# 1AC – Dartmouth SV

## 1AC – Northwestern

### 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

### 2AC – AT: Prices

#### Nonunique – dominant platforms have raised prices.

Vaheesan ’19 [Sandeep; Legal Director @ Open Markets Institute, JD @ Duke; “The Profound Nonsense of Consumer Welfare Antitrust,” *The Antitrust Bulletin* 1(16); AS]

IV. The False Assumptions About Business Conduct

Empirical research, especially in recent years, has shed important light on the effects of certain business conduct. The research on mergers and predatory pricing, in particular, is worth highlighting First, retrospective analyses of corporate mergers have found that they often lead to higher prices and markups. And they generally do not yield productive efficiencies and indeed have often produced inefficiencies. Second, research has found that dominant firms can use below-cost pricing to eliminate and discipline rivals and maintain or augment their power.

Notwithstanding this empirical research, the courts and the agencies rely on simplistic theoretical assumptions about mergers and predatory pricing. In their policy and practice, the DOJ and the FTC continue to presume that mergers generally enhance productive efficiencies. They tolerate consolidation on the grounds that mergers will allow firms to reduce costs of production and potentially lower prices for consumers. In a similar disregard for empirical research, the Supreme Court has asserted that “predatory pricing is rarely tried, and even more rarely successful”53 and rewritten doctrine based on this false assumption. In short, antitrust enforcers and the courts have established pro-merger and pro-predation policy based on speculative theories and ignored a wealth of contrary research findings.

A. The Evidence on Horizontal Mergers and Predatory Pricing

Empirical research has documented that large horizontal mergers and predatory pricing can and do often reduce consumer welfare. In other words, even taking consumer welfare as the appropriate goal of antitrust, corporate consolidation and below-cost pricing by dominant firms should be a serious concern. Economic research, especially in recent years, has found that mergers frequently result in higher prices and price-cost markups and rarely produce the promised productive efficiencies. Other research has shown that dominant firms can use predatory pricing to maintain or extend their market control.

1. Mergers. Economics research has shown that mergers in concentrated markets often lead to higher prices and higher price-cost markups. John Kwoka reviewed dozens of merger retrospectives and found that approximately 80% of the studied mergers led to higher prices and reduced output.54 A comprehensive study of mergers in the manufacturing sector found that these consolidations generally led to higher prices and higher price markups.55 Studies of specific mergers in concentrated markets have similarly found higher prices and price markups.56

A related line of literature has concluded that market concentration is associated with higher prices and markups. A 2017 study found a nearly fourfold increase in markups since 1980 and attribute this rise to increased market power.57 Similarly, a recent article finds that the economy-wide increase in concentration has contributed to higher profit margins.58 In a meta-study of analyses of concentration and price, Leonard Weiss found the positive correlation between concentration and price to be “overwhelming.”59 More recently, based on a review of the empirical literature, Herbert Hovenkamp and Carl Shapiro concluded, “[C]oncentrated industries tend to perform poorly in serving consumers, as they displayed higher prices, higher price/cost margins, and higher profits than less concentrated industries.”60

The empirical literature has found that mergers generally failed to yield their promised efficiencies. In a major 1987 study, economists David Ravenscraft and Frederic Scherer found that mergers generally were not efficiency enhancing and indeed often produced inefficiencies.61 Other research since then has generally been in line with their findings. The study on mergers and acquisitions in manufacturing, noted above, found that these transactions typically did not lead to plant- or firm-level improvements in efficiency.62 In the merger retrospectives he reviewed, John Kwoka found little evidence of firm efficiency improvements from consolidation.63 Examining the empirical research on corporate mergers, economist Melissa Schilling wrote, “A considerable body of research concludes that most mergers do not create value for anyone, except perhaps the investment bankers that negotiated the deal.”64

2. Predatory Pricing. Empirical evidence has found that dominant firms have engaged in predatory pricing. They have used temporary below-cost pricing to eliminate or discipline rivals and protect their own market power. Economists have documented this conduct in many industries, including airlines, coffee, ocean shipping, telecommunications, and tobacco.65 The airline and tobacco studies deserve special attention.

Multiple airlines have resorted to aggressive, below-cost pricing to protect their hub dominance. In response to limited entry by rivals, certain dominant hub carriers have dramatically expanded seat capacity and slashed fares

below the cost of service on newly competitive routes. Through this temporary but steep price discounting, they have eliminated the new competitors and restored their own dominance.66 Once the entrants have exited the market, incumbent carriers have reduced capacity and raised fares, sometimes to levels above the pre-entry levels.67 In a 2001 report, the Department of Transportation (DOT) found significant evidence to suggest predation and concluded that predation in the industry was real and indeed common. According to the DOT, this predation eliminated competition in the target markets and helped deter entry against hub incumbents in general.68 According to the DOT, American Airlines at its Dallas/Fort Worth hub, Delta Air Lines at its Atlanta hub, and Northwest Airlines at its Detroit hub appear to have engaged in successful below-cost pricing against new rivals.69

The tobacco industry has also witnessed several episodes of predatory pricing. The industry, which has been highly concentrated for more than a century, is infamous for its regular, lockstep price increases and substantial profit margins.70 Cigarette manufacturers have responded to threats from either newcomers or smaller rivals with bursts of below-cost pricing. For instance, in the 1930s and 1980s, cigarette makers, in concert or independently, slashed prices and sustained significant losses and successfully eliminated rivals or pressured them to follow coordinated pricing practices again.71

## Dependency Trap

## 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.

## Advantage CP

### 2AC – AT: Advantage CP

#### Diverstures fail.

Khan & Vaheesan ’17 [Lina; Chairperson @ Federal Trade Commission, JD @ Yale Law School; and Sandeep; Legal Director @ Open Markets Institute, JD @ Duke; “Market Power and Inequality: The Antitrust Counterrevolution and Its Discontents,” *Harvard Law & Policy Review* 11(1), p. 235-294; AS]

D. Merger and Monopoly Remedies Should Focus on Maintaining and Restoring Competitive Market Structures

Stronger antitrust rules must be paired with effective remedies in public enforcement actions if markets are to be competitive. Even very strong restrictions on conduct are unlikely to be effective if the subsequent remedies are weak. Legal victories are certain to be pyrrhic when "liability is found; but ineffective remedies are imposed and competitive outcomes are not altered very much."3 64 For example, even under a stricter merger enforcement regime, companies may pursue anticompetitive mergers if they need to make only minor concessions to get through the nominally tough merger review process. To promote competitive markets and the citizen interest standard, the antitrust agencies must seek to maintain and restore competitive market structures. In the merger context, an effective approach would mean enjoining mergers in their entirety rather than accepting divestitures or conduct remedies. In monopolization matters, structural remedies must be favored over complex, quasi-regulatory behavioral solutions.

While the agencies wisely prefer divestitures to conduct remedies in the case of horizontal mergers, the defects of this approach-even from an efficiency perspective-are apparent. Retrospective studies suggest that structural remedies often fail to maintain competition.365 A landmark FTC study in 1999 found that, in a quarter of reviewed divestitures, "the buyers [were] not operating viably in the relevant market"366 and so competition was not preserved following a merger.3 67

While FTC divestiture remedies may have improved following the study, two spectacular failures in recent years raise continued doubts about their efficacy. In the mergers between Hertz and Dollar Thrifty in 2012368 and Albertsons and Safeway in 2015,369 the FTC required the merging entities to divest assets to address competition concerns in local markets. In both instances, the acquiring entities proved to be incapable of replacing the lost competition and filed for bankruptcy less than a year after the FTC blessed the divestitures. And in the cruelest of ironies and a stinging rebuke to the FTC, in both instances the merging firms ended up buying back some of the entities originally divested.37 0

Importantly, neither remedy's failure came as a surprise to observers. In Hertz/Dollar Thrifty, the entity that Hertz divested-Advantage Rent a Car-did not appear to be viable from the beginning. Advantage was stripped of cars and the support of being under the Hertz umbrella.371 A rental car consultant described the divestiture as akin to "taking a two-year old and saying 'OK, now you've got to go to kindergarten and play Little League."372 On top of inadequate financial and logistical capabilities, Advantage's new management and ownership appeared to lack the knowhow to run a successful car rental business.3 73 In the meantime, as Advantage floundered, the Big Three in the car rental market raised prices at the highest rate since the start of the Great Recession.3 74 Perversely, Hertz went on to reacquire some of the Advantage locations it had divested. 7 1

The remedy in the Albertsons/Safeway case is arguably even harder to fathom. To allay the FTC's concerns, the merging entities sold 146 Albertsons stores in towns and cities in the Western United States, where they competed with a Safeway, to a small supermarket chain called Haggen.3 76 Following this acquisition, the number of Haggen stores increased from 18 to 164.377 Even a casual observer could have predicted that Haggen would have great difficulty expanding its storefronts nearly ten-fold in a very short period of time. The skeptics have been proven right. Haggen struggled to integrate the new stores and, despite its reorganization efforts in bankruptcy, may be forced to liquidate.3 78 Underscoring how the remedy backfired, Albertsons has reacquired a number of the stores it sold through the bankruptcy process.3 79

Even if divestitures could be perfectly tailored and if they preserved competition in narrow markets in every instance, they would fail to advance the citizen interest standard. As they have in recent decades, large companies would still grow larger through consolidation, notwithstanding minor modifications to address the antitrust agencies' efficiency concerns. Businesses could use their greater size to coordinate with rivals across a number of markets and also to engage in exclusionary conduct to preserve their market power. In addition, their greater size would give them more power over our general political economy-an outcome that the congressmen and senators debating and drafting the antitrust statutes sought to forestall.3 80

## Core PIC

### 2AC – AT: Core PIC

#### FTC expertise key to cater separations to industry trends – CP creates uncertainty that deters innovation.

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]

This set the scene for the creation of the Federal Trade Commission. Most notably, the authorizing statute declared “unfair methods of competition” in commerce unlawful. The committee report explained the reason for including such a broad term: The committee gave careful consideration to the question as to whether it would attempt to define the many and variable unfair practices which prevail in commerce and to forbid [them] or whether it would, by a general declaration condemning unfair practices, leave it to the commission to determine what practices were unfair. It concluded that the latter course would be the better, for the reason . . . that there were too many unfair practices to define, and after writing 20 of them into the law it would be quite possible to invent others.80 In other words, Congress would leave it up to the new Commission to define and identify practices that constituted “unfair methods of competition.” Indeed, the FTC would be especially suited to this task, given that Congress was designing the agency to gather and develop expertise in business practices and industry trends.81

These aspects of the FTC’s design reflect Congress’s intention for the new agency to alter the institutional structure of antitrust enforcement. By passing the Sherman Act, Congress had adopted a crime-tort model—which prohibited certain bad acts—rather than a corporate-regulatory model, which would have created a regulatory regime for policing the capital-concentrating effects of incorporation laws.82 By creating the Federal Trade Commission, Congress was adopting an expert-agency model alongside the crime-tort model. A key aim was for legislators to recover power to steer antitrust law back from the courts. As Senator Albert Cummins expressed, “I would rather take my chance with a commission at all times under the power of Congress, at all times under the eye of the people . . . than . . . upon the abstract propositions, even though they be full of importance, argued in the comparative seclusion of the courts.”83

In order to equip the FTC to fulfill this institutional mission, Congress endowed the Commission with the authority to “make rules and regulations for the purpose of carrying out the [FTC Act’s] provisions.”84 In the parlance of Chevron, this means “Congress delegated authority to the agency generally to make rules carrying the force of law,” and agency interpretations made pursuant to that authority fall within the domain of Chevron.85 In light of confusion around whether “unfair methods of competition” applied only to practices that harmed competitors, Congress in 1938 passed the Wheeler-Lea Amendment,86 adding the proscription against “unfair or deceptive acts or practices.”87 In 1973, the DC Circuit clarified that the FTC did, indeed, have the authority to promulgate substantive rules, not just procedural ones.88 The court observed that the “use of substantive rule-making is increasingly felt to yield significant benefits to those the agency regulates” and that “[i]ncreasingly, courts are recognizing that use of rule-making to make innovations in agency policy may actually be fairer to regulated parties than total reliance on case-by-case adjudication.”89

#### Agencies inexperienced with competition causes delay – stifles innovation.

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]

Moreover, even disputes between well-heeled corporations can take years to resolve. For example, in 2011 Bloomberg filed a complaint with the FCC, alleging that Comcast was improperly grouping Bloomberg’s channel in an unfavorable cluster of channels.679 Since the FCC had conditioned Comcast’s acquisition of NBC on the basis of fair “neighborhooding” of independent news networks, Bloomberg claimed that Comcast was in violation of its commitments.680 Granted that this dispute was adjudicated outside the auspices of section 616 and the agency’s ALJ, the FCC took over two years to reach a final decision.681 Given the importance of timeliness in high-tech markets—where a slight delay can render a remedy obsolete—even a two-year process in digital markets will likely come at the expense of innovation.

## FTC Tradeoff DA

### 2AC – FTC DA

#### ONE – FTC fails now because case-by-case adjudication drains resources.

Kades 7/28 – Michael Kades, Director for Markets and Competition Policy at the Center for Equitable Growth, “Competitive Edge: Congress needs to restore the Federal Trade Commission’s authority to seek monetary remedies when companies break the law,” 7/28/21, https://equitablegrowth.org/competitive-edge-congress-needs-to-restore-the-federal-trade-commissions-authority-to-seek-monetary-remedies-when-companies-break-the-law/

Market power and its abuse are far too prevalent in the U.S. economy, increasing the prices consumers pay, suppressing wage growth, limiting entrepreneurship, and exacerbating inequality. Equitable Growth’s 2020 antitrust transition report identifies a lack of deterrence as a key problem: “Antitrust enforcement faces a serious deterrence problem, if not a crisis.”

As the report explains, “Rather than deter anticompetitive behavior, current legal standards do the opposite: They encourage it because such conduct is likely to escape condemnation, and the benefits of violating the law far exceed the potential penalties.” In the face of such warnings, it is a particularly bad time for the Supreme Court to unanimously reject 40 years of lower court rulings and conclude that the Federal Trade Commission can neither force companies to give up the profits they earned by violating the law nor compensate the victims of those violations. (The first remedy is called disgorgement, and the second remedy is called restitution.)

Whether the Supreme Court in April correctly interpreted the statute at issue in the case, AMG Capital Management LLC v. Federal Trade Commission, is less important than its implications. Professor Andy Gavil discusses a potential silver lining in the Supreme Court’s decision—the glass-half-full approach. He argues that if the Supreme Court faithfully applies its approach to statutory interpretation, then it could open the door to broader application of the antitrust laws.

I look at the direct impact of the decision—the glass-half-empty approach. I argue that the decision deprives the antitrust agency of a critical, albeit imperfect, weapon that has deterred anticompetitive conduct particularly in the pharmaceutical industry. Although it has used disgorgement in competition cases sparingly, those awards have deterred the entire industry from engaging in the challenged conduct.

Before the recent Supreme Court decision, the disgorgement awards in competition cases went far beyond the impact in a single case. The savings include benefits from the conduct that did not occur. If the commission cannot seek monetary remedies, then companies will keep the rewards of their illegal conduct. Perversely, the companies causing the greatest harm will benefit the most from April’s decision.

The impact reaches even further. Without the threat of a disgorgement award, companies are more likely to drag out litigation and tax the FTC’s limited resources. Because the commission will spend more resources on egregious cases to reach weaker results, it will have fewer resources to challenge anticompetitive conduct in other areas and, for example, could affect enforcement in merger cases or in the high-tech industry.

#### TWO – Rule of reason unduly burdens agencies – high costs, delays, and complex litigation.

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

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

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

#### THREE – Rulemaking frees resources.

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

Second, establishing rules could help relieve antitrust enforcement of steep costs and prolonged trials. Identifying ex ante what types of conduct constitute “unfair method[s] of competition” would obviate the need to establish the same exclusively through ex post, case-by-case adjudication. Targeting conduct through rulemaking, rather than adjudication, would likely lessen the burden of expert fees or protracted litigation, potentially saving significant resources on a present-value basis.47

Moreover, establishing a rule through APA rulemaking can be faster than litigating multiple cases on a similar subject matter. For taxpayers and market participants, the present value of net benefits through the promulgation of a clear rule that reduces the need for litigation is higher than pursuing multiple, protracted matters through litigation. At the same time, rulemaking is not so fast that it surprises market participants. Establishing a rule through participatory rulemaking can often be far more efficient. This is particularly important in the context of declining government enforcement relative to economic activity, as documented by the ABA.48

## Economy

### 2AC – AT: Innovation DA

#### Turn: small firms are better innovators.

Hemphill & Wu ’20 [C. Scott; Moses H. Grossman Professor of Law @ New York University School of Law; and Tim; Julius Silver Professor of Law, Science and Technology @ Columbia Law School; “Nascent Competitors,” *University of Pennsylvania Law Review* 168(7), p. 1879-1910; AS]

Innovation. First, a nascent competitor is an innovator. Innovation can take the form of technical progress or new business models that better serve consumer needs. Protecting the fruits of innovation is important because new products and services drive economic growth. Such competition is valuable both because the entrant's product may represent a real advance and because the entrant increases the pressure on the incumbent to innovate in anticipation or response. 29 Competition also opens the door to further entry in this and other businesses. Finally, and perhaps most obviously, competition can benefit **consumers** by lowering the price paid for these innovations.

Over the last century and a half, small, innovative firms have played a particularly important role in the process of innovation and competition. This is not to discount the important history of innovation at big firms with large research laboratories, such as Bell Labs, Xerox PARC, and research labs at General Electric and Merck.30 However, over the same period, a significant number of disruptive innovations-those that transform industry-have come out of very small firms with new technologies unproven at the time: examples include the Bell Telephone Company, RCA, MCI, Genentech, Apple, Netscape, and dozens of others.31

There is a particular competitive significance of the big innovations at the smaller firms, for they also represent competitive entry, and sometimes completely transform the industry.32 New, unproven innovators are a key source of disruptive innovation.33 Consider that Bell's telephone did not improve the telegraph, but replaced it, or the impact of Apple's personal computer on the computing industry. As this suggests, nascent competitors can hold the promise of offering fresh competition for the market, not just in the market. They have the capacity to displace an incumbent through a paradigm shift-for example, a new platform for developing software or decoding a genome. Nascent competition tends to be important in industries marked by rapid innovation and technological change. Software, pharmaceuticals, mobile telephony, e-commerce, search, and social network services are leading examples.

#### Self-reinforcing acquisition exit does not promote innovation – high prices, low productivity and killer acquisitions.

Lemley and Creary ’21 [Mark and Andrew; Professor of Law @ Stanford and JD MBA Candidate @ Stanford; “EXIT STRATEGY”; 101 B.U. L. REV. 1 (2021)]

III. THE PROBLEM WITH EXIT STRATEGIES

Should it trouble us that the nature of today's startup and VC industries drives startups to sell to incumbent monopolists? In this Part, we argue that the answer is yes.

A. What's Wrong with Incumbents Acquiring Startups?

There are several reasons to be concerned that startups tend to be acquired by incumbents rather than go public or merge with another maverick and that VCs intensify this phenomenon.

First, concentration in the tech industry is a large and growing problem. Others have recognized as much. 273 The normal waves of Schumpeterian competition that disciplined previous network markets seem to have stalled; the companies that dominate the digital economy are all more than fifteen years old and have dominated their market categories for more than a decade. 274 While monopoly alone is not illegal or necessarily problematic, today's tech monopolists have almost certainly held onto and even broadened their monopolies by acquiring firms that in another era would have displaced them. At the very least, these acquisitions have reduced the likelihood of disruptive innovation that would challenge the power of those monopolies. Monopoly can lead to higher prices, though that has not been true for most of today's tech giants. But it can also lead to less consumer-friendly nonprice terms, such as reduced privacy, increased advertising exposure, and less consumer choice and this appears to be happening today.275

Second, incumbent acquisition has contributed to the increasing concentration of technological capacity. Technology is diffusing from leaders to followers more slowly than it used to. Economists have blamed this for a long-term drop in productivity in recent decades and for sustained declines in entrepreneurship over the last decade. 276 Even if today's tech monopolists are good for consumers-and they may be in many ways-the consolidation of technological leadership and resulting loss of technology diffusion is bad for economic growth more generally.

Third, and perhaps most problematic, tech giants often buy up promising startups only to shut them down. Sometimes this is intentional. Economists have documented cases of "killer acquisitions"-companies that buy incipient competitors in order to eliminate the threat they pose. 277 While especially prominent in biotech, the practice is also prominent among big tech firms: Facebook, Google, and Oracle have all bought and shut down competing firms, sometimes in the same day.278 Tim Wu calls this the "Kronos effect"-killing your competitors in their infancy. 279 At other times, firms engage in "acquihires"-buying a startup to get the brainpower it employs, not the products or ideas the startup offers. 280 (Both outcomes often come together: as one tech journalist put it, "[a]nother day, another acqui-hired shutdown." 281 ) But even incumbents that buy startups in good faith often shut them down within a few years. While companies fail all the time, incumbent mergers seem littered with failures. Facebook alone has shut down dozens of once-promising projects after it acquired them, and Google has done the same. 282 Those are not just technologies that no longer compete with the monopolist; they are technologies that we no longer have access to at all because of the exit strategy.

Finally, some might worry about market concentration for its own sake. As New Brandeis scholars remind us, economic concentration often leads to political concentration. 283 And today, tech firms spend more than others to lobby local, state, and federal governments. 284 They and their controlling founders also shape the news that reaches consumers and citizens, corporate executives, and public officials.285 And even supposing their leadership is unimpeachably civic, their structural concentration makes their platforms easier or at least more valuable targets for state and nonstate actors to exploit through disinformation, surveillance, and other campaigns meant to undermine social and political processes. 286 Today's dominant tech platforms aren't solely to blame for political divisions,287 and the lack of alternative exit strategies for VC-backed firms aren't solely to blame for these platforms-but we're not optimistic that current incentives make better alternatives likely to come about. Society tends to benefit when companies compete with incumbents, not cave to them. Not all of these effects apply to all acquisitions. Startups acquired by incumbents fall into three basic categories: companies that compete directly, companies that offer complementary products, and companies that might change the nature of the market altogether. Purposeful killer acquisitions seem most likely of direct competitors and perhaps of companies that threaten the business model altogether. Acquisitions of complements, by contrast, may be more socially beneficial, a prospect we explore in the next Section. Even complementary mergers, however, raise concerns. While an incumbent is unlikely to buy a complement in order to shut it down, complementary acquisitions still increase the size and political power of the incumbent. They may also make eventual direct challenges less likely by expanding the footprint of the incumbent across related markets, making the job of building a competitor that much more complicated.

## Politics DA

### 2AC – AT: Infrastructure

#### Won’t pass- funding disputes, lack of unity

Elliott 9-16-21

(Philip, https://time.com/6098810/house-democrats-reconciliation/)

House Democrats yesterday finished penning a 2,600-page bill that finally outlines the specifics of their ambitious “soft” infrastructure plan that won’t attract a single Republican vote. But no one was really rushing to Schneider’s for bottles of bubbly. For a party ready to spend $3.5 trillion to fund its social policy agenda, there were plenty of glum faces on Capitol Hill. In fact, one key piece of the legislation—a deal that would finally let Medicare negotiate lower prices with drug companies—fell apart in the Energy and Commerce Committee when three Democrats voted against it. It found resurrection a short time later when Leadership aides literally plucked it from the Energy and Commerce team and delivered it to the Ways and Means Committee for its approval instead. Even there, though, one Democrat voted against it, saying the threat it posed to pharmaceutical companies’ profits would doom it in the Senate. “Every moment we spend debating provisions that will never become law is a moment wasted and will delay much-needed assistance to the American people,” Rep. Stephanie Murphy of Florida later argued. Put another way? Brace for some nasty politics over the next two weeks as House Speaker Nancy Pelosi tries to get this bill to a vote before the budget year ends on Sept. 30. And those 2,600 pages had better be recyclable. Democrats can only afford three defectors if they want to usher this bill into law, and they’re perilously close to failure. So far, five centrist Democrats in the House have said they prefer a scaled-back version of the Medicare component. But if Pelosi gives the five centrists that win, she risks losing the support of progressives who are already sour that things like a punitive wealth tax and the end to tax loopholes aren’t present in the current version of the bill. As it stands now, letting Medicare negotiate drug prices would save the government about $500 billion over the next decade. The scaled-back version doesn’t have an official cost, but a very similar version got its score in the Senate last year: roughly $100 billion in savings. Because Democrats are using a budgeting loophole to help them avoid a filibuster and pass this with bare majorities, that $400 billion gap matters a lot more than on most bills. Scaling back the Medicare savings means they would also have to scale back their overall spending on the bill—a big line in the sand for progressives who say they’ve already compromised too much. All of this, of course, comes as President Joe Biden and his top aides in the White House have been trying to get Senate centrists onboard. Just yesterday, he met separately with Sens. Kyrsten Sinema and Joe Manchin, fellow Democrats who have expressed worries about the $3.5 trillion price tag but have been vague about what exactly they want to cut back on. With the Senate evenly divided at 50-50, and Vice President Kamala Harris in position to break the ties to Democrats’ victories, any shenanigans from those two independent thinkers scrambles the whole package. Oh, and that other bipartisan infrastructure plan that carries $550 billion in new spending? It’s still sitting on the shelf in the House. Pelosi said she’d bring it to the floor only when the bigger—and entirely partisan—bill was ready. And there’s plenty of grumbling about that package, too. If this is all beginning to sound like a scratched record that keeps repeating, it’s because this has become something of a pattern here in Washington. Things look pretty grim for legislation in town these days, despite Democrats controlling the House, the Senate and the White House. Their margin for error is literally zero, and so hiccups from a half-dozen centrists can forewarn a doomed agenda.

#### Squo antitrust thumps 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.

#### 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.

#### 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.

### 2AC – System Resiliency Add-On

#### Dominant online platforms pose cybersecurity risks – preventing concentration is key.

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]

System Resiliency. — As a growing share of online commerce and communications rely on dominant online platforms, the resiliency of platform infrastructure becomes paramount. Yet concentrating activity can also concentrate risk, creating the possibility that a single system crash could have cascading effects.588 [\*\*Start footnote 588\*\* For in-depth analysis of how excessive concentration can heighten system fragility, see generally Barry C. Lynn, End of the Line: The Rise and Coming Fall of the Global Corporation 11 (2005) (arguing that an essential network platform “can be viewed as common property that belongs to all of the companies that rely on it” and therefore, “no one, quite naturally, is responsible for ensuring that the system is safe”); Barry C. Lynn, Built To Break, Challenge, Mar.–Apr. 2012, at 87, 94–95 (describing a shutdown in Japanese automobile manufacturing following a 2007 earthquake, which disrupted operations at an industrial firm that produced an automobile part used by all Japanese automakers, and using this example to illustrate the problems that result when an entire industry utilizes the same infrastructure); Yossi Sheffi & Barry C. Lynn, Systemic Supply Chain Risk, Bridge, Fall 2014, at 22, 25–26 (noting how, given increasing reliance on “single ‘super’ suppliers” throughout the economy, “[a] strike, sabotage, financial problem, or cyberattack can shut down a supplier, . . . creating a systemic disruption”). For an argument for why antitrust analysis generally and merger enforcement specifically should take fragility and resiliency concerns into account, see Peter C. Carstensen & Robert H. Lande, The Merger Incipiency Doctrine and the Importance of “Redundant” Competitors, 2019 Wis. L. Rev. (forthcoming) (manuscript at 58–63) (on file with the Columbia Law Review). \*\*End Footnote 588\*\*]For example, AWS leads the cloud computing market, capturing a greater share than its next three competitors combined.589 This level of concentration has at least two potential risks. One is general fragility. For example, a single outage at AWS a few years ago led Netflix, Reddit, Business Insider, and several other major websites to crash for five hours.590 The second risk is the security vulnerabilities created by monoculture. Homogeneity can render a system more susceptible to malware or hacks, a risk recognized in the context of computer systems.591 As more businesses come to use AWS as default computing power (the company counts among its clients the CIA592), the potential systemic ramifications are not trivial. Indeed, the prospect of Amazon winning a single-source contract for the Pentagon has prompted concerns that awarding the business to a single provider could increase cybersecurity risks.593 Analogous concerns raised by Google’s dominance have prompted policy officials to debate whether the company should be designated as “critical infrastructure.”594 Notably, these resiliency concerns are primarily responding to concentration, not integration. A vertical separation would not address the underlying issue, unless exiting an adjacent market would reduce exposure to risk.

#### Extinction.

Orlov ’20 [Vladimir, Founder & Director of the PIR Center, President of the Trialogue Club International, Head of the Center for Global Trends and International Organizations at the Diplomatic Academy, Ministry of Foreign Affairs of the Russian Federation, Co-Founder and Academic Supervisor of the International Dual Degree MA Program in Nonproliferation and Global Security Studies, MGIMO University, Professor at MGIMO University, author (or coauthor) of more than a dozen books and monographs and more than three hundred research papers, articles, and essays, publishes his views in Russian and foreign periodicals, “‘No Holds Barred’ and the New Vulnerability: Are We in for a Re-Run of the Cuban Missile Crisis in Cyberspace?,” SSRN Scholarly Paper, ID 3538078, Social Science Research Network, 02/14/2020, papers.ssrn.com, doi:10.2139/ssrn.3538078]

Not hundred per cent of the dialogue has been frozen, fortunately. Certain informal, mostly offthe-record, meetings of US and Russian experts on cyber agenda continue taking place, both through Track 2 and Track 1.5. One of the most intellectually stimulating meetings, with frank exchanges, took place in Vienna in December 2018. The report produced after the meeting stressed “the significant risk […] that cyber-attacks could conceivably lead to a military escalation that may further trigger a nuclear weapons exchange, a fact that became more explicit with the adoption of the current Nuclear Posture Review. This issue gets complicated given that third parties may have the capabilities to invoke a cyber conflict between Russia and the United States. Whether a country or a non-state actor, they could put the two countries on the verge of an armed conflict by attacking critical infrastructure of either of them and making it look as if the aggressor were the other one”[22]. However, one should have no illusion: such informal meetings may be fully fruitful only when their reports and policy recommendations are utilized by the governments. And for that, a warmer climate in bilateral relations is a must. So far, we see exactly the opposite: mercury falling to freezing levels.

Risk of cyber clashes growing into a chaotic global cyber war has been emphasized by the UN Secretary-General Antonio Guterres in his Agenda for Disarmament: “Malicious acts in cyberspace are contributing to diminishing trust among States… States should implement the recommendations elaborated under the auspices of the General Assembly, which aim at building international confidence and greater responsibility in the use of cyberspace.[23]” However, as the members of the US-Russian Track 1.5 working group on strategic stability recently concluded, “without a constructive dialogue on cyber issues between the United States and Russia, the world would most likely fail to agree on any norms of responsible behavior of states in cyber space”[24].

Do we really have to survive a cyber equivalent of the Cuban Missile Crisis to realize the importance of achieving some kind of agreement on cyber issues, and on the broader agenda of international information security?[25] Or is that kind of talk plain old alarmism?

I don’t want to sound a fatalist, but I am even less keen on sounding like an ostrich that’s buried its head in the sand. We cannot ignore the obvious: whether the world’s most powerful actors like it or not, the world is sliding to another major crisis like the one in 1962. The cyber war is already raging. There are no rules of engagement in that war. The uncertainty is high. The spiral of tension is getting out of control. The cyber arms race is gaining momentum. And there are no guarantees that the next crisis will be controllable, or that it will result in a catharsis as far as international information security regulation is concerned. There’s no telling what will happen once the cyber genie is out of the bottle.

# 1AR

## Innovation

### XT – George Mason

#### All their authors are hacks.

Dayen ’18 [KOCH-FUNDED THINK TANK LINKED TO GEORGE MASON UNIVERSITY IS NOW PRETENDING IT’S NOT PART OF GEORGE MASON UNIVERSITY ; <https://theintercept.com/2018/09/19/the-mercatus-center-is-a-part-of-george-mason-university-until-its-not/>; AS]

The George Mason paper touched off controversy when it was released in July, because buried in the findings was an estimate that the $32.6 trillion price tag would also result in a [$2 trillion savings](https://jacobinmag.com/2018/07/medicare-for-all-mercatus-center-report) over national expenditures on health care, relative to the status quo. Designed to create sticker shock for “Medicare for All,” instead the study, produced by the Mercatus Center, which bills itself as part of George Mason, inadvertently proved a point of progressive supporters of single payer.

The Mercatus Center, which gets most of its funding from foundations like the Koch family foundations, scrambled to dispute its own finding. Working paper author Charles Blahous argued that an alternative scenario he constructed using higher provider payment rates (which, by definition, costs more money) is actually the correct one. This makes no sense, since “Medicare for All” is based on Medicare rates. But fact-checking organizations largely took Blahous’s side, while [making factual errors](https://www.peoplespolicyproject.org/2018/08/07/3p-gives-glenn-kessler-20-pinocchios-for-3-factual-mistakes/) over and [over again](https://twitter.com/ryanlcooper/status/1031706012905074688) and [attributing incorrect statements](https://www.peoplespolicyproject.org/2018/08/20/jake-tappers-faulty-medicare-for-all-fact-check/) to “Medicare for All” supporters.

### XT 2AC 1: Innovation Low

#### Studies confirm chilled innovation across sectors.

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]

One study found that Amazon is more likely to enter product spaces that have higher sales, better reviews, and that do not require significant effort by sellers to grow.200 The effect of Amazon’s entry, meanwhile, is to reduce shipping costs for consumers and increase sales—but its selfpreferential treatment can also foreclose consumers’ access to competing products.201 Overall, Amazon’s entry has not yet affected customer perceptions of product quality,202 but it does “discourage[] third-party sellers from continuing to offer the products.”203 The authors of that study note that existing merchants discouraged by Amazon’s entry “may bring fewer innovative products to the platform.”204

A study assessing how app developers reacted to perceived or actual entry by Google, meanwhile, found that developers are “discouraged from innovating in the affected market.”205 Indeed, even the threat of direct competition by Google spurs developers to “significantly reduce[]” updates on affected apps—and to reallocate their efforts to markets unaffected by Google’s entry.206 Notably, the average small firm also responds by pivoting to a focus on short-term profits, leading to higher prices.207

Empirical studies assessing how actual or potential entry by a dominant platform affects complementors are still limited. Investors acknowledge unequivocally that the dominance of digital platforms deters investment in certain markets, and data suggest that firms looking to compete with a core functionality of Google, Facebook, or Amazon have seen funding dry up.208 The few available case studies confirm that the risk of appropriation chills or at least diverts certain forms of investment and innovation. More empirical work on this issue would help deepen public understanding of how funders assess the risk of platform foreclosure and appropriation, and what impact platform expansion into adjacent markets may have on innovation.

At first glance, the idea that dominant digital platforms may be using their integrated structure to undermine dynamic efficiency appears in tension with standard economic theory. The Appendix to this Article reviews leading theories on when integrated firms can be expected to discriminate against or exclude rivals in adjacent markets, identifies the set of conditions under which this is likely to happen, and explains why digital platform markets fit these conditions.

#### Platforms discriminate, not innovate.

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. Innovation Concerns. — Reports document that dominant digital platforms are using their integrated structure to discriminate against rivals and appropriate their competitively significant business information.548 If this dynamic depresses the incentive to innovate—as studies suggest it does549—then this cost of digital platform integration is worth taking seriously. While standard economic theory states that only under certain exceptions will dominant platforms have the incentive and ability to discriminate against complementors, digital markets characterized by network externalities help create the conditions under which platforms are likely to discriminate.550 Moreover, because dominant digital platforms passively capture highly precise and nuanced data on their business customers—information that is more valuable by virtue of being more sophisticated551—both the risk and cost of information appropriation is heightened in digital markets.

Concerns about information exploitation are not new. In 1971, when the FCC was considering whether its “maximum separation” regime should prohibit involvement by carriers in data processing entirely (or should require instead that their data-processing services be run as an independent affiliate),552 it noted that an integrated carrier could potentially misappropriate information against processor rivals.553 Data processors worried that integrated carriers would be able to collect their sensitive business information to exploit against them as rivals in data processing. The FCC concluded that this risk of misappropriation was low.554 Its final decision stated that that the majority of independent data processors would likely use the Bell System for communication services,555 and since Bell was forbidden from operating in unregulated markets (including data processing) altogether, there would be no risk of misappropriation of information by a rival.556 Still, the FCC recognized the potential threat and noted it would “consider any attempt on the part of a carrier to secure and use such information for the benefit of its data processing affiliate as a serious breach of the policy established herein.”557

### XT 2AC 2-3: Small Firms Key

#### Even inefficient small firms are good for innovation

Federico et al. ’20 [Giulio; European Commission; Fiona Scott Morton; Yale University and NBER; and Carl Shapiro; University of California, Berkeley, and NBER; “Antitrust and innovation: Welcoming and protecting disruption,” *Innovation Policy and the Economy* 20(1), p. 125-190; AS | GCD]

B. Defense of Dominant Position

Before discussing specific business practices, it is instructive to consider the antitrust treatment of dominant firms in innovative markets more generally. One of the most basic, underlying policy trade-offs is developed in Segal and Whinston (2007). They point out that stricter antitrust policy will increase the profits of an entrant at the expense of the incumbent. Segal and Whinston ask how shifting profits in this manner affects innovation. Their key point is that today’s successful entrant can grow to be tomorrow’s dominant incumbent. In their basic model, that is inevitable, as today’s entrant leapfrogs the incumbent, swapping places and becomes tomorrow’s incumbent. In that model, Segal and Whinston carry out the counterfactual we describe above by altering only the ability to exclude the entrant. They show that stricter antitrust enforcement promotes innovation “precisely when it raises the incremental expected discounted profits over an innovation’s lifetime” (1707). Similarly, Gans (2011) argues that a “static” analysis can often give the right answer regarding innovation.

There are a variety of types of conduct that a dominant firm can use to exclude a rival that threatens its market power. These include tying (as in the US Microsoft case), exclusive dealing, loyalty rebates, and mostfavored nation (MFN) provisions.58 In platform markets, conduct aimed at hindering multihoming on one side of the market may be a particularly effective exclusionary strategy. Multihoming is a strategy that encourages innovation competition because it raises contestability: consumers operating on more than one platform can more easily shift share to a more innovative product. Therefore, policies by a dominant firm that discourage multihoming on one side of the market can have an adverse effect on innovation akin to traditional exclusive dealing arrangements. For example, imagine what would happen if Uber prohibited its drivers from driving for another platform. Because Uber is larger than Lyft, that rule would likely cause most drivers to “single home” (i.e., to drive exclusively) for Uber. That would lower the number of drivers available on Lyft and might well increase wait times on Lyft, causing Lyft to be less attractive to consumers. In the short term, contestability would fall, as an innovation on the Lyft platform would be less visible to consumers, because more of them would single-home on Uber. In addition, if Lyft were to exit some areas, Uber would feel less competitive pressure on price and on innovation in those markets.

Exclusion of a disruptive entrant inherently harms the competitive process, even if that disruptive entrant is (currently) less efficient than the dominant firm. Indeed, that pattern tends to be the norm in industries subject to significant economies of scale (e.g., due to network effects and/or learning by doing). Disrupters that are less efficient at the outset than the established dominant firm can still pose a grave competitive threat to the incumbent, because they have countervailing characteristics that appeal to consumers, or their efficiencies will improve as they gain experience and scale. Regardless of an entrant’s current level of efficiency, the competitive process requires they not be squashed by conduct that does not constitute competition on merit, which can include conduct that would not make economic sense if not for its exclusionary impact on competitors.

Some of the hardest and most important questions in this area relate to business conduct alleged to exclude nascent competitors. Because the nascent competitor’s success can be highly uncertain, for its exclusion to have a large effect on expected consumer welfare, the value of the increased competition in the event of its success must be large. This is most likely to be the case when the incumbent has substantial and durable market power. If consumers have limited options, then even a small chance of the arrival of an effective second choice can be very valuable to them. This observation suggests the use of a sliding scale to assess the impact of challenged business practices on competition: the greater and more durable the incumbent’s market power is, the lower the chance of success by the entrant required for that entrant to warrant protection from exclusionary conduct. This principle is essentially the same to the one we developed in connection with mergers involving uncertain pipeline products and potential challengers to a dominant firm.

#### Nascent competitors are distinctively important because of future developments.

Hemphill & Wu ’20 [C. Scott; Moses H. Grossman Professor of Law @ New York University School of Law; and Tim; Julius Silver Professor of Law, Science and Technology @ Columbia Law School; “Nascent Competitors,” *University of Pennsylvania Law Review* 168(7), p. 1879-1910; AS]

Future potency. Second, a nascent competitor is relevant due to its promise of future innovation. Its potency is not yet fully developed and hence unproven. Whether that innovation will make a difference in the marketplace is subject to significant uncertainty. That is due to the unpredictable rate and direction of technological change. This uncertainty stems from the same forces of technological progress that make innovation so valuable. The nascent competitor may fail in various ways: the unproven cure, despite highest hopes, may flunk its clinical trials; the technologies thought to be the future might, in fact, be overrated. This uncertainty may not be a quantifiable risk, like the odds in a casino, but closer to Knightian true uncertainty-in other words, not readily susceptible to measurement. 34

The unpredictable path of innovation often results in product plasticity, in which products evolve and are used for purposes different than the original. For example, in the 1990s, mobile telephones gained popularity as a complement to a wired telephone, as a means for making calls on the go.35 Today, they compete with land lines, cameras, computers, televisions, and credit cards. General purpose technologies such as computing and Internet connectivity act as powerful fuel for unpredictable change.36 Uncertainty about what products the incumbent and the nascent competitor will actually offer in the future has a further consequence-uncertainty about the degree to which those products will actually compete.

In some cases, a nascent competitor may already have begun to compete in the incumbent's market, even if its potency is not yet fully proven. For example, at the time of its announced acquisition, PacBio competed with Illumina for sequencing business, and Instagram competed with Facebook for the attention of social network users. 37 Existing competition, where present, may be merely partial: the Netscape browser competed with Microsoft's browser but not (yet) with Windows.

Where competition has already begun, its existence might inform a positive prediction about future competition. In addition, a particular acquisition might be challenged on account of lost current competition. However, current competition is not an essential feature of nascent competition. It is the further, future developments that give nascent competition its distinctive importance.38

### XT – Acquisitions Bad

#### 1. Price distortion matters more for long term innovation than scale, customer access and complementary tech effects combined.

Lemley and Creary ’21 [Mark and Andrew; Professor of Law @ Stanford and JD MBA Candidate @ Stanford; “EXIT STRATEGY”; 101 B.U. L. REV. 1 (2021)]

But perhaps we should be happy about, or at least fine with, sales of startups to incumbents. There are at least three reasons why that might be true about any particular merger, and other reasons we might want to put up with anticompetitive consequences in order to encourage investment in startups. First, some technologies might work well only at scale. Some artificial intelligence ("AL") inventions may require a sufficiently large database to train on, for instance. Those inventions might work better in the hands of a company like Google that already has access to most of the text and images in the world than in the hands of a company without such a comprehensive training dataset. 288

Second, the incumbent might get the innovation into the hands of more people, simply because it has more customers. 289 Entry may be inefficient on this view because the entrant will have to prove the value of the innovation to consumers and often require them to switch away from products they already know and like. 290 "[E]xpected consumer welfare can be higher under commercialization by sale [from a small innovator to an incumbent] despite the risk of increased market power." 29 1

Third, the market leaders may be best positioned to put complementary technologies to work. Their complementary assets may be more synergistic, their cash on hand greater and more immediately deployed, their engineers more talented, and their business know-how more complete-all resulting in their being able to bring proposed products to life better and faster than anyone else. While these may be valid points in particular cases, they neither disprove nor help solve the problems of concentration caused by the norm of selling startups to incumbents.

First, market structure matters. Markets that are not competitive not only distort prices but also reduce innovation. 292 Further, incumbent acquisitions prevent potential competitors from combining to form a company that can credibly threaten entry at scale. 293 So reducing the possibility of Schumpeterian competition is likely to discourage innovation in the long run. And precisely because incumbency does bring some real advantages, we may need to create incentives to support Schumpeterian competition and avoid perpetual incumbency.

And second, in any event, the incumbent will put the innovation in the hands of more consumers only if it actually deploys that product. As we have seen, incumbents often buy startups and then kill them, either deliberately or by dissipating the team and not focusing on the acquired product. 294 Incumbents have less incentive to deploy new technologies than startups do. That's because incumbents that replace their existing product with a new one are mostly stealing customers from themselves. 295 And incumbents don't need to innovate to stay alive if they can buy any entrant that looks like a threat.296

Finally, the value of scale is similarly not a persuasive reason for most incumbent mergers. There may be markets where network effects are so strong that merger is inevitable. But we should be reluctant to assume that just because scale has value, the incumbent will always make a better product. History is full of cases where that turned out not to be true. Sometimes it just means we need a new dominant firm. And we won't see those leapfrog products if the incumbent buys the potential disruptor.297 Even in the relatively rare case of technologies that can reach their full potential only when deployed to the entire market, there are alternatives to allowing incumbents to buy up all new technologies. We could, for example, require that certain Al training databases be open to all AIs or that companies allow access by competitors seeking to make their products interoperable with the de facto standard.298

Competition, in short, is an externality to an incumbent-startup merger transaction. Consumers benefit from the possibility of competition-both in terms of choice and potentially lower prices and because competition may drive more innovation. But the merging firms don't capture those benefits, and so they naturally ignore them in favor of maximizing the private benefits they get by cementing a monopoly and selling the startup for a price that reflects that monopoly profit. That doesn't mean that there are no benefits to such a merger. But companies have an incentive to engage in those mergers even when they aren't in the public interest.

#### 2. Kronos effect encourages anticompetitive investments. VCs build with the intent to destroy.

Lemley and Creary ’21 [Mark and Andrew; Professor of Law @ Stanford and JD MBA Candidate @ Stanford; “EXIT STRATEGY”; 101 B.U. L. REV. 1 (2021)]

There may be one other reason to allow incumbents to acquire VC-backed startups: it may counterintuitively improve the prospect that incumbentdestroying startups get funded at all because it makes funding any startup more attractive to VCs.299 Funding a startup's unlikely goal of supplanting an incumbent may be financially viable only if failing to supplant that incumbent still leads to a sufficiently attractive alternative: acquisition by that incumbent. And if so, perhaps we should be wary not just of the ex post consequences of incumbent acquisitions but the ex ante consequences of preventing thembecause then we'll really never see Schumpeterian competition get off the ground.

While this is an important consideration, and we discuss it in detail below, innovation today faces a starker problem: selling to incumbents is not the backstop but increasingly the starting point for funding decisions. In any event, we doubt that making incumbent acquisitions more difficult will dampen VC investment to a concerning degree given that the demand for private equity and venture capital investment opportunities has recently increased by orders of magnitude. 300 Still, the risk of chilling procompetitive investments can and should be mitigated by making alternative exits like IPOs or secondary sales easier at the same time that we increase the difficulty of incumbent acquisitions, as we describe further below.30