# 1nc – harvard 3

## OFF

### P – SPEC – 1NC

#### Interpretation -- In addition to prohibited practices, the aff should specify the agent of antitrust authority and sanctions.

William **KOVACIC** Global Competition Professor of Law and Policy @ George Washington University Law School **’12** “The Institutions of Antitrust Law: How Structure Shapes Substance Substance” 110 MICH. L. REV. 1019 p. 1026

A more complete framework of the institutional elements of antitrust law enforcement might organize the examination of the system around the following questions:

What is the purpose of the statutes? What do the statutes prohibit?

By what means are infringements detected and evidence gathered? Which entities have authority to prosecute violations?

Which body decides guilt or innocence?

What sanctions are imposed for wrongdoers?

A classification scheme cast along these lines would help identify more clearly the volume's examination of the U.S. antitrust system and assist in illuminating connections among its elements.

#### Violation – the plan text does not specify agent, authority, or sanctions.

#### 1 – Negative ground. Institutional structure and agent of implementation key to antitrust outcomes. Any debate over only the preferred outcomes is hopelessly incomplete.

William **KOVACIC** Global Competition Professor of Law and Policy @ George Washington University Law School **’12** “The Institutions of Antitrust Law: How Structure Shapes Substance Substance” 110 MICH. L. REV. 1019 p. 1019-1020

Forty years ago, Graham Allison wrote the Essence of Decision' and transformed the study of foreign policy and public administration.2 Allison's analysis of the Cuban Missile Crisis appeared amid profound concerns about the competence of U.S. government institutions. "Few issues about the American government," he wrote, "are more critical today than the matter of whether the federal government is capable of governing."3 To Allison, better performance required greater insight into how the structure and operations of public institutions shaped policy results. "[B]ureaucracy is indeed the least understood source of unhappy outcomes produced by the U.S. government,"4 Allison wrote. "If analysts and operators are to increase their ability to achieve desired policy outcomes, . . . we shall have to find ways of thinking harder about the problem of 'implementation,' that is, the path between preferred solution and actual performance of the government."5 Essence of Decision quickly appeared on reading lists in political science departments and schools of public administration, and its analytical orientation and vocabulary have become enduring elements of academic discourse.

Daniel Crane's The Institutional Structure of Antitrust Enforcement ("InstitutionalStructure")7 may do for antitrust law what Essence of Decision did for public administration. Unlike most literature on antitrust law, this superb volume does not address pressing issues of substantive analysis (e.g., when can dominant firms offer loyalty discounts?).8 Instead, Institutional Structure studies the design and operation of the institutions of U.S. antitrust enforcement. Professor Crane skillfully advances a basic and powerful proposition: to master analytical principles without deep knowledge of the policy implementation mechanism is dangerously incomplete preparation for understanding the U.S. antitrust system, or any body of competition law. "Institutions," Professor Crane observes, "are a critical and underappreciated driver of an antitrust policy that interacts in many subtle ways with substantive antitrust rules and decisions" (p. xi). Institutional Structure demonstrates that the causes of observed policy outcomes, good and bad, often reside in the institutional framework. Seemingly potent conceptual insights may fizzle, or create mischief, if the institutions that must apply them are deformed. Good policy results depend on the strength of what Allison called "the path between preferred solution and actual performance." In the language of modem technology, one cannot deliver broadband-quality policy outcomes through dial-up institutions.

#### 2 – Voting issue – cross-ex is too late for counterplan competition. 2AC clarification destroys 1NC strategic coherence. Every branch is topical. Rule-making and common law don’t link to any of the same positions and reading both requires contradiction.

### CP – Regs – 1NC

#### The United States federal government should substantially increase its regulation of competition, increasing the weight afforded to the competitive process in issuing said regulations.

#### Solves.

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 – FTC – 1NC

#### Plan trades off with FTC resources in other areas

Reinhart 21 – Tara Reinhart, head of the Antitrust/Competition Group in Skadden’s Washington, D.C. office, “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.

#### Resources are key to FTC privacy leadership.

Hoofnagle et al. ’19 [Chris; 8/8/19; Adjunct Professor of Information and Law @ Cal; Woodrow Hartzog; Professor of Law and Computer Science @ Northeastern University; and Daniel Solove; John Marshall Harlan Research Professor of Law @ George Washington; “The FTC can rise to the privacy challenge, but not without help from Congress”; https://www.brookings.edu/blog/techtank/2019/08/08/the-ftc-can-rise-to-the-privacy-challenge-but-not-without-help-from-congress/; AS]

We think the FTC is still the right agency to lead the US privacy regulatory effort. In this essay, we explain the FTC’s structural and cultural strengths for this task, and then turn to reforms that could help the FTC rise to modern information privacy challenges. Fundamentally, the FTC has the structure and the legal powers necessary to enforce reasonable privacy rules. But it does need to evolve to meet the challenge of regulating modern information platforms.

THE FTC WIELDS GREAT POWERS TEMPERED WITH EXPERIENCE

The FTC has remarkable powers. At its creation a century ago, Congress gave it unprecedented investigatory and enforcement tools. These have been broadened over time as the FTC has faced new wrongs. Today, the FTC can examine business practices even where there is no investigatory predicate, and as a general-purpose consumer protection agency, it can sue almost any business.

As a result, the FTC is nimble and can adapt to new technologies without an act of Congress. Founded in the days of misleading newspaper advertising, the FTC was quick to pivot to radio, television, and internet fraud. The breadth and generality of its powers are also a source of strength. Much more than just data protection, modern consumer problems involve platforms, power, information asymmetries, and market competition. In theory, the FTC has a broad enough jurisdiction and charge to handle diverse issues often labeled as “privacy,” such as algorithmic manipulation and accountability.

In the information economy, privacy is among the most important values that law and norms should protect. Yet at the same time, privacy must also accommodate other important values, including the risks inherent in economic development. In our view, privacy is a means to the ends of freedom and autonomy in our personal lives and in our polity. It is a key component for human flourishing.

THE FTC HAS ACHIEVED MUCH WITH LIMITED RESOURCES AND WITHOUT CONSISTENT CONGRESSIONAL SUPPORT

Many privacy issues are thought to be new. But the FTC has decades of experience handling privacy problems, particularly in credit reporting and debt collection. The FTC’s earliest information privacy matters, in 1951 and then a series of cases in the 1970s, recognized the general consumer preference against commercialization of personal data. Using its enforcement powers, the FTC sued companies for deceptive data collection, and for the sale of data collected in preparing tax returns. The agency brought its first internet-related fraud case in 1994, long before most consumers shopped online. Since then, the FTC has pursued the biggest names in internet commerce. It has steadily broadened the duties for fair information handling, particularly in the information security domain.

The FTC’s broadest jurisdiction is its enforcement against unfair and deceptive practices under Section 5 of the FTC Act. Despite a wide reach, however, Section 5 has some significant limits in power. The FTC generally cannot issue a fine for Section 5 violations initially—fines can only be issued for violations of consent decrees, as happened in the Facebook case.

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

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

Even with these severe limitations, it has managed to bolster important norms and send strong signals to industry that have influenced the practices of many companies. It has become a significant enforcement agency that industry pays attention to. It has an enforcement record that compares quite well to other agencies in the US as well as around the world.

Some critics of the Facebook settlement have focused only on its shortcomings. Despite flaws and limits in the consent order, the five-billion-dollar fine was the biggest privacy settlement worldwide by far. It is an order of magnitude greater than the highest fine under the EU’s General Data Protection Regulation so far (the UK ICO’s €183 million fine against British Airways) and roughly double the record fine under EU competition law, which privacy advocates have urged as the reference for privacy fines.

The settlement also contains significant and noteworthy measures, such as forcing Facebook to make privacy a board-level concern and requiring Mark Zuckerberg to verify compliance. As dissenting Commissioners Chopra and Slaughter note, the FTC’s settlement doesn’t solve every problem; Facebook’s structure and business model remain the same. But no existing enforcement agency has come close to matching the FTC’s impact in this case, and foreign data protection agencies similar to proposed in the U.S. as FTC alternatives have not demonstrated the power or political capital to do so. As privacy enforcers go, the FTC stacks up well to others in many regards.

#### Privacy regulation is key to the liberal order – US leadership resolves the current patchwork of rules.

Slaughter & McCormick ’21 [Matthew; Paul Danos Dean and Earl C. Daum 1924 Professor of International Business in the Tuck School of Business @ Dartmouth College, Former Member @ White House Council of Economic Advisers; and David; CEO @ Bridgewater Associates Former Senior Positions @ U.S. Commerce Department, the National Security Council, and U.S. Treasury Department; “Data Is Power: Washington Needs to Craft New Rules for the Digital Age,” *Foreign Affairs* 100(3), p. 54-63; AS]

A PATCHWORK OF RULES

Current international institutions are not equipped to handle the proliferation of data. Nor are they prepared to address the emerging fault lines in how to approach it. The institutional framework for international trade-that of the World Trade Organization and its predecessor, the General Agreement on Tariffs and Trade-was built at a time when mainly agricultural and manufactured goods crossed borders and data flows were in the realm of fiction. The wTO's framework depends on two key classifications: whether something is a good or a service and where it originated. Goods are governed by different trade rules than are services, and a product's origin defines what duties or trade restrictions apply.

Data defies this basic categorization for several reasons. One is that vast amounts of data-such as one's online browsing before ordering clothes-are unpriced consequences of the production and consumption of other goods and services. Another is that it is often hard to determine where data is created and kept. (From which country does data on an international flight's engineering performance originate? In which country does a multinational firm's cloud storage of its clients' data reside?) Moreover, there is no agreed-on taxonomy for valuing data. In the event of a trade dispute, WTO members may seek legal recourse and ask the organization to make a one-off correction, but such fixes do not address the fundamental inconsistencies between the WTO's framework and the nature of data.

The lack of an internationally accepted framework governing data leaves big questions about the global economy and national security unanswered. Should sovereign governments be able to limit the location and use of their citizens' data within national borders? What does this concept even mean when the cloud and its data are distributed across the Internet? Should governments be able to tax the arrival of data from other nations, just as they levy tariffs on the import of many goods and services? How would this work when the data flows themselves are often unpriced, at least within the firms that gather the data? What controls can sovereign governments impose on data entering their countries? Can they demand that data be stored locally or that they be given access to it?

The absence of an international framework also threatens people's privacy. Who will ensure that governments or other actors do not misuse people's data and violate their economic, political, and human rights? How can governments protect their citizens' privacy while allowing data to move across borders? Today, the United States and the EU do not agree on answers to these questions, causing friction that hurts cooperation on trade, investment, and national security. China, for its part, has shown little commitment to privacy. Without common and verifiable methods of anonymizing data to protect personal privacy, the innovative potential of personal data will be lost-or fundamental rights will be violated.

In the absence of coherent and collective answers to these questions, countries and trade blocs are improvising on their own. This has left the world today with a collection of inconsistent, vague, and piecemeal regulations. Recent regional trade deals have included several provisions regarding data and e-commerce. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership, which does not include the United States, prohibits requirements that data be stored within a given country and bans duties on cross-border flows of electronic content. It recognizes the growing importance of the digital services sector, and it forbids signatories from demanding access to the source codes of companies' software. The U.S.-Mexico-Canada Agreement (USMCA) has similar provisions. Both free-trade agreements aim to allow unencumbered flows of data, but they are largely untested and, by virtue of being regional, are limited.

The EU sharpened its data rules on privacy in the General Data Protection Regulation. The GDPR attempts to empower individuals to decide how companies can use their data, but many have voiced concerns that the GDPR has effectively established trade barriers for foreign firms operating in EU member countries by requiring expensive compliance measures and raising the European market's liability risks. Moreover, the EU's rules are the subject of continual dispute and litigation.

Of much greater concern to the United States is China's distinct digital ecosystem. Over a generation ago, China began building its "Great Firewall," a combination of laws and technologies that restrict the flow of data in and out of China, in part by blocking foreign websites. China has since adopted a techno-nationalist model that mandates government access to data generated in the country. The sheer quantity of that data fuels China's innovation but also enables the country's repressive system of control and surveillance-and at the expense of open, international flows of data.

Beijing now seeks to expand this model. It has clear plans to use its indigenous technology industry to dominate the digital platforms that manage data, most immediately 5G telecommunications networks. To that end, it has unveiled an audacious plan, China Standards 2035, to set global standards in emerging technologies. And through the so-called Digital Silk Road and the broader Belt and Road Initiative, it is working to spread its model of data governance and expand its access to data by building Internet infrastructure abroad and boosting digital trade.

And the United States? At the federal level, the country has not settled on any legal framework. Nor, beyond the USMCA, has it engaged in any meaningful cross-border agreements on data flows. So far, the United States has not answered China's efforts with a coherent plan to shape technology standards or ensure widespread privacy protections. The United States' ad hoc responses and targeted efforts to encourage other countries to reject the Chinese company Huawei's 5G technology may work in the near term. But they do not constitute an effective long-term plan for harnessing the power of data.

#### LIO prevents global great power war.

Beckley ’20 [Michael; Associate Professor of Political Science @ Tufts University; “Rogue Superpower Why This Could Be an Illiberal American Century”; *Foreign Affairs* 99(6), p. 73-87]

What would happen to the world if the United States fully embraced this kind of “America first” vision? Some analysts paint catastrophic pictures. Robert Kagan foresees a return to the despotism, protectionism, and strife of the 1930s, with China and Russia reprising the roles of imperial Japan and Nazi Germany. Peter Zeihan predicts a violent scramble for security and resources, in which Russia invades its neighbors and East Asia descends into naval warfare. These forecasts may be extreme, but they reflect an essential truth: the postwar order, although flawed and incomplete in many ways, has fostered the most peaceful and prosperous period in human history, and its absence would make the world a more dangerous place.

Thanks to the U.S.-led order, for decades, most countries have not had to fight for market access, guard their supply chains, or even seriously defend their borders. The U.S. Navy has kept international waterways open, the U.S. market has provided reliable consumer demand and capital for dozens of countries, and U.S. security guarantees have covered nearly 70 nations. Such assurances have benefited everyone: not just Washington’s allies and partners but also its adversaries. U.S. security guarantees had the effect of neutering Germany and Japan, the main regional rivals of Russia and China, respectively. In turn, Moscow and Beijing could focus on forging ties with the rest of the world rather than fighting their historical enemies. Without U.S. patronage and protection, countries would have to get back in the business of securing themselves and their economic lifelines.

Such a world would see the return of great-power mercantilism and new forms of imperialism. Powerful countries would once again try to reduce their economic insecurity by establishing exclusive economic zones, where their firms could enjoy cheap and secure access to raw materials and large captive consumer markets. Today, China is already starting to do this with its Belt and Road Initiative, a network of infrastructure projects around the world; its “Made in China 2025” policy, to stimulate domestic production and consumption; and its attempts to create a closed-off, parallel Internet. If the United States follows suit, other countries will have to attach themselves to an American or a Chinese bloc—or forge blocs of their own. France might seek to restore its grip on its former African colonies. Russia might accelerate its efforts to corral former Soviet states into a regional trade union. Germany increasingly would have to look beyond Europe’s shrinking populations to find buyers for its exports—and it would have to develop the military capacity to secure those new far-flung markets and supply lines, too.

As great powers competed for economic spheres, global governance would erode. Geopolitical conflict would paralyze the UN, as was the case during the Cold War. NATO might dissolve as the United States cherry-picked partners. And the unraveling of the U.S. security blanket over Europe could mean the end of the European Union, too, which already suffers from deep divisions. The few arms control treaties that remain in force today might fall by the wayside as countries militarized to defend themselves. Efforts to combat transnational problems—such as climate change, financial crises, or pandemics—would mimic the world’s shambolic response to COVID-19, when countries hoarded supplies, the World Health Organization parroted Chinese misinformation, and the United States withdrew into itself.

The resulting disorder would jeopardize the very survival of some states. Since 1945, the number of countries in the world has tripled, from 46 to nearly 200. Most of these new states, however, are weak and lack energy, resources, food, domestic markets, advanced technology, military power, or defensible borders. According to research by the political scientist Arjun Chowdhury, two-thirds of all countries today cannot provide basic services to their people without international help. In short, most countries depend critically on the postwar order, which has offered historically unprecedented access to international aid, markets, shipping, and protection. Without such support, some countries would collapse or be conquered. Fragile, aid-dependent states such as Afghanistan, Haiti, and Liberia are only some of the most obvious high-risk cases. Less obvious ones are capable but trade-dependent countries such as Saudi Arabia, Singapore, and South Korea, whose economic systems would struggle to function in a world of closed markets and militarized sea-lanes.

### K – LPE – 1NC

#### 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.

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­ “[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.

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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.

### CP – States – 1NC

#### The fifty states and relevant sub-national entities should substantially increase the importance afforded to the competitive process in analysis of anticompetitive business practices.

#### States solve.

Arteaga & Ludwig ’21 [Juan; 1/28/21; Partner @ Crowell & Moring LLP, JD @ Columbia; and Jordan; Partner @ Crowell & Moring LLP, JD @ Loyola Law School, Los Angeles; “The Role of US State Antitrust Enforcement,” *Global Competition Review*; https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement; AS]

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

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

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

### DA – Politics – 1NC

#### Budget passes now – Manchin and Sinema support.

Carney 10-28-21

(Jordain, https://thehill.com/homenews/senate/579016-manchin-signals-hes-okay-with-175t-spending-framework-price-tag)

Sen. Joe Manchin (D-W.Va.) signaled on Thursday that he could support the $1.75 trillion price tag for Democrats' social spending plan, even as he hasn't said if he supports the overall framework deal. "We negotiated a good number that we worked off of, and we're all dealing in a good faith," Manchin told reporters. Asked if $1.75 trillion was too high, Manchin replied: "That was negotiated." ADVERTISEMENT Manchin's comments are his first indication that he supports a $1.75 trillion top line — the size of the framework deal that Biden announced. Democrats are proposing paying for their plan, in part, with tax increases focused on high-income households and corporations. The top line is dramatically smaller than the $3.5 trillion spending ceiling that Democrats paved the way for with a budget resolution earlier this year that teed up the spending deal. Progressives had hoped for a $6 trillion bill. But Manchin's preferred price tag has been substantially smaller. Manchin had said for weeks that he was at $1.5 trillion. Biden then threw out a top line of around $2 trillion, and Democrats over the past week said they hoped to get Manchin to come up to between $1.7 trillion and $2 trillion. Manchin's suggestion that he helped negotiate the $1.75 trillion top line for the deal on the spending framework comes as he sidestepped several times on Thursday saying if he supports the framework. “This is all in the hands of the House right now. I’ve worked in good faith and I look forward to continuing to work in good faith and that’s all I’m going to say,” Manchin told reporters earlier Thursday. ADVERTISEMENT Manchin has been at the center of a lobbying storm as Democrats try to lock down his support for different provisions of the spending framework. During a vote on Thursday, Senate Finance Committee Chairman Ron Wyden (D-Ore.), Senate Environment and Public Works Committee Chairman Tom Carper (D-Del.), Senate Democratic Whip Dick Durbin (D-Ill.), Senate Majority Leader Charles Schumer (D-N.Y.) and Sen. Angus King (I-Maine) stopped Manchin to speak with him. Sen. Kirsten Gillibrand (D-N.Y.), who is also trying to get Manchin's support for including a paid family leave plan in the package, was also spotted lobbying him on the Senate floor. Even as Manchin hasn't said whether he supports the framework, some of his Democratic colleagues told reporters on Thursday that they believe it has the backing of all 50 Senate Democrats. Ocasio-Cortez presses Biden on student debt: 'Doesn't need Manchin's... Manchin, Sinema put stamp on party, to progressive chagrin “It's clear that they back this plan," Sen. Chris Coons (D-Del.) told reporters about Manchin and Sen. Kyrsten Sinema (D-Ariz.), adding that he had spoken to both of them. Sen. Tim Kaine (D-Va.) added that he also believed there were 50 votes for the framework deal. "Joe Biden would not have announced this deal and put Sens. [Sinema] and Manchin’s name in the first paragraph of the announcement unless he felt a high degree of confidence," Kaine said.

#### Antitrust action saps finite capital, imperils rest of agenda

Karaim 21

(Reed, <http://library.cqpress.com/cqresearcher/document.php?id=cqresrre2021050705>, 5-7)

Stucke, the former U.S. Justice Department antitrust official, says that despite Wu and Khan's credentials and reputation, changing antitrust policy will require a concerted effort. With Biden having an ambitious overall agenda and his Democratic Party holding the slimmest possible majority in the Senate, Stucke says, the question is “to what extent will the Biden administration want to expend political capital on this. They've got some bipartisan support for antitrust reform, but to what extent are they going to mobilize that?”

#### Budget key to solve climate change.

Dino Grandoni and Brady Dennis 8/11/21. Reporter covering energy and environmental policy. Reporter focusing on environmental policy and public health issues. “Biden aims for sweeping climate action as infrastructure, budget bills advance”. Washington Post. Aug 11 2021. https://www.washingtonpost.com/climate-environment/2021/08/10/biden-climate-congress/

After years of dragging their feet, lawmakers in Washington advanced a pair of major bills this week that include significant provisions for tackling climate change as scientists continue to ring alarm bells about the state of the planet.

The Senate approved on Tuesday a sweeping bipartisan $1.2 trillion infrastructure bill with funding for many public works meant to cut climate-warning emissions. A day later, Democrats in the chamber took a major step to adopt an even bigger, $3.5 trillion budget bill supporting yet more programs for cleaning up power plants and cars.

Each, if passed, would invest billions of dollars in the sort of clean energy transition the United States must make to have any chance of hitting the goal set by President Biden to cut the nation’s emissions by at least 50 percent by the end of this decade.

“This was one of the most significant legislative days we’ve had in a long time here,” Senate Majority Leader Charles E. Schumer (D-N.Y.) told reporters Wednesday.

But both bills face a potentially bumpy road ahead. Democrats still need to draft in committees the details of their massive budget reconciliation package over the coming weeks, with not a single vote to spare in the 50-50 split Senate. The bipartisan public-works bill, meanwhile, still needs approval from the House, where progressive Democrats hold significant sway.

The moves on Capitol Hill come as hundreds of scientists detailed this week the intensifying fires, floods and other catastrophes that will continue to worsen until humans dramatically scale back greenhouse gas emissions.

Scientists assembled by the United Nations made clear in a landmark report Monday that time is running out for the world to make immediate and dramatic cuts to emissions produced by the burning of fossil fuels and other human activities. U.N. Secretary General António Guterres called the sobering, sprawling report from the Intergovernmental Panel on Climate Change a “code red for humanity.”

But it remains unclear whether the new findings alone will be enough to spur new action in a Washington as politically divided as ever.

Climate change remains a distinctly fraught issue in the United States compared with many other countries, with the de facto leader of one of the two major parties — former president Donald Trump — dismissing the scientific consensus about human-caused climate change and downplaying its risks throughout his term.

Even if Congress passes bills with big climate provisions, regulations from the Biden administration are vulnerable to being reined in by federal court judges appointed by Trump and the most conservative Supreme Court in a generation. And the fate of many of the administration’s climate initiatives could depend on the Democratic Party retaining control of Congress — and on how Biden himself fares if he runs again in 2024.

If Biden and his Democratic allies in Congress succeed in shifting the nation rapidly toward a greener future, the math of climate change means that the rest of the world would have to follow suit, and quickly. The United States accounts for only about one-seventh of global emissions. The rest of the world — particularly the world’s largest emitter, China — would need to set more aggressive goals for reducing footprints as well.

Other countries have taken steps to do that. The European Union, for instance, agreed earlier this year to cut carbon emissions as a bloc by at least 55 percent by 2030. But how aggressively China, India, Russia and other nations will move in the years ahead remains an open question.

World leaders already faced mounting pressure to arrive at a major U.N. climate conference scheduled this fall in Scotland with more ambitious, concrete plans to slow greenhouse gas pollution. That pressure grew only more intense after Monday’s IPCC assessment, which found that the world is quickly running out of time to meet the goals of the 2015 Paris agreement.

The report found that humans can only unleash less than 500 additional gigatons of carbon dioxide — the equivalent of about 10 years of current global emissions — to have an even chance of limiting warming to 1.5 degrees Celsius (2.7 Fahrenheit) above preindustrial levels.

The hopes of hitting that target, the most aspirational goal outlined in the Paris accord, will soon slip away without rapid action, the report made clear. After all, the world has already warmed more than 1 degree Celsius (1.8 degrees Fahrenheit), with few signs of slowing unless nations begin to cut emissions at a rate unprecedented in history.

For Biden to live up to his promises to reduce U.S. emissions sharply in coming years, transition to electric vehicles and eliminate the carbon footprint of the power sector by 2035, his administration needs a helping hand from Congress.

The infrastructure package, which the Senate approved in a 69-to-30 vote with the support of 19 Senate Republicans, apportions billions of dollars for building new transmission lines, public transit and electric-car charging stations.

Meanwhile, the separate $3.5 trillion budget reconciliation bill, which Democrats plan to pass on their own, includes more far-reaching provisions for tackling climate change.

That measure would impose new import fees on polluters and give tax breaks for wind turbines, solar panels and electric vehicles. It would also seek to electrify vehicles used by the U.S. Postal Service and other federal agencies and create a new Civilian Climate Corps to enlist young people in planting trees and other conservation work.

Perhaps most crucially, the legislation would put new requirements on electricity providers to use cleaner forms of energy — something President Barack Obama’s administration tried but failed to do.

Dan Lashof, U.S. director of the World Resources Institute, called Tuesday’s bipartisan infrastructure package “a down payment” on the fight against climate change but not nearly enough going forward. He said it is essential for the Senate to also pass the budget-reconciliation package that funds a broader array of climate-focused measures to create jobs and shift the nation’s infrastructure toward one no longer reliant on fossil fuels.

“The forthcoming reconciliation package could be our best opportunity for advancing climate action this decade,” he said. “Kicking the can down the road is no longer an option as extreme weather wreaks havoc across our nation and around the world.”

Passing both bills, along with tighter regulations from the Environmental Protection Agency, “puts us within shooting distance” reducing emissions by 50 percent by 2030, according to Collin O’Mara, president of the National Wildlife Federation.

#### Warming causes extinction – global nuclear conflagration.

Michael Klare 20. The Nation’s defense correspondent, professor emeritus of peace and world-security studies at Hampshire College, senior visiting fellow at the Arms Control Association in Washington, DC. “How Rising Temperatures Increase the Likelihood of Nuclear War”. The Nation. Jan 13 2020. https://www.thenation.com/article/archive/nuclear-defense-climate-change/

Climbing world temperatures and rising sea levels will diminish the supply of food and water in many resource-deprived areas, increasing the risk of widespread starvation, social unrest, and human flight. Global corn production, for example, is projected to fall by as much as 14 percent in a 2°C warmer world, according to research cited in a 2018 special report by the UN’s Intergovernmental Panel on Climate Change (IPCC). Food scarcity and crop failures risk pushing hundreds of millions of people into overcrowded cities, where the likelihood of pandemics, ethnic strife, and severe storm damage is bound to increase. All of this will impose an immense burden on human institutions. Some states may collapse or break up into a collection of warring chiefdoms—all fighting over sources of water and other vital resources.

A similar momentum is now evident in the emerging nuclear arms race, with all three major powers—China, Russia, and the United States—rushing to deploy a host of new munitions. This dangerous process commenced a decade ago, when Russian and Chinese leaders sought improvements to their nuclear arsenals and President Barack Obama, in order to secure Senate approval of the New Strategic Arms Reduction Treaty of 2010, agreed to initial funding for the modernization of all three legs of America’s strategic triad, which encompasses submarines, intercontinental ballistic missiles, and bombers. (New START, which mandated significant reductions in US and Russian arsenals, will expire in February 2021 unless renewed by the two countries.) Although Obama initiated the modernization of the nuclear triad, the Trump administration has sought funds to proceed with their full-scale production, at an estimated initial installment of $500 billion over 10 years.

Even during the initial modernization program of the Obama era, Russian and Chinese leaders were sufficiently alarmed to hasten their own nuclear acquisitions. Both countries were already in the process of modernizing their stockpiles—Russia to replace Cold War–era systems that had become unreliable, China to provide its relatively small arsenal with enhanced capabilities. Trump’s decision to acquire a whole new suite of ICBMs, nuclear-armed submarines, and bombers has added momentum to these efforts. And with all three major powers upgrading their arsenals, the other nuclear-weapon states—led by India, Pakistan, and North Korea—have been expanding their stockpiles as well. Moreover, with Trump’s recent decision to abandon the Intermediate-Range Nuclear Forces (INF) Treaty, all major powers are developing missile delivery systems for a regional nuclear war such as might erupt in Europe, South Asia, or the western Pacific.

All things being equal, rising temperatures will increase the likelihood of nuclear war, largely because climate change will heighten the risk of social stress, the decay of nation-states, and armed violence in general, as I argue in my new book, All Hell Breaking Loose. As food and water supplies dwindle and governments come under ever-increasing pressure to meet the vital needs of their populations, disputes over critical resources are likely to become more heated and violent, whether the parties involved have nuclear arms or not. But this danger is compounded by the possibility that several nuclear-armed powers—notably India, Pakistan, and China—will break apart as a result of climate change and accompanying battles over disputed supplies of water.

Together, these three countries are projected by the UN Population Division to number approximately 3.4 billion people in 2050, or 34 percent of the world’s population. Yet they possess a much smaller share of the world’s freshwater supplies, and climate change is destined to reduce what they have even further. Warmer temperatures are also expected to diminish crop yields in these countries, adding to the desperation of farmers and very likely resulting in widespread ethnic strife and population displacement. Under these circumstances, climate-related internal turmoil would increase the risk of nuclear war in two ways: by enabling the capture of nuclear arms by rogue elements of the military and their possible use against perceived enemies and by inciting wars between these states over vital supplies of water and other critical resources.

The risk to Pakistan from climate change is thought to be particularly acute. A large part of the population is still engaged in agriculture, and much of the best land—along with access to water—is controlled by wealthy landowners (who also dominate national politics). Water scarcity and mismanagement is a perennial challenge, and climate change is bound to make the problem worse. Climate and Social Stress: Implications for Security Analysis, a 2013 report by the National Research Council for the US intelligence community, highlights the danger of chaos and conflict in that country as global warming advances. Pakistan, the report notes, is expected to suffer from inadequate water supplies during the dry season and severe flooding during the monsoon—outcomes that will devastate its agriculture and amplify the poverty and unrest already afflicting much of the country. “The Pakistan case,” the report reads, “illustrates how a highly stressed environmental system on which a tense society depends can be a source of political instability and how that source can intensify when climate events put increased stress on the system.” Thus, as global temperatures rise and agriculture declines, Pakistan could shatter along ethnic, class, and religious lines, precisely the scenario that might trigger the sort of intervention anticipated by the US Joint Special Operations Command.

Assuming that Pakistan remains intact, another great danger arising from increasing world temperatures is a conflict between it and India or between China and India over access to shared river systems. Whatever their differences, Pakistan and western India are forced by geography to share a single river system, the Indus, for much of their water requirements. Likewise, western China and eastern India also share a river, the Brahmaputra, for their vital water needs. The Indus and the Brahmaputra obtain much of their flow from periods of heavy precipitation; they also depend on meltwater from Himalayan glaciers, and these are at risk of melting because of rising temperatures. According to the IPCC, the Himalayan glaciers could lose as much as 29 percent of their total mass by 2035 and 78 percent by 2100. This would produce periodic flooding as the ice melts but would eventually result in long periods of negligible flow, with calamitous consequences for downstream agriculture. The widespread starvation and chaos that could result would prove daunting to all the governments involved and make any water-related disputes between them a potential flash point for escalation.

As in Pakistan, water supply has always played a pivotal role in the social and economic life of China and India, with both countries highly dependent on a few major river systems for civic and agricultural purposes. Excessive rainfall can lead to catastrophic flooding, and prolonged drought has often led to widespread famine and mass starvation. In such a setting, water management has always been a prime responsibility of government—and a failure to fulfill this function effectively has often resulted in civil unrest. Climate change is bound to increase this danger by causing prolonged water shortages interspersed with severe flooding. This has prompted leaders of both countries to build ever more dams on all key rivers.

India, as the upstream power on several tributaries of the Indus, and China, as the upstream power on the Brahmaputra, have considered damming these rivers and diverting their waters for exclusive national use, thereby diminishing the flow to downstream users. Three of the Indus’s principal tributaries, the Jhelum, Chenab, and Ravi rivers, flow through Indian-controlled Kashmir (now in total lockdown, with government forces suppressing all public functions). It’s possible that India seeks full control of Kashmir in order to dam the tributaries there and divert their waters from Pakistan—a move that could easily trigger a war if it occurs at a time of severe food and water stress and one that would very likely invite the use of nuclear weapons, given Pakistan’s attitude toward them.

The situation regarding the Brahmaputra could prove equally precarious. China has already installed one dam on the river, the Zangmu Dam in Tibet, and has announced plans for several more. Some Chinese hydrologists have proposed the construction of canals linking the Brahmaputra to more northerly rivers in China, allowing the diversion of its waters to drought-stricken areas of the heavily populated northeast. These plans have yet to come to fruition, but as global warming increases water scarcity across northern China, Beijing might proceed with the idea. “If China was determined to move forward with such a scheme,” the US National Intelligence Council warned in 2009, “it could become a major element in pushing China and India towards an adversarial rather than simply a competitive relationship.”

Severe water scarcity in northern China could prompt yet another move with nuclear implications: an attempted annexation by China of largely uninhabited but water-rich areas of Russian Siberia. Thousands of Chinese farmers and merchants have already taken up residence in eastern Siberia, and some commentators have spoken of a time when climate change prompts a formal Chinese takeover of those areas—which would almost certainly prompt fierce Russian resistance and the possible use of nuclear weapons.

In the Arctic, global warming is producing a wholly different sort of peril: geopolitical competition and conflict made possible by the melting of the polar ice cap. Before long, the Arctic ice cap is expected to disappear in summertime and to shrink noticeably in the winter, making the region more attractive for resource extraction. According to the US Geological Survey, an estimated 30 percent of the world’s remaining undiscovered natural gas is above the Arctic Circle; vast reserves of iron ore, uranium, and rare earth minerals are also thought to be buried there. These resources, along with the appeal of faster commercial shipping routes linking Europe and Asia, have induced all the major powers, including China, to establish or expand operations in the region. Russia has rehabilitated numerous Arctic bases abandoned after the Cold War and built others; the United States has done likewise, modernizing its radar installation at Thule in Greenland, reoccupying an airfield at Keflavík in Iceland, and establishing bases in northern Norway.

Increased economic and military competition in the Arctic has significant nuclear implications, as numerous weapons are deployed there and geography lends it a key role in many nuclear scenarios. Most of Russia’s missile-carrying submarines are based near Murmansk, on the Barents Sea (an offshoot of the Arctic Ocean), and many of its nuclear-armed bombers are also at bases in the region to take advantage of the short polar route to North America. As a counterweight, the Pentagon has deployed additional subs and antisubmarine aircraft near the Barents Sea and interceptor aircraft in Alaska, followed by further measures by Moscow. “I do not want to stoke any fears here,” Russian President Vladimir Putin declared in June 2017, “but experts are aware that US nuclear submarines remain on duty in northern Norway…. We must protect [Russia’s] shore accordingly.”

### DA – Econ – 1NC

#### Current antitrust law fosters innovation and competition – the plan crushes growth

Wright 21 – Joshua D. Wright, Executive Director of the Global Antitrust Institute at the Antonin Scalia Law School, former commissioner of the U.S. Federal Trade Commission from 2013 to 2015, “A Time for Choosing: The Conservative Case Against Weaponizing Antitrust,” Summer 2021, https://nationalaffairs.com/time-choosing-conservative-case-against-weaponizing-antitrust

It has long been vogue among liberal advocates to champion expansion of government control over firms, their decisions, and internal workings. Perhaps no better present example can be found than in the area of antitrust, where the policy landscape looks eerily similar to the progressive view articulated 60 years ago, littered with a hodgepodge of proposals to “break up” large firms, prohibit all mergers and acquisitions, assign burdens of proof to the accused, and control the design of products. Today’s progressives offer much of the same medicine for what allegedly ails the modern economy. Senator Warren has proposed, for example, to “break up big tech” platforms such as Amazon, Apple, Facebook, and Google, and to make technology companies criminally liable for misinformation presented on their platforms.[ii] While the large and successful American tech firms—the envy of the global economy—make a convenient target for these proposals, do not be fooled. This wolf comes as a wolf. The modern progressive antitrust agenda is part of a broader, more radical program—self-described as Neo-Brandeisian Antitrust—to turn antitrust law upside down so that it may be weaponized to shape and plan all sectors of the economy.

These proposals, while unfortunate and misguided, draw heavily upon standard liberal orthodoxy that has tended to be largely suspect of markets and the agency of individuals. One can hardly be surprised to see a staunch progressive like Senator Warren or Bernie Sanders advocate greater government control over private life. Perhaps one even grows to expect it.

What is more surprising, however, is the company Senator Warren and the Neo-Brandeisian Antitrust movement have attracted with the siren call of using the antitrust laws to centrally plan the tech sector (among others things), and to achieve greater government control of the interactions between individuals and the technology we use in our daily lives. Stalwart conservatives like Senator Hawley, for example, among others, have offered policy proposals to “deal” with “Big Tech” that eerily mimic those of Senator Warren and the command and control left. Senator Hawley has proposed legislation that would rewrite Section 230 of the Communications Decency Act and usher in a quasi-Conservative Fairness Doctrine for the internet.[iii] Indeed, Hawley’s proposal would place the Federal Trade Commission in the Big Brother position of determining when a social media platform’s moderation decision was “designed to” or “motivated by an intent to” negatively impact a political party. Attorney General Barr has offered a similar refrain, announcing that antitrust is an appropriate tool to police political bias.[iv] And President Trump recently signed an executive order that directs the Federal Trade Commission to explore using its consumer protection authority to sue social media platforms for content moderation decisions.[v]

Without question, the emotional appeal undergirding these actions is understandable. Conservative voices and opinions too often face a stacked deck when dealing with technology companies and social media, in particular. And this bias against conservative voices has taken on new life in the Trump era. But the hallmark of conservative values has been to rightfully eschew government control over economic life and to value principle over expediency. What is at stake, however, with the current proposals to upend modern antitrust to address tech markets is more important than whatever fleeting satisfaction is gained from exacting policy revenge on firms perceived to squelch conservative voices and ideas. At stake are conservative commitments to the rule of law and the role of the judiciary—newly stocked with immense talent by the Trump administration—in preventing government expansion and overreach. And if we resign ourselves to transient political wins, and debase the belief that entrepreneurs rather than bureaucrats should shape technology markets, we risk not only undermining these great causes conservatives have championed for decades but also the enormous economic gains to Americans that arise in our highly competitive tech markets.

Readers less familiar with antitrust law may not understand its critical role in the conservative legal movement. Modern antitrust law—and its consumer welfare standard—is a complex product of powerful ideas, extant economic evidence, and jurists like Bork, Thomas, Scalia, Easterbrook, and Doug Ginsburg taking on the wobbly intellectual foundations of 1960s competition law. That their efforts were so successful in persuading their liberal counterparts on the Supreme Court and lesser federal courts to join in the dismantling of the stale and obsolete antitrust that was then the law of the land is powerful evidence of the force of their ideas. It is difficult to find an area of law where the conservative legal movement enjoyed as much success as quickly and with such resounding results.

No doubt it helped that yesteryear’s antitrust was intellectually bankrupt and an insult to the rule of law. It pursued an unfortunate amalgamation of contradictory doctrines, including undefined notions of populism, protection of individual industries, and reducing firm size, that could be used to justify nearly any result. For instance, antitrust law allowed the market-leading frozen pie manufacturer in Utah to successfully sue its three national-brand competitors for eroding its high market share through a series of price cuts—thereby preventing precisely the type of competition the law was intended to protect. Antitrust law was so unprincipled and incoherent at the time that it led Justice Potter Stewart to observe while reviewing a government suit to block a merger between two grocery stores with a combined market share of 7.5% that, “The sole consistency that I can find is that, in litigation under [the merger laws], the Government always wins.”[vi]

The conservative legal movement, powered by the intersection of economic analysis and law, brought the rule of law to the wild and untamed progressive antitrust vision of the 1960s. Grounding antitrust law in a disciplined and tractable framework not only promotes the rule of law while preventing arbitrary and capricious enforcement, it also creates a stable and predictable environment for private actors and firms to invest and innovate. Of course, no doctrine is perfect and today’s antitrust is not without its own flaws. But it is tethered to robust economic evidence and common-law developments that promote competitive outcomes and, like the common law, has built-in mechanisms to improve and evolve in response to empirical evidence. But the coherent and principled makeup of antitrust should not and cannot be taken for granted.

Proposals today that are attracting conservatives and liberals alike aim to unwind these gains in exchange for granting those who happen to have power in the government a dominant hand in controlling tech firms on the fleeting hope that the power will be deployed for the greater social good. We have experience with this approach to antitrust in the United States. It is what we used to do. And we know better. Shifting power from judges to regulators, and then allowing those regulators to pick winners and losers to achieve political and social goals, is a recipe for abandoning conservative commitment to the rule of law while simultaneously sacrificing economic growth and innovation. The price is too high, with little or nothing to offer those who value individual liberty, the rule of law, and economic growth. While progressive ideology is contiguous with increasing government control over economic and social interactions in technology markets for its own sake, conservative principles are not. The proposed bargain is also remarkably short-sighted. It should go without saying that empowering partisan regulators to enforce a Fairness Doctrine for conservatives is not likely to work out so well when the other side is in control.

Conservatives traditionally have been wary of proposals by liberals and other big government proponents seeking to substitute the judgment of regulators and bureaucrats for those of entrepreneurs and innovators. And rightfully so. Such proposals, even when well intentioned, risk making Americans worse off. Progressives and populists now seek to commandeer antitrust to usher in a new era of central planning in order to achieve social policy objectives that they could not accomplish otherwise. But at what cost? The risks are not trivial. Using antitrust to redesign tech companies and their products will undermine the competitive dynamics that have brought Americans countless modern benefits, including smartphones, fast and easy online shopping, on-demand ride hailing, easy-to-access streaming media, and a bevy of free services including email, maps, and video conferencing. It also will threaten the incredible economic growth and job creation that these companies have brought to America’s shores. And while politicians surely will make promises akin to, “if you like the digital platform you have, you’ll get to keep it,” it is all too clear that when you expand government discretion and limit judicial oversight, those in positions of power will increasingly impose their preferences on the broader society. Ask yourself, do you really want the government designing the iPhone?

The reality is that the U.S. digital economy is highly competitive and serves Americans well. Fueled by investment, innovation, and entrepreneurship, the digital economy has contributed substantially to America’s economic growth. According to the Bureau of Economic Analysis, the digital economy accounted for 6.9 percent of gross domestic product in 2017, growing at an annual rate of 9.9 percent since 1998 as compared to 2.3 percent for the economy overall.[vii] That economic growth has been driven by some of the world’s most successful tech companies, such as Amazon, Apple, Facebook, Intel, Google, and Microsoft, each of which calls the United States home. These firms are investing ever-increasing amounts on research and development to innovate new products and stay competitive. In fact, the United States leads the world in research and development spending, and tech companies lead in the United States—representing the nation’s top five spenders with investments totaling more than $75 billion in 2018.[viii] Tech companies rank second (behind the telecom sector) in U.S. capital expenditures, with Alphabet (Google’s parent company), Amazon, Apple, Facebook, Intel, and Microsoft together spending more than $45 billion in 2017.[ix] And these investment figures are only expected to continue to grow. These are hardly the actions of monopolists resting on their laurels, secure in belief that they are untouchable by competition.

#### 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.

## Competition ADV

### 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.

### Inequality Impact – 1NC

#### Inequality has only a minor effect on growth at worst, especially in the U.S.

Chris Giles 15, Economics Editor for FT, “Inequality is unjust, not bad for growth,” Aug 18 2015, <https://www.ft.com/content/94a7b252-45a1-11e5-b3b2-1672f710807b>

Disparity of income is both a virtue and a vice. The virtue of providing rewards for effort and generating economic growth must be balanced against the vice of inequality’s manifest injustice. Riches derived through good fortune, good parents or being born at a good time are far from easy to defend. The problem for society and governments is to determine an acceptable degree of redistribution, balancing the remaining inequality with the blunted incentives from higher taxes and benefits. Or so we thought.¶ The past two years have witnessed huge growth in the industry of academic research rejecting this trade-off. Lower inequality boosts growth, its advocates claim, so countries really can have more redistribution, a narrower gap between rich and poor, alongside more sustained economic expansion.¶ Leading the charge towards the new consensus are two somewhat surprising institutions — the International Monetary Fund and the Organisation for Economic Cooperation and Development. Are these traditional bastions of orthodoxy infusing their policy prescriptions with the most up-to-date empirical evidence or merely following fashion?¶ There is no doubt that the new ideas are strongly held. Angel Gurría, head of the OECD, is convinced of the new reality. “Addressing high and growing inequality is critical to promote strong and sustained growth,” he says only to be outbid in rhetorical certainty by Christine Lagarde, the fund’s managing director. She reckons the rich should thank the poor. “Contrary to conventional wisdom, the benefits of higher income are trickling up, not down,” she says.¶ For all the excitement among this rarefied global elite, the research results are mundane. Economic performance varies wildly over time and across countries, yet the evidence suggests inequality explains only a tiny fraction of these differences. Whatever effect the gap between rich and poor might have on growth, other forces dominate, so we should not look to redistribution as the new engine of growth.¶ With the results almost entirely based on cross-country correlations, they also have troubling inconsistencies. Ms Lagarde and the IMF research think that a higher income share for the rich harms economic performance while the OECD says only inequality between the poorest and the middle matters. The Paris-based international organisation concludes that a lack of access to skills among the poor is the mechanism by which higher inequality hits growth at the same time as finding no role for skills in its equations on growth.¶ If the global results are weak, they also have close to zero policy prescriptions for rich countries where the results have caused most excitement — the US and the UK in particular. Far from being examples of the worst excesses of capitalism, these Anglo-Saxon nations emerge from the IMF data set as countries with relatively strong growth, low inequality and high redistribution.

#### 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.

### Infrastructure Impact – 1NC

#### Big tech fixing cybersecurity now---only the have the power to do it.

Ingrid Chung 21. Summer editorial intern at National Review. "Big Tech Is Doing the Right Thing on Cybersecurity". National Review. 8-30-2021. https://www.nationalreview.com/corner/big-tech-is-doing-the-right-thing-on-cybersecurity/

President Joe Biden recently met with Big Tech executives to discuss how to improve cybersecurity after recent cyberattacks in which government software contractor Solarwinds and oil pipeline Colonial Pipeline were targeted. Leading tech corporations, including IBM, Google, and Amazon, will all try to improve cybersecurity by investing in the training of personnel in this field and upgrading their respective encryption and security systems. Microsoft has also committed to investing $150 million in upgrades for cybersecurity systems of government agencies. Big Tech may not always do the right thing, but these plans to enhance cybersecurity are certainly something that we can all stand behind.

In recent years, as the Internet has become increasingly influential and indispensable, cybersecurity has, correspondingly, become an increasingly prominent threat to not only citizens’ privacy but also to national security. Former national-security adviser John Bolton explained the significance of cybersecurity to national defense in a recent National Review article, in which he characterized threats from cyberspace as “a multiplicity of hidden, ever-changing threats.” A recent report by the Heritage Foundation raised concern over espionage, trading of secrets, and the disruption of military commands and communication potentially being conducted in the cyber domain.

The effective regulation of cyberspace, a relatively new front for modern warfare characterized by its elusiveness and lack of boundaries, is sometimes challenging. Laxness in cybersecurity, however, has often led to catastrophic consequences. For instance, the WannaCry Ransomware Cyber Attack in 2017, in which files in affected computer systems were locked until ransom was paid for their decryption, affected approximately 200,000 computers in 150 countries and led to enormous financial costs. Victims of the cyber-extortion scheme included entities from government agencies such as the English National Health Service to major international corporates such as Boeing.

It is well established that both the state and leading tech corporations have a legitimate interest in enhancing cybersecurity. The government is responsible for engaging in national defense in the cyber domain and tech corporations are obligated to protect the privacy of their users, whose personal information is often entrusted to them.

Big Tech’s plans to cooperate with the government to improve cybersecurity through financial investments appears to be promising. While it may be difficult to predict the effectiveness of such investments, the fact that Big Tech and the government are placing the enhancement of cybersecurity close to the top of their agenda and are committing to coordinated efforts is good news. Big Tech, with its financial prowess derived from the sheer size of the industry, and a unique relationship with the use of cyberspace, is uniquely positioned to materially contribute to state-led efforts to secure cyberspace. Furthermore, investing in education on cybersecurity of employees may also be useful in raising awareness and amplifying the industry’s collective concern over capacity to combat cyberattacks in the long run.

#### The grid is resilient to cyber-attacks and states have no motive.

Jesse Dunietz and Robert M. Lee 17. \*\*Scientific American's 2017 AAAS Mass Media fellow, and a Ph.D. candidate in computer science at Carnegie Mellon University. \*\*CEO of industrial cybersecurity firm Dragos. “Is the Power Grid Getting More Vulnerable to Cyber Attacks?” Scientific American. <https://www.scientificamerican.com/article/is-the-power-grid-getting-more-vulnerable-to-cyber-attacks/>

Two weeks ago it was cyberattacks on the Irish power grid. Last month it was a digital assault on U.S. energy companies, including a nuclear power plant. Back in December a Russian hack of a Vermont utility was all over the news. From the media buzz, one might conclude that power grid infrastructure is teetering on the brink of a hacker-induced meltdown. The real story is more nuanced, however. Scientific American spoke with grid cybersecurity expert Robert M. Lee, CEO of industrial cybersecurity firm Dragos, Inc., to sort out fact from hype. Dragos, which aims to protect critical infrastructure from cyberattacks, recently raised $10 million from investors to further its mission. Before he founded the company, Lee worked for the U.S. government analyzing and defending against cyberattacks on infrastructure. For a portion of his military career, he also worked on the government’s offensive front. His work has given him a front-row view on both sides of infrastructure cybersecurity. [An edited transcript of the interview follows.] How concerned should we be about grid and infrastructure cybersecurity, and what should we be most worried about? The electric grid and most infrastructure we have is actually fairly well built for reliability and safety. We’ve had a strong safety culture in industrial engineering for decades. That safety and reliability has never been thought of from a cybersecurity perspective, but it has afforded us a very defensible environment. As an example: if a portion of the U.S. power grid goes down. We usually anticipate those things for hurricanes or winter-weather storms. And we’re good at moving away from the computers and doing manual operations, just working the infrastructure to get it back. Usually it’s hours, maybe days; never more than a week or so. A lot of these cyberattacks deal with the computer technology and the interconnected nature of the infrastructure. And so when they target it in that way, you’re talking hours, maybe a day, at most a week of disruption. For reasonable scenarios, we’re not talking about a long time of outages, and we’re not talking about compromising safety. Now, the scary side of it is [twofold]. One, our adversaries are getting much more aggressive. They’re learning a lot about our industrial systems, not just from a computer technology standpoint but from an industrial engineering standpoint, thinking about how to disrupt or maybe even destroy equipment. That’s where you start reaching some particularly alarming scenarios. The second thing is, a lot of that ability to return to manual operation, the rugged nature of our infrastructure—a lot of that’s changing. Because of business reasons, because of lack of people to man the jobs, we’re starting to see more and more computer-based systems. We’re starting to see more common operating platforms. And this facilitates a scale for adversaries that they couldn’t previously get. When you say our adversaries are getting more aggressive, what are you referring to? The key events are things like the Ukraine attack in 2015–2016, [in which a cyberattack brought down portions of the Ukrainian power grid], as well as two different campaigns in 2013–2014, BlackEnergy2 and Havex, [two malware programs that were deployed against energy sector companies]. Basically, far-reaching espionage on industrial facilities one year; the next year getting into industrial environments; and then culmination in attacks in 2015–2016. That’s aggressive in itself. For my own firm, what we’re seeing in the [overall] activity in the space is it’s growing. Over the last decade, I have seen adversary activity increase in some measure, and then around 2013–2014 just start spiking. What are the adversaries actually doing in these attacks? [There are two broad categories of attacks.] Stage I intrusions are those designed to gain information. These are the traditional espionage efforts we’ve become accustomed to hearing about, where information is stolen or deleted. A Stage II attack could result in temporary loss of power, physical damage to equipment, or other types of scenarios we often hear about. It is important to note these are not trivial to accomplish. If an attacker wants to progress to a Stage II attack, during the Stage I intrusion they have to steal information specific to [that] industrial environment. The 2013–2014 campaigns that I mentioned were exactly the kinds of Stage I activity that you’d want to use to pivot into a Stage II activity. And so they scared the heck out of all of us. But the stuff we’ve heard about recently—the nuclear site and about a dozen energy companies that were compromised in a phishing campaign that made the news—none of that sounded tailored toward pivoting into a Stage II. Once an adversary has broken into the “business networks” used for email, documents and so on, how far a jump is it for them to access the industrial control system (ICS) networks used to control and monitor the industrial equipment? In nuclear environments, [business networks and control networks are] airgapped—[i.e., computers on one network cannot talk to those on the other]—because of safety regulations. The idea that because you got into the business network you can easily move into the ICS network is ridiculous. That is not true with other industrial infrastructures—electric energy, oil and gas, manufacturing, etc. You absolutely have [ICS] networks that are connected up. The nuance here is that we have a joke in the community: you’ll get security folks who don’t know much about ICS coming in with penetration testers and saying, “Oh my gosh, I found so many vulnerabilities!” And so the joke is, why don’t I just sit you down at the terminal? I will give you 100 percent access. Now make the lights blink. There’s a big gap there. [So the challenge is] not so much getting access. It’s once you get access, do you know what to do in a way that’s not just going to be embarrassing? What motivation do these adversaries have to attack the U.S. grid? I do not feel that there is a legitimate reason for adversaries to disrupt or destroy industrial infrastructure outside of a conflict scenario. Ukraine and Russia is a great example. I don’t necessarily mean declared war, but in places where we see conflict, I think we’ll see industrial attacks: North Korea-South Korea, China-Taiwan. But there are some scenarios that concern me, where we might have our hands forced and not have clarity around what happened. I’m aware of at least one case where a skilled adversary broke into an industrial environment, and in the course of intelligence operations they accidentally knocked over some sensitive system that led to visible destruction and almost to multiple casualties. And the worst part is, we didn’t actually realize it was a failed operation until about a month after, because the forensics and analysis take time. So you could have a scenario where the U.S., Russia, China, Iran—big players—are doing intelligence operations on each other, are doing pre-positioning to have deterrence or political leverage, and mess up that operation in a way that looks like an attack that we do not have transparency on for some time. We do not have international norms around how to handle that. Outside of conflict scenarios, though, I don’t see the advantage to [deliberate] disruptive or destructive attacks. I think we haven’t seen it not because they haven’t wanted to, but because the return on investment is minimal. What’s really advantageous is sitting U.S. congressmen and policymakers fearing what can happen with industrial infrastructure. That fear drives policy far more than actually turning the lights off and having them realize [they will] come back on in six hours.

## Europe ADV

### Convergence – 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.”

### Internet Freedom Impact – 1NC

#### Net neutrality obviously thumps the internet freedom impact – prevents democratic, open use of the internet.

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

## CP – Regulation PIC

#### It does not expand the scope of core antitrust laws – AFFs must touch Sherman Clayton and FTC

Gibbs ‘ND [Gibbs Law Group; “The Sherman Antitrust Act”; https://www.classlawgroup.com/antitrust/federal-laws/sherman-act/; AS]

The Sherman Antitrust Act is one of three core federal antitrust laws, along with the Clayton Antitrust Act and the Federal Trade Commission Act.

#### Antitrust laws are enforced by the DOJ and FTC.

DOJ and FTC 16. Antitrust Guidance for Human Resource Professionals Department of Justice Antitrust Division Federal Trade Commission. https://www.justice.gov/atr/file/903511/download

This document is intended to alert human resource (HR) professionals and others involved in hiring and compensation decisions to potential violations of the antitrust laws. The Department of Justice Antitrust Division (DOJ or Division) and Federal Trade Commission (FTC) (collectively, the federal antitrust agencies) jointly enforce the U.S. antitrust laws, which apply to competition among firms to hire employees. An agreement among competing employers to limit or fix the terms of employment for potential hires may violate the antitrust laws if the agreement constrains individual firm decisionmaking with regard to wages, salaries, or benefits; terms of employment; or even job opportunities. HR professionals often are in the best position to ensure that their companies’ hiring practices comply with the antitrust laws. In particular, HR professionals can implement safeguards to prevent inappropriate discussions or agreements with other firms seeking to hire the same employees.

#### They are alternatives not subsets.

Stephen G. Breyer 87. SCOTUS Justice since 1994. California Law Review Volume 75. Issue 3. Article 15. “Antitrust, Deregulation, and the Newly Liberated Marketplace”.

On this view, antitrust is not another form of regulation. Antitrustis an alternative to regulation and, where feasible, a better alternative.3To be more specific, the classicist first looks to the marketplace to protectthe consumer; he relies upon the antitrust laws to sustain market compe-tition. He turns to regulation only where free markets policed by anti-trust laws will not work-where he finds significant market "defects"that antitrust laws cannot cure. Only then is it worth gearing up thecumbersome, highly imperfect bureaucratic apparatus of classical regula-tion. Regulation is viewed as a substitute for competition, to be usedonly as a weapon of last resort-as a heroic cure reserved for a seriousdisease.

#### It is a jurisdictional question---antitrust authorities don’t intervene in regulatory concerns.

Babette E. Boliek 11. Associate Professor of Law at Pepperdine University School of Law. J.D., Columbia University School of Law; Ph.D., Economics University of California, Davis. FCC Regulation Versus Antitrust: How Net Neutrality is Defining the Boundaries, 52 B.C.L. Rev. 1627 (2011). <http://lawdigitalcommons.bc.edu/bclr/vol52/iss5/2>

As argued in this Article, the recent Comcast decision should not be dismissed as an inconvenient hurdle to be sidestepped by reclassification; rather it marks a pivotal invitation to Congress to redefine the boundaries between the FCC and antitrust authorities. In the long wake of assorted jurisdictional tugs of war between the two regimes, and amidst a legacy of accusations of regulatory capture and administrative overreach,29 the net neutrality debate accentuates historic preferences for antitrust versus regulation, a subject which should be revisited and squarely addressed. Before that can be done, however, the rules of the road—the issue of jurisdiction—must be clearly decided.

The analysis of the relevant jurisdiction is broken into two rival camps: (1) regulatory jurisdiction and (2) antitrust jurisdiction. The first camp, regulatory jurisdiction, the more complex of the two, is further divided into two subparts of particular concern (a) legacy-based regulation and (b) “satellite jurisdiction.” The first subpart of regulatory jurisdiction, legacy-based regulation, refers to the FCC’s congressionally designated core industry. The concern with legacy-based regulation is that the FCC will engage in procedural opportunism: that is, the agency may exploit the service classification process to extend its own regulatory authority.

### 2NC – ADV 1

#### 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 – Europe

#### Regulation solves data privacy and EU harmonization

Beaupre ’20 [Jacob; Associate @ Nicolaides Fink Thorpe Michaelides Sullivan LLP, JD @ DePaul University College of Law; “Big Is Not Always Bad: The Misuse of Antitrust Law to Break up Big Tech Companies,” *DePaul Business & Commercial Law Journal* 18(1), p. 25-48; AS]

iii. Regulation, not Antitrust

Regulating the tech giants would be more in line with the goals outlined by those who are concerned about the influence of Big Tech. Opponents of Big Tech cite fears of data privacy, the spread of misinformation, and data misuse. Much of Big Tech's opposition comes from fears about data concerns. Roughly half of Americans do not trust the government or social media sites to protect their data.1 35 Because of these increasing concerns, companies like Apple already expect to be regulated by the government. 13 6 However, the FTC does not have much enforcement power in the protection of online privacy. Internet companies have disputed the FTC's authority to regulate data privacy practices. 137 To solve this problem the FTC has requested Congress create internet privacy and security laws. 138 Regulating Big Tech would be a more narrowly-tailored way to deal with the power and size of tech companies.

As of now, there is only a "patchwork" of existing regulations that apply to issues like data use and privacy. 139 To give consumers the information and transparency they want, the U.S. Congress should draft legislation outlining what can and cannot be done with consumers' data. Legislation should clearly outline consent, access, portability of information, and erasure of personal information. Additionally, policymakers should look to the European Union's General Data Protection Regulations ("GDPR") or the California Consumer Privacy Act. The GDPR protects all personal online data, regardless of who collects it or how it is processed. 140 Under the GDPR, companies are required to notify users of a data breach within 72 hours of discovering a data breach and companies must request user consent in a clear and accessible way. 141 Additionally, the GDPR allows users to stop third party access or to delete their data. 142 The GDPR imposes a fine of up to 4 percent of annual global revenue for noncompliance. 143 Regulations, like the GDPR, could serve as a template to give consumers greater control over their data.

The GDPR is not the only law regulating the tech industry and reforming data privacy. The California Consumer Privacy Act, which will take effect on January 1, 2020, will likely transform data privacy law. 14 4 Once enacted, California will have the strictest data privacy laws in the nation.145 The Act will apply to companies serving California residents, which is impactful due to California's economic presence and large population. Due to California's economic impact and large population, almost all companies will ultimately serve California residents. 14 6 The law not only compels companies to disclose data col lection in their privacy policies, but also to company users on request. The Act also allows users to delete their data and to "opt out" of having their data sold.147 Additionally, it is illegal for companies to discriminate against consumers for exercising their privacy rights under the Act.148 The Act is primarily geared toward consumers as it governs consumer privacy rights and disclosures made to consumers. 149 These protections only apply to California residents, but few companies are "likely to devote the resources necessary to provide the Act's opt-out options to a user visiting a Web site from an IP address in California, while providing a Web site without those features to residents of the other 49 states." 150As written, the law has expansive consumer protections, which could soon become the model that other states and the federal government follow.

#### Modeling applies to them because of regulatory overlap abroad but international coordination and regulatory signaling is sufficient to resolve signaling warrants.

Kovacic 15 – FTC's General Counsel from June 2001 to December 2004 (William, "The Federal Trade Commission as Convenor: Developing Regulatory Policy Norms without Litigation or Rulemaking." Colorado Technology Law Journal, vol. 13, no. 1, 2015, p. 17-30. HeinOnline)//gcd

The sketch of regulatory multiplicity above covers the United States alone. The expansion of cross-border commerce, the emergence of new regulatory authorities abroad, and widely accepted notions of extraterritoriality mean that many forms of conduct are subject to control by more than one jurisdiction. Roughly 125 jurisdictions now have competition laws,27 and a growing number of authorities play a significant role in reviewing the behavior of firms engaged in crossborder trade. Privacy protection likewise is an important priority for many jurisdictions outside the United States. For example, privacy and data protection in the European Union (EU) features a complex interaction of community-wide law and restrictions imposed by individual member states.2 8 The application of EU and member state law has a major impact on the behavior of multinational firms doing business in Europe. In antitrust, privacy, and other policy domains, individual jurisdictions have the capacity to set global standards through the unilateral enforcement of their own rules. The magnitude of these crossborder regulatory spillovers gives the United States a large stake in what happens abroad, as decisions taken in other nations can have decisive effects on domestic U.S. commerce. International regulatory interdependencies mean that national regulatory bodies are devoting increasing effort to various initiatives-bilateral, regional, and global29 - to coordinate enforcement work and to promote progress toward acceptance of superior procedural and substantive norms.

### 2NC – AT Regulations Fail

#### Regulations strike the right balance – competition policy is more prone to regulatory capture, link to every solvency deficit and cause anti-competitive innovation. Case specific regulation under common rule is desirable

Budzinski and Mendelsohn 21 – Oliver Budzinski is professor of competition and sports economics at the University of Southern Denmark. Dr. Juliane Mendelsohn has been appointed Junior Professor and Head of the newly established Group for Law and Economics of Digitization at USD (Regulating Big Tech: From Competition Policy to Sector Regulation?, Ilmenau Economics Discussion Papers, Vol. 27, No. 154 October 2021 https://www.tu-ilmenau.de/fileadmin/Bereiche/WM/wth/Diskussionspapier\_Nr\_154.pdf)//gcd

3 Ex Ante versus Ex Post – What Is the Adequate Institutional Framework for Digital Markets? A definitive part of the DMA-initiative is to shift the governance of large digital ecosystems’ market behavior away from an ex post control to an ex ante regulation (Botta 2021; Petit 2021). This is based upon the ostensible experience that competition policy, more precisely abuse control, as an ex post tool is too slow and not effective enough to secure the goals of contestable markets and fair (effective) competition (Marsden & Podszun 2020; Altmeier et al. 2021; Cabral et al. 2021; Monti 2021). This section critically reviews this assumption and also looks at the benefits of an ex ante regulation in contrast to ex ante and ex post competition remedies. First, this seemingly dichotomous choice, cannot be compounded with the classical “ex post competition policy” versus “ex ante regulation” debate. Competition policy includes ex post as well as ex ante tools. With respect to market power, merger control represents an ex ante tool which is designed to prevent the manifestation of market power through the external growth of companies (i.e. through mergers and acquisitions). Other ways of attaining market power are scrutinized ex ante since this would either harm social welfare (like market power through pathbreaking innovations) and/or it would be difficult to exercise (like market power emerging through internal company growth). Cartel policy too may include ex ante as well as ex post elements, but the control of market behavior that abuses market power is usually designed as an ex post tool. A standard difference between ex ante and ex post intervention into anticompetitive practices and arrangements, however, is about the negative effects themselves and to what extent they can be predicted and avoided. Ex ante regulation can prevent competitive harm before it happens; whereas ex post intervention reacts to harm that is already taking place and shows negative effects. An ex post policy can only hope to remedy the harm (via damage compensation), however, this only works if the damage to competition is reversible, otherwise even damage compensation will fail to restore the original situation. This major advantage of ex ante regulation corresponds with an inherent weakness: ex ante regulation requires detailed and near-certain knowledge about which conduct and arrangements will cause harm to competition in future. But since regulation often meet and must enhance dynamic competition processes (as knowledge-generating processes; Hayek 1968), ex ante regulation entails a certain “pretense of knowledge” (Hayek 1975), i.e., the regulators are “pretending” to know the effects of certain conduct and arrangements, whereas only competition as a discovery procedure can generate this knowledge. Now, obviously, it is possible to assess the harm of conduct and arrangements in competition ex ante by empirically supported economic theory – the cartel prohibition as well as merger control are based on such assessments – (although maybe not perfectly), but an ex ante regulation does take away the option for judgment based on casespecific empirical evidence and the benefit of analysing actual market information/data through observing the behavior in question (Cabral et al. 2021). This, in turn, is an advantage of an ex post regime. When addressing the digital economy, the issues of dynamics and change are particularly relevant. The DMA regulation addresses markets characterized by high dynamics and innovation. In such markets, it is particularly difficult to define harmful conduct in advance and to foresee the welfare benefits of novel changes and modes of conduct. Our discussion of the economic adequacy of the proposed rules of the DMA (see section 3.1) shows that regarding some of the proposed rules there is already (albeit often brand new) economic knowledge about anticompetitive harm, but that in regard to other proposed rules the picture is unclear. Altogether, highly dynamic and innovative markets are the most difficult and challenging object for setting ex ante regulation and often more fitting for an ex post regime, which is generally less disturbing of creative market forces (Franck & Peitz 2021b). This is further supported by the effects that the proposed rules in the DMA will have on the overall conduct of the regulated companies and the extent to which these can be anticipated. From a law-and-economics perspective, prohibiting a certain conduct or arrangement means to devalue the choice of this strategy for the company in question – if sanctions and enforcement probability are high enough, the company will abandon its previously employed and now regulated conduct. However, this creates the incentive to replace the devalued option with a strategy that achieves similar goals through different ways. In other words, the regulated companies experience incentives to innovate on anticompetitive behavior and create new ways of (ab-)using their market power and reaching their respective anticompetitive goals. Ex ante regulation cannot anticipate these new conduct and arrangements (Caffarra & Scott Morton 2021) since they are not known before the regulation kicks in (Hayek 1945) and thus fails to regulate them. Furthermore, the DMA’s definition of types of services (“core platform services”) breathes the spirit of today’s world of digital services – but tomorrow’s world may look very different. This means that (i) core services of tomorrow may be overlooked and (ii) outdated services may be regulated beyond the necessary time. Ex post intervention, on the other hand, can observe the effects of new ways of anticompetitive behavior or from new types of services as they display on the market and subsequently address them. Again, if the scope for innovations on anticompetitive conduct and arrangements is low in an industry, such incentives and effects can be negligible, but this is not the case in the digital economy, where we would suggest that the scope for finding and creating new ways of abusive behavior is rather high. Another common justification for ex ante regulation arises if markets are said to be characterised by inherent market failure. In platform markets this may take the shape of the formation or non-competitive bottlenecks (Gerardin 2021) or of markets characterized by extreme returns to scale (Colomo 2021). Economic research, however, does not necessarily support an inevitable market failure here: First, competition among platforms is possible and generally superior (inter alia, Evans & Schmalensee 2007; Haucap & Stühmeier 2016; Budzinski & Kuchinke 2020). Second, not all digital markets display the characteristics of platform economics – and in many cases the platform character is a choice of business model rather than a natural element of the market in question (Budzinski 2016, 2021a). Notwithstanding, the digital economy may require different rules than other parts of the economy (inter alia, Schweitzer et al. 2018; Marsden & Podszun 2020; Budzinski, Gaenssle & Stöhr 2020a) – and particularly an enhanced and advanced notion (and standard) of market power. Yet, it is not clear whether more adequate rules require ex ante regulation or may also (or better) be achieved by reforming the ex post regime of abuse control. If the dominant reason for the DMA, however, was to target exclusively a predefined set of companies (GAFAM) and limit the scope of their entrepreneurial activity, this would favor ex ante regulation (Caffarra & Scott Morton 2021). While much of the debate on the appropriate rules and remedies for the digital economy cannot be characterized solely as a tension between ex ante or ex post measures, a significant portion of it will be a question of the correct design of either an ex ante or an ex post remedy. One prominent reason that is often listed in favor of an ex ante regulation and has clearly been a key motivation for the DMA (see Rec. 5: “while enforcement occurs ex post and requires an extensive investigation of often very complex facts on a case by case basis“), but is actually a matter of design rather than of ex ante versus ex post, is the idea that ex ante instruments will be both a quicker form of intervention and face lower enforcement hurdles (inter alia, Colomo 2021; Monti 2021; Furman et. al. 2019; Congressional Majority Staff Report 2020; Podszun et al. 2021). However, first, it is not so clear that DMA-procedures will be quicker and more efficient (see section 3.2). And, second, a reform of the abuse control rules in competition policy – enhancing the concept of market power, lowering the barriers for intervention, re-allocating the burden of proof and the re-adjusting the standards for evidence, enhancing and complementing the list of per se abusive behavior in the case of market power, etc., – may serve and achieve the same needs and goals. Thus, with respect to this major motivation, the issue is rather the adequate design of institutions and not a switch from ex post to ex ante. At the end of the day, key challenges with the enforcement of abuse control measure – including exploitative rather than exclusionary abuse cases (Geradin 2021) – are a consequence of political shifts and concepts that may have been (in hindsight) overly critical and reluctant of enforcing special obligations for powerful companies (Bougette et al. 2019). Similarly, the quest for unambiguous rules offering clear guidance and avoiding legal uncertainty (Colomo 2021; Monti 2021; Vezzoso 2021), problems of under- or over-inclusiveness of norm addressees (Geradin 2021; Monopolkommission 2021), the reliance on business models rather than market factors (Basedow 2021; Rodríguez 2021; see also section 3.1) or the inclusion of procompetitive effects and efficiency defenses (Schweitzer 2021) all represent important aspects that also are rather a matter of design and not so much a matter of ex ante versus ex post. To some degree, this may also be true with respect to concerns about inconsistencies of an ex ante regulation with existing legal institutions (Graef 2021; Basedow 2021; Vezzoso 2021) as well as with national competition policies (Budzinski, Gaenssle & Stöhr 2020b; Basedow 2021), although there may be more issues here that cannot be easily reconciled with an ex ante regulation – and thus favor a reformed ex post solution. Eventually, the likelihood of regulatory capture increases with ex ante regulation as does the danger of overflowing administration and its selfreinforcing dynamics (see also section 3.2.3). In summary, ex ante regulation is recommendable when (i) harm is likely to be irreversible, (ii) the economic theory of what causes harm in which way is well-developed, (iii) the employed company strategies are not subject to dynamic innovation, and (iv) the risk of collusive equilibria between ex ante regulators and norm addressees is low. In the case of the digital economy, or more precisely, large digital online services, (i) is likely to be given regarding some of the regulated conduct, (ii) is only partly given at best, (iii) is clearly and significantly failed, and (iv) not matched as well. This leads us to the following assessment: While we see urgent need to reform the competition rules against an abuse of market power (re-invigorating enforcement, broadening the scope to include systemic market power, adding examples of conduct that is a per se abuse of power, etc.), we are highly skeptical of the merits of an ex ante regulation as proposed with the DMA.

### 2NC – AT Capture

#### Info gathering solves and the impact is overstated

Baker 13 – Professor of Law, American University Washington College of Law. (Jonathan, Antitrust Enforcement And Sectoral Regulation: !e Competition Policy Bene"ts Of Concurrent Enforcement In !e Communications Sector, CPI Vol. 9 | Number 1 | Spring 2013 https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=2127&context=facsch\_lawrev)//gcd

II. CAPTURE the greater role of politics at the FCC does not necessarily mean that the agency’s performance is better or worse than that of the FTC. It may be sensible use of governmental resources, for example, for Congress in elect to delegate to an agency the identification and ratification of interest group bargains8 ; under such circumstances, the agency itself would be performing as intended, and any concerns about agency outcomes would properly be attributable to the legislature, not the agency.9 As with legislation itself, though, there is no guarantee that outcomes based on interest group bargains will serve the public good – most obviously if some a"ected groups are systematically underrepresented in political processes, but even if all groups are at the table.10 Still, single sector agencies like the FCC are often considered more prone to “capture” by regulated industries than generalist agencies with a broad cross-industry purview like the competition agencies. Agencies are described as “captured” when they appear to favor the interests of the regulated industries over public interest concerns like promoting competition.11 this charge has at times been leveled at the FCC.12 By contrast, when the FTC is criticized, it is generally not for capture but for other occasional failings, like lethargy,13 taking “cheap consents”14 or its general approach to antitrust.15 Agency capture is largely not about direct political in%uence.16 If an agency makes a bad decision because it has little insulation when the a"ected industry complains to Congress, the problem is the capture of the legislature, not the capture of the agency. Capture is also not mainly the product of the “revolving door” (the movement of personnel between regulatory agencies and regulated $rms, in both directions). In my experience, industry jobs go to agency veterans largely because they are seen as e"ective and have developed expertise, not because of the positions they took as agency o&cials.17 Moreover, the revolving door helps bring good people into agencies, both at the start of their careers, when they may value the option of leaving later, and later in their careers, when they can use skills and experience developed outside on behalf of the public interest. My sense is that capture is a threat at the FCC mainly when the regulated industry can manage the agency’s information.18 When an industry speaks with one voice, and has privileged access to the relevant information, it can shape how the agency sees an issue. the FCC’s engineering and economic expertise in critically reviewing the information submitted by industry only goes so far without data. Moreover, the competition agencies typically obtain more information using compulsory processes than the FCC obtains through voluntary submissions and routine data collection from regulated firms, particularly in a political environment in which the latter activity may be questioned as imposing unnecessary burdens on industry. Many FCC decisions are not subject to biases resulting from information asymmetry. In 2011, when the FCC reviewed AT&T’s proposed acquisition of T-Mobile, it was in a strong position to avoid regulatory capture notwithstanding AT&T’s extensive lobbying e"ort:19 the concurrent DOJ review gave it access to the type of information that the antitrust agencies obtain through use of compulsory process, and the industry did not speak with one voice (as one major wireless provider expressed concerns about the acquisition). To the extent capture is nevertheless a concern with the FCC today, it could be addressed in part by expanding the range of information the FCC requires regulated firms to submit on a routine basis. III. TAKING A LONG TERM PERSPECTIVE In the U.S. system, sectoral regulators have an advantage over the competition agencies in protecting potential competition, particularly when dealing with fast-moving markets. It is difficult for the competition agencies to take a long term focus in their enforcement actions because the generalist district court judges they must convince rarely have prior industry expertise and may in consequence tend to view predictions about industry evolution as speculative. By contrast, the FCC is the fact-finder in its decisions and can bring more expertise and sustained attention to understanding industry evolution. As a practical consequence, the FCC can take a longer view than the competition agencies. It has used that power to stop or impose conditions of some mergers that the Justice Department could not easily challenge because the firms involved were potential rivals rather than current competitors. $e FCC stopped the 1997 merger talks between AT&T, then a long distance company, and SBC, a large local telephone service provider and regional Bell operating company.20$e FCC also imposed competition-related conditions on the 1997 merger between Bell Atlantic and NYNEX, two local telephone service providers in adjoining territories, when the Justice Department declined to sue.21 $e Justice Department’s position on that matter was likely colored by the di#culty it would have faced in proving a potential competition case to a federal judge.22 Similarly, it likely would have been more di#cult for the Justice Department to address potential competition issues involving online video distribution raised by the recent Comcast/NBCU transaction had the FCC not also been involved.23 Moreover, the FCC was better situated than an antitrust agency to address the long-term potential competition issues that were the subject of the FCC’s Open Internet (net neutrality) rules.24 $e FCC rejected the alternative of relying solely on ex-post competition review, the approach that competition agencies would have taken,25 on the view that review after problems arise would be ineffective and too late

### 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.

#### Data sharing mandate solves and links substantially less

Mayer-Schonberger and Ramge 18 – VIKTOR MAYER-SCHONBERGER is Professor of Internet Governance and Regulation at the University of Oxford. THOMAS RAMGE is Technology Correspondent for brand eins and writes for The Economist. ("A Big Choice for Big Tech: Share Data or Suffer the Consequences." Foreign Affairs, vol. 97, no. 5, September/October 2018, p. 48-54. HeinOnline.)//gcd

Their success has brought tremendous benefits to users-and grave dangers to societies and economies. Each company hoards the information it collects and uses centralized systems to run its huge businesses. That hoarding has hampered innovation and allowed the companies to abuse user data, and their centralized systems leave online markets vulnerable to unexpected shocks, posing risks to the wider economy. The most common answer to the problem of overly powerful firms is to break them up, as U.S. regulators once did to Standard Oil and AT&T. Yet that would destroy much of the value that these digital giants have created and probably do little to improve competition in the long run, since without structural reforms, killing today's digital superstars would simply generate opportunities for new ones to emerge. There is a better solution: a progressive data-sharing mandate. This would leave these companies intact but require them to share anonymized slices of the data they collect with other companies. Such a mandate would decentralize digital markets and spur innovation as companies competed to extract the best insights from the same data. Much is at stake; if governments fail to act, they will leave key parts of Western economies and democracies vulnerable to sudden failures.

## ADV 1

### Inequality Turn – 2NC

#### Increased competition actually concentrates wealth – specifically it decreases wages [don’t read this if you’re reading wage link to econ DA]

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

There is something odd in the monopoly regressivity claim that lax antitrust enforcement contributes to wealth inequality. The critique implicitly assumes that more market competition— the virtue that antitrust law is supposed to produce— means more equality.157 But that assumption cannot be squared with a plethora of redistributive social welfare programs, which are predicated on the assumption that when income is based solely on the value of the participants’ marginal contributions to impersonal markets, gross income inequality results. For example, if competition achieved a desirable income distribution, then minimum wage laws would be unnecessary. Those laws are necessary because the interaction between downstream product market competition and upstream competition for labor inputs results in wages that are deemed socially unacceptable.158 Organizing unions had to be exempted from the antitrust laws because requiring competition for employment among the laboring classes would result in lower income and poorer working conditions.159 The entire social welfare state is predicated on redirecting the paths of markets from the outcomes otherwise determined by competitive exchange.

The arc of competition does not inherently bend toward equality. To the contrary, competition tends to concentrate wealth in the hands of those with the resources valued most by the market. To the extent that resources are unevenly distributed— think of intelligence, skill, family upbringing, and educational opportunity—competition often exacerbates inequality as compared to systems that allocate wealth based on some principle of equal desert. As previously noted, for example, increased product market competition tends to lead to wage increases for skilled workers and wage reductions for unskilled workers.160 Similarly, unregulated markets for executive talent lead to high wages for corporate managers based on competitive benchmarking.161 Further, increases in product market competition might lead to an increase in CEO compensation since managerial talent might be most valuable to corporations when product market competition intensifies.162 In sum, competition tends to distribute wealth unevenly and regulatory intervention is often required to alter these inequality effects.

### AT: Inequality Causes Diversionary War

#### Inequality doesn’t cause diversionary war

Gal Ariely 15, senior lecturer in the Department of Politics & Government, Ben-Gurion University of the Negev, PhD from the University of Haifa’s School of Political Sciences, “Does National Identification Always Lead to Chauvinism? A Cross-national Analysis of Contextual Explanations,” Globalizations, 2015, https://s3.amazonaws.com/academia.edu.documents/43980028/Ariely\_Globalizations\_2015.pdf?AWSAccessKeyId=AKIAIWOWYYGZ2Y53UL3A&Expires=1515397197&Signature=78lnbbHNRVjhLgOKyRPKm%2BK8M1o%3D&response-content-disposition=inline%3B%20filename%3DDoes\_National\_Identification\_Always\_Lead.pdf

With respect to internal explanations, the effects of income inequality and ethnic diversity are presented in Table 3. Models 3.1 and 3.2 indicate that neither directly affects chauvinism. H4 is therefore not supported. The results suggest, however, that both have a negative effect on the national-identification slopes. Contrary to our expectations, countries with higher levels of economic and ethnic division appear to exhibit a weaker relation between national identification and chauvinism. While these findings might seem to contradict H5, the pattern was caused by outliers. After excluding South Africa—the most unequal and ethnic diverse country in our sample—the effect of ethnic diversity is not even of borderline significance. After excluding Chile—the most unequal country in our sample—the interaction effects for economic inequality were also far from significant. The results, therefore, do not support H5.21¶ Conclusions¶ During the historic phone call between President Obama and Iranian President Sheikh Hasan Rouhani in September 2013, the latter stated that his country’s nuclear program ‘represents Iran’s national dignity’.22 This declaration reflects the common perception that Iran’s nuclear program mobilizes Iranians in support of resisting further national humiliation at the hands of foreigners (Moshirzadeh, 2007). This reflects the important role national feelings play in the contemporary international arena. Evidence from other examples—such as the Israeli-Palestine conflict—indicates that national identity serves as a key factor in conflict resolution. The prominence of national feelings is not limited to the Middle East, their effect on public attitudes towards international issues, and conflicts also being manifest in the West (Billig, 1995; Kinder & Kam, 2010).¶ It is thus hardly surprising that scholars seeking to develop a better understanding of conflicts adopt a social-psychology perspective, replacing the deterministic view that identification with one’s in-group necessarily leads to antagonism towards out-groups with an examination of the broader social context. In line with this approach, the present paper focuses on the way in which political and social contexts encourage chauvinistic views towards the international arena and how they affect the relation between national identification and chauvinism.¶ Integrating various social and psychological theories, we investigated two external contextual explanations (globalization and conflict) and an internal explanation (social division). Employing cross-national survey data, we examined the relation between national identification and chauvinism across 33 countries. The findings indicate that a positive relationship exists between national identification and chauvinism across most of the countries, although the level differs from country to country. Using a multilevel regression analysis, we tested to see whether globalization, conflict, and social division correlate with this variation. The results indicate that social and political contexts are related to chauvinism and the ways national identifi- cation and chauvinism are linked. Although a closer relation exists between national identification and chauvinism in more globalized countries, globalization failed to explain the variation in chauvinism itself. These findings support the notion that globalization highlights the importance of national identity (Calhoun, 2007; Castells, 2011). While those sections of globalized societies that are attached to their country also tend to resist international cooperation and endorse hostile views, the complexity of the phenomenon—as evinced by the divergent findings of previous studies (e.g. Jung, 2008; Norris & Inglehart, 2009)—calls for further research of this interpretation. The fact that the current study is cross-sectional must also be taken into account, the findings adducing the relation but not the causal relations between the variables. In contrast to experimental studies, the present design is similarly limited in its ability to offer a robust control for alternative explanations.¶ Another external factor found to be relevant—to a certain degree—was conflict. Countries that suffered large numbers of deaths in conflicts and mobilized resources and personnel exhibited higher levels of chauvinism. When other indices for conflict were used, however, these results were not replicated. A possible explanation for this finding lies in the inherent limitation in the way in which conflicts are measured across various countries. Measuring international conflicts is a challenging task (Anderton & Carter, 2011). While the ways of measuring conflict were chosen because they reflect different dimensions of conflict in order to be representative of a wide range of countries, the problem of comparability cannot be ignored. An alternative explanation may derive from the fact that only deaths from conflict and resources/personnel mobilization are sufficiently significant to contribute to chauvinism. The limitations of our measurements of conflict and research design mean that this idea must remain speculative, however. In addition, it is important to emphasize that the sample of countries is also limited as many countries are not involved in conflict and there is also limited variation in the types of conflicts.¶ Contrary to what the divisionary theory of national mobilization would lead us to expect, neither economic inequality nor ethnic diversity were related to chauvinism or affected the relation between national identification and chauvinism. This finding might also be explained by the limitation of the current research design. The number of countries included in the ISSP 2003 National Identity Module being relatively small and the sample only covering countries with available survey data, the results relate solely to this specific sample of countries. Across another set of countries, social division might play a far more significant role. Another explanation might be the meaning given to national identification and chauvinism across the countries. While evidence exists for the comparability of the scales across most of the countries, the divergent meaning probably attributed to them in Germany, the United States, and Israel might form an additional limitation.

## ADV 2

### XT 1NC 1: Convergence Now

#### 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

# 1NR

## da econ

### AT: china – 1nr

#### Sitaraman lacks warrants AND the line they have highlighted is contextualized to military contractors. ALSO they are wrong.

**Jamison, 20** -- a visiting scholar at the American Enterprise Institute, where he works on how technology affects the economy, and on telecommunications and Federal Communications Commission issues. He is concurrently the director and Gunter Professor of the Public Utility Research Center at the University of Florida’s Warrington College of Business

[Mark Jamison, “Breaking up Big Tech will not help the US innovate or compete with China,” American Enterprise Institute, 8-19-2020, <https://www.aei.org/technology-and-innovation/breaking-up-big-tech-will-not-help-the-us-innovate-or-compete-with-china/>, accessed 6-11-2021]

It is an open question how regulation might affect whatever competition there might be between the US and China, but Sitaraman and Wheeler are wrong. Sitaraman seems unaware of the five decades of academic research showing that market structure — the number and relative sizes of firms in a market or industry — does not determine the amount of innovation. Wheeler also seems unaware of how markets for ideas work. Here are my explanations. **Regulation and market structure** Both Sitaraman and Wheeler assume that government regulation can define an industry’s market structure, but they are wrong for two reasons. First, more regulation results in industries having larger firms, not smaller ones, and it also lowers labor productivity. This has been confirmed in several economic studies (see examples [here](https://www.jstor.org/stable/pdf/2555465.pdf), [here](https://www.aeaweb.org/articles?id=10.1257/aer.20130232), and [here](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3169332)). Regulations raise the cost of a firm being in business, which means firms need to be larger to cover those fixed costs. The other reason is that the economics of social media, search, and e-commerce, etc. have determined today’s market structures. Breaking up the companies wouldn’t repeal these economic realities, so the current market structure would reemerge, except with possibly even larger firms. **Market structure and innovation** Sitaraman assumes that less concentrated markets are more innovative. Decades of scholarly research have shown that this isn’t the case. In the mid-20th century, some economists believed that monopoly markets would produce more innovations than competitive markets. The argument was that a monopoly could capture more profits from innovation than a firm in a competitive market could, so monopoly markets gave more innovation. But in the 1960s, economists began testing the hypothesis. Studies examined whether an individual firm’s size or the relative sizes of firms in an industry affected research and development or innovation. The Organisation for Economic Co-operation and Development recently released a [paper](https://www.oecd-ilibrary.org/docserver/603802238336.pdf?expires=1597079338&id=id&accname=guest&checksum=A95F6C6A23FC75793D054B737FDFB9D4) summarizing the research. The summary finds that the relationships vary over time and across industries, so the best conclusion is that firm size and market structure cannot be used to affect innovation. **Ideas and data** Wheeler believes that innovation comes from companies analyzing data and selling products. Actually, in the tech space, more and more innovations are coming from decentralized, small-scale innovators. This pattern was discovered in [academic research](https://www.jstor.org/stable/117505?seq=1#metadata_info_tab_contents) about 20 years ago and [still holds](https://academic.oup.com/icc/article/29/2/241/5652235). What is happening is that innovators develop ideas for products and demonstrate their potential value. In a few instances, such as in the case of Facebook, the innovator forms a business and succeeds. But more often than not, the innovators sell their company or at least their product to an enterprise that has a proven business model. This was probably the situation with Instagram, which had a great idea and a weak business model at best before selling to Facebook, which then turned the idea into a profitable business. Wheeler also appears to believe that if a company is unable to uniquely profit from the data it captures, the company will capture extensive data anyway. I have heard many times the argument that profits don’t matter, such as in the net neutrality debates. But the arguments are always made by people who care very much about the profitability of their retirement savings. So I think they know they are wrong. **Market structure and geopolitical competitiveness** Sitaraman also believes that smaller firms would be less likely to want to enter the Chinese market and would thus avoid being compromised by China’s influence. This might be true, but if it is, then it is also true that the US firms would be less active in all global markets, which would decrease US influence. Since part of the rivalry between the US and China is likely to include global influence, retracting US companies from the global economy would certainly decrease US competitiveness. **What’s to be done?** Clearly, some writers need to spend more time reviewing the literature: The flaws in Sitaraman’s and Wheeler’s analyses were refuted long ago by scholarly research. It would also be helpful if advocates for hands-on control of companies were humbler in their beliefs that they fully understand businesses and can redesign them at will.

## da politics

## da ftc

### uq

#### FIRST – prefer issue-specific uniqueness – FTC resources being low proves that they are making tradeoffs to prioritize privacy

McKinnon 9/29 – John D. McKinnon, reporter for the Wall Street Journal covering high tech policy, “FTC Weighs New Online Privacy Rules,” 9/29/21, https://www.wsj.com/articles/ftc-weighs-new-online-privacy-rules-11632913200

WASHINGTON—The Federal Trade Commission is considering strengthening online privacy protections, including for children, in an effort to bypass legislative logjams in Congress.

The rules under consideration could impose significant new obligations on businesses across the economy related to how they handle consumer data, people familiar with the matter said. The early talks are the latest indication of the five-member commission’s more aggressive posture under its new chairwoman, Lina Khan, a Democrat who has been a vocal critic of big business, particularly large technology companies.

Congressional efforts to assist the FTC in tackling perceived online privacy problems was the focus of a Senate Commerce Committee hearing Wednesday. If the agency chooses to move forward with an initiative, any broad new rule would likely take years to implement.

In writing new privacy rules, the FTC could follow several paths, the people said: It could look to declare certain business practices unfair or deceptive, using its authority to police such conduct. It could also tap a less-used legal authority that empowers the agency to go after what it considers unfair methods of competition, perhaps by viewing certain businesses’ data-collection practices as exclusionary.

The agency could also address privacy protections for children by updating its rules under the 1998 Children’s Online Privacy Protection Act. And it could use its enforcement powers to target individual companies, as some privacy advocates urge.

The FTC might choose not to move forward with any major privacy initiative. And action could be delayed as agency Democrats wait for confirmation of President Biden’s newest nominee to the commission, privacy advocate Alvaro Bedoya.

But since taking office June 15, Ms. Khan has made a number of moves to lay the groundwork for potential rule making, including by voting with the FTC’s two other Democrats to change internal procedures to expand her control over the rule-writing process. Mr. Biden has ordered the FTC to look at writing competition rules in a number of areas, including “unfair data collection and surveillance practices that may damage competition, consumer autonomy, and consumer privacy.”

#### SECOND – the FTC is streamlining their enforcement process to make privacy regulation efficient and effective

Conley 9/23 – Stephen Conley, associate at Wiley Rein LLP, regulatory counsel on a wide array of issues related to privacy, telecommunications, and technology, “Latest Changes at FTC Will Drive Federal Action on Privacy, Data Security, and AI,” 9/23/21, https://www.jdsupra.com/legalnews/latest-changes-at-ftc-will-drive-7883938/

Last week’s Federal Trade Commission (FTC) Open Commission Meeting (Open Meeting) featured a number of agency developments that will drive its approach to privacy, data security, and AI/algorithmic decision-making during Chair Lina Khan’s tenure. These include an enhanced rulemaking petition process and guidance on health breach notification for health apps and connected devices, on top of a streamlined process for data and algorithmic bias investigations announced the day before the Open Meeting. These developments follow the adoption in July of streamlined rulemaking processes that can be used by the agency for implementing privacy or other data-related rules.

All these changes lay the foundation for much greater activity on both the enforcement and rulemaking side when it comes to privacy, security, algorithms, and data governance.

At the FTC’s September 15 Open Meeting, the agency approved several changes that will directly impact privacy, data security, and AI. Additionally, the FTC withdrew the 2020 Vertical Merger Guidelines, which will have a significant impact on how the agency reviews market competition and mergers.

The FTC approved a health app policy statement, stating that it will apply its existing Health Breach Notification Rule to health apps in the marketplace that are not covered by the Health Insurance Portability and Accountability Act (HIPAA). The Rule requires notification to consumers and the FTC upon unauthorized disclosures of covered health data – which the FTC will now interpret to include both data breaches and discovery of certain privacy violations. We summarize the Rule and its potential impact in more detail here. The vote was 3-2.

The FTC established a process for considering external rulemaking petitions by a 4-1 vote. Under the new process, formal petitions for rulemaking will be published in the Federal Register and placed on a 30-day public comment period, after which the FTC will publicly announce whether it will go forward with a rulemaking. While external petitions can inform the FTC’s work, there has been no formal process for resolving them in the past, and no way for other stakeholders to effectively engage. The procedural change could be significant – it will likely incentivize greater use of rulemaking petitions, since an official response is now guaranteed. In the past, external groups have pushed for rulemaking in areas like AI, and these kinds of petitions will now get much more attention. Industry stakeholders should expect increased regulatory activity in the areas of privacy, security, algorithms, and data governance more generally.

These developments come just days after the FTC announced the adoption of streamlined investigation and enforcement procedures under new investigation resolutions in certain areas. These include:

Algorithmic and Biometric Bias: One new resolution allows staff to investigate allegations of bias in algorithms and biometrics. As we have previously discussed, algorithmic bias has been a key area of focus for the FTC, and enforcement activity has been previewed.

Children under 18: Another resolution allows the staff to address harmful conduct directed at children under 18. This resolution is notable because the primary children’s privacy law – the Children’s Online Privacy Protection Act (COPPA) applies to children under the age of 13. Some lawmakers have pushed for the expansion of COPPA to older minors, and it remains to be seen whether the FTC will investigate privacy issues with older minors as well.

Deceptive and Manipulative Conduct on the Internet. This resolution expands the scope of previous resolutions to include the “manipulation of user interfaces,” including but not limited to “dark patterns,” which were recently the subject of an FTC workshop. Although critics have complained that these “dark patterns” are used to obtain consumer data without consent, the FTC has not defined which user interface designs are sufficiently “manipulative,” and it is not clear what would fall within the scope of deceptive conduct under the FTC Act.

All of these developments follow the FTC’s vote to streamline its rulemaking processes in July. As we previously explained, in July the FTC approved procedural changes to streamline its FTC Act Section 18 rulemaking process related to unfair or deceptive practices – often known as “Magnuson-Moss” rulemaking. The changes mean that this rulemaking process will proceed more quickly, though it still will be more cumbersome than traditional Administrative Procedure Act (APA) rulemaking. The passage and debate is another signal that the current Commission intends to be aggressive on rulemaking, including potentially on privacy and algorithms.

#### THIRD – the nomination of Bedoya to the FTC proves they’re increasing resources, expertise, and effort on privacy

Wyrich 9/22 – Andrew Wyrich, deputy tech editor at the Daily Dot, “‘Privacy rights are civil rights’: Why Biden’s pick for FTC signals a new effort to protect user data,” 9/22/21, https://www.dailydot.com/debug/alvaro-bedoya-ftc-privacy-data-abuses/

President Joe Biden’s nomination of Alvaro Bedoya, the founding director of Georgetown Law’s Center on Privacy and Technology, was immediately hailed by public interest groups. Bedoya has a background in a number of issues that could become a focus for the agency if he’s confirmed to the FTC by the Senate.

Bedoya’s experience in privacy matters and facial recognition is extensive. He co-authored a report in 2016 that found “most American adults are enrolled in a police face recognition network” and served as a chief counsel for the U.S. Senate Judiciary Committee on Privacy, Technology, and Law. In that role, according to his bio on Georgetown’s website, he conducted oversight on “location privacy and biometrics.”

At Georgetown, Bedoya also put together the “Color of Surveillance” conference, which for years looked at the impact of surveillance on communities of color. He’s also written numerous articles about the privacy and civil rights concerns raised by the technology.

All of that experience has public interest groups excited about what he could accomplish on the commission.

“He’s an expert in the privacy realm and how privacy rights are civil rights,” Carmen Scurato, a senior policy counsel at Free Press, told the Daily Dot. “He’s been, throughout the years, expressing the concern and need for the government to address the abuses of data and the impacts on privacy.”

That background in tackling privacy issues, according to a person who worked with him that spoke with the Daily Dot, will bring an expertise to the FTC that they “do not really have with the folks they have sitting there now.”

Lina Khan, who was named the chair of the commission by Biden earlier this year, has been critical of big tech companies and is an expert in antitrust issues. Naturally, that has been the focus of the commission so far.

The person added that they expect Bedoya to “push the envelope” on how the FTC goes after companies that commit abuses by focusing on the “unfair” aspect of the law, not just the “deceptive.”

The FTC Act allows for the commission to initiate enforcement action if it has “reason to believe” that the law has been violated. It notes that “unfair or deceptive acts or practices in or affecting commerce” are unlawful.

Most of the enforcements in the tech and privacy space have focused on the deceptive part of the law. In 2019, the FTC imposed a $5 billion fine on Facebook for “deceiving users” about how much control they had over the privacy of their personal information. The penalty was the largest imposed on a company for violating a consumer’s privacy.

Similarly, earlier this year the FTC settled with Everalbum over allegations that it “deceived consumers” about its use of facial recognition. The commission alleged that the company offered an app called “Ever” that allowed users to upload videos and stored them on its cloud-based storage.

Then Everalbum launched a new feature—that was enabled by default—that used facial recognition to group users’ photos by the faces of people and tag them by name. It had said previously, the commission noted, that it wouldn’t enable the use of the technology by default.

The commission has also used “unfair” in its settlements against tech companies. In November 2020, the FTC announced a settlement with Zoom, the popular videoconferencing company. That settlement, which focused on Zoom saying it offered “end-to-end encryption” but really didn’t, also noted that Zoom “secretly installed” software called ZoomOpener on Macs.

ZoomOpener allowed for the software to automatically launch and bypass a safeguard in Safari that guarded against malware, the FTC said. The FTC’s complaint alleged that the company didn’t give adequate notice to users about ZoomOpener—or get their consent—and deemed that “unfair” and a violation of the FTC Act.

A ‘clear signal’ for the FTC

While the agency has tackled data abuses, observers say they believe Bedoya’s nomination shows that the FTC might focus more on the issue in the future.

Sara Collins, a policy counsel at Public Knowledge, said there seems to be a “clear signal” that the administration and FTC sees that “privacy is important” and that they want to be “intersectional in how we approach these types of issues.” Collins, and others, noted Bedoya’s experience working on issues related to privacy and surveillance of communities of color.

“That’s what [Bedoya] really brings to the table: a deep understanding of privacy, technology, and civil rights,” Collins said. “I think this shows a commitment by the administration that they want the FTC to be a fulsome agency. They want it to be exerting its competition powers—I think the nomination of Khan is a clear indication of that, and so are her statements and the work she has been doing—but I do think that this is a signal to the broader community, or even the broader tech portfolio, that we’re not just doing competition. We’re going to be doing privacy, we are going to be digging into more design, algorithm, AI. We want to be serious about regulating this space and having a regulator on the beat who wants to regulate this space.”

Collins said once Bedoya is confirmed, she expected that the FTC would work on broader rulemaking around privacy while also working on cases that “flesh out” the agency’s understanding and scope of its powers in highlighting “especially egregious cases of data abuses.”

The commission has both rulemaking authority, the ability to issue industry-wide regulations, and enforcement powers to lead investigations into companies that violate laws.

It’s not just the people at the commission that are signaling a push toward privacy issues at the agency. House Democrats proposed setting aside $1 billion for the commission to set up a bureau that would focus on “unfair or deceptive acts or practices related to privacy, data security, identity theft, data abuses, and related matters.” The proposal is part of a massive budget reconciliation effort.

Just this week, a group of Democratic senators sent a letter to the FTC urging the commission to use its rulemaking authority to “to protect consumer privacy, promote civil rights, and set clear safeguards on the collection and use of personal data in the digital economy.”

Meanwhile, in July, more than 50 civil rights, privacy rights, and internet rights groups called on the FTC to step in and curb the data collection practices of big tech companies. The groups specifically asked the agency to use its rulemaking authority to ban corporate use of facial recognition, surveillance in public, and “industry-wide data abuse.”

Even the commission itself has hinted at their focus on data abuses and artificial intelligence. Earlier this summer, Commissioner Rebecca Kelly Slaughter spoke at the agency’s “PrivacyCon” in July. In her prepared remarks, Slaughter noted the FTC needed to look into “a wide variety of data abuses, including questions of racial bias, civil rights, and economic exclusion.”

Slaughter added: “Words matter, and ‘data abuses’ reflects the fact that rampant corporate data collection, sharing, and exploitation harms consumers, workers, and competition in ways that go well beyond more traditional or libertarian privacy concerns.”

The commission itself published a blog post in April about artificial intelligence, noting that the technology can lead to “troubling outcomes.”

In 2014, Bedoya spoke about a “problem in privacy” for both the government and the industry. He said the value of that data had caused both sides to “collect as much information as possible and to retain it as long as possible.”

“Both in the intelligence committee and in industry, there’s effectively an effort to redefine privacy,” Bedoya said at the time. “Privacy used to be about collecting only what you needed to collect. Under the new model, you collect as much information as possible and you protect privacy through after-the-fact, post-collection use restrictions.”

While some tech companies have been offering opt-outs or other mechanisms for users, it’s clear there is momentum in Washington toward creating some kind of privacy standard for users. The FTC, if Bedoya is confirmed, could initiate rulemaking that covers these issues while Congress continues to work on a federal privacy law. There’s a growing consensus for the FTC to act in this space, and experts say Bedoya’s nomination is another indication of that.

“There is clearly both an appetite within the FTC and outside the FTC for this work to happen,” Collins said, adding: “I think it’s likely we that get more facial recognition cases. I think it’s likely that we get more AI or algorithmic bias cases. Maybe even some data security cases. We just had, at the open meeting, Chopra and Khan talking about health apps and privacy. That’s my guess, but obviously, it’s up to the commissioners on how to move forward.”

#### FOURTH – even if they’re not fully effective, successful privacy rulemaking causes Congressional action which solves our impact

Kelly 9/29 – Makena Kelly, policy reporter for The Verge covering net neutrality, data, and privacy, “As privacy issues worsen, Congress looks to the FTC,” 9/29/21, https://www.theverge.com/2021/9/29/22699202/data-privacy-facebook-google-congress-senate-reconciliation-infrastructure

“The FTC is not very well-funded to do this kind of work. It has limited resources and limited capabilities to engage in privacy work, plus all of the other work it has to do,” Sara Collins, privacy policy counsel at Public Knowledge, said Tuesday. “It’s a competition authority. It’s a general consumer protection authority. They have to have more resources to do this work.”

Still, experts like Collins are optimistic that any new FTC rulemaking could force Congress’ hand on legislative reform. Several states, including California and Colorado, have already enacted their own state bills as well. This patchwork of regulation could build more momentum for lawmakers to tackle a federal law once and for all.

#### FIFTH – the reconciliation bill will increase FTC funding for privacy enforcement – that solves any residual uniqueness arguments

Ikeda 9/16 – Scott Ikeda, longtime tech reporter and senior correspondent at CPO magazine, “FTC Sets Its Sights on Big Tech: $1 Billion Proposed to Create Digital Privacy & Cybersecurity Division,” 9/16/21, https://www.cpomagazine.com/data-privacy/ftc-sets-its-sights-on-big-tech-1-billion-proposed-to-create-digital-privacy-cybersecurity-division/

The creation of a federal-level digital privacy bill continues to be a problem for the United States government, but the House Democrats are looking to put reins on Big Tech through other legislative means. A proposed $1 billion addition to the $3.5 trillion economic package would go to the Federal Trade Commission (FTC) for the purposes of establishing a digital division that focuses on privacy issues, cybersecurity incidents and other matters that center on online services and platforms.

The full scope of the bill includes “unfair or deceptive acts or practices relating to privacy, data security, identity theft, data abuses, and related matters.”

$1 Billion Boost Could Spark Stronger Regulation of Big Tech

The proposal was developed by a panel of Democrats in the House of Representatives and has yet to go up for a vote, but has a favorable path to adoption given the party’s control of Congress and the Executive. The issue is also one that has bipartisan support, though the Republican interest in regulating Big Tech has tended to be more along antitrust lines rather than privacy issues. Out of fear of a filibuster in the Senate, the Democrats will likely add this measure to the overall spending bill and attempt to pass the entire thing via the reconciliation process (which comes down to a simple majority vote).

Should the measure pass, it would increase the FTC’s budget by nearly 30% over the coming decade. The agency has struggled with regulation of Big Tech at times due to a simple lack of resources. The tech giants have much more money at their disposal than any regulatory body, and put it to use hiring away former members of these agencies as strategic resources and exhausting every possible stall tactic and challenge in courtrooms.

Cillian Kieran, CEO of Ethyca, sees empowerment of the FTC as a realistic first step to restoring balance as a federal privacy bill continues to take a long time in coalescing: “Creating the new FTC division focused on protecting Americans from privacy violations and other data abuses is an exciting, necessary, and promising first step … I think of privacy infrastructure as our other kinds of infrastructure, like bridges. Everybody crossing a bridge or using the internet deserves a safe experience, and we must ensure that the supervisors of that infrastructure—the FTC, in the case of privacy—have the tools they need to protect the public … Following Chair Lina Khan’s appointment earlier this year to lead the FTC, the proposal signals that Washington’s sentiments about privacy—Congress has introduced more than 20 privacy bills this session, yet none have passed—are finally translating into action.”

The proposal is scheduled to be finalized on September 15 and go before the House Energy and Commerce Committee next week. As it stands, it does not call for granting the FTC any new powers; the burst of funding would instead go toward enforcing existing laws with a focus on Big Tech’s transgressions. The Democrats will have to refrain from attempting to add new powers to the FTC’s arsenal if the intention is to pass the bill via reconciliation. The proposal is also part of a package that includes items unrelated to cybersecurity or regulation of Big Tech: $30 billion to remove and replace lead pipes used in water and sewage systems, $10 billion for supply chain resilience projects and $13.5 billion for the development of zero emissions vehicle infrastructure.

The FTC has its hands full with both privacy and monopoly power issues that involve Big Tech firms, and some cases leave one wondering if there might have been a better outcome if the agency was better equipped and funded. A monopoly lawsuit it brought against Facebook in late 2020 was dismissed in June, with the judge ruling that the FTC had not displayed adequate metrics or methods to hold up its assertion that Facebook owns more than 60% of the social media market. And the agency settled with upstart Zoom over its exaggerated security claims last year as well, not fining the company and only requiring it to make certain security improvements.

### AT: we are not the FTC – 1nr

#### Antitrust focus trades off with attention to privacy.

Caitlin Chin, Research Analyst, Center for Technology Innovation - The Brookings Institution, and Marla Odell, Research Intern - Center for Technology Innovation, ’19, “Highlights: Commissioners discuss the future of the FTC’s role in privacy” https://www.brookings.edu/blog/techtank/2019/11/05/highlights-commissioners-discuss-the-future-of-the-ftcs-role-in-privacy/

Against a backdrop of high-profile data breaches and abuses, the Federal Trade Commission (FTC) has taken center stage. On October 28, FTC Commissioners Rebecca Kelly Slaughter and Christine Wilson joined Brookings Distinguished Fellow Cameron Kerry for a fireside chat to discuss the agency’s mandate to protect consumer privacy in an increasingly data-driven world—and how federal privacy legislation could help the agency carry out its mission.

Over the past few months, the FTC has announced several settlements in major cases. These include a $575 million settlement with Equifax following a wide-reaching data breach, a $170 million settlement with YouTube due to alleged COPPA violations, and a $5 billion settlement with Facebook—the largest privacy fine recorded to date—stemming from alleged deceptive data sharing practices with third-parties, including Cambridge Analytica. To supporters of these settlements, these record-breaking fines and new oversight requirements bring immediate corporate change and consumer remedies. To critics, however, the settlements do not sufficiently deter future violations and instead reflect the FTC’s constant internal trade-off to settle privacy cases, rather than litigate or push for tougher penalties, in the face of limited agency resources and capacity.

#### 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.

#### Expanding the rule of reason unduly burdens federal agencies – high costs, delays, and complex litigation sap resources.

Chopra & Khan ’20 [Rohit; Commissioner @ Federal Trade Commission; and Lina; Chairperson @ Federal Trade Commission, JD @ Yale Law School; “The Case for “Unfair Methods of Competition” Rulemaking,” *The University of Chicago Law Review* *87*(2), p. 357-380; AS]

The current approach to antitrust also makes enforcement highly costly and protracted. In 2012, the American Bar Association (ABA) published the report of a task force that sought to “study ways to control the costs of antitrust litigation and enforcement.”9 The task force, the authors explained, was “a response to concerns” about both “the costs imposed on businesses by the American system of antitrust enforcement” and “the length of time required to resolve antitrust issues both in litigation and in enforcement proceedings.”10 Out-of-control costs undermine effective antitrust enforcement by agencies and private litigants, but may advantage actors who profit from anticompetitive practices and can treat litigation as a routine cost of business. Professor Michael Baye and Former Commissioner Joshua Wright have noted that generalist judges may be ill-equipped to independently analyze and assess evidence presented by economic experts.11 Because determining the legality of most conduct now involves complex economic analysis, courts have effectively “delegate[d] both factfinding and rulemaking to courtroom economists,” making courtroom economics “not just inevitable but often dispositive.”12 In fact, paid expert testimony now is often “the ‘whole game’ in an antitrust dispute.”13

Paid experts are a major expense. Some experts charge over $1,300 an hour, earning more than senior partners at major law firms.14 Over the last decade, expenditures on expert costs by public enforcers have ballooned.15 In a system that incentivizes firms to spend top dollar on economists who can use ever-increasing complexity to spin a favorable tale, the eye-popping costs for economic experts can put the government and new market entrants at a significant disadvantage.16 Another component of the burden is that antitrust trials are extremely slow and prolonged.17 The Supreme Court has criticized antitrust cases for involving “interminable litigation”18 and the “inevitably costly and protracted discovery phase,”19 yielding an antitrust system that is “hopelessly beyond effective judicial supervision.”20 That it can easily take a decade to bring an antitrust case to full judgment means that by the time a judge orders a remedy, market circumstances are likely to have outpaced it.21 The same 2012 ABA report suggested that lengthy, costly litigation may be contributing to reduced government-enforcement efforts over time relative to the expansion of the US economy.22

#### Case by case adjudication costly.

Foer & Durst ’18 [Albert; Senior Fellow @ American Antitrust Institute; and Arthur; Assistant Attorney General @ Office of the Attorney General for the District of Columbia; “The Multiple Goals of Antitrust,” *The Antitrust Bulletin* 63(4), p. 494-508; AS]

Note some implications. These are highly theoretical constructs, and the calculations that they require must be based on empirical information about consumer behavior and predictions about future behavior—in other words must be premised on probabilities that are a matter of opinion rather than mathematical, scientific certainties. By shifting the antitrust case from structural assumptions about how the political economy works to proof about what the effects of particular transactions or practices have been or will be, they impose large expenses for economic data gathering, modeling, and analysis, often ending up in conflicting testimony of economic consultants, presented to judges who are not trained to evaluate this type of argumentation. As Tim Wu has aptly put it, “Economics does not yield answers, but arguments.”17

### AT: FTC taking Ls – 1nr

#### , it takes out the case – ultra-conservative Court will continue to hand out Ls by willfully misreading the aff’s standard.

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

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

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