# 1NC

## off

### t – prohibit

#### Prohibitions are bans that command behavior regardless of cost-benefit analysis.

AARON M . LEVINE, associate at Sullivan & Cromwell, JD Yale, & JOSHUA C . MACEY, Clerk for Judge Harvey Wilkinson, JD Yale, ’18, “Dodd-Frank Is a Pigouvian Regulation” The Yale Law Journal 127:1336

A. Command-and-Control Regulations

In a command-and-control regulatory scheme, the regulator—which can be an administrative agency, a judicial body, an executive, or a legislature—either prohibits or requires a certain action. Prohibitions—often called bans23 —pervade the American regulatory system and address a variety of problems, such as drug use24 and speeding.25 Mandates are also prevalent and cover diverse regulatory areas, such as minimum wage26 and seatbelt requirements.27 Dodd-Frank is replete with both prohibitions and commands.28 The most obvious benefit of command-and-control regulations is that they are a direct way for the government to prohibit or mandate behavior. Some regulatory goals are better served when the government does not need to engage in a complicated cost-benefit analysis to determine how much of a behavior should be permitted. Instead, a blanket prohibition or requirement is preferable. For instance, when implementing Dodd-Frank, Congress decided that most swaps should be traded on exchanges29 and that companies should report certain information about swap deals.30 Rather than charging financial institutions for refusing to report swaps or trade on an exchange, Dodd-Frank simply requires banks to abide by these rules.31 There was no need for the government to give parties the option not to report swaps since its aim was to force companies to report information on swap deals in every situation in order to promote pretrade price transparency.32 In situations like this, when the government is certain that an action should be required or prohibited, it need not waste resources implementing a complicated market-based scheme in order to accomplish its regulatory goal. Command-and-control regulations can also be optimal even when the government is not entirely sure that the relevant activity is worthy of indiscriminate prohibition or promotion. If the government lacks information about the private value a company places on an activity, but knows that the social costs of that activity are exorbitant, it may be advantageous to ban the activity entirely rather than to embrace an incentive-based regime that risks under-deterrence. Some have found SIFI regulations flawed for just this reason. For instance, the President of the Federal Reserve Bank of Minneapolis, Neel Kashkari, announced a plan to raise capital requirements dramatically in large part to force SIFIs to reduce dramatically the scope and scale of their operations.33 The idea is that capital requirements are currently not sufficiently onerous to incentivize banks to downsize. Recognizing that too big to fail firms remain a problem, Kashkari proposed increasing SIFI capital requirements to 23.5% in order to reduce the risks posed by these kinds of financial institutions.34 Although Kashkari grounds this position in the desire to ensure that banks have sufficient capital to withstand an economic downturn without resorting to bail outs,35 he acknowledges that his proposal would have the side benefit of forcing banks to restructure themselves.36 The compliance costs would be so onerous that they would effectively amount to a hard cap on bank size because banks would be forced to take immediate corrective actions and shrink dramatically.37 According to Kashkari, current capital rules do not provide a strong enough incentive for banks to downsize and simplify of their own accord, but more onerous capital requirements would.38 B. Market-Based Incentives In contrast with command-and-control regulations, market-based solutions neither prohibit nor require activities; instead, they influence behavior by changing the costs associated with certain actions. The government uses market-based incentives to regulate all sorts of behavior. Section 163(h) of the Tax Code, for example, provides a tax deduction for interest paid on home mortgages.39 The purpose of this provision is to incentivize people to buy homes—to give them “a stake in society and induce[] them to care about their neighborhoods and towns” by providing them a financial bonus when they do so.40 In this vein, the Tax Code has also been used to incentivize, among other things, the use of green energy,41 employer-provided health insurance,42 and charitable donations.43 As discussed in greater detail in Parts II and III, one of Dodd-Frank’s more onerous market-based regulations is the SIFI designation.44 Although the purpose of the SIFI designation is ostensibly to force banks to take steps toward becoming more resilient to economic downturns,45 the regulations also effectively charge financial institutions for being large. Banks are automatically subject to SIFI regulations if they have assets exceeding $50 billion.46 As soon as a bank crosses that threshold, it must pay a capital surcharge, conduct annual stress tests, and abide by certain liquidity requirements.47 And SIFI requirements get more onerous as banks get bigger.48 In short, these costs deter banks from growing larger. There are significant advantages to market-based solutions.49 In fact, most economists regard “Pigouvian taxes”—a classic form of market-based incentives in which the government imposes a tax on a private activity equal to the social costs created by that private activity—as generally preferable to other forms of regulation in most market conditions.50 One scholar framed the tension between the academic exuberance for Pigouvian taxes and the reluctance of policymakers to implement them in the following terms: “To many economists, the basic argument for increased use of Pigouvian taxes is so straightforward as to be obvious. But as George Orwell once put it, ‘We have now sunk to a depth where the restatement of the obvious is the first duty of intelligent men.’”51

#### The plan “adds weight” -- that doesn’t ban and requires complex cost – benefit analysis.

#### Limits and ground – allowing the aff to establish a new theory of harm opens the door to any amicus brief as a new aff, and avoids all topic DAs by claiming they ban nothing by *only* expanding existing grounds.

### p – misclosure

#### Misclosure is a voter – they said “it’s the 1AC we read against you at Harvard” – it was not, we have attached that one along with the 1NC. Ag, killer acquisitions, surveillance cards, AND plan text(!!!) are new and were not sent til after the 1NC. Key to neg prep in the pre-round and deterrence. Also means be extra-lenient with new block args.

### cp – regulate

#### The United States federal government should substantially increase its economic regulations aimed at protecting the competitive process, including at least more robust labor protections, requiring information-sharing about cybersecurity vulnerabilities in the communications market, data portability requirements, coordinating economic regulation with the European Union through the Trade Technology Council, and encouraging sustainable agriculture.

#### 2NC can clarify and kick pieces – misclosure!

#### Non-antitrust enforcement is sufficient

Rill 2 – was an Assistant Attorney General for the Antitrust Division in the Department of Justice (James, "The Evolution of Modern Antitrust among Federal Agencies." George Mason Law Review, vol. 11, no. 1, Fall 2002, p. 135-142. HeinOnline)//gcd

Multiple federal enforcement agencies with competition-related authority, broadly defined, have evolved from several different roots. From the outset, these agencies were not uniformly consumer-welfare impelled or oriented, nor have they altogether evolved in that direction. Their focus has been as much on social and political, non-consumer-welfare concerns-a continuing condition more prevalent before the mid-1970s than today. Federal economic concerns with market power brought about the establishment of regulatory agencies prior to enactment of the Sherman Act.' The patriarch, the Interstate Commerce Act of 1887,2 was a congressional response to concerns with the alleged monopoly and political power of the nation's railroads. Over the ensuing years, numerous other non-antitrust agencies were vested with power to regulate competition. Evolving from concerns with "bigness" as a threat to markets and, indeed, to the political system, legislation was enacted to address particular industries. This legislation afforded specialized agencies authority to regulate competition, to some extent in the same vein as that vested in the traditional antitrust agenciese.g., the Packers and Stockyards Act of 19213 and the Public Utility Holding Company Act of 1935.' Specialized agencies were also created to deal with the competitive functioning of industries in markets which were believed to embrace public assets, for example, air space and airlines and, initially, spectrum and broadcast communications. Part of the concern with "bigness" derived from fear of "excessive" competition, leading to statutory and regulatory restrictions on low-level pricing and limitations on market entry. The antitrust statutes were not immune from infection by this concern, as evidenced by enactment of the Robinson-Patman Act in 1936.' While the jurisdiction of sectoral agencies over competition and the relevant industries was often expressed in the governing statues as antitrust concerns, the overarching mandate was, and is, to protect and advance "the public interest." This ambiguous standard continues to provide sectoral agencies with more latitude to address industry competitive and other attributes beyond consumer welfare. The unfortunate ambiguity of this standard is brilliantly illuminated in an address by Judge Henry Friendly in the 1962 Oliver Wendell Holmes lectures at Harvard Law School and in a subsequent article in the Harvard Law Review.

### da – econ

#### Moving away from the consumer welfare standard in antitrust destroys growth

Auer 18 – Dick Auer, Senior Fellow, International Center for Law & Economics, “Comments of the International Center for Law & Economics: Topic 4: Antitrust law and the consumer welfare standard,” FTC Hearings on Competition & Consumer Protection in the 21st Century, https://www.ftc.gov/system/files/documents/public\_comments/2018/10/ftc-2018-0074-d-0071-155999.pdf

The adoption of the consumer welfare standard was an enormous improvement over what came before it. Yet no one would assert that every aspect of antitrust policy in furtherance of the consumer welfare standard is perfect and should remain unchanged. There will always be grounds for critique and improvement of specific policy decisions and processes. But none of these arguments undercuts the basic merits of the standard and its supremacy over alternatives.

Antitrust enforcers and courts have a difficult time as it is ensuring that their decisions actually benefit consumers. As Robert Pitofsky once said, “antitrust enforcement along economic lines al-ready incorporates large doses of hunch, faith, and intuition.”40 But the existence of imperfections does not justify intervention that would move us further away from economic objectives. Indeed, such intervention would more than likely make the imperfections worse.

When antitrust policy is unmoored from economic analysis, it exhibits fundamental and highly problematic contradictions, as Herbert Hovenkamp highlighted in a recent paper:

As a movement, antitrust often succeeds at capturing political attention and engaging at least some voters, but it fails at making effective or even coherent policy. The result is goals that are unmeasurable and fundamentally inconsistent, although with their contra-dictions rarely exposed. Among the most problematic contradictions is the one between small business protection and consumer welfare. In a nutshell, consumers benefit from low prices, high output and high quality and variety of products and services. But when a firm or a technology is able to offer these things they invariably injure rivals, typically those who are smaller or heavily invested in older technologies. Although movement antitrust rhetoric is often opaque about specifics, its general effect is invariably to encourage higher prices or reduced output or innovation, mainly for the protection of small business or those whose technology or other investments have become obsolete.41

Even with careful economic analysis, it will not always be clear how to resolve the inevitable tensions between consumer welfare and other policy preferences. In 1978, then-FTC-Chairman Michael Pertschuk laid out his vision for a “new competition policy” at the FTC. In it, he asserted that anti-trust policy must consider

the social and environmental harms produced as unwelcome by-products of the market-place: resource depletion, energy waste, environmental contamination, worker alienation, the psychological and social consequences of market-stimulated demands.”42

It is not clear what it would mean to take account of these things in the context of anything approaching a rigorous policy framework. But even more troublingly, many, if not all of them call for a rejection of the core, competition-focused objective of antitrust.

For instance, Jonathan Adler has described the collision between antitrust and environmental protection in cases where, precisely because of reduced output, collusion might lead to better environ-mental outcomes, such as improved conservation of wild fish and other common pool resources.43 How would a court or enforcer conceivably evaluate that trade-off? It is difficult enough to evaluate the procompetitive justifications for certain conduct already — including in somewhat similar circumstances where intrabrand price or distribution constraints, for example, may be aimed at pre-serving the “common pool resource” of brand value or consumer goodwill. But that difficulty is only magnified where the trade-off is between incommensurate benefits, distributed over entirely different populations, and without any operational connection between them within the firm undertaking the conduct in question.

Whatever benefits might conceivably come from giving weight to non-economic values, even just at the margin, they would inevitably come at the expense of the core, competitive values of modern antitrust. As Ernest Gellhorn noted in his masterful critique of Pertschuk’s “socially conscious” vision for the FTC:

Competitive values must be sacrificed if social values are to be given primacy — or else the new policy is nothing more than rhetoric and official deception. The second and equally important point is that the new chairman’s “humanistic model” for antitrust is formless, shapeless, and unpredictable. There simply are no generally accepted “democratic and social norms” for applying the antitrust laws — and some of the new chairman’s announced values are worrisome, at least to the extent they are offered as the basis for determining the shape and operation of much of our economy.

The problem is that unless antitrust law has an objective and principled foundation, antitrust enforcement can become the personal plaything of enforcement personnel, or the stock in trade of lobbyists and influence-peddlers.44

While it is perfectly reasonable to care about political corruption, worker welfare, and income ine-quality, it is not at all reasonable to try to shoehorn goals based on these political concerns into antitrust — a body of legal doctrine whose tools are wholly inappropriate for achieving those ends. As Carl Shapiro has noted, “The fundamental danger that 21st century populism poses to antitrust is that populism will cause us to abandon this core principle and thereby undermine economic growth and deprive consumers of many of the benefits of vigorous but fair competition.”45

#### Extended COVID economic decline causes multilateral meltdown – causes nuclear war, climate change, Arctic and space war.

McLennan 21 – Strategic Partners Marsh McLennan SK Group Zurich Insurance Group, Academic Advisers National University of Singapore Oxford Martin School, University of Oxford Wharton Risk Management and Decision Processes Center, University of Pennsylvania, “The Global Risks Report 2021 16th Edition” “http://www3.weforum.org/docs/WEF\_The\_Global\_Risks\_Report\_2021.pdf

Forced to choose sides, governments may face economic or diplomatic consequences, as proxy disputes play out in control over economic or geographic resources. The deepening of geopolitical fault lines and the lack of viable middle power alternatives make it harder for countries to cultivate connective tissue with a diverse set of partner countries based on mutual values and maximizing efficiencies. Instead, networks will become thick in some directions and non-existent in others. The COVID-19 crisis has amplified this dynamic, as digital interactions represent a “huge loss in efficiency for diplomacy” compared with face-to-face discussions.23 With some alliances weakening, diplomatic relationships will become more unstable at points where superpower tectonic plates meet or withdraw.

At the same time, without superpower referees or middle power enforcement, global norms may no longer govern state behaviour. Some governments will thus see the solidification of rival blocs as an opportunity to engage in regional posturing, which will have destabilizing effects.24 Across societies, domestic discord and economic crises will increase the risk of autocracy, with corresponding censorship, surveillance, restriction of movement and abrogation of rights.25 Economic crises will also amplify the challenges for middle powers as they navigate geopolitical competition. ASEAN countries, for example, had offered a potential new manufacturing base as the United States and China decouple, but the pandemic has left these countries strapped for cash to invest in the necessary infrastructure and productive capacity.26 Economic fallout is pushing many countries to debt distress (see Chapter 1, Global Risks 2021). While G20 countries are supporting debt restructure for poorer nations,27 larger economies too may be at risk of default in the longer term;28 this would leave them further stranded—and unable to exercise leadership—on the global stage.

Multilateral meltdown Middle power weaknesses will be reinforced in weakened institutions, which may translate to more uncertainty and lagging progress on shared global challenges such as climate change, health, poverty reduction and technology governance. In the absence of strong regulating institutions, the Arctic and space represent new realms for potential conflict as the superpowers and middle powers alike compete to extract resources and secure strategic advantage.29 If the global superpowers continue to accumulate economic, military and technological power in a zero-sum playing field, some middle powers could increasingly fall behind. Without cooperation nor access to important innovations, middle powers will struggle to define solutions to the world’s problems. In the long term, GRPS respondents forecasted “weapons of mass destruction” and “state collapse” as the two top critical threats: in the absence of strong institutions or clear rules, clashes— such as those in Nagorno-Karabakh or the Galwan Valley—may more frequently flare into full-fledged interstate conflicts,30 which is particularly worrisome where unresolved tensions among nuclear powers are concerned. These conflicts may lead to state collapse, with weakened middle powers less willing or less able to step in to find a peaceful solution.

### cp – gcsr

#### The United States federal government should, after prior and binding consultation with stakeholders, adopt a green competition standard.

#### The CP solves the AFF but the perm stops state immunization– the process is necessary to CSR

Miazad 21 – Founding Director and Senior Research Fellow of the Business in Society Institute at Berkeley Law. (Amelia, Prosocial Antitrust (March 11, 2021). Available at SSRN: <https://ssrn.com/abstract=3802194>)//gcd

The DOJ and FTC should convene a public debate on whether competition policy prevents or discourages companies from collaborating to address environmental or social risks. The DOJ and FTC should initiate a public debate on whether and how competition policy supports or undermines the Biden administration’s policy agenda on environmental and climate justice. Similar to the recent public debate on competition policy at the European Commission, US antitrust enforcement agencies should seek submissions from a wide range of stakeholders, including consumer rights advocates, economists, antitrust practitioners, academics, and industry participants.355 These submissions should seek to surface specific examples of whether and how competition policy is currently interfering with or dampening companies’ efforts mitigate environmental and social risks. The outcome of this public debate will delineate the scope of reform to competition policy. While antitrust law in the US and EU diverge in many ways, US antitrust enforcement agencies should attempt to align their efforts with the European Commission. Multinationals represent both the greatest threat and promise for combating climate change and economic injustice. Similar to other areas of antitrust enforcement, having vastly different international regimes will forestall progress. ii. The DOJ and FTC should update the Antitrust Guidelines for Collaboration Among Competitors and issue separate guidance on competitor collaboration to address climate change. Recently, there has been a robust example of the federal government affirmatively adjusting antitrust law to permit corporate collaboration when necessary to achieve a vital policy goal. In 2014, President Obama issued a statement stressing that “Cyber threats pose one the gravest national security dangers that the United States faces.”356 Acknowledging the role of antitrust law in mitigating this national security threat, the DOJ and FTC issued an “Antitrust Policy Statement on Sharing of Cybersecurity Information.”357 This joint statement acknowledged that antitrust could be unwittingly chilling valuable collaboration: “private entities may, however, be hesitant to share cyber threat information with others, especially competitors, because they believe such sharing may raise antitrust issues.”358 To further the policy goal of a “more secure and productive nation,”359 the DOJ and FTC detailed the contours of information that would be permissible under antitrust policy. Relying on United States v. United States Gypsum Co.,360 the agencies also clarified that they would impose a rule of reason analysis to information sharing in the context of cybersecurity in light of the public policy goal.361 On January 27, 2021, President Biden issued an executive order that begins with a commitment to put “the climate crisis at the center of United States Foreign Policy and National Security.”362 Crucially, the administration has also stressed that climate justice and economic justice are mutually dependent.363 The same day, Defense Secretary Lloyd Austin committed to “immediately take appropriate policy actions to prioritize climate change considerations in our activities and risk assessments, to mitigate this driver of insecurity.”364 Treasury Secretary Janet Yellen also responded by creating a new senior treasury post for a “Climate Czar” to mitigate the risks to the financial system posed by climate change.365 US antitrust enforcement agencies must recognize the unique role that competition policy plays to advance the administration’s policy goals by issuing guidelines for competitor collaboration to meet national security and economic priorities. iii. The DOJ & FTC should extend the fast-tracked review process for the COVID-19 pandemic to collaboration to address climate change. In response to the COVID-19 pandemic, the DOJ and FTC sprang into action and issued a fast-tracked review process for collaborations among corporate competitors seeking to advance health and safety.366 The agencies pledged to respond to applications within a week, whereas the standard process takes several months.367 As discussed above, the US was not alone. Competition agencies from Europe to Asia and South America have tried to support—or at least not obstruct— the pandemic response.368 But US agencies have specifically limited their guidance to joint efforts “to address the spread of COVID-19 and its aftermath.”369 Climate change deserves the same level of exigency warranting a fast-tracked review process. The UK, for example, temporarily relaxed competition rules to help the dairy industry avoid waste and sustain productive capacity by allowing dairy producers to share information like surplus milk quantities and stock levels.370 iv. Courts and antitrust enforcement agencies should recognize the procompetitive justifications underlying competitor collaboration to address environmental and social risks. The Sherman Act’s broad wording has left courts with wide latitude to define procompetitive justifications for competitor collaboration. Although they have already largely abandoned the per se analysis,371 courts and enforcement agencies should recognize that addressing systematic risk serves a valid procompetitive purpose. This is true even if the activity involves traditionally “per se” illegal categories, such as price fixing and group boycotts. This will require courts and enforcement agencies to consider the economic benefits of any prosocial collaboration from a “total social welfare perspective.”372 If the prosocial collaboration raises prices for current consumers but decreases negative externalities overall, then it should be permitted to proceed as procompetitive. This will, of course, require more robust externality accounting grounded in natural resource and environmental economics as opposed to the neoclassical economics that discounts scarcity.373 v. Congress should pass legislation that authorizes the DOJ and FTC to oversee temporary collaboration safe harbors. While fast-tracking the review process is a good start, it does not go nearly far enough to ensure that competition enforcement is not preventing or discouraging companies from addressing systematic risks. Toward that end, Congress should pass legislation requiring the DOJ and FTC to provide a safe harbor for competitor collaboration that addresses systematic environmental and social risks. Defining the specific scope of that exemption will emerge out of a consultative process, but global competition authorities offer some recent examples. On July 9, 2020, the Netherlands Authority for Consumers and Markets (ACM) was the first in the EU to publish draft guidelines containing a proposed approach to addressing sustainability agreements. 374 The Draft Guidelines would exempt agreements where sustainability benefits outweigh the anticompetitive effects. The Dutch Guidelines are bold in at least two respects. First, they do not require quantitative evidence of sustainability benefits if the companies involved in the agreement represent less than 30% of combined market share. Second, they take into account the benefits of the agreements for future consumers – a perspective that is far better aligned with universal ownership. Also, the Greek competition authority is currently advocating for a competition law sustainability ‘sandbox’ that would allow “industry to experiment with new business formats that aim to realize more quickly and efficiently sustainability goals, and which involve cooperation between competing undertakings or even more permanent changes in market structure in order to be accomplished.”375 The DOJ and FTC would be tasked with determining the scope and duration of any safe harbor. But those agencies will need to acquire more robust expertise in environmental economics to ensure that the procompetitive justifications for these competitor collaborations can be adequately measured. Moreover, any safe harbor from antitrust scrutiny would have to be closely monitored with appropriate sunset provisions. This activity-specific exception will undoubtedly trigger increased enforcement and monitoring costs as well. Senator Congress appears poised to increase funding for antitrust enforcement—funding for the oversight of prosocial collaboration should also be prioritized.376 CONCLUSION Corporations must mitigate systematic risks, such as climate change, income inequality and racial injustice. This is an economic imperative. Universal owners are now demanding corporate action to reduce the widespread damage that systematic risks are expected to wreak on their economy-wide portfolios. But corporations cannot act in isolation. They recognize the need to collaborate. Antitrust law currently prevents and discourages companies from working together to meet bold environmental and social demands. This Article sheds light on the collision course on which universal owners and the companies in which they invest, on the one hand, and antitrust law, on the other hand, find themselves. The debate about how antitrust law can support prosocial collaboration has begun in Europe. It needs to start in the US too. This Article has detailed the forces that require changes in antitrust law, and it proposes several approaches for initiating the debate and addressing antitrust law’s shortcomings.

#### The incentive structure of the CP solves the AFF without new rules

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Competition authorities should not provide straightforward competition rules when certain segments of a market need to be guaranteed to promote the development of a desirable new technology. Enhancing further competition in certain markets could also be in favor of green growth. Policies to encourage green growth consumption patterns have an enhanced link with competition policy. For instance, competition laws that prevent misleading advertising could be helpful to ensure greater respect for the rights of consumers, which is a component of sustainable development in many instances. Around the globe one of the first cases encompassing sustainability issues is the Shell/Tepco Case5 . In 2001, the Competition Tribunal of South Africa for the first time expressed its reading of the public policy evaluation in South African competition law. The European Court of Justice (ECJ), regarding Case C-379/98, stated that “[t]he use of renewable energy sources for producing electricity, is useful for protecting the environment in so far as it contributes to the reduction in emissions of greenhouse gases which are amongst the main causes of climate change which the European Community and its Member States have pledged to combat.” The ECJ decided that while the law was violated by the anti-competitive behavior of the dominant firm, it was doing so for protecting the environment. According to the HCC (2020), the Greek Competition Commission, has the power to issue an exemption decision under article 1 par. 3 of Law No 3959/2011. In its Decision No. 457/V/2009 the HCC issued an exemption decision under article 1 par. 3 of Law No 3959/2011 to the Public Company of Electricity (DEH) for an exclusive supply agreement for 15 years with a lignite mine for the generation of electricity, among others, on the grounds that security of energy supply would benefit direct consumers (HCC, 2009). Moreover, in its Decision No. 627/V/2016 the HCC cleared with commitments the acquisition of Piraeus Port Authority SA (PPA) by COSCO (Hong Kong) Group Limited (COSCO), among others, on the grounds that the clearance of the acquisition would benefit the public sector and the “users” of the Greek port, by €368,5 million (HCC, 2016). 6 With regard to Greek and European merger control, public interest considerations do not form part of the substantive test in both regimes. However, past case law indicates that HCC has engaged with green growth arguments, although in all of these cases sustainability has played a secondary role in the decision reached (HCC, 2020). Particularly, in HCC’s Decision No. 682/2019 the notifying party put forward two strategic objectives for the clearance of concentration; on the one hand, the reduction of energy required at all stages of its production process, through the recycling of aluminium products (scrap) by products whose use has been completed and, on the other hand, the achievement of acquired firm’s green attitude in favor of sustainable development (HCC, 2019). 7 All in all, the above mentioned case law indicates that competition policy should and must be the driving force of sustainability. The next step is to internalize green growth externalities into completion law towards sustainable growth. The interconnection between competition policy and sustainable growth is unquestionable. The former may play crucial role by enhancing sustainability through competition rules. National competition authorities must be the mechanism fostering sustainable growth by taking into account various aspects of externalities and comparing discounted gains against environmental costs. The analysis reveals that EU countries should strengthen their efforts towards Sustainable Development, particularly by eliminating their dependency from energy imports. One of the critical requirements for green growth is green investments, as it has been set out by EGGA (EC, 2019). Competition policy should, therefore, offer the incentives to firms to improve technological progress towards greener technologies and to avoid investments funds being channeled to brown technologies for short-term returns (Capasso et al., 2019). 8 For these purposes, it should balance the negatives and positives during the evaluation of firms’ anti-competitive behavior for protecting the environment.

#### Corporate sustainability solves extinction from environmental collapse but antitrust deters it

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* TNC – transnational corporation

A handful of TNCs have a major direct or indirect influence on the world’s ocean, the global atmosphere and terrestrial biomes, system components that serve critical functions in Earth’s dynamics (Fig. 1 and Table 1). TNCs dominate harvesting of the largest and most valuable fish stocks, including species with important functions in ocean ecosystems31. The same is true for the world’s forest capacity to regulate Earth’s climate 32. About 70% of greenhouse gas emissions are attributed to 100 companies, including both TNCs and stateowned monopolies producing coal, oil and gas33. These companies disproportionally influence climate change and ocean acidification. Sectors that generate contaminated effluents, with impact on ecosystems and biodiversity, show similar dominance (Table 1). TNCs have also become central in the development of the global food system, a major driver of environmental change, through simplification of landscapes, loss of biodiversity, release of greenhouse gas emissions, and alteration of biogeochemical and freshwater cycles34,35 (Table 1). Following recent mergers and acquisitions, the fertilizers market, the global agrochemical industry and the commercial crop seed market are dominated by ten, four and three TNCs, respectively. The same is true for ten corporations engaged in animal pharmaceuticals (Fig. 1). The observed levels of consolidation in the food system are also striking for individual commodities such as coffee, banana, cocoa, soy, palm oil or farmed salmon (Fig. 1 and Table 2). Mega-merger trends continue to drive consolidation vertically and horizontally within and across sectors, borders, systems and the land–ocean interface36,37, with dominant companies being often interlinked and interdependent. Clearly, TNCs are central actors in the human-dominated world and possess the ability to influence critical functions of the biosphere. This global keystone actor dimension of TNCs 31, whether producers, suppliers or financial actors, should be recognized, accounted for and governed in efforts towards sustainability within planetary boundaries. TNCs and sustainability Reality presents us with dominance40 and the environmental time window for transforming human actions towards sustainability is shrinking28. In this context, could the power of dominant TNCs help leverage large-scale systemic chang e41, accelerate positive transformations towards sustainability42 and contribute to a safe operating environmental space for humanity 30? In the face of insufficient environmental agreements and regulations, dominance poses a threat to sustainability. For instance, companies able to set barriers to entry in a sector can stifle sustainable practices and technological innovation in general. They can also impose low prices on suppliers, which reduces suppliers’ capacity to diversify and can force them into monocultural practices (particularly in the agricultural sector). Finally, TNCs often lobby regulators to weaken environmental and social standards to the benefit of their own businesses43–45. More generally, there exists scepticism towards businesses as sustainability leaders given two decades of relative ineffectiveness of voluntary corporate social responsibility25,46. Market concentration and corporate power are often regarded as roadblocks to social progress given the business priority of economic profit over nonmarket values24. Concerns have also been raised about viewing business as the solution to the problems they themselves took part in creating24. Also, emerging TNC sustainability initiatives have been questioned as they do not challenge the underlying imperative of business growth47. On the other hand, should dominant TNCs impose effective sustainability standards throughout their supply chain, this could influence both upstream and downstream market actors, including small and medium enterprises. This was the case when the world’s largest retailer committed to certified seafood, which is thought to have catalysed other retailers and triggered a rapid increase in certification48. Hence, as dominant actors impose sustainability measures, behavioural changes may propagate throughout global markets. Over the past two decades, 250 to 300 pioneering companies have actively invested for sustainable development, followed by several thousand other companies integrating sustainability considerations in their business49. Reputational risk management represents an important part of corporate strategy, particularly for large household-facing brands that are vulnerable to naming-and-shaming campaigns16,50. Such exposure helped realize the corporate sector soy moratorium, which contributed to reduced deforestation in the Brazilian Amazon 51. The World Wildlife Fund has consequently worked to influence companies with the greatest impacts on commodity demand, with the aim of shifting entire markets towards corporate stewardship of biodiversity, water and climate, and reducing the impact from commodity production on key areas of importance for global conservation52. However, TNC leadership is unlikely to be sufficient unless governments also provide a regulatory context that safeguards nonmarket ecological and social values. Antitrust law and institutions have a central role to play in regulating dominance and keeping markets competitive, but they are ill suited to address concerns associated with public governance of goals like environmental sustainability or with the political power of large corporations53,54. Importantly, the delineation between public governance and large corporations is increasingly blurred55. Private governance is rapidly emerging in a range of biosphere-related sectors56,57, where TNCs play a big role in shaping their own regulatory space58 including how sustainability is defined and enacted. Concerns have been raised over such increasing influence, particularly with respect to accountability, fair representation and global equity16. In this context, major changes in the strategy and practice of TNCs are needed to help shift power away from being exercised to the detriment of sustainable use of the biosphere24. Towards corporate biosphere stewardship Are we starting to observe the beginnings of such a shift? Action is urgently needed to stabilize the Earth system within conditions favourable for humanity28 and rising awareness of the dependence of the global economy on the biosphere foundation59 is creating incentives for rapid innovation in business strategy and practice60. Although the primary goal of TNCs is not to produce for the common good, different incentives have led some progressive companies to increasingly engage in substantive sustainability efforts.

### da – ftc

#### FTC’s increasing enforcement in privacy now---it’s focused on algorithmic bias.

James V. Fazio 21. Special counsel in the Intellectual Property Practice Group at Sheppard, Mullin, Richter & Hampton LLP, with Liisa M. Thomas, 3/11. “What Is FTC’s Course Under Biden?” https://www.natlawreview.com/article/what-ftc-s-course-under-biden

The new acting FTC chair, Rebecca Kelly Slaughter, recently signaled that the FTC may increase enforcement and penalties in the privacy and data security realm. Slaughter pointed to several areas of focus for the FTC this year, which companies will want to keep in mind: Notifying Consumers About FTC Allegations: Slaughter referred favorably to two recent cases: (1) the Everalbum biometric settlement from earlier this year (which we wrote about at the time); and (2) the Flo Health settlement over alleged deceptive data sharing practices (which we also wrote about at the time). In drawing on these two cases, Slaughter indicated that in future cases the FTC intends to include as part of any settlement a requirement to notify customers of any FTC allegations. This, she said, would allow consumers to “vote with their feet” and help them decide whether to recommend their services to others. FTC Intent to Plead All Relevant Violations: According to Slaughter, another lesson the FTC is taking from the Flo case is to include in the cases it brings all potentially applicable violations of all relevant privacy-related laws. In the Flo case, Slaughter said the FTC should have pleaded a violation of the Health Breach Notification Rule, which requires that vendors of personal health records notify consumers of data breaches. Focus on Ed Tech and COPPA: Given the explosive growth of education technology during COVID-19, the FTC is conducting an industry sweep of the industry. Related to this, the FTC is reviewing its Children’s Online Privacy Protection Act Rule. This goes beyond the refresh the agency did of their FAQs earlier in the pandemic (which we wrote about at the time). For now, Slaughter reminds companies that parental consent is needed before collecting information online from children under the age of 13. Examination of Health Apps: The FTC will take a closer look at health apps, including telehealth and contact tracing apps, as more and more consumers are relying on such apps to manage their health during the pandemic. Overlap Between Competition and Privacy: Slaughter also indicated that it is worth looking at situations where there may be not only privacy concerns, but antitrust as well. Because the FTC has a dual mission (consumer protection and competition) she notes that it has a “structural advantage” over other regulators in that it can look at these issues, especially since -she states- “many of the largest players in digital markets are as powerful as they are because of the breadth of their access to and control over consumer data.” Racial Equality and AI/Biometrics/Geotracking: Slaughter noted that COVID-19 is exacerbating racial inequities. She pointed to the unequal access to technology, as well as algorithmic discrimination (the idea that discrimination offline becomes embedded into algorithmic system logic). The FTC intends to focus on algorithmic discrimination, as well as on the discrimination potentially embedded into facial recognition technologies. (This mirrors concerns that gave rise to the recent Portland facial recognition law, which we recently wrote about). Finally, Slaughter commented on the use of location data to identify characteristics of Black Lives Matter protesters, and said she is concerned about the misuse of location data to track Americans engaged in constitutionally protected speech. Putting it Into Practice: Companies that operate health apps, that are in the education technology space, or that use algorithms or facial recognition tools will want to keep in mind that these are areas of focus for the FTC. And for everyone, keep in mind that the FTC has indicated it will beef up privacy law penalties and will ask for more notification to injured consumers.

#### Antitrust enforcement saps up FTC resources and personnel, which are finite.

Tara L. Reinhart, et al. 21. \*\*Head of Skadden, Arps, Slate, Meagher & Flom LLP’s Antitrust/Competition Group. \*\*Steven C. Sunshine, Co-head of Skadden, Arps, Slat, Meagher & Flom LLP’s Antitrust/Competition Group. \*\*David P. Whales, antitrust lawyer with over 25 years of experience in both private and public sectors. \*\*Julia Y. York, partner at Skadden, Arps, Slat, Meagher & Flom LLP. \*\*Bre Jordan, associate at Skadden, Arps, Slat, Meagher & Flom LLP focusing on antitrust law. “Lina Khan’s Appointment as FTC Chair Reflects Biden Administration’s Aggressive Stance on Antitrust Enforcement.” 6/18/21. https://www.skadden.com/insights/publications/2021/06/lina-khans-appointment-as-ftc-chair

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

#### That trades off with the necessary resources for privacy enforcement.

John O. McGinnis\* and Linda Sun\*\* 20. \*George C. Dix Professor, Northwestern University, and Associate-Designate, Wilmer Pickering Hale & Dorr LLP. “Unifying Antitrust Enforcement for the Digital Age.” Northwestern Public Law Research Paper No. 20-20. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3669087

The FTC needs more resources to adequately address the nation’s growing privacy concerns. Currently, the FTC oversees both consumer protection—encompassing privacy—and antitrust,249 making the FTC the chief federal agency on privacy policy and enforcement250 and the nation’s de-facto privacy agency.251 The agency has long-standing experience in enforcing privacy statutes252 and also has special privacy assets, such as an internet lab capable of high-quality tech forensics to track invasions of privacy.253 The FTC, however, has failed to keep pace with the massive growth of privacy concerns—a phenomenon also driven by modern technology. Very few Americans feel conﬁdent in the privacy of their information in the digital age.254 According to a 2019 study, over 80% of Americans feel that they have little to no control over the data collected on them by companies and the government.255 To adequately address privacy concerns, the FTC needs more resources.256 The agency has been explicit that it needs more manpower to police tech companies. In requesting increased funding from Congress, FTC Director Joseph Simons said the money would allow the agency to hire additional staff and bring more privacy cases.257 A former director of the FTC’s Bureau of Consumer Protection, which houses the privacy unit, has called the FTC “woefully understaffed.”258 As of the spring of 2019, the FTC had only forty employees dedicated to privacy and data security, compared to 500 and 110 employees at comparable agencies in the UK. and Ireland, respectively.259 Without more lawyers, investigators, and technologists, the FTC will be forced to conduct privacy investigations less thoroughly, and in some cases, forgo them altogether.260 Currently, the FT C’s resources are spread thin across multiple missions, to the detriment of its privacy efforts. Removing the agency’s antitrust responsibilities would reallocate resources from the antitrust department to its privacy unit and other areas of consumer protection. Further, it would free up the scarce time of the commissioners to oversee this essential effort.261

#### Unchecked algorithmic bias risks massive inequality and extinction.

Mike Thomas 20. Quoting AI experts including MIT Physics Professors, Senior Features Writer for BuiltIn. THE FUTURE OF ARTIFICIAL INTELLIGENCE: 7 ways AI can change the world for better ... or worse, Updated: April 20, 2020, <https://builtin.com/artificial-intelligence/artificial-intelligence-future>

Klabjan also puts little stock in extreme scenarios — the type involving, say, murderous cyborgs that turn the earth into a smoldering hellscape. He’s much more concerned with machines — war robots, for instance — being fed faulty “incentives” by nefarious humans. As MIT physics professors and leading AI researcher Max Tegmark put it in a 2018 TED Talk, “The real threat from AI isn’t malice, like in silly Hollywood movies, but competence — AI accomplishing goals that just aren’t aligned with ours.” That’s Laird’s take, too. “I definitely don’t see the scenario where something wakes up and decides it wants to take over the world,” he says. “I think that’s science fiction and not the way it’s going to play out.” What Laird worries most about isn’t evil AI, per se, but “evil humans using AI as a sort of false force multiplier” for things like bank robbery and credit card fraud, among many other crimes. And so, while he’s often frustrated with the pace of progress, AI’s slow burn may actually be a blessing. “Time to understand what we’re creating and how we’re going to incorporate it into society,” Laird says, “might be exactly what we need.” But no one knows for sure. “There are several major breakthroughs that have to occur, and those could come very quickly,” Russell said during his Westminster talk. Referencing the rapid transformational effect of nuclear fission (atom splitting) by British physicist Ernest Rutherford in 1917, he added, “It’s very, very hard to predict when these conceptual breakthroughs are going to happen.” But whenever they do, if they do, he emphasized the importance of preparation. That means starting or continuing discussions about the ethical use of A.G.I. and whether it should be regulated. That means working to eliminate data bias, which has a corrupting effect on algorithms and is currently a fat fly in the AI ointment. That means working to invent and augment security measures capable of keeping the technology in check. And it means having the humility to realize that just because we can doesn’t mean we should. “Our situation with technology is complicated, but the big picture is rather simple,” Tegmark said during his TED Talk. “Most AGI researchers expect AGI within decades, and if we just bumble into this unprepared, it will probably be the biggest mistake in human history. It could enable brutal global dictatorship with unprecedented inequality, surveillance, suffering and maybe even human extinction. But if we steer carefully, we could end up in a fantastic future where everybody’s better off—the poor are richer, the rich are richer, everybody’s healthy and free to live out their dreams.”

### k – lpe

#### The 1AC’s construct of the firm as the locus of competitive innovation reproduces neoclassical economic orthodoxy. Antitrust is justified as an intervention to correct “market failures.” Market failure relies on the ideal of perfect competition.

Nathan **TANKUS** Research Director Modern Monetary Network **AND** Luke **HERRINE** PhD Candidate @ Yale Law, JD NYU & Former Clerk Second Circuit of Appeals **’21** “Competition Law as Collective Bargaining Law” <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3847377> p. 1-3

­ “[T]oo often discourse about ‘the market’ conveys the sense of something definite—a space or constitution of exchange...when in fact, sometimes unknown to the term’s user, it is being employed as a metaphor of economic process, or an idealisation or abstraction from that process.” – E.P. Thompson2 Introduction To those who study governance of the labor relationship, it is obvious that the relationship between business and labor must be governed, and that stability in this social relation is something valued by labor, business, and society writ large.3 Strangely, the idea that governance is necessary and price stability is good are both obscure interlopers to the study of competition law. To bridge the gap between these two areas of law--and incidentally give labor a greater role and stature in theorizing competition law--we aim to provide a general “market governance” framework for understanding how markets are governed in the context of the legal rules that allow and disallow certain forms of coordination. This framework draws from multiple heterodox traditions in political economy, but is particularly oriented toward building out the emerging framework of Neochartalist microeconomics.4

[Insert Footnote 4 – Turner]

Neochartalism, or Modern Monetary Theory (MMT), began as a macroeconomic framework for understanding how legal institutions produce and reproduce money and monetary value, particularly the acceptance of monetary objects in payments of taxes and court-ordered obligations. In developing over the last twenty-five years, Neochartalism has become an interdisciplinary perspective for understanding and reinterpreting a variety of social phenomena. Some scholarship, particularly the path-breaking work of the late economist Fred Lee (who we rely on in conceptualizing issues in this chapter) builds up a microeconomic framework that is uniquely consistent with--and reliant on--MMT insights. We hope others choose to follow Lee and ourselves in making contributions to Neochartalist Microeconomics and expanding the reach of Neochartalism in a variety of subfields that remain dominated by mainstream microeconomics.

While it is beyond the scope of the current chapter to identify all the ways in which our current perspective accords with unique insights of Neochartalism, our focus on potential financial and market instability, money prices and money income as a focus of analysis rather than relative prices and “real variables'' reflect our Neochartalist lens. Our focus on the legal construction of markets also adds to Neochartalism’s emphasis on the legal construction of a monetary production economy in general. Our focus on inherent and irreducible mediated social interdependence also accords with the scholarly perspective that Neochartalist humanities scholars bring to Neochartalism e.g. SCOTT FERGUSON, DECLARATIONS OF DEPENDENCE: MONEY, AESTHETICS, AND THE POLITICS OF CARE (2018).

[End footnote 4]

Arriving at a theory of market governance requires rejecting economic common sense. Far too much economics scholarship--both among orthodox scholars and their critics--treats “perfect competition” as the analytical (and often normative) baseline for all markets, including labor markets. Under perfect competition, prices (including wages) are arrived at entirely via the uncoordinated matching of bids and asks, assumed to result in settled equilibriums represented by intersecting supply and demand curves. If all markets are perfectly competitive (and certain other conditions obtain), then each input and output has its proper price which sends “signals” throughout the economy and results in a perfectly “efficient” allocation of resources. From this perspective, coordination, especially coordination over prices (again, including wages), appears as an unnatural intervention, a way for those acting collectively to collect “rents” above the “real” value of their contribution to society. If coordination is to be justified, it is usually to correct for some other deviation from perfect competition: workers might bargain collectively to capture some of a monopsonist's rents, for example. And, indeed, many of those trained in economics who advocate for collective bargaining or other worker-empowerment measures appeal to one or more “market failures”.5 In doing so, they reproduce the idea— intentionally or not—that if competition were finally left to do its work it would reveal the prices that reflect the allocation of goods and services that perfectly matches relative scarcity, that markets would work “better” if they were moved “closer” to (or to “resemble” or “approximate”) the “competitive” ideal.6 Collective bargaining is a distortion, but it is the best we can do in our distorted world.

But here's the rub: collective bargaining is not a distortion of a preexisting “labor market”. More generally, coordination between market participants (over price or other matters) is not in itself a distortion of any market. There is not and has never been a market without coordination, including over prices.

#### Neoclassical paradigm will destroy humanity and the biosphere.

Anne **FREMAUX** PhD Political Ecology & Philosophy @ Grenoble ‘**19** *After the Anthropocene: Green Republicanism in a Post-Capitalist World* p. 1-3

If the main starting point of this book is the severe environmental crisis we are facing and the natural planet-wide collapse toward which we are heading, today’s ecological reality is powerfully connected to other issues such as growing socioeconomic inequalities, the erosion of democratic institutions, the organized apathy of citizens, the loss of power of nation-states in favor of corporations, the progressive disappearance of the notion of common good, and the economic colonization of the social, cultural, and political life by economic objectives. The global ecological crisis reveals these interlinked disasters caused by the core components of capitalism that include: an excessive exploitation of nature, the rise of industrialism, the self-destructive over- confidence in human-technical power, the arrogant anthropocentric mind- set, and denial of ecological limits, as well as the narrow rationalism and materialism that develop within a reductionist predominant form of science.

Neoliberalism as a ‘global system’ threatens societies as a whole and more especially the core values of social communities and democracy, such as justice, ‘common decency,’ civic virtue, or citizenship. In neoliberal patterns, economic efficiency, market values, employability, consumer freedom, and instrumental rationality are favored over democratic participation, civic values, personal autonomy, active citizenship, intellectual development (‘enlightenment’1), and moral rationality (reasonability2). Institutions dedicated to the common good are systematically turned into competitive structures to satisfy the interests of markets and greedy elites. Pluralism is disappearing under the assault of a one-dimensional consumer pattern which treats humans and non-humans as commodities under the hegemony of private interests. Civil society, an essential element of the agonistic and critical democracy defended in this book, is losing out to ‘spectator democracy.’ Indeed, citizens are more and more passive and self-centered in part because existing political and democratic structures leave them with few opportunities to participate and make collective decisions. As a consequence, the link between democratic politics and citizens is being critically weakened. Neoliberal individuals end up being overtaken by lassitude and resignation, indifference, and loss of interest for the shared common world. What defines neoliberal society is, indeed, a widespread disaffection for democracy and social bonds entailed by the loss of political agency and self-determination. In such a system, propaganda is necessary to manufacture consent3 and to shape the fundamental values to ensure that individuals see themselves as consumers, workers, or owners of capital, rather than citizens, spiritual or relational individuals, friends, or members of social and ecological communities. In order to be fully operational, such a system must also rely on high doses of cynicism and the value of relativism cultivated by deconstructive postmodern views.

Neoliberal competitive market-state systems have colonized all aspects of life, but mainly, they have subjugated nature and used it as an ‘unlimited’ spring of profit and resources intended to feed the logic of growth. The globalized neoliberal framework behaves as if nature were only a neutral background for profit-seeking and economic development. In order to push back the ecological limits that are more and more visible, neoliberals argue that those limits can be transcended through decoupling and technological innovations (Chapter 5). Indeed, constructivist neoliberal governments act as if the biosphere were a mere component of the socioeconomic sphere. As an anti-ecological ideology, neoliberalism denies the existence of natural limits and promotes unlimited material wants vs. limited resources, a cult of endless consumption (consumerism), and techno-fixes (techno-optimism) as the solution to social and ecological problems. The appropriation and commodification of nature undertaken by this form of economic ideology and the freedom it enshrines—understood mainly as the legitimate exercise of extractive power—entail that the environment is viewed only as an instrumental source of raw material and sinks of fossil fuels rather than as an ethically valuable physical, biological, and chemical context of life. Inevitably, this type of economy has supported an insatiable extraction that is today overwhelming ecosystemic capacities. Neoclassical economics is certainly the instrumental form of rationality ‘that most actively opposes the ethical valuation of the environment’ (Smith, 2001: 26).

The neoliberal capitalist agenda, associated with an arrogant anthropocentrism and the technological optimism of many political leaders, experts, techno-scientists, academics, and citizens, has transformed nature and people into raw materials (‘natural’ and ‘human resources’). It has replaced democratic and republican institutions—defined by their concern for the common good—by structures aiming at facilitating the activities and profits of corporations and markets. It has deprived Western political structures of substantial democratic energy by turning citizens of wealthy liberal nations into demoralized and nihilist homo oeconomicus (‘neoliberal citizens’), that is, passive consumers as opposed to active citizens. More than that, neoliberalism, through mass media, entertainment, information, and educational systems, has incrementally converted all the spheres, activities, and dimen- sions of life into economic ones (‘economization’ or ‘marketization’ of life). Private and public institutions are used as ways to transmit the values of capitalism.4 As an unethical and unsustainable model of commercialization, ultraliberal capitalism supports crass commodification, intensifies ine-ualities and transforms everything in its way—from non-human nature to human beings—into replaceable, dispensable and disposable products. As a global threat, neoliberalism leads to ‘environmental stresses (water shortages, deforestation, soil erosion or climate change), food and energy insecurity, peak oil, rising poverty and inequalities within and between societies, increasing passivity of citizens within democracies and the inexorable rise of corporate power within and over the democratic state’ (Barry, 2008: 3).

The price we, humans, are socially, politically and ecologically paying and will continue to pay in the future for the triumph of the neoliberal ideology is disproportionate with anything humankind has experienced so far (see Fig. 1.2). However, human relatively recent history already shows that the popular passivity and political apathy (mentioned above) fostered by cynical and disempowering systems of ideas have the potential to favour the rise of dictatorial regimes in which a father figure or ‘strong man’ could take upon the conduct of public affairs. At a time when chauvinistic, racist, anti-elitist, and macho-ist parties are dangerously rising in all Western countries, this fear is taking a serious turn, which includes the risk of an authoritarian ecology.

#### We should use the framework of challenge-driven political economy instead of a competitiveness framework. Using the power of the state to make and shape markets is key to direct policy to solve inequality and climate change.

Mariana **MAZZUCATO** Inst. for Innovation & Public Purpose @ University College (London) **AND** Rainer **KATTEL** Inst. for Innovation & Public Purpose @ University College (London) **’20** “Grand Challenges, Industrial Policy, and Public Value” Non-paginated

Twenty-first-century policymaking is increasingly defined by the need to respond to major social, environmental, and economic challenges. Sometimes referred to as ‘grand challenges’, these include threats like climate change, demographic, health, and well-being concerns, as well as the difficulties of generating sustainable and inclusive growth. Against this background, policymakers are increasingly embracing the idea of using industrial and innovation policy to tackle these ‘grand challenges’. Examples of challenge-led policy frameworks include the United Nation’s Sustainable Development Goals (SDGs; Borras,­­ 2019), the European Union’s Horizon Europe research and development programme (Mazzucato, 2018a), and the UK’s 2017 Industrial Strategy White Paper (HM Government, 2018).

Challenge-driven policy frameworks are emerging in parallel to well-established modernization and competitiveness frameworks**.** While 1 2 modernization, and in particular competitiveness frameworks, rely on the idea that government should first and foremost fix market failures,3 a challenge-driven agenda does not have such clearly defined theoretical origins and analytical lenses. As Richard Nelson argued in 1977 in his seminal book The Moon and the Ghetto, getting man to the moon and back is not the same as solving the problem of ghettos in American cities. Put differently, the nature of our knowledge about socio-economic challenges differs from our perception of strictly technical challenges. We can discover answers to technical puzzles; socio-economic issues do not have a single correct discoverable solution. Such issues require continuous discussion, experimentation, and learning.

We believe challenge-led growth requires a new conceptual and analytical framework that has at its core the idea of confronting the direction of growth with growth that is, for example, more inclusive and sustainable. Such a framework should focus on market shaping and market co-creating (Mazzucato, 2016). This is a question of both theory and policy practice. In theory, challenge-driven innovation policy questions both established neoclassical and evolutionary concepts (Schot and Steinmueller, 2018). In policy practice, directed policies require rethinking what is meant by ‘vertical policies’.

Industrial policies have always been composed of both a horizontal and a vertical element. Horizontal policies have historically been focused on skills, infrastructure, and education, while vertical policies have focused on sectors like transport, health, energy, or technologies. These two traditional approaches roughly embody differing schools of economics: neoclassical economics-inspired horizontal policies focusing on supply-side factors and inputs; and evolutionary economics-inspired policies putting emphasis on demand-side factors and systemic interactions (Nelson and Winter, 1974; Hausmann and Rodrik, 2006 for a synthesis). Although certain sectors might be more suited to sectorspecific vertical strategies, the ‘grand challenges’ expressed in SDGs are cross-sectoral by nature and hence we cannot simply apply a vertical approach to them. Both neoclassical and evolutionary approaches to industrial policy have relied on the idea that the best policy outcome is economy-wide development, without specifying its nature. In policy this has led to managing economies according to GDP growth rates, competitiveness indices and rankings, or other macro indicators (e.g. exports, patents) (Drechsler, 2019). Yet, many SDGs are only indirectly related to the economy and hence many of the key issues around SDGs have not been theorized in the context of innovation and industrial policy (see, e.g., Zehavi and Brenzitz, 2017).

In this chapter we argue that through well-defined goals, or more specifically ‘missions’, that are focused on solving important societal challenges, policymakers have the opportunity to determine the direction of growth by making strategic investments, coordinating actions across many different sectors, and nurturing new industrial landscapes that the private sector can develop further (Mazzucato, 2017; Mazzucato and Penna, 2016). The result would be an increase in cross-sectoral learning and macroeconomic stability. This ‘mission-oriented’ approach to industrial policy is not about top-down planning by an overbearing state; it is about providing a direction for growth, increasing business expectations about future growth areas, and catalysing activity—self-discovery by firms (Hausmann and Rodrik, 2003)—that otherwise would not happen (Mazzucato and Perez, 2015). It is not about de-risking and levelling the playing field, nor about supporting more competitive sectors over less (Aghion et al., 2015), since the market does not always know best, but about tilting the playing field in the direction of the desired societal goals, such as the SDGs. However, we argue, to achieve this requires a new analytical framework based on the idea of public value and a policymaking framework aimed at shaping markets in addition to fixing various existing failures. Indeed, we argue that if we want to take grand challenges such as the SDGs seriously as policy goals, market shaping should become the overarching approach followed in various policy fields.

## advantage – concentration

### turn – inequality – 1nc

#### Monopolies decrease inequality – they provide a monopoly wage premium

Crane 16 – Daniel Crane, Associate Dean for Faculty and Research and Frederick Paul Furth, Sr. Professor of Law, University of Michigan, “Antitrust and Wealth Inequality,” *Cornell Law Review*, Volume 101, Number 5, 2016, pp. 1171-1228

Contrary to the assumption that shareholders and senior managers are capturing virtually all of the monopoly rents obtained by corporations, the evidence suggests that a significant amount of rent sharing occurs within the firm. As Mark Roe has noted, “[e]mployees of monopoly firms can, and do, ally with capital to split the rents, to facilitate constricting production and raising price, and to seek barriers to competitive entry.” 84 Empirical evidence shows that nonunion employees see higher wages as the market concentration of their industry increases and also that higher seller concentration leads to stronger unionization, which in turn leads to higher wages.85 The monopoly labor wage premium has been observed across a variety of industries.86 For present purposes, the monopoly labor wage premium is important because it suggests the ability of blue-collar workers to extract significant monopoly rents from their employers, thus counterbalancing any regressive effects from shareholder or senior management rent extraction.87

Consistent with the evidence that increases in market power yield higher wages for blue-collar employees, there is evidence of labor union support for large corporate mergers that raise serious competitive issues. For example, the Communication Workers of America came out in favor of the AT&T and T-Mobile merger that the Federal Communications Commission and the Justice Department both opposed, and that AT&T and Deutsche Telekom, T-Mobile’s parent corporation, ultimately withdrew from.88 An editorial published in the Huffington Post explained that progressives should support the proposed merger “[b]ecause AT&T is the ONLY unionized wireless company in the country and the merger would ensure that 20,000+ T-Mobile workers would have the chance to join the 43,000 currently unionized AT&T Mobility employees with decent wages and legal protections on the job.”89 Similarly, the three airline employee unions supported American Airlines’ questionable merger with US Airways, believing that employees would fare better in the combined company.90

A related point concerns the differentiating effects among different classes of workers from increases in product market competition. Such competition may increase wage inequality by shifting demand in favor of skilled labor at the expense of unskilled labor, with the effect that a wage gap grows between skilled and unskilled labor.91 Such instances of income stratification have ambiguous effects on the overall distribution of wealth but would likely be regressive on net since they would shift down the average salaries of workers at the lowest end of the income distribution.

The progressive effects of market power–enhancing mergers may go beyond the financially quantifiable and spill outside the boundaries of the firm. Civil rights organizations have supported controversial mergers, arguing that the combined firm would cater better to the needs of minorities. For example, the Reverend Al Sharpton played a leading role in supporting the Comcast and NBC Universal merger, arguing that the deal would enhance racial diversity in broadcasting.92 The NAACP supported the AT&T and T-Mobile merger, arguing that AT&T had been a progressive corporate citizen that would bring a better culture to T-Mobile’s employment conditions and contracting practices.93 It also supported the Sirius and XM merger, which resulted in a monopoly in satellite radio.94 Other civil rights organizations have similarly weighed in favor of mergers ultimately challenged on antitrust grounds.95

At a minimum, the monopoly labor wage premium and evidence of union and civil rights organization support for competitively controversial corporate mergers should call into question the progressive argument that stronger merger enforcement would advance progressive wealth redistribution. Many interests within and without the firm have an opportunity to extract monopoly rents or otherwise benefit from business reorganizations that contribute to the creation of market power.

### antitrust fails – 1nc

#### Antitrust doesn’t solve inequality

Crane 16 – Daniel Crane, Associate Dean for Faculty and Research and Frederick Paul Furth, Sr. Professor of Law, University of Michigan, “Antitrust and Wealth Inequality,” *Cornell Law Review*, Volume 101, Number 5, 2016, pp. 1171-1228

Amid this broad debate, a particular claim has emerged regarding the relationship between market competition and inequality. A wide array of scholars and public intellectuals, including such notable figures as Nobel Laureates Joseph Stiglitz4 and Paul Krugman5 and former Labor Secretary Robert Reich,6 among others, have claimed that monopoly and anticompetitive market conditions are among the root causes of wealth inequality.7 Some of these commentators blame the rising tide of wealth inequality on a weak record of antitrust enforcement in the United States.8 All seem to propose that enhancing antitrust enforcement against mergers, monopolies, and anticompetitive agreements could contribute to creating a more equal society.

This Article challenges this emerging monopoly regressivity claim in two ways. First, it shows that the relationship between enforcement of the antitrust laws and wealth inequality is far more complex than monopoly regressivity critics recognize. The relationship between market power (the subject of antitrust law) and income distribution is subtle, circumstantially contingent, and, at least for a developed economy, extremely difficult to generalize. Whatever their other faults, it is far from certain that antitrust violations (including cartels, anticompetitive mergers, and abuses of dominance) systematically redirect wealth from the poor to the rich. To sustain a showing that they do, one would need information about a large number of factors, including the relative wealth of producers and consumers, overcharge pass-on rates, the effects of market power on employees of the firm, the distribution of rents between managers and shareholders, the progressive or regressive effects of antitrust violations where government entities are the purchasers, and the distribution of rents among classes of managers. Although there are undoubtedly cases where antitrust violations have regressive effects, there are also undoubtedly many cases where their effects are progressive or distributively neutral. It is virtually impossible to calculate the net effect on wealth distribution from general increases or decreases in overall antitrust enforcement.

The second response this Article makes to the monopoly regressivity claim is that a significant set of antitrust interventions actually impede voluntary efforts to secure a more equitable and just society. In a set of important cases, application of conventional antitrust principles frustrated private actors seeking to promote social justice by diverting market forces from their ordinary paths.9 Hence, an undifferentiated increase in antitrust enforcement could, in many instances, exacerbate rather than diminish inequality and related forms of social justice.

To motivate this angle, consider some glimpses of the kinds of cases in which antitrust has posed an obstacle to private actors pursuing wealth redistribution goals. Examples include an antitrust challenge to an agreement by the Ivy League universities on a financial aid system designed to increase educational diversity;10 antitrust concerns preventing garment manufacturers in the United States from joining forces to pressure foreign suppliers to conform to minimal labor and employment standards;11 and antitrust challenges to National Collegiate Athletic Association (NCAA) rules prohibiting its members from paying student athletes, which could disrupt the cross subsidization of women’s athletic programs and other less popular sporting programs.12 In each of these cases, discussed in greater detail below, there is a plausible argument that application of unqualified antitrust principles would increase the welfare of consumers but also impair the ability of private actors to pursue solutions to serious equality problems.

In tandem, these twin objections throw a wrench into the growing progressive claim that more antitrust enforcement would lead to a more just distribution of wealth. Not only could an undifferentiated increase in antitrust enforcement exacerbate wealth inequality in various ways but it could also impede private, voluntary pursuit of related social justice objectives.

Thus far, this introduction has considered the effect of an undifferentiated increase in antitrust enforcement—actions to augment and strengthen enforcement as a general matter, such as by providing more funding to the antitrust agencies, liberalizing rules for private enforcement, increasing fines and penalties, or adopting rules making antitrust claims easier to win. Changes in the level of antitrust enforcement have no clear effect on the regressivity or progressivity of wealth distribution and social justice more generally, but one could try to tailor antitrust policy to maximize wealth redistribution and social justice in particular cases. Although it might sometimes be prudent as a matter of prosecutorial discretion to prioritize resource allocation in the direction of fighting antitrust violations with highly regressive effects, it would be a mistake to recalibrate antitrust doctrine in an effort to combat wealth inequality. Even putting aside the likely deleterious effects on productive and allocative efficiency such doctrinal shifts might entail, it is impossible to craft a distributively-oriented body of antitrust law that would reliably increase wealth equality by clamping down on regressive forms of market power exploitation.

#### New antitrust is circumvented and watered down – durable fiat doesn’t solve judicial disregard and congressional inaction

Crane 21 – Frederick Paul Furth Sr. Professor of Law at UMich (Daniel, Antitrust Antitextualism, 96 Notre Dame L. Rev. 1205 (2021). Available at: <https://scholarship.law.nd.edu/ndlr/vol96/iss3/7>

As first the antitrust agencies through their merger guidelines and then the courts through endorsement of the agencies’ approach systematically shifted merger policy away from the incipiency standard and began requiring formal market definition and probability of adverse price effects, Congress acquiesced through inaction. Whatever else it said in 1950, Congress has thus far shown itself willing to let the courts and antitrust agencies reshape merger law in a form far more favorable to business consolidation. \* \* \* In sum, from the courts’ earliest forays into interpreting the Sherman Act up through contemporary antitrust jurisprudence, the courts have manifested a systematic tendency to interpret the substantive antitrust statutes contrary to their texts, legislative histories, and often their spirit.236 Sometimes, as with the rule of reason and labor exemption, the judicial disregard of text and purpose has occurred fairly immediately. In other cases, as with the Robinson-Patman and Celler-Kefauver Acts, an initial period of statutory fidelity has slipped gradually into a period of statutory infidelity. In some cases, as with respect to section 5 of the FTC Act and section 3 of the Clayton ct, the courts continue to proclaim their fidelity after they functionally move to infidelity. In many cases, the courts stop pretending after a while and admit quite candidly that they are taking liberties with the statute. If this antitrust antitextualism is merely the product of common-law methodology, one would expect to see movement away from the statute’s text in both permissive and restrictive directions, or, to put it more crassly, both in favor of big capital and against it. But the movement has all been in one direction: loosening a congressional check on big capital. Thus, the rule of reason allowed courts to bless large combinations of capital that the courts deemed reasonable; narrowing the labor exemption frustrated labor’s ability to countervail capital’s power; restricting the private right of action for treble damages significantly curtailed the private-litigation check on business; judicial narrowing of the Clayton Act’s exclusive dealing and tying restrictions allowed (mostly big) firms to exploit market power; reading “unfair” out of the FTC Act eliminated section 5 as a check on business morality; eviscerating the Robinson-Patman Act protections for small and independent businesses favored large and powerful businesses; and requiring proof of likely price increases and technical relevant market definition in merger cases immunized many large-scale mergers from legal challenge. Throughout the history of American antitrust law, the courts have shown a systematic tendency to read down the antitrust statutes in favor of big capital. But the story of antitrust antitextualism is not simply one of conservative/progressive ideological struggle between Congress and the courts. Much of the action away from statutory text and purpose was accomplished by, or with the support of, judges of the political left. Unlike in other fields, Congress has not responded with statutory overrides. And far from buttressing its atextual statutory readings of the antitrust laws through veiled constitutional warnings about congressional overreaching, the Court has repeatedly pulled in the opposite direction, asserting quasi-constitutional reverence for antitrust law.237 Despite ample opportunity to do so, the Court has not removed antitrust law from the reach of congressional reconsideration by constitutionalizing its atextual readings. Antitrust antitextualism does not follow a conventional left/right ideological pattern. Its actual pattern is more subtle III. THE IDEALISTIC CONGRESS, PRAGMATIC COURTS THESIS AND ITS IMPLICATIONS Thus far, this Article has made an empirical observation—that, from the beginning of antitrust history, the courts have atextually read down the antitrust statutes in favor of big business and considered and rejected a potential explanation: that this phenomenon primarily represents an ideological tugof-war between a progressive Congress and more conservative courts. This final Part searches for an alternative understanding, one that is perhaps less obvious but more fitting, and then considers its systemic implications for the antitrust enterprise. A. The Idealistic/Pragmatic Thesis Congress writes expansive statutes reining in business power, the courts (either immediately or over time) disregard the plain text of the statutes and trim them down in favor of capital, and Congress acquiesces through inaction. Why? The best-fitting explanation is this: the antitrust laws reside in perennial tension between two fundamental impulses of the American political psyche—the romantic and idealistic attachment to smallness over bigness, and the pragmatic and often grudging realization that large-scale organization may be necessary to achieve material advantages. The romanticism and idealism of the anti-bigness impulse pushes it to the fore in the popular political arena. Congress legislates on the popular aspiration for an egalitarian economy organized around small proprietors and independent local businesses and freedom from economic dominance. When the statutes come to the courts or antitrust agencies, judges and antitrust enforcers play the pragmatic role of balancing those popular aspirations against the contending impulse for efficiency and material benefit. This balancing act induces them to give less effect to the statutes than the broad statutory texts suggest. So long as the judicial decisions achieve results that strike a politically acceptable outcome between the aspirational and pragmatic impulses, Congress is content to leave the judicial and enforcement decisions alone.

### AT: cyber stuff – 1nc

#### Inequality obvi not unique – our short-term DAs are faster cuz it’s a structural arg abt election cycles, AND can’t solve global inequality which foments discontent.

#### No catastrophic cyberattacks---25 years of empirics prove they stay low-level and non-escalatory.

Lewis 20---senior vice president and director of the Technology Policy Program at the Center for Strategic and International Studies). Lewis, James. 2020. “Dismissing Cyber Catastrophe.” Center for Strategic & International Studies. August 17, 2020. https://www.csis.org/analysis/dismissing-cyber-catastrophe.

A catastrophic cyberattack was first predicted in the mid-1990s. Since then, predictions of a catastrophe have appeared regularly and have entered the popular consciousness. As a trope, a cyber catastrophe captures our imagination, but as analysis, it remains entirely imaginary and is of dubious value as a basis for policymaking. There has never been a catastrophic cyberattack. To qualify as a catastrophe, an event must produce damaging mass effect, including casualties and destruction. The fires that swept across California last summer were a catastrophe. Covid-19 has been a catastrophe, especially in countries with inadequate responses. With man-made actions, however, a catastrophe is harder to produce than it may seem, and for cyberattacks a catastrophe requires organizational and technical skills most actors still do not possess. It requires planning, reconnaissance to find vulnerabilities, and then acquiring or building attack tools—things that require resources and experience. To achieve mass effect, either a few central targets (like an electrical grid) need to be hit or multiple targets would have to be hit simultaneously (as is the case with urban water systems), something that is itself an operational challenge. It is easier to imagine a catastrophe than to produce it. The 2003 East Coast blackout is the archetype for an attack on the U.S. electrical grid. No one died in this blackout, and services were restored in a few days. As electric production is digitized, vulnerability increases, but many electrical companies have made cybersecurity a priority. Similarly, at water treatment plants, the chemicals used to purify water are controlled in ways that make mass releases difficult. In any case, it would take a massive amount of chemicals to poison large rivers or lakes, more than most companies keep on hand, and any release would quickly be diluted. More importantly, there are powerful strategic constraints on those who have the ability to launch catastrophe attacks. We have more than two decades of experience with the use of cyber techniques and operations for coercive and criminal purposes and have a clear understanding of motives, capabilities, and intentions. We can be guided by the methods of the Strategic Bombing Survey, which used interviews and observation (rather than hypotheses) to determine effect. These methods apply equally to cyberattacks. The conclusions we can draw from this are: Nonstate actors and most states lack the capability to launch attacks that cause physical damage at any level, much less a catastrophe. There have been regular predictions every year for over a decade that nonstate actors will acquire these high-end cyber capabilities in two or three years in what has become a cycle of repetition. The monetary return is negligible, which dissuades the skilled cybercriminals (mostly Russian speaking) who might have the necessary skills. One mystery is why these groups have not been used as mercenaries, and this may reflect either a degree of control by the Russian state (if it has forbidden mercenary acts) or a degree of caution by criminals. There is enough uncertainty among potential attackers about the United States’ ability to attribute that they are unwilling to risk massive retaliation in response to a catastrophic attack. (They are perfectly willing to take the risk of attribution for espionage and coercive cyber actions.) No one has ever died from a cyberattack, and only a handful of these attacks have produced physical damage. A cyberattack is not a nuclear weapon, and it is intellectually lazy to equate them to nuclear weapons. Using a tactical nuclear weapon against an urban center would produce several hundred thousand casualties, while a strategic nuclear exchange would cause tens of millions of casualties and immense physical destruction. These are catastrophes that some hack cannot duplicate. The shadow of nuclear war distorts discussion of cyber warfare. State use of cyber operations is consistent with their broad national strategies and interests. Their primary emphasis is on espionage and political coercion. The United States has opponents and is in conflict with them, but they have no interest in launching a catastrophic cyberattack since it would certainly produce an equally catastrophic retaliation. Their goal is to stay below the “use-of-force” threshold and undertake damaging cyber actions against the United States, not start a war. This has implications for the discussion of inadvertent escalation, something that has also never occurred. The concern over escalation deserves a longer discussion, as there are both technological and strategic constraints that shape and limit risk in cyber operations, and the absence of inadvertent escalation suggests a high degree of control for cyber capabilities by advanced states. Attackers, particularly among the United States’ major opponents for whom cyber is just one of the tools for confrontation, seek to avoid actions that could trigger escalation. The United States has two opponents (China and Russia) who are capable of damaging cyberattacks. Russia has demonstrated its attack skills on the Ukrainian power grid, but neither Russia nor China would be well served by a similar attack on the United States. Iran is improving and may reach the point where it could use cyberattacks to cause major damage, but it would only do so when it has decided to engage in a major armed conflict with the United States. Iran might attack targets outside the United States and its allies with less risk and continues to experiment with cyberattacks against Israeli critical infrastructure. North Korea has not yet developed this kind of capability. One major failing of catastrophe scenarios is that they discount the robustness and resilience of modern economies. These economies present multiple targets and configurations; they are harder to damage through cyberattack than they look, given the growing (albeit incomplete) attention to cybersecurity; and experience shows that people compensate for damage and quickly repair or rebuild. This was one of the counterintuitive lessons of the Strategic Bombing Survey. Pre-war planning assumed that civilian morale and production would crumple under aerial bombardment. In fact, the opposite occurred. Resistance hardened and production was restored.1 This is a short overview of why catastrophe is unlikely. Several longer CSIS reports go into the reasons in some detail. Past performance may not necessarily predict the future, but after 25 years without a single catastrophic cyberattack, we should invoke the concept cautiously, if at all. Why then, it is raised so often? Some of the explanation for the emphasis on cyber catastrophe is hortatory. When the author of one of the first reports (in the 1990s) to sound the alarm over cyber catastrophe was asked later why he had warned of a cyber Pearl Harbor when it was clear this was not going to happen, his reply was that he hoped to scare people into action. "Catastrophe is nigh; we must act" was possibly a reasonable strategy 22 years ago, but no longer. The resilience of historical events to remain culturally significant must be taken into account for an objective assessment of cyber warfare, and this will require the United States to discard some hypothetical scenarios. The long experience of living under the shadow of nuclear annihilation still shapes American thinking and conditions the United States to expect extreme outcomes. American thinking is also shaped by the experience of 9/11, a wrenching attack that caught the United States by surprise. Fears of another 9/11 reinforce the memory of nuclear war in driving the catastrophe trope, but when applied to cyberattack, these scenarios do not track with operational requirements or the nature of opponent strategy and planning. The contours of cyber warfare are emerging, but they are not always what we discuss. Better policy will require greater objectivity.

#### No widespread blackouts – That's not how the grid works.

Koerth 18 – Maggie, senior science writer for FiveThirtyEight, citing Bill Lawrence, vice president and chief security officer at the North American Electric Reliability Corporation and Candace Suh-Lee, who leads a cybersecurity research team at the Electric Power Research Institute, a nonprofit research and development lab, " Hacking The Electric Grid Is Damned Hard", *FiveThirtyEight*, 8/13/2018, <https://fivethirtyeight.com/features/hacking-the-electric-grid-is-damned-hard/> JHW

The nightmare is easy enough to imagine. Nefarious baddies sit in a dark room, illuminated by the green glow of a computer screen. Meanwhile, technicians watch in horror from somewhere in the Midwest as they lose control of their electrical systems. And, suddenly, hundreds of thousands, even millions of Americans are plunged into darkness. That scene was evoked in recent weeks as federal security experts at the Department of Homeland Security warned that state-sponsored hackers have targeted more than American elections — they’re after the electric grid, too. They’ve gotten “to the point where they could have thrown switches,” a DHS official told The Wall Street Journal. Both DHS and the FBI have linked these attacks to Russia — which was already pinned as the culprit in two attacks that shut down power to hundreds of thousands of people in Ukraine two Decembers in a row, in 2015 and 2016. It’s all very urgent — a high-risk crisis that must be solved immediately. But, surprisingly, some electrical system experts are thinking about it in a different way. Cyberattacks on the grid are a real risk, they told me. But the worst-case scenarios we’re imagining aren’t that likely. Nor is this a short-term crisis, with risks that can be permanently solved. Bringing down the grid is a lot harder than just flicking a switch, but the danger is real — and it may never go away. Representatives from two nonprofit organizations — both of which play large roles in how the electric grid is regulated and maintained — said it is easier to imagine disaster scenarios than create one. “There’ve been some very sensational books out there about the grid going dark because someone’s got their finger ready over a mouse and everything is going to turn off at the same time,” said Bill Lawrence, vice president and chief security officer at the North American Electric Reliability Corporation, the regulatory authority that sets and enforces technological standards for utility companies across the continent. “The grid does not work that way.” Our electric infrastructure is chock-full of both redundancies and regional variations — two things that impede widespread sabotage. That’s not to say that the grid isn’t under attack. Lawrence acknowledged that there is interest in “trying to hurt us from a distance.” But he emphasized there have not yet been any successful attacks — meaning hackers haven’t caused any blackouts. The division of Homeland Security that collects reports of cyberattacks on critical infrastructure has not yet published its incident report numbers for 2017. Organizations report incidents on a voluntary basis, so these numbers may not reflect all incidents. They’ve been poking at our critical infrastructure for a long while. Incident reports published by the Industrial Control Systems Cyber Emergency Response Team — a division of Homeland Security that does training and responds to cyberattacks on critical infrastructure — suggest that electricity, oil and natural gas infrastructure have been routinely targeted for years.1 There are dozens of these attacks reported to ICS-CERTS annually. However, it would be difficult for these attacks to lead to wide-scale blackouts, according to Lawrence and Candace Suh-Lee, who leads a cybersecurity research team at the Electric Power Research Institute, a nonprofit research and development lab. And that’s true even if hackers do eventually succeed in taking control of some electric systems. It helps that the North American electric grid is both diverse in its engineering and redundant in its design. For instance, the Ukrainian attacks are often cited as evidence that hundreds of thousands of Americans could suddenly find themselves in the dark because of hackers. But Lawrence considers the Ukrainian grid a lot easier to infiltrate than the North American one. That’s because Ukraine’s infrastructure is more homogeneous, the result of electrification happening under the standardizing eye of the former Soviet Union, he told me. The North American grid, in contrast, began as a patchwork of unconnected electric islands, each designed and built by companies that weren’t coordinating with one another. Even today, he said, the enforceable standards set by NERC don’t tell you exactly what to buy or how to build. “So taking down one utility and going right next door and doing the same thing to that neighboring utility would be an extremely difficult challenge,” he said. Meanwhile, the electric grid already contains a lot of redundancies that are built in to prevent blackouts caused by common problems like broken tree limbs or heat waves — and those redundancies would also help to prevent a successful cyberattack from affecting a large number of people. Suh-Lee pointed to an August 2003 blackout that turned the lights off on 50 million people on the east coast of the U.S. and Canada. “When we analyzed it, there was about 17 different things lined up that went wrong. Then it happened,” she said. Hackers wouldn’t necessarily have control over all the things that would have to go wrong to create a blackout like that. In contrast, Suh-Lee said, scenarios that sound like they should lead to major blackouts … haven’t. Take the 2013 Metcalf incident, where snipers physically attacked 17 electric transformers in Silicon Valley. Surrounding neighborhoods temporarily lost power, but despite huge energy demand in the region, “the big users weren’t even aware Metcalf had happened,” she said. Difficult isn’t the same as impossible, Suh-Lee told me. Depending on where an attack happened and how people responded, you could get the stuff of our nightmares. Lawrence repeatedly invoked the phrase “knock on wood” as he talked about the possibility of infiltrations of electric infrastructure turning into real-world blackouts. That’s why there’s a lot of effort going into research, monitoring and preparation for cyberattacks. Lawrence’s team, for instance, is gearing up for an event that’s held every other year and is sort of like war games for the electric grid. And the Department of Energy is planning a similar event, focused on figuring out what it takes to reboot after a hacker-caused blackout. But that preparation doesn’t mean we’ll eventually solve this problem, either, Suh-Lee said. If the chances of a cinematic disaster are low, the chances of a theatrical hero on a white horse riding in to save the day are even lower. Making the grid stronger and more resilient also means making it more digital — the work that’s being done to improve the infrastructure has also created new opportunities for hackers to break in. And the risk of attack is here to stay. Security improvements are “never going to completely eliminate the risk,” she said. “The risk is out there and people will find a new way to attack.” We’ll be living with cyber threats to the grid for the rest of our lives.

### AT: ag stuff – 1nc

#### Small farms can’t replace big ag – the US economy requires industrialized production.

Nordhaus and Blaustein-Rejto 21 [Ted Nordhaus is the executive director of the Breakthrough Institute; Dan Blaustein-Rejto is the director of food and agriculture at the Breakthrough Institute; “Big Agriculture Is Best”; Foreign Policy; https://foreignpolicy.com/2021/04/18/big-agriculture-is-best/]

In some ways, it is not surprising that many of the best fed, most food-secure people in the history of the human species are convinced that the food system is broken. Most have never set foot on a farm or, at least, not on the sort of farm that provides the vast majority of food that people in wealthy nations like the United States consume.

In the popular bourgeois imagination, the idealized farm looks something like the ones that sell produce at local farmers markets. But while small farms like these account for close to half of all U.S. farms, they produce less than 10 percent of total output. The largest farms, by contrast, account for about 50 percent of output, relying on simplified production systems and economies of scale to feed a nation of 330 million people, vanishingly few of whom live anywhere near a farm or want to work in agriculture. It is this central role of large, corporate, and industrial-style farms that critics point to as evidence that the food system needs to be transformed.

But U.S. dependence on large farms is not a conspiracy by big corporations. Without question, the U.S. food system has many problems. But persistent misperceptions about it, most especially among affluent consumers, are a function of its spectacular success, not its failure. Any effort to address social and environmental problems associated with food production in the United States will need to first accommodate itself to the reality that, in a modern and affluent economy, the food system could not be anything other than large-scale, intensive, technological, and industrialized.

Not so long ago, farming was the principal occupation of most Americans. More than 70 percent labored in agriculture in 1800. As late as 1900, some 40 percent of the U.S. labor force still worked on farms. Today, that figure is less than 2 percent.

The consolidation of U.S. agriculture has been underway for more than 150 years. First came irrigation and ploughs, then better seeds and fertilizers, and then tractors and pesticides. With each innovation, farmers were able to produce larger harvests with fewer people and work larger plots of land. Better opportunities drew people to cities, where they could get jobs that provided higher wages and, thereby, produced greater economic surplus—that is, profits and ultimately societal wealth. The large-scale migration of labor from farms to cities pushed farmers to invest even more in labor-saving and productivity-enhancing practices and technologies in a virtuous cycle of urbanization, agricultural intensification, and economic growth that is the hallmark of all affluent societies.

It is not a stretch to say that the United States is wealthy today because most of its people work in manufacturing, services, technology, and other sectors of the economy. In this, the country is not alone. No nation has ever succeeded in moving most of its population out of poverty without most of that population leaving agriculture work.

That transition often isn’t easy. Millions of Black Americans made the difficult journey from tenant farming in the South to factory work in the North, where they faced new forms of racism even as they escaped the tyranny of sharecropping. More recently, small farmers have struggled to survive as increasingly high agricultural productivity and falling commodity prices tilted the playing field toward large farms. Rural communities have likewise suffered as dramatic improvements in labor productivity have shrunk employment in agriculture.

But over the long term, the living standards and life opportunities offered in the modern knowledge, service, and manufacturing economies have proved vastly greater than anything possible under the agrarian social and economic arrangements that most Americans over the last two centuries happily abandoned—and that too many Americans today romanticize.

Modern life required not only liberating most Americans from agrarian labor but also the development of a food system capable of getting food from farms to the cities where increasing numbers of Americans lived and worked. A food system that lost much of its harvest to pests and spoilage needed to dramatically cut losses even as its bounty needed to travel farther and farther. For this reason, the rise of modern agriculture is as much a story of railways and highways as combines and tractors, refrigeration and grain elevators as pesticides and fertilizer.

The development and growth of feedlots followed a similar path. As the historian Maureen Ogle recounts in her magnificent history of the beef industry, In Meat We Trust, the first feedlots grew out of the stockyards of Chicago and Kansas City in the late 19th century. The most efficient way to get beef to burgeoning markets in America’s cities was to drive cattle to these new rail centers, where they were finished, slaughtered, and then shipped throughout the country by rail. After World War II, beef production and feedlots expanded massively, driven not so much by corporate greed as by rising demand for beef from the United States’ newly prosperous middle class and by a scarcity of labor as ranch hands returning from the battlefields of Europe and the Pacific chose to pursue better economic opportunities in the postwar economy.

Debates about the social and environmental impacts of America’s food system cannot be disentangled from the basic reality that in a modern industrialized society, most people will live in cities and suburbs and will not work in agriculture. As a result, most food will need to be produced by large farms, with little labor, far away from the people who will consume it.

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

#### Bigger is better – large farms are key to desirable social and environmental outcomes.

Nordhaus and Blaustein-Rejto 21 [Ted Nordhaus is the executive director of the Breakthrough Institute; Dan Blaustein-Rejto is the director of food and agriculture at the Breakthrough Institute; “Big Agriculture Is Best”; Foreign Policy; https://foreignpolicy.com/2021/04/18/big-agriculture-is-best/]

An accurate understanding of the benefits of the U.S. food system points toward a number of important opportunities to improve it.

First, the United States should double down on technology and productivity. Better seeds, irrigation, fertilizers, feeds, and animal breeding—together with precision farming made possible by big data, GPS systems, and rural broadband—could significantly improve both the competitiveness and environmental performance of U.S. farms. We estimate that doubling federal support for agricultural research and development, from $4 billion annually to $8 billion, over the next decade would reduce greenhouse gas emissions from global agriculture by an amount equivalent to about 40 percent of current U.S. cropland emissions while increasing U.S. exports.

Second, liberalizing trade agreements can improve global food security, benefit U.S. agriculture, and bring substantial environmental benefits. Free trade agreements like the North American Free Trade Agreement (NAFTA) have historically been a target for environmentalists, who argue that they hurt poor farmers in developing countries while opening up U.S. markets to producers with lower labor and environmental standards. But overall, agricultural trade benefits the global poor and further liberalization could lift millions out of poverty while improving food security. Further reducing trade barriers, particularly for goods with relatively low environmental footprints, would also concentrate production in places with an environmental comparative advantage. For instance, NAFTA mostly shifted Mexican and U.S. production toward crops that each country produced most efficiently.

Third, the United States should stop growing crops for biofuels and incentivize farmers to produce food for export markets. About 40 percent of U.S. corn is diverted for production of biofuels, largely because the federal government mandates for ethanol use in gasoline. These policies might have made some sense in the 1970s, when oil was scarce and America’s petroleum reserves seemed to be on the wane. But today, the country is awash in oil, and the transition to electric vehicles is just getting started.

Continuing to use some of the most highly productive farmland in the world to grow corn for biofuels also has terrible environmental costs. Under the best of circumstances, biofuels have a marginally lower carbon footprint than conventional petroleum-based fuels. But every bushel of corn that is used for fuel is also a bushel that isn’t used for food, which increases pressure to convert forests for farming somewhere else in the world. If President Joe Biden were to change just one thing about the U.S. food system to protect the environment, it would be to get rid of ethanol, not Twinkies.

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

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

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

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

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

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

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

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

### AT: surveillance stuff – 1nc

#### Surveillance impact’s ridiculous – just says “we surveil climate believers”, can’t solve millions of ppl not thinking warming is real and can’t facilitate large-scale decarbonization.

### turn – telecomm

#### Telecomm concentration’s key to 5G.

Taylor and Jackson 20 (Dr Will Taylor is an associate director in NERA Economic Consulting’s Antitrust and Competition, Energy and Communications, Media and Internet Practices in Auckland and Sydney, Australia. Adrien Cervera-Jackson is an Associate Director in NERA Economic Consulting’s Antitrust and Competition Practice in London, December 2020, "Competition implications of the transition to 5G," International Bar Association, <https://www.ibanet.org/article/8fe7b254-f2e9-41b2-a9d6-c259838aeef0.//ES>).

There are a number of conceptual reasons why a merger might lead to increased investment, which are set out below, along with commentary from the VHA/TPG and Sprint/T-Mobile judgments: Increased scale and scope improve the business case for investment in common/shared network assets Many investments in telecommunications networks are lumpy and fixed costs are high. Combining two mobile networks or a fixed and a mobile network (as was the case with VHA/TPG) improves the business case for investment in shared infrastructure, since the same costs are spread over more customers. The VHA/TPG decision states that ‘MergeCo will benefit financially from achieving scale. Scale is important for MNOs, as it enables the fixed costs of providing coverage to be recovered across a larger number of customers’.[33] Related to these cost savings, the decision states, ‘Further, I do not consider that MergeCo would use its net profit after tax to pay dividends to its shareholders or to pay down debt, at the expense of using its financial firepower to invest in its network or compete for market share’.[34] Relieving capital constraints In both VHA/TPG and Sprint/T-Mobile, a key issue was the ability of one of the players to finance investment absent the merger. In VHA/TPG, the evidence suggested that VHA was facing financial difficulties that wouldn’t be resolved absent the merger, which impacted its ability to invest. The judge stated, ‘it seems Vodafone faces financial difficulties that are unlikely to materially change absent the merger, and those financial difficulties will limit the extent to which Vodafone can invest in, and grow its business, in the counterfactual.’[35] However, the merged entity would have an improved ability to fund network investment due to an improved balance sheet, improved access to debt and equity funding, cost synergies and financial benefits from economies of scale.[36] In relation to an improved balance sheet, the judge stated ‘MergeCo would have a stronger balance sheet than either TPG or Vodafone separately. This would provide MergeCo with the capacity to invest strongly in its mobile assets, including by raising equity capital if necessary, and to roll-out 5G services and reduce network congestion more quickly.’[37] The VHA/TPG decision also asserted that the increased ability to invest would allow a faster rollout of 5G, stating ‘MergeCo’s ability to invest additional capex in its network will enable it to offer high-quality 5G services to customers far sooner than Vodafone or TPG would be able to alone. In doing so, MergeCo will have the opportunity to become a more effective competitive constraint on Telstra and Optus.’[38] Similarly, in Sprint/T-Mobile, the District Court was concerned with the viability of Sprint as a competitor given its financing issues, stating: ‘The weight of the evidence at trial establishes that Sprint is caught in a vicious cycle caused by its inability to finance meaningful network investment, which perpetuates a low-quality network that drives away customers and limits Sprint’s ability to generate the cash necessary to reduce its financial constraints.’[39] Noting the narrow applicability of this ‘weakened competitor’ defence,[40] the District Court explored whether there were any competitive means other than the merger to resolve Sprint’s competitiveness issues, ultimately concluding that there was not.[41] Combining scarce spectrum holdings increases network capacity and lowers network build cost As noted above, network capacity can be increased by increasing the number of sites, investing in more efficient equipment (eg, upgrading to 5G) or increasing spectrum holdings. Increasing spectrum holdings increases the capacity of the existing network, but also means the capacity provided by any new investments also increasesx. In this sense, increased spectrum holdings reduce the incremental cost of expanding capacity. This was the case in Sprint/T-Mobile, with the judge stating: ‘The undisputed evidence at trial reflects that combining Sprint and T-Mobile’s low-band and mid-band spectrum on one network will not merely result in the sum of Sprint and T-Mobile’s standalone capacities, but will instead multiply the combined network’s capacity because a technological innovation referred to as “carrier aggregation” and certain physical properties governing the interaction of radios.’[42] There is a further benefit if the spectrum holdings are contiguous, since this would also eliminate the need for ‘guard bands’ and thus increase the total amount of usable spectrum.[43] VHA and TPG had complementary spectrum holdings in a number of different bands. The decision noted that combining spectrum could lead to benefits, including the reduced need for ‘overhead control’[44] and reduced congestion on the merged network.[45] The VHA/TPG decision explicitly recognised that the increased network capacity resulting from the merger would release funds which could then be redirected to accelerating the 5G rollout: ‘The increase in the capacity of MergeCo’s network will reduce the need to build additional sites or conduct “tactical” 4G upgrades to relieve immediate congestion issues, a substantial proportion of which is inefficient as it would need to be also replaced in the near future. That will release additional capex which can be directed towards accelerating MergeCo’s 5G roll-out.’[46] Combining spectrum in different bands allows an appropriate balance of coverage and capacity, reducing network build costs As described above, different spectrum bands have different uses, with low-frequency spectrum providing superior coverage but low capacity and high-frequency spectrum providing poor coverage but high capacity. In Sprint/T-Mobile, T-Mobile had substantial low-band spectrum that Sprint lacked, while Sprint had substantial mid-band spectrum that complemented T-Mobile’s holdings. The parties argued that having a broader spectrum portfolio would allow more efficient spectrum use (ie, using low-band in areas where mid-band could not reach), leading to cost efficiencies, since low-band spectrum can provide greater coverage with fewer sites: ‘Apart from capacity and cost benefits, Defendants claim that New T-Mobile will provide better coverage than Sprint customers currently receive because T-Mobile’s low-band spectrum covers a broader range and penetrates through buildings more effectively than Sprint’s mid-band holdings can. Having a broad range of spectrum would allow New T-Mobile to dedicate each band of spectrum to its best use; it could prioritize the use of low-band in areas that mid-band and mmWave could not reach, while instead prioritizing the other two bands in areas correspondingly closer to the cell sites.’[47]

#### Winning the 5G race is key to US hegemony—geoeconomics, cyberthreats, and spheres of influence

Tham 18 (Jansen Tham, Masters in Public Policy graduate of the Lee Kuan Yew School of Public Policy, National University of Singapore, specializing in Politics and International Affairs, December 13, 2018, "Why 5G Is the Next Front of US-China Competition," No Publication, <https://thediplomat.com/2018/12/why-5g-is-the-next-front-of-us-china-competition//ES>).

Geoeconomics of 5G First, 5G technology will support next-gen digital applications that permit ultra-fast, low latency (or lag), and high-throughput communications. These new apps are likely to fuel the future smart cities and digital economies, predicted to be the next key driver of economic growth in the much-touted Fourth Industrial Revolution. As a result, the superpower that gains a first-mover advantage in resolving the many technological, political, and policy challenges and successfully deploys the 5G network is likely to gain a significant economic edge over the other. This makes 5G implementation a zero-sum economic game – as viewed from an Chinese or American lens – rather than a win-win situation where technological advancements and solutions are shared for mutual gain. From the geoeconomic perspective, 5G networks could become such a game-changer that the technology tilts the balance between the world’s first and second most advanced economy. The geoeconomics also applies to other states at the periphery of the two superpowers. Whichever superpower that successfully deploys 5G can claim to replicate its model in other countries and exert geopolitical, economic, and technological influence over these states. Therefore, 5G has the potential to be the next leverage tool that the United States and China can wield in the great power competition to redraw the lines between the U.S. and Chinese camps – especially in Northeast, Southeast, and South Asia. 5G Cyberthreat Second, the prevailing global sentiment of possible Chinese cyberespionage through the technology it exports has its roots in the United States, with its national security agencies labeling Huawei and ZTE – heavyweights in the tech industry and front-runners of 5G technology – as potential national security threats. Despite the perceived security assessment that the use of Chinese equipment and software could damage U.S. security interests (which is certainly possible), there remains no concrete evidence to date supporting the cyber threat that Washington has hypothesized. Fundamentally, there is deep distrust on the part of the American national security establishment toward Beijing more than any concrete Chinese practices. This has precipitated the concern that the United States is susceptible to Chinese cyberespionage, or even subject to the disruption of critical cyber-infrastructure that may paralyze the nation. This suspicion is manifested in the decisions of the U.S. government regarding the use of Chinese equipment in 5G, and more broadly, the use of Chinese equipment by the government. The 5G issue is thus a conduit through which U.S. fears of Chinese hegemony is materializing, and the outcome of 5G could become an important proxy to assess the state of the U.S.-China bilateral relationship – or the depth of how icy it could get. 5G “Sphere of Influence” Third, the concern over their cybersecurity has driven states to coalesce around American leadership – and policy – on the future 5G network. Indeed, the countries that have publicly adopted the U.S. position are either its allies or close partners. It is notable that the other three members of the Quadrilateral (or Quad) grouping of countries – Australia, Japan, and India – appear to be joining the U.S. camp, along with some of its European allies. It is a matter of time before the United States and China separately gather allies to take a position on the issue of incorporating Huawei or ZTE’s technology in 5G networks. This is already happening. It would create de facto “spheres of influence” in Asia and beyond – reminiscent of the “spheres of influence” created during the Cold War by the United States and the Soviet Union. States that have heretofore been sitting on the fence and unwilling to commit to either Chinese or American policy on the matter could be forced to take a stand under intense diplomatic pressure. This would specifically apply to states like South Korea, the Philippines, Thailand, and Vietnam – countries that are ostensibly strong U.S. military allies or close partners, but which also fall within Beijing’s political influences due to their proximity to the middle kingdom. 5G as Proxy: What’s the End Game? Through the 5G issue, it is likely that both superpowers will take stock of and develop a clearer picture of where each country – Asian or otherwise – stands on the broader U.S.-China geopolitical chessboard. This will have repercussions beyond 5G, into the more strategic positioning of the two superpowers on the international stage. There is no clear end-game for the 5G issue, as both Beijing and Washington posture for the “hearts and minds” – or telecoms networks – of states. What is obvious is that the 5G issue is no mere technical or security problem, but one that has vast implications for the U.S.-China modus vivendi from the economic and political perspectives. After all, the stage is set for 5G to become a proxy battlefield for global technological, economic and (eventually) military supremacy – and one that peripheral countries must carefully manage to avoid becoming collateral damage in the great power rivalry that is heating up.

#### Turns the LIO.

## advantage – convergence

### convergence now – 1nc

#### Convergence with EU now – aff authors run the Biden administration.

Michaels & Kendall ’21 [Daniel; 7/15/21; Brussels Bureau Chief @ The Wall Street Journal; and Brent; Legal Affairs Reporter in the Washington Bureau @ The Wall Street Journal “U.S. Competition Policy Is Aligning With Europe, and Deeper Cooperation Could Follow”; https://www.wsj.com/articles/u-s-competition-policy-is-aligning-with-europe-and-deeper-cooperation-could-follow-11626334844; AS]

The European Union’s top antitrust regulator foresees greater alignment with the U.S. on competition enforcement, particularly in the tech sector, amid a broader policy reorientation under the Biden administration.

EU Executive Vice President Margrethe Vestager, the bloc’s competition commissioner, said she expects “much more intense work when it comes to technology and the digitized market” between her team and Washington.

President Biden’s policy statements and appointments, plus legislative proposals from Congress, indicate the U.S. is moving closer to positions long held in the EU regarding internet giants, pharmaceutical firms and other industries with diminishing competition.

As the world’s two most powerful antitrust regulators, the U.S. and the EU can shape global competition discourse and rein in many of the world’s largest companies, so greater cooperation could have significant impact.

For supporters of aggressive enforcement, “it will certainly be a marriage made in heaven,” said Jeffrey Jacobovitz, a Washington-based antitrust lawyer with Arnall Golden Gregory LLP. “I think they’ll work hand in hand. Increased coordination makes enforcement stronger.”

That alignment will make it even more incumbent on companies in the crosshairs to develop broad, cross-Atlantic strategies on how to respond to that scrutiny, Mr. Jacobovitz said.

While tech companies say similar policies in multiple jurisdictions can simplify operations, some worry about the U.S. adopting some of Europe’s more aggressive positions.

“The U.S. should be wary of copying EU-style experimental regulation,” said Christian Borggreen, vice president and head of the Brussels office at the Computer & Communications Industry Association, which represents companies including Amazon.com Inc., Facebook Inc. and Google. “As a leader in tech innovation, the U.S. would have much more to lose if they get it wrong.”

Mr. Biden’s appointments of high-profile U.S. progressives who have criticized tech giants—Lina Khan to run the Federal Trade Commission, and Tim Wu to the White House Economic Council—have been widely seen as indicating that Mr. Biden plans to turn up the heat on internet conglomerates. Companies such as Microsoft Corp. , Apple Inc. and Google parent Alphabet Inc. previously felt little pressure from Democrats, including former President Barack Obama, who criticized past EU efforts to restrain U.S. tech companies.

Ms. Vestager held an initial meeting with Ms. Khan by videoconference on July 2. Mr. Biden has yet to appoint someone to lead antitrust enforcement at the Justice Department. That nomination could provide further clues to his administration’s approach.

In parallel, House Democrats recently introduced a package of bills with bipartisan support that target big tech companies’ practices considered by critics as anticompetitive. The proposed legislation could go as far as breaking up, or at least shrinking, Amazon and other top tech companies.

New York state could go a step further with proposed antitrust legislation that would forbid companies from abusing a dominant market position—a prohibition central to EU competition regulation that is much stricter than U.S. federal antitrust rules.

Mr. Biden last week issued an executive order seeking to curb the power of companies across the U.S. economy that dominate their markets.

The jockeying for new policy approaches comes as officials on both continents have faced enforcement challenges in limiting digital giants’ activities. Ms. Vestager has imposed billions of dollars in penalties on U.S. tech companies but had little impact on their ability to control markets, according to critics including consumer advocates and some smaller competitors.

In the U.S., a federal judge last month dismissed cases brought by the FTC and most U.S. states against Facebook, though the FTC is expected to try again with an amended lawsuit.

“I believe there is a greater consensus that competition enforcement has not always delivered on its promise,” said University of Oxford law professor Ariel Ezrachi, who is director of Oxford’s Centre for Competition Law and Policy. He said the new U.S. approach is “a real tectonic shift.”

#### The EU supports the consumer welfare standard.

Kovacic ’18 [William; Global Competition Professor of Law and Policy @ George Washington University Law School; “Competition Policy in the European Union and the United States: The Treatment of Dominant Firms” in Hearing on “A Comparative Look at Competition Law Approaches to Monopoly and Abuse of Dominance in the US and the EU”; Senate Judiciary Subcommittee on Antitrust, Competition Policy, and Consumer Rights; AS]

3. Similarities and Dissimilarities in the Substance of EU and US Competition Policy

I share the often-expressed view of EU and US competition officials that the general trend of competition policy in the two jurisdictions has been toward common acceptance of substantive standards and the analytical concepts that support the implementation of those standards. An overview of overall goals and specific areas of activity verifies that proposition and also underscores noteworthy differences.

3.1. The Objectives of Competition Policy

It is nearly 30 years since Robert Bork’s Antitrust Paradox famously underscored the importance of objectives to the operation of a competition policy system. “Antitrust policy,” Bork wrote, “cannot be made rational until we are able to give a firm answer to one question: What is the point of the law – what are its goals? Everything else follows from the answer we give.”14

Modern discourse between EU and US government officials has featured many statements about the proper aims of competition law. The speeches of top agency leaders in both jurisdictions indicate broad agreement on the question of goals. Each jurisdiction accepts the broad proposition that the central aim of competition law is “the objective of benefitting consumers.”15 Consistent with the single-minded focus on “consumer welfare,” EU and US antitrust officials routinely disavow any purpose of applying competition laws to safeguard individual competitors as an end in itself. EU officials also have grown accustomed to hearing, by direct quotation or paraphrase, the U.S. Supreme Court’s admonition that the proper aim of antitrust law is “‘the protection of competition, not competitors.’”16

### AT: internet – 1nc

#### No internet impact – U.S. authoritarian-like censorship practices and net neutrality repeal thump – our Internet is not actually open so can’t set a model.

Kilovaty ’17 [Ido; Research Scholar in Law, a Cyber Fellow at the Center for Global Legal Challenges, and a Resident Fellow at the Information Society Project at Yale Law School. “Repealing Net Neutrality, National Security, and the Road to a Dictatorial Internet”. Harvard Law Review Blog. Dec 22 2017. https://blog.harvardlawreview.org/repealing-net-neutrality-national-security-and-the-road-to-a-dictatorial-internet/]

On Thursday, December 15, 2017, the Federal Communications Commission (FCC) voted to repeal the Open Internet Order, often referred to as “net neutrality.” This should be no less than a bombshell, as the Internet was originally conceived as a free and open platform, not governed by economic interests, where service providers are neutral as to the data packets flowing through their infrastructure. To solidify that notion, Obama administration rules prohibited internet service providers from discriminating between different websites or services based on whom they wish to promote for financial, ideological, or other reasons. But this net neutrality concept is now being reversed, and we should be thinking about it as no less than a regime change, leading us towards a dictatorial, and potentially not so safe, Internet.

This is not a moment to herald the passing of the Internet entirely. The Internet is still going to be a significant part of our daily lives. However, we are about to witness a true regime change of the Internet. With the FCC’s repeal of net neutrality, the United States, being the leader and proponent of a free and global Internet for at least two decades, is about to create a dictatorial Internet.

This significant Internet regime change could have two important implications, both less intuitive than the commonly discussed consumer-focused concerns. First, internet giants will further consolidate their power, thus increasing our dependence on their services. Subsequently, it could increase their susceptibility to foreign information operations, and potentially pressure them to increase censorship and restrictions on speech, stemming from this national security concern. Second, this will result in an Internet that is less global, encouraging authoritarian regimes to further restrict their own internet, for ideological and political ends.

Consolidation of Power and National Security

Internet giants such as Facebook, Twitter, Amazon, YouTube, and Google, are already in control of a substantial portion of our content consumption, communication, and data hosting activities. It is already difficult for new players to successfully compete against these established Internet players. Without net neutrality, we are about to become even more dependent on these platforms, because they are the ones who will be able to afford more bandwidth and thus be able to block new players from competing under the same rules. This could lead to serious impediments to free speech, but more importantly – new speech and innovation.

But this particular problem goes even further. Consider the Russian meddling in the U.S. presidential election of 2016. The reason why the Russians have been so successful in achieving their goal is due to our already existing dependence on these platforms. Facebook, Google, and Twitter recently came under fire for not acting on the Russian disinformation campaigns on their respective platforms that directly flows from their influence on large groups of people.

Consider this – the Russian disinformation and meddling campaigns took place when net neutrality was still the rule. Whereas repealing net neutrality will result in these Internet giants potentially consolidating their power, which would mean that even more Internet users would be dependent on their almost exclusive services and content, given the convenience of ISP prioritization allowed by the repeal. A post-net neutrality reality will amplify the effects of foreign governments who would attempt to interfere with U.S. internal affairs. Such a scenario could pressure these leading tech giants into censoring and limiting speech allegedly to protect national security interests, to prevent additional foreign meddling.

Such restriction would be in addition to the more intuitive adverse impact on speech with the repealing of net neutrality. This intuitive impact is due to the anticipated prioritization of certain platforms of speech, following the repeal of net neutrality, meaning that no speech will be created equal online. Thinking about the non-intuitive national security implications of the net neutrality repeal described in this section should raise the concern and opposition of other agencies and departments responsible for cybersecurity and national security.

Finally, FCC Chairman, Ajit Pai, has previously claimed that net neutrality provides an excuse for authoritarian states to further isolate their Internet from the global grid. However, repealing net neutrality, and backing off from promoting the Internet as a global and free platform of ideas, will lead to the same. In fact, it will serve as a model for these regimes, whether for commercial or ideological reasons. The result is the same – certain portions of the Internet will be effectively censored.

“Balkanized” Internet

Balkanization of the Internet is a phenomenon that has been discussed over the years, particularly in the context of China, and its approach to Internet governance. The Chinese government has been consistently working on ensuring that the flow of information is heavily controlled, and that the Internet in China is regulated in line with ideological and economic interests. Other countries, like Brazil, have followed suit, particularly in the aftermath of the Snowden revelations. When certain governments are interventionist and paternalistic, the Internet varies from country to country, meaning that transnational communications and information exchanges could be significantly restricted.

With net neutrality about to become a thing of the past, the role of the U.S. as a champion of a free and global internet, where information is flowing across borders and free expression is a central aspect, is diminishing. This should alarm every single one of us, because there is potentially no equivalent leader to assume the role of the champion of a free and global Internet. In Canada, for example, recent Supreme Court decision could have far-reaching implications on the freedom of the Internet. The Court ruled that Google is under obligation to remove search results globally if they hold information pertaining to an ongoing patent infringement trial. Similarly, the European Court of Justice is considering whether EU’s right to be forgotten could apply to search results outside of EU borders. This shows that states are pushing for their conflicting Internet narratives, with potential global implications, while the U.S. is repealing its net neutrality principles, which would remove it from its role of leading the idea of a free and open internet across the globe. This gap in value-driven leadership could reshape the Internet for the decades to come, with voices to regulate and balkanize the Internet becoming louder throughout the world.

#### No internet impact

Lewis 15—Senior Fellow and Director of the Strategic Technologies Program at the CSIS and a PhD from the University of Chicago [James A, “Managing Risk for the Internet of Things,” *CSIS*, December, p. iv-v, <https://csis-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/publication/151201_Lewis_ManagingRiskIoT_Web.pdf>]

The majority of Internet “users” are machines, not people. The devices that make up “the Internet of Things” (IoT) connect to the Internet, take action, and create immense amounts of data. These devices will perform progressively more functions, creating new risks for safety and security, but we need more than anecdotes to assess risk and devise useful policies. An initial conclusion about security and the Internet of Things is that popular portrayals significantly exaggerate and misrepresent risk.

• The Internet of Things will be no more secure than the conventional Internet and may be more vulnerable, since many IoT devices will use simple computers with limited functionality

• Increased vulnerability, however, does not mean an increased risk. The benefits of IoT outweigh the potential for harm, and one risk usually not considered is that premature or overreaching measures for security or privacy will stifle economic growth and innovation.

• IoT devices allow hackers to produce physical effects. Researchers have demonstrated many vulnerabilities in IoT devices, but the consequences of these vulnerabilities largely qualify as malicious pranks. Only IoT devices that perform sensitive functions or where disruption can produce mass effect will increase risk. This means most IoT devices pose little risk.

• The state of online privacy is so dreadful it is unlikely that IoT will make it worse.

• The same problems that keep us from making cyberspace more secure will slow progress in IoT security: technological uncertainty, limited international cooperation, lack of incentives for improvement, limited regulatory authority, weak online identities, and an Internet business model based on exploitation of personal data

• We can accelerate risk reduction with the same approaches we use for general cybersecurity: research, liability, international cooperation, and regulation. The White House could repeat its approach to critical infrastructure and task sector-specific agencies to work with companies to improve the security of IoT devices they use or sell.

• Autonomy will be a key determinant for IoT risk. Limiting device autonomy or providing a way to override autonomy reduces risk. IoT standards should require a higher degree of human intervention and control for sensitive functions.

• A secure device connecting to an unsecured network does little to reduce risk. Given the weak state of security on most networks, making IoT more secure requires better use of encryption, strong authentication, and increased resilience for both devices and networks.

• We can use three metrics—the value of data, the criticality of a function, and scalability of failure—to assess IoT risk. Devices that create valuable data, perform crucial functions, or can produce mass effect need to be held to higher standards. Those that do not can be left to market forces and the courts to correct

• Risk is dynamic. It decreases as technology matures and as familiarity and experience grow. As we gain experience with IoT, risk will decrease.

# 2NC

## LPE K

#### These debates are the core of antitrust. The economic concepts and worldviews embedded in antitrust advocacy should be evaluated upstream of specific cost-benefit comparison of implementation.

Sabel **RAHMAN** Law @ Brooklyn **’20** “Structuralist Regulation” Prepared for NYU Law School Public Law Colloquium, September 2020

Second, this concept of structuralist regulation helps provide a policy framework for understanding and engaging some of the structuralist claims made by grassroots reform movements especially in this moment. We are in a unique moment of resurgent grassroots activism, and as scholars of social movements have argued, many of these movements are advancing structural, transformative visions of public policy and legal-institutional change.20 But these claims are often seen as outside the scope of more traditional modes of policy debate and analysis. Building a conceptual framework of what we mean by ‘structural’ reform can help bridge the reform ideas being generated by grassroots movements on the one hand, and those arising from policymakers and academics on the other. More broadly, we might even say we are on the cusp of a revival of interest in structuralist policy solutions in response to the deeper problems of economic inequality,21 racial subordination,22 power in public law,23 and political economy approaches to law and public policy.24 A clearer understanding of structuralist policy design will be important to inform the kind of inclusionary policy agenda needed to remedy these inequities.

The rest of the paper proceeds as follows. Part I provides a conceptualization of ‘structuralist’ policymaking, identifying the underlying assumptions that animate structuralism as a regulatory strategy. This Part also notes that this concept of regulatory strategy (or what I call “regulatory logic”, as defined below) should be understood as a distinct way of unpacking and analyzing the patterns of policymaking judgment distinct from other modes of analysis like cost-benefit analysis or the rules-versus-standards debate. Part II then looks at examples of structuralist policy proposals in recent economic policy debates: the debate over tech platforms, the debate over too-big-to-fail financial firms and systemic risk, and the renewed interest in anti-trust and anti-monopoly law. These examples help illustrate structuralist regulatory logics in action, and their distinctive assumptions and potential benefits over more conventional regulatory approaches. The purpose of this Part is not to offer a full-throated defense of structuralist policies in each of these sectors (although I am perhaps unsurprisingly sympathetic to the arguments on the merits); rather the purpose here is simply to illustrate structuralism as a distinct mode of thinking about policymaking. Part III articulates some broader implications for how to implement and institutionalize structuralist policies. Part IV concludes with some closing thoughts on how structuralism as a way of thinking about regulation connects to this broader moment of intense political and scholarly interest in inequality and racial (in)justice.

I. Structure as regulatory subject and strategy

Regulatory logics

The task of creating an effective and responsive regulatory system is often thought of in terms of questions of institutional design the balance of responsibilities between legislatures, agencies, and judges; how agencies should be structured; how agency heads should be appointed; how agencies can generate sufficient expertise to regulate effectively without falling prey to industry capture. But part of the challenge in ensuring effective and responsive regulation lies within the ways in which regulators and policymakers more broadly think about their task—the concepts and worldviews that operate within the ‘black box’ of policy decisionmaking and judgment.

However stringently we might read the external legal constraints on regulatory action— whether through judicial review or command—the fact of regulator discretion and judgment is inescapable.25 So how then should we think about the analytical methods or frameworks employed by regulators themselves? Regulators and legislators are not merely technical automatons executing the public will or legislative command. Nor are they simply political ideologues. Rather, policymakers are necessarily making decisions that involve degrees of subjective, normative, and policy judgments. The ways in which that judgment is exercised has an impact on the dynamics of regulatory policy.

Embedded in these judgments are a range of assumptions, values, and concerns. How are policymakers understanding the purposes of regulation in a given domain? Do they see their enterprise as complementary to existing private parties and practices? Or as fundamentally critical and oppositional? How do regulators view their own capacities and institutional competency—particularly relative to other private or governmental actors? Do they see themselves as outgunned and undermanned? Or well-informed and capable? What is their analysis of the systems and causes that drive the problems they are trying to solve—and which of those causes are, in their view, most amenable to the tools they have on hand? These are the kinds of underlying questions that operate upstream from a discrete policy issue or costbenefit analysis inquiry.

These questions often aggregate into distinctive patterns of judgment, consistent regulatory strategies, or what I call in this paper “regulatory logics”. Regulatory logics live squarely in the midst of the black box of regulatory judgment; they are more reasoned and grounded in understandings of the empirical nature of the world than pure political ideology, but at the same time they also share some degree of normative, subjective judgment beyond merely technical calculations of risk, costs, and benefits. We can think of “regulatory logics” as analogous to canons and methods of statutory interpretation in the judiciary. Just as canons offer a conceptual framework and method of reasoning forjudges seeking to fill in the gaps between statutory text and a new fact situation, regulatory logics can be thought of as a bundle of presumptions about the social goals of regulation, about the relative institutional competency of regulators in comparison to private actors, and about the appropriate methods of analysis required in formulating rules responding to new circumstances. And, like modes of interpretive reasoning, regulatory logics do not predetermine a specific outcome—though they may shade in some directions making some policy determinations

## CP – CSR

#### New regulations cause a chilling effecting on prosocial collaboration

Balmer 20 –(Paul, "Colluding to Save the World: How Antitrust Laws Discourage Corporations from Taking Action on Climate Change," Ecology Law Quarterly, <https://www.ecologylawquarterly.org/currents/colluding-to-save-the-world-how-antitrust-laws-discourage-corporations-from-taking-action-on-climate-change/> 7-27-2020)//gcd

II. ANTITRUST SCRUTINY OF CORPORATE COLLABORATION As corporations pursue socially responsible strategies—whether on climate change or other social causes—the threat of antitrust enforcement looms. This threat discourages collaboration among competitors, even to meet goals that are objectively positive for society.30 Much of this chilling effect comes from the inconsistent and evolving nature of antitrust enforcement and a general lack of bright-line rules. Section 1 of the Sherman Act, the 1890 seminal antitrust law, prohibits “[e]very contract, combination, . . . or conspiracy in restraint of trade or commerce.”31 Although every competitive action, and certainly every contract and agreement, restrains trade in some manner, courts have enforced section 1 to prevent “unreasonably restrictive” contracts, combinations, and conspiracies.32 Unreasonable restraints on trade, in turn, include those that “reduce output, raise price, or diminish competition with respect to quality, innovation, or consumer choice.”33 But how those various bad outcomes interact, or when to prioritize lower prices over other antitrust goals, is unsettled and subject to frequent debate.

## CP

### 2NC – ADV 1

#### The counterplan resolves the entire advantage – it uses the non-antitrust competition policy of regulatory agencies to change the incentives of companies. This includes fines, consequences and break-ups if necessary. It is a PIC out of antitrust as the enforcer.

#### 1st card in 1NC is advocate

Jan Eeckhout 21, professor at Universitat Pompeu Fabra in Barcelona, “Epilogue,” The Profit Paradox, 06/01/2021, pp. 275–282

Like over a century ago, we’re experiencing an epoch of similar progress, and, like then, the gains of that progress are unequally distributed. Since 1980, the few have amassed all the benefits of pro gress while most see no gains at all. Th ere is a clear chain of events originating with domi- nant firms grabbing extreme market power. This has profound implications for work, the source of income for the majority of the people. Market power leads to wage stagnation and extreme wage inequality, and it stymies social mobility and economic dynamism. The deteriorat- ing labor market in turn affects some people’s health and overall well-being. But it is not only the workers who feel let down; the small and medium entrepreneurs are frustrated as well. They can barely keep their establishments afloat because market power is concentrated in a few dominant firms that squeeze their returns and shuts down their businesses.

Market forces—t he lack of competition challenging big business— are not only failing the poor, they are also failing the m iddle class and small business owners. Big- business capitalism is failing the majority of the house holds, where most come out on the short end and do worse than their parents. Pro-market capitalism is losing out to pro-business.

The central thesis of The Profit Paradox is that technological innovation has a natural tendency toward accumulating wealth in few hands. New technologies favor the early adopter who can take the entire mar- ket while using the same technology to entrench power and limit com- petition in the market. Remember Orwell’s words: “The trouble with competitions is that somebody wins them.”

We therefore need strong institutions and independent regulation that guarantees and protects competition. One of the biggest misper- ceptions is that markets are free and that competition is a natu ral out- come. Most markets work perfectly fine, but in the advent of new tech- nologies, market failure leads to dominance and the accumulation of wealth. Only pro-market capitalism can attain healthy competition, which is to the benefit of all stakeholders in society, including the customers and the workers. Only then can we guarantee that what is good for business is good for workers.

Often, stakeholder capitalism and corporate responsibility are hailed as the panacea. Unfortunately, they are no more than a drop in the ocean. Of course, it is beneficial if business o wners care about their workers and make sure that they earn a good living. A large firm that exerts monopsony power can make life better for its captive workers. The German model of nonconflictual worker repre sen ta tion is an ex- ample of making work work.1 Often, better treatment of workers raises productivity, which is in the interest of the shareholders, too.

Generally, though, corporate responsibility is high on good inten- tions but low on results; it simply d oesn’t work if we expect that the CEOs or the boards of companies take it upon themselves to reduce their market power, in the pro cess lowering profits and increasing wages. That would lead to perverse economic decisions and inefficiency. Moreover, the unilateral decision not to exert market power is to the benefit of the other competitors who do exert market power. Hence, only coordinated action, such as regulation, can resolve the negative effects of market power.

Most importantly, self- regulation does not work b ecause the prob- lem is economy-w ide: it is like asking the major o wners of fossil fuel– generating firms to self- regulate emissions and environmental stan- dards. BP and Shell bombard us with advertising that praises how much they do for the environment, but they also keep selling oil that increases CO2 emissions. What we need instead is policy that regulates the emis- sions, such as carbon taxes and cap and trade, for example. That regula- tion has to come from outside the industry. Once the regulation is in place, profit- maximizing firms will be as efficient as the market and the regulation demands to generate low emissions energy.

The same holds for the stakeholder capitalism that attempts to re- duce the adverse effects of market power that operate economy wide. The social responsibility of the firm should be to maximize profits through innovation and the use of new technologies. However, we should not allow firms to make profits from using those technologies that build moats around their castles. Institutions should ensure that there is healthy competition. If a firm makes excess profits, regulation should facilitate entry of competitors, which leads to lower prices and lower profits in the long run. This brings innovation and growth, and it leads to more employment and higher wages.

Rather than stakeholder capitalism, I therefore advocate for stronger and ind e pend ent institutions that attain the desired social goals. The mandate of a competition authority is to protect competition, not com- petitors or businesses. It should rein in market power and give power to the market. Most markets work well without much intervention or regulation, but when they d on’t, pro- competitive institutions that are in de pen dent of politics guarantee there is no market failure.

My proposal is therefore a separation of powers to achieve the social objectives: competition by firms in the market, and regulation of the market by the competition authority. On the level playing field of com- petition, firms should be allowed to make profits, as they should be prepared to go bankrupt without bailouts in bad times. The competition authority’s visible hand will ensure that the market’s “invisible hand,” where firms seek their own gain, will unintendedly produce the greatest gain for all.

Unfortunately, in the absence of such institutions, the rise of market power has resulted in widespread discontent against the backdrop of enormous technological advances and economic progress. Some of this discontent is simply the wrong perception. Many forget that only over half a century ago people died of pneumonia, for example, or that pov- erty and standards of living w ere much worse than they are now. But only part of the discontent is misperception; a large part of it is real. And that is why opinions get extremely polarized, why the gillets jaunes (yel- low vests) demonstrate in France, and why people lose faith in po liti cal and economic institutions.

And with the COVID-19 pandemic, society jumps out of the frying pan into the fire. Everything indicates that the fallout of the 2020 economic crisis is generating even more pronounced inequality. Those most negatively affected are the low skilled, the poor, minorities, the elderly, those in low-quality housing and in disadvantaged neighborhoods, the disabled, and the unhealthy. They are all more likely to lose their jobs, their incomes, and their lives. Of course, not everything is the fault of market power, so let’s not use the pandemic as an excuse to bash big business. But when, under the guise of a safety net for the unfortunate, a multitrillion-dollar rescue package disproportionately helps large companies, then the policy responses are making things worse in the long run. Eventually, workers have to pick up the tab in the form of taxes on labor (or high inflation).

The fact that in April 2020, in the middle of the crisis, US stocks had their best month since 1987 and that they reached new highs by the summer is bad news. Markets rally because of the multitrillion- dollar bailout with no strings attached and without a need to pay back the handouts, not because the economy is healthy. This bailout capitalism tilts the scales even more in favor of large companies with market power. In times of healthy capitalism, it is fine if an airline goes bust because it keeps investors in check to make the best decisions in the first place. When an investor makes the right decisions and times are good, they make money. And if things go wrong, companies make losses or even go bankrupt, and the investor loses money. That is what investors in healthy capitalism sign up for.

The argument increasingly is that, like with banks, those megafirms are too big to fail. In a massive downturn such as the COVID-19 recession, those large firms will drag with them hundreds of thousands of jobs if they go under. Moreover, the bankruptcy of one large firm will have a knock-on effect that leads to the contagion of bankruptcies among other, smaller firms. The contagion of a virus leads to the contagion of business failures. The problem with this argument is that those firms are too big because they have market power. Had there been more healthy competition with more firms in all markets, those firms would not have been too big to fail in the first place. In the theatre of a healthy competitive market, failing is part of the scenario. Now, only the small firms without market power fail.

This lopsided capitalism gets to the heart of the dominance of large corporations and the Profit Paradox. A number of large, thriving firms that make huge profits for prolonged periods of time is bad for the economy. We have to stop equating a rising stock market with a healthy economy. And if at the height of an economic recession, with small businesses closing and unemployment claims at record highs, those stock markets rally, then we know that market power is propping up some businesses at the expense of labor, t oday and in the future.

The greatest threat of market power is that its enormous concentration of wealth further entrenches that power. Market power generates huge profits that allow the few to buy po litic al f avors, which further cements that power. It is a vicious cycle that destroys democracy. In his grim description of exploitation in the Chicago meatpacking industry at the beginning of the twentieth c entury, Upton Sinclair writes in The Jungle: “[The businesses] own not merely the l abor of society, they have bought the governments; and everywhere they use their raped and stolen power to intrench themselves in their privileges, to dig wider and deeper the channels through which the river of profits flows to them.”2

This pro cess of market power reinforces po liti cal power, and vice versa; wealth creating wealth is not sustainable in the long run. In Ger- many, the Weimar Republic had tight relations with big business, which led to a rise in industrial cartels. And only a few de cades later the coal and steel conglomerates provided the defense apparatus for Nazi war- mongering. The ensuing wars, the economic depression, and high infla- tion decimated small business and the middle class. After the war the alienated small merchants and entrepreneurs ensured that this vicious cycle between politics and big business was broken. The postwar econ- omy was built around Mittelstand (small business), where procompeti- tive institutions made space for small and medium enterprises as the engine of growth for the recovering country.3

History has taught us that it is sufficient for a spark in one region to ignite the dynamite everywhere else. In 1914 the United States did not have the political problems that Germany had, and Teddy Roosevelt’s trust busting was an attempt to restore the balance toward more equality. But it was not enough, and the globalized economy was brought down by World War I. Following the war, the United States had major discontent during the Great Depression, and in World War II the United States was dragged into the world conflict again.

In his recent book The Great Leveler (2017), Walter Scheidel argues that mass violence and catastrophes are the only forces that can reduce in- equality.4 He goes back to the Stone Age and carefully documents how only wars, revolutions, state collapse, and plagues have managed to restore more equal socie ties. The thesis is that ine quality is so tenacious that only calamitous violence can dismantle it. Will it be any diff er ent now?

It appears that in our age of advanced medical technology and information, society has managed to avoid the COVID-19 virus becoming the next great leveler. Epidemiologists and scientists have educated us on how to use social distancing, face masks, and gloves to manage the spread of a disease that would in earlier times have been far more deadly. We may have managed to level the curve of contagion and death and avoided a n eedless social implosion. But COVID-19 has not leveled the inequality that has grown out of proportion in the past four decades— quite the contrary.

Inequality is as high as it was before World War I. Discontent is everywhere. Only very draconian measures will revert the course. It helps to look back: “ Those who cannot remember the past are condemned to repeat it.”5 Incidentally, four Viennese intellectuals in exile, Friedrich von Hayek, Karl Popper, Joseph Schumpeter, and Stefan Zweig, set the tone for a postwar economic and social order with the objective of avoiding the concentration of power and totalitarianism. They all experienced the dire consequences of a collapsing order firsthand and ded cated the remainder of their lives to making sure no one else would experience the same ever again.

We cannot ignore how rapid technological progress and tightly interconnected global economies created enormous market power at the turn of the last century, in the last so- called modern times. The result was a Gilded Age— one where the majority of the workforce saw no gains. Today, in the current modern times, the economy is edging in the direction of a new Gilded Age. In the first half of the twentieth century we were able to stop the slow-drifting ship of in equality in the global economy, but it took two brutal wars and the Great Depression.

Today, the only way to avoid another calamity and restore the economic order is to bet on pro-market reforms that break the power of mega- firms. We need to put the trust back into antitrust, which requires the ambition of a moonshot and the resources of a Manhattan Project. And if that is not complicated enough, market power, like climate change, is a global problem that requires international coordination.

We also need to break the link between market power and political power, which are dangerously feeding off each other. We need to keep money out of politics and politics out of the economy. That means we need to minimize the role of lobbying. In the United States, campaign finance holds politicians hostage, who suffer acutely from Stockholm syndrome. Campaign finance has a role in many social prob lems, from mass shootings to the opioid crisis.

But the political influence of big business is also at the heart of the ailments of the economic system. Firms with market power have the resources to lobby politicians, and they use the lobbying to build larger uncontested empires, which in turn frees up more resources to lobby even further. In this vicious cycle, mega- firms kidnap politicians on is- sues ranging from data protection (the big tech firms) to the absence of environmental regulation (the Koch family), and most of all, on the power of those dominant firms to further extend their dominance. Lob- bying is the main vehicle to create and perpetuate market power. It was like that for the East India Com pany, a master lobbyist, and it is nothing more than a legalized form of corruption.

Market power concentrates vast resources in the hands of a few, who use those resources and more to perpetuate market power. This poses a serious threat to democracy. To put it in the words that former US Su- preme Court Justice Louis Brandeis reputedly has spoken, “Americans might have democracy . . . , or wealth concentrated in a few hands, but they could not have both.” 6

It is easy to blame the capitalist system. It is true that technology and markets inherently lead to concentration of wealth and inequality, but markets do not operate in a vacuum: even the most rogue form of capitalism needs institutions and regulation. It needs an army and a police force to guarantee that property rights are respected, and to foster trust between trading partners that encourages them to make long-t erm in- vestment decisions. But from this rogue form of laissez- faire capitalism much more intervention and regulation is needed to ensure that capital- ism is also competitive. The current institutions ensure that capitalism is pro-business. To safeguard democracy and a just division of what society produces, we need regulation and institutions that foster pro-competitive capitalism. We need that now, before it’s too late!

#### Better regs solve grids – their evidence

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The Department of Energy may have the most direct regulatory authority over the electric grid, but as the grid becomes more elemental to broader national security concerns, oversight of the grid will broaden to other federal agencies. In the event of a crippling grid attack, the United States would face three overarching issues: first, there would be a national security issue related to defending the United States from a potential aggressor; second, there would likely be immediate and severe economic disruption; and, lastly, there would be social dislocation and a burden placed on emergency services.66 Due to these concerns, federal management of the grid is likely to expand beyond the purview of the Department of Energy and become more of an interagency concern.67 This is already occurring, but as grid attacks multiply the interest of a wider government role becomes essential. The principal agencies that will likely continue to expand their authority over grid management are the Department of Homeland Security, Department of Defense, Department of Commerce and Department of the Treasury. This underscores the fact that the electric grid is essential to multiple facets of modern life. It is in effect a keystone to national security, and to economic and social normalcy.

2.2. What are cyber attacks, and how do they impact the grid?

Cyber attacks manifest in numerous ways, from credit-card-data heists to physical destruction of uranium enrichment facilities.68 Because of this feature, it is often challenging to sufficiently define a cyber attack, but Merriam-Webster defines it as ‘an attempt to gain illegal access to a computer or computer system for the purpose of causing damage or harm’.69 It is in the nature of the damage or harm inflicted that cyber attacks take on so many forms. Generally, cyber attacks come in two varieties, either cybercrime or cyber warfare.70

Cybercrime includes financial fraud, identify theft, corporate espionage, hacktivism and a myriad of other forms that are notable for their lack of national security implications.71 Frequently, the tools of the trade used in cyber aggression are developed and honed in the cybercrime domain. In cybercrime, the individual or entity initiating an attack may go up against a secure system, but one that is not as well equipped to respond as the United States military or other branches of the government. Russian hackers in the Heartland Payment Systems data breach, although ultimately caught and sentenced to time in a federal prison, gained valuable training in the cyber attack field when they stole 130 million credit card numbers.72 Similarly, ongoing acts of Chinese cyber espionage, known as ‘Titan Rain’, have resulted in extensive data collection from federal government systems (including, but not exclusive to, the United States Department of Defense).73 Cybercrime, not to be discounted in its severity and destructive capacity, can be thought of as a precursor for the more sophisticated and existential threats posed by cyber warfare. The data collected through cybercrime, along with the tools and tactics that are honed, in effect sharpen the sword that can be used in cyber war.

Cyber war, much as the name suggests, is the execution of war strategies through cyber attacks.74 Unlike cybercrime, cyber war is often the result of state action as opposed to non-state actors, and it often carries higher stakes than cybercrime. A caveat to this point, however, is that state actors may rely on non-state actors to administer cyber attacks as a means of making attribution more difficult.75 In its most direct form, cyber warfare involves attacks on military assets. However, the National Intelligence Council Report Global Trends 2025 made a distressing comment that suggests cyber attacks could extend beyond the battlefield of traditional military targets: ‘Cyber and sabotage attacks on critical US economic, energy, and transportation infrastructure might be viewed by some adversaries as a way to circumvent [United States] strengths on the battlefield and attack directly [United States] interests at home’.76

For purposes of this article, it is the National Intelligence Council's reference to critical infrastructure that is most relevant. Properly functioning transportation systems, energy production, Internet services and financial markets are essential to modern life, but among the various forms of critical infrastructure none is perhaps more essential than electricity production and distribution. Without a functioning grid, the aforementioned elements of society are all diminished. This fact makes grid security a leading concern in any discussion of cyber attack risk. In other words, we have entered a phase in modern life where war strategy may, and likely will, include tactics designed to disrupt or disable an essential element of our civilisation – our ability to produce and distribute electricity to our population. At the risk of hyperbole, this feature of 21st century war-making turns a cyber threat into a potential existential threat.

3. The current situation

3.1. Global order vs global mayhem

It is fair to question whether our electric grid is truly at risk of a major attack and subsequent disruption. After all, it is a premise that supports billions of dollars of private security expenses, animates fear among the public and could prompt elected officials to over-react and over-regulate, and it may be used by military institutions to justify expanded powers into everyday life. Therefore, we must ask ourselves if catastrophic grid failure as a result of a cyber attack is really the risk that it might appear to be in modern life. Put differently, are we in a pre-September-11 moment or are we simply dabbling in apocalyptic paranoia?

The topic of nation state hacking often leads to Russia because few countries have demonstrated both the will and the acumen needed to execute large-scale cyber attacks.77 To answer the question of whether electric grid hacking is a figment of science fiction or a tangible threat, we start with Ukraine.

The first wave of Ukrainian grid attacks occurred on 23 December 2015, when a third party successfully gained entry into and control over electricity distribution substations (the systems of a distribution network essential to transmit electric power to end consumers).78 The outages lasted several hours, shut off power for approximately 225,000 individuals, and occurred through discrete attacks about every half hour.79 Switching to manual override systems eventually restored power, which is an essential component of attack mitigation. To add insult to injury, the responsible party also jammed call centres to prevent affected customers from reporting power outages.80

Robert Lee, a former cyber warfare operations officer for the United States Air Force and co-founder of Dragos Security, said the Ukraine attack was ‘brilliant’.81 He went on to highlight that the attack was sophisticated in terms of logistics, operations and the malware tools used.82 Lee also suggests that the attack was likely coordinated among various actors, including but not exclusive to cybercriminals and nation states.83 Lee is reluctant to attribute the hack to any one actor, including Russia; however, that has not stopped Ukraine from blaming their former Soviet master.84 This highlights a recurring problem with cyber attacks: namely, that it is often difficult, if not impossible, to attribute blame to the responsible party.85

It may be that the 2015 Ukrainian grid attack was simply a harbinger of things to come, because the Ukrainian grid was struck again almost a year later, in 2016.86 The 2016 attack impacted fewer electric customers, but demonstrated improved sophistication compared with the 2015 shut down.87 Marina Krotofil, a Ukrainian researcher for Honeywell Industrial Cyber Security Lab, surmised that the 2016 hack was more of a ‘demonstration of capabilities’ than an attack meant to cripple Ukraine's grid.88

In the end, Ukraine emerged from these attacks mostly unscathed, but the events marked a far more troubling revelation: that Ukraine is merely a testing ground for cyber warfare tools and tactics.89 Since 2016, Ukraine has become ground zero for cyber war shows of force:

‘Ukraine is [a] live-fire space’, says Kenneth Geers, a veteran cybersecurity expert and senior fellow at the Atlantic Council who advises NATO's Tallinn cyber center and spent time on the ground in Ukraine to study the country's cyber conflict. Much like global powers [that] fought proxy wars in the Middle East or Africa during the Cold War, Ukraine has become a battleground in a cyberwar arms race for global influence.90

While it may at first seem desirable to other nations for Ukraine to bear the burden of being a proverbial testing ground, what happens in Ukraine is not staying in Ukraine. Rather, Ukraine is simply a sharpening stone for the swords that are likely to be used against stronger adversaries like the United States and its NATO allies.

Contemporaneous with the Ukraine attacks, US grid systems were suffering similar intrusions. Unlike the Ukraine hacks, the US grid intrusion did not result in a lights-out scenario; however, Jonathan Homer, chief of industrial-control-system analysis for the Department of Homeland Security, said that attacks ‘got to the point where they could have thrown switches’.91 To this day, the grid is still under frequent attack.92 Many grid security experts suspect Russia is involved in the bulk of the grid intrusion efforts, but also express concern that Iran and North Korea are probing weaknesses in grid defence.93 Attempts to infiltrate and possibly disrupt power distribution has extended to attacks on nuclear power plants.94 The plant in question – the Wolf Creek Generating Station in Burlington, Kansas – suffered intrusions into its business network, which suggests that hackers were probing for possible ways to access industrial control systems within the plant.95 Fortunately, the intrusion did not result in an operational impact. However, the incident proves that efforts are underway to exploit even the most sensitive and dangerous components of the grid.

The testing of cyber weaponry abroad and the discoveries of foreign reconnaissance at home all raise the same alarming question: if these are the means, what is the end? In part, foreign actors likely see cyber warfare as a way of asymmetrically confronting the vast power of the United States military (and its NATO allies).96 It remains merely speculative at this time whether a large-scale grid disruption is the goal of foreign actors engaged in these activities. Nonetheless, it is evident that the will is present and the methods are growing more sophisticated; thus, it is reasonable to conclude that under certain geopolitical circumstances a massive grid attack in the United States could occur as a consequence of advancing larger asymmetrical military and/or political objectives. This possibility, combined with the increasing volume of threats in the cyber realm, suggests that world affairs are trending more towards conflict and less towards peace, and it further suggests that such conflict may manifest itself in ways that extend beyond the confines of traditional battlefields.

3.2. What the United States is doing now – offence and defence

There is no question that grid security is a top issue for policymakers, and, relatedly, there is no shortage of efforts underway or aspired to for purposes of fortifying the grid. At a federal level, the Federal Energy Regulatory Commission (FERC) has been stepping up its reporting mandates. New standards published by FERC last summer require the NERC to report cybersecurity attacks that ‘compromise or attempt to compromise electronic security perimeters, electronic access control or monitoring systems, and physical security perimeters’.97 While this is certainly a positive development favouring a stronger grid, there is wide discretion granted by FERC to NERC on what sorts of attacks constitute an incident98 that would then trigger disclosure.

### 2NC – Ag

#### “encouraging sustainable ag” means things like subsidies, new regs on what pollutants or methods can be used in farming. That solves

Schechinger 21 [Anne; Senior Analyst of Economics for EWG; “Farm Subsidies Ballooned Under Trump – President Biden Should Not Make the Same Mistakes”; EWG; Feb 24, 2021; https://www.ewg.org/interactive-maps/2021-farm-subsidies-ballooned-under-trump/]

Taxpayer-funded farm subsidies have long been skewed in favor of the richest farmers and landowners. But under the Trump administration, even more money went to the largest and wealthiest farms, further shortchanging smaller, struggling family farms.

EWG’s analysis of records from the Department of Agriculture finds that subsidy payments to farmers ballooned from just over $4 billion in 2017 to more than $20 billion in 2020 – driven largely by ad hoc programs meant to offset the effects of President Trump’s failed trade war.

Not only did the amount of subsidies skyrocket, but the richest farms also increased their share: In 2016, about 17 percent of total subsidies went to the top 1 percent of farms and about 60 percent to the top 10th. In 2019, the richest 1 percent received almost one-fourth of the total, and the top 10th received almost two-thirds.1

The staggering growth of subsidies and the worsening inequity in distribution underscore the urgency for the Biden administration and the new Congress to enact commonsense farm subsidy reforms that will benefit small, struggling farmers and the environment and make up for the mistakes of the Trump years.

Traditional Subsidies Are Dwarfed by Ad Hoc Programs

The 2014 Farm Bill established two traditional commodity farm subsidy programs that send payouts to farmers every year. These programs, the Agricultural Risk Coverage program, or ARC, and the Price Loss Coverage program, or PLC, are triggered if crop yields or prices are lower than expected. Farmers can choose to take part in either ARC or PLC for the entire length of each farm bill, typically five years. Not every farm receives payments from these programs every year, but many do, and the programs send out billions of dollars annually.

But even though these existing programs pay farmers for reductions in crop prices, the Trump administration established additional multi-billion-dollar ad hoc subsidy programs – subsidies for specific, limited and supposedly temporary purposes.

The Market Facilitation Program, or MFP, paid billions to farmers in 2018 and 2019 for losses driven by tariffs that China placed on agricultural imports from the U.S. in retaliation for Trump’s trade war.

The Coronavirus Food Assistance Program, or CFAP, sent billions to farmers last year. The USDA is still accepting applications for this year, but Biden has ordered a freeze on payments until further notice.

ARC and PLC payments, from their inception in 2014 through 2019, the most recent year of payments, were $32.04 billion. But ad hoc subsidies far exceeded the total payments from those traditional programs in the final two years of the Obama administration and under Trump: a total of $49.08 billion in five years of annual disaster payments, two years of MFP payments and CFAP payments through October of last year.

Altogether, since 2014, ad hoc and traditional subsidy programs cost U.S. taxpayers more than $81.1 billion.

The chart below shows the growth in farm subsidies since 2018, when the MFP began. Since ARC and PLC payments are made in the calendar year after the year the crop was grown, we won’t know the 2020 payments until this fall. So the chart below includes an estimate for 2020 ARC and PLC payments, provided by the Congressional Budget Office.

The majority of payments went to just eight states – Illinois, Iowa, Kansas, Minnesota, Nebraska, North Dakota, South Dakota and Texas. Farmers in those states received more than $41 billion, or 51 percent of the total.

The interactive map below shows annual county-by-county subsidy payments since 2014. The 10 counties that received the highest ad hoc payments together received over $1.6 billion.

The massive outlays of taxpayer dollars aren’t the only cost of wasteful farm subsidies.

Nationwide, nitrate contamination of drinking water – from nitrogen in fertilizer and manure running off farm fields – is a serious and growing health hazard. Analysis of USDA records shows how federal payments are subsidizing farms in counties with severe nitrate contamination.

For example, levels of nitrate in drinking water are especially high in the San Joaquin Valley of California, where communities with majority-Latino populations are the most likely to have high nitrate. Six of the 10 U.S. counties with the highest ad hoc subsidy payments are in the San Joaquin Valley – Fresno, Kern, Kings, Merced, Stanislaus and Tulare, which since 2014 received a total of $1.09 billion from disaster payments, MFP and CFAP.

Yet all of the traditional and ad hoc subsidies outlined above are only a part of the total payments American farmers receive every year. Federal crop insurance – a Depression-era ad hoc program written into law in 1980 – adds billions each year, and tends to pay farmers for the same reductions in crop prices as ARC and PLC. Conservation programs also make payments to farmers every year, but conservation payments are considerably smaller than farm subsidies or crop insurance.

The Largest Farms Get the Most Money

The USDA classifies 98 percent of all U.S. farms as “family farms,” but the top 0.3 percent are considered “very large family farms.” These biggest farms have a gross farm income of at least $5 million and in 2019 provided their operators a median household income of just under $1 million.

As USDA data shows, the great majority of both traditional commodity and ad hoc program payments go to the largest and wealthiest farms, which generally have considerable assets to fall back on in lean years. Small farms that struggle when crop prices are low or during the pandemic-triggered economic crisis get only a small portion of payments. It’s no accident: The programs are designed so that farms with the largest acres or crop production get the highest payments.

For example, through the MFP in 2018 and 2019:

The top 1 percent of recipients received 16 percent of payments, with an average total payment for both years of $524,298 per farm. The top 10 percent received 58 percent of payments, with an average total payment of $185,340.

The bottom 80 percent of recipients received only 23 percent of payments – an average payment for both years of only $9,109 per recipient.

The ARC, PLC and CFAP programs had very similar payment concentrations. But compared to other Americans, do farmers need all this money?

In December, the USDA’s Economic Research Service forecast that when all data for 2020 is in, the median income for all farm households is expected to be $86,992. That’s almost 25 percent more than the 2019 median household income for all U.S. households of $69,703.

Just looking at income from farming, the huge ad hoc payments of recent years have made subsidies a large chunk of total farm income.

Between 2019 and 2020, total direct government payments to farms increased by over 107 percent, bringing the share of farm income from government payments to almost 40 percent. As the graphic below shows, that pushed 2020 farm income levels significantly above the 20-year average.

It’s clear that even most “small” farmers are better off than the average American – in 2019, only 3 percent of all farm households had levels of wealth that were lower than the average U.S. household.

Yet during the pandemic and economic crises of last year, when millions of Americans lost their jobs, had to close their small businesses and struggled to put food on the table, taxpayers sent over $20 billion to farmers through CFAP, plus annual disaster payments. (Like other subsidies, CFAP payments went disproportionately to the largest and richest farms, rather for direct aid to hungry Americans.) And that’s before we know the figure for payments through ARC and PLC.

How To Fix the Broken Farm Subsidy System

The Biden administration and the new Congress have many opportunities to fix the traditional commodity farm subsidy programs of ARC and PLC, and to shift funding for the ad hoc programs into conservation programs that benefit farmers, all Americans and the environment. EWG recommends:

Ending the huge ad hoc subsidy programs of the Trump administration. MFP, which paid out over $23 billion in 2018 and 2019, should not be renewed. CFAP is still making payments to farmers, but when those payments are complete, it should not be renewed unless targeted to small farmers in need.

Increasing funding for conservation programs. Instead of sending billions to the largest and wealthiest farms, funding for existing conservation programs should be increased. These programs still give money to farmers, but they also generate public health and environmental benefits through improved water quality and soil health. These programs also encourage the adoption of conservation practices that may reduce greenhouse gas emissions.

Reforming traditional commodity farm subsidy programs. The ARC and PLC programs need a strict means test to stop most of the payments from going to the largest farms. Currently, farmers can receive payments as long as their income is less than $900,000 a year, or $1.8 million for a farmer and spouse. There is a $125,000 annual payment limit, but a farm can have an unlimited number of “partners” that can each receive up to $125,000, allowing many people who do not live or work on the farm to get a check every year. Restricting farms to just a few eligible managers could greatly reduce the number of city slickers who get payments.

Changing farm subsidy programs to end USDA’s racist legacy. Stricter payment and income limits that would send payments to small farms, instead of the largest farms, would benefit Black, Latino and Asian American farmers, who often own smaller farms than white farmers do.

### L2NB

#### Targeted regulations don’t use the hammer of antitrust – solves bizcon

Bakst and Beaumont-Smith 20 – Daren Bakst is a senior research fellow in Regulatory Policy Studies at the Heritage Foundation. Gabriella Beaumont-Smith is a senior policy analyst for Trade and Macroeconomics in the Center for Data Analysis (CDA). (“A Conservative Guide to the Antitrust and Big Tech Debate,” BACKGROUNDER No. 3563 | December 1, 2020 https://www.heritage.org/sites/default/files/2020-11/BG3563\_0.pdf)//gcd

Antitrust Should Be Used Judiciously and Not Used for Unrelated Issues. Unlike targeted regulations that address specific problems, antitrust law can be used to completely reshape an industry and potentially the entire economy by reshaping numerous industries. Therefore, antitrust is not a policy tool to be used lightly. Yet, many proposed reforms, such as in the recent House Subcommittee report, would use concerns about Big Tech as a way to make broad-based changes to antitrust law. Just because a concern is raised about the power of Big Tech, this does not mean that antitrust is the tool to address that concern. For example, policymakers may want to address Big Tech’s censorship of speech or address data and privacy issues. These issues, though, are distinct from the competition issues addressed by antitrust law. Trying to use antitrust to address these unrelated issues will undermine antitrust and gives the impression that the goal is simply to punish Big Tech.

## ADV 1

### Inequality Turn – 2NC

#### Empirics on our side – zero statistical support for antitrust decreasing inequality

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

[Tables omitted]

The papers advocating for increased enforcement do not provide evidence that enforcement is, in fact, related to reductions in inequality. What follows is our preliminary attempt to make progress in this regard. We approach this task descriptively, since strong research designs are elusive here given the national nature of enforcement. Left without a plausible comparator, we present time series regressions relating measures of inequality to antitrust enforcement measures. For all of the standard reasons, 175 what follows cannot isolate causation with any confidence, but it is a useful first step to see if there appears to be any association between antitrust enforcement and inequality measures.

For enforcement measures, we use DOJ investigation data, which are available for the period 1984 to 2016 and are broken down by § 1 investigations, § 2 investigations, merger investigations, and other investigations. 17 6 We initially focus on consumption for our outcome measures for the reasons discussed above.

In Table 1 below, we focus on merger investigations, given the focus on increasing market concentration in the papers calling for increased antitrust enforcement. Again, the enforcement data determine our sample period which covers 1984 through 2016. Our outcome variable is the ratio of average consumption expenditures among those in the fifth income quintile to the consumption expenditures of those in the first income quintile. 177 This ratio appears to be AR(1) so we allow for a one period autoregressive term in each of the regressions. 178 Presumably past enforcement is as important or more important than current enforcement, so we provide distributed lag specifications. 179

Although the merger investigations are uniformly negative, in no case are they statistically significant (individually or jointly).

In Table 2, we control separately for a linear trend to account for nonenforcement factors involved in pushing inequality up over the period.

We repeat these exercises using total investigations to allow for a more general measure of enforcement.

Distinct from the merger investigation results, which were uniformly negative though insignificant, in the specifications using total investigations the sign of the effect of investigations on the ratio of quintile five consumption to quintile one consumption switches from lag to lag.

To unpack these results, Table 5 presents the effect of investigations on real average consumption expenditures for the first and fifth quintile households by income. For brevity, we only present the specifications with two lags and the time trend.

On the whole, the relationship between the enforcement metrics and consumption is comparable for the households in both the first and fifth income quintiles. There is not much empirical evidence to substantiate the proposed correlation between antitrust enforcement activity and inequality. And certainly not evidence significant enough to justify the aggressive policy proposals recently injected into discussion of competition policy.

Stepping away from this aggregate analysis for a moment, it is interesting to note that the new (-old) focus on "big is bad" when it comes to inequality ignores an impressive literature on the effects of one of the biggest players in the US in recent decades-Walmart. Work by Jerry Hausman and Ephraim Leibtag shows that when Walmart Supercenters enter a market, food prices paid by consumers in the market drop by about three percent, and because they have detailed longitudinal data on household expenditures, they are able to estimate household welfare effects due to this price decrease. They find that the welfare effects are substantial and they are most pronounced for those at the lower end of the socioeconomic spectrum. 8 ' In addition to this price effect, David Matsa shows that Wal-Mart's entry into a market induces competitor supermarkets to improve the quality of their service so as to avoid losing even more business to Wal-Mart and its lower prices."' Thus, in the posterchild case for big is bad, the behemoth Wal-Mart would appear to improve inequality by its very existence.

Although we believe consumption is the most relevant measure for assessing the welfare effects (in absolute or, as here, in relative terms) of antitrust policy, we provide similar analyses of income and wealth. Using Census data,'82 in Table 6, we again provide estimates from an AR(1) distributed lag model examining the effects of DOJ investigations, both merger specific and total, on the income shares received by those individuals in the first quintile and the fifth quintile, while also controlling for a background linear trend.

As with consumption measures, there is generally no statistically significant effect (individually or jointly) of current or past investigations (regardless of whether we focus on merger-specific or total investigations) on the income shares of those at the bottom or the top of the income distribution. Putting aside statistical significance, while past investigations are associated with increases in the income share received by those at the bottom of the distribution, current investigations have the opposite effect. Further, many of the investigation coefficients are positive for the fifth quintile income share as well. If we examine combined ratios of the shares as we did with the consumption data, we still find no support for the assumption that an increase in antitrust enforcement has any systematic effect on inequality.1 3

#### Statistical evidence proves

Dorsey 20 – Elyse Dorsey, Adjunct Professor, Antonin Scalia Law School at George Mason University, “Consumer Welfare & the Rule of Law: The Case Against the New Populist Antitrust Movement,” *Pepperdine Law Review*, 2020, 47 Pepp. L. Rev. 861

Second, consider the empirical evidence supporting a causal link between antitrust enforcement and inequality. 260 This proffered link remains, thus far, largely theoretical and undeveloped empirically. Populist papers advocating for increased antitrust as a salve for increasing inequality do not offer empirical support for their preferred course of treatment. But other authors have begun to explore empirically the proposed tie between antitrust enforcement and inequality. Wright et al., for instance, present time series regressions relating measures of inequality to antitrust enforcement measures. 26 1 While the authors acknowledge the standard reasons that these analyses cannot isolate, with confidence, causation, their work provides a useful foray into the empirical basis for the notion that antitrust enforcement and inequality are causally linked. 262 The authors examine data from DOJ investigations between 1984 and 2016, focusing first on merger investigations, given the populist emphasis on merger activity, and then broadly examine all DOJ investigations for a more general enforcement measure. 263 Their results do not offer "much empirical evidence to substantiate the proposed correlation between antitrust enforcement activity and inequality." 264

Populist claims that increased antitrust enforcement is necessary to combat a severe trend of increasing inequality thus appear to be overstated. While inequality appears to be increasing, the rate is likely more modest than the populist movement implies. And there is, as of yet, no empirical support for the underlying proposition that increasing antitrust enforcement levels would slow, stop, or reverse this trend.

### Inequality T/

#### The costs of monopoly actually fall disproportionately on the rich

Crane 16 – Daniel Crane, Associate Dean for Faculty and Research and Frederick Paul Furth, Sr. Professor of Law, University of Michigan, “Antitrust and Wealth Inequality,” *Cornell Law Review*, Volume 101, Number 5, 2016, pp. 1171-1228

Notwithstanding the points emphasized in the previous two sections, it is clear that household consumers do end up bearing some of the brunt of antitrust violations. But it is a long leap from that recognition to the claim that antitrust violations are regressive. The relatively wealthy can be exploited through the exercise of market power at least as much as—and perhaps proportionately more than—the relatively poor.

Anticompetitive conduct is by no means limited to markets involving sales to primarily lower income individuals. One can readily identify examples of antitrust violations in industries producing goods or services sold primarily to the wealthy; for example, gem-quality diamonds,134 stock brokerage services, 135 auctioning of high-end art,136 and luxury watches.137 Picking on just one market, anticompetitive actions have a storied history in the luxury automobile industry. Recently, federal prosecutors in New York recommended the indictment for price fixing of Mercedes-Benz dealers in New York, New Jersey, and Connecticut;138 while Chinese competition officials mulled bringing price fixing charges against BMW and Audi.139 Reaching back in automotive history, Rolls-Royce secretly acquired Bentley during the Great Depression, largely to forestall competition from its closest rival.140 And, to pick a famous monopolization case, one can ponder the wealth distribution effects in Aspen, Colorado—playground of the rich and famous— when the Aspen Skiing Company decided to jettison its cooperation with the rival mountain owned by Highlands.141 In all of these cases—and many others—the modal customer for the relevant good or service was likely to be in the upper stratum of the income distribution.142

Looking economy-wide, the effects of increases in market power on the distribution of wealth are subtle. Consumers in the top quintile of household wealth spend four times as much as consumers in the bottom quintile.143 So, if monopolists extracted equal proportions of wealth from every consumer dollar spent, the burden of monopoly pricing would fall four times as heavily on the wealthiest income stratum than on the least wealthy stratum. However, the effect of monopoly pricing could still be regressive in the sense of increasing the gap in relative wealth between the rich and the poor. Monopoly rent extraction operates essentially like sales taxes, which are known to have regressive properties,144 because spending as a share of income decreases with increases in income (since the rich save a considerably greater percentage of their income than do the poor).145 But monopoly pricing probably does not have the regressive characteristics of a sales tax.

First, the regressive effect of sales taxes arises because unspent wealth is not subject to the tax. In the case of monopoly power, however, there is no reason to exclude unspent wealth from the rent-extraction capacity of monopolists. Rents can be extracted from unspent wealth due to monopolistic conditions in the banking, brokerage, investment products, and financial services industries. Indeed, anticompetitive conditions in the banking and financial services industries are among the chief complaints of progressives today.146 If the general level of monopolistic rent extraction on unspent wealth is equal to the level of monopolistic rent extraction on consumer spending, then the regressivity of the sales tax would vanish altogether for monopoly rent extraction.147

Second, the regressivity of the sales tax arises from the tax’s flat rate, but monopolists do not extract equal proportions of wealth from rich and poor consumers for every dollar spent. To the contrary, economic theory holds that market power permits monopolists to price discriminate and do so primarily to the disadvantage of the wealthy. Acts that create market power may thus permit the selling firm to charge different prices to different classes of consumers based on their varying demand elasticities and to do so in progressive ways.

Price discrimination through the exercise of market power is a pervasive concern of modern antitrust policy.148 For example, the Justice Department and FTC’s 2010 Horizontal Merger Guidelines repeatedly stress the concern that market power acquired through mergers will facilitate price discrimination.149 Whether or not price discrimination is economically efficient,150 it usually has progressive wealth effects, since the wealthy are less price elastic than the poor for most goods and services.151 As firms acquire market power through anticompetitive acts and begin to increase their prices, they often do so employing pricing schemes that extract significantly more monopolistic rents from the wealthy than from the poor. To the extent that antitrust enforcement creates more competitive markets and more competitive markets diminish price discrimination, the effect in many instances could be to decrease the prices paid by the rich while reducing less, keeping flat, or even decreasing the prices paid by the comparatively less wealthy.

### Industrial Ag

#### Farming is rapidly becoming sustainable---all environmental metrics are improving

Michael Shellenberger 20, Founder and President of Environmental Progress, Former President of the Breakthrough Institute, Apocalypse Never: Why Environmental Alarmism Hurts Us All, ISBN: 0063001705,9780063001701

As farms become more productive, grasslands, forests, and wildlife are returning. Globally, the rate of reforestation is catching up to a slowing rate of deforestation.19

Humankind’s use of wood has peaked and could soon decline significantly.20 And humankind’s use of land for agriculture is likely near its peak and capable of declining soon.21 All of this is wonderful news for everyone who cares about achieving universal prosperity and environmental protection.

The key is producing more food on less land. While the amount of land used for agriculture has increased by 8 percent since 1961, the amount of food produced has grown by an astonishing 300 percent.22

Though pastureland and cropland expanded 5 and 16 percent, between 1961 and 2017, the maximum extent of total agriculture land occurred in the 1990s, and declined significantly since then, led by a 4.5 percent drop in pastureland since 2000.23 Between 2000 and 2017, the production of beef and cow’s milk increased by 19 and 38 percent, respectively, even as total land used globally for pasture shrank.24

The replacement of farm animals with machines massively reduced land required for food production. By moving from horses and mules to tractors and combine harvesters, the United States slashed the amount of land required to produce animal feed by an area the size of California. That land savings constituted an astonishing one-quarter of total U.S. land used for agriculture.25

Today, hundreds of millions of horses, cattle, oxen, and other animals are still being used as draft animals for farming in Asia, Africa, and Latin America. Not having to grow food to feed them could free up significant amounts of land for endangered species, just as it did in Europe and North America.

As technology becomes more available, crop yields will continue to rise, even under higher temperatures. Modernized agricultural techniques and inputs could increase rice, wheat, and corn yields five-fold in sub-Saharan Africa, India, and developing nations.26 Experts say sub-Saharan African farms can increase yields by nearly 100 percent by 2050 simply through access to fertilizer, irrigation, and farm machinery.27

If every nation raised its agricultural productivity to the levels of its most successful farmers, global food yields would rise as much as 70 percent.28 If every nation increased the number of crops per year to its full potential, food crop yields could rise another 50 percent.29

Things are headed in the right direction regarding other environmental measures. Water pollution is declining in relative terms, per unit of production, and in absolute terms in some nations. The use of water per unit of agricultural production has been declining as farmers have become more precise in irrigation methods.

High-yield farming produces far less nitrogen pollution run-off than lowyield farming. While rich nations produce 70 percent higher yields than poor nations, they use just 54 percent more nitrogen.30 Nations get better at using nitrogen fertilizer over time. Since the early 1960s, the Netherlands has doubled its yields while using the same amount of fertilizer.31

High-yield farming is also better for soils. Eighty percent of all degraded soils are in poor and developing nations of Asia, Latin America, and Africa. The rate of soil loss is twice as high in developing nations as in developed ones. Thanks to the use of fertilizer, wealthy European nations and the United States have adopted soil conservation and no-till methods, which prevent erosion. In the United States, soil erosion declined 40 percent in just fifteen years, between 1982 and 1997, while yields rose.32

## 2NC – ADV 2

### No I/L

#### New TTC and merger work disproves divergence.

Hollman 21 – ("Antitrust in focus," JD Supra, <https://www.jdsupra.com/legalnews/antitrust-in-focus-november-2021-5548191/> 11-29-2021)//gcd

International cooperation is high on antitrust authorities’ agendas

Cooperation between antitrust authorities is not a new concept and there are numerous venues in which antitrust enforcement officials engage with one another, such as the International Competition Network and the OECD’s Competition Committee. Across the world, authorities discuss the best ways of ensuring that antitrust rules are fit for purpose and consider ongoing challenges such as globalisation, digitisation and sustainability. In merger control, there is increasing coordination on remedies packages, to try to ensure a “global” solution to antitrust issues in multinational cases, a recent example being [S&P/IHS Markit](https://comms.allenovery.com/e/uxkyon0lqvgj7g/0b40d251-73e7-4a22-87dc-55b9c2f5915f). And in cartels, we have heard that sharing leads between agencies has been important in helping to discover potential infringements.

While these collaboration efforts are ongoing, they look set to increase. In the last couple of months we have witnessed a number of new pledges to coordinate as well as renewed enthusiasm about the benefits that such cooperation can bring.

Two developments stand out:

[Commissioner Vestager has heralded a “new era of transatlantic cooperation”](https://comms.allenovery.com/e/seerkhm2tawh2w/0b40d251-73e7-4a22-87dc-55b9c2f5915f). This follows the recent establishment of the Trade and Technology Council through which the U.S. and the EU will coordinate their approaches to global trade, economics and technology. She underlined the need to strengthen common values and to address shared concerns, eg, on the role of platforms. Commissioner Vestager [highlighted](https://comms.allenovery.com/e/yquio0fbtzvhtfw/0b40d251-73e7-4a22-87dc-55b9c2f5915f)the recently announced Joint Technology Competition Policy Dialogue, which will focus on developing a common EU-U.S. approach to competition in the digital sector. More generally, in her view, the growing convergence between EU and U.S. antitrust policies/rules makes closer cooperation more likely to be effective.

#### The EU supports the consumer welfare standard.

Kovacic ’18 [William; Global Competition Professor of Law and Policy @ George Washington University Law School; “Competition Policy in the European Union and the United States: The Treatment of Dominant Firms” in Hearing on “A Comparative Look at Competition Law Approaches to Monopoly and Abuse of Dominance in the US and the EU”; Senate Judiciary Subcommittee on Antitrust, Competition Policy, and Consumer Rights; AS]

3. Similarities and Dissimilarities in the Substance of EU and US Competition Policy

I share the often-expressed view of EU and US competition officials that the general trend of competition policy in the two jurisdictions has been toward common acceptance of substantive standards and the analytical concepts that support the implementation of those standards. An overview of overall goals and specific areas of activity verifies that proposition and also underscores noteworthy differences.

3.1. The Objectives of Competition Policy

It is nearly 30 years since Robert Bork’s Antitrust Paradox famously underscored the importance of objectives to the operation of a competition policy system. “Antitrust policy,” Bork wrote, “cannot be made rational until we are able to give a firm answer to one question: What is the point of the law – what are its goals? Everything else follows from the answer we give.”14

Modern discourse between EU and US government officials has featured many statements about the proper aims of competition law. The speeches of top agency leaders in both jurisdictions indicate broad agreement on the question of goals. Each jurisdiction accepts the broad proposition that the central aim of competition law is “the objective of benefitting consumers.”15 Consistent with the single-minded focus on “consumer welfare,” EU and US antitrust officials routinely disavow any purpose of applying competition laws to safeguard individual competitors as an end in itself. EU officials also have grown accustomed to hearing, by direct quotation or paraphrase, the U.S. Supreme Court’s admonition that the proper aim of antitrust law is “‘the protection of competition, not competitors.’”16

#### GDPR outweighs antitrust but credibility high now

Collins 21 – (Katie, 12-15-2021, "US, EU are working together again," CNET, <https://www.cnet.com/news/friends-reunited-how-the-us-and-eu-spent-the-year-reconnecting-on-tech/>)//gcd

Eleven months later, not everything the economic superpowers hoped for has come to pass, but there have arguably been some major breakthroughs -- the formation of a new tech council, for one. The US has also been making efforts to claw back credibility following four years of failing to coordinate during the Trump era and delays in agreeing on effective domestic tech policy, which Europe has responded to well.

Bart Gordon, a former congressman and chair of the House Science and Tech Committee, now serves as a director of the Trans-Atlantic Business Council. He said he's seen goodwill on both sides to find common ground throughout 2021.

"There's been a sea change," he said. "In the previous administration, President Trump was looking for reasons to try to pick a fight, whereas in this administration, they're looking for reasons to try to work together."

New year, new US attitude to diplomacy

2021 certainly got off to an optimistic start. Following Joe Biden's election victory, there was a real excitement in Brussels and other European capitals, said Tyson Barker, head of technology and global affairs at the German Council on Foreign Relations. "They wanted to take advantage of this opportunity to grab this administration as a like-minded partner in tech leadership," he said.

Meanwhile, the US knew it had to make amends if it wanted to get its relationship with the EU back on track. Donald Trump, Biden's predecessor, had made no secret of his disdain of Europe's attempts to bring US tech companies to heel. "They were inheriting four years of real tension with the European Union," Justin Sherman, a fellow at the Atlantic Council, said about the Biden administration.

Europe is also worried that Trump may run for president again in 2024, added Gordon, meaning that the two powers need to make the most of the next three years in developing confidence in one another. "There is a burden on the United States to really reach out and try to build some of those bridges back," he said.

That's why it was unsurprising when the US extended an olive branch by immediately appointing a lead negotiator to work on reestablishing data flows between the US and EU. This followed a ruling by the EU's top court in 2020 that [invalidated Privacy Shield](https://www.cnet.com/news/us-eu-privacy-shield-data-sharing-pact-invalidated-over-surveillance-fears/) -- the mechanism used to transfer data between the two regions -- due to surveillance fears.

Then in June, the EU and US formed the Trade and Technology Council, or TTC, which will attempt to find common ground on key tech policy issues. And in October, discussions led by the Organisation for Economic Co-operation and Development finally resulted in a long-overdue international agreement that will see big tech companies pay fairer shares of tax in countries around the world.

These were important milestones but don't tell the full story. Even post-Trump, the US isn't enamored of Europe's tech rules, which have left Biden and his team on the back foot coming into discussions.

There has been a convergence in perspectives between the US and Europe, said Barker, "but it's convergence on terms that have actually been more set in Europe." Europe has repeatedly said it seeks "alignment" with the US on tech rules, but it's unlikely to budge much given how well established the bloc's policies are on tech.

Where Europe leads, will the US follow?

The last time a US administration attempted to work with allies on tech policy was during the Obama era, but it was a very different time for tech. The relationship between government and big tech was on good terms, and the tide had not yet turned to suggest that tech was anything other than a force for good. But during Trump's turn at the helm, the US relationship with Europe soured and the scourge of disinformation and fallout from the Cambridge Analytica scandal sparked suspicion and scrutiny of tech giants.

It's not as though time stood still in Europe during this era. In fact, this period saw major advances in Europe putting rules in place for regulating tech giants and handing out multibillion-dollar antitrust fines to big tech companies. In 2018, Europe's General Data Protection Regulation, a landmark overhaul of the bloc's privacy laws commonly known as [GDPR](https://www.cnet.com/tags/gdpr/), came into effect. It was part of a decade-long overhaul of digital rules.

The EU moved even faster in 2021, publishing draft regulation for AI and making major progress on two pieces of [legislation](https://www.cnet.com/tags/legislation/), the Digital Markets Act (designed to tackle anti-competitive practices in tech) and the Digital Services Act (which focuses on moderation and illegal content). Both have been years in making.

"The sophistication of Europe's approach has been driven by a decade-plus of debate," Barker said. "Europe says, 'It's great that you guys are here, it's great that there's been convergence on so many areas of tech regulation... but we can't wait.'"

This urgency was further exacerbated by the Jan. 6 attack on the Capitol, a violent act that resulted in five deaths. It spurred countries around the world to more urgently tackle the virality of disinformation and other incendiary content, Barker added. It also cemented the idea among European leaders that regulation holding tech platforms to account was overdue.

The progress that Europe has made over the past four to five years is making it harder for the US to take a leadership role in discussions. And it hasn't helped that Biden's attempt to take the lead on digital policymaking was scuppered earlier this month when the US was forced to postpone the launch of the Alliance for the Future of the Internet following pushback from digital rights groups. The [proposal](https://www.protocol.com/policy/white-house-alliance-future-internet) was an attempt to rally a coalition of democracies around shared principles for an open web.

Same room, same page? Not so fast

Joint efforts to bring countries together have been more successful. The first meeting of the TTC went ahead in Pittsburgh in September, with the second slated to take place in Europe in April.

But gathering people together in one room is just one step. Getting them to see eye to eye is another. "There's still a lot of roadblocks that the US and the EU keep hitting when they try and actually get to agreement," Barker said.

One such roadblock is a differing stance on privacy. Earlier this year, the US trade representative put out a statement naming GDPR as a trade barrier and arguing that it exerts too much control over tech companies. But, in spite of niggles over some mechanisms of GDPR, the legislation is fast approaching its fourth birthday and won't be going away anytime soon.

Sherman said the US is losing out by not having its own comprehensive federal privacy law. Not only is that absence a national security threat, but it hurts consumers and puts the US at a competitive disadvantage as countries around the world, China included, bolster their own privacy safeguards.

The EU wants the US to mirror the privacy protections of GDPR so it can confidently allow the data of European citizens to safely flow across borders. That's unlikely to happen, but a compromise is entirely possible, Sherman said. "It's realistic to say that we should be able to have stronger privacy rules that aren't a copy of GDPR but that boost privacy protections in a way the EU can better work with."

# 1NR

## da ftc

### ftc da – 1nr

#### Straight turn –

#### 1 – Counterplan resolves it. Adopts a more aggressive antitrust standard in most cases.

#### 2 – Link turn presumes UQ – must win that the FTC is going to bring suit across a wide swath of sectors now to win that the plan makes it more efficient – otherwise, status quo is no suits and plan is more suits that are slightly more efficient.

#### 3 – Concede no internal link between aff and resources – 2AC 2 was no tradeoff argument.

#### 4 – Uniqueness will be answered on other page.

#### 5 – Link turn is wrong – 1NC ev says new antitrust cases require lawyer armies, millions of dollars, and years – AND the aff brings new suits across ag, surveillance, big tech, and communications, which obvi outweighs “efficiencies” link turn.

#### Lengthy litigation creates crushing resource tradeoffs.

FFHSJ, Fried Frank Harris Shriver & Jacobson Llp [Law firm], 1-5-2021, "Managing Antitrust Risk in the Biden Administration," Lexology, https://webcache.googleusercontent.com/search?q=cache:QV1NrcUaRWIJ:https://www.lexology.com/library/detail.aspx%3Fg%3D8f2eaf8e-db8e-47d5-80c5-c912e3042591+&cd=23&hl=en&ct=clnk&gl=us

Federal Courts and Budget Constraints Will Be Limiting Factors

Challenging transactions based on novel antitrust theories, without the benefit of precedent, means the agencies have the uphill battle of persuading a court that the transaction violates antitrust laws. The DOJ's unsuccessful challenges of the AT&T/Time Warner and Sabre/Farelogix mergers showed how difficult it can be to win a merger challenge that goes beyond the comfort of precedent and presumptions. Notably, in Sabre/Farelogix, the court found in favor of the parties based almost entirely on the precedent set in the Supreme Court's decision in Ohio v. American Express. Similarly, the FTC's Ninth Circuit loss in its lawsuit against Qualcomm will make it more difficult to bring an antitrust challenge to licensing practices for standard-essential patents. With the Trump Administration appointing almost a quarter of active federal judges and three Supreme Court justices, winning cases that push the boundaries of antitrust law will not be easy.

Further, despite a record number of litigated cases, the budget at the antitrust agencies is insufficient to match the rhetoric of more enforcement. The DOJ had 25% fewer full-time employees in 2019 than it had 10 years earlier9 and the FTC recently imposed a hiring freeze. With limited resources, the agencies are forced to make important tradeoffs in deciding what matters to challenge, settle, or walk away from. Indeed, Commissioner Wilson reportedly voted against bringing a lawsuit to block CoStar's acquisition of RentPath, in part, because of limited FTC resources.10 Although the agencies will receive a modest budget increase for the current fiscal year,11 it is far short of what some think is needed.12 As antitrust enforcement has become a bipartisan issue, a significant increase in the antitrust agencies' budgets in the future is likely.

## da econ

### overview – 1nr

#### extended economic collapse during covid causes multilateral meltdown – alliance fracturing, debt trapping, and rising nationalism ensure hotspot escalation globally – that’s mclennan.

#### outweighs on timeframe – their args are structural, tracing populism from 08 to now – that is 14 years, covid is one – our ev says extending decline in the short-term makes conflict more likely.

#### each link we win turns adv 1 – presumes the aff facilitates competition and innovation which is wrong.

### AT: china winning now – 1nr

#### Answering it from the case – totally irrelevant to our DA – DA’s about growth and innovation in the U.S. relative to before the plan, NOT about comparison between the U.S. and China.

### AT: case turns it – 1nr

#### 1 – Framing issue – our link has decades of evidence – CWS has been lowering prices and increasing competition – stick with what you know – that’s 1NC link card.

#### 2 – Replacing 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.

#### Any alternative to consumer welfare causes a laundry list of problems for the economy – specifically causes special interest rent-seeking and cronyism

Keating 21 – Raymond J. Keating, chief economist for the Small Business & Entrepreneurship Council, “The Treacherous Turn on Antitrust Regulation of U.S. Tech Companies,” 2/24/21, <https://sbecouncil.org/2021/02/24/the-treacherous-turn-on-antitrust-regulation-of-u-s-tech-companies/>

[Modified for objectionable language]

Nonetheless, in the end, the consumer welfare standard is, by far, the best we have in terms of some consistency and reasonableness in applying vague antitrust laws.

Antitrust and Congress: A Bad System May Become Far Worse

Given the formidable shortcomings of antitrust law and regulation, one would hope that if Congress was going to consider reform or updating, the effort would be focused on at least trying to somehow better connect the law and enforcement with economic realities and how markets actually function.

That is not the case with the reports presented by Democrats and Republicans in the House Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary. In fact, each report, and largely the Democrats’ analysis, serves up recommendations that would create far greater distance between how markets work and antitrust regulation.

Let’s be perfectly clear: Neither report offers recommendations that will improve antitrust law and enforcement. Most of the proposals labor under mistaken assumptions; and would actually inject more politics and uncertainty into the antitrust equation, while moving antitrust law, regulation and enforcement further away from sound economics.

The Democrats’ majority report is intent on a vast expansion of antitrust regulation and enforcement, including tossing out the consumer welfare standard in favor of, effectively, more politics over economics; while the Republican report also argues for expanded regulation and enforcement, but more tentatively so at least in terms of the language used.

The overwhelming tendency in the Democrats’ report is to make sweeping declarations about increased and inevitable monopolization (such as: “Over the past decade, the digital economy has become highly concentrated and prone to monopolization.”), along with “weakened innovation and entrepreneurship,” that ignore the dynamism of the tech economy, the enormous benefits derived by consumers, actual consumer decisions, and the definition of a monopoly.

As for the Republican report, it is willing to go along with the Democrats on a number of proposals, raises questions about others, and rejects some. As stated, “We prefer a targeted approach, the scalpel of antitrust, rather than the chainsaw of regulation.”

As it turns out, though, the Republican “scalpel” is far from targeted. The report expresses political disagreements with the firms involved (for example: “Most notably, the report does not address how Big Tech has used its monopolistic position in the marketplace to censor speech. This censorship is experienced by groups and ideologies on all wings of the political spectrum but is most notably realized through tech platforms exerting overt bias against conservative outlets and personalities.”)

Consider some key proposals from the Democrats’ report and our responses.

• Proposal: “Reasserting the anti-monopoly goals of the antitrust laws and their centrality to ensuring a healthy and vibrant democracy.” – “[T]he Subcommittee recommends that Congress consider reasserting the original intent and broad goals of the antitrust laws by clarifying that they are designed to protect not just consumers, but also workers, entrepreneurs, independent businesses, open markets, a fair economy, and democratic ideals.”

Response: This proposal would toss out the consumer welfare standard, and replace it with a broad basis for undermining businesses that have earned considerable market share. Antitrust actions would return to a period in which politics, special interest influences, rent-seekers, and uncertainty held even greater sway over the realm of antitrust – even more so than it does today. By effectively giving more control over business decisions and models to a political class that often fails to understand current business and market conditions, never mind where industries and markets are headed in the future, there inevitably will be losses in terms of innovation, investment, efficiency, and growth.

• Proposal: “Structural separations and prohibitions of certain dominant platforms from operating in adjacent lines of business.” – “Structural separations prohibit a dominant intermediary from operating in markets that place the intermediary in competition with the firms dependent on its infrastructure. Line of business restrictions, meanwhile, generally limit the markets in which a dominant firm can engage.”

Response: Again, having government determine and dictate business decisions, rather than having decisions made by businesses and entrepreneurs subject to market competition and consumer sovereignty would mean lost innovation, productivity and consumer benefits.

• Proposal: “Interoperability and data portability, requiring dominant platforms to make their services compatible with various networks and to make content and information easily portable between them.”

Response: Investments in engineering and information often are the lifeblood of businesses in the digital economy. It’s how they provide added value to customers. To have government impose assorted mandates on the use and availability of such investments inevitably will reduce and/or redirect such investments, with consumers, again, suffering.

• Proposal: “Presumptive prohibition against future mergers and acquisitions by the dominant platforms.” – “Under this change, any acquisition by a dominant platform would be presumed anticompetitive unless the merging parties could show that the transaction was necessary for serving the public interest and that similar benefits could not be achieved through internal growth and expansion.” – “[T]he Subcommittee recommends that Members consider codifying bright-line rules for merger enforcement, including structural presumptions. Under a structural presumption, mergers resulting in a single firm controlling an outsized market share, or resulting in a significant increase in concentration, would be presumptively prohibited…”

Response: The basis for justifying such random impositions on mergers certainly does not rest with sound economics, nor with how the market works, including that any mergers ultimately will be put to the test of competition and consumer decision-making in the marketplace. Instead, this is simply about a political preference or bias against mergers and “bigness” per se.

• Proposal: “To strengthen the law relating to potential rivals and nascent competitors, Subcommittee staff recommends strengthening the Clayton Act to prohibit acquisitions of potential rivals and nascent competitors.” – “Since startups can be an important source of potential and nascent competition, the antitrust laws should also look unfavorably upon incumbents purchasing innovative startups. One way that Congress could do so is by codifying a presumption against acquisitions of startups by dominant firms, particularly those that serve as direct competitors, as well as those operating in adjacent or related markets.”

Response: A surefire way to ~~cripple~~ [destroy] startups is to reduce or disincentivize investment in such ventures. This proposal seems designed specifically to undermine entrepreneurship. It is rather commonplace in an assortment of industries for a certain portion of startups to eventually be purchased and merged into larger businesses. Indeed, that possibility or option provides incentives for investing in such enterprises.

• Proposal: “Clarifying that market definition is not required for proving an antitrust violation, especially in the presence of direct evidence of market power” and “Clarifying that ‘false positives’—or erroneous enforcement—are not more costly than ‘false negatives’—or erroneous non-enforcement—and that, in relation to conduct or mergers involving dominant firms, ‘false negatives’ are costlier.”

Response: These measures are simply meant to make it easier to impose politically-driven antitrust regulation or actions against businesses. After all, why bother with defining the market or even considering “false positives” when one is so sure that large businesses and mergers are inherently evil – again, despite the fact that large businesses gained their notable market share by serving consumers well?

• Proposal: “Restoring the federal antitrust agencies to full strength, by triggering civil penalties and other relief for ‘unfair methods of competition’ rules, requiring the Federal Trade Commission to engage in regular data collection on concentration, enhancing public transparency and accountability of the agencies, requiring regular merger retrospectives, codifying stricter prohibitions on the revolving door, and increasing the budgets of the FTC and the Antitrust Division.”

Response: The assumption with these proposals is that antitrust agencies are not doing everything that this Democratic report seeks to do at least in part due to a lack of power, dollars and/or staff. The fact that some administrations might see matters differently, and have a dissimilar antitrust philosophy, seems to be ignored. Also, the number of rather absurd antitrust cases brought by such agencies belies the lack-of-power and/or lack-of-funding assumptions. Consider for example, the FTC suing to stop Edgewell Personal Care Co., maker of Schick razors, from buying razor rival Harry’s Inc., or the FTC challenging Post Holdings, Inc.’s proposed acquisition of TreeHouse Foods, Inc.’s “private label ready-to-eat cereal business.” Private label products are made by one company and offered for sale by a different firm under its brand, and the FTC argued for government action to stop a merger in a small portion of the breakfast foods market. Also, there don’t seem to be high barriers to entry in the razor market. In each case, government antitrust action led to the mergers being called off – after all, challenging a federal agency’s antitrust intrusion gets quite pricey. So much for federal antitrust agencies lacking power and resources.

• Proposal: “Strengthening private enforcement through elimination of obstacles such as forced arbitration clauses, limits on class action formation, judicially created standards constraining what constitutes an antitrust injury, and unduly high pleading standards.”

Response: The objectives here not only include an expansion of antitrust actions and special interest interference, but clearly, serving the interests of trial lawyers.

And, the list goes on. As noted already, the two reports do not make recommendations that would improve antitrust law and regulation.

As for the Republican report, while the language is more tentative in expanding antitrust regulation, and does not go as far as the Democrats, the effort in effect would ramp up antitrust regulation, which would lay the groundwork for political allies and opponents to use this as a stepping stone to greater antitrust interference. Most striking from the Republican report was where they clearly went beyond the idea of using a “scalpel” to improve antitrust enforcement. Consider the following for example:

• “The Clayton, Sherman, and Federal Trade Commission Acts were all written with broad interpretations to ensure antitrust regulators would not be hamstrung by future market developments. However, antitrust enforcers have boxed themselves in by relying on judicial interpretations instead of statutory language and Congressional intent. The report accurately describes how these changes have hamstrung true oversight efforts, granting Big Tech a de facto immunity from antitrust scrutiny…

• “By reinforcing presumptions that certain behaviors are likely to reduce competition, lowering evidentiary burdens in litigated cases, and emphasizing that anticompetitive effects are not limited to price effects and include innovation competition, quality, output, and consumer choice, Congress can make a meaningful difference.”

• “We also agree with a number of the majority’s other legislative recommendations, including proposals to shift the burden of proof for companies pursuing mergers and acquisitions and empowering consumers to take control of their user data through data portability and interoperability standards.”

• “The report makes a good case for the need to strengthen our nation’s antitrust agencies with regard to resources. We agree wholeheartedly with this recommendation. We need to give our nation’s antitrust enforcers the resources needed to succeed in litigation against Big Tech.”

Response: Recommendations to expand the powers and discretion of regulators; to increase unnecessary and burdensome regulatory requirements; to reduce checks and balances on regulatory undertakings; and to increase the budget for regulators, all in order to increase regulation of U.S. technology firms seems otherworldly. Missing is a healthy skepticism of governmental power and regulation.

And then there is the willingness to use antitrust action to engage in political disagreements with private companies, as noted earlier. For example:

• “Google used its dominant advertising technology product to demonetize conservative media outlets, including The Federalist. YouTube, a Google subsidiary, blocked videos from Republican politicians and media groups. Amazon censored conservative organizations, including the Family Research Council and the Alliance Defending Freedom by blocking Americans’ ability to donate to these groups through the AmazonSmile tool. Facebook’s algorithms, advertising policies, and content moderation rules have all combined to discriminate against conservative viewpoints, shadow ban conservative organizations and individuals, and suppress political speech… Unfortunately, the majority missed an opportunity to fully scrutinize Big Tech’s use of monopoly power to silence Americans’ First Amendment right to free speech. It is difficult to consider the subcommittee’s investigation into platform behaviors and anticompetitive behavior complete without a robust discussion about platforms using their monopoly power to engage in editorial decisions that silence free speech.”

Response: While one can agree or disagree with particular decisions being made by private companies, they are private companies. And bringing governmental power down upon such decision-making should always be deeply troubling. For good measure, this certainly is not an area for antitrust regulation.

On the more positive aspects of their recommendations, Republicans were unwilling to go along with their Democratic colleagues in other areas. For example:

• “However, the majority also offers policy prescriptions that are non-starters for conservatives. These proposals include eliminating arbitration clauses and further opening companies up to class action lawsuits. Similarly, the majority’s desire to institute Glass-Steagall for America’s tech sector and modeling the majority’s equal terms for equal services recommendation on President Obama’s net neutrality rule will not garner support from Republicans.”

• “The majority report also includes a recommended presumption that any vertical merger by a dominant platform is unlawful. We are concerned that the presumption against vertical mergers, in particular, will chill venture capital investment in a way that will further harm innovative startups and reduce their ability to get their product to market.”

As far as these criticisms of the majority report go, they generally are on target. However, the overall friendliness of the minority report, or response to the Democrats’ majority report, is troubling, and would help to lay the groundwork for a potential vast expansion in antitrust regulation that, in the end, will undermine investment, innovation, dynamism and entrepreneurship in the economy, which, of course, would harm consumers.

#### The consumer welfare standard is stable, predictable, and ­well-understood – the burden should be on the aff to provide robust empirical support for their departure from it

Dorsey 20 – Elyse Dorsey, Adjunct Professor, Antonin Scalia Law School at George Mason University, “Consumer Welfare & the Rule of Law: The Case Against the New Populist Antitrust Movement,” *Pepperdine Law Review*, 2020, 47 Pepp. L. Rev. 861

The populist antitrust movement argues vociferously for abandoning the well-established consumer welfare standard.145 To many within this movement, the consumer welfare standard is an impediment to successful antitrust enforcement and to the achievement of socio-political goals such a regime may foster.14 6 As such, they argue that the consumer welfare standard should not be allowed to persist. This line of argument views with the rosiest of glasses the well-trod history, described above, of antitrust enforcement pre-consumer welfare standard-which experts, scholars, Nobel Laureates, judges and Supreme Court Justices across the political spectrum have recognized to be a disaster that undermined fundamental principles of our democracy, including the rule of law. 147

Nonetheless, populist antitrust proponents advocate returning to this pre-consumer welfare standard world.148 Some of the many benefits of the consumer welfare standard-and the commensurate costs of abandoning this standard-are described above.149 This section explores the empirical evidence upon which populists rely when arguing to abandon the consumer welfare standard.15

A threshold question raised by the populist movement's call to abandon the consumer welfare standard is whether this standard is systematically flawed such that abandoning it is warranted.151 The move to reject a standard that has been uniformly embraced by the Supreme Court and the lower courts for decades should be supported by clear economic consensus that the standard is doing more harm than good.15 2 In other words, strong empirical support should exist for the populist movement's allegations that the consumer welfare standard is not doing what it purports to do, that it is, in any event, attempting to maximize the wrong set of values, and that wholesale retargeting of antitrust enforcement would achieve the goals the populist movement has identified. 153

Thus far, however, the populist antitrust movement has not demonstrated such a sound economic basis.154 The evidence upon which it relies is mixed, at best. 5 At most, it calls into question the level of enforcement under the consumer welfare standard, not the utility of the standard itself. 156 As an initial matter, then, rejecting the consumer welfare standard today would risk all the observed benefits of the standard without compelling evidence of an actual problem-and with no persuasive reason to believe the proffered solutions would enhance outcomes.15 7

#### Any departure from consumer welfare involves incoherent and unpredictable standards – it actively dissuades growth

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

It is widely acknowledged by commentators across the political spectrum that prior to the antitrust revolution, antitrust jurisprudence was an incoherent and unpredictable body of law that frequently showed hostility to business.239 Before the adoption of the consumer welfare standard, courts would attempt to weigh an array of social and political goals that often were at odds with one another and also with modern economics. 240 This paradoxical approach weaponized the antitrust laws against the competitive process and, as a result, antitrust doctrine was internally inconsistent and counterproductive. Antitrust not only failed to promote competition, but it actively dissuaded competitors from becoming more efficient and bringing consumers lower prices, greater innovation, and other benefits.

The consumer welfare standard offered antitrust a way out of this quagmire. Today, the consumer welfare standard provides antitrust jurisprudence a disciplined method of analyzing competition that starts and ends with the straightforward question: "Is the challenged conduct likely to make consumers better or worse off?" Rather than issuing decisions that may hinge upon any number of socio-political goals, courts today predictably answer-and their analyses turns solely upon-this question in every antitrust case. This singular focus avoids the internal inconsistencies of the socio-political approach to antitrust, within which various courts would condemn both procompetitive and anticompetitive conduct depending upon the discrete social or political end the court sought to foster in a given case and not based upon whether the conduct actually promoted competition.

Multi-prong approaches often elevate the welfare of competitors or other social and political goals above consumers, and perversely can lead to results in which prices go up, output goes down, or innovation is slowed, but yet the conduct is not condemned because some other social end is achieved. The consumer welfare model instead provides a concrete framework for evaluating allegedly anticompetitive behaviors based on tradeoffs tied to the health of the competitive process as measured by whether consumers are better or worse off. Critically, the consumer welfare standard allows antitrust to funnel earlier questions about the ability of less efficient rivals to compete, the viability of small and independent competitors, and the size and influence of firms back to a singular inquiry about whether consumers are harmed. As a result, non-economic social and political objective no longer serve as a distraction and antitrust can contribute positively to society.

Today, courts, enforcers, and businesses have in the consumer welfare standard a consistent and predictable methodology for assessing whether conduct is permissible under the antitrust laws. With the Supreme Court embracing the central role of the consumer welfare standard to modern antitrust analysis, the contemporary debate largely has shifted to identifying appropriate liability rules and economic evidence for assessing whether specific transactions and business arrangements is likely to harm consumers. 241

#### 3 – Increased political oversight structurally depresses innovation, dynamism, and profits

Brough 21 – Wayne Brough, Policy Director for Technology and Innovation at R Street, “Washington wants to weaponize antitrust law to attack “Big Tech” and it is going to backfire horribly,” 6/15/21, https://www.rstreet.org/2021/06/15/washington-wants-to-weaponize-antitrust-law-to-attack-big-tech-and-it-is-going-to-backfire-horribly/

The consumer welfare standard helped rationalize antitrust enforcement and the case law that has emerged since its adoption has helped curb the political abuse of antitrust policies. Abandoning the need to identify demonstrable consumer harm would return antitrust law to an era characterized by arbitrary enforcement actions that many in today’s Congress seem to have forgotten. But the increased political oversight that comes with adopting more aggressive tools for antitrust enforcement poses a real threat to consumers, to innovation and to economic growth.

Abandoning the American Way in Favor of a European One

The bills introduced in the House can be interpreted as a turn toward a European approach to competition policy. Last year, the EU passed the Digital Markets Act, and the House proposals sound eerily similar. The EU started by defining “gatekeepers,” something similar to the “covered platforms” in the House bills. Restrictions on self-preferencing, interoperability requirements and other elements introduced in the House all have direct counterparts in the EU’s law.

The EU adopted its laws with a clear target in mind—American tech companies that were dominating markets in Europe and outperforming their European rivals. Politically, it made sense to rewrite the rules of the game in favor of homegrown talent. Among other things, this meant the EU could collect billion-dollar fines from American companies, all in the name of “fair competition.”

But the performance of European companies is probably the best reason not to follow the EU’s lead in redefining how we regulate competition. By virtually every measure, U.S. companies have been more innovative, more dynamic and more profitable than their European counterparts. There are more start-ups in the United States and they have greater access to capital. While the United States and the EU have economies of similar magnitudes, in 2019, U.S. startups had a valuation of $1.37 trillion compared to EU startups with an evaluation of $240 billion.

The rise of Silicon Valley is an American success story. Today the top five companies in the United States based on market capitalization are tech companies. They have led the digital revolution, providing consumers a virtually endless stream of new products at low or even zero cost in many cases. These are signs of a robust market that serves consumers well. It is important to remember that big does not equate to bad—sometimes a firm is large because it is efficient at serving its customers what they want. The tech sector supports 12 million jobs and more than $2 trillion in economic output. Current antitrust laws grounded in the consumer welfare standard are part of the institutional framework that make this possible. Congress should ensure antitrust laws fit best into the modern U.S. economy, but the House proposals are a radical departure that shifts the focus to protecting competitors rather than consumers. They would weaponize antitrust law, provide politicians a greater say in America’s boardrooms and replace economic efficiency with political expediency and preference.

#### Err neg – enforcement actions have subtle over-deterrence effects and it’s better to err on the side of less regulation

Auer 18 – Dick Auer, Senior Fellow, International Center for Law & Economics, “Comments of the International Center for Law & Economics: Topic 4: Antitrust law and the consumer welfare standard,” FTC Hearings on Competition & Consumer Protection in the 21st Century, https://www.ftc.gov/system/files/documents/public\_comments/2018/10/ftc-2018-0074-d-0071-155999.pdf

One of the important lessons of economics in antitrust is that economic tools are uniquely capable (although still imperfectly so) of distinguishing competitive from anticompetitive conduct — the perennial challenge of (non-cartel) antitrust enforcement and adjudication. Non-economic evidence (so-called “hot docs,” for example) can be counter-productive and can obscure rather than illuminate the competitive significance of challenged conduct. A rigorous adherence to economic principles and economic reasoning is essential if antitrust enforcers are to ensure that their interventions actu-ally benefit consumers.

Thus, a necessary corollary to reliance on the consumer welfare standard in antitrust cases is that an evidence-based approach rooted in error-cost analysis is crucial. Particularly in innovative markets where unfamiliar business strategies are attempted, and the relative knowledge of regulators and enforcers is low, it is critical to hew to an evidence-led, error-cost approach to antitrust evaluation.57

The error-cost framework in antitrust originates with Easterbrook’s seminal analysis,58 itself built on twin premises: first, that false positives in enforcement are more costly than false negatives because self-correction mechanisms mitigate the latter but not the former; and second, that errors of both types are inevitable, because distinguishing procompetitive conduct from anticompetitive conduct is an inherently difficult task.59

A key virtue of employing the error-cost framework is that it helps to avoid the bias of economists, who frequently fail to conduct their analyses in a realistic institutional setting and avoid incorporating the social costs of erroneous enforcement decisions into their recommendations for legal rules.

Antitrust over-deterrence is not costless — the losses from erroneously deterred innovative business practices may be unseen, but they function as a drag on society nonetheless. The goal of the error-cost approach is optimal enforcement that errs on the side of permitting innovative practices that might otherwise be difficult to square under existing antitrust rules.

### AT: labor mobility – 1nr

#### 1 – Maybe I’m just *stupid* and will need Callahan to give me an ECON101 lecture, but this card is explicitly about occupational licensing restrictions, which the 1AC fails the ctrl-f test for – don’t spec that they say that those are anticompetitive and don’t explain the internal link between symmetric competition standards.

#### They are regulations at the state level. Those are obvi not business practices. It’s not about giving workers more money, it’s about letting them choose where they work without making it illegal.

Ben Wilterdink 20, director of programs at the Archbridge Institute, a Washington-based think tank focused on economic mobility, “Prioritize licensing reform for health and economic recovery,” Washington Examiner, 6/4/20, https://www.washingtonexaminer.com/opinion/op-eds/prioritize-licensing-reform-for-health-and-economic-recovery

One of the most encouraging responses to the pandemic has been the willingness of policymakers at every level of government to suspend unnecessary regulations that made it harder for medical professionals to serve or for businesses to operate. Now, as communities begin to reopen and seek to recover economically, it is more important than ever to remove the barriers that would inhibit those efforts while still protecting the public if the virus reemerges in the fall. Though there are many examples of unnecessary regulations that would hinder an economic recovery, occupational licensing restrictions should be at the top of the list.

Suspension or relaxation of occupational licensing restrictions was among the first action policymakers took to ensure a quick and effective response to the pandemic. So far, 35 states have allowed out-of-state medical personnel to receive temporary licenses to work in their jurisdictions. Furthermore, 31 states waived or modified certain licensing requirements, and 25 states allowed inactive or retired licensees to practice legally.

#### 2 – Antitrust is the bigger internal link – all of that was above.

#### The aff’s wages argument is a separate link – sustained wage increases signal inflation to the Fed

Cox 9/7 – Jeff Cox, writer for CNBC, “A sharp rise in wages is contributing to worries over inflation,” 9/7/21, https://www.cnbc.com/2021/09/07/a-sharp-rise-in-wages-is-contributing-to-worries-over-inflation.html

Now might be a good time for the Federal Reserve to start worrying about inflation.

August’s jobs report, besides being a big disappointment on the 235,000 headline number, also showed that wages are rising even with weak hiring.

Average hourly earnings jumped 0.6% for the month, about double what Wall Street had been expecting, and the increase from a year ago stood at a robust 4.3%, up from a 4% rise a month ago. Even leisure and hospitality, which saw zero net job growth in August, saw wages jump 1.3% for the month and 10.3% on the year.

Those numbers come as the Fed is weighing when to start pulling back on the historically easy monetary policy in place since the early days of the Covid-19 pandemic. Some voices on Wall Street expect the wage and inflation numbers to start resonating with Fed officials.

“The 5.2% unemployment rate and rapidly rising wages suggest building inflationary pressure that will ultimately lead to more hawkish policy,” Citigroup economist Andrew Hollenhorst wrote in a detailed analysis of the current jobs situation.

While Fed officials mostly discuss the total payroll gains, Hollenhorst said he “would expect this rhetoric to shift a bit, perhaps at the September [Federal Open Market Committee] meeting, with more focus on the high level of job openings and increasing wages.”

Fed Chairman Jerome Powell went to great lengths in his annual speech in August during the central bank’s Jackson Hole symposium to knock down concerns about rising wage pressures as well as inflation overall, despite consistently higher numbers.

“Today we see little evidence of wage increases that might threaten excessive,” Powell said during the Aug. 27 speech. Measures Powell said he follows – he did not mention the Labor Department’s monthly average hourly earnings figure – point to “wages moving up at a pace that appears consistent with our longer-term inflation objective.”

One specific measure Powell mentioned was the Atlanta Fed’s Wage Growth Tracker.

That measure looks at wages on monthly and 12-month basis and then uses a three-month moving average to iron out distortions. On a smoothed level, the tracker is showing wages rising at a 3.7% pace, fairly consistent with the past few years. Without smoothing, the 12-month rate runs to 4.2%, which is the highest since 2007 and representative of how bumpy the data has gotten lately.

The Atlanta Fed will next update the tracker Friday, giving the Fed another look at potential pressures that could trigger a wage-price spiral, which economists consider “bad” inflation.

Fed officials thus far have attributed higher inflation numbers to supply issues. A continued rise in wages could signal that demand is becoming a factor.

#### that quickly destroys the economy

Cox 21 – Jeff Cox, finance editor for CNBC.com where he manages coverage of the financial markets and Wall Street, “The Fed can fight inflation, but it may come at the cost of future growth,” 3/20/21, https://www.cnbc.com/2021/03/20/the-fed-can-fight-inflation-but-it-may-come-at-a-cost.html

One of the main reasons Federal Reserve officials don’t fear inflation these days is the belief that they have tools to deploy should it become a problem.

Those tools, however, come with a cost, and can be deadly to the kinds of economic growth periods the U.S. is experiencing.

Hiking interest rates is the most common way the Fed controls inflation. It’s not the only weapon in the central bank’s arsenal, with adjustments to asset purchases and strong policy guidance also at its disposal, but it is the most potent.

It’s also a very effective way of stopping a growing economy in its tracks.

The late Rudi Dornbusch, a noted MIT economist, once said that none of the expansions in the second half of the 20th century “died in bed of old age. Every one was murdered by the Federal Reserve.”

In the first part of the 21st century, worries are growing that the central bank might become the culprit again, particularly if the Fed’s easy policy approach spurs the kind of inflation that might force it to step on the brake abruptly in the future.

“The Fed made clear this week that it still has no plans to raise interest rates within the next three years. But that apparently rests on the belief that the strongest economic growth in nearly 40 years will generate almost no lasting inflationary pressure, which we suspect is a view that will eventually be proven wrong,” Andrew Hunter, senior U.S. economist at Capital Economics, said in a note Friday.

As it pledged to keep short-term borrowing rates anchored near zero and its monthly bond purchases humming at a minimum $120 billion a month, the Fed also raised its gross domestic product outlook for 2021 to 6.5%, which would be the highest yearly growth rate since 1984.

The Fed also ratcheted up its inflation projection to a still rather mundane 2.2%, but higher than the economy has seen since the central bank started targeting a specific rate a decade ago.

Competing factors

Most economists and market experts think the Fed’s low-inflation bet is a safe one – for now.

A litany of factors is keeping inflation in check. Among them are the inherently disinflationary pressures of a technology-led economy, a jobs market that continues to see nearly 10 million fewer employed Americans than a decade ago, and demographic trends that suggest a longer-term limit to productivity and price pressures.

“Those are pretty powerful forces, and I’d bet they win,” said Jim Paulsen, chief investment strategist at the Leuthold Group. “It may work out, but it’s a risk, because if it doesn’t work and inflation does get going, the bigger question is, what are you going to do to shut it down. You say you’ve got policy. What exactly is that going to be?”

The inflationary forces are pretty powerful in their own right.

An economy that the Atlanta Fed is tracking to grow 5.7% in the first quarter has just gotten a $1.9 trillion stimulus jolt from Congress.

Another package could be coming later this year in the form of an infrastructure bill that Goldman Sachs estimates could run to $4 trillion. Combine that with everything the Fed is doing plus substantial global supply chain issues causing a shortage of some goods and it becomes a recipe for inflation that, while delayed, could still pack a punch in 2022 and beyond.

The most daunting example of what happens when the Fed has to step in to stop inflation comes from the 1980s.

Runaway inflation began in the U.S. in the mid ’70s, with the pace of consumer price increases topping out at 13.5% in 1980. Then-Fed Chairman Paul Volcker was tasked with taming the inflation beast, and did so through a series of interest rate hikes that dragged the economy into a recession and made him one of the most unpopular public figures in America.

Of course, the U.S. came out pretty good on the other side, with a powerful growth spurt that lasted from late -1982 through the decade.

But the dynamics of the current landscape, in which the economic damage from the Covid-19 pandemic has been felt most acutely by lower earners and minorities, make this dance with inflation an especially dangerous one.

“If you have to prematurely abort this recovery because we’re going to have a kneejerk stop, we’re going to end up hurting most of the people that these policies were enacted to help the most,” Paulsen said. “It will be those same disenfranchised lower-comp less-skilled areas that get hit hardest in the next recession.”

The bond market has been flashing warning signs about possible inflation for much of 2021. Treasury yields, particularly at the longer maturities, have surged to pre-pandemic levels.

That action in turn has raised the question of whether the Fed again could become a victim of its own forecasting errors. The Jerome Powell-led Fed already has had to backtrack twice on sweeping proclamations about long-term policy intentions.

“Is it really going to be all temporary?”

In late-2018, Powell’s statements that the Fed would continue raising rates and shrinking its balance sheet with no end in sight was met with a history-making Christmas Eve stock market selloff. In late 2019, Powell said the Fed was done cutting rates for the foreseeable future, only to have to backtrack a few months later when the Covid crisis hit.

“What happens if the healing of the economy is more robust than even the revised projections from the Fed?” said Quincy Krosby, chief market strategist at Prudential Financial. “The question for the market is always, is it really going to be all temporary?’”

Krosby compared the Powell Fed to the Alan Greenspan version. Greenspan steered the U.S. through the “Great Moderation” of the 1990s and became known as “The Maestro.” However, that reputation became tarnished the following decade when the excesses of the subprime mortgage boom triggered wild risk-taking on Wall Street that led to the Great Recession.

Powell is staking his reputation on a staunch position that the Fed will not raise rates until inflation rises at least above 2% and the economy achieves full, inclusive employment, and will not use a timeline for when it will tighten.

“They called Alan Greenspan ‘The Maestro’ until he wasn’t,” Krosby said. Powell “is telling you there’s no timeline. The market is telling you it does not believe it.”

To be sure, the market has been through what Krosby described as “squalls” before. Bond investors can be fickle, and if they sense rates rising, they’ll sell first and ask questions later.

Michael Hartnett, the chief market strategist at Bank of America, pointed to multiple other bond market jolts through the decades, with only the 1987 episode in the weeks before the Oct. 19 Black Monday stock market crash having “major negative spillover effects.”

He doesn’t expect the 2021 selling to have a major impact either, though he cautions that things could change when the Fed finally does pivot.

### AT: FTC enforcement now – 1nr

#### 1 – It’s been a million years and she hasn’t done anything – has not brought a single case and this card is just like, “they think something is coming!” but our link is NOT about bizcon nor perception – AND, probably won’t do mass breakups until after midterms to save the Dems

#### 2 – Deadlock prevents antitrust enforcement

Doesn’t interfere with privacy enforcement because there’s consensus. The plan changes this by FIAT

Eleanor Tyler 10/7/21. Legal Analyst on the Litigation team, with a focus on antitrust, at Bloomberg Law. “ANALYSIS: FTC May Be Headed Into Deadlock, Delaying Big Deals.” https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-ftc-may-be-headed-into-deadlock-delaying-big-deals

The Federal Trade Commission may be about to pause, unable to act on antitrust enforcement and policy until President Biden’s nominee can be confirmed and seated.

On Oct. 8, Federal Trade Commissioner Rohit Chopra is stepping down to take up his new position as head of the Consumer Financial Protection Bureau. Because it takes a majority among the Commissioners present to conduct business, and because the remaining commissioners will be split 2-2 between Democrat and Republican appointees, the Commission may find itself sitting on its hands until an equally divided Senate can approve privacy expert Alvaro Bedoya, whom Biden nominated Sept. 20 for Chopra’s seat.

In the past, the Commission has typically managed to continue making decisions and bringing cases while short a member (or several). These aren’t normal times, however. Many actions could be easily conducted on a bipartisan basis, but decisions about antitrust policy—and, potentially, antitrust enforcement—have proven contentious. That poses a potential obstacle for deals currently under investigation at the FTC, which tend to be large deals and those with market overlap between the parties.

#### 3 – They’re giving everything else a pass.

Zephyr Teachout 10/29/21. Associate professor of law at Fordham Law School. “Why Judges Let Monopolists Off the Hook.” https://www.theatlantic.com/ideas/archive/2021/10/antitrust-facebook-congress-sherman-act/620539/

Americans have gotten far too used to the idea that corporate behemoths are free to acquire any company they want, engage in predatory behavior, and bully, squeeze out, or demand kickbacks from smaller rivals. Indeed, the U.S. government’s decision to let Facebook buy an obvious rival, Instagram, looks so wrong in hindsight—especially now that leaked documents have revealed Facebook’s seeming indifference to the many problems that its products cause or exacerbate—that Americans should utterly disavow the complex legal framework that allowed the Federal Trade Commission to rationalize that decision. Over the past several decades, establishing that a company has violated antitrust law has become an extraordinarily difficult process. And when violations of the law are hard to punish, authorities will usually give them a pass—as the FTC did with Facebook’s acquisition of Instagram. (Yesterday, Facebook rebranded itself as Meta.)

#### 4 – Other enforcement is all talk

JED GRAHAM 9/16/21. Writes about economic policy for Investor's Business Daily.

Khan is clearly using her bully pulpit to the utmost, trying to dissuade merger talks from reaching fruition.

But right now it's all talk. She has turned a few heads, but the S&P 500 and Big Tech leaders have kept cruising. Facebook stock is up 11% since Khan took the FTC's helm on June 15, while Apple has climbed 15% and Google stock 18%. That's despite reports that the Justice Department is preparing to file a second Google antitrust suit over its ad dominance.

The new antitrust enforcement regime may not change all that much "until they show that they can sue and win," Kovacic said.

#### 5 – No major new cases

Brent Kendall 10/9/21. Legal affairs reporter in the Washington bureau of The Wall Street Journal. “Justice Department Makes Quiet Push on Antitrust Enforcement.” https://www.wsj.com/articles/justice-department-makes-quiet-push-on-antitrust-enforcement-11633800598

The five-member FTC voted 3-2 along partisan lines last month to formally withdraw those guidelines. The commission’s new chairwoman, Lina Khan, is a leading progressive advocate for overhauling antitrust enforcement. She has been laying the groundwork for changes at the commission as she settles into the job, but hasn’t yet spearheaded any major new cases.

#### 6 – No increase in merger enforcement.

Laurence Bary et al. 10/28/21. Antitrust lawyer in the Paris office of Dechert, with Mike Cowie, James A. Fishkin, Clemens Graf York von Wartenburg, Dennis S. Schmelzer and Delphine Strohl. “DAMITT Q3 2021: Where’s the Wave? No Uptick Yet in Significant Merger Enforcement Activity.” https://www.lexology.com/library/detail.aspx?g=42eaa9f3-e4f6-48d7-8680-29c7216a7f1f

Dechert has yet to see an increase in concluded significant U.S. merger investigations despite a surge in merger filings that began in the fall of 2020. Instead, we continue to see a decrease in concluded significant merger investigations year-to-date compared to this point in 2019 and 2020.

The average duration of significant merger investigations remains around 12 months, with significant variations below and above the average.

The Federal Trade Commission did not file a single complaint or consent decree in the third quarter, which may suggest that it is taking longer for consent decrees to be finalized under the new administration.

#### 7 – No other moves are beind made..

T.J. York 10/22/21. Received his degree in political science from the University of Southern California. He has experience working for elected officials and in campaign research. He is interested in the effects of politics in the tech sector “Federal Trade Commission Will Likely Not Be Able to Implement Competition Rules, Panelists Say.” https://broadbandbreakfast.com/2021/10/federal-trade-commission-will-likely-not-be-able-to-implement-competition-rules-panelists-say/

The Federal Trade Commission’s attempts to use rulemaking authority to issue antitrust policy governing technology companies will be struck down in federal courts, said panelists participating in a TechFreedom event on Thursday.

Recently formed conservative majorities on the Supreme Court and other panels have expressed opposition to the idea that the FTC possesses such rulemaking authority, these panelists said.

Hence, unlike past supreme courts, they current bench is likely to strike down FTC-issued binding rules.

Panelists highlighted former President Donald Trump appointees Brett Kavanaugh and Neil Gorsuch as justices who have opposed legal reasoning often used to permit FTC rulemaking.

Indeed, some panelists said early 20th Century legislation governing the FTC makes the case that the agency was created as an investigative body rather than a regulatory one.

Peter Wallison, senior fellow emeritus at the American Enterprise Institute, said that between five and six Supreme Court justices would ultimately vote to weaken precedents that allow for FTC rulemaking.