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### 1AC – Competitiveness

#### Contention one: Competitiveness

#### Dominant digital platforms gatekeep access to markets by both operating a platform and marketing their own goods on it. Only structural prohibitions prevent barriers to entries posed by companies’ structure, not just the scale of their market power.

Khan ’19 [Lina; Chairperson @ Federal Trade Commission, JD @ Yale Law School; “The Separations of Platforms and Commerce,” *Columbia Law Review* 119(4), p. 973-1098; AS]

A handful of digital platforms exert increasing control over key arteries of American commerce and communications. Structuring access to markets, these firms function as gatekeepers for billions of dollars in economic activity. By virtue of setting marketplace rules for the millions of merchants, producers, and developers dependent on their infrastructure, dominant platforms today “function as regulators.”3

As these platforms further concentrate market power, there are rising concerns about their size—usually in reference to the large share that each firm captures of its primary markets.4 Yet an equally important question concerns not the scale of these companies but their structure. One feature dominant digital platforms share is that they have integrated cross business lines such that they both operate a platform and market their own goods and services on it. This structure places dominant platforms in direct competition with some of the businesses that depend on them, creating a conflict of interest that platforms can exploit to further entrench their dominance, thwart competition, and stifle innovation.5 Consider Spotify’s effort to reach users through Apple’s iPhone while Apple sought to promote Apple Music. In 2016, Spotify revealed that Apple had blocked the streaming application from the App Store, “continu[ing] a troubling pattern of behavior by Apple to exclude and diminish the competitiveness of Spotify on iOS and as a rival to Apple Music.”6 Or take the challenge faced by Yelp, Foundem, and scores of online services to reach internet users while Google sought to build out its own competitor offerings.7

In Europe and India, competition authorities have found that Google ranks its own services higher than those offered by rivals, a “search bias” that means anyone competing with Google properties may effectively disappear from Google search results.8 Merchants that rely on Amazon to reach consumers are in a similar bind: Not only must they jostle for placement against Amazon’s own goods, but they also face the constant risk that Amazon will spot their bestselling items and produce them itself.9 Facebook, equipped with technology that lets it detect which rival apps are succeeding, would often give companies a choice: Be acquired by Facebook, or watch it roll out a direct replica.10 Competing with one of these giants on the giant’s own turf is rife with hazards.

Venture capitalists now factor this risk into their investment decisions.11 Indeed, the power of these gatekeeper platforms to steer the fate of countless other firms is described by entrepreneurs and investors as “having a profound impact on innovation in Silicon Valley”12 and “choking off the start-up world.”13 Venture capitalists now discuss a “kill-zone” around digital giants—“areas not worth operating or investing in, since defeat is guaranteed.”14 Discussing how tech platform giants today use their integrated structure to undermine rivals, a product manager who worked for Microsoft leading up to its antitrust suit observed, “It’s what we did at Microsoft.”15

Indeed, the way in which dominant online platforms threaten to undermine competition and distort markets today is not entirely new. At its core, the problem traces to a basic challenge posed by firms that capture control over a critical network or channel of distribution. Regulators and competition authorities have traditionally harnessed a set of tools to ensure that bottleneck facilities do not distort competition. These tools include common carriage, which requires firms to offer customers equal access on equal terms,16 as well as interoperability, which requires networks to maintain an open interface, enabling users to switch between platforms with ease.17 These policies respond, respectively, to problems of discrimination and lock-in.

In digital markets, however, third parties that depend on a platform risk not just discrimination and lock-in but also appropriation. Because dominant platforms monitor with unrivaled precision the business activity of third parties while also competing with them, a platform can harvest insights gleaned from a producer at the producer’s expense. This Article argues that these combined problems of discrimination and information appropriation invite recovering common carriage’s forgotten cousin: structural separations. Structural separations place clear limits on the lines of business in which a firm can engage. Rather than prohibit particular business practices, separations proscribe certain organizational structures. In antitrust, structural remedies are contrasted with behavioral ones: Whereas behavioral remedies seek to prevent firms from engaging in specific types of conduct, structural remedies seek to eliminate the incentives that would make that conduct possible or likely in the first place.18

Structural prohibitions have been a traditional element of American economic regulation. They have been applied as a standard regulatory tool and key antitrust remedy in network industries, often to prohibit a dominant intermediary from competing with the businesses that depend on it to get to market. While common carriage regimes prevent a firm from discriminating—requiring equal service on equal terms—structural prohibitions eliminate one source of the incentive to discriminate. In this way, common carriage and structural separations often functioned as complements in the service of nondiscrimination.

Today, structural separations have largely been abandoned.19 At the same time that lawmakers have significantly weakened or outright eliminated sector-specific regulatory regimes, judicial interpretation of antitrust law has drastically narrowed the forms of vertical conduct and structures that register as anticompetitive. And when antitrust enforcers have targeted these forms of conduct and structures in recent years, they’ve applied remedies that generally (1) fail to target the underlying source of the problem and (2) overwhelm the institutional capacities of the government actors assigned to oversee them.20 Neglecting structural separations results in both substantive harms and institutional misalignments—effects that are especially pronounced in digital markets.

#### Case-by-case adjudication creates slow and ambiguous enforcement of prohibitions on unfair business practices – regulatory uncertainty substantially disadvantages entrants.

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]

Antitrust law today is developed exclusively through adjudication. In theory, this case-by-case approach facilitates nuanced and fact-specific analysis of liability and well-tailored remedies. But in practice, the reliance on case-by-case adjudication yields a system of enforcement that generates ambiguity, unduly drains resources from enforcers, and deprives individuals and firms of any real opportunity to democratically participate in the process. One reason that antitrust adjudication suffers from these shortcomings is that courts analyze most forms of conduct under the “rule of reason” standard. The “rule of reason” involves a broad and open-ended inquiry into the overall competitive effects of particular conduct and asks judges to weigh the circumstances to decide whether the practice at issue violates the antitrust laws. Balancing short-term losses against future predicted gains calls for “speculative, possibly labyrinthine, and unnecessary” analysis and appears to exceed the abilities of even the most capable institutional actors.1 Generalist judges struggle to identify anticompetitive behavior2 and to apply complex economic criteria in consistent ways.3 Indeed, judges themselves have criticized antitrust standards for being highly difficult to administer.4 And if a standard isn’t administrable, it won’t yield predictable results. The dearth of clear standards and rules in antitrust means that market actors face uncertainty and cannot internalize legal norms into their business decisions.5 Moreover, ambiguity deprives market participants and the public of notice about what the law is, thereby undermining due process—a fundamental principle in our legal system.6

Decades ago, former Commissioner Philip Elman observed that case-by-case adjudication “may simply be too slow and cumbersome to produce specific and clear standards adequate to the needs of business~~men~~[people], the private bar, and the government agencies.”7 Relying solely on case-by-case adjudication means that businesses and the public must attempt to extract legal rules from a patchwork of individual court opinions. Because antitrust plaintiffs bring cases in dozens of different courts with hundreds of different generalist judges and juries, simply understanding what the law is can involve piecing together disparate rulings founded on unique sets of facts. All too often, the resulting picture is unclear. This ambiguity is compounded when the Supreme Court assigns to lower courts the task of fleshing out how to structure and apply a standard, potentially delaying clarity and certainty for years or even decades.8

#### FTC rulemaking improves the speed, clarity and certainty of enforcement to level the playing field for market entrants.

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]

“Rulemaking” often evokes the idea of government imposing some inflexible prescription upon the marketplace. This is not what we are suggesting. As former Commissioner Elman rightly noted, rulemaking can also be related to “standards, guidelines, pointers, criteria, or presumptions.”41 Rules come from courts, legislative bodies, and agencies. While they were not promulgated as agency rules, certain elements of the merger guidelines eventually came to serve as rules once courts adopted them.42 The merger guidelines stipulate the analytical framework that the agencies rely on to enforce the merger law. Agency rulemaking could do the same for “unfair methods of competition.”

We see three major benefits to the FTC engaging in rulemaking under “unfair methods of competition,” even if the conduct could be condemned under other aspects of antitrust laws. As we describe above, the current approach generates ambiguity, is unduly burdensome, and suffers from a democratic participation deficit. Rulemaking can benefit the marketplace and the public on all of these fronts.

First, rulemaking would enable the Commission to issue clear rules to give market participants sufficient notice about what the law is, helping ensure that enforcement is predictable.43 The APA requires agencies engaging in rulemaking to provide the public with adequate notice of a proposed rule. The notice must include the substance of the rule, the legal authority under which the agency has proposed the rule, and the date the rule will come into effect.44 An agency must publish the final rule in the Federal Register at least thirty days before the rule becomes effective.45

These procedural requirements promote clear rules and provide clear notice. As the Supreme Court has stated, a “fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.”46 Clear rules also help deliver consistent enforcement and predictable results. Reducing ambiguity about what the law is will enable market participants to channel their resources and behavior more productively and will allow market entrants and entrepreneurs to compete on more of a level playing field.

#### There are no neatly bounded ways to capture all dimensions platform power – expanding rulemaking authority for an expert agency allows separations regimes to match market realities.

Khan ’19 [Lina; Chairperson @ Federal Trade Commission, JD @ Yale Law School; “The Separations of Platforms and Commerce,” *Columbia Law Review* 119(4), p. 973-1098; AS]

D. Application: Challenges and Unresolved Questions

Implementing a separations regime presents some first-order questions and challenges. First, how do we define platforms and to which platforms should a separation apply? Second, how does one identify the parameters of the platform, especially when integration provides heightened functionality? Third, what should be the scope of the prohibited activity and how should the prohibition be structured? And fourth, what is the proper institutional mechanism for implementing the separation? This section offers some initial suggestions for how to approach these questions. Arriving at a complete analytical framework for structuring separations in digital markets will require deeper engagement with these issues.

1. Defining Platform. — Offering a clearly bounded definition of “platform” is challenging. Most definitions look to the role that the entity plays in intermediating activity by others. One definition, for example, is “a firm that controls a network, facility, or essential input that those providing a complementary good or service” must “rely on.”635 Another set of definitions focuses on the infrastructure-like role that these firms play, by structuring access to markets or facilitating transactions.636 And some discussions use the terms “network,” “infrastructure,” and “platform” interchangeably.637

Recent studies by policymakers have also settled on the idea that dominant platforms play a unique role that regulators should recognize. In March, the Digital Competition Expert Panel—a panel convened by the U.K. government to study digital markets—issued a report proposing, among other ideas, that dominant platforms that enjoy a “powerful negotiating position” be designated as having a “strategic market status” and be required to abide by a special code of conduct.638 A report commissioned by the European Commission, meanwhile, noted that, by designing marketplace rules that govern millions of users, dominant platforms “function as regulators” that should face a special responsibility to “ensure a level playing field” on their marketplace and “not use [their] rule-setting power to determine the outcome of competition.”639 Given the challenge of offering a bounded definition of “dominant platform,” any definition will likely be under- or over-inclusive. But any definition should seek to capture the degree of market power that the platform enjoys over users.640 How essential is the platform’s infrastructure? To what degree do other businesses depend on the platform to reach users, and what is the cost to businesses of avoiding this platform and using alternative channels? Relevant factors could include: (1) the extent to which the entity serves as a central exchange or marketplace for the transaction of goods and services, including the level of market power that it enjoys in its platform market; (2) the extent to which the entity is essential for downstream productive uses, and whether downstream users have access to viable substitutes for the entity’s services; (3) the extent to which the entity derives value from network effects, and the type of network effects at play; (4) the extent to which the entity serves as infrastructure for customizable applications by independent parties; and (5) the size, scope, scale, and interconnection of the company.

There are no neatly bounded ways to capture these dimensions of platform power. When implementing “maximum separation,” the FCC initially used operating revenue as the criterion for determining which carriers must comply.641 In the context of digital platforms, market share may prove a better proxy than operating revenues, given that it is the platform’s role as a gatekeeper or bottleneck—for which there are no real adequate substitutes—that gives rise to the relevant harms.

The prohibition should be centered on the activities that the platform facilitates as a bottleneck. Since a key goal of the separations regime is to eliminate the conflict of interest that arises when a dominant platform directly competes with the firms using the platform,642 only activity that would place platforms in direct competition in this way would be subject to the prohibition. This would not prevent platforms from integrating into lines of business that do not rely on the platform market. Nor would such a separations regime target conglomeration or vertical integration categorically; it would instead focus on platform entry into markets that creates the ability and incentive to discriminate, to leverage dominance, and to use information collected on firms as customers against them as competitors.

2. Distinguishing Between Platform and Commerce. — Applying separations to digital platforms would likely raise the challenge of identifying what constitute distinct products or services. In Microsoft, for example, the court had to determine whether the operating system and the browser—the two products the government claimed Microsoft had “tied”—should be considered a single integrated system.643 Microsoft argued that bundling new functionality into old products was a basic component of technological evolution.644 A similar issue may arise with digital platforms: Android, for example, could claim that certain apps must be integrated with its operating system in order to provide basic functionality or for technical necessity.

The traditional metric for assessing whether a set of bundled products constitute separate products is consumer demand. In Microsoft, the D.C. Circuit relied on Jefferson Parish’s consumer-demand test to determine whether consumers preferred a choice in browsers.645 Applying a similar inquiry in the platform context could similarly help identify whether integration of distinct functionalities should be viewed as an integrated system or as a platform. Regulators would also have the capacity to determine, over time, whether certain apps or features were necessary for basic functionality and whether the benefits of integration were sufficiently high to offset any potential harms to innovation. There may also be specific apps or functionalities where innovation is less likely to be transformative, and therefore where integration may prove fewer risks. As with earlier regimes, periodic reassessment and revisions would prove necessary to ensure the separation continued to accord with and reflect evolving market realities.

3. Institutional Mechanism and Timing. — A separations regime separating platforms and commerce could be implemented through statute or rulemaking or as antitrust remedies (under existing or new antitrust law). A statute from Congress could also establish the principle of separating platforms from commerce—as was the case with banking— with the specific authority to design and implement separations delegated to an agency. This approach would benefit from having an expert agency design and revisit the separation. Absent new legislation, the FTC could use its Section 5 authority to implement a separations principle through rulemaking.646 Designing separations only through rulemaking would require the agency to create rules of general applicability and— absent a specific congressional mandate—could limit the agency’s ability to structure highly tailored separations. Antitrust remedies would be costlier and take significantly longer, requiring the government or a private party to successfully show anticompetitive conduct and effects stemming from a digital platform’s involvement in multiple markets.

Given the enfeebling of antitrust doctrines that police single-firm anticompetitive conduct—and the judicial requirement that remedies be carefully tailored to competitive harm—this path is likely to be significantly more challenging.647 Previous instances of structural separations offer a few models for structuring these prohibitions. An operational or functional separation requires the firm to create separate divisions within the firm, requiring that a platform wishing to engage in commerce may do so only through a separate and independent affiliate, which the platform may not favor in any manner. A full structural separation, by contrast, requires that the platform activity and commercial activity be undertaken through separate corporations with distinct ownership and management. For example, the functional approach would permit Alphabet to operate Google search and vertical services that produce content so long as the two complementary services are structured as separate affiliates. The second option would prohibit Alphabet from running both the platform service and the complementary service, requiring that one be spun off and run by an independent owner.

It’s not clear that anything short of a full structural separation would be sufficient, especially given the risks of information misappropriation. While running complementary services as affiliates could be accompanied by information firewalls, the efficacy of firewalls requires close monitoring.648 Evidence shows that the antitrust agencies have neglected to fully monitor and enforce conduct remedies in the past.649 Moreover, firewalls may prove especially difficult to monitor in the context of digital platforms, given the heightened information asymmetries between private platform firms and public enforcers. It is possible that the risk of information misappropriation may vary by platform—but dominant platforms should carry the burden of establishing why operating complementary services as affiliates would not be anticompetitive.

Finally, a basic challenge facing regulators and enforcers when dealing with high-tech industries is the role of timing. Because these markets can evolve quickly, market changes can render regulatory interventions obsolete.650 Similarly, the failure to intervene can leave exclusionary conduct unchecked, resulting in path-dependent reductions in innovation. Any subsequent attempt to impose separations should include a built-in review process every two to three years, to ensure that the remedy still matches the market conditions.65

#### Competition by new entrants produces innovative tech – consolidation results in lethargic firms that undermine the US tech edge.

Sitaraman ’20 [Ganesh; Co-founder and Director of Policy @ Great Democracy Initiative; Professor of Law @ Vanderbilt University; “The National Security Case for Breaking Up Big Tech,” *Knight First Amendment Institute at Columbia*; AS]

Big Tech, Competitiveness, and Innovation

One of the central arguments against breaking up and regulating big tech on national security grounds is that big tech companies are essential for innovation in the tech sector and thus for American competitiveness and ultimately for national security. Historically, however, innovation has come from a mix of competition and public funding of research and development. Breaking up and regulating tech companies thus doesn’t mean ceding ground to the Chinese on technological innovation—it means creating a competitive marketplace with great innovative capacity.

Whether or not they say it explicitly, those who want to protect big tech from antitrust and regulation support a national champions model. The national champions approach suggests that innovation takes place within big companies that are protected from competition and therefore have resources to spend on research and development. Some associate this approach with Joseph Schumpeter, who suggested that firms in competitive markets might be less innovative than monopolists.58 In this vein, commentators celebrate how Bell Labs was able to innovate for generations and see Google X, Facebook, and other tech companies as similarly investing in frontier research that will ultimately lead to innovative breakthroughs.59

While innovation can take place under a national champions model, innovation does not require national champions—and there are strong arguments that the national champions approach is limited and even counterproductive. First, as Tim Wu has noted, “[B]oth history and basic economics suggest we do much better trusting that fierce competition at home yields stronger industries overall.”60 This response, of course, has been commonplace in basic economics for decades and in debates on competition is linked to the views of Kenneth Arrow.61 Market competition is good for innovation because competitors have to find ways to differentiate themselves in order to survive and expand. In contrast, large protected firms get lethargic, are slow to innovate, and rest on their laurels.

Wu points out that we also have evidence—not just theory—to show that protecting national champions is inferior to encouraging competition. In the 1980s, Wu argues, Japan took the approach of protecting its national champions in the electronics industry. Powerhouses like NEC, Panasonic, and Toshiba had direct government support. In contrast, the United States took the opposite tack with IBM. The computer firm was brought under antitrust scrutiny, and the legal battle went on for more than a decade, along the way chilling Big Blue from engaging in any conduct that could even potentially run afoul of the antitrust laws. The result, Wu notes, was to create the space for a variety of hardware and software companies, Microsoft, Lotus, and Apple among them. Competition led to innovation and the creation of some of the most forward-looking companies of the era.62

Second, national champions can actually limit innovation because they have an incentive to avoid research and innovations that might jeopardize their business model or undermine their dominant position. Bell Labs, for example, has long been celebrated for its role as an “ideas factory.”63 But Bell and AT&T also suppressed innovations when they threatened its business model. Bell inventors, for example, developed recording devices in the 1930s that could have been used for answering machines. But AT&T’s management blocked their emergence for fear that they would jeopardize use of the telephone.64

An alternative approach to innovation is one that relies less on protectionism for national champions and more on market competition and on public investment in research and innovation. Competition, as noted already, can be a powerful motivator for innovation. When big tech incumbents face little competition, society forgoes the innovation benefits that come from competition. Who knows if Instagram or WhatsApp could have dethroned Facebook’s primacy and developed even more new and innovative products? Facebook’s moves to acquire those firms prevented us from ever finding out. What small businesses might emerge if they didn’t have to compete with Amazon Basics on Amazon’s Marketplace? Unwinding mergers and separating platforms from companies that do business on the platform would help spur competition and lead to innovation.

Some might argue that robotics, AI, and quantum computing are so resource-intensive that an ecosystem of smaller companies engaged in fierce competition would mean that no company would have the resources available to invest in those next-generation technologies. There are a few responses to this argument. First, it is not clear that breaking up and regulating big tech would prevent those firms from having the considerable resources to develop the technologies of the future. Facebook would still have billions of users, even without Instagram and WhatsApp, for example. Amazon’s platform would still have enormous market power.

#### Independently, dominant platforms fuel Chinese digital authoritarianism – dependencies on Chinese firms furthers their military technologies.

Sitaraman ’20 [Ganesh; Co-founder and Director of Policy @ Great Democracy Initiative; Professor of Law @ Vanderbilt University; “The National Security Case for Breaking Up Big Tech,” *Knight First Amendment Institute at Columbia*; AS]

BIG TECH, GLOBAL ENTANGLEMENTS, AND GREAT POWER COMPETITION

At a time of resurgent great power competition, claims that big tech companies are assisting that competition are superficially appealing, but they largely do not hold up to scrutiny. Many of the biggest tech companies are global players, operating in China, working with that government (knowingly or unknowingly), and seeking to expand their footprint. This not only means that their work abroad assists technological development in China but also that the Chinese government has increased leverage over those companies and the United States. Breaking up these companies would create a domestic technological ecosystem in which a more significant part of the marketplace is not dependent on Chinese markets, thereby making the United States more resilient.

How Big Tech Helps Strengthen China

The claim that big American tech companies are somehow an alternative to Chinese dominance—or, in the more extreme form, that they are competing with China on behalf of the United States—is largely backwards. In fact, many big American tech companies are operating in China, working with Chinese companies, and seeking to expand. Because markets and the state are intertwined in China, interactions with Chinese companies and investments in China are likely to pass along operational and technological developments to the Chinese government and military, including in ways that advance its emerging surveillance state—and accelerate its ability to spread its model of digital authoritarianism around the world. In short, big tech companies that operate in China are likely assisting the rise of China, not acting as a hedge against it.

Rather than competing with China, many big tech companies are integrating with China or attempting to deepen their integration with China. Google has announced an AI center in Beijing,8 and it is exploring a partnership with Tencent that involves using the Chinese tech giant’s cloud service as an alternative to Google Cloud.9 In 2018, the company also proposed Project Dragonfly, which would have created a search engine that would be in compliance with Chinese censorship regulations behind the Great Firewall.10 That endeavor created controversy within the firm and criticism from human rights groups.11

Other companies also operate in China or are seeking to do so. Microsoft is expanding data centers in China and has built an operating system, “Windows 10 China Government Edition,” for the Chinese government.12 After Alibaba, Amazon provides the largest cloud service in China, and its Amazon Web Services division works with local companies and is expanding its data centers.13 Apple, of course, famously designs its phones in California but makes them in China.14 In 2017, Apple announced a partnership with a Chinese firm with close ties to the government and a year later moved its Chinese iCloud and iCloud encryption services to China.15 Notably, Facebook isn’t operating in China—but not for lack of trying. The company has repeatedly attempted to gain access but has been blocked by government officials.16

Merely operating in China might not seem like it undermines the claim of U.S.-Chinese competition. After all, it might be that American companies are seeking to steal market share from Chinese companies in China. Global dominance requires, unsurprisingly, dominance around the globe, including in the world’s biggest markets. The problem is that, according to scholars, U.S. government officials, and even American business associations, any U.S. company that is developing AI in China, making significant technological investments in China, or simply operating in China is likely supporting the Chinese government and military.

Chinese companies are often state-run, partly owned by the state, or have informal ties to state and Communist Party officials, as scholars have documented.17 Formal and informal ties allow the government to have influence over many companies, and they create an incentive for companies to comply with party preferences preemptively even without formal government pressure.18 Cooperation and partnerships with these companies therefore mean cooperation with state-directed aims. “No major Chinese company,” Senator Mark Warner has noted, “is independent of the Chinese government and Communist Party.”19 An official at the U.S. Chamber of Commerce goes even further, arguing that American firms going to China have “to please the Chinese government and the Communist Party.”20

Moreover, because artificial intelligence is a dual-use technology, ostensibly commercial innovations can also have military implications. China’s stated doctrine of “civil-military fusion” thus virtually guarantees that companies are indirectly assisting the military if they are working with Chinese entities.21 Under that doctrine, “any technologies held by the private or academic sectors—whether imported or developed in-house—must be shared with the Chinese military.”22 When combined with the corporate-state relationship in China, this means the technological innovations in the private sector are likely being shared with the government for military purposes. As former defense secretary Ash Carter has noted, “If you’re working in China, you don’t know whether you’re working on a project for the military or not.”23

The fact that Chinese companies and the state are intertwined means that American companies working in China are potentially helping accelerate the adoption of digital authoritarianism within China and its spread abroad. In general, the development of artificial intelligence “offers a plausible way for big, economically advanced countries to make their citizens rich while maintaining control over them.”24 Big data, combined with AI, enables governments and big tech companies not only to predict but also to shape what individuals will do.l Politically, this means that governments will have the power to preempt dissenters to a far greater degree than authoritarian regimes of the past.25 Economically, it means that centralized economic planning might find greater success than in the past, because governments and companies can shape the behavior of individuals.26 And over time, behavioral changes shape beliefs, potentially building support for the regime itself.27 These dynamics suggest that the new “digital authoritarianism” may have greater staying power than its low-tech precursors.28

At home, China has long been concerned about domestic disharmony and has pursued a policy of “social management” to achieve “holistic” security—not just national security but party organization and the management of the social order.29 The Chinese State Council sees AI as “irreplaceable” in ensuring social harmony in the future.30 China has taken steps to develop a “social credit system,” in which individuals are assessed in every interaction to determine their trustworthiness, their compliance with laws and social norms, and the degree to which their social networks are also compliant. Chinese tech companies have reportedly agreed to share data with the government in support of this project.31 Local governments and tech companies are cooperating to develop “credit cities,” the local counterpart to a full-on national system.32 Chinese companies are also already exporting surveillance technologies abroad, including biometric censors and facial recognition software.33

Given that many big American tech companies are operating in China or seeking to do so and that engagement with Chinese entities likely means information is transferred to the government, the idea that big American tech companies are helping the United States vis-à-vis China in some kind of Cold War-style technology arms race makes little sense. It is just as likely, if not much more so, that firms operating in China are directly or indirectly furthering China’s emergent domestic surveillance capabilities, its military use of those technologies, and its spread of digital authoritarianism abroad as well.34

#### Adopting a separations regime for dominant platforms is key – a competitive ecosystem prevents dependence on Chinese markets.

Sitaraman ’20 [Ganesh; Co-founder and Director of Policy @ Great Democracy Initiative; Professor of Law @ Vanderbilt University; “The National Security Case for Breaking Up Big Tech,” *Knight First Amendment Institute at Columbia*; AS]

How Breaking Up Big Tech Builds a More Resilient Economy and Democracy

What does bigness have to do with integration? Or to put it differently, is the real problem integration with China rather than a weak antitrust and regulatory regime to govern big tech companies? The question of integration with China as a general matter is beyond the scope of this essay, but the size and dominance of American tech companies is part of the problem, and breaking up big tech should therefore be part of the solution.

To see why, compare a concentrated ecosystem with a small number of big companies to a competitive ecosystem with a large number of small companies. In a concentrated ecosystem with few players, China will have far more leverage over the United States. A small number of big tech companies that are integrated with China will be more dependent on Chinese markets for consumers and profits—and, in turn, more vulnerable to pressure from the Chinese government. In contrast, in a fractured market with many players, it is much more likely that some will seek other sources for supply chains, develop domestic American capacities, or simply choose not to engage in the Chinese market—whether because of idiosyncratic preferences, competitive dynamics, product differentiation, higher costs, or other factors.

It is theoretically possible that we might instead expect another out come: A small number of tech firms making monopoly profits might not need Chinese markets and therefore would be more independent from that country’s fusion of politics and economics. Likewise, a multi-player ecosystem of smaller companies, each with razor-thin profit margins, might push all of these players to dependence on Chinese markets for consumers and profits (this is, of course, where debates over integration versus disentanglement are relevant). But theory is not reality, and this alternative hypothesis has not been borne out. In our current highly concentrated tech market, big tech companies are not forsaking Chinese markets out of a combination of morality, patriotism, and monopoly profits. They are operating in China and are desperate to integrate further.

Concerns about censorship and distorted practices are also significantly reduced in a competitive ecosystem of smaller players because some companies and creative gatekeepers won’t aim to comply with Chinese government preferences. Consider the Hollywood context. Disney’s share of box office sales domestically, for example, approaches 40 percent, and the six biggest studios have 85 percent of box office sales.53 These companies produce fewer films and, because of their market power, can contractually require that those films be shown in theaters in ways that block other films.54 These companies are also increasingly integrating vertically across production and distribution: Netflix both produces shows and operates a streaming service, as does Amazon and now even Disney. The result is that smaller players are likely to face a tilted playing field because integrated behemoths can prioritize their own content over competitors and might not take chances on content that isn’t likely to maximize their viewership goals.55 If these big integrated companies comply with Chinese censors because of their ambitions in the Chinese market, then American consumers will not see content that doesn’t adhere to Chinese government preferences. In contrast, in a system with a large number of small studios, many would not have the size and scope to play to the Chinese market, let alone be dependent on the Chinese market. They also wouldn’t have the power and scale to preference their own content over competitors through vertical integration. The result would be an ecosystem in which Americans will have a range of content choices—including entertainment that might not accord with the views of foreign censors.

Big tech companies are not likely immune from what is happening in Hollywood—as well as what has happened to Mercedes and other entities that seek to operate in China. Many of these companies, like Amazon and Google, seek access to Chinese markets and operate as both content producers and distributors or platforms. To the extent that they have divisions whose work is objectionable to censors in foreign countries (Amazon, of course, creates its own content; as does YouTube, which is a subsidiary of Google), they too will feel pressure to preemptively shape that content in ways that are palatable to censors. And because of their market power within the United States, U.S. consumers are likely to be left with fewer and fewer serious scalable alternatives.

#### Chinese tech supremacy causes nuclear war.

Kroenig ’18 [Matthew; 11/12/18; Deputy Director for Strategy @ Scowcroft Center for Strategy and Security, Associate Professor of Government and Foreign Service @ Georgetown University; “Will disruptive technology cause nuclear war?”; https://thebulletin.org/2018/11/will-disruptive-technology-cause-nuclear-war/]

Recently, analysts have argued that emerging technologies with military applications may undermine nuclear stability (see here, here, and here), but the logic of these arguments is debatable and overlooks a more straightforward reason why new technology might cause nuclear conflict: by upending the existing balance of power among nuclear-armed states. This latter concern is more probable and dangerous and demands an immediate policy response.

For more than 70 years, the world has avoided major power conflict, and many attribute this era of peace to nuclear weapons. In situations of mutually assured destruction (MAD), neither side has an incentive to start a conflict because doing so will only result in its own annihilation. The key to this model of deterrence is the maintenance of secure second-strike capabilities—the ability to absorb an enemy nuclear attack and respond with a devastating counterattack.

Recently analysts have begun to worry, however, that new strategic military technologies may make it possible for a state to conduct a successful first strike on an enemy. For example, Chinese colleagues have complained to me in Track II dialogues that the United States may decide to launch a sophisticated cyberattack against Chinese nuclear command and control, essentially turning off China’s nuclear forces. Then, Washington will follow up with a massive strike with conventional cruise and hypersonic missiles to destroy China’s nuclear weapons. Finally, if any Chinese forces happen to survive, the United States can simply mop up China’s ragged retaliatory strike with advanced missile defenses. China will be disarmed and US nuclear weapons will still be sitting on the shelf, untouched.

If the United States, or any other state acquires such a first-strike capability, then the logic of MAD would be undermined. Washington may be tempted to launch a nuclear first strike. Or China may choose instead to use its nuclear weapons early in a conflict before they can be wiped out—the so-called “use ‘em or lose ‘em” problem.

According to this logic, therefore, the appropriate policy response would be to ban outright or control any new weapon systems that might threaten second-strike capabilities.

This way of thinking about new technology and stability, however, is open to question. Would any US president truly decide to launch a massive, bolt-out-of-the-blue nuclear attack because he or she thought s/he could get away with it? And why does it make sense for the country in the inferior position, in this case China, to intentionally start a nuclear war that it will almost certainly lose? More important, this conceptualization of how new technology affects stability is too narrow, focused exclusively on how new military technologies might be used against nuclear forces directly.

Rather, we should think more broadly about how new technology might affect global politics, and, for this, it is helpful to turn to scholarly international relations theory. The dominant theory of the causes of war in the academy is the “bargaining model of war.” This theory identifies rapid shifts in the balance of power as a primary cause of conflict.

International politics often presents states with conflicts that they can settle through peaceful bargaining, but when bargaining breaks down, war results. Shifts in the balance of power are problematic because they undermine effective bargaining. After all, why agree to a deal today if your bargaining position will be stronger tomorrow? And, a clear understanding of the military balance of power can contribute to peace. (Why start a war you are likely to lose?) But shifts in the balance of power muddy understandings of which states have the advantage.

You may see where this is going. New technologies threaten to create potentially destabilizing shifts in the balance of power.

For decades, stability in Europe and Asia has been supported by US military power. In recent years, however, the balance of power in Asia has begun to shift, as China has increased its military capabilities. Already, Beijing has become more assertive in the region, claiming contested territory in the South China Sea. And the results of Russia’s military modernization have been on full display in its ongoing intervention in Ukraine.

Moreover, China may have the lead over the United States in emerging technologies that could be decisive for the future of military acquisitions and warfare, including 3D printing, hypersonic missiles, quantum computing, 5G wireless connectivity, and artificial intelligence (AI). And Russian President Vladimir Putin is building new unmanned vehicles while ominously declaring, “Whoever leads in AI will rule the world.”

If China or Russia are able to incorporate new technologies into their militaries before the United States, then this could lead to the kind of rapid shift in the balance of power that often causes war.

If Beijing believes emerging technologies provide it with a newfound, local military advantage over the United States, for example, it may be more willing than previously to initiate conflict over Taiwan. And if Putin thinks new tech has strengthened his hand, he may be more tempted to launch a Ukraine-style invasion of a NATO member.

Either scenario could bring these nuclear powers into direct conflict with the United States, and once nuclear armed states are at war, there is an inherent risk of nuclear conflict through limited nuclear war strategies, nuclear brinkmanship, or simple accident or inadvertent escalation.

This framing of the problem leads to a different set of policy implications. The concern is not simply technologies that threaten to undermine nuclear second-strike capabilities directly, but, rather, any technologies that can result in a meaningful shift in the broader balance of power. And the solution is not to preserve second-strike capabilities, but to preserve prevailing power balances more broadly.

When it comes to new technology, this means that the United States should seek to maintain an innovation edge. Washington should also work with other states, including its nuclear-armed rivals, to develop a new set of arms control and nonproliferation agreements and export controls to deny these newer and potentially destabilizing technologies to potentially hostile states.

These are no easy tasks, but the consequences of Washington losing the race for technological superiority to its autocratic challengers just might mean nuclear Armageddon.

### 1AC – Plan

#### The United States federal government should adopt the principle of separating platforms from commerce for platforms in the private sector.

### 1AC – Dependency Trap

#### Contention two: Dependency Trap

#### Digital platform conglomeration generates a dependency trap that threatens inclusive growth – separating platforms from commerce protects small firms in the developing world.

Buthelezi & Hodgeet ’21 [Thembalethu, James; Principal Economist at the Economic Research Bureau of the Competition Commission of South Africa.Chief Economist at the Economic Research Bureau of the Competition Commission of South Africa.; “Competition and Consumer Protection Policies”; The United Nations; <https://unctad.org/system/files/official-document/ditccplp2021d2_en_0.pdf>; AS]

Making markets more inclusive not only addresses social imperatives, but also can make markets more competitive and benefit consumers. Most economists see a large and vibrant small business sector as essential in providing dynamism, growth and employment opportunities to an economy. Digital start-ups play the same role, especially in terms of dynamism through innovation. Consumer benefits may manifest themselves in lower prices, but equally important are the benefits from greater choice, and better privacy protection and innovation. Indeed, the open banking initiative in the United Kingdom has seen the most benefits from increased innovation by challengers but also the incumbents that have been forced to innovate more with their own data, which is now also accessible to challengers.

However, there is a distinct risk that the digital age could threaten this inclusion in two ways. First, there is a risk that digital markets are dominated by developed economy global giants exploiting the vast economies of scale and scope that exist. Second, there is also a risk that digital markets become dominated by a few large digital conglomerate firms even if they are domestically owned.

Conglomeration is a clear trend in digital markets, with larger digital platforms rapidly moving into adjacent markets, including producing or providing the products sold on their platforms. This is in stark contrast with the most recent trend of the industrial age, which is to focus on core competencies and abandon conglomeration which was often punished by investors. Various factors are driving this trend. One is the economies of scope associated with data gathered or consumers accessing those platforms, which can then be monetized in various ways. Rather than exchanging this data, firms have sought to exploit it themselves. Amazon’s move from online retailing of books to all other products, including its own brands, is a classic case. A second is the enormous resources at their disposal. For example, Amazon invested early in data centres to support the development of its e-commerce activities but then later decided to enter the market for cloud services (through Amazon Web services).44 The third way that inclusion 44 Bourreau M and de Streel A. (2019). Digital Conglomerates and EU Competition Policy. CRIDS Namur Digital Institute. can be undermined is that the control of consumer access enables platforms to displace those that depend on it. Amazon and Google shopping are examples for commercial goods, but Facebook and Apple do the same with apps.45 Finally, the observation of global trends indicate that digital conglomerates are much more likely to acquire start-ups than be challenged by them.46 Conglomeration is not only a global platform phenomenon. The same economic forces can support local conglomeration. South Africa has its own Internet giant, Naspers, which built its position through acquiring shares in Chinese social networking and gaming firm Tencent early on. Naspers has been building its local e-commerce and digital online platforms, in part through a series of acquisitions. It has also been expanding the product range of such platforms. Furthermore, the gradual expansion of the highly successful South African healthcare insurer Discovery into life insurance, short-term insurance and now banking is a more “old economy” example of how such data and consumer access can be leveraged into adjacent markets.

Conglomeration by global and local digital market firms has the potential to negatively impact inclusion, even if there is sufficient competition among these larger players to maintain price and non-price market outcomes at competitive levels. This is particularly concerning in the South African context, where market concentration levels are already high, and the likely impact of increased conglomeration are heightened barriers to entry for potential entrants since the large digital platforms become “gatekeepers” to access markets.

Therefore, from a competition policy perspective, more needs to be done to ensure that digital markets are also open to domestic start-ups and challengers, and that global firms share in the rewards that they derive from developing markets. Locally, additional tools will be required to address the threat of conglomeration. For example, merger control needs to be revisited not only for killer acquisitions, which have attracted most attention, but also to combat increased conglomeration through merger creep. Such acquisitions do not necessarily kill a potential competitor, but rather gives the conglomerate platform a foothold in an adjacent market that can be leveraged later.47

Merger control also needs to be alert to the removal of a potential entrant of another sort. In a developing country context, there is also a tendency for global platforms to acquire the largest local home-grown platform rather than enter themselves. Such mergers deny consumers the benefit of additional competition and a potentially less concentrated market in the future. In addition, taking a tougher stance on conglomerate strategies, such as self-preferencing, exclusive and most favoured nation agreements, may also be appropriate. In its draft buyer-power enforcement guidelines48 the CCSA has already highlighted that behaviour such as self-preferencing would be considered as unfair trading practice by dominant online platforms that bring together thirdparty suppliers and consumers, such as e-commerce platforms.

Developing domestic firms to compete in this space is another area for competition and even industrial policy. Online businesses can sell products globally without a physical presence in the countries they service. Such global reach and costless replication mean that the previous drivers of localized production are frequently left out. For instance, transport costs for raw materials, import tariffs or domestic distribution all provided a rationale for a local presence. That rationale may be missing in many (but not all) future digital markets. As a result, the driving force of innovation and back-end jobs created by these firms may remain in their headquartered country, leading to even greater exclusion of developing countries. Furthermore, global platforms may choose to shift their profits to low-tax jurisdictions – a strategy not necessarily viable for local platforms – that provide these global firms with a significant competitive advantage over local platforms.

If this is to be avoided, then developing countries will need to provide industrial policy incentives for global firms to station operations in their jurisdictions. It will also need to support the development of local digital firms to participate in the digital age, much like the infant industry arguments of old times. It will also require investment in skills and capital financing. This must include the funding of research through universities and will require regulators such as the CCSA to invest in-house talent focused on digitalization of the economy.

Policymakers and regulators in developing countries must also focus their efforts on how to support entrepreneurs to unleash these opportunities and deconcentrate markets. Doing so would directly address the twin objectives of competition policy, namely, more competitive and more inclusive markets. This support may be best achieved through proactively unblocking whatever hindrances remain for these digital entrants, particularly from incumbent firms. Ownership of data and access to consumers or distributional channels are market features that favour large firms purely by dint of their size and incumbency, rather than guaranteed superior product offerings.

3. Data portability and interoperability

Data is seen as a source of significant advantage in the digital age. Data is also the basis for many new and old services. While data portability and interoperability are at the heart of loosening the ~~FAAGs’~~ [GAFA’s] gatekeeper power, there is also tremendous scope for a general regime on data portability and interoperability to open markets to new innovative businesses, while ensuring privacy and security of personal data. Such a regime may be an effective tool in addressing the market power of existing “brick and mortar” incumbents by reducing barriers to entry, allowing new entrants to disrupt traditional industry and have an impact across all markets. Data is not the only area. The European Union expert report’s findings on digital markets around strategies to frustrate new entry deployed by digital firms also resonate to a large extent with existing old economy platforms such as financial service Consideration needs to be given to whether such rule changes should have broader application in markets where incumbents fight digital disruptors. Another benefit of a proactive approach is that it may well prevent emerging digital markets from becoming concentrated and less inclusive over time. A potential advantage of developing countries is that some of these digital markets are not as well developed, or there is still scope for new entry and market growth as a large part of the population is not yet connected. This means that there is still space to keep these markets competitive and not have the difficult task of either regulating entrenched monopolists or seeking to develop entrants in their presence. After all, if there is one lesson for competition policy from the ~~FAAGs’~~ [GAFA’s] debate, it is that it is extremely hard to address economic power once it is in place, especially for a competition regulator in a developing country.

The European Union expert report on digital markets has suggested a shift in onus for dominant digital firms on certain conduct.50 However, a developing country competition regulator should also consider whether there are additional rules which could be imposed even on non-dominant digital firms to ensure competitive markets in the future. For example, rules on data interoperability, limitations on most favoured nation or best price clauses, and limits to self-preferencing on digital platforms more generally could be imposed in competition law enforcement regardless of dominance. Limiting large platforms from selling in competition with those that access consumers through them might be another area for consideration.51

#### The United States must apply structural separations to platforms competing with commerce internationally – the Global South overwhelmingly lacks the institutional capacity to police platforms on their own.

Gurumurthy ’19 [Anita et al; Executive Director of IfTC and Expert Advisor for the UN Secretary General; “PLATFORM PLANET DEVELOPMENT IN THE INTELLIGENCE ECONOMY”; <https://itforchange.net/platformpolitics/wp-content/uploads/2019/06/Platform-Planet-Development-in-the-Intelligence-Economy_ITfC_2019.pdf>; AS]

Platform governance: the way forward

Platform governance is an overarching development policy challenge of our times, not just a narrow technology policy issue. A planetwide restructuring of economic ecosystems by digital platforms has triggered new contestations over socio-structural relations and geopolitical power. This calls for a cohesive policy response that can adequately and appropriately reorient the platform mode of economic organization towards a more equitable distribution of the efficiencies of intelligence scale economies. Such a policy approach also needs to be multi-scalar (spanning interventions at global to national and local levels) as well as cross-sectoral (encompassing integrated actions in digital, economic and social policy domains). We summarize the challenges for policy development in this chapter, also discussing the key building blocks of a comprehensive policy framework.

4.1 Governance challenges in the platform economy

a) Old laws don’t work: Most countries in the Global South lack legislative frameworks that address the rights and development implications of platformization trends. For example, as we found, individuals engaged in platform-mediated service work across different sectors – domestic work in the Philippines, tourism in Indonesia, and transportation in South Africa – are not covered under pre-existing labor laws (Barrameda et al., 2019; Bentley & Maharika, 2019; Mare et al., 2019). Similarly, the interests of small and medium enterprises and consumers are not adequately protected against unfair trade practices of platform companies in emerging digital commerce markets such as Nigeria (Nuruddeen et al., 2018). Even developed countries with legal-institutional frameworks for human rights enforcement and corporate accountability – such as EU member states – face difficulties in coping with the ongoing digital disruption. In France and Belgium, robust pre-digital labor laws are proving inadequate in providing social protection to platform workers with atypical employment contracts. Similarly, the application of preexisting consumer protection frameworks to digital services in the EU has meant the use of blanket disclaimer clauses by platform firms, with no explanations about obligations arising in the online context (Delronge et al., 2019). When new legislation specific to the digital context, such as the GDPR, has been introduced, the penalties for violation may often not be deterrent enough (Hintz & Brand, 2019). It has been found that companies such as Google, which have been repeatedly fined by the European Commission for non-compliance with prevailing legislation, nonchalantly continue their illegal market practices by treating fines as the costs of doing business.

b) State responses are knee-jerk: Platform regulation often times tends to be ‘scandal-prompted’. For example, in China, it was public outrage over the rape and murder of two female passengers by DiDi Hitch drivers in 2018 that prompted the ministry of transport to set up a national supervision platform for systematic background verification of the drivers enrolled with ride-hailing companies (Chen et al., 2019). Similarly, in Uruguay, the central bank rushed in to hastily regulate the P2P lending sector without fully understanding its operational dynamics as a response to increasing negative national media coverage about the sector becoming a ‘financial Uber’ (Aguirre & GarciaRivadulla, 2019).

c) Platforms become boundary objects, interpreted differently by different state agencies: The conflicting imperatives to create an enabling environment for the growth of the domestic digital sector whilst guarding against the monopolistic and exclusionary tendencies of the platform economy seem to culminate in a Catch-22 scenario impeding effective policy development. For example, in Argentina, there was a bitter tug-of-war between the Ministry of Production and the Argentine revenue service (AFIP) about the application of tax laws to the regional e-commerce platform MercadoLibre. While the Ministry of Production called for exempting the platform from tax liability as part of its larger strategy of encouraging domestic digital industry, the AFIP was of the opinion that MercadoLibre ought to be treated as a commercial firm rather than as a technology company. The Ministry of Production had its way, but it is difficult to ascertain whether the decision to treat MercadoLibre as a technology company deserving of tax exemptions will fare better for the long term health of the Argentinian economy in comparison to the AFIP proposal (Artopoulos, 2019).

d) Big platforms are mythified as the necessary route to success: The myth-making that surrounds platforms also means that governments, especially in the Global South, adopt pro-platform policy approaches. The promise of innovation and opportunity has often led governments to valorize platforms as an enabling force in aiding national growth. There has existed in the tech industry, even before the platform era, an “alliance capitalism” between industries of innovation and policy (Higgins, 2015, as cited in Chen et al., 2019). Consider the 2018 bid by Amazon for its new headquarters, which had city and state governments in the US outdoing one another to offer sops, tax cuts, economic incentives and even political positions to the company, convinced by the potential for jobs and economic growth that Amazon could bring in for the economy (City Lab, 2018b). Or, as in China’s case, where the Internet Plus vision has catalyzed and championed the growth of private platforms in many ways (Chen et al., 2019).

e) Platform companies tend to usurp public policy spaces: By becoming a part of the multi-stakeholder processes that drive policy, platforms take on a direct role in norm and rule development. Such formal membership in governance spaces raises concerns about conflict of interest. In Argentina, when traditional banks raised concerns over MercadoLibre’s new offerings for fintech services, the company successfully negotiated with the government to set up a commission to liaison between the central bank and itself, also managing to get a seat on the commission (Artopoulos, 2019). In December 2018, Netflix’s director of regulation was appointed to Brazil’s film board, Conselho Superior de Cinema, a recognition that the platform is an increasingly important player in the country’s media regulation discussions (Valente & Luciano, 2019).

f) The lack of binding international law gives corporations runaway power: There is no binding global legal framework to check corporate abuse and violation of human rights. Transnational digital companies not only flout domestic legislation with impunity, but also exploit the lack of cross-jurisdictional rules. When faced with the risk of prosecution for unfair market practices in national courts, they evade responsibility by transferring liability to their parent company outside the jurisdiction (Mare et al., 2019; Van Eck & Nemusimbori, 2018). For example, in 2017, the South African Transport and Allied Workers Union brought a case to the national Commission for Conciliation, Mediation and Arbitration (CCMA) on how Uber’s arbitrary deactivation and termination of drivers enrolled on the platform constituted a violation of protections against unfair dismissal under the country’s existing labor laws. CCMA took up proceedings against Uber SA, the South African subsidiary of the global platform company, and ruled in favour of the plaintiffs. A year later, the company managed to get the ruling overturned in the Labor Court on the technicality that Uber SA was a mere recruitment and training agency for Uber BV based in the Netherlands, which provided the app and made payments to partner-drivers.

4.2. Curbing digital monopolies

The platform economy displays monopolistic tendencies that curtail economic innovation and deepen inequality; but by no means is this an inevitability (Mann & Iazzolino, 2019). Traditional legal approaches to managing the rights, relations and conduct of persons and businesses engaged in commerce demand a major overhaul in the digital context (See Figure 5). This pertains to both commercial laws and to new rules concerning techno-design.

4.2.1 Changes to commercial laws

a) Competition law: Current approaches in competition law tend to regard short term consumer pricing gains as an adequate indicator of vibrant market competition (Khan, 2019). Understandably, this signal becomes extremely misleading in emerging digital markets where dominant platform companies often pursue strategies of free/deep-discounted products and services with an eye on long term consolidation of the network-data advantage for market domination (Curbing Corporate Power Alliance, 2019). In this scenario, competition law must move away from a narrow, neoliberal consumer welfarist approach. Instead, it must adopt economic structuralism as a framework to address the undue advantage that digital platforms enjoy in their role as “unavoidable trading partners” in the multisided markets they control (Cremer et al., 2019). The unique vantage that platforms occupy enables them to engage in upstream and downstream price manipulation, which policy must be able to check. The opacity that surrounds such data-supported gaming by platform companies makes it difficult to identify and establish proof of willful anti-competitive conduct. The EU has attempted to address this through its February 2019 regulation for platform businesses. It has mandated a duty of transparency (to be effective by 2020) with regard to standard terms and conditions of service (including data practices and notice of changes in terms of services) on all platform intermediaries providing digital services. This covers search engines, e-commerce marketplaces, app stores, social media and even price comparison tools. In addition, it has provided user guarantees for a right to explanation pertaining to algorithmic ranking and prioritization of goods and services on platform marketplaces (European Commission Press Release, 2019).

#### Structural separations between platforms and commerce equalize international bargaining power – now is key to prevent feedback effects from locking in dependency.

Johannsen & Gonzalez ’21 [German; PhD Candidate and LLM @ Max Planck Institute for Innovation and Competition; and Andrés; LLM and Chilean Competition Law Compliance Officer; “Digital Platforms & Economic Dependence in Chile Any Room for Competition Theories of Harm without Dominance?”; <https://law.haifa.ac.il/images/ASCOLA16/GJAG.pdf>; 15 June 2021; AS]

1. Platforms and economic dependence

As transactions —both economic and social— move to the Internet, the role of digital intermediary platforms (hereinafter "platforms") in the economy has increased as facilitators of interactions between the several economic agents (users, buyers, sellers, advertisers, suppliers, etc.). At a global level, some platforms have reached a large size, in some cases becoming part of digital conglomerates with a multinational presence, among which are the so-called TechGiants.7 In Chile, while there is a consolidated presence of platforms that base their business on exploiting the attention of users (e.g. social networks or video platforms), in other sectors platforms are in early stages of expansion8 (e.g. e-commerce in Chile9 ).

In their expansive or developing stage, the platforms seek to increase the amount of users who interact through them. In general terms, more users on one side of the platform, gives more value to the users of that side and/or the other sides (direct and indirect network effects). Already in the world-renowned US Microsoft case this effect was reported when it was pointed out that developers preferred writing applications for operating systems that had enough consumers, and consumers preferred operating systems that already had multiple applications, an effect that is recognized as a barrier to entry.10 Additionally, in the data economy, the more members, the more and better data, which allows for improved service/user experience (databased network effects).11 In other words, by acting as an intermediary, the platform captures revenue, but also internalizes positive externalities, adding value to its whole infrastructure. The positive feedback generated by network effects, in addition to economies of scale and scope, can lead to a platform reaching a size where, for its rivals, it is no longer profitable to compete.12 Once this tipping point is reached, it is easier for the platform to win the whole market.13 This economic rationale defines how and for what purpose platforms compete. On the other hand, the platforms' business models seek to create a long-term relationship with users and suppliers.14 In this regard, the platform can track those who participate in it (via personal accounts and devices) and extract data to create profiles, study preferences and predict behaviour.15 This generates efficiencies related to the personalization of services, which reduces the efforts to match supply and demand. The information obtained from the data analysis generates value that, added to the positive network externalities, increases switching cost for users and suppliers.16 Regarding users, switching costs could be lower if they interact through several platforms (multi-homing).17 However, many times this is not the case since users incur in convenience costs or the platform sets strategies to make muti-homing unlikely.

18 Regarding suppliers, switching costs also depend on whether they had to adapt their technology and business model to the platform’s requirements. 19 Increasing switching costs can make it unrealistic for a provider to switch platforms and still operate in an economically viable way.20 The result is an asymmetry of bargaining power to the detriment of those who depend on the platform. In other words, there is an economic dependence, asis known in comparative doctrine.21 The brick-and-mortar retail sector,22 several agro-industrial sectors,23 and in the context of digital platforms show different market structures leading to dependence. 24 Yet, in the latter, there are two major differences. On one hand, economic dependence can be a decisive factor in the winner-takes-all race. On the other hand, platforms can be placed in a strategic position, as the orchestrator of marketplaces where other players —most of them not rivals of the platform— are going to compete. Therefore, it is critical to understand to what extent economic dependence regarding a platform may affect the wellfunctioning of the market.

2. Dominant power and uneven bargaining power

Economic dependence accounts for an unequal distribution of bargaining power.25 This imbalance allows the holder of such power to exercise aggressive negotiation strategies both at the contractual level (e.g. tied sales, arbitrary interruption of trade relations) and extracontractual level (e.g. refusal to buy or sell), which end up imposing an excessive economic burden on the weaker party. In comparative law, this type of uneven bargaining power is often called superior bargaining position or relative market power26 (hereinafter, indistinctly, “bargaining power” or “relative power”). The exercise of relative market power can have, in turn, a feedback-loop effect, as it reinforces the existing situation of economic dependence.

Regarding digital platforms that provide services as a distribution channel, their strategic position as an intermediary and the size of suppliers who offer goods through it —many of which are small or medium businesses— allows them to be in a position of relative power visà-vis many suppliers. Under these circumstances, the platform can incur in various forms of abuses. The most obvious would be to increase unilaterally the commissions for transactions or enter into exclusivity contracts. A less obvious would be to use the information it obtains as intermediary to favour the marketing of its own branded products 27 or deny access to data that is relevant to users (e.g. about recommendations) and suppliers (e.g. about ranking).28 Not being able to access such data can increase the cost of switching platforms, as it makes data portability more difficult, which in turn may increase the degree of dependence.

While these commercial practices are a manifestation of economic and contractual freedom, in some cases they might be abusive as they could undermine good faith and/or fairness in commercial relationships. In other words, these normative foundations serve as a basis for establishing a boundary between practices with relative market power that are socially acceptable and those which are not. Both at a national and comparative law, the materialization of this dividing line is found mainly in the field of contract law and unfair commercial practices laws. 29

On the other hand, from the perspective of the market’s functioning, although imbalances of bargaining power are inherent in all markets —so much so that they are usually considered a sign of competition—, 30 the exercise of relative market power could, under certain circumstances, cause negative effects on the market structure. As such, a second normative foundation for limiting relative market power could be competition. 31

For instance, taking the commissions’ example, if the platform’s relative market power allows it to raise commissions only to certain suppliers, the resulting differentiated charges can lead to a downstream distortion of competition. 32 On the other hand, in the refusal to grant access to data example, while a vertical-bilateral approach would enable a claim for damages generated on those who cannot access their data, a horizontal-collective approach allows an analysis of whether there are artificial barriers that obstruct competition in the platform market. Moreover, the imposition of exclusive distribution clauses or other formulas that increases switching costs can cause the same effect. 33

Platforms have incentives to be the first to adopt this type of strategy, because by doing so they can take advantage in the winner-takes-all race. 34 In this context, one of the main questions is when these aggressive strategies should be regarded as anti-competitive. To this end, competition law usually resorts to the rule of dominance.35 Dominant power is a legal fiction that —based on economic parameters— distinguishes whether a firm has sufficient market power to behave with independence from competitors36 and/or customers37 on a constant basis. If so, their behaviour is scrutinised to assess whether it has an economic justification or, on the contrary, whether it was carried out to exclude competitors or exploit the market. Yet, in digital platform markets (and in the data economy in general) this rule faces several difficulties.38 First, since platforms have multiple sides, it is complex to understand the distribution of power among them.

39 Second, in the data economy it is complex to know what the true utility or value of a company's accumulated data is and how important it is to access this data for third parties to compete.40 On the other hand, the rule of dominance seems not able to handle all cases of economic dependence threatening competition. Indeed, according to the examples we saw, a third difficulty is that there could be a scenario of dependence distorting downstream or upstream competition (where the platform does not compete, or competes, but is not dominant). Finally, a fourth difficulty is that, even without dominance, a platform can make strategic use of dependence to reach a position of dominance that will later allow it to win the whole market.

#### Structural separations can reorient the coordinates of geo-economic power – smart economies need smarter regulations.

Gurumurthy et al. ’20 [Anita “Unskewing the Data Value Chain: A Policy Research Agenda for Equitable Platform Economies”; (September 1, 2020); Available at SSRN: <https://ssrn.com/abstract=3872492>; AS]

Development is about how developing countries can move out of highly competitive activities with low margins to higher value activities with higher knowledge premiums, a process that has been recognized as structural transformation (Mann & Iazzolino, 2019). Fuelled by digital intelligence, all sectors of the economy are today undergoing a rapid makeover; a transition that requires developing countries to ensure that their productivity gains and digital capabilities are in a virtuous cycle. However, the “intelligence premium” harvested by dominant platform-lead firms in global data value chains constitutes a barrier to entry, impairing the global competitiveness of developing countries (Gurumurthy et al., 2019). The private enclosures of data and digital intelligence unfairly cement the competitive advantage of rich countries in global data value chains and thwart the potential for structural transformation of developing countries. Hence, while the data paradigm presents an urgency for systemic coordination towards national digital industrialization, it also represents a highly contested faultline in global resource redistribution.

The development question for the digital economy then is this: how can the data value chain be unskewed for redistributive equity and inclusion?

This conundrum has been the topic of significant, even if nascent, debates. Both traditional and new age policy proposals are being put forth from various quarters: institutional reform proposals from multilateral agencies and regional political blocs such as OECD, policy review assessments initiated at the national level, and unconventional and radical solutions from progressive civil society networks and scholars.

The emerging proposals can broadly be divided into three main areas: reining in Big Tech power, carving out a new resource governance regime for data resources, and building intelligence infrastructure capabilities in the Global South. Admittedly, many of the ideas involved are fledgling and demand in-depth exploration and robust debate before they can coalesce into clear and effective policies. But the juggernaut of Big Tech impunity and a yawning democratic deficit in global/regional policies in critical areas like trade, taxation and capital flows demand bold and agile action that eschews incremental, status quoist measures. They call for a conceptual overhaul that accounts for the realpolitik of geo-economic power.

The following sections take stock of noteworthy policy proposals that have emerged in each of the three areas, examining them critically and posing priority directions for a research agenda11 that can answer the following questions:  How are current policy directions and emerging institutional mechanisms able to address questions of market fairness and economic equity in the digital economy?  How do emerging global policy frameworks on data and AI impact national development priorities and pathways?

Area 1. Reining in Big Tech power through traditional policy instruments

In mainstream policy discourses in the digital arena, there is increasing recognition that competition and taxation policy reform are urgently needed to effectively curb Big Tech power in global data value chains.

With respect to competition policy, there is mounting consensus that industrial era competition law frameworks need to be overhauled so that they are able to effectively address the anti-competitive risks of network-data effects in data value chains. In 2020, the European Commission for Competition announced an in-depth study aimed at the updation of its merger assessment rubrics to address the realities of asset light, data heavy platform business models of the digital age (Modrall, 2020). The United States House Judiciary Committee has just concluded an investigation into the structural separations to be effected in data value chains to ensure that corporations controlling essential platform infrastructures are not also competing with the businesses that transact goods and services on them, the urgently needed “separation of platforms and commerce” that legal scholar, Lina Khan, has flagged in her study of Amazon’s antitrust behavior (Khan, 2017; 2019). Such interventions to overhaul traditional competition laws are urgently needed in the Global South as well.12

Currently, the European Union is exploring a limited form of structural separation by prohibiting specialized data sharing services from deploying the data that they transact for other uses, in an attempt to establish boundaries between data intermediation and intelligence services layers. But as the proposed regulation in its current form does not extend to cloud service providers, content intermediaries, and data exchange platforms developed in the context of IoT, it can be argued that this regulatory solution does not go far enough.13

#### Applying extraterritorial remedies to dominant platforms in developing countries unlocks the benefits of the digital economy.

First ’21 [Harry; Professor of Trade Regulation @ NYU; “Digital Platforms and Competition Policy in Developing Countries”; <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3864953>; AS]

Despite these caveats, it would be unwise for agencies in developing countries to ignore innovation issues in competition law enforcement. Developing countries have particular policy concerns that may seem less important to developed countries. One major concern, of course, is economic development, for which innovation may be a critical driver, particularly if we view innovation in a less technology‐centric way. Another major concern is inclusive economic growth, making certain that the gains from markets are distributed more widely rather than less, particularly when it comes to groups that have faced discrimination or have not adequately participated in the economy. A third concern is sovereignty, to make sure that a developing economy is not dominated by outside economic interests. Competition enforcement that increases innovation, particularly through an emphasis on competitive rivalry in dynamic markets, offers the possibility of advancing all three goals.

II. Digital Platform Use in Developing Countries

A. An Overview

Digital platforms are in widespread use in developing countries. The major U.S. digital platforms tend to be ubiquitous—in South Africa, for example, nearly half of all Internet users use Facebook, YouTube, and WhatsApp39— but there are also more local platforms in developing countries that are of significant size.40

Digital platforms can be categorized in different ways. Most common is to categorize them by the type of service they offer; the proposed EU Digital Markets Act, for example, has eight categories of “core platform service,” such as search engines, social networks, and operating systems.41 This type of categorization is similar to product markets as analyzed under competition law. A more functional approach divides digital platforms into transaction platforms and innovation platforms.42 Transaction platforms are generally multi‐sided and “support exchanges between a number of different parties,” Amazon and Uber being good examples. Innovation platforms (sometimes called technology or engineering platforms) provide components that a firms in a sector can use in common for their interactions. Computer operating systems and technology standards are good examples of these platforms.43

Entrepreneurs in developing countries have generally not created innovation platforms.44 Rather, they have used platform technologies created elsewhere to offer products that are distributed digitally, mostly on a relatively localized basis, that is, within the home country of the entrepreneur. Platform technologies are thus tools for these enterprises, allowing them to create new products and distribute them more efficiently. Even if entrepreneurs in developing countries do not create the tools, however, their use of platform technologies can still be market‐creating or sustaining and thereby qualify as innovation that can drive economic growth.

As the following examples will show, whether platforms are successful depends on many factors beyond competition law enforcement. Indeed, at the moment, competition law violations may not as yet have emerged. The question, though, is whether competition policy can play a role in keeping digital platform tools accessible and digital product markets competitive.

B. Mapping Platform Use in Africa: Four Areas

1. Online retail sales

Online retail sale of physical products and services is developing in Africa, but slowly. In South Africa, for example, e‐commerce is estimated to have only approximately 1‐2 percent of total retail sales, in comparison to 18 percent in the UK, with customers generally being higher income earners mostly concentrated in metropolitan areas.45 Nevertheless, throughout Africa a wide range of products are sold through online retail platforms, including food, consumer electronics, fashion, and apparel.46

Retailers use platforms in three ways. First, traditional brick‐and‐mortar stores use internet sales as a complement to their sales in physical stores; this has given major retailers a strong presence in online retail selling.47 Second, some sellers have an online presence only, selling their products at retail on various digital platforms. The “most ubiquitous” digital enterprises in Africa are e‐commerce sites that present their products on Facebook.48 Third, Africa‐based platforms offer marketplace services for other retailers. Takealot in South Africa has become the largest online retail marketplace in South Africa, for example, with more traffic than international competitors such as Amazon or eBay.49 It has also begun integrating into offering its own exclusive brands in competition with other retailers on the platform, raising potential concerns for self‐preferencing.50

Online retail sellers in Africa, particularly small and medium business enterprises, face a set of challenges that make it difficult to compete successfully. Online advertising is critical for these enterprises, but the two main advertising channels are Facebook and Google, and their use is expensive and complex for smaller businesses.51 Most e‐ commerce payment transactions are made by credit card, but fees can be high, payments can be slow, and concern for fraud has been high.52 Delivery may require investments in expensive assets to assure delivery (trucks, motorcycles, warehouses), particularly if the postal service is unreliable.53 On the other hand, the expense of drop‐ shipping international packages, the unreliability of the postal service, the relatively small size and geographical isolation of many African countries can make it difficult for international platforms like Amazon to compete successfully with local e‐commerce sites.54

2. Value chains

Companies in Africa use digital platforms to participate in “value chains,” that is, as intermediate transactors in the production and sale of goods and services. The ultimate consumer in the chain may be located outside the country or inside. For many African countries, participation in global value chains has been seen as an important way to stimulate economic growth, particularly if small and medium size businesses are the beneficiaries of such participation.55

The extent to which digital platforms have increased such participation by African firms is unclear. A study of value chains in Kenya and Rwanda examined how tourism firms integrated with international tourism sites to provide booking availability and service information, but found that their participation was often limited by a lack of technical skills and by the platforms’ managerial requirements.56 A study of small‐scale fresh fruit and vegetable farmers in Tanzania and Kenya focused on the use of certain basic platform technologies (mobile phones, Internet, and Facebook) to access payment systems, get pricing and production information, and reach export markets. Such usage was actually rather small (only 11 percent of farmers surveyed). Although the use of cellphones was helpful to small farmers in many local markets, reaching export markets required use of the Internet more than the use of basic cellphones, a step that excluded farmers who lacked sophistication (technical and linguistic).57

The difficulties of establishing digital value chains is not just limited by access to technology. More tractably for competition law, existing market structures and entrenched competitors may stand in the way as well.

A good example is the effort to create an online tea auction market in Mombasa, Kenya. The Mombasa Tea Auction provides the link between East African tea processors and international buyers.58 Kenya is the world’s leading exporter of tea and tea is Kenya’s number one foreign exchange earner.59 Tea is transported from highland areas in Africa to storage warehouses in Mombasa, where it is subsequently auctioned. Two groups have been the main intermediaries between growers and buyers in this process—tea brokers and storage warehouses—and only tea brokers could negotiate with buyers in the auction. Sellers made payments to the auction and then collected the tea from the warehouses for export. About 95% of tea exported from Kenya was sold through the Mombasa Tea Auction.

Asian competitors had been using online auctions but the Mombasa Tea Auction was done in person. Recognizing the auction’s inefficiencies, in 2012 an effort was made by the East African Tea Trade Association (EATTA) to introduce an online auction system. EATTA has 200 members from 10 African countries (mostly in East Africa) and includes all groups in the industry (producers, buyers, brokers, warehouses, and packers). Intermediaries were most opposed to an online auction, particularly the brokers who were believed to have controlled the in‐person auction and feared disintermediation.60 Interestingly, the brokers also feared that buyers would find it easier to collude when they didn’t have to place bids in an open auction, perhaps a not misplaced worry given a later antitrust suit against EATTA for fixing brokers’ and warehouse owners’ fees in the tea auction.61

After a trial run of an online auction, the EATTA members voted against its continuation. Apparently the brokers were able to convince smaller producers, whose only link to these markets was through the brokers, that an online auction would harm the brokers and thereby harm them.62 It was not until 2019 that an online tea auction became operational.63

3. FinTech

Financial technology products (“fintech”) operate as multisided platforms connecting buyers and sellers of financial services using the internet, mobile devices, software technology, and/or cloud services.64 Fintech products can cover aspects of banking, digital currencies, insurance, lending, money transfers, and payments. Fintech products can be deeply disruptive of existing banking and financial services but they can also offer platform infrastructure for many businesses. As such, fintech products are widely used throughout Africa.

Probably the most widely‐lauded fintech product in Africa is M‐Pesa, the payments service that runs on mobile phones.65 M‐Pesa was launched in 2007 by Vodafone, the U.K.‐based telecom company, in partnership with two African mobile phone system operators, Safaricom in Kenya and Vodacom in Tanzania.66 M‐Pesa “allows users to deposit money into an account stored on their cell phones, to send balances using SMS technology to other users (including sellers of goods and services), and to redeem deposits for regular money.”67 There is no charge for depositing the cash with the mobile phone company; charges are deducted when “e‐float” or “e‐money” is sent to recipients or when cash is withdrawn.68

M‐Pesa spread quickly following its introduction, with 10,000 new registrations by the end of its first year; two years later there were 7.7 million M‐Pesa registered accounts.69 In its first ten years the service expanded to ten countries, including one in Eastern Europe. By that time 21 percent of all adults in Sub‐Saharan Africa had a mobile money account; 73 percent of the population of Kenya and more than 50 percent of the population of Uganda and Zimbabwe used mobile money.

For all of M‐Pesa’s important success, its growth has actually been fairly limited, as has been the growth of fintech firms generally, which “have been slow to penetrate other sectors and other countries.”70 M‐Pesa has been limited by the fact that it operates a low‐tech service, using basic cellphones and text technology but not relying on more advanced smartphones.71 Thus it has proved less attractive in countries like South Africa that already had more advanced smartphone use and a “much more advanced banking network” that was able to meet the needs that M‐Pesa met.72 M‐ Pesa’s technological limits also made it less attractive for integrating its mobile payments API into other software applications.73

Whether the slow diffusion of fintech in Africa is a result of technological impediments or competitor resistance is unclear. One author concludes that the “largest impediment to more rapid FinTech growth appears to be the electrical and communications infrastructure in many developing countries, which have only limited, unreliable access to broadband Internet connections and smartphone handsets.”74 There is little doubt that these infrastructure issues affect the ability of digital platforms to thrive in Africa, but it may also be the case that the powerful financial companies can create legal roadblocks to fintech entry as well as try to preempt that entry by offering products similar to what potentially disruptive fintech entrants are offering. Indeed, this may be the case in South Africa. As the South Africa Competition Commission points out, one approach is for incumbents to accommodate the competitive threat by partnering with the upstart fintech firm: “the Fintech firm commits to remain small, providing the incumbent with its offerings whilst being able to ride on the scale, distribution channels and licenses of the traditional bank.”75 Another possibility is for the incumbent to acquire the fintech firm outright. A third is for the incumbent firm to compete with the fintech’s offerings, potentially leading to anticompetitive actions such as denying the fintech firm needed access to infrastructure assets.76

4. Sharing platforms

Sharing platforms are used by a wide variety of businesses in Africa. The South Africa Competition Commission defines these platforms as offering “short‐term peer‐to‐ peer transactions to share the use of idle assets and services or to facilitate collaboration.”77 Sharing platforms include not only firms that allow owners of vehicles and accommodations to “share” them with users, but also allows the sharing of work spaces, money (loans), clothing, and free‐lance services.78

Sharing platforms is an area in which the major international companies face competition with local enterprises. In the ride‐hailing segment, for example, Uber’s entry into African markets triggered the spread of mobile mapping technology for collecting location data from mobile vehicles. This allowed local companies to develop their own products suited to the needs of customers in different cities and countries, “giving themselves an edge over foreign services.”79 In South Africa, for example, Taxi Live and Mr D Foods (both South African firms) compete with Uber for taxi ride‐hailing and food delivery; Afri Ride, a South African company, competes by allowing commuters or drivers to offer unoccupied seats on their trips.80 In Kenya Little Cab competed with Uber by accepting M‐Pesa payments.81

Even with the existence of local companies, international firms appear to be the major competitors in most of these sharing platform markets. In a survey of users in Nairobi, Little Cab, four years after its entry, was running a distant third to the international platforms, Uber and Bolt.82 A 2020 survey in South Africa showed that three of the fifteen most popular applications in South Africa were international ride‐sharing platforms; none of the platforms in the survey was South African or African.83

The competitive problems that firms in sharing platform markets face do not appear to be the result of the exercise of anticompetitive conduct by dominant firms. Of course, as in developed countries, these platform companies do face opposition from the traditional operators in the fields that the platforms challenge. In the ride‐sharing market, for example, the metered taxi industry has responded to Uber’s entry in ways that are similar to the responses in developed countries. Taxi drivers have tried to physically block Uber drivers;84 they have also tried to invoke government action to stop Uber from engaging in certain business practices.85 But they have also tried to meet the challenge with the more competitive response of developing their own apps to connect passengers to metered taxis.86

C. Conclusion

The mapping just presented of digital platform use in Africa is by no means complete. Digital platforms are being developed in many other areas. In agriculture, for example, Kenya‐based mobile apps have been launched to help farmers better manage crops such as cassava, maize, and potatoes.87 In health care, there is a long list of available apps: “Hello Doctor” provides free essential medical information in 10 African countries; FD Detector (developed by five teenage girls from Nigeria) detects fake drugs by using bar codes; mTrac allows health care workers in Uganda to submit weekly health data via SMS; Omomi provides women in Nigeria with maternal and child health information and connects them to doctors.88

Even though the overview is necessarily incomplete, the picture that does emerge shows that digital platforms do hold out the promise not just of extending traditional industries into new means of distribution. Digital technologies also hold out the promise of dealing with certain problems that are more acute in developing countries (although not absent in developed countries). Access to capital can be increased through fintech applications; business transactions can be facilitated if payment systems are more secure; small enterprises can reach markets more efficiently if digital platforms are available and open; health care information and data can be shared more easily where mobile applications are available. Many of these improvements are more incremental than fundamental, but they all lead to better market‐driven outcomes.

III. Lessons For Competition Policy For Digital Platforms

It is not surprising that even a brief survey of the adoption of digital platforms in Africa shows that their use is both important and spreading. To a large degree these platform technologies are tools for a variety of improvements in the production and distribution of old and new products. The ability to use these tools to create new offerings is an important aspect of innovation.

Developed countries now seem obsessed with the power of the major platforms over many aspects of our economy and life. Developing countries seem less obsessed but, in a significant way, more dependent. Mobile technology is a key tool for delivering new digital products, but this technology often comes with a hidden “tax” imposed by developed world patent holders that control the standards on which these devices (now smartphones) are based and set the fees for licensing those standards.89 Developed world competition law enforcers seem powerless to control this pricing power; we wouldn’t expect developing world enforcers to do better. This tax, however, may be more critical in economies where the incomes are lower and smartphone use more limited.

What about the power of the GAFA? Although the use of Google and Facebook products is clearly ubiquitous, Apple and Amazon seem less powerful. In particular, Amazon’s business model puts it at a disadvantage in many developing economies, where shipping costs, tariffs, and delivery systems give local online sellers an edge.

Facebook and Google, but especially Facebook, loom larger. Search is important for delivering advertising, but Facebook, combined with WhatsApp, is vital not only for digital advertising but for digital presence. Sellers have come to rely on Facebook for connecting to consumers and establishing a network of users with whom to communicate and from whom to get information and data. Entrepreneurs in the developing world have complained about Facebook and Google’s high advertising rates, but with Facebook the problem goes deeper. Should Facebook or WhatsApp change their terms of use in some way, there would be little that developing countries could do. If Australia is having trouble controlling Facebook, what would we expect from countries with fewer users and smaller economies?90

This means that the first lesson for competition policy toward digital platforms is actually aimed at developed countries. If antitrust authorities in the U.S. are successful in their litigation against Facebook and Google, at least some thought should be given to how the remedies sought will affect developing countries.91 Although consideration of extraterritorial effects is not part of the case against these companies, remedy is broader. Positive spillovers should be part of the governments’ calculus.

#### Only the FTC can cooperate with foreign antitrust agencies to properly administer remedies.

Pachnou ’17 [Ms. Despina, Organization for Economic Co-operation and Development, “DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS COMPETITION COMMITTEE” https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/et\_remedies\_united\_states.pdf]

5. The Agencies’ Cooperation with Foreign Jurisdictions on Remedies

18. Achieving effective remedies often entails cooperation with foreign jurisdictions. Such cooperation may allow the U.S. agencies to secure relief that sufficiently protects U.S. competition and consumers without applying the remedy to conduct or assets outside the United States. When an extraterritorial remedy is necessary to address harm or threatened harm to U.S. commerce and consumers, cooperation helps to minimize the risk of conflict with obligations of foreign laws or foreign remedial orders.35 Cooperation and coordination on remedies can be efficient for enforcers and the parties under investigation, especially given that over 130 jurisdictions have antitrust laws and over 80 require pre-merger notification. Cooperation may result in a remedies package that addresses competition concerns in multiple jurisdictions.36 The Agencies work closely with competition enforcers in other jurisdictions on cases under common review, including to help foster convergence and consistent remedy determinations.37

6. U.S. Case Examples

19. To the extent that the Agencies rely on extraterritorial remedies, they do so in both merger and conduct cases, although they arise most frequently in the merger context. In all cases, the Agencies seek remedies that are appropriately tailored and that do not apply extraterritorially unless necessary to address the harm or threatened harm to U.S. commerce or consumers.

6.1. Merger Cases

20. In most mergers, the Agencies can obtain an effective remedy for U.S. competition and consumers without extraterritorial divestitures or other relief. This is the case even when an Agency coordinates with other jurisdictions in investigating a transaction that raises concerns in both domestic markets and markets outside the U.S. Even in these instances, however, coordination between jurisdictions can be helpful. For example, the FTC benefited from coordinating with antitrust authorities in Canada, the EU, and Mexico during the investigation of Emerson Electric Co.’s acquisition of Pentair plc, even though the potential harm to U.S. markets was resolved exclusively through the divestiture of a U.S. switchbox facility.38 Similarly, in the General Electric-Alstom SA merger, effective relief for U.S. markets required divestiture of only U.S. based assets; however, coordination between the Department and the EC in connection with the Department’s investigation “facilitated [the Department’s] investigation and helped formulate remedies that [preserved] competition in the United States and internationally.”39 A coordinated remedy resulted in the Department and the EC announcing separate settlements that eliminated harm to consumers in their respective jurisdictions. 40 There are many more cases in which the Agencies have coordinated with their foreign counterparts on mergers that affect multiple jurisdictions.41

21. Although a merger may affect competition in several jurisdictions, the Agencies focus on preserving competition in the domestic markets that may be harmed by the proposed acquisition. On some occasions, relief secured by foreign jurisdictions means that no remedy, domestic or extraterritorial, is necessary to protect domestic competition. Though our experience in deferring to another authority’s remedy is limited, we have relied on informal deference and remain interested in doing so, under the right conditions. A notable example was in connection with Cisco’s acquisition of Tandberg in 2010. The Department declined to challenge the merger in part due to certain commitments that Cisco made to the European Commission (EC) to facilitate interoperability in products related to a type of videoconferencing called telepresence. Waivers of confidentiality by the parties and industry participants allowed the Department and the EC to cooperate closely in their parallel reviews of the transaction, resulting in an efficient outcome for the enforcers and the merging parties.42

22. Nevertheless, certain merger investigations resolved by consent decree have required the divestiture of assets located outside the United States to preserve competition within the United States. For example, the FTC consent decree resolving concerns regarding the merger of cement manufacturers Holcim Ltd. and Lafarge SA required, in part, divestiture of a Canadian cement plant and related U.S. terminals along with two Canadian terminals related to a U.S. cement plant. The FTC explained that the divested assets “remedy competitive concerns in northern U.S. markets [and are] part of a larger group of Holcim assets located in Canada that Holcim and Lafarge have agreed to divest to address competitive concerns raised by the [Canadian Competition Bureau (“CCB”)]. Commission staff worked closely with staff from the CCB to reach outcomes that benefit consumers in the United States.”

43 An extraterritorial remedy was also required to resolve Department’s investigation of the Anheuser-Busch InBev SA/NV & Grupo Modelo S.A.B. merger. The consent decree in that matter similarly required divestiture of a facility outside of the United States, the Grupo Modelo brewery in Mexico, and a perpetual and exclusive U.S. trademark license to the seven brands of beer that Modelo then offered in the United States, as well as three brands not yet offered in the United States, but currently sold by Modelo in Mexico. This remedy allowed the acquirer “to meet current and future demand for Modelo Brand Beer in the United States,” which resolved concerns that the merger would harm competition in twenty-six local U.S. markets.

#### Global digital inequality tears at the seams of the international order.

Wong ’20 [Johnson; Graduate School of Public and International Affairs @ UOttowa; “Digital Divide: Geotechnology, Politics and the International System”; <https://ruor.uottawa.ca/bitstream/10393/41017/1/WONG%2C%20Johnson%2020205.pdf>; AS]

Despite the power of institutions and the strength of international organizations to resolve conflicts, the digital divide brought on by technology, economic self-interest, and centuries of culture, will necessarily disrupt the existing international system. Even within Western liberal democratic countries, there continues to be significant systemic confrontations as long-running grievances remain unresolved, such as historical racial divisions, the surge in right-wing populism, and a growing inequality gap. Internationally, there is a shift in the character and ability of international institutions themselves to resolve disputes through existing mechanisms, such as the ABM treaty, the CFE treaty, and the INF treaty. These are a few examples of the breakdown of existing international constructs (Hall, 2019, 4). At the same time, China will continue to offer, in partnership with its Russian and other Eurasian allies, an alternative political model that will emphasize the values and qualities which are important to those societies: social stability, economic prosperity, and national strength. Zhao summarizes this argument “In the final analysis, there is a choice between a Confucius capitalist China that is trying to integrate with a socially and ecologically unsustainable planetary capitalist order and a renewed socialist China that is leading a post-capitalist and post-consumerist, sustainable developmental path as part and parcel of an alternative globalization” (Zhao, 2013, 27). The separation between capitalism and political liberalism is an intentional strategy meant to demonstrate that state governance can be effective without political change. The Chinese model will also emphasize regional strength while avoiding ideas about global tyranny so long as the US continues to be portrayed as an international bully and troublemaker that acts with impunity. On the character about the Internet itself, the seeds of doubt had already been made in various forums: “At the Forum of Independent Local and Regional Media in 2014, Putin labeled the Internet ‘a special CIA project’, adding that the United States wanted to retain their monopoly over it” (Budnitsky and Jia, 2018, 607). The digital divide will become another point of division to separate the global community this century, and as a means for authoritarians to consolidate power. While military conflict may be avoidable, cyberconflict and the use of hybrid warfare – involving careful coordination between state and non-state actors – may take place more often as state forces engage online in efforts to upset the new status quo. The benefits of technology, such as 5G and beyond, may also challenge trends and perspectives about values and culture on both sides as societies and the role of technology to support individual, corporate or state interests evolve.

#### Extinction from nuclear war, warming, and next gen tech.

Harari ’18 [Yuval Noah; Professor of History @ Hebrew University of Jerusalem; “We need a post-liberal order now”; The Economist, https://www.economist.com/open-future/2018/09/26/we-need-a-post-liberal-order-now]

For several generations, the world has been governed by what today we call “the global liberal order”. Behind these lofty words is the idea that all humans share some core experiences, values and interests, and that no human group is inherently superior to all others. Cooperation is therefore more sensible than conflict. All humans should work together to protect their common values and advance their common interests. And the best way to foster such cooperation is to ease the movement of ideas, goods, money and people across the globe. Though the global liberal order has many faults and problems, it has proved superior to all alternatives. The liberal world of the early 21st century is more prosperous, healthy and peaceful than ever before. For the first time in human history, starvation kills fewer people than obesity; plagues kill fewer people than old age; and violence kills fewer people than accidents. When I was six months old I didn’t die in an epidemic, thanks to medicines discovered by foreign scientists in distant lands. When I was three I didn’t starve to death, thanks to wheat grown by foreign farmers thousands of kilometers away. And when I was eleven I wasn’t obliterated in a nuclear war, thanks to agreements signed by foreign leaders on the other side of the planet. If you think we should go back to some pre-liberal golden age, please name the year in which humankind was in better shape than in the early 21st century. Was it 1918? 1718? 1218? Nevertheless, people all over the world are now losing faith in the liberal order. Nationalist and religious views that privilege one human group over all others are back in vogue. Governments are increasingly restricting the flow of ideas, goods, money and people. Walls are popping up everywhere, both on the ground and in cyberspace. Immigration is out, tariffs are in. If the liberal order is collapsing, what new kind of global order might replace it? So far, those who challenge the liberal order do so mainly on a national level. They have many ideas about how to advance the interests of their particular country, but they don’t have a viable vision for how the world as a whole should function. For example, Russian nationalism can be a reasonable guide for running the affairs of Russia, but Russian nationalism has no plan for the rest of humanity. Unless, of course, nationalism morphs into imperialism, and calls for one nation to conquer and rule the entire world. A century ago, several nationalist movements indeed harboured such imperialist fantasies. Today’s nationalists, whether in Russia, Turkey, Italy or China, so far refrain from advocating global conquest. In place of violently establishing a global empire, some nationalists such as Steve Bannon, Viktor Orban, the Northern League in Italy and the British Brexiteers dream about a peaceful “Nationalist International”. They argue that all nations today face the same enemies. The bogeymen of globalism, multiculturalism and immigration are threatening to destroy the traditions and identities of all nations. Therefore nationalists across the world should make common cause in opposing these global forces. Hungarians, Italians, Turks and Israelis should build walls, erect fences and slow down the movement of people, goods, money and ideas. The world will then be divided into distinct nation-states, each with its own sacred identity and traditions. Based on mutual respect for these differing identities, all nation-states could cooperate and trade peacefully with one another. Hungary will be Hungarian, Turkey will be Turkish, Israel will be Israeli, and everyone will know who they are and what is their proper place in the world. It will be a world without immigration, without universal values, without multiculturalism, and without a global elite—but with peaceful international relations and some trade. In a word, the “Nationalist International” envisions the world as a network of walled-but-friendly fortresses. Many people would think this is quite a reasonable vision. Why isn’t it a viable alternative to the liberal order? Two things should be noted about it. First, it is still a comparatively liberal vision. It assumes that no human group is superior to all others, that no nation should dominate its peers, and that international cooperation is better than conflict. In fact, liberalism and nationalism were originally closely aligned with one another. The 19th century liberal nationalists, such as Giuseppe Garibaldi and Giuseppe Mazzini in Italy, and Adam Mickiewicz in Poland, dreamt about precisely such an international liberal order of peacefully-coexisting nations. The second thing to note about this vision of friendly fortresses is that it has been tried—and it failed spectacularly. All attempts to divide the world into clear-cut nations have so far resulted in war and genocide. When the heirs of Garibaldi, Mazzini and Mickiewicz managed to overthrow the multi-ethnic Habsburg Empire, it proved impossible to find a clear line dividing Italians from Slovenes or Poles from Ukrainians. This had set the stage for the second world war. The key problem with the network of fortresses is that each national fortress wants a bit more land, security and prosperity for itself at the expense of the neighbors, and without the help of universal values and global organisations, rival fortresses cannot agree on any common rules. Walled fortresses are seldom friendly. But if you happen to live inside a particularly strong fortress, such as America or Russia, why should you care? Some nationalists indeed adopt a more extreme isolationist position. They don’t believe in either a global empire or in a global network of fortresses. Instead, they deny the necessity of any global order whatsoever. “Our fortress should just raise the drawbridges,” they say, “and the rest of the world can go to hell. We should refuse entry to foreign people, foreign ideas and foreign goods, and as long as our walls are stout and the guards are loyal, who cares what happens to the foreigners?” Such extreme isolationism, however, is completely divorced from economic realities. Without a global trade network, all existing national economies will collapse—including that of North Korea. Many countries will not be able even to feed themselves without imports, and prices of almost all products will skyrocket. The made-in-China shirt I am wearing cost me about $5. If it had been produced by Israeli workers from Israeli-grown cotton using Israeli-made machines powered by non-existing Israeli oil, it may well have cost ten times as much. Nationalist leaders from Donald Trump to Vladimir Putin may therefore heap abuse on the global trade network, but none thinks seriously of taking their country completely out of that network. And we cannot have a global trade network without some global order that sets the rules of the game. Even more importantly, whether people like it or not, humankind today faces three common problems that make a mockery of all national borders, and that can only be solved through global cooperation. These are nuclear war, climate change and technological disruption. You cannot build a wall against nuclear winter or against global warming, and no nation can regulate artificial intelligence (AI) or bioengineering single-handedly. It won’t be enough if only the European Union forbids producing killer robots or only America bans genetically-engineering human babies. Due to the immense potential of such disruptive technologies, if even one country decides to pursue these high-risk high-gain paths, other countries will be forced to follow its dangerous lead for fear of being left behind. An AI arms race or a biotechnological arms race almost guarantees the worst outcome. Whoever wins the arms race, the loser will likely be humanity itself. For in an arms race, all regulations will collapse. Consider, for example, conducting genetic-engineering experiments on human babies. Every country will say: “We don’t want to conduct such experiments—we are the good guys. But how do we know our rivals are not doing it? We cannot afford to remain behind. So we must do it before them.” Similarly, consider developing autonomous-weapon systems, that can decide for themselves whether to shoot and kill people. Again, every country will say: “This is a very dangerous technology, and it should be regulated carefully. But we don’t trust our rivals to regulate it, so we must develop it first”. The only thing that can prevent such destructive arms races is greater trust between countries. This is not an impossible mission. If today the Germans promise the French: “Trust us, we aren’t developing killer robots in a secret laboratory under the Bavarian Alps,” the French are likely to believe the Germans, despite the terrible history of these two countries. We need to build such trust globally. We need to reach a point when Americans and Chinese can trust one another like the French and Germans. Similarly, we need to create a global safety-net to protect humans against the economic shocks that AI is likely to cause. Automation will create immense new wealth in high-tech hubs such as Silicon Valley, while the worst effects will be felt in developing countries whose economies depend on cheap manual labor. There will be more jobs to software engineers in California, but fewer jobs to Mexican factory workers and truck drivers. We now have a global economy, but politics is still very national. Unless we find solutions on a global level to the disruptions caused by AI, entire countries might collapse, and the resulting chaos, violence and waves of immigration will destabilise the entire world. This is the proper perspective to look at recent developments such as Brexit. In itself, Brexit isn’t necessarily a bad idea. But is this what Britain and the EU should be dealing with right now? How does Brexit help prevent nuclear war? How does Brexit help prevent climate change? How does Brexit help regulate artificial intelligence and bioengineering? Instead of helping, Brexit makes it harder to solve all of these problems. Every minute that Britain and the EU spend on Brexit is one less minute they spend on preventing climate change and on regulating AI. In order to survive and flourish in the 21st century, humankind needs effective global cooperation, and so far the only viable blueprint for such cooperation is offered by liberalism. Nevertheless, governments all over the world are undermining the foundations of the liberal order, and the world is turning into a network of fortresses. The first to feel the impact are the weakest members of humanity, who find themselves without any fortress willing to protect them: refugees, illegal migrants, persecuted minorities. But if the walls keep rising, eventually the whole of humankind will feel the squeeze.

### 1AC – Extra

#### Back to advantage 1:

#### Market dynamism lies at 30-year lows.

Khan ’19 [Lina; Chairperson @ Federal Trade Commission, JD @ Yale Law School; “The Separations of Platforms and Commerce,” *Columbia Law Review* 119(4), p. 973-1098; AS]

1. Are Dominant Digital Platforms Stifling Innovation? — One risk associated with foreclosure and value appropriation by dominant digital platforms is that this conduct could deter entry and chill innovation. If independent developers or producers rely on a dominant platform to reach customers and also face the constant risk that the platform will foreclose access, appropriate their business value, or both, producers may be less likely to secure funding and develop their product in the first place. In Microsoft, the district court found that Microsoft’s exclusionary conduct not only had hobbled innovation in middleware and applications software but had discouraged competition throughout the computer industry as a whole.185 The long-term effect of its conduct was to “deter[] investment in technologies and businesses that exhibit[ed] the potential to threaten Microsoft.”186

Anecdotal evidence suggests that both actual entry and the threat of entry by digital platforms into platform-adjacent markets is dampening investment in complementary segments, now known as a “kill-zone.”187 For example, a survey of more than two dozen Silicon Valley investors revealed that Facebook’s willingness to appropriate information from and mimic the functionality of apps has created “a strong disincentive for investors” to fund services that Facebook might copy.188 One founder observed, “People are not getting funded because Amazon might one day compete with them.”189 “We don’t touch anything that comes too close to Facebook, Google or Amazon,” said a managing partner at New Enterprise Associates.190 Another venture capital investor noted that the impact of dominant digital platforms on “what can be funded, and what can succeed, is massive.”191 This concern raised by venture capitalists makes sense: A potential innovator (or a potential funder of a potential innovator) decides whether to invest based on the anticipated risk and reward of realizing the innovation. Anticipating platform discrimination or appropriation will lower expected rewards, depressing the incentive to invest. Even the uncertainty of discrimination can dissuade entry by heightening risk.

Data on investment trends do not offer a decisive answer but generally seem consistent with the story told by surveyed investors. Venture capital funding as a whole appears to be booming: In 2018, the total annual venture capital invested surpassed $100 billion for the first time since the dot-com period.192 The number of angel and seed investments, meanwhile, has been declining since 2015, signaling that it has become harder for startups to secure an initial round of financing.193 Indeed, it is late-stage deals with mature companies that account for an “outsized proportion” of total capital today,194 while startups see fewer first financings, even as the deal value for startups has increased.195 In other words, venture capital markets seem to be following a winner-takemost model: Fewer firms receive funding, but those that do are raising more capital.196 These trends come against a backdrop of falling entrepreneurship: Startup formation is at a thirty-year low, contributing to a loss of business dynamism.197

# 2AC

## Competitiveness

## Dependency Trap

## T

### 2AC – AT: T-Scope = Number of Practices

#### C/I – Expand means to increase the scope.

Merriam-Webster ‘ND [“Expand” https://www.merriam-webster.com/dictionary/expand; AS]

2: to increase the extent, number, volume, or scope of : ENLARGE

#### “Scope” of antitrust laws include scope of action, policy on anticompetitive behaviors, probability of investigation, and competition advocacy.

Bradford & Chilton ’18 [Anu; Professor of Law @ Columbia; and Adam; Professor of Law @ UChicago; “Competition Law Around the World from 1889 to 2010: The Competition Law Index” *Journal of Competition Law & Economics* 14(3), p. 393-432]

Indicators for Competition Law and Policy (CLP): Finally, the CLP Indicators measure the strength and scope of competition regimes in 49 jurisdictions in 2013.53 Relying on a survey conducted among competition agencies, the CLP captures these agencies perception of whether various features of their domestic competition laws prevent anticompetitive behavior. These features include (1) the scope of action (including competences, investigative powers, sanctions/remedies, and private enforcement); (2) policy on anticompetitive behaviors (including horizontal agreements, vertical agreements, mergers, and exclusionary conducts); (3) probability of investigation (including independence, accountability, and procedural fairness); and (4) competition advocacy. Like CPI, FNI, and Four Indicators, the CLP also attempts to measure whether the competition policy reflects generally recognized “good” practices

## States CP

### 2AC – AT: States CP

#### State enforcement over-deters and generates uncertainty – stifles innovation and competition.

Grosso ’21 [Jacob; JD Candidate @ University of Richmond School of Law; “The Preemption of Collective State Antitrust Enforcement in Telecommunications,” *University of Richmond Law Review* 55(2), p. 615-656; AS]

Preemption would address the effects of the growth of federal regulators in the telecommunications market, particularly CFIUS, as well as the resulting changes to the regulatory landscape. If the states act as another national regulator in telecommunications, then innovation, competition, and the ability of federal enforcers to pursue policy goals will be stifled. To solve this problem, collective state antitrust action should be preempted by federal law in the telecommunications market. States likely remain better plaintiffs than consumers in many situations and therefore should litigate on behalf of their citizens. This litigation should be conducted individually, with federal regulatory enforcement generally left to federal regulators.

States should not be prevented from enforcing antitrust law; instead, states should focus exclusively on violations of their own state laws and on protecting their citizens as individual enforcers, not as a collective body. Federal agencies are the proper regulators of national industries such as telecommunications, while state enforcement prevents federal nonenforcement policies which may benefit social welfare overall.253 With respect to policy goals, CFIUS's interventions in recent years showcase the federal government's focus on national security concerns in the telecommunications market. Agendas balancing broader policy goals-such as national security-with competition are only possible under a more centralized enforcement system and by specialized agencies.254

Specialized agencies are therefore the best regulators of the telecommunications market. 25 5 The requirement that "[a]ntitrust analysis must always be attuned to the particular structure and circumstances of the industry at issue" leads to efficiencies from the use of specialized enforcers. 256 The inelasticity of the market and the significant barriers to entry require oversight by specialized expert regulators to maintain a competitive environment, and interference from other government regulators will only impede the ability of the federal regulators to direct this market. Nonenforcement policies, used when the agencies determine doing so is in the best interests of competition, cannot be enforced without a monopoly on enforcement. 257

Placing control in the hands of more centralized regulators reduces uncertainty for competitors due to the inherent inconsistencies in court proceedings and allows for better market functioning. 258 The inability to pursue nonenforcement agendas and reduce litigation will cause unnecessary false positives. False positives can discourage competition and innovation. 25 9 Too many false positives will cause competitors to restrict their behavior drastically to comply with enforcers at the cost of innovative business practices.26 0 Overenforcement and the resulting false positives reduce competition, inviting harm to both the consumer and the aggregate social welfare.26 1 Reduction in states' ability to conduct collective antitrust litigation will naturally decrease the overall amount of litigation, which provides several benefits to competition and to regulators. These benefits include reduced compliance costs, legal fees, and the redistribution of resources. 26 2 Reduced costs will benefit administrative costs, particularly those resulting from the coordination of state agencies. The result is a leaner, specialized enforcement system; increased market freedom due to clear regulations; and the opportunity for regulators to balance broader policy goals with antitrust.

#### States cannot apply global antitrust remedies – they’re key to preventing the dependency trap cause by dominant platform’s conduct in developing countries

Funta ’18 [Rastislav; PhD, LLM, Associate Professor of European Union Law in Janko Jesenský Faculty of Law @ Danubius University; “Extraterritorial application of us-antitrust law on global cartels from comparative (EU LAW) perspective,” *The Lawyer Quarterly* 8(3); AS]

The first question seemed to be largely clarified. The text of the law is based on the socalled “effects test”, which is based on the decision of the Supreme Court in United States v. Aluminium Co. of America, 148 F.2d 416 (2d Cir. 1945) and subsequently confirmed by the Supreme Court in Hartford Fire Insurance Co. v. California, 509 U.S. 764, 113 S.Ct. 2891, 125 L.Ed.2d 612 (1993). The differences between the various Circuit Courts are focused on the second question: Is it the applicant’s claim in the concrete procedure which is the result of the domestic impact,17 or satisfies such a claim a potential18 or potential19 plaintiffs? The question referred to the Supreme Court has tended to be as whether the plaintiffs can assert claims under the Sherman Act to compensate for damages arising solely from transactions that took place outside the US market. The question focused on the applicability of the Sherman Act to foreign conduct. The Sherman Act is to be considered if such activities have an effect on the US market (effects test). Unlike European law, the US Sherman Act focuses more on foreclosure practices and attempts to market monopolization20 Described according to Senator John Sherman, Chairman of the US Senate Financial Committee, Sherman’s antitrust law of 1890, has to protect against commercial practices designed to restrict or eliminate competition in the market. Sherman’s law is divided into two sections.21 According to them, it is forbidden to monopolize trade, all mergers and collusion, which would restrict competition within trade. The Sherman Act was the first measure adopted by the US Congress to ban trusts (or monopolies of any kind). Although many US states have previously enacted similar laws, they were limited to domestic trade. On the other hand, Sherman’s law was based on Congress’s constitutional power to regulate interstate trade.

### 2AC – AT: Federalism DA

#### Link nonunique – courts radically altered the balance in favor the fed.

Meese ’20 [Alan; Ball Professor of Law and Co-Director in Center for the Study of Law and Markets @ William and Mary Law School; “Antitrust Regulation and the Federal-State Balance: Restoring the Original Design,” *American University Law Review* 70(1); AS]

INTRODUCTION

The U.S. Constitution grants Congress limited regulatory powers, leaving the remaining authority to the states. Passed in 1890, the Sherman Antitrust Act1 (“the Sherman Act” or “the Act”) reflects this allocation of responsibility, reaching only a subset of trade restraints, while states retain authority over the rest. This Article contends that the Supreme Court erred when it radically altered the balance between state and national power over trade restraints in 1948, abandoning several decades of precedent that recognized exclusive state authority over most intrastate restraints. This change contravened the apparent intent of Congress, unduly expanded the reach of federal antitrust regulation, and undermined the regime of competitive federalism that had generated the rules governing intrastate restraints producing no interstate harm.

The Sherman Act reaches only those restraints of trade that also restrain “commerce among the several States.”2 The Supreme Court initially read this language to place meaningful limits on the scope of the Act. Drawing upon its Commerce Clause jurisprudence of dual federalism, the Court held that the Act usually did not reach intrastate restraints—that is, agreements governing transactions or transportation confined to one state. Intrastate cartels and mergers thus fell within the exclusive jurisdiction of individual states, even if such restraints indirectly affected interstate commerce.

There was an important caveat, however. When intrastate restraints affected interstate commerce “directly,” the Sherman Act reached such agreements to the exclusion of the states. Effects were direct if the restraint produced antitrust harm that crossed state lines, by exercising market power to the detriment of out-of-state consumers. For more than five decades, the Act reached only those restraints that produced interstate harm, leaving states with exclusive authority over all other restraints within their respective borders. Authority over trade restraints thus resided in mutually exclusive domains, and a regime of competitive federalism produced the rules governing those restraints within the exclusive authority of the states.

The Court abruptly changed course in 1948, greatly expanding the Act’s reach and adjusting the boundaries between state and federal authority in favor of the federal government. Echoing Wickard v. Filburn, 3 the Court replaced the direct/indirect standard with the substantial effects test.4 Thus, the Sherman Act now reaches local restraints producing no interstate harm.

#### Federalism not zero-sum.

Meese ’20 [Alan; Ball Professor of Law and Co-Director in Center for the Study of Law and Markets @ William and Mary Law School; “Antitrust Regulation and the Federal-State Balance: Restoring the Original Design,” *American University Law Review* 70(1); AS]

B. Substantial Effects and the Collapse of Competitive Federalism

The Court’s significant expansion of the Act and recognition of concurrent authority over numerous local restraints radically altered the balance between state and federal power over trade restraints. This major reallocation of regulatory authority undermined the robust regime of competitive federalism that characterized pre-1948 regulation of trade restraints.88 Many restraints were now subject to rules produced by two sovereigns. Because the Sherman Act provided a regulatory floor, states lacked incentives to generate innovative doctrinal approaches less interventionist than Sherman Act doctrine.89 To be sure, states remained free to impose more interventionist rules, condemning conduct that courts treat as perfectly reasonable under the Sherman Act. However, the prospect of aggressive state antitrust enforcement policy has led to sporadic federal judicial invalidation of state antitrust laws and calls for more such preemption.90 Indeed, Richard Posner has called for preemption of all state antitrust regulation of conduct that affects interstate commerce.91 Thus, state efforts to adopt intrusive antitrust regulation vis-á-vis local restraints necessarily take place in the shadow of possible federal reaction, further attenuating the sort of incentives necessary to drive robust competition between the states.92 Perhaps because of this fear, a supermajority of states all but require their courts to read their own antitrust statutes to replicate federal law.93

States do retain exclusive authority over conduct producing no impact of any sort on interstate commerce, raising the prospect of continued rivalry between states to generate doctrine governing such restraints. However, the pervasive integration of the nation’s economy has likely reduced the size of this category to a trivial portion of the nation’s commerce, weakening states’ incentives to produce a separate set of rules governing such restraints.94 Indeed, studies of state antitrust activity conclude that most states bring few, if any, antitrust cases.95 While competition between the states to produce certain bodies of law is alive and well,96 competitive federalism in antitrust is on life support or worse, depriving society of the benefits of interjurisdictional rivalry.97

## Politics

### 2AC – AT: Politics

#### Squo cases thump the link.

Suter 9-10-21

(Tara, https://www.opensecrets.org/news/2021/09/google-on-track-surpass-2020-lobbying-lawsuit-biden-admin/)

Google is facing increased scrutiny from the Justice Department, as reports arose last week that an antitrust lawsuit over the company’s advertising activities may be brought against the company soon. The news of the impending lawsuit comes after the Biden administration appointed strong antitrust advocates to both the Federal Trade Commission and the DOJ, signaling that President Joe Biden is looking to challenge “Big Tech” companies and their business practices. While pressure builds on Google to demonopolize, Google’s parent company, Alphabet Inc., is on its way to surpass its 2020 federal lobbying spending. In the first half of 2021, Alphabet spent nearly $1.8 million more on federal lobbying than it did at the same time period in 2020. That’s $5.9 million this year versus $4.1 million last year. The company’s spending this year is more on track with its spending in 2019, when the company spent around $12.8 million on federal lobbying efforts. While 2021’s number may match that, 2019’s total spend was considerably less than previous years when Alphabet routinely spent more than $15 million. Alphabet is increasing its federal lobbying as lawsuits pour in from more than 30 states. In July, 36 states and the District of Columbia sued the tech giant claiming it attempted to limit competition to its app store, Google Play, through tactics including paying Samsung Electronics Co. not to create its own app store. The tech company has been under increased scrutiny following a smattering of complaints in 2020 for violating antitrust laws. In October 2020, the DOJ sued Alphabet for “unlawfully maintaining monopolies through anticompetitive and exclusionary practices in the search and search advertising markets.” In response to that suit, Google released a statement saying users choose the company’s search engine because they enjoy its services, not because it is a monopoly. “Today’s lawsuit by the Department of Justice is deeply flawed,” Kent Walker, Google’s senior vice president of global affairs said in the statement when the lawsuit was filed. “People use Google because they choose to, not because they’re forced to, or because they can’t find alternatives.” However, the lawsuit won’t go to trial until September 2023. The U.S. is not the only country considering antitrust cases against Alphabet. The European Union has been looking into whether Alphabet tried to prevent non-Google smart assistants from being downloaded on their devices. In 2017, the E.U. fined Alphabet $2.7 billion dollars (€2.4 billion euros) for promoting its own shopping tools on its search engine over other competitors.

#### No dem agreement on reconciliation bill

Olson 9-16-21

(Tyler, https://www.foxbusiness.com/politics/biden-pitches-infrastructure-bill-wealth-gap-fair-share)

The address comes as Democrats are struggling to hash out details about what exactly will be in their budget reconciliation package – the legislative vehicle that allows them to circumvent the Senate filibuster and thus avoid working with Republicans. Some moderates are upset at how expensive the legislation is and at how quickly it's being thrown together. There are also disagreements on the details of how to handle certain elements of the bill, like SALT taxes or prescription drugs. A group of moderate Democrats, for example, voted against a prescription drug provision in the House Energy and Commerce Committee this week.

#### Won’t pass – Biden PC fails – he’s in over his head

Geraghty 9/17 – Jim Geraghty, senior political correspondent of National Review, “A Flailing President,” 9/17/21, https://www.nationalreview.com/corner/a-flailing-president/

Axios informs us that “President Biden failed to persuade Sen. Joe Manchin (D-W.Va.) to agree to spending $3.5 trillion on the Democrats’ budget reconciliation package during their Oval Office meeting on Wednesday,” declaring in a headline, “Biden bombs with Manchin.”

Every politician walks into office with an enormous, and probably unrealistic, sense of his own ability to persuade others. But with each passing week, the gap between the president that Joe Biden thinks he is, and the president that he actually is, grows a little bit wider.

The Financial Times reported that last week Chinese president Xi Jinping turned down an offer from Biden for a face-to-face meeting. Biden insisted the report was not true. One foreign analyst concluded that the Chinese government gave a warmer reception to the Taliban than they did to U.S. presidential envoy John Kerry in early September.

Biden’s new security deal with the U.K. and Australia has left the French livid. “France accused U.S. President Joe Biden on Thursday of stabbing it in the back and acting like his predecessor Donald Trump after Paris was pushed aside from a historic defense export contract to supply Australia with submarines.”

The surge of migrants at the border has not been part of a predictable seasonal pattern. The inflation that was supposed to be short-lived continues to drag on; if you doubt the impact, ask your neighbors about their grocery bills. The pandemic that Biden pledged to shut down has killed more than 25,000 Americans so far this month, even with 76 percent of American adults having received at least one shot of the vaccine. The administration that promised to “follow the science” on vaccines is grappling with what to do when FDA scientists don’t have a consensus on the value of booster shots. Scientists are noticing that the administration’s pledge to “follow the science” has been dependent upon the political convenience of what the science is indicating.

Biden, Antony Blinken, and the rest of the president’s team spent a lot of time patting themselves on the back and declaring that “America is back!” after taking office. But as autumn arrives, they look naïve, unprepared, slow-footed, and in over their heads. A flailing president is a failing president.

#### Afghanistan thumps PC.

Kapur 8-22-21

(Sahil, https://www.nbcnews.com/politics/white-house/honeymoon-over-afghanistan-chaos-comes-critical-moment-biden-s-agenda-n1277338)

WASHINGTON — President Joe Biden’s honeymoon with congressional Democrats appeared to reach an abrupt halt last week when a number of his allies on Capitol Hill began pummeling his execution of the U.S. withdrawal from Afghanistan, promising investigations. It’s a precarious moment for Biden, who needs to save his political capital to pass his ambitious agenda with thin Democratic majorities. House leaders are battling dissent among moderate lawmakers skeptical of the dual-track strategy to approve a $550 billion infrastructure bill and a $3.5 trillion package to expand the social safety net and raise taxes on the wealthy. Some insiders see a new phase for relations between Biden and Democrats. “The relationship has certainly hit a rough spot,” said Jim Manley, who was an aide to former Senate Democratic leader Harry Reid of Nevada. “On a whole host of issues, he’s had a pretty good run since becoming president. Now I think the relationship is going to get a little trickier from here on out.” He said he was “surprised by the tough tone” that key Democratic committee chairs like Rep. Gregory Meeks of New York and Sen. Bob Menendez of New Jersey took on Afghanistan, adding that they appear determined to conduct “rigorous” oversight of Biden, their fellow Democrat. The larger political impact of the chaos in Afghanistan is unclear. Polls taken during the chaos found that Americans still prefer withdrawing over remaining. But the situation has enveloped the White House in a near-term crisis that may limit its persuasive powers over Democratic lawmakers. An NBC News poll released Sunday found that Biden's job approval rating is 49 percent, while 48 percent of U.S. adults disapprove. That is down from April, when Biden drew 53 percent approval and 39 percent disapproval.

#### Plan popular.

Lande & Vaheesan ’20 [Robert; Professor of Law @ University of Baltimore School of Law and Sandeep; Legal Director @ Open Markets Institute, JD @ Duke; “Preventing the Curse of Bigness Through Conglomerate Merger Legislation,” *Ariz. St. LJ* 52; AS]

B. Growing Political and Public Concern About Corporate Power

Public recognition of, and concern about, corporate political power is growing. An increasing number of politicians and public figures are focused on the political and social—as well as economic—power of large businesses. This concern is not limited to one portion of the political spectrum. A diverse set of voices and organizations are calling for tackling monopoly and oligopoly power in American society.

Prominent liberal and progressive voices have demanded action to curb the economic and political power of large corporations. Many Democrats have made strengthening anti-merger and anti-monopoly law a key pillar of their agenda.80 As mentioned in the introduction, Senator Amy Klobuchar introduced an anti-merger bill that would establish a presumption of illegality involving mergers that combined more than $5 billion in assets.81 This bill would target corporate size directly, although it features a large exemption for pure conglomerate mergers.82

Senator Bernie Sanders weighed in against the AT&T/Time Warner merger and identified the further agglomeration of power as a principal evil of the combination. 83 He stated this consolidation “represents a gross concentration of power that runs counter to the public good.”84 And in early October 2018, Sanders introduced a bill that would break up the largest financial institutions in the United States and establish a cap on size going forward.85 Senator Sanders also promised to combat the excesses of large firms in the agricultural sector, stating that they are devastating to the small farmer and are a direct cause of mass unemployment, lower wages, massive wealth inequality, and a host of social problems. 86 In his October 2019 Corporate Accountability and Democracy plan, presidential candidate Sanders condemned the present system in which “a small group of ultrawealthy CEOs are making the decisions that increasingly determine our economic, environmental and political future.”87

Senator Elizabeth Warren has offered extensive critiques of corporate power, citing undue political influence as one of the evils of corporate bigness.88 In a keynote address at a conference hosted by the Open Markets Institute in December 2017, Senator Warren warned that “[c]oncentrated market power also translates into concentrated political power—the kind of power that can capture our government. And that’s exactly what’s happening, as President Trump and the Republicans in Congress bow to the power and influence of these industrial giants and financial titans.”89 Warren promised that if elected president, she would break up Amazon, Facebook, and Google.90 She published a detailed plan to break up big tech companies, including the creation of a threshold of $25 billion in annual revenue, above which companies would be subject to restrictions and regulations including mandatory divestitures of certain portions of the company. 91 Facebook allegedly removed Warren’s political ads posted on Facebook that called for breaking up Facebook.92

Warren also called for breaking up some of the biggest farming corporations “so that they not only do not have that kind of economic power, so that they’re wiping out competition, so they’re taking all the profits for themselves . . . but also so that they don’t have that kind of political power.”93

These figures are not outliers but are representative of a growing antimonopoly philosophy among Democrats, liberals, and progressives. Others have echoed the concerns expressed by Senators Klobuchar, Sanders, and Warren. (Former) Representative (and current Minnesota Attorney General) Keith Ellison and sitting Representative Ro Khanna established an Antitrust Caucus and called for antitrust enforcers to look beyond just consumer welfare. 94 Alexandria Ocasio-Cortez, the Democratic representative for New York’s 14th Congressional district, has repeatedly voiced concerns about the political might of large financial institutions.95 Senator Cory Booker has lamented the “incredible concentration of economic and political power in this country” 96 and introduced a bill that would establish a moratorium on corporate mergers in agriculture. 97 Former Colorado governor and former presidential candidate John Hickenlooper has called for a major revival in antimonopoly enforcement.98

Indeed, many Democrats have criticized the political power of banks since at least the 2007–08 financial crisis. In early 2009, just six months after the collapse of Lehman Brothers and the start of the worst financial crisis in eighty years, Senator Richard Durbin famously observed that “the banks— hard to believe in a time when we’re facing a banking crisis that many of the banks created—are still the most powerful lobby on Capitol Hill. And they frankly own the place.”99

Among academics and commentators, Joseph Stiglitz and Paul Krugman have repeatedly sounded the alarm about the pervasive market power problem. Stiglitz has opined that “America has a monopoly problem—and it’s huge” and cited the political power of large corporations as subverting democracy. 100 Krugman has similarly recognized the corrosive political power of large corporations. 101 Former Secretary of Labor, Harvard professor, and political commentator Robert Reich applauded Elizabeth Warren’s announced intention to break up big tech and predicted that breaking them up would allow for more privacy, decentralization of information, and more innovation. 102 Barry Lynn, director of the Open Markets Institute think tank, has sounded the alarm that tech giants like Google and Facebook are a threat to core democratic institutions.103 Zephyr Teachout, a progressive law professor, promised that if elected Attorney General of New York she would explore breaking up Google and Facebook using New York state antitrust laws.104

Conservatives in the United States are generally supportive of, and deferential toward, big business interests. Conservative thinkers have indeed played a major role in weakening the antitrust laws and allowing consolidation and monopolization across the economy.105 In the name of “free markets,” conservative politicians and commentators typically favor policies that support large corporations and place few restrictions on them.106

Nonetheless, more and more conservative voices are starting to raise concerns about corporate power. At present, many of the attacks reflect anger at certain companies, more than corporate power in general. Much of the conservative criticism appears driven by the perceived politics of their executives and employees more than a distrust of large corporations and their power in general. For example, Google is viewed as supportive of the Democratic Party and some liberal causes and it has drawn significant criticism from the right. 107 Whatever the underlying motivation though, skepticism of large corporations, or at least a subset of them, is a growing strand of thought on the right.

At least on the surface, the Trump administration reflects this rising antimonopoly tendency among conservatives. President Trump has repeatedly attacked certain powerful corporations.108 He has criticized the power of Amazon and its founder and chief executive officer, Jeff Bezos. 109 He has also condemned vertical integration in telecommunications—specifically calling out the completed merger between Comcast and NBC Universal and the now-completed merger between AT&T and Time Warner—for threatening to “destroy democracy.”110 His former chief strategist and right-wing icon, Steve Bannon, called for public utility regulation of tech platforms like Facebook and Google.111 Former Attorney General Jeff Sessions called for remedying the perceived liberal bias of these same tech platforms.112

Others on the right have sounded similar fears about corporate power. Senator Ted Cruz, who has been a major recipient of campaign contributions from large corporations,113 has endorsed using the antitrust laws against the power of tech platforms. 114 Senator (and former Representative) Marsha Blackburn has criticized platforms like Google and YouTube for failing to practice viewpoint neutrality and called them out for apparent bias against individuals and organizations expressing conservative opinions. 115 Representative Jim Jordan (R-OH) expressed similar concerns and insinuated that stronger governmental measures should be applied to curb the power of giant social media companies.116 Senator Josh Hawley (R-MO) previously served as Missouri’s attorney general and, during his tenure, opened an antitrust investigation into Google.117

Some conservative media outlets have in recent years been vocal critics of corporate power. Breitbart, the hard-right news outlet formerly run by Steve Bannon, has championed antitrust enforcement against large corporations.118 The American Conservative, a nativist right outlet that supports economic populism, has become a consistent critic of corporate power and supporter of renewed antitrust enforcement.119 Tucker Carlson, a commentator on Fox News, has endorsed public checks on Facebook and Google.120

Conservative talk radio icon Rush Limbaugh described what he saw as a pernicious aspect to corporate ownership of media.121 He stated that large, non-media corporations or their CEOs, for example Jeff Bezos purchasing The Washington Post, acquire media to shape policy and thereby increase their power. 122 Even anti-government conspiracy theorist Alex Jones has called on the Trump administration to break up big technology companies because the supposedly left-leaning Silicon Valley titans are using their massive power to stifle conservative viewpoints.123

With rising awareness of, and opposition to, corporate power, an antimerger law that directly targeted corporate size could attract significant popular and political support. Senator Klobuchar’s bill has already introduced size-based limits on consolidation into the political debate.124 Many liberals and progressives appear ready to embrace this idea.125 On the right, support for such a possibility is much less certain.126 Yet, a growing tide of criticism from conservative figures suggests at least one faction on the right may be open to preventing corporate growth through extremely large mergers and acquisitions.127

#### Winners win – legislative blitz key to success

Waldman 20

(Paul, <https://www.washingtonpost.com/opinions/2020/12/02/joe-biden-has-move-fast/>, 12-2)

For every day of his presidency, Joe Biden will be restrained and bedeviled by Republican power. Republicans will probably retain control of the Senate, and even if they don’t, they will do everything they can to sabotage Biden’s agenda. They will obstruct and delay, whether it’s on legislation, appointments or anything else, to make sure Biden has as little as possible to show for his time in office. Unfortunately, Biden is naturally inclined to respond in just the way Republicans are counting on. He’s a compromiser, a dealmaker — a man who wants to believe that there are bipartisan solutions to be found. That’s not to say that Biden is naive about what he faces, just that he will always be vulnerable to some of the same mistakes that President Barack Obama made early in his tenure, mistakes that come from thinking Republicans just might be operating in good faith and with the proper persuasion they can be dealt with. But a realization of the full implications of our current polarization may just prove liberating for the new administration. There are at least some encouraging signs that Biden understands the situation; here’s a report from Politico on how his transition is thinking about personnel: Concerned about Republicans slow-walking confirmation hearings for Cabinet appointees and hollowed-out federal agencies, Biden and his aides are eager to place mid- to lower-level officials across the federal government, particularly in national security roles, to ensure his administration can begin to enact his agenda immediately, according to three people familiar with the situation. Slow-walking will absolutely be the Republican strategy, on both appointments and legislation. They won’t come out and say they’re going to stonewall every appointee and refuse to allow any legislation to pass; instead they’ll say that they just want to make sure Biden doesn’t stock his administration with radical leftists and propose far-out socialist laws. Send us the nominees and the bills, and we’ll consider them. It’ll just take some time. Weeks will then stretch into months, and the Biden agenda will languish. They’ve done it before — Obama himself describes how they endlessly dragged out negotiations on the Affordable Care Act by claiming they might support it — and they’ll do it again. That’s the Republican plan. The first step to getting around it is to understand that the public won’t blame gridlock on the ones who are causing it. They’ll just see a bunch of bickering in Washington with nothing getting done, and Biden will be the one who takes the blame. Once you realize that the public is neither aware of nor particularly concerned about process questions, you can stop worrying about whether Republicans will squawk at this appointment or that executive order — because they’ll squawk no matter what you do. If it’s a good idea and you think the results will be good, then just do it. As quickly and comprehensively as possible. As David Roberts of Vox observes: In 2009, Obama and his aides made the mistake of thinking that their major initiatives had to be rolled out one at a time in sequence, because he had a finite store of “political capital” that had to be spent carefully. But political capital is not something that exists apart from any particular issue; it isn’t a special sauce that has to be poured on a policy in order to make it palatable. And with the parties as polarized and unified as they are, political capital has become all but meaningless. There may have been a time when a popular president possessed so much capital that a senator from the opposition party would feel compelled to support him on part of that president’s agenda, but that time is long gone. There is no account Biden can draw on to turn Republican “no” votes into “yes.” So setting up a series of high-profile policy battles may be the opposite of what Biden should do. The unfortunate fact is that he may not have the opportunity to do much in the way of big legislation on health care or climate change or anything else, and if he has only executive power to work with, it makes it all the more urgent to move quickly. Which means getting staff in place immediately and then unleashing them. The Revolving Door Project argues that Biden should give as much authority as possible to the agencies to let them dismantle their particular corners of the Trump legacy on their own, because the task “simply will not happen if approached sequentially or micromanaged” by a White House staff with limited bandwidth. That means moving on every policy area all at once. There’s nothing to be gained by putting off any part of Biden’s agenda. Whatever he can do given the limits of his power, he should do as soon as possible, in a flood of policymaking. Even if Democrats win both Georgia races and control the Senate, Biden should acknowledge that he likely has two years until the 2022 midterm elections to pass whatever legislation he can. Not only will Democrats probably lose one or both houses in the inevitable backlash (as happens to most presidents in their first midterm), the only possible chance at forestalling that result is to get results, as many as possible, that he can show the voters. Republicans will complain that Biden is being partisan, uncompromising, taking a “my way or the highway” approach. It will be a strategy to convince everyone of the lie that Biden and Democrats might be able to find some way of winning them over, when in fact they’ll be implementing a strategy of total opposition. If Biden follows them on that fruitless quest, he’ll be running in circles while crucial time passes and nothing gets done. The only option for him is to decide not to care about Republican whining and do what he got elected to do with all haste. The alternative is failure.

#### Covid Mandate proves no pc.

Lowe 9-10-21

(Tiana, https://www.washingtonexaminer.com/opinion/bidens-vaccine-mandate-is-a-legal-mess-and-a-logistical-disaster)

President Joe Biden extended an eviction moratorium already deemed unconstitutional by the Supreme Court, so it would come as little surprise that President Norms would ignore the law going forward with his imperiled presidency. But Biden's latest blow in his campaign against the coronavirus isn't just a legal mess destined for endless court challenges; it's a logistical nightmare with little likelihood of doing anything other than further tightening the labor market and inflaming the sentiments of the vaccine-hesitant. As a part of his umpteenth plan to stop the pandemic, the White House announced a series of vaccine requirements. Two of these, one for contractors with the federal government and another for healthcare workers at facilities funded by Medicare and Medicaid, seem kosher enough, legally speaking. But Biden's signature mandate is directed at the 80 million workers at private businesses with 100 or more employees. "The Department of Labor’s Occupational Safety and Health Administration (OSHA) is developing a rule that will require all employers with 100 or more employees to ensure their workforce is fully vaccinated or require any workers who remain unvaccinated to produce a negative test result on at least a weekly basis before coming to work," the administration announced. "OSHA will issue an Emergency Temporary Standard (ETS) to implement this requirement." That sound you hear is labor lawyers across the country licking their lips over the prospect of profits. Legally speaking, the rule is dubious at best. While the administrative state offers an unseemly amount of authority to the Labor Department in the name of workplace safety, legal challenges will likely range from the 14th Amendment to the Religious Freedom Restoration Act. Even in the case those challenges fail, the odds of a district court judge issuing a nationwide injunction are decent enough to render the rule a gamble. All of this remains to be seen in the exact text of the rule But even more baffling is how Biden believes this can be enforced. Two and a half seconds ago, Democrats and the media went apoplectic at the prospect of Texas deputizing citizens to enforce their fetal heartbeat abortion ban, and now what? Employers are supposed to narc on each other to the federal government should a company fail to comply? And none of that is to mention that the economic implications will be given our already artificially tight labor market. From Democrats casting doubt on the vaccine during the Trump administration to the disastrous Johnson & Johnson pause, the White House and the public health bureaucracy have failed to sell the vaccine successfully. With no political capital left to spare, Biden has resorted to brute force.

#### PC Doesn’t work on moderates or they would’ve flipped by now.

Shepherd 6-2-21

(Brittany, Yahoo News White House Correspondent, http://www.cnn.com/TRANSCRIPTS/2106/02/cnr.02.html)

JOE BIDEN, PRESIDENT OF THE UNITED STATES: I hear all the folks on TV saying, why doesn't Biden get this done? Well, because Biden only has a majority of effectively four votes in the House and a tie in the Senate, with two members of the Senate who vote more with my Republican friends. But we're not giving up. (END VIDEO CLIP) POPPY HARLOW, CNN ANCHOR: Quite a statement there, without naming names. Brittany Shepherd, White House correspondent for Yahoo News is with us and CNN political analyst Rachael Bade, co-author of "Politico's Playbook." Good morning, guys -- ladies. Brittany, it's further than he's gone before, and he named names without naming names. I mean, are words like that pressure going to sway Manchin and Sinema? BRITTANY SHEPHERD, WHITE HOUSE CORRESPONDENT, YAHOO NEWS: Well, Poppy, it's definitely more than nothing. Though we can acknowledge it was pretty subtle, right? And what we didn't hear is the truth that Joe Biden only has a limited amount of political capital, right? And if you look at that political capital like gambling chips, he has a very limited amount just for the month of June, in that same speech yesterday, he said that he has -- he would like to get many things done in this month. So, in five days, that's infrastructure. In three weeks that's police reform. Perhaps renewed calls for gun legislation. Look what's happening around the country. And, of course, an overhaul on the voting system. So every chip he cashes in to convince Manchin or Sinema to move on the filibuster, or at least vote towards his way, is one or two chips he can't use for any of those other things, right? So it's definitely some pressure, but we've heard Joe Manchin say time and time and time again that he believes what he believes and he's not going to move, you know, one way or the other. So I think it's going to take a little bit more from the White House to really arm twist. Perhaps it's an ultimatum. And that's what you're hearing from Democrats and progressives and just Democrats on The Hill. They feel like they've thrown the book at both Manchin and Sinema. You know, they've had closed door sessions with folks like -- everyone from Jon Tester to Raphael Warnock to convince Manchin that, you know, he has to do something and still he walked out of that meeting saying, I believe what I believe. So I think what we're seeing from the White House is an attempt to lever pull but I anticipate the calls for a more severe lever pull is going to be coming soon.

#### Bidens actions are woefully insufficient to solve warming.

Dayton Martindale, ‘19 "Hold the Applause. Biden’s Climate Plan Is Mostly Fluff.," In These Times, https://inthesetimes.com/article/joe-biden-climate-change-plan-is-mostly-fluff-carbon-capture-fossil-fuels

When I first skimmed the section headers of Joe Biden’s climate plan on Tuesday, my eyes glossing past most of the details, I came away cautiously optimistic. While I wished his goals were more ambitious, I was heartened to see even a relative moderate like Biden calling for an end to fossil fuel subsidies, a vast expansion of protected lands and $1.7 trillion in climate investment over the next 10 years. That seemed like a win. Biden’s plan is a gamble, plunging us into the torrent and betting on carbon capture to stabilize the climate—and the fossil fuel industry. Later in the afternoon, however, I took the time to read the whole thing more closely, and my optimism turned to disappointment. The 10,000-word plan covers a lot of ground — including somewhat arbitrary forays into the science of the greenhouse effect, Biden’s record, and steps already taken by city and state governments to address climate change — giving the appearance of a monumental document. But once you look beneath the puff, it becomes clear the plan is not grounded in robust proposals, and the substance is remarkably flimsy. His good ideas (like ending subsidies) are mostly shared by the rest of the Democratic field; he puts undue faith in new technologies, hoping they can save us without having to directly confront the fossil fuel industry; and the regulations he suggests are generally either mild or toothless — likely not enough to achieve his stated goals, themselves insufficient to stem the crisis.

#### Even extreme warming won’t cause extinction

Dr. Toby Ord 20, Senior Research Fellow in Philosophy at Oxford University, DPhil in Philosophy from the University of Oxford, The Precipice: Existential Risk and the Future of Humanity, Hachette Books, Kindle Edition, p. 110-112

But the purpose of this chapter is finding and assessing threats that pose a direct existential risk to humanity. Even at such extreme levels of warming, it is difficult to see exactly how climate change could do so. Major effects of climate change include reduced agricultural yields, sea level rises, water scarcity, increased tropical diseases, ocean acidification and the collapse of the Gulf Stream. While extremely important when assessing the overall risks of climate change, none of these threaten extinction or irrevocable collapse.

Crops are very sensitive to reductions in temperature (due to frosts), but less sensitive to increases. By all appearances we would still have food to support civilization.85 Even if sea levels rose hundreds of meters (over centuries), most of the Earth’s land area would remain. Similarly, while some areas might conceivably become uninhabitable due to water scarcity, other areas will have increased rainfall. More areas may become susceptible to tropical diseases, but we need only look to the tropics to see civilization flourish despite this. The main effect of a collapse of the system of Atlantic Ocean currents that includes the Gulf Stream is a 2°C cooling of Europe—something that poses no permanent threat to global civilization.

From an existential risk perspective, a more serious concern is that the high temperatures (and the rapidity of their change) might cause a large loss of biodiversity and subsequent ecosystem collapse. While the pathway is not entirely clear, a large enough collapse of ecosystems across the globe could perhaps threaten human extinction. The idea that climate change could cause widespread extinctions has some good theoretical support.86 Yet the evidence is mixed. For when we look at many of the past cases of extremely high global temperatures or extremely rapid warming we don’t see a corresponding loss of biodiversity.87

[FOOTNOTE]

We don’t see such biodiversity loss in the 12°C warmer climate of the early Eocene, nor the rapid global change of the PETM, nor in rapid regional changes of climate. Willis et al. (2010) state: “We argue that although the underlying mechanisms responsible for these past changes in climate were very different (i.e. natural processes rather than anthropogenic), the rates and magnitude of climate change are similar to those predicted for the future and therefore potentially relevant to understanding future biotic response. What emerges from these past records is evidence for rapid community turnover, migrations, development of novel ecosystems and thresholds from one stable ecosystem state to another, but there is very little evidence for broad-scale extinctions due to a warming world.” There are similar conclusions in Botkin et al. (2007), Dawson et al. (2011), Hof et al. (2011) and Willis & MacDonald (2011). The best evidence of warming causing extinction may be from the end-Permian mass extinction, which may have been associated with large-scale warming (see note 91 to this chapter).

[END FOOTNOTE]

So the most important known effect of climate change from the perspective of direct existential risk is probably the most obvious: heat stress. We need an environment cooler than our body temperature to be able to rid ourselves of waste heat and stay alive. More precisely, we need to be able to lose heat by sweating, which depends on the humidity as well as the temperature.

A landmark paper by Steven Sherwood and Matthew Huber showed that with sufficient warming there would be parts of the world whose temperature and humidity combine to exceed the level where humans could survive without air conditioning.88 With 12°C of warming, a very large land area—where more than half of all people currently live and where much of our food is grown—would exceed this level at some point during a typical year. Sherwood and Huber suggest that such areas would be uninhabitable. This may not quite be true (particularly if air conditioning is possible during the hottest months), but their habitability is at least in question.

However, substantial regions would also remain below this threshold. Even with an extreme 20°C of warming there would be many coastal areas (and some elevated regions) that would have no days above the temperature/humidity threshold.89 So there would remain large areas in which humanity and civilization could continue. A world with 20°C of warming would be an unparalleled human and environmental tragedy, forcing mass migration and perhaps starvation too. This is reason enough to do our utmost to prevent anything like that from ever happening. However, our present task is identifying existential risks to humanity and it is hard to see how any realistic level of heat stress could pose such a risk. So the runaway and moist greenhouse effects remain the only known mechanisms through which climate change could directly cause our extinction or irrevocable collapse.

This doesn’t rule out unknown mechanisms. We are considering large changes to the Earth that may even be unprecedented in size or speed. It wouldn’t be astonishing if that directly led to our permanent ruin. The best argument against such unknown mechanisms is probably that the PETM did not lead to a mass extinction, despite temperatures rapidly rising about 5°C, to reach a level 14°C above pre-industrial temperatures.90 But this is tempered by the imprecision of paleoclimate data, the sparsity of the fossil record, the smaller size of mammals at the time (making them more heat-tolerant), and a reluctance to rely on a single example. Most importantly, anthropogenic warming could be over a hundred times faster than warming during the PETM, and rapid warming has been suggested as a contributing factor in the end-Permian mass extinction, in which 96 percent of species went extinct.91 In the end, we can say little more than that direct existential risk from climate change appears very small, but cannot yet be ruled out.

## China DA

### 2AC – AT: China DA

#### US-China relations are dead – far too many alt causes.

Trudy Rubin 21, foreign policy reporter, “The gloves came off in Alaska for U.S.-China relations. What comes next?” Inquirer, https://www.inquirer.com/opinion/antony-blinken-yang-jiechi-anchorage-biden-xi-jinping-20210323.html

The ugly verbal spat between Secretary of State Antony Blinken and top Chinese officials who met last Thursday in Anchorage, Alaska, laid bare the future of U.S.-China relations.

Most astonishing was that, propelled by Blinken, officials on both sides displayed their deep grievances against each other in public, in front of media cameras. Ever since, American experts on the U.S.-China relationship have been arguing whether this exchange equaled diplomatic malpractice by Blinken or refreshing frankness.

What’s not in question is this: The accusations in Alaska set the tone for a future relationship between an existing and a rising superpower unlike any we’ve seen in the modern era. The prospects for cooperation are low, and the challenge to keeping the competition in check will be high.

Which brings us back to the importance of the Alaska exchange.

Blinken quickly dispensed with welcoming remarks and made clear that the United States considered China a threat to “global stability,” with its cyberattacks on the United States, economic coercion of U.S. allies, and repressive actions (toward the Uyghurs) in Xinjiang, and toward Hong Kong and Taiwan. He also stressed tight American ties with allies in Asia, including with South Korea and Japan, who were pleased that “the United States is back.”

China’s top Communist Party foreign affairs chief Yang Jiechi ignored the brief time limit on speeches and lashed back with a 16-minute diatribe (possibly meant to be delivered whatever tack Blinken pursued).

Yang rebuked the United States for causing “turmoil” by invading other countries, maintaining a “Cold War mentality,” and trying to impose its “own democracy in the rest of the world.” He added pointedly, “Many people in the United States have little confidence in the democracy of the United States,” and cited “deep-seated” U.S. human rights challenges. He also bragged that Japan and South Korea were bound to China by trade.

The confrontation, augmented by Chinese foreign minister Wang Yi and national security adviser Jake Sullivan, made clear that Chinese leaders had a totally different vision of a new world order, in which their authoritarian regime would become the prime model.

“These kinds of punches and counterpunches have been taking place in private for a long time,” I was told by Ryan Hass, author of Stronger: Adapting America’s China strategy in an Age of Competitive Interdependence. “What was different here was that it was visible for everyone to see.”

So what was Blinken’s purpose in coming on so strong before the cameras? Clearly, he wanted to demonstrate that Chinese leaders’ claims of American decline are false and the U.S. is strong enough to push back. And that, contrary to the Trump White House, the Biden team will respond to Chinese aggression in concert with its democratic allies, rather than ineffectively acting solo.

The question in my mind is whether delivering this message in public boxes in the Biden team by rousing more intense nationalist feelings in both countries. Yang returned to a hero’s welcome. And in this country, rousing intense anti-China feelings may make it harder to find a manageable modus vivendi with Beijing (and may rouse further despicable prejudice against Asian Americans).

However, given the growing tensions between Beijing and Washington, perhaps this public verbal clash was unavoidable. And it lays down three vital markers if Blinken’s rhetoric is going to signify more than mere words.

First, the Biden team’s wooing of European and Asian allies has been wise but will require skillful diplomacy to continue. Neither EU countries nor Asian partners want to line up openly against Beijing but are willing to join with the United States in pushing back against Chinese government aggression, whether political, economic, or military. For example, this week the European Union, the United Kingdom, and Canada coordinated with Washington on sanctioning Beijing for enormous human rights abuses against the predominantly Muslim Uyghurs.

#### Reciprocating antitrust enforcement locks the US and China into interdependence which strengthens the relationship.

Zhang 21 – Angela Huyue Zhang is an associate professor at the Faculty of Law at the University of Hong Kong. An expert in Chinese law, Angela has written extensively on Chinese regulatory issues. Angela is a four-time recipient of the Concurrence Antitrust Writing Award, which selects the best articles published globally in the field of antitrust law each year. Angela frequently speaks at prestigious antitrust conferences in the United States, Europe, and Asia. And she regularly contributes commentaries to popular press including Project Syndicate, Nikkei Asia Review and Bloomberg. Angela has broad research interests in the areas of law and economics, particularly in transnational legal issues bearing on businesses. She is currently working on a few projects pertaining to platform governance and regulation, trade and investment, as well as the Chinese political economy. Angela also serves as the Director of the Centre for Chinese Law at the University of Hong Kong, which promotes legal scholarship with the aim to develop a deeper understanding of China and facilitate dialogue between East and West. Before joining the University of Hong Kong, Angela taught at King’s College London and practiced law for six years in the United States, Europe, and Asia. She worked as a bankruptcy lawyer at Debevoise & Plimpton in New York and as an antitrust attorney at Cleary Gottlieb Steen & Hamilton in Brussels. Angela was admitted to the New York Bar in 2009. ​Angela received her LLB from Peking University, and her LLM, JD and JSD from the University of Chicago Law School. She wrote her doctoral dissertation under the supervision of former Judge Richard A. Posner. Chinese Antitrust Exceptionalism: How The Rise of China Challenges Global Regulation. Oxford: Oxford University Press, 2021. https://doi.org/10.1093/oso/9780198826569.001.0001.

The substantial exchange of hostages between the East and the West, which has the prospect of facilitating positive changes in the Chinese regime, should therefore give us hope for peace. It is precisely for this reason that I advocate greater economic integration. Economic interdependence raises the costs of conflict and increases the incentives for countries to cooperate.13 Indeed, a pre- ponderance of economic evidence has shown that trade can reduce conflict among countries.14 Tus, the expansion of Chinese firms into foreign markets should not be seen as something to be blocked but should be welcomed as an important step towards a more prosperous and peaceful relationship between China and the rest of the world.15 Conversely, if Chinese firms are discouraged from entering or even cut off from Western markets, as some politicians are calling for these days, then foreign governments will hold less leverage over China. In fact, the Western policy of decoupling the Chinese economy from Western economies, while a seemingly straightforward response to rising political tensions, is eroding trust and making conflict more likely.16 In recent years, Western hostilities directed towards China and Chinese firms have triggered strong nationalistic sentiments in China, making it difficult for a substantial minority of Chinese policy-makers to push for reforms that would allow for greater democracy and freedom at home.17 Worryingly, policies of disengagement and containment will turn China into a more isolated, self-reliant, and inward-looking country, further heightening the risk of a full-blown war.

Certainly, my proposal to foster economic interdependence does not imply a laissez-faire approach. It is perfectly understandable that host countries want to stay vigilant about Chinese infuence.18 Thus, a pragmatic and flexible legal framework must be put in place to allow the host countries to retain significant regulatory leverage over Chinese firms, while avoiding too much red tape and undue regulatory burden on businesses. This is not an easy balance to strike but it is also the new normal that today’s foreign policy-makers should be prepared for given China’s rise. Antitrust lawyers and academics should also abandon the utopian ideal that antitrust law analysis is completely immune from political influence. It cannot be. As clearly illustrated by the EU’s latest proposal to tackle foreign state subsidies, the fine lines between competition law, trade law, and national security are becoming increasingly blurred. In a similar vein, the US Supreme Court’s decision to accord high deference to the Executive in the Vitamin C case means that politics will inevitably play a role in affecting future judicial decision-making in export cartel cases.

### 2AC – Harmonization

#### Plan harmonizes US law with the EU – key to free trade.

Heinemann & Choi ’20 [Andreas; Associate Professor of Law in Graduate School of International and Area Studies @ Hankuk University of Foreign Studies; and Yo Sop; Professor in Law @ University of Zurich; “Competition and Trade: The Rise of Competition Law in Trade Agreements and Its Implications for the World Trading System,” *World Competition* 43(4), p. 521-542; AS]

2.2 CONVERGENCE OF SUBSTANTIVE COMPETITION RULES: BASIC PRINCIPLES

Most countries’ competition regimes contain three substantive sets of rules, including the prohibition of anti-competitive agreements, the abuse of a dominant position or monopolization,48 and the control of mergers with respect to their effects on competition. The analogous architecture of substantive provisions in the field of competition law demonstrates impressive convergence on a worldwide level, distinctive from a comparative perspective.49 However, there are many variations regarding details. With respect to anti-competitive agreements, many competition regimes treat hardcore restrictions, such as agreements regarding price-fixing, output restrictions, market sharing, and bidrigging, as per se or quasi-per se illegal, thus demonstrating their common philosophy of zero tolerance for hardcore cartels. Nonetheless, there are diverging views on the issue of tacit collusion. In some competition regimes, such as that of the EU, the sharing of critical information, such as individual and future prices or output, between competing undertakings is deemed to constitute illegal concerted practices. By contrast, this view has not been accepted by other jurisdictions, despite their adoption of provisions prohibiting concerted practices.50

With regard to provisions prohibiting the abuse of a dominant position or monopolization, the divergence among competition regimes is even more notable.51 Regarding dominance, some competition regimes have adopted the concept of collective dominance, which originates in European competition law. By contrast, some competition regimes, despite their considerable willingness to adopt EU concepts, have not accepted the concept of collective dominance.52

Regarding abuse, there are differences with respect to the fundamental distinction between exploitative and exclusionary abuse: exploitative abuse refers to conduct with respect to the other market side (suppliers or customers), for example excessive pricing, whereas exclusionary abuse addresses business conduct that obstructs or eliminates competing firms. In particular, US antitrust law does not cover exploitative abuse, as the US regime assumes that excessive pricing or high prices induce more competition in the market, whereas the competition regimes of the EU and other jurisdictions that have accepted the European approach prohibit exploitative abuse because this type of conduct leads to results that do not correspond to competitive conditions. Moreover, the unilateral conduct rules of the various competition regimes have different aims. Whereas in the US they are essentially aimed at consumer welfare and efficiency, other jurisdictions have adopted the idea of competitive fairness.53 In particular, the concept of fairness recently influences the development of a competition rule of abuses of a superior position in the digital economy. Therefore, in jurisdictions other than the US, the term anti-competitiveness often embraces the broad concept of unfairness.54

With respect to merger control, there is considerable diversity regarding the conditions of notification. Many jurisdictions provide for an obligation to notify linked to certain thresholds (often but not always based on turnover); in other jurisdictions notification is provided on a voluntary basis. Regarding the substantive appraisal test, the US merger control regime uses the ‘substantial lessening of competition’ (SLC) test, while the EU regime has adopted the ‘significant impediment to effective competition’ (SIEC) test. Although the terminology in the two tests differs, varying outcomes in practice owe less to different concepts than to the appreciation of facts in the single case.

In conclusion, there is a lot of convergence in the areas of anti-competitive agreements and merger control, whereas the rules on unilateral conduct (abuse of a dominant position or monopolization) are characterized by considerable divergence. One of the major reasons for this observation is the fact that rules on unilateral conduct are frequently influenced by the fundamental objectives of competition law. In many developing countries, various socio-political goals, such as fair competition, seem important.55 A current task of developing countries’ competition regimes is therefore to harmonize these general objectives and blend them with the goal of economic efficiency, while the US antitrust regime seems to focus more on improving the concept of efficiency.

With respect to free trade agreements, it is important to note that countries must make efforts for the convergence of their substantive competition rules in order to pave the way for common competition chapters in their FTAs. This is only possible if countries study the competition law of their trading partners. In the absence of knowledge about others’ domestic economic policies, it is impossible to achieve successful cooperation.56

#### Trade solves great power war constraints on great power conflict.

Drezner ’16 [Daniel; May 2016; Nonresident Senior Fellow @ Brookings Institution, Professor of International Politics in the Fletcher School of Law and Diplomacy @ Tufts University; “Five Known Unknowns about the Next Generation Global Political Economy”; https://www.brookings.edu/wp-content/uploads/2016/07/IOS-Drezner-web-1.pdf]

3. Will geopolitical rivalries or technological innovation alter the patterns of economic interdependence?

Multiple scholars have observed a secular decline in interstate violence in recent decades.105 The Kantian triad of more democracies, stronger multilateral institutions, and greater levels of cross-border trade is well known. In recent years, international relations theorists have stressed that commercial interdependence is a bigger driver of this phenomenon than previously thought.106 The liberal logic is straightforward. The benefits of cross-border exchange and economic interdependence act as a powerful brake on the utility of violence in international politics. The global supply chain and “just in time” delivery systems have further imbricated national economies into the international system. This creates incentives for governments to preserve an open economy even during times of crisis. The more that a country’s economy was enmeshed in the global supply chain, for example, the less likely it was to raise tariffs after the 2008 financial crisis.107 Similarly, global financiers are strongly interested in minimizing political risk; historically, the financial sector has staunchly opposed initiating the use of force in world politics.108 Even militarily powerful actors must be wary of alienating global capital.

Globalization therefore creates powerful pressures on governments not to close off their economies through protectionism or military aggression. Interdependence can also tamp down conflicts that would otherwise be likely to break out during a great power transition. Of the 15 times a rising power has emerged to challenge a ruling power between 1500 and 2000, war broke out 11 times.109 Despite these odds, China’s recent rise to great power status has elevated tensions without leading to anything approaching war. It could be argued that the Sino-American economic relationship is so deep that it has tamped down the great power conflict that would otherwise have been in full bloom over the past two decades. Instead, both China and the United States have taken pains to talk about the need for a new kind of great power relationship. Interdependence can help to reduce the likelihood of an extreme event—such as a great power war—from taking place.

Will this be true for the next generation economy as well? The two other legs of the Kantian triad—democratization and multilateralism—are facing their own problems in the wake of the 2008 financial crisis.110 Economic openness survived the negative shock of the 2008 financial crisis, which suggests that the logic of commercial liberalism will continue to hold with equal force going forward. But some international relations scholars doubt the power of globalization’s pacifying effects, arguing that interdependence is not a powerful constraint.111 Other analysts go further, arguing that globalization exacerbates financial volatility—which in turn can lead to political instability and violence.112

A different counterargument is that the continued growth of interdependence will stall out. Since 2008, for example, the growth in global trade flows has been muted, and global capital flows are still considerably smaller than they were in the pre-crisis era. In trade, this reflects a pre-crisis trend. Between 1950 and 2000, trade grew, on average, more than twice as fast as global economic output. In the 2000s, however, trade only grew about 30 percent more than output.113 In 2012 and 2013, trade grew less than economic output. The McKinsey Global Institute estimates that global flows as a percentage of output have fallen from 53 percent in 2007 to 39 percent in 2014.114 While the stock of interdependence remains high, the flow has slowed to a trickle. The Financial Times has suggested that the global economy has hit “peak trade.”115

If economic growth continues to outstrip trade, then the level of interdependence will slowly decline,

thereby weakening the liberal constraint on great power conflicts. And there are several reasons to posit why interdependence might stall out. One possibility is due to innovations reducing the need for traded goods. For example, in the last decade, higher energy prices in the United States triggered investments into conservation, alternative forms of energy, and unconventional sources of hydrocarbons. All of these steps reduced the U.S. demand for imported energy. A future in which compact fusion engines are developed would further reduce the need for imported energy even more.116

A more radical possibility is the development of technologies that reduce the need for physical trade across borders. Digital manufacturing will cause the relocation of production facilities closer to end-user markets, shortening the global supply chain.117 An even more radical discontinuity would come from the wholesale diffusion of 3-D printing. The ability of a single printer to produce multiple component parts of a larger manufactured good eliminates the need for a global supply chain. As Richard Baldwin notes, “Supply chain unbundling is driven by a fundamental trade-off between the gains from specialization and the costs of dispersal. This would be seriously undermined by radical advances in the direction of mass customization and 3D printing by sophisticated machines...To put it sharply, transmission of data would substitute for transportation of goods.”118 As 3-D printing technology improves, the need for large economies to import anything other than raw materials concomitantly declines.119

Geopolitical ambitions could reduce economic interdependence even further.120 Russia and China have territorial and quasi-territorial ambitions beyond their recognized borders, and the United States has attempted to counter what it sees as revisionist behavior by both countries. In a low-growth world, it is possible that leaders of either country would choose to prioritize their nationalist ambitions over economic growth. More generally, it could be that the expectation of future gains from interdependence—rather than existing levels of interdependence—constrains great power bellicosity.121 If great powers expect that the future benefits of international trade and investment will wane, then commercial constraints on revisionist behavior will lessen. All else equal, this increases the likelihood of great power conflict going forward.

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### XT – FTC Expands the Scope

#### FTC can expand the scope.

Justin **HURWITZ** Law @ Nebraska **’14** “Chevron and the Limits of Administrative Antitrust,” 76 U. PITT. L.

REV. 209 (2014) p. 262-263

It is more difficult to consider whether an agency construction of Section 5 would pass Chevron step-two without knowing the specific construction in question. At this stage, the question is whether the specific construction is permissible. Here too, however, it seems likely that any agency construction would be deemed permissible. As discussed previously, there is substantial debate within the antitrust literature on what constitutes anticompetitive conduct,a38 and it is a near certainty that a court would deem as permissible any FTC construction of Section 5 arguably in line with non-fringe understandings of what constitutes anticompetitive conduct under the Sherman or Clayton Acts. This conclusion would likely hold even where the FTC may disagree with judicial constructions of the Sherman and Clayton Acts.

That alone would greatly expand the scope of Section 5vis-A-vis current understandings of antitrust law, but Section 5 is not constrained by the Sherman and Clayton Acts, and there is no reason to think that FTC interpretations of "unfair" would be constrained by economic logic. While the FTC's separate unfair acts and practices authority is expressly constrained by a consumer welfare test, its unfair method of competition authority is not. The history of the FTCA offers a sufficient basis for courts to find almost any construction of an "unfair" method of competition permissible--even if that construction is based in supremely uneconomic logic. This history, moreover, offers little, if anything to suggest that such a construction is impermissible. 39 Thus, it is likely that the FTC could construe any form of conduct (i.e., a "method") that harms anyone (i.e., "unfair") operating in the same product market as the entity engaging in that conduct (i.e., "competition") to be an unfair method of competition.

## China DA

### 1AR – Relations Low

#### US-China relations are dead and not coming back

Alex **Ward 3/23**, former associate director in the Atlantic Council's Brent Scowcroft Center on International Security “Don’t expect the US and China to be friendly anytime soon,” Vox.com, https://www.vox.com/22338506/usa-china-anchorage-alaska-strategy-relationship

I f the first meeting between the Biden administration and Chinese officials last week underscored anything, it’s that the US and China are unlikely to be friendly in the years to come.

The two sides’ views of how the world should run are diametrically opposed — and competition more than cooperation will guide how Washington and Beijing interact for a long time.

US Secretary of State Tony Blinken told his Chinese counterparts at the meeting in Anchorage, Alaska, that the Biden administration wouldn’t accept an international system that runs on Beijing’s concept of power, which he described as “a world in which might makes right and winners take all.” That, the top American diplomat said, “would be a far more violent and unstable world for all of us.”

But Yang Jiechi, China’s top foreign affairs official, rejected that China should abide by the US-backed “rules-based international order” Blinken advocated for, which Yang noted is also “advocated by a small number of countries.” Instead, Yang asserted it was “important for all of us to come together to build a new type of international relations, ensuring fairness, justice, and mutual respect.”

The yawning gap between the two sides makes it clear: “This is the battle for the international system,” Elizabeth Economy, an expert on China at Stanford University’s Hoover Institute, told me. “The challenge,” she added, is “fundamental.”

Which is why, even though discord between the two countries is higher now than it’s been in decades, most experts I spoke to said the Biden administration shouldn’t try to improve relations with China. Washington should instead push Beijing hard on issues such as human rights, military aggression, economic coercion, and much more. Anything less, experts said, would implicitly invite China to run roughshod over the world.

Progress can still be made despite the tensions. Where interests align — on climate change, North Korea, Afghanistan, and other issues — both sides can find common ground. But the American Enterprise Institute’s Zack Cooper told me cooperation for cooperation’s sake shouldn’t be the desired outcome. “The goal should be a results-oriented relationship,” he said. “What’s the point of discussion if we’re not actually going to resolve any of the problems?”

Experts said this isn’t quite a new Cold War, though it may feel like it. That’s because the real sticking points are about trade, technology, and the rules of cyberspace rather than the threat of nuclear annihilation.

This is a superpower rivalry for a new era — and it’s likely going to get worse before it gets better.

“The relationship has deteriorated to the worst point that I’ve seen in the last two decades,” said Economy. While ties haven’t reached rock bottom, “we’ve got conflict in pretty much every single policy area.”