review, and still fewer seek or even know about external review options available in most states. Of the cases that do end up under external review, almost a third of all insurer denials are overturned. This is clear proof that whatever process insurers have to determine medical necessity is often not in line with medical opinion. A study of emergency room visits found that when one insurance company denied visits as being “not emergencies,” more than 85 percent of them met a “prudent layperson” standard for coverage.

Some might argue that it makes sense to have two doctors discuss a case and then come to a consensus on the most cost-effective approach for an individual. That’s not what is happening. This is a system that saves insurance companies money by reflexively denying medical care that has been determined necessary by a physician. And it should come as no surprise that denials have a disproportionate effect on vulnerable patient populations, such as sexual-minority youths and cancer patients.

We can do better. If physicians order too many expensive tests or drugs, there are better ways to improve their performance and practice, such as quality-improvement initiatives through electronic medical records.

When an insurance company reflexively denies care and then makes it difficult to appeal that denial, it is making health-care decisions for patients. In other words, insurance officials are practicing medicine without accepting the professional, personal or legal liability that comes with the territory.

We don’t have to put up with this. Health care in the United States is shockingly opaque; it’s time to take insurance companies out of our decision-making process.

#### People won’t change their providers, they’re decided by deals with corporations and problems with Medicare and Medicaid are inevitable otherwise

# 1NR

## FDI

### 1NR – Util

#### Reps aren’t deterministic – they have to prove the plan is bad under their framework because the political context is the determining feature of how representations are deployed

Shim 14 [David Shim is Assistant Professor at the Department of International Relations and International Organization of the University of Groningen. “Visual Politics and North Korea: Seeing is believing.”]

Imagery can enact powerful effects, since political actors are almost always pressed to take action when confronted with images of atrocity and human suffering resultant from wars, famines and natural disasters. Usually, humanitarian emergencies are conveyed through media representations, which indicate the important role of images in producing emergency situations as (global) events (Benthall 1993; Campbell 2003b; Lisle 2009; Moeller 1999; Postman 1987). Debbie Lisle (2009: 148) maintains that, 'we see that the objects, issues and events we usually study [. . .] do not even exist without the media [.. .] to express them’. As a consequence, visual images have political and ethical consequences as a result of their role in shaping private and public ways of seeing (Bleiker. Kay 2007). This is because how people come to know, think about and respond to developments in the world is deeply entangled with how these developments are made visible to them.

Visual representations participate in the processes of how people situate themselves in space and time, because seeing involves accumulating and ordering information in order to be able to construct knowledge of people, places and events. For example, the remembrance of such events as the Vietnam War, the terrorist attacks of 11 September 2001 or the torture in Abu Ghraib prison cannot be separated from the ways in which these events have been represented in films, TV and photography (Bleiker 2009; Campbell/Shapiro 2007; Moller2007). The visibility of these events can help to set the conditions for specific forms of political action. The current war in Afghanistan serves as an example of this. Another is the nexus of hunger images and relief operations. Vision and visuality thus become part and parcel of political dynamics, also revealing the ethical dimension of imagery, as it affects the ways in which people interact with each other.

However, particular representations do not automatically lead to particular responses as, for instance, proponents of the so-called 'CNN effect’ would argue (for an overview of the debates among academic, media and policy-making circles on the 'CNN effect', see Gilboa 2005; see also. Dauber 2001; Eisensee/ Stromberg 2007; Livingston/Eachus 1995; O'Loughlin 2010; Perlmutter 1998, 2005; Robinson 1999, 20011. There is no causal relationship between a specific image and a political intervention, in which a dependent variable (the image) would explain the outcome of an independent one (the act). David Perlmutter (1998: I), for instance, explicitly challenges, as he calls it, the 'visual determinism' of images, which dominates political and public opinion. Referring to findings based on public surveys, he argues that the formation of opinions by individuals depends not on images but on their idiosyncratic predispositions and values (see also, Domke et al. 2002; Perlmutter 2005).

Yet, it should also be noted that visuals function as unquestioned referents in international politics when underlining the necessity of such specific policy practices as sanctions, deterrents and/or military cooperation. A good example of this is satellite imagery, which plays a pivotal role in the surveillance and assessment of missile or nuclear proliferation activities by so-called ‘rogue states’ like Iran and North Korea. Regarded as providing compelling evidence about the stage of development of nuclear facilities or about the collaboration between suspect states, satellite images point to a nexus between visuality, knowledge and international politics wherein this way of seeing consequently enables governments to make legitimate statements, draw conclusions and take informed political action. In sum, the visual provides the foundation for knowledge generation and, in doing so, bestows political responses with legitimacy (cf. Möller 2007). A now famous case-in-point is Colin Powell’s PowerPoint presentation at the United Nations Security Council in February 2003. In the briefing, the then US Secretary of State showed satellite images that allegedly proved the existence of Iraqi ‘Weapons of Mass Destruction’. What was remarkable about Powell’s presentation was that the visual emerged as the primary referent for the US government’s casus belli, which, in the words of MacDonald et al. (2010: 7–8), disclosed the fact that the ‘logic of geopolitical reason is now inseparable from its visual representation’ (see also, Campbell 2007c; Der Derian 2001).

The causal theory of the ‘CNN effect’, or what Perlmutter (1998: 1) has called above ‘visual determinism’, misconceives of how the visual recasts the political realm itself (Hansen 2011). Rather than asking whether an image caused an intervention, it should be asked instead how the visual has been involved in structuring the understandings of legitimate action, and how visual representations of different policy options affect particular security practices (Williams 2003: 527). For instance, many scholars have shown that images can provoke particularly emotive responses (Bleiker/Hutchison 2008; Crawford 2000; Hariman/Lucaites 2007; Mercer 2006; Ross 2006). Just one example of the (deliberate) evocation of an emotional reaction is the numerous fundraising campaigns that have been run by different humanitarian aid organizations over the years, in which imagery plays an essential role (Bell/Carens 2004; Dogra 2007; Manzo 2008).

#### Moral equality means even a small risk of preventing extinction outweighs structural violence – future generations

Bostrom, 2012 (Mar 6, Nick, director of the Future of Humanity Institute at Oxford, recipient of the 2009 Gannon Award, “We're Underestimating the Risk of Human Extinction,” interview with Ross Andersen, freelance writer in D.C., <http://www.theatlantic.com/technology/archive/2012/03/were-underestimating-the-risk-of-human-extinction/253821/>)

some have argued that we ought to be directing our resources toward humanity's existing problems, rather than future existential risks, because many of the latter are highly improbable. You have responded by suggesting that existential risk mitigation may in fact be a dominant moral priority over the alleviation of present suffering. Can you explain why? Bostrom: Well suppose you have a moral view that counts future people as being worth as much as present people. You might say that fundamentally it doesn't matter whether someone exists at the current time or at some future time, just as many people think that from a fundamental moral point of view, it doesn't matter where somebody is spatially---somebody isn't automatically worth less because you move them to the moon or to Africa or something. A human life is a human life. If you have that moral point of view that future generations matter in proportion to their population numbers, then you get this very stark implication that existential risk mitigation has a much higher utility than pretty much anything else that you could do. There are so many people that could come into existence in the future if humanity survives this critical period of time---we might live for billions of years, our descendants might colonize billions of solar systems, and there could be billions and billions times more people than exist currently. Therefore, even a very small reduction in the probability of realizing this enormous good will tend to outweigh even immense benefits like eliminating poverty or curing malaria, which would be tremendous under ordinary standards.

## Biz Con

### 1NR – Biz Con – Impact

#### Decline causes fast nuclear wars – underlying factors turn ‘peaceful retrenchment’ violent – now is different

Liu 18 [Quan Liu, M.D., Greater China, The Economist Group. “The next economic crisis could cause a global conflict. Here's why.” 11/13/18. https://www.weforum.org/agenda/2018/11/the-next-economic-crisis-could-cause-a-global-conflict-heres-why]

The response to the 2008 economic crisis has relied far too much on monetary stimulus, in the form of quantitative easing and near-zero (or even negative) interest rates, and included far too little structural reform. This means that the next crisis could come soon – and pave the way for a large-scale military conflict.

The next economic crisis is closer than you think. But what you should really worry about is what comes after: in the current social, political, and technological landscape, a prolonged economic crisis, combined with rising income inequality, could well escalate into a major global military conflict.

The 2008-09 global financial crisis almost bankrupted governments and caused systemic collapse. Policymakers managed to pull the global economy back from the brink, using massive monetary stimulus, including quantitative easing and near-zero (or even negative) interest rates.

But monetary stimulus is like an adrenaline shot to jump-start an arrested heart; it can revive the patient, but it does nothing to cure the disease. Treating a sick economy requires structural reforms, which can cover everything from financial and labor markets to tax systems, fertility patterns, and education policies.

Policymakers have utterly failed to pursue such reforms, despite promising to do so. Instead, they have remained preoccupied with politics. From Italy to Germany, forming and sustaining governments now seems to take more time than actual governing. And Greece, for example, has relied on money from international creditors to keep its head (barely) above water, rather than genuinely reforming its pension system or improving its business environment.

The lack of structural reform has meant that the unprecedented excess liquidity that central banks injected into their economies was not allocated to its most efficient uses. Instead, it raised global asset prices to levels even higher than those prevailing before 2008.

In the United States, housing prices are now 8% higher than they were at the peak of the property bubble in 2006, according to the property website Zillow. The price-to-earnings (CAPE) ratio, which measures whether stock-market prices are within a reasonable range, is now higher than it was both in 2008 and at the start of the Great Depression in 1929.

As monetary tightening reveals the vulnerabilities in the real economy, the collapse of asset-price bubbles will trigger another economic crisis – one that could be even more severe than the last, because we have built up a tolerance to our strongest macroeconomic medications. A decade of regular adrenaline shots, in the form of ultra-low interest rates and unconventional monetary policies, has severely depleted their power to stabilize and stimulate the economy.

If history is any guide, the consequences of this mistake could extend far beyond the economy. According to Harvard’s Benjamin Friedman, prolonged periods of economic distress have been characterized also by public antipathy toward minority groups or foreign countries – attitudes that can help to fuel unrest, terrorism, or even war.

For example, during the Great Depression, US President Herbert Hoover signed the 1930 Smoot-Hawley Tariff Act, intended to protect American workers and farmers from foreign competition. In the subsequent five years, global trade shrank by two-thirds. Within a decade, World War II had begun.

To be sure, WWII, like World War I, was caused by a multitude of factors; there is no standard path to war. But there is reason to believe that high levels of inequality can play a significant role in stoking conflict.

According to research by the economist Thomas Piketty, a spike in income inequality is often followed by a great crisis. Income inequality then declines for a while, before rising again, until a new peak – and a new disaster. Though causality has yet to be proven, given the limited number of data points, this correlation should not be taken lightly, especially with wealth and income inequality at historically high levels.

This is all the more worrying in view of the numerous other factors stoking social unrest and diplomatic tension, including technological disruption, a record-breaking migration crisis, anxiety over globalization, political polarization, and rising nationalism. All are symptoms of failed policies that could turn out to be trigger points for a future crisis.

Voters have good reason to be frustrated, but the emotionally appealing populists to whom they are increasingly giving their support are offering ill-advised solutions that will only make matters worse. For example, despite the world’s unprecedented interconnectedness, multilateralism is increasingly being eschewed, as countries – most notably, Donald Trump’s US – pursue unilateral, isolationist policies. Meanwhile, proxy wars are raging in Syria and Yemen.

Against this background, we must take seriously the possibility that the next economic crisis could lead to a large-scale military confrontation. By the logic of the political scientist Samuel Huntington , considering such a scenario could help us avoid it, because it would force us to take action. In this case, the key will be for policymakers to pursue the structural reforms that they have long promised, while replacing finger-pointing and antagonism with a sensible and respectful global dialogue. The alternative may well be global conflagration.

#### Slower growth increases populist conflict---140 years of data proves. – disproves defense and triggers more structural violnence

James Pethokoukis 6/4/21. The DeWitt Wallace Fellow at the American Enterprise Institute where he runs the AEIdeas blog. "Biden's budget predicts the Roaring Twenties will end in 2022. Uh oh.". https://theweek.com/politics/1001118/the-populist-political-warning-in-the-biden-budget

But there's a big non-economic reason to hope for growth faster than the pace predicted in the Biden budget. The historically slow recovery out of the Great Recession coincided with a rise of nativist populism, both here and in other rich countries. When economic growth falters, bad things often happen. In the study "Going to extremes: Politics after financial crises, 1870 – 2014," researchers found after a severe financial crisis, "voters seem to be particularly attracted to the political rhetoric of the extreme right, which often attributes blame to minorities or foreigners." This reaction equates to a 30 percent increase, on average, in the vote share going to far-right parties. A similar cause-and-effect is suggested in "Populist psychology: economics, culture, and emotions," which finds that economic crises "cause emotional reactions that activate cultural discontent. This, in turn, activates populist attitudes."

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#### Only growth solves the environment

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

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

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

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

#### Growth turns inequality.

Tejvan Pettinger 19. Economic teacher and graduate with a degree from Oxford University. "Benefits of economic growth." Economics Help. 12-14-2019. https://www.economicshelp.org/macroeconomics/economic-growth/benefits-growth/

Economic growth means an increase in real GDP – an increase in the value of national output, income and expenditure. Essentially the benefit of economic growth is higher living standards – higher real incomes and the ability to devote more resources to areas like health care and education.

[Chart Omitted]

real-gdp-1955

UK real GDP since 1955. Shows the magnitude of increased national output.

The benefits of economic growth include

benefits-growth

Higher average incomes. Economic growth enables consumers to consume more goods and services and enjoy better standards of living. Economic growth during the Twentieth Century was a major factor in reducing absolute levels of poverty and enabling a rise in life expectancy.

Lower unemployment. With higher output and positive economic growth, firms tend to employ more workers creating more employment.

[Chart Omitted]

unemployment-total

UK unemployment rises during a recession – falls during periods of economic growth.

Lower government borrowing. Economic growth creates higher tax revenues, and there is less need to spend money on benefits such as unemployment benefit. Therefore economic growth helps to reduce government borrowing. Economic growth also plays a role in reducing debt to GDP ratios.

[Chart Omitted]

uk-national-debt

A long period of economic growth in the post-war period helped reduce the UK debt to GDP ratio.

Improved public services. Higher economic growth leads to higher tax revenues and this enables the government can spend more on public services, such as health care and education e.t.c. This can enable higher living standards, such as increased life expectancy, higher rates of literacy and a greater understanding of civic and political issues.

Money can be spent on protecting the environment. With higher economic growth a society can devote more resources to promoting recycling and the use of renewable resources

Investment. Economic growth encourages firms to invest, in order to meet future demand. Higher investment increases the scope for future economic growth – creating a virtuous cycle of economic growth/investment.

Increased research and development. High economic growth leads to increased profitability for firms, enabling more spending on research and development. Also, sustained economic growth increases confidence and encourages firms to take risks and innovate.

Economic development. The biggest factor for promoting economic development is sustained economic growth. Economic growth in south-east Asia over the past few decades has played a major role in reducing absolute levels of poverty – increasing life expectancy.

More choice. In less developed economies, a large proportion of the population work in agriculture/subsistence farming, economic growth enables a more diverse economy with people able to work in service sector, manufacturing and having a greater choice of lifestyles.

### 1NR – UQ

#### Growth is up – assumes their answers

Mutikani 2/4 [Lucia Mutikani, Reuters. “U.S. labor market shrugs off Omicron surge, economy strong ahead of rate hikes.” 2/4/22. https://www.reuters.com/business/us-job-growth-beats-expectations-january-unemployment-rate-40-2022-02-04/]

The U.S. economy created far more jobs than expected in January but despite the disruption to consumer-facing businesses from a surge in COVID-19 cases, pointing to underlying strength that should sustain the expansion as the Federal Reserve starts to raise interest rates.

The Labor Department's closely watched employment report on Friday also showed a whopping 709,000 more jobs were added in November and December than previously estimated. Wage gains accelerated last month and the labor pool expanded.

The upbeat report ended days of anxiety among economists and White House officials who had frantically tried to prepare the nation for a disappointing payrolls number.

"This is a strong jobs report," said Chris Low, chief economist at FHN Financial in New York. "The odds of quelling inflation without a recession look better today than yesterday."

Nonfarm payrolls increased by 467,000 jobs last month, the survey of establishments showed. Economists polled by Reuters had forecast 150,000 jobs would be added in January. Estimates ranged from a decrease of 400,000 to a gain of 385,000 jobs.

Employment is 2.9 million jobs below its pre-pandemic peak.

Part of the broad increase in payrolls likely reflected low layoffs after the holiday hiring season, with 10.9 million job openings at the end of December. Though the drop in actual employment in January was in line with prior years, there were large differences at the industry level.

The government also reported that 374,000 more jobs were created in the 12 months through March 2021 than previously reported. January capped President Joe Biden's first year in office, which saw 6.6 million jobs added. Despite the strong economy, Biden's popularity is declining amid soaring inflation.

"We still have a lot of work to do," said Biden at the White House. "Making sure every American has a job, it's a great start, but it's not the finish."

The labor market resilience could alter expectations that economic growth would slow significantly in the first quarter, after consumer spending exited 2021 with a whimper. The economy grew at a 6.9% annualized rate in the fourth quarter. Growth estimates for the first quarter are below a 2% pace.

Strong employment gains, accompanied by the biggest annual increase in wages since May 2020, pave the way for the U.S. central bank to raise interest rates in March by at least 25 basis points to tame high inflation. Economists expect as many as seven rate hikes this year.

"The report is unequivocally good for the economy, but not for markets as the strength in the numbers presents another data point which supports more aggressively hawkish Fed action," said Cliff Hodge, chief investment officer at Cornerstone Wealth in Charlotte, North Carolina.

Stocks on Wall Street were higher. The dollar (.DXY) was steady versus a basket of currencies. U.S. Treasury prices fell.

LABOR POOL EXPANDS

Economists had anticipated a weak jobs report as the government surveyed businesses for payrolls in mid-January, when Omicron infections were peaking. The Labor Department said a record 3.616 million people who had a job were absent during the survey week because of illness.

Workers who are out sick or in quarantine and do not get paid during the payrolls survey period are counted as unemployed in the establishment survey even if they still have a job. Lower-paid hourly workers in industries like healthcare as well as leisure and hospitality, who typically do not have paid sick leave, bore the brunt of the winter COVID-19 wave.

According to the latest government data, paid sick leave was available to 79% of civilian workers in March 2021.

The leisure and hospitality industry added 151,000 jobs in January. Healthcare employment increased by 18,000. There were gains in retail, professional and business services employment as well as transportation and warehousing, and wholesale trade.

Manufacturing payrolls rose by 13,000, but construction employment fell 5,000, likely because of freezing temperatures. Government payrolls increased by 23,000 jobs.

Employment could increase further as coronavirus infections continue to subside. First-time applications for unemployment benefits dropped for a second straight week last week.

The United States is reporting an average of 354,399 new COVID-19 infections a day, sharply down from the more than 700,000 in mid-January, according to a Reuters analysis of official data.

The government introduced new population estimates for the household survey, from which the unemployment rate is derived. The new assumptions had a negligible effect on the unemployment rate, which rose to 4.0% from 3.9% in December.

But the labor force participation rate, or the proportion of working-age Americans who have a job or are looking for one, increased to 62.2% due to the changes in the composition of the population, from 61.9% in December.

The workforce increased by 1.393 million people. The employment-to-population ratio rose to 59.7% from 59.5% in December.

Other details of the household survey were strong. Employment increased by 1.199 million jobs. The survey counts people who have a job as employed regardless of whether they got paid during the survey week if they were temporarily absent from their jobs because of illness or other reasons.

A broader measure of unemployment, which includes people who want to work but have given up searching and those working part-time because they cannot find full-time employment, dropped to 7.1%, the lowest since February 2020, from 7.3% in December.

With some lower hourly paid workers at home, wage growth accelerated. Average hourly earnings surged 0.7%, which raised the annual increase to 5.7%, the largest gain since May 2020.

But Omicron's surge cut the average workweek to 34.5 hours, the shortest since April 2020, from 34.7 hours in December.

"All in all, the U.S. economy appears to be on a strong footing," said Noah Williams, an adjunct fellow at the Manhattan Institute.

#### 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.

#### Economy high and stable now.

Kent Miller 1/17, Global Corporate Affairs & Communications, PwC Global, polled 4,446 CEOs, “CEO optimism hits 10-year high – three-quarters expect a stronger global economy in 2022: PwC Global CEO Survey,” PricewaterhouseCoopers, 1-17-2022, https://www.pwc.com/gx/en/news-room/press-releases/2022/pwc-25th-annual-global-ceo-survey.html

77% predict a stronger global economy in the coming year; only 15% expect weaker conditions

Optimism about the global economy trends higher compared to last year in India, Japan, UK, France, Italy; somewhat lower in the US, China, Brazil, Germany

Strong correlation is shown between customer trust and CEO confidence as well as whether a net-zero commitment has been made

Cyber and health risks rank as top global threats followed closely by macroeconomic volatility

CEOs identify the US as the most important growth destination globally over the next 12 months, followed by China

Net-zero commitments are lagging for many – fewer than a quarter of CEOs said their companies have made commitments

CEOs continued to face pressure generated by the ongoing COVID pandemic and market conditions such as rising inflation, supply chain disruptions and the ‘Great Resignation’ in parts of the world. Despite the array of shifting headwinds, the CEOs that we surveyed are the most optimistic they have been in 10 years about the prospects for a stronger economy in the coming year. More than three-quarters of CEOs, 77%, predict the global economy will improve, while only 15% expect worsening conditions.

CEO optimism for 2022 is a tick higher than the 76% optimism level from a year ago and fully 54 points higher than 2020, when more than half (53%) of CEOs predicted a declining economy. These are findings from PwC’s 25th Annual Global CEO Survey, which polled 4,446 CEOs in 89 countries and territories between October and November 2021.

While there is general optimism among CEOs for economic growth in 2022, the perspective varies widely across individual countries and territories. Among the largest territories, optimism is highest in India, where 94% of CEOs anticipate global growth in the coming year, up from 88% last year. Optimism is also trending up solidly among CEOs in Japan (plus 16 points to 83%, from 67% last year), and is modestly higher in the UK (up five points to 82%). Italy and France saw large increases in CEO optimism, perhaps as a result of stronger than expected economic recoveries.

CEO optimism in Italy reached 89%, up 18 points from a year ago, while France experienced the greatest increase in CEO optimism, soaring 25 points to 85%.

At the other end of the spectrum, CEO optimism about the global economy declined most notably in the US, down 18 points to 70%, and was also slightly down in Brazil (dropping seven points to 77%), China (down nine points to 62%) and Germany (down four points to 76%), perhaps as inflation and supply chain constraints became more of an issue.

While US CEOs may be less sanguine on the global economy, they are comparatively confident about their own companies’ growth prospects, with 40% extremely confident about achieving revenue growth in 2022. India CEOs are similarly confident in their companies’ outlook.

Bob Moritz, Global Chairman, PwC said: “While the ongoing pandemic and emergence of new variants cast a shadow over the year, the high level of CEO optimism we found speaks to the strength and resilience of the global economy and the ability of CEOs to manage through uncertainty. There is nothing “normal” about the world we are working in, but we are getting used to it. We are seeing differences in confidence among countries, and there is no shortage of challenges to navigate, but it is encouraging that CEOs we spoke with on the whole feel positive about 2022.”

The power of trust

Trust has never been more important to a company’s success, and never more challenging to earn and maintain. Based on CEO responses to a series of questions about their customers’ behaviours, the survey shows a correlation between customer trust and CEO confidence. CEOs of companies ranking highest on perceived customer trust are more confident in their growth prospects in the coming year. Seventy-one percent of CEOs of companies with the highest levels of trust are very or extremely confident in their companies’ prospects for revenue growth in the next 12 months, compared to just 47% of those with the lowest levels of trust.

Trust was also found to be correlated with net-zero commitments. CEOs of companies ranked highest for trust are significantly more likely to lead organisations that have made a net-zero commitment (29%) than those ranked lowest for customer trust (16%). CEOs of “high-trust” companies are also more likely to lead organisations that have tied non-financial outcomes to their compensation. About half of CEOs who lead organisations ranked highest for trust have customer satisfaction (51%) and employee engagement metrics (46%) tied to their personal bonus or incentive plan.

Cyber and health risks top CEOs’ concerns

CEOs’ optimism is high for the most part, but they are also well aware of potential threats that could impact their companies over the coming 12 months.

Similar to last year, cyber and health risks rank as the leading global threats, identified by 49% and 48% of CEOs, respectively. Not far behind is macroeconomic volatility, with 43% of CEOs either very or extremely concerned about the potential impact of inflation, fluctuations in GDP and labour market issues in the coming year. Another major underlying concern is the ability to attract and retain talent - 69% of CEOs concerned about social inequality risks cite this as an impact, as do 62% of CEOs concerned about health risks.

From an industry perspective, cyber risks are top of mind for financial services CEOs, 59% of whom cited cyber as a key threat. Notably, manufacturing (40%) and consumer (39%) CEOs displayed lower concern levels about cyber, despite those sectors’ high volume of cyber attacks. It bears watching to see if this relative level of complacency reverses itself over the coming year.

Understandably, a high percentage of hospitality and leisure CEOs (75%) are concerned about the impact of health risks on their business. And 49% of energy, utility and resource CEOs see climate change as a key threat in the coming year, 15 points higher than the percentage across all industries.

CEO perception of threats varies by geography. More than half, 58%, of CEOs in Asia-Pacific are very or extremely concerned about health risks in the coming year (the exception is China, where only 42% of CEOs are highly concerned about health risks). By comparison, just 37% of Western Europe and 44% of North America CEOs have similar concerns about health risks. Conversely, only 44% of Asia-Pacific CEOs are highly concerned about cyber risks (Australia, at 71%, is a notable exception), while North America CEOs show a higher level of concern (56%; 61% in the US), as well as Western Europe (50%; 66% in Switzerland).

Bob Moritz said: “When CEOs look at the next 12 months, they are understandably concerned about potential threats to short-term performance that could result from disruptions, including macroeconomic volatility, cyber and health risks. While threats such as climate change and social inequality are further down the list, it is critical not to lose focus on these more long-term issues as they will define what sort of world we live in and hand down to the next generation.”

Global CEOs look to the US for growth

When CEOs look outside their home country for revenue growth in the coming year, the US is viewed as offering the greatest potential. Forty-one percent rank the US as one of the top countries for their companies’ growth prospects over the next 12 months, up from 35% in 2021. China is ranked second overall, at 27%, comparable to its ranking last year, followed by Germany (18%) and the UK (17%, a six point increase from a year ago). For US CEOs, the UK is top-ranked for revenue growth importance over the next 12 months – 37% said it is one of their top markets, more than China at 26%. China CEOs rank the US (29%) as top-three most important for revenue growth, followed closely by Australia (24%), Germany (23%) and Japan (23%).

## Trade DA

### 1NR – Turns Case – Thompson

#### Nuclear war is not whitewashing---results in targeting urban centers which necessitates acknowledging their risks.

Nicole A. **Thompson 18**. Chicago-based creative writer. 4-6-2018. "Why I will not allow the fear of a nuclear attack to be white-washed." RaceBaitR. http://racebaitr.com/2018/04/06/2087/#

I couldn’t spare empathy for a white woman whose biggest fear was something that hadn’t happened yet and might not. Meanwhile, my most significant fears were in motion: women and men dying in cells after being wrongly imprisoned, choked out for peddling cigarettes, or shot to death during ‘routine’ traffic stops. I twitch when my partner is late, worried that a cantankerous cop has brutalized or shot him because he wouldn’t prostrate himself. As a woman of color, I am aware of the multiple types of violence that threaten me currently—not theoretically. Street harassment, excessively affecting me as a Black woman, has blindsided me since I was eleven. A premature body meant being catcalled before I’d discussed the birds and the bees. It meant being followed, whistled at, or groped. As an adult, while navigating through neighborhoods with extinguished street lights, I noticed the correlation between women’s safety and street lighting—as well as the fact that Black and brown neighborhoods were never as brightly lit as those with a more significant white population. I move quickly through those unlit spaces, never comforted by the inevitable whirl of red and blue sirens. In fact, it’s always been the contrary. Ever so often, cops approach me in their vehicle’s encouraging me to “Hurry along,” “Stay on the sidewalk,” or “Have a good night.” My spine stiffening, I never believed they endorsed my safety. Instead, I worried that I’d be accused of an unnamed accusation, corned by a cop who preys on Black women, or worse. A majority of my 50-minute bus ride from the southside of Chicago to the north to join these women for the birthday celebration was spent reading articles about citywide shootings. I began with a Chicago Tribute piece titled “33 people shot, seven fatally, in 13 hours,” then toppled into a barrage of RIP posts on Facebook and ended with angry posts about police brutality on Tumblr. You might guess, by the time I arrived to dinner I wasn’t in the mood for the “I can’t believe we’re all going to die because Trump is an idiot” shit. I shook my head, willing the meal to be over, and was grateful when the check arrived just as someone was asking me about my hair. My thinking wasn’t all too different from Michael Harriot’s ‘Why Black America Isn’t Worried About the Upcoming Nuclear Holocaust.” While the meal was partly pleasant, I departed thinking, “fear of nuclear demolition is just some white shit.” Sadly, that thought would not last long. I still vibe with Harriot’s statement, “Black people have lived under the specter of having our existence erased on a white man’s whim since we stepped onto the shore at Jamestown Landing.” However, a friend—a Black friend—ignited my nuclear paranoia by sharing theories about when it might happen and who faced the greatest threat. In an attempt to ease my friend’s fear, I leaned in to listen but accidentally toppled down the rabbit hole too. I forked through curated news feeds. I sifted through “fake news,” “actual news,” and foreign news sources. Suddenly, an idea took root: nuclear strike would disproportionately impact Black people, brown people, and low-income individuals. North Korea won’t target the plain sight racists of Portland, Oregon, the violently microaggressive liberals of the rural Northwest, or the white-hooded klansmen of Diamondhead, Mississippi. No, under the instruction of the supreme leader Kim Jong-un, North Korea will likely strike densely populated urban areas, such as Los Angeles, Chicago, Washington D.C., and New York City. These locations stand-out as targets for a nuclear strike because they are densely populated U.S. population centers. Attacking the heart of the nation or populous cities would translate to more casualties. With that in mind, it’s not lost on me that the most populous cities in the United States boast sizeable diverse populations, or more plainly put: Black populations. This shit stresses me out! There’s a creeping chill that follows me, a silent alarm that rings each time my Google alert chimes letting me know that Donald Trump has yet again provoked Kim Jong-Un, a man who allegedly killed his very own uncle. I’ve grown so pressed by the idea of nuclear holocaust that my partner and I started gathering non-perishables, candlesticks, a hand-crank radio, and other must-buy items that can be banked in a shopping cart. The practice of preparing for a nuclear holocaust sometimes feels comical, particularly when acknowledging that there has long been a war on Black people in this country. Blackness is bittersweet in flavor. We are blessed with the melanized skin, the MacGyver-like inventiveness of our foremothers, and our blinding brightness—but the anti-blackness that we experience is also blinding as well as stifling. We are stuck by rigged systems, punished with the prison industrial complex, housing discrimination, pay discrimination, and worse. We get side-eyes from strangers when we’re “loitering,” and the police will pull us over for driving “too fast” in a residential neighborhood. We get murdered for holding cell phones while standing in our grandmother’s backyard. The racism that strung up our ancestors, kept them sequestered to the back of the bus and kept them in separate and unequal schools still lives. It lives, and it’s more palpable than dormant. To me, this means one thing: Trump’s America isn’t an unfortunate circumstance, it’s a homecoming event that’s hundreds of years in the making, no matter how many times my white friends’ say, “He’s not my president.” In light of this homecoming, we now flirt with a new, larger fear of a Black genocide. America has always worked towards Black eradication through a steady stream of life-threatening inequality, but nuclear war on American soil would be swift. And for this reason I’ve grown tired of whiteness being at the center of the nuclear conversation. The race-neutral approach to the dialogue, and a tendency to continue to promote the idea that missiles will land in suburban and rural backyards, instead of inner-city playgrounds, is false. “The Day After,” the iconic, highest-rated television film in history, aired November 20, 1983. More than 100 million people tuned in to watch a film postulating a war between the Soviet Union and the United States. The film, which would go on to affect President Ronald Reagan and policymakers’ nuclear intentions, shows the “true effects of nuclear war on average American citizens.” The Soviet-targeted areas featured in the film include Higginsville, Kansas City, Sedalia, Missouri, as well as El Dorado Springs, Missouri. They depict the destruction of the central United States, and viewers watch as full-scale nuclear war transforms middle America into a burned wasteland. Yet unsurprisingly, the devastation from the attack is completely white-washed, leaving out the more likely victims which are the more densely populated (Black) areas. Death tolls would be high for white populations, yes, but large-scale losses of Black and brown folks would outpace that number, due to placement and poverty. That number would be pushed higher by limited access to premium health care, wealth, and resources. The effects of radiation sickness, burns, compounded injuries, and malnutrition would throttle Black and brown communities and would mark us for generations. It’s for that reason that we have to do more to foster disaster preparedness among Black people where we can. Black people deserve the space to explore nuclear unease, even if we have competing threats, anxieties, and worries. Jacqui Patterson, Director of the Environmental and Climate Justice Initiative, once stated: African American communities are disproportionately vulnerable to and impacted by natural (and unnatural) catastrophes. Our socio-economic vulnerability is based on multiple factors including our lack of wealth to cushion us, our disproportionate representation in lower quality housing stock, and our relative lack of mobility, etc.

### 1NR – Turns Case – Trade

#### 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.