# Doc---Harvard---Round 2

# 1NC

## OFF

### 1NC---States CP

#### The 50 states, Washington, D.C., and all relevant territories should substantially increase prohibitions on undemocratic governance in agricultural cooperatives, and increase resources allocated to antitrust enforcement.

#### Solves the aff

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At the federal level, the U.S. antitrust laws—including the Sherman Act and the Clayton Act, which governs mergers and acquisitions—are enforced by the FTC and DOJ. States also have antitrust laws, which are enforced by state AGs and are often patterned after their federal analogs, but can contain important differences. States frequently collaborate with the federal antitrust agencies and/or other states on merger investigations. However, the Supreme Court has recognized that states are not required to do so, and have the right to make enforcement decisions that differ from other federal and state authorities.[[3]](https://www.jdsupra.com/legalnews/trends-in-state-antitrust-enforcement-42950/#_ftn3) States have sometimes exercised this authority in order to “fill the gap” of perceived under-enforcement at the federal level. For example, in June 2017, the California AG sued to block Valero Energy Partners LP’s acquisition of two petroleum terminals in Northern California, despite the FTC’s decision not to challenge the deal. Several months later, the parties abandoned the transaction. More broadly, in recent years, there has been a growing trend of robust and autonomous state antitrust enforcement, as illustrated by major investigations and enforcement actions by state coalitions in the healthcare, pharmaceutical, telecom, and technology sectors, among others. Consistent with this trend, Colorado AG Phil Weiser—who previously served as Deputy Assistant Attorney General in the DOJ Antitrust Division under the Obama administration—has affirmed his commitment to “protecting all Coloradans from anticompetitive consolidation and practices…whether or not the federal government acts to protect Coloradans.” In keeping with this mandate, the Amendment will bring Colorado increasingly in line with states such as California and New York that have demonstrated an appetite for aggressive, independent antitrust enforcement, even where it may depart (or conflict) with federal action.

### 1NC---FTC Trade-Off DA

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

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

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

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

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

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

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

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

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

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

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

### 1NC---Adv CP

#### The United States federal government should:

#### ban undemocratic governance in agricultural cooperatives through non-antitrust regulations

#### substantially increase funding allocated to social insurance programs, increase investment in green infrastructure and public universities, and increase the minimum wage

#### increase its spending on research and development

#### domestically phase in a carbon tax

#### The first plank PICs out of anti-trust legislation and the FTC and DOJ as enforcers---other agencies’ regulations solve.

Lawrence Fullerton et al. 08. Joel M Mitnick, William V Reiss, George C Karamanos and Owen H Smith. Sidley Austin LLP. Vertical Agreements The regulation of distribution practices in 34 jurisdictions worldwide. “United States.” https://www.sidley.com/-/media/files/publications/2008/03/getting-the-deal-through--vertical-agreements-2008/files/view-united-states-chapter/fileattachment/united-states-21.pdf

5 What entity or agency is responsible for enforcing prohibitions on anticompetitive vertical restraints? Do governments or ministers have a role?

The Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DoJ) are the two federal agencies responsible for the enforcement of federal antitrust laws. The FTC and the DoJ have jurisdiction to investigate many of the same types of conduct, and therefore have adopted a clearance procedure pursuant to which matters are handled by whichever agency has the most expertise in a particular area.

Additionally, other agencies, such as the Securities and Exchange Commission and Federal Communications Commission, maintain oversight authority over regulated industries pursuant to various federal statutes, and therefore may review vertical restraints for anti-competitive effects.

#### Second plank fosters innovation---solves everything

Economist 21, 1-16-2021, "The case for more state spending on R&D," Economist, https://www.economist.com/briefing/2021/01/16/the-case-for-more-state-spending-on-r-and-d

There is nothing new about economists arguing for more government spending on research and development (R&D). Theoretical work done by Kenneth Arrow in the 1960s convinced his colleagues that the private sector would not on its own provide the amount of innovation that economies need to maximise their growth. Empirically the coincidence, in the 1950s, of increased government R&D spending and excellent rates of productivity and GDP growth strengthened the case further.

It is true that the hard evidence for a positive impact of such R&D spending on overall growth is both fairly weak and suggests that it lags the outlay by quite a while. But few doubt that the return is, in practice, significant. Rich-world governments currently spend, on average, a bit over 0.5% of GDP on R&D; a couple more tenths of a percentage point could make a big difference.

The economists have the advantage, here, of pushing at a door that others are in the process of pulling open. Government R&D spending as a fraction of GDP has spent most of the past 40 years shrinking (see chart 1). In 2018, though, the most recent year for which data are available, figures from 24 OECD countries showed government spending on R&D rising by a healthy 3% in real terms following a particularly lean period after the financial crisis. In 2020 the French government promised to increase its research budget by 30% over ten years as part of a new research strategy. The Japanese government has also been increasing funding, and setting up a new provision for “moonshots”. In America, having resisted Donald Trump’s attempts to cut research budgets, Congress may well look favourably on President-elect Joe Biden’s promise to pump them up.

This enthusiasm is not simply driven by a belief that such spending will increase growth. It is also about a fear of China. A research backwater when its economy took off in the 1980s, China has since spent heavily on R&D to obvious effect. A study published by Elsevier, a scientific publisher, and Nikkei, a news business, in 2019 found that China published more high-impact research papers than America did in 23 out of 30 “hot” research fields. Many in Europe and America think that competing with, or outcompeting, China means following its lead. The incoming Biden administration promises “breakthrough technology R&D programmes” which will “direct investments to key technologies in support of us competitiveness”.

And a third factor unites governments inside and outside China: they have strategic goals they can only meet through the development of new technologies and the deployment of existing ones. The government support for vaccines against sars-cov-2 is a case in point. The increasing need for deep decarbonisation is another.

#### Third plank solves inequality---bolsters productivity via laborer benefits

Andres Vinelli & Christian E. Weller 21. “The Path to Higher, More Inclusive Economic Growth and Good Jobs.” <https://www.americanprogress.org/issues/economy/reports/2021/04/27/498794/path-higher-inclusive-economic-growth-good-jobs/>.

Relief efforts, such as President Biden’s American Rescue Plan, primarily support the demand side of the economy. The federal funds going to households, businesses, and state and local governments are desperately needed to support all parts of the economy that are struggling from an unprecedented onslaught on their financial health. These payments are an important first step to lift the economy back up to its previous levels, reducing unemployment, stabilizing economic growth, and improving financial stability. More is needed, though, to return the economy to much faster growth and build a sustainable economy that works for everybody. The goal is to raise economic capacity by emphasizing the economy’s supply side. Faster productivity growth, and thus faster economic growth, will create even more opportunities for employment and wage gains. It will also make it easier to address the country’s looming challenges of massive economic inequality, climate change, lackluster caregiving support, and crumbling public health and other infrastructure, to name a few. The ARP already includes some measures, such as financial support for higher education, that would have positive supply-side effects. Importantly, public policies can break the interconnected trends of high inequality, widespread insecurity, and low investment that underlie low productivity growth. First, policies can reduce income inequality by strengthening workers’ wages and benefits. Second, a number of policies can substantially reduce income uncertainty and volatility for households. Most notably, social insurance programs, such as unemployment insurance, health insurance, and Social Security, are critical tools to give working families some peace of mind. Third, more federal funding for research and development, a green infrastructure, and more support for education—all purviews of the public sector—can lift up productivity growth. All three types of policies will boost productivity growth. Higher incomes due to increased pay and better benefits, such as paid family and medical leave, make it less likely that workers leave an employer. Less turnover boosts workers’ on-the-job experience and their productivity, while more income stability reduces financial, psychological, and health stress for workers. This makes it easier for workers to concentrate on their work since they are typically worrying less about how to pay their bills. Less income uncertainty also makes it easier for workers to plan for, save for, and invest in their own future—for example, by moving to a new location when better opportunities arise, starting a business, or supporting their children’s education. All of these steps mean that households will have more skills and be able to better use those skills, thereby increasing productivity across the economy. Moreover, large-scale public investments will create new technologies for companies and reduce the financial risks associated with new ventures. In the end, businesses and people will be better positioned to use scarce resources.

#### Fourth plank solves warming---keeps it under 2 degrees and gets modeled

Inman ’17 (Phillip; 5/29/2017; economics editor of the Observer and an economics writer for the Guardian; “Sky-high carbon tax needed to avoid climate catastrophe, say experts,” <https://www.theguardian.com/environment/2017/may/29/sky-high-carbon-tax-needed-to-avoid-catastrophic-global-warming-say-experts>; Date Accessed: 7/3/2017; DS)

A group of leading economists warned on Monday that the world risks catastrophic global warming in just 13 years unless countries ramp up taxes on carbon emissions to as much as $100 (£77) per metric tonne. Experts including Nobel laureate Joseph Stiglitz and former World Bank chief economist Nicholas Stern said governments needed to move quickly to tackle polluting industries with a tax on carbon dioxide at $40-$80 per tonne by 2020. A tax of $100 a tonne would be needed by 2030 as one of a series of measures to prevent a rise in global temperatures of 2C. In a report by the High Level Commission on Carbon Prices, which is backed by the World Bank and the International Monetary Fund, they suggest poor countries could aim for a lower tax since their economies are more vulnerable. The aim of a tax on carbon would be essential to meet the targets set by the Cop21 Paris Agreement in 2015, they said. The call for action will sting European leaders, who have presided over a carbon trading scheme since 2005 that currently charges major polluters just €6 (£5.20) for every tonne of carbon they release into the atmosphere. The European scheme, which issues firms with carbon credits that can be traded on a central exchange, has come under fire for allowing heavy energy users to avoid investments in new technology to cut their emissions. Critics accuse officials of issuing too many credits and allowing the price to fall to a level that makes it cheaper for companies to pollute than change their behaviour. Stiglitz and Stern said prices should rise to $50-$100 by 2030 to give businesses and governments an incentive to lower emissions even when fossil fuels are cheap. The Trump administration has rejected calls to introduce a carbon tax in the United States, saying it would cost jobs. Washington’s refusal to adopt a tax has deterred Brussels from moving to a more substantial charge on emissions, which would have the effect of increasing energy costs, at least in the short term, and imposing higher costs on European manufacturers. The European Union’s Emissions Trading System (ETS) is the world’s biggest scheme for trading greenhouse gas emissions allowances. It covers 11,000 power stations and industrial plants in 30 countries, whose carbon emissions make up almost 50% of Europe’s total.

### 1NC---T-Subsets

#### ‘Core antitrust laws’ are economy-wide---the aff is particular

Gerber ’20 [David; October; Distinguished Professor of Law at Chicago-Kent College of Law, Illinois Institute of Technology; Oxford Scholarship Online, Competition Law and Antitrust, “What is It? Competition Law’s Veiled Identity,” Ch. 1, p. 14-15]

C. A Core Definition

The Guide uses the terms “competition law” and “antitrust law” to refer to a general domain of law whose object is to deter private restraints on competitive conduct. We look more closely at the terms:

1. “General”—The laws included are those that are applicable throughout an economy and thereby provide a framework for all market operations (there are always some exempted sectors). Laws dealing only with specific markets (e.g., telecommunication) do not play that role.

2. “Domain of Law” here refers to a politically authorized set of norms and the institutional arrangements used to enforce them.

Is it law—or is it policy? The relationship between “competition law” and “competition policy” is not always clear. Often the terms are used interchangeably, but there can be important differences between them. Both can refer to norms used to combat restraints on competition, but they represent two different ways of looking at the relevant laws, and the differences can influence how norms are interpreted and applied. “Law” implies that established methods of interpretation are used to interpret and apply the norms and that established procedures are the sole or primary means of enforcing and changing the norms. In this view, the norms are a relatively stable component of a legal system. Thinking of those same norms as “policy,” on the other hand, implies that they are a tool of whatever government is in power and that it can use and modify them as it wishes.

3. “Restraint” refers to any limitation imposed by one or more private actors that reduces the intensity of competition in a market.

4. “Competition” refers to a process by which firms in a market seek to maximize their profits by exploiting market opportunities more effectively than other firms in the market.

#### Prefer it---

#### 1---Limits---sectors are unbounded, permitting any procedural change to all industries

#### 2---Ground---centralizes generics with literature prominence

### 1NC---Delegation CP

#### The United States federal government should delegate antitrust rulemaking authority to a new expert agency. The agency should begin notice-and-comment rulemaking to prohibit undemocratic governance in agricultural cooperatives.

#### Solves the aff---engages in notice-and-comment

Rebecca Haw 11. Climenko Fellow and Lecturer on Law, Harvard Law School. J.D., Harvard Law School, 2008; M. Phil, Cambridge University, 2005; B.A., Yale University, 2001."Amicus Briefs and the Sherman Act: Why Antitrust Needs a New Deal." Texas Law Review, vol. 89, no. 6, May 2011, p. 1247-1292. HeinOnline.

Without the informational benefits of expertise and notice-and-comment rulemaking, the Court may be a poor choice to define the broad proscriptions of the Sherman Act. Framed this way, the problem has an obvious solution: give the power to interpret the Act to an expert agency.240 This idea has academic support already, 241 and the case for it is strengthened by this Article's observation that the Court has tried to approximate administrative decision making by relying on amicus briefs. The obvious candidates for reallocation are the two existing antitrust agencies: the Department of Justice's Antitrust Division and the FTC.

A. The Agency Solution

Using agencies to give specific meaning to American antitrust's most important statute means avoiding the problems with the Court's current quasi-administrative process for rulemaking. As adjudicators, agency experts would know what kind of economic evidence is necessary for an efficient solution and would be better able to understand it when it is presented by the parties. Repeat exposure to antitrust cases would only reinforce this advantage, while also giving the administrative judges a broader perspective on what kinds of conflicts commonly arise in competition law, a perspective necessary for efficient policy making in the first instance. A Supreme Court Justice hears about one antitrust case a year, hardly the cross section of controversies necessary to make efficient economic policy writ large.

Agencies could take policy making a step further using notice-and-comment rulemaking. Unlike in adjudication, regulation by rulemaking can be initiated without the formal requirements of a case or controversy and a proper appeal to the Supreme Court. Informal letters of complaint could spark an investigation. A rule-making agency could announce its intention to regulate publicly and provide a convenient venue for, or even solicit, expert opinions on the economic impact of the proposed rule. Not only would it have the benefit of these numerous perspectives, but it would also have the obligation to respond to them in a reasoned manner. Its rule would be subject to judicial review, affording an opportunity to catch mistakes 242 or invalidate rules that do nothing but deliver rents to special interests.

Another advantage of rulemaking, an option for agencies but not for the Court, since it only operates through adjudication, is that rulemaking regulates behavior ex ante, while resolution of economic policy through cases is necessarily ex post. Antitrust courts worry obsessively about "chill"--deterring procompetitive behavior with overly broad rules for liability.2 43 In fact, the overruling of Dr. Miles in Leegin implies that the entire twentieth century was a period of inefficient business practices and stunted innovation in distribution because of an early misunderstanding of RPM. Only after a long and expensive period of litigation was Leegin redeemed for breaking the law by effecting a change in the law, and only after Leegin was issued were similar firms, perhaps walking the Colgate line better than Leegin, redeemed for wanting some control over their product's ultimate retail price.24 4 The problem of ex post rulemaking is made worse by the treble damages afforded successful plaintiffs suing under the Sherman Act.2 4 5 To create a new form of liability, the Court has to punish a firm threefold for complying with standing antitrust norms. Thus Supreme Court lawmaking in antitrust is a kind of one-way ratchet.246

The result of the current ex post scheme is that "antitrust law leaves considerable gaps between what is permissible and what is optimal." 2 47 With judges making the rules one case at a time, this gap is justifiable. As discussed above, when judges are not economically sophisticated enough to know where "optimal" lies, 24 8 laissez-faire is a very inexpensive regulatory regime for courts to follow, and raising the level of regulation would effect a kind of taking of property from firms operating under the status quo. So if the Court is making antitrust policy, laissez-faire may be the only sensible approach. But that is not to say that it is the most sensible approach. An agency could provide firms with the necessary clarity-ex ante-that they need when conducting business in a world where competitive behavior so closely resembles anticompetitive conduct. The current state of affairs is that much more is illegal on the books than antitrust lawyers think is actually likely to be struck down in a court.24 9 Lawyers thrive in such a legally uncertain world, but firm efficiency suffers.

#### Key to democracy

Harry First and Spencer Weber Waller 13. Harry First, New York University School of Law. Spencer Weber Waller, Loyola University Chicago School of Law. “Antitrust’s Democracy Deficit”. Fordham Law Review, Volume 81 Issue 5 Article 13. https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4890&context=flr

Redressing antitrust’s democracy deficit on the procedural side can be done with the tools of administrative law. Administrative law is the body of law that controls the procedures of governmental decision making.151 It allows interested persons to participate in decisions that affect their interests. Normally, it requires appropriate notice, the right to be heard, fair procedures, protection of fundamental rights, and judicial review of the resulting decision. These basic features are present in the administrative laws of most foreign legal systems and are part of a growing international consensus.152 The tradeoff is that the decisions of administrative agencies that properly follow these strictures normally are granted a degree of deference as to the interpretation of the laws they enforce.153 Frequently, but not inevitably, private parties also have the right to proceed with actions for damages against private parties who violate their regulatory obligations and even against the government itself when it acts unlawfully, either substantively or procedurally. These tools of administrative law are available to make antitrust enforcement decisions more transparent and more responsive to the interests that the antitrust laws were meant to serve, thereby promoting both better decision making and greater democratic legitimacy.

CONCLUSION

Free markets and free people cannot be assured by the efforts of technocrats. Ultimately, both come about through the workings of democratic institutions, respectful of the legislature’s goals and constrained from engaging in arbitrary action. Antitrust has moved too far from democratic institutions and toward technocratic control, in service to a laissez-faire approach to antitrust enforcement. We need to move the needle back. Doing so will strengthen the institutions of antitrust, the market economy, and the democratic branches of government themselves.

#### Solves war

Christopher Kutz 16. PhD UC Berkeley, JD Yale, Professor, Boalt Hall School of Law @ UC Berkeley, Visiting Professor at Columbia and Stanford law schools, as well as at Sciences Po University. “Introduction: War, Politics, Democracy,” in On War and Democracy, 1.

Despite Churchill’s famous quip—“Democracy is the worst form of government, except for all those other forms that have been tried from time to time”2—democracy is seen as a source of both domestic and international flourishing. Democracy, understood roughly for now as a political system with wide suffrage in which power is allocated to officials by popular election, can solve or help solve a host of problems with stunning success. It can solve the problem of revolutionary violence that condemns autocratic regimes, because mass politics can work at the ballot box rather than the streets. It can help solve the problem of famine, because the systems of free public communication and discussion that are essential to democratic politics are the backbone of the markets that have made democratic societies far richer than their competitors. It can help solve the problem of environmental despoliation, which occurs when those operating polluting factories (whether private citizens or the state) do not need to answer for harms visited upon a broad public. And democracy has been famously thought to help solve the problem of war, in the guise of the idea of the “peace amongst democratic nations”—an idea emerging with Immanuel Kant in the Age of Enlightenment and given new energy with the wave of democratization at the end of the twentieth century.

## Case

### Regional Food Adv

**Food safety standards an alt cause to ag consolidation, antitrust intervention doesn’t solve**

Philip **Watson &** Jason **Winfree, 21.** Watson is an Associate Professor, Agriculture Economics & Rural Sociology at the University of Idaho. Winfree is an Associate Professor of Agricultural Economics and Rural Sociology at the University of Idaho. "Should we use antitrust policies on big agriculture?" Applied Economic Perspectives and Policy (2021): 1-14.

Relax food standards

A good example of policies for increasing fixed costs is food standards. Implementing regulations, such as food quality standards, can increase the level of market concentration in agriculture because it requires all firms to add costly measures, effectively increasing the fixed costs of production. While some of the costs from regulations, such as food standards, might be variable, research has typically shown that it leads to higher fixed costs (Bovay & Sumner, 2017). If these regulations increase fixed costs, it financially incentivizes firms to become larger. Therefore, when such policies are implemented, policymakers should be cognizant of the pressure of such policies. This is not to say that food safety policies are always unwarranted, but the costs of such policies should be taken into account. So, **while many advocates of antitrust intervention in agriculture cite food safety as a reason in favor of intervention, food safety standards are likely** exacerbating consolidation **in agriculture and encouraging larger firms.**

#### Perception of isolationism is inevitable

Steven Erlanger 20. Chief diplomatic correspondent in Europe for The New York Times. "Europe Wonders if It Can Rely on U.S. Again, Whoever Wins". No Publication. 10-22-2020. https://www.nytimes.com/2020/10/22/world/europe/europe-biden-trump-diplomacy.html?action=click&module=Top%20Stories&pgtype=Homepage

BRUSSELS — Treated with contempt by President Trump, who considers them rivals and deadbeats instead of allies, many European leaders look forward to the possibility of a Biden presidency. But they are painfully aware that four years of Mr. Trump have changed the world — and the United States — in ways that will not be easily reversed.

Even if civility can be restored, a fundamental trust has been broken, and many European diplomats and experts believe that U.S. foreign policy is no longer bipartisan, so is no longer reliable. “The shining city on the hill is not as shining as it used to be,” Reinhard Bütikofer, a prominent German member of the European Parliament, put it bluntly.

For the first time, said Ivan Krastev, director of the Center for Liberal Strategies, “Europeans are afraid that there is no longer a foreign-policy consensus in the United States. Every new administration can mean a totally new policy, and for them this is a nightmare.”

The ideological divide will be on display on Thursday, when Mr. Trump and Joseph R. Biden Jr. are scheduled to hold their final presidential debate.

There will be what most consider low-hanging fruit for a Biden administration that will please Europeans. The crop includes an extension to the New Start nuclear arms control treaty with Russia and returns to the Paris climate accord, the World Health Organization and even the Iran nuclear accord. There will be feel-good meetings and statements about multilateralism, less confrontation about trade, renewed efforts to reform the World Trade Organization and a less combative atmosphere at summit meetings of the Group of 7 and NATO.

But Mr. Trump’s complaints are shared by many Americans, and given the polarization in America, President Emmanuel Macron of France has pushed Europe to step up in an altered world, where China is rising and the Trump administration is only a symptom of an American retreat from global leadership, not the cause.

The idea of European “strategic autonomy” — of a Europe less dependent on Washington and with its own strong voice in the world — has been gaining ground, even if it is more aspiration than reality.

Some, like Nathalie Tocci, director of Italy’s Institute of International Affairs, and François Heisbourg, a French security analyst, fear that a Biden presidency could short-circuit European autonomy and let Europeans continue, as Ms. Tocci said, “sticking our heads in the sand.”

A Trump re-election, of course, might accelerate the trend toward autonomy, even if few believe that Mr. Trump would be able to pull out of NATO, as one of his former national security advisers, John Bolton, suggested he might.

American foreign policy was traditionally bipartisan — the old phrase that “politics stops at the water’s edge” had merit, especially during the Cold War. But the collapse of the Soviet Union meant that foreign policy, too, was subject to deepening political polarization in the United States.

“There is an incredible decay in Europe of the sense of the United States as a leader,” accelerated and symbolized by mishandling of the coronavirus, said Jeremy Shapiro of the European Council on Foreign Relations.

“Biden doesn’t solve their America problem,” he said. “He’s not going to be president for ever, and Democrats won’t always be in power, and people have learned that the U.S. can’t be trusted on foreign policy, because the next administration will come in and wipe it away.”

The inconsistency of U.S. foreign policy has undermined American credibility, some warned.

There is “an American decline in geopolitical weight,” said Francis Fukuyama of Stanford University. “The single fact that shapes the U.S. role in global politics is polarization, and this polarization will not disappear if Joe Biden is elected,” he said. “Americans simply don’t agree with one another on basic premises, even on how much America should be involved in global affairs and NATO.”

William J. Burns, a former senior American diplomat who now runs the Carnegie Endowment in Washington, thinks the damage is lasting, no matter who wins the election.

“One of the more insidious effects of polarization is to make foreign policy a tool of partisan politics,” he said. “It’s done enduring damage to America’s reputation in the world for being able to keep its word.”

#### Global coop doesn’t solve anything

Young et al 13 Kevin Young is Assistant Professor in the Department of Political Science at the University of Massachusetts Amherst, David Held is Master of University College, and Professor of Politics and International Relations, at the University of Durham. He is also Director of Polity Press and General Editor of Global Policy, Thomas Hale is a Postdoctoral Research Fellow at the Blavatnik School of Government, Oxford University, Open Democracy, May 24 13, "Gridlock: the growing breakdown of global cooperation", <http://www.opendemocracy.net/thomas-hale-david-held-kevin-young/gridlock-growing-breakdown-of-global-cooperation>[Modified for ableist language]

The Doha round of trade negotiations is deadlocked, despite eight successful multilateral trade rounds before it. Climate negotiators have met for two decades without finding a way to stem global emissions. The UN is [destroyed] paralyzed in the face of growing insecurities across the world, the latest dramatic example being Syria. Each of these phenomena could be treated as if it was independent, and an explanation sought for the peculiarities of its causes. Yet, such a perspective would fail to show what they, along with numerous other instances of breakdown in international negotiations, have in common. Global cooperation is gridlocked across a range of issue areas. The reasons for this are not the result of any single underlying causal structure, but rather of several underlying dynamics that work together. Global cooperation today is failing not simply because it is very difficult to solve many global problems – indeed it is – but because previous phases of global cooperation have been incredibly successful, producing unintended consequences that have overwhelmed the problem-solving capacities of the very institutions that created them. It is hard to see how this situation can be unravelled, given failures of contemporary global leadership, the weaknesses of NGOs in converting popular campaigns into institutional change and reform, and the domestic political landscapes of the most powerful countries. A golden era of governed globalization In order to understand why gridlock has come about it is important to understand how it was that the post-Second World War era facilitated, in many respects, a successful form of ‘governed globalization’ that contributed to relative peace and prosperity across the world over several decades. This period was marked by peace between the great powers, although there were many proxy wars fought out in the global South. This relative stability created the conditions for what now can be regarded as an unprecedented period of prosperity that characterized the 1950s onward. Although it is by no means the sole cause, the UN is central to this story, helping to create conditions under which decolonization and successive waves of democratization could take root, profoundly altering world politics. While the economic record of the postwar years varies by country, many experienced significant economic growth and living standards rose rapidly across significant parts of the world. By the late 1980s a variety of East Asian countries were beginning to grow at an unprecedented speed, and by the late 1990s countries such as China, India and Brazil had gained significant economic momentum, a process that continues to this day. Meanwhile, the institutionalization of international cooperation proceeded at an equally impressive pace. In 1909, 37 intergovernmental organizations existed; in 2011, the number of institutions and their various off-shoots had grown to 7608 (Union of International Associations 2011). There was substantial growth in the number of international treaties in force, as well as the number of international regimes, formal and informal. At the same time, new kinds of institutional arrangements have emerged alongside formal intergovernmental bodies, including a variety of types of transnational governance arrangements such as networks of government officials, public-private partnerships, as well as exclusively private/corporate bodies. Postwar institutions created the conditions under which a multitude of actors could benefit from forming multinational companies, investing abroad, developing global production chains, and engaging with a plethora of other social and economic processes associated with globalization. These conditions, combined with the expansionary logic of capitalism and basic technological innovation, changed the nature of the world economy, radically increasing dependence on people and countries from every corner of the world. This interdependence, in turn, created demand for further institutionalization, which states seeking the benefits of cooperation provided, beginning the cycle anew. This is not to say that international institutions were the only cause of the dynamic form of globalization experienced over the last few decades. Changes in the nature of global capitalism, including breakthroughs in transportation and information technology, are obviously critical drivers of interdependence. However, all of these changes were allowed to thrive and develop because they took place in a relatively open, peaceful, liberal, institutionalized world order. By preventing World War Three and another Great Depression, the multilateral order arguably did just as much for interdependence as microprocessors or email (see Mueller 1990; O’Neal and Russett 1997). Beyond the special privileges of the great powers Self-reinforcing interdependence has now progressed to the point where it has altered our ability to engage in further global cooperation. That is, economic and political shifts in large part attributable to the successes of the post-war multilateral order are now amongst the factors grinding that system into gridlock. Because of the remarkable success of global cooperation in the postwar order, human interconnectedness weighs much more heavily on politics than it did in 1945. The need for international cooperation has never been higher. Yet the “supply” side of the equation, institutionalized multilateral cooperation, has stalled. In areas such as nuclear proliferation, the explosion of small arms sales, terrorism, failed states, global economic imbalances, financial market instability, global poverty and inequality, biodiversity losses, water deficits and climate change, multilateral and transnational cooperation is now increasingly ineffective or threadbare. Gridlock is not unique to one issue domain, but appears to be becoming a general feature of global governance: cooperation seems to be increasingly difficult and deficient at precisely the time when it is needed most. It is possible to identify four reasons for this blockage, four pathways to gridlock: rising multipolarity, institutional inertia, harder problems, and institutional fragmentation. Each pathway can be thought of as a growing trend that embodies a specific mix of causal mechanisms. Each of these are explained briefly below.

Growing multipolarity.

The absolute number of states has increased by 300 percent in the last 70 years, meaning that the most basic transaction costs of global governance have grown. More importantly, the number of states that “matter” on a given issue—that is, the states without whose cooperation a global problem cannot be adequately addressed—has expanded by similar proportions. At Bretton Woods in 1945, the rules of the world economy could essentially be written by the United States with some consultation with the UK and other European allies. In the aftermath of the 2008-2009 crisis, the G-20 has become the principal forum for global economic management, not because the established powers desired to be more inclusive, but because they could not solve the problem on their own. However, a consequence of this progress is now that many more countries, representing a diverse range of interests, must agree in order for global cooperation to occur.

Institutional inertia.

The postwar order succeeded, in part, because it incentivized great power involvement in key institutions. From the UN Security Council, to the Bretton Woods institutions, to the Non-Proliferation Treaty, key pillars of the global order explicitly grant special privileges to the countries that were wealthy and powerful at the time of their creation. This hierarchy was necessary to secure the participation of the most important countries in global governance. Today, the gain from this trade-off has shrunk while the costs have grown. As power shifts from West to East, North to South, a broader range of participation is needed on nearly all global issues if they are to be dealt with effectively. At the same time, following decolonization, the end of the Cold War and economic development, the idea that some countries should hold more rights and privileges than others is increasingly (and rightly) regarded as morally bankrupt. And yet, the architects of the postwar order did not, in most cases, design institutions that would organically adjust to fluctuations in national power.

Harder problems.

As independence has deepened, the types and scope of problems around which countries must cooperate has evolved. Problems are both now more extensive, implicating a broader range of countries and individuals within countries, and intensive, penetrating deep into the domestic policy space and daily life. Consider the example of trade. For much of the postwar era, trade negotiations focused on reducing tariff levels on manufactured products traded between industrialized countries. Now, however, negotiating a trade agreement requires also discussing a host of social, environmental, and cultural subjects - GMOs, intellectual property, health and environmental standards, biodiversity, labour standards—about which countries often disagree sharply. In the area of environmental change a similar set of considerations applies. To clean up industrial smog or address ozone depletion required fairly discrete actions from a small number of top polluters. By contrast, the threat of climate change and the efforts to mitigate it involve nearly all countries of the globe. Yet, the divergence of voice and interest within both the developed and developing worlds, along with the sheer complexity of the incentives needed to achieve a low carbon economy, have made a global deal, thus far, impossible (Falkner et al. 2011; Victor 2011).

Fragmentation.

The institution-builders of the 1940s began with, essentially, a blank slate. But efforts to cooperate internationally today occur in a dense institutional ecosystem shaped by path dependency. The exponential rise in both multilateral and transnational organizations has created a more complex multilevel and multi-actor system of global governance. Within this dense web of institutions mandates can conflict, interventions are frequently uncoordinated, and all too typically scarce resources are subject to intense competition. In this context, the proliferation of institutions tends to lead to dysfunctional fragmentation, reducing the ability of multilateral institutions to provide public goods. When funding and political will are scarce, countries need focal points to guide policy (Keohane and Martin 1995), which can help define the nature and form of cooperation. Yet, when international regimes overlap, these positive effects are weakened. Fragmented institutions, in turn, disaggregate resources and political will, while increasing transaction costs. In stressing four pathways to gridlock we emphasize the manner in which contemporary global governance problems build up on each other, although different pathways can carry more significance in some domains than in others. The challenges now faced by the multilateral order are substantially different from those faced by the 1945 victors in the postwar settlement. They are second-order cooperation problems arising from previous phases of success in global coordination. Together, they now block and inhibit problem solving and reform at the global level.

#### Comparative consolidation is solid

Jeff Stein, 21. White House economics reporter for The Washington Post. "Biden administration ramps up antitrust efforts amid worries about high prices." Washington Post, 30 Aug. 2021, https://www.washingtonpost.com/us-policy/2021/08/30/white-house-oil-gas-ftc/

Biden officials have expressed strong confidence in the power of antitrust enforcement to reduce a range of economic maladies. In July, Biden signed an executive order with 72 directives aimed primarily at directing federal agencies to step up antitrust investigations or enforcement. A growing body of literature has suggested that increased corporate consolidation is responsible for a range of problems in the U.S. economy. The White House has said that 75% of U.S. industries are more consolidated than they were 20 years ago, a trend that the administration has said has contributed to a tripling of prices for many household necessities. Researchers at Northeastern University have found that mergers in concentrated markets drive up prices by an average of 7%, while a paper in the Quarterly Journal of Economics has found a tripling in product "markups" since 1980. But it's an open question whether the antitrust effort can address high prices in the areas most troubling to consumers. In the letter released Monday, Khan, the FTC chair, told Deese that she is directing regulatory staff to ensure that the consolidation of large oil and gas firms is not leading to higher prices through "collusive practices." Khan also vowed additional steps to "deter unlawful mergers" in the oil and gas industry and investigate whether "the power imbalance favoring large national chains" force fuel station franchisees to sell gasoline at higher prices. Khan's statement follows a controversial $21 billion merger between 7-Eleven and Speedway, a convenience store chain with thousands of stores across the country. FTC members appointed by Democrats have raised concerns about the impact of that transaction, saying it raises "significant competitive concerns in hundreds of local retail gasoline and diesel fuel markets across the country." "What we see is shortages and price gouging everywhere, and what the FTC is going to try to do is stop that," said Matt Stoller, an antitrust expert at the American Economic Liberties Project. "If you own most of the gas stations in an area, you can control the price or collude with others to control the price. Preventing that collusion will reduce prices." Other experts are dubious. Some point out that the U.S. oil and gas industry is no more consolidated than international competitors, and that gas prices tend to follow an international pattern - not price-fixing by a handful of small firms. "It's PR. This is not going to reduce prices," said Pavel Molchanov, an oil industry analyst at Raymond James.

#### New antitrust is applied globally---offends allies

Herbert Hovenkamp 03. Ben V. & Dorothy Willie Professor of Law and History, University of Iowa. “Antitrust as Extraterritorial Regulatory Policy,” 48 Antitrust BULL. 629 (2003).

Today few of us are sympathetic with the view that the common law exists apart from and somehow transcends the jurisdiction of the courts that make it. Nevertheless, there is a powerful sense in which the rules of antitrust law are regarded as "natural," while explicitly regulatory rules are considered to be purely local, territorial, or political. This view is given considerable support by a powerful neoclassical economic model that views markets as natural, in the sense that they exist separate and apart from state policy making. 32

Within this model antitrust law is a kind of background umpire that does not make first instance choices about price, quantity, quality, new entry and the like, but that does limit the anticompetitive exercise of market power. Antitrust operates as a kind of "macro" version of contract law. The common law of contracts is designed to facilitate and protect the utility of individual private bargains; antitrust is designed to do much the same thing, but for markets as a whole. Under this conception a well defined set of antitrust principles always operates in the background, so to speak, permitting private bargaining to proceed without interference in the great majority of instances, but intervening when competitive processes go awry. Further, widespread agreement exists both inside and outside the United States on a set of core principles pertaining to such things as naked price fixing, market division agreements, and the like. Within this core, problems of extraterritoriality have largely been limited to the technical ones of devising appropriate jurisdictional rules and remedies.

In contrast, the power to regulate is different. Under the traditional view of regulation the power to set price, quantity, quality, or the right to enter a market emanates in the first instance from the government. Further, although there is widespread economic agreement on fundamental principles, regulatory design is much more specific to the sovereign-more likely to reflect the demographics, industrial or employment base, or politics of the particular state imposing the regulation.

For example, nearly all of the 50 states of the United States have an antitrust law. With relatively few exceptions, however, the substantive coverage of these antitrust laws is the same, and mimics federal law. Many states have court decisions or even legislative enactments stating that federal antitrust law should govern the interpretation of that particular state's antitrust law as well. 33 The result is that the coverage of state antitrust law is remarkably similar from one state to the next. But one can hardly say the same thing about each state's regulation of land use, power generation and distribution, taxicabs, liquor pricing, and the like. Whatever homogeneity regulatory theory might produce, the politics of regulation virtually guarantees jurisdiction-specific outcomes.

But homogeneity in antitrust policy also begins to break down when antitrust law moves beyond its fundamental neoclassical concern with cartels or well-defined exclusionary practices, and into areas where its role is more controversial or marginal. This is often the case when the antitrust laws are applied in recently deregulated markets. For example, a common antitrust problem that arises in deregulated industries falls under the general rubric of unilateral refusals to deal. In order to encourage competition, newly deregulated firms may be forced to share their facilities, information, intellectual property, or other assets with new rivals. Devising reasonable "nonregulatory" rules governing refusals to deal in such markets has always extended the antitrust laws to the margin of their competence.

Increasingly, American courts seem willing to apply antitrust law to markets regulated by foreign nations under circumstances where regulatory laws themselves would never reach. For example, neither Congress nor a state legislature would very likely attempt to regulate the customer service or information provision practices of a foreign national's telephone company. But both federal and state courts have done precisely that under the guise of antitrust enforcement.3 4

Antitrust policy makes this thinkable as a result of the confluence of two sets of doctrines. First is the expansive reach of our antitrust laws to practices that have a substantial effect on United States commerce. Second is the very narrow conception of comity that applies in antitrust cases.

As a general matter, comity concerns in the international conflict of laws requires the court to consider the competing interests of domestic and foreign sovereigns. 35 After a half century of debate over the meaning of comity in international Sherman Act adjudication, the Supreme Court gave the doctrine an extraordinarily narrow meaning in the Hartford Fire case.36 That case involved an alleged insurance boycott in which Lloyd's of London participated as reinsurer. Lloyd's conduct-agreeing with some United States insurers not to write reinsurance policies for other United States insurers who wanted to write policies with broader coverage-was neither forbidden nor compelled by British law. To the defendant's claim of comity the Supreme Court replied that the provisions of the Sherman Act governing jurisdiction over transactions in foreign commerce were mandatory. As a result, a federal court could not simply decline jurisdiction on the basis of some general balancing of interests. 37 Rather, "comity" permits a federal court to decline jurisdiction only when there was a "conflict" between the law of the foreign sovereign and United States law. Further, "conflict" was defined not under choice of law principles, but more absolutely, as occurring only when the foreign law compelled the conduct at issue. 38

Perhaps significantly, the activity of the London reinsurers was very likely reachable under United States antitrust law even under ordinary interest analysis principles. British law was found by the Supreme Court to be indifferent to what the London reinsurers were doing. Further, what they were doing was agreeing not to insure against liability for particular toxic pollution risks in the United States, and risk of liability is of course measured in relation to the physical environment and legal regime in which the injury occurs. 39 As a result, the London reinsurers were selling a product especially targeted for United States markets and allegedly participating in a boycott designed to keep broader coverage insurance policies out of that market.

But Hartford Fire's definition of comity is significantly problematic under deregulation. To the extent a foreign sovereign deregulates a public utility or common carrier, that firm enjoys greater discretion to make its own decisions. As a result, considerations of comity may no longer preclude a Sherman Act suit. What makes this especially problematic is the way that the Sherman Act has been used in the United States as a kind of replacement for the regulatory agency. Under comprehensive agency regulation a filed tariff plus regulatory oversight would have governed numerous acts by regulated firms, including pricing, entry into new markets, interconnection obligations and other duties to deal.40 Government relaxation of regulatory restrictions has given firms some discretion over these things but in the process has substituted the antitrust courts as governmental supervisor. In some situations this causes little difficulty because regulation may have been misapplied to a competitively structured industry to begin with.41 In other situations, such as long-distance telecommunication, a competitive environment has developed because of changes in technology, and topto-bottom price and product regulation is no longer necessary.42

But in a third class of situations the application of the antitrust laws is much more "regulatory" and more difficult to defend. These are the cases where unilateral conduct of the kind that was historically supervised by the regulatory agency now comes under antitrust jurisdiction. For example, under the essential facility doctrine a federal court of general jurisdiction may be asked to apply antitrust law to determine the scope of a formerly regulated firm's duty to interconnect with rivals. The circuit courts have applied the doctrine frequently in the telecommunications industry,43 but also to railroads" and natural gas pipelines.4 5 Problematically, supervising interconnection requirements involves the court in highly technical questions about the scope of the duty to deal and perhaps even about the price at which the deal must be made. In these cases we have not really "deregulated" at all; rather, we have simply substituted regulation by a government agency for regulation by a court, often through the highly inefficient and uncertain process of a jury trial. To do that in a purely domestic situation is ill-advised enough, but to do it abroad by taking advantage of the expansive jurisdictional reach of the Sherman Act is completely unjustified.

IV. Extraterritorial antitrust and foreign deregulation

As expansive as the regulatory power asserted by the United States sometimes becomes, it does not generally interfere directly into foreign governments' regulation of their own highly regulated industries. But to a large extent modem antitrust has inherited the regulatory attitude expressed by the Western Union decision discussed above. For several reasons, the idea that the United States Antitrust laws are jurisdictionally exceptional can produce overreaching that is offensive to foreign prerogatives. First, the United States antitrust laws are extremely general and make no distinction between ordinary competitive firms and public utilities or common carriers; the same rules purport to apply to all business firms. Second, the jurisdictional language of the antitrust laws is both mandatory and general to the same extent-that is, the "affecting foreign commerce" language of the basic Sherman Act and the export commerce language of the Foreign Trade Antitrust Improvement Act 6 do not distinguish between regulated and ordinary competitive firms. And third, the limiting doctrines of international law-namely Act of State, foreign sovereign compulsion, foreign sovereign immunity, and comity-do not distinguish among types of firms or types of antitrust complaints. They apply equally to both price fixing, which is at the core of antitrust concern, and to the essential facility doctrine, which lies at or outside its margin.

#### Ends the US-Japan economic alliance

Takaaki Kojima 02. Fellow, Weatherhead Center for International Affairs, 2001-2002. “International Conflicts over the Extraterritorial Application of Competition Law in a Borderless Economy”. https://datascience.iq.harvard.edu/files/fellows/files/kojima.pdf

We are witnessing increasingly widespread and penetrating economic globalization today. As a result of trade liberalization, import restrictions or regulations on trade and investment have decreased substantially, and trans-border business activities face less barrier. At the same time, the role of trans-border business activities, especially those by so-called multinational or global enterprises, have become increasingly important and even dominant in some sectors.

As far as the territorial scope of business activities are concerned, state borders are more or less diminishing to become almost borderless; as for legal regimes, however, sovereign states retain in principle exclusive jurisdiction over their territories and nationals under international law. Business activities are regulated by the domestic laws of sovereign states or by international agreements concluded among sovereign states. The pertinent question is how to coordinate “borderless” business activities within the existing legal regimes governed by sovereign states. In the field of trade law, the measures of each state are restricted by international agreements, in particular under the GATT/WTO regime. In the field of competition law, such an international regime is lacking and the domestic laws of each state regulate private restraints of trade in the relevant markets.

Serious jurisdictional conflicts have transpired in the last several decades between the United States and other states over the so-called extraterritorial application of U.S. antitrust laws on anticompetitive conducts abroad. This problem has also caused diplomatic frictions between the United States and other states, as it concerns state sovereignty. In this essay, the author will review the historical development of international conflicts caused by the extraterritorial application of competition law and attempt to examine the options available to circumvent or solve these conflicts. The main focus will be U.S. antitrust law and its relation with other jurisdictions, mainly the European Union and Japan, considering the grave implications to competition law and policy as well as to the world economy. 2

II. Extraterritorial Application of U.S. Antitrust Laws

Problems concerning the extraterritorial application of U.S. antitrust laws have been discussed in many publications. Of the U.S. antitrust laws, the Sherman Act applies to “commerce … with foreign nations ” (Section 1) without qualifying provisions concerning its territorial scope as “within the United States” (Section 2) or “in any section of the country” (Section 3) as specified in the Clayton Act. In the past, U.S. courts interpreting the Sherman Act of 1890 and other antitrust laws commonly followed the traditional territorial principle with regard to its jurisdictional reach. In the American Banana case (213 U.S. 347 (1909)), where all the acts complained of were committed outside the territory of the United States, including the defendant’s alleged inducements of the Costa Rican government to monopolize the banana trade, the U.S. Supreme Court dismissed the complaint on the ground, inter alia, that acts committed outside of the United States are not governed by the Sherman Act. In this case, the territorial principle in the classic sense was applied.

In later decisions such as the American Tobacco case (221 U.S. 106 (1911)) and the Sisal case (274 U.S. 268 (1927)), jurisdiction was exercised over the defendants on the ground that although the agreements in question were concluded by foreigners outside the United States, jurisdiction was limited to what was performed and intended to be performed within the territory of the United States. In these cases, the territorial principle was applied more flexibly, but it has been observed that this application cannot be argued other than as a sensible and reasonable deployment of the objective territorial theory. 3

An entirely different approach was taken in the Alcoa case (148 F.2d. 416 (1944)), in which foreign companies outside the United States had concluded the agreements. The Court of Appeal for the Second Circuit held it settled law that any State may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders. It went on further to state that the agreements, although made abroad, were unlawful if they were intended to affect imports and did affect them.

This theory of the intended effect (the effects doctrine) elaborated in the Alcoa case was criticized by many as an excess of jurisdiction under public international law. For instance, R.Y. Jennings noted that “in this new guise it apparently comprehends the exercise of jurisdiction over agreements made abroad, by foreigners with foreigners provided only that the agreement was intended to have repercussions upon American imports or exports,” 4 while F.A. Mann argued that “the type of effect within the meaning of the Alcoa ruling has nothing in common with the effect which by virtue of established principles of international jurisdiction confers that right of regulation.” 5 Neverthele ss, since the Alcoa case, U.S. courts have continued to follow the new jurisdictional formula of the effects doctrine.

In response to excessive application of U.S. antitrust laws, especially with respect to courts’ orders to produce documents such as subpoena duces tecum located abroad, a considerable number of states have issued diplomatic protests. Australia, France, the United Kingdom, the Netherlands, and New Zealand have even enacted blocking legislation. 6 The protesting states maintain that taking evidence abroad, including an order to produce documents, is an exercise of extraterritorial enforcement of jurisdiction that, under international law, requires the consent of the state where the evidence is located. The United Kingdom has been one of the strongest opponents to U.S. claims of extraterritorial jurisdiction. The U.K. government stated for instance that “HM Government considers that in the present state of international law there is no basis for the extension of one country’s antitrust jurisdiction to activities outside of that country of the foreign national.” 7 The Protection of Trading Interest law was enacted in 1980, which provides to extensively thwart the extraterritorial application of U.S. antitrust laws. The U.K. government invoked the provisions in the Laker Airways case (1983 W.L.R. 413) in 1983.

Having faced the antagonistic reactions of other states, U.S. courts began to show some restraint in assuming extraterritorial jurisdiction. In the Timberlane case (549 F.2d. 9 th Cir. (1976)), the court concluded that it had jurisdiction over alleged anticompetitive conducts in Honduras but refrained from asserting extraterritorial jurisdiction after having applied three tests: first, whether the challenged conduct had had some effect on the commerce of the United States; second, whether the conduct in question imposed a burden on U.S. commerce; and third, whether the complaint’s interests of and links to the United States were sufficiently strong vis-à-vis those of other nations to justify an assertion of extraterritorial authority. The Foreign Trade Antitrust Improvements Act enacted in 1976 applies to foreign conduct that has a direct, substantial and reasonably foreseeable effect on U.S. commerce, The U.S. enforcement agencies, the Department of Justice (DOJ) and the Federal Trade Commission (FTC), have adopted this jurisdictional rule of reason formula since the Enforcement Guidelines for International Operations of 1988. However, divergent views exist as to whether the third test of balancing the interests of other states is a rule of international law or just a comity. 8 Furthermore, not all U.S. courts have consistently applied the test of balancing interests. 9

In 1993, the Supreme Court decision in the Hartford Fire Insurance case (113 S. Ct. 2891 (1993)) reaffirmed the effects doctrine, stating that the Sherman Act applies to foreign conduct that was meant to produce and did in fact produce some substantial effect in the United States. The Court then took a restrictive view on the test of balancing interests, stating that the only substantial question is whether there is a true conflict between domestic and foreign law, and held that no such conflict seemed to exist because British law did not require defendants to act in a manner prohibited by U.S. law. 10

Japan maintains the territorial principle and rejects the effects doctrine, stating that the effects doctrine cannot be regarded as an established rule of international law. In the view of the Government of Japan, the extraterritorial application of U.S. domestic laws (including U.S. antitrust laws) based on the effects doctrine is not allowed under general international law. 11 In the Nippon Paper case, where a Japanese company was prosecuted under the Sherman Act, the Japanese government submitted a brief of amicus curiae where it stated, inter alia, that the extraterritorial application of the Sherman Act to a conduct of a Japanese company engaged in business in Japan is unlawful under international law. 12 Nonetheless, the U.S. Supreme Court affirmed the Court of Appeal decision, which assumed the extraterritorial application of the Sherman Act to a criminal case for the first time (118 S. Ct. 685 (1998)).

#### Alliance turns China rise

Shihoko Goto 21. deputy director for geoeconomics and senior associate for Northeast Asia at the Wilson Center. "When Trade No Longer Hampers U.S.-Japan Ties". 4-20-2021. https://www.wilsoncenter.org/blog-post/when-trade-no-longer-hampers-us-japan-ties

The April 16th meeting between President Joe Biden and Japanese Prime Minister Yoshihide Suga marked several milestones: not only was it the first foreign leader’s visit to the Biden White House, but it was also the first visit to the United States by Yoshihide Suga as the Japanese prime minister. It was also the first in-person summit meeting between the United States and Japan since the outbreak of a global pandemic. It marked a number of firsts in terms of content too, not least that it was the first time since the 1980s in which trade was not a sore point of contention between the two sides. Instead, trade relations projected as a way forward for further bilateral cooperation in confronting the China threat.

That isn’t to say trade relations between Japan and the United States are now smooth sailing. The U.S. trade deficit with the world’s third-largest economy runs to nearly $68 billion, and although the two sides signed a merchandise trade deal in 2019, the Japanese auto industry remains a point of contention for the United States. Indeed, Japan’s auto exports account for about $54 billion, or close to 80 percent, of the overall trade deficit. Meanwhile, the Biden administration is not expected to lift tariffs on steel and aluminum anytime soon, nor is it expected to make efforts to join the CPTPP in the near future, much to the frustration of Tokyo.

Yet instead of trying to negotiate a breakthrough on the trade front, the Biden-Suga meeting focused on bilateral economic relations based on their shared threat of dealing with China’s ambitions to challenge the regional status quo. Until recent months, Tokyo had aspired to maintain solid relations with China whilst furthering ties with the United States, most notably by endeavoring to decouple economic interests with Beijing from the security threat that China has increasingly been posing upon Tokyo. After the joint 2+2 joint security meeting in Tokyo in March, however, the two countries declared that China’s behavior is “inconsistent with the existing international order, presents political, economic, military, and technological challenges to the Alliance and to the international community.”

Since then, Tokyo has moved even closer to Washington publicly in pushing back against China, as the bilateral statement noted “the importance of peace and stability across the Taiwan Strait,” marking the first time since 1969 that Japan and the United States publicly referred to Taiwan which remains a core interest for China. In short, Japan’s hedging against the United States and maintaining a balancing act between China and the United States is now over. Not only is its security interests even more closely aligned with that of the United States, Japan’s economic interests are now more intertwined with that of the United States than ever.

Rather than focusing on the trade balance, Tokyo and Washington’s economic relations will concentrate more on economic resilience and maintaining free and fair economic rules of engagement in the Indo-Pacific. At the same time, the two countries are expected to work more closely together on competing against China in emerging technologies, from 5G to AI and information sciences.

For Japan, one of the biggest takeaways from the Biden-Suga meeting will be that the days of Japan posing an economic threat to the United States are now over. It will also be putting increasing pressure not only for Tokyo to be prepared to fight back against China on the economic as well as security fronts together with Washington, but it will also push Tokyo to step up its own efforts to compete in the innovation economy that goes beyond manufacturing.

#### Primacy is broadly sustainable

Joseph S. Nye 20. Professor at Harvard University and former chair of the National Intelligence Council. "No, the Coronavirus Will Not Change the Global Order". Foreign Policy. 4-16-2020. https://foreignpolicy.com/2020/04/16/coronavirus-pandemic-china-united-states-power-competition/

How will the coronavirus pandemic reshape geopolitics? Many commentators predict the end of an era of globalization that has prospered under U.S. leadership since 1945. Some see a turning point at which China surpasses the United States as a global power. Certainly, there will be changes, but one should be wary of assuming that big causes have big effects. For example, the 1918-1919 flu pandemic killed more people than World War I, yet the lasting global changes that unfolded over the next two decades were a consequence of the war, not the disease.

Globalization—or interdependence across continents—is the result of changes in transportation and communication technology, and these are unlikely to cease. Some aspects of economic globalization such as trade will be curtailed but financial flows less so. And while economic globalization is influenced by the laws of governments, other aspects of globalization such as pandemics and climate change are determined more by the laws of biology and physics. Walls, weapons, and tariffs do not stop their transnational effects, though deep and persistent economic stagnation would slow them down.

This century has seen three crises in two decades. The 9/11 terrorist attacks did not kill very many people—but like jujitsu, terrorism is a game in which a smaller player can use the shock of horror to create a disproportionate impact on the opponent’s agenda. U.S. foreign policy was profoundly distorted by choices made in a state of panic that led to long wars in Afghanistan and Iraq. The second shock, the 2008 financial crisis, brought on the Great Recession, gave rise to populism in Western democracies, and strengthened autocratic movements in many countries. China’s fast, massive, and successful stimulus package contrasted with the West’s lagged response, leading many to predict that China was on course to become the world’s economic leader.

Initial responses to the century’s third crisis, the coronavirus pandemic, also went down the wrong path. Both Chinese President Xi Jinping and U.S. President Donald Trump started off with denial and misinformation. Delays and obfuscation wasted crucial time for testing and containment, and the opportunity for international cooperation was squandered. Instead, after imposing costly lockdowns, the world’s two largest economies engaged in propaganda battles. China has blamed the U.S. military for the presence of the virus in Wuhan, and Trump has spoken about the “Chinese virus.” The European Union, with an economy roughly the size of the United States’, dithered in the face of disunity. Yet a virus could not care less about borders or about the nationality of its victims.

The incompetence of its response has hurt the United States’ reputational (or soft) power. China has provided aid, manipulated statistics for political reasons, and engaged in vigorous propaganda—all in an attempt to turn the narrative of its early failure into one of a benign response to the pandemic. However, much of Beijing’s effort to restore its soft power has been treated with skepticism in Europe and elsewhere. That is because soft power rests on attraction. The best propaganda is not propaganda.

In soft power, China starts from a weak position. Despite major efforts since former President Hu Jintao announced the objective of increasing the country’s soft power at the 17th National Congress in 2007, Beijing has created its own obstacles by exacerbating territorial disputes with neighboring countries and by its insistence on repressive party control, which prevents the full talents of society from being unleashed in the way that happens in democracies. It is not surprising that global public opinion polls and rankings such as the Soft Power 30 rank China low in soft power. The top 20 spots in the index are held by democracies.

In hard power, too, the balance favoring the United States will not be changed by the pandemic. Both the U.S. and Chinese economies have been hit hard, as have those of the United States’ European and East Asian allies. Before the crisis, China’s economy had grown to two-thirds the size of the United States’ (measured at exchange rates), but China entered the crisis with a slowing growth rate and declining exports. Beijing has also been investing heavily in military power, but remains far behind the United States and may slow down its military investments in a more adverse budgetary climate. Among other things that the crisis has exposed is China’s need for major expenditures on its inadequate health care system.

Moreover, the United States has geopolitical advantages that will persist despite the pandemic. The first is geography: It is bordered by oceans and friendly neighbors, while China has territorial disputes with Brunei, India, Indonesia, Japan, Malaysia, the Philippines, Taiwan, and Vietnam. A second advantage is energy: The shale oil and gas revolution has transformed the United States from an energy importer to a net exporter. China, on the other hand, is highly dependent on energy imports passing through the Persian Gulf and the Indian Ocean, where the United States has naval supremacy. The United States also has a demographic advantages: Over the next decade and a half, according to research by Stanford University’s Adele Hayutin, the U.S. workforce is likely to grow by 5 percent, while China’s will shrink by 9 percent, mainly a result of its former one-child policy. China’s working-age population peaked in 2015, and India will soon pass China as the world’s most populous nation. And it barely needs repeating that U.S. power also results from its place at the forefront of the development of key technologies including biotechnology, nanotechnology, and information technology. U.S. and other Western research universities dominate higher education.

All this suggests that the COVID-19 pandemic is unlikely to prove a geopolitical turning point. But while the United States will continue to hold most of the high cards, misguided policy decisions could cause it to play these cards poorly. Discarding the aces of alliances and international institutions would be one such misguided decision. Another one would be a severe restriction of immigration. Long before this crisis, when I asked former Singaporean Prime Minister Lee Kuan Yew why he did not think China would surpass the United States as a global power anytime soon, one reason he cited was the United States’ ability to draw on the talents of the entire world and to recombine them in diversity and creativity. Given its ethnic Han nationalism, this kind of openness would be impossible for China. But if populism leads the United States to toss away its valuable cards of alliances, international institutions, and openness, Lee could be wrong.

### Populism Adv

#### ‘Rural depopulation’ claims are exaggerated---and alt causes

Ted Nordhaus & Dan Blaustein-Rejto, 21. Nordhaus is Executive Director, Breakthrough Institute. Blaustein-Rejto is Director, Food and Agriculture, Breakthrough Institute, “Small Farms, Big Pollution,” Foreign Policy, June 2, 2021. https://foreignpolicy.com/2021/06/02/big-agriculture-pollution-small-farms-inefficient/, accessed 6-8-21

Sanderson and Cox blame industrial agricultural in the corn belt not only for the dead zone in the Gulf of Mexico but for rendering “entire landscapes uninhabitable” across the region. Millions of Americans still comfortably living in such places would beg to differ. Yes, as Sanderson and Cox note, there are more hogs in the state of Iowa than people. So what? Insofar as the claim is relevant at all, it regards the question of why Iowa has so few people, not why it has so many hogs. And while the expansion of hog farming in the state in recent decades is attributable to industrial production methods, the decline of the human population is not, as large-scale rural outmigration has been underway in Iowa for over a century. As we note in our essay, rural depopulation has been much more the cause of the consolidation and industrialization of American agriculture than it is the result of those farming practices**.**

#### Rural economies are fine

Tonya Garcia, 21. MarketWatch reporter covering retail and consumer-oriented companies. “11 million birds and counting: Tractor Supply sales signal robust rebound for rural America.” April 28, 2021. https://www.marketwatch.com/story/rural-economies-recovering-more-quickly-from-covid-than-other-areas-to-tractor-supplys-benefit-11619637223

Tractor Supply Co.’s TSCO, +1.13% first-quarter results got a lift from its core customers in rural areas, which, the company says, weren’t as affected by the pandemic and are recovering more quickly than other geographies. “The fastest growth customer segment is our core farm and ranch,” said Hal Lawton, chief executive of the retailer, during the first-quarter earnings call, according to a FactSet transcript. “This segment is very healthy as rural economies, for the most part, were less impacted by the pandemic and are recovering at a steeper and more robust rate.” Tractor Supply reported what Lawton called a “record performance” in the first quarter. Lawton attributed the results to a few other factors as well, including a 400-basis point shift to a younger demographic between the ages of 18 and 45 years old. This group, which had been slow to purchase homes, were “shocked” by the pandemic and began to do so. “There continues to be a net migration out of urban areas, largely driven by the millennial segment,” Lawton said on the call. “The most robust homeownership growth is in the millennial cohort, with the growth coming in suburban and rural areas. We believe the growth in this customer segment has staying power, and could be (a) structural game-changer for us.” Pet owners are also a strong demographic for Tractor Supply, and pet ownership soared during the pandemic. For Tractor Supply, that means sales of things like pet food and shampoo also increased. The company also saw bird sales soar.

#### Ag consolidation inevitable and good

Shaun Haney, 21. “Big agriculture may not be perfect, but has a place in the future of food.” May 28, 2021. https://www.realagriculture.com/2021/05/big-agriculture-may-not-be-perfect-but-has-a-place-in-the-future-of-food/

In 2008, I started RealAgriculture.com as a hobby that has turned into a dream come true. Getting a chance to see agriculture across Canada, talking to farmers involved in all facets of agriculture makes me a very lucky person. Along with writing for RealAgriculture.com, I also host RealAg Radio on Rural Radio 147 every weekday at 4:30pm est. One of the points the authors make that really stuck with me as I think about growing economies like China and India was: “No nation has ever succeeded in moving most of its population out of poverty without most of that population leaving agriculture work.” As people become wealthy by moving to the city, working in manufacturing, services, and technology, there are less people to farm which allows for and drives agriculture consolidation. An important parallel driver of this consolidation trend has been the efficiency and productivity gains of mechanization. With the development of precision agriculture, robotics, and artificial intelligence, is there any reason to believe that this consolidation trend stops? The idea that the food system should be railroaded into one big-size-fits-all is creating a structure consumers are concerned about with grocers, packers, tech companies, telecoms, and drug companies. There are “persistent misperceptions” about agriculture, “most especially among affluent consumers,” that seem to disregard the economic realities of the average consumer. Although I agree that today’s modern agriculture practices present under-appreciated benefits for the rank and file of society, the idea that there is only one way, as say the authors, is wrong. A lot of times in agriculture we talk about how so many people are disconnected from the farm, and we talk about that from a communication standpoint and the negatives of that; the authors of this story reverse that, flip it, put it on its head from the standpoint that shows that North American society moved so many people out of poverty. “But over the long term, the living standards and life opportunities offered in the modern knowledge, service, and manufacturing economies have proved vastly greater than anything possible under the agrarian social and economic arrangements that most Americans over the last two centuries happily abandoned—and that too many Americans today romanticize.” The further we get away from a memory, the more we romanticize about how awesome it was, and we forget some of the negatives, the challenges, and the struggles that came with that. Food production is a good example. When you think about the way that some people are trying to push food production back into a distant time in the past, I think a lot of times they forget about some of the challenges, the struggles, the hardship that those people faced. It’s not necessarily consumer greenwashing, but there’s an element here of ‘this is how I would like my food produced,’ even though it doesn’t necessarily fit the realities of economics, and according to the authors, some of the social benefits as well. Nordhaus and Bleistein-Rejto continue: “Debates about the social and environmental impacts of America’s food system cannot be disentangled from the basic reality that in a modern industrialized society, most people will live in cities and suburbs and will not work in agriculture. As a result, most food will need to be produced by large farms, with little labor, far away from the people who will consume it.” Although in agriculture we begrudge the disconnect that people feel to our society contribution, it is a natural evolution as a society urbanizes and the economy matures. We’re having a hard time filling jobs in primary agriculture today. If we’re supposed to go back to more small farms, where is the labour force going to come from to do that work? Remember, in some of these cases, when we think back to this romantic view of the way food production was and should be in the future, that also doesn’t involve technology. You see the pictures, the stock photos that are used in some of these stories, and it’s often not the most advanced technology being used. One of the loudest arguments against big agriculture is the perception of environmental harm. “In the contemporary environmental imagination, highly productive, globally traded agriculture is a bad thing—poisoning the land at home and undermining food sovereignty abroad. But in reality, a pound of grain or beef exported from the United States almost always displaces a pound that would have been produced with more land and greenhouse gas emissions somewhere else,” write Nordhaus and Bleistein-Rejto. The counter-argument written by Sanderson and Cox argues that “By now, it is vitally clear that earth’s systems — the atmosphere, oceans, soils and biosphere — are in various phases of collapse, putting nearly one half of the world’s gross domestic product at risk and undermining the planet’s ability to support life. And big industrialized agriculture — promoted by U.S. foreign and domestic policy — lies at the heart of the multiple connected crises we are confronting as a species.” Regenerative agriculture is getting a lot of attention right now as agriculture tries to rebrand its sustainability practices. For some, true regenerative agriculture could only be practised by small farms, and as larger operations grasp onto the concept, those looking to be niche will align with a new sexy, marketing word. Near the end of the article, Nordhaus and Bleistein-Rejto point toward a future where big agriculture builds on its already clear strengths, to improve on the food system by:Doubling down on technology and productivity through precision farming; Liberalizing trade agreements can improve global food security, benefit agriculture, and bring substantial environmental benefits; and, Stop growing crops for biofuels and incentivize farmers to produce food for export markets. The future of the food system is yet to be determined, but additional production system options attempt to supplant the current models. Synthetic meats and vertical farms look to create options for consumers with lower environmental footprints by encompassing the true definition of factory farming. I have always found it ironic that the same consumers against big agriculture would be totally comfortable with Google or another tech conglomerate controlling the food space. As I addressed earlier, how you define “big” is going to depend whether you are in or out of the industry. But modern day large-scale agriculture has provided under-appreciated value to society and still has room to improve. Missing from this entire discussion has been profitability. For farmers and ranchers, bigger does not mean more profitable. Inside the industry we have seen the rise and decline of the mega farm, the consolidation in the supply chain, as well as among producers. We talk about attracting new entrants but the capital requirements, including the price of land, are such a barrier. I have always wanted to further study farm profitability relative to size. There is so much attention paid to number of head, gross revenue, and acres farmed and not return on assets or ROI. On Wall Street they talk about earnings per share, while in agriculture we focus too much on size being the determinant of farming success. At a time where government struggles to listen to or trust farmers and their organizations while trying to re-organize food systems based on climate and health goals, agriculture must find a way to the table. Big agriculture has room to improve but the many benefits of modern agriculture to society are hard to argue with.

#### No civil war

William G. Gale & Darrell M. West, 21. Gale is The Arjay and Frances Fearing Miller Chair in Federal Economic Policy Senior Fellow - Economic Studies Director - Retirement Security Project Co-Director - Urban-Brookings Tax Policy Center. West is director and vice president of Governance Studies. Vice President and Director - Governance Studies Senior Fellow - Center for Technology Innovation Douglas Dillon Chair in Governmental Studies. “Is the US headed for another Civil War?” September 16, 2021. https://www.brookings.edu/blog/fixgov/2021/09/16/is-the-us-headed-for-another-civil-war/

STILL, CIVIL WAR IS NOT INEVITABLE

Take a deep breath. Despite the factors above, civil war is not inevitable. Indeed, that scenario faces several limiting factors that hopefully will stop the escalation of conflict. Historically, other than during the 1860s and the Reconstruction period, these kinds of forces have limited mass violence and kept the country together. Most of the organizations talking about civil war are private, not public entities: When Southern states seceded in 1860, they had police forces, military organizations, and state-sponsored militias. That varies considerably from today, where the forces who have organized for internal violence are mostly private in nature. They are not sponsored by state or local governments and do not have the powers of government agencies. They are voluntary in nature and cannot compel others to join their causes. There is no clear regional split: We do not have a North/South schism similar to what existed in the 19th century. There are urban/rural differences within specific states, with progressives dominating the cities while conservatives reside in rural communities. But that is a far different geographic divide than when one region could wage war on another. The lack of a distinctive or uniform geographic division limits the ability to confront other areas, organize supply chains, and mobilize the population. There can be local skirmishes between different forces, but not a situation where one state or region attacks another. A history of working through ballot box: Despite Republicans’ increasing (and false) accusations that elections they lose are fraudulent—GOP candidate Larry Elder made unfounded claims of voter fraud in the recent California recall election before the election even happened!—America has a history of resolving conflict through electoral and political means, not combat. Although there has been a deterioration of procedural safeguards and democratic protections, the rule of law remains strong and government officials are in firm position to penalize those who engage in violent actions. We expect that these limiting factors will allow the country to avoid a full-scale civil war. However, with nearly half the country believing this conflict to be likely, we need to take that scenario seriously. This is, after all, not the first time the country has been sharply divided. The 1860s conflagration—a needed step to rid the nation of slavery—lasted four years, cost over 600,000 lives, and had a devastating impact on the economy, political system, and society as a whole. It was a shocking breach of the national union by slave-holders and a demonstration of what happens when basic governance breaks down.

### Modeling Adv

#### No modeling---divergences in implementation inevitable, especially with an arbitrary standard

Ma. Joy V. Abrenica 18. Professor, School of Economics, University of the Philippines Diliman. BALANCING CONSUMER WELFARE AND PUBLIC INTEREST IN COMPETITION LAW. 13:2 Asian J WTO & Int'l Health L & Pol'y 443. 2018. Pg 448-449

The economic approach to antitrust enforcement has been embraced not only by the U.S. and European Commission (hereinafter "EC"), but also by developing countries whose antitrust laws were very much influenced by these two regimes. The OECD describes the convergence among antitrust regimes as follows: There is general consensus that the basic objective of competition law is to protect and preserve competition as the most appropriate means of ensuring the efficient allocation of resources . . . in free market economies. While countries differ somewhat in defining efficient market outcomes, there is general agreement that the concept is manifested by lower consumer prices, higher quality products and better product choice. 22 But the adoption of a common framework has not resulted in uniform implementation of competition principles. This is because most competition regimes are still conditioned by the zeitgeist of their own competition law, as well as by social and political realities in the domestic front. Two opposing philosophies are driving antitrust enforcement in different directions. One perspective presumes that unencumbered markets are vulnerable to abuse of dominance and collusion among competing producers; thus vigorous enforcement is necessary to preserve competition. Another perspective holds that market competition is robust and could prevail upon any private attempt to suppress it; therefore, rigid enforcement is counterproductive as it could undermine rivalry, hinder innovation and thus harm consumers in the long term. Most regimes would strive for the middle ground, i.e., neither intransigent nor too lenient. However, the effects of and intent behind market behavior are rarely apparent and often difficult to discern. This could result in a finding of infringement when in fact the conduct is a legitimate response to competitive pressure (type 1 error), or a failure to foil an anticompetitive conduct as it is mistaken for an innocuous pursuit of efficiency (type 2 error). Both types of error could ruin competition. Indeed, striking the right balance in enforcement is arduous and mature jurisdictions are not exempted from the challenge. One observes notable disagreements between the U.S. and EC on such issues as refusal to deal and reverse patent payments, for example, as well as flip-flopping of decisions on various forms of vertical restraints. The divergence in views and inconsistencies in decision is probably inevitable as the understanding of economic behavior and market processes continue to evolve. Boudreaux explained: Almost all of the original bases for antitrust intervention have been shattered by sound economics. Price-cutting is no longer an obvious means of monopolizing; bigness is no longer believed to be inevitable, inevitably harmful, or perpetual; and the myriad contracting arrangements devised by actual market participants are increasingly understood to enhance competition despite having been ignored by authors of textbooks. The advances that have occurred in economic theorizing are generally abstruse demonstrations of theoretical possibilities. Only when these theories have been supported by solid empirical findings should they serve as the basis for policy . . .. (emphases added)23 Against this perplexed environment in the backdrop, the meshing of public interest and competition objectives adds further complication, uncertainty and unpredictability in competition enforcement.

#### Food prices don’t cause conflict–reject their bad studies.

Demarest 15—PhD Researcher at the Centre for Research on Peace and Development [Leila, “Food price rises and political instability: Problematizing a complex relationship,” *The European Journal of Development Research*, Vol. 27, No. 5, p. 650-671, Emory Libraries]

6. Conclusions and Way Forward

While some progress has been made in improving our understanding of the linkages between rising food prices and conflict, several important gaps remain. Firstly, notions of conflict and political instability are often used interchangeably, while these concepts and the relationships between them remain to some extent vague. The ‘food riot’ concept in particular leads to confusion. Although it is popularly seen as a violent rise of the masses, in reality, many peaceful events are gathered under this term, while violence is often committed by the state rather than by hungry consumers. The term also presupposes that food is the central issue at hand, which does not necessarily have to be the case. Many misunderstanding arise from the second gap identified in this paper: the uncritical data gathering based on international news reports. Not only are these remarkably inconsistent, they also make use of classifications which are not scientifically investigated. Finally, causal mechanisms in the relationship between rising food prices and conflict often remain assumptions in the literature and lack empirical foundation. Three crosscutting avenues for improvement therefore exist: better concept definitions, better data gathering, and more focus on contexts.

Clearly defined concepts and categorizations of conflict and instability are a necessary foundation for research on the linkages between rising food prices and conflict. For (food) protests in particular, purposeful categorizations require an enhanced insight in the events that took place on the ground. Local news sources for data gathering can prove to be more reliable than Western (English) media to accomplish this. Event descriptions are also likely to be more detailed in local sources, which allows for a first-hand qualitative analysis of causes and context.

As international food prices are likely to remain high, improving our understanding of the causal mechanisms which can lead to conflict remains crucial. We can draw important lessons from the literature on poverty and conflict, resource scarcity and conflict, and regime transition in Africa. The causal role of economic factors alone has continuously been questioned, and ‘context’ or prevailing political, economic, and social factors play a crucial role in the conflict outcome. The argument that adverse economic shocks seem more of a trigger to conflict rather than an important cause is not particularly remarkable in itself. Yet while many authors acknowledge this, the focus often remains on the trigger. Resource scarcity, climate change, population growth, or food insecurity often remain the starting point of analyses, with researchers consequently tracing the divergent (theoretical) possibilities for conflict. In the end, most admit that these factors do not automatically lead to conflict everywhere, and stress the importance of context. Because the theoretical possibilities for conflict are so large, however, the context factor remains rather understudied with as most agreed upon notions that elements of ‘grievance’ and ‘collective action’ are required.

It is hence important to focus more on the ‘contexts’ that can lead to conflict and, in doing so, to make the distinction between different forms of conflict. This also implies a data collection exercise. Contextual data are currently collected at the aggregate, national level, and only on a yearly basis, which can lead to spurious relations. While the use of these variables is increasingly questioned in civil war studies, we can also doubt their strength in the study of highly localized, one-time events such as riots. I particularly make the case for ‘bringing politics back in’. The policies taken by the government are crucial in the violent escalation of social conflict (e.g. accommodation versus repression), but the only variable currently in use to explain state behaviour seems to be the country-level regime type variable (Polity IV or Freedom House), which is also used with regards to highly localized conflicts. Other ways in which politics matter, can be the strength of the political opposition. The Muslim Brotherhood in Egypt, for example, was probably better organized than other opposition groups to make use of economic unrest.

#### No cyber impact---every scenario is empirically denied

James Andrew Lewis 18, senior vice president at the Center for Strategic and International Studies, Ph.D. from the University of Chicago, January 2018, “Rethinking Cybersecurity: Strategy, Mass Effect, and States,” <https://espas.secure.europarl.europa.eu/orbis/sites/default/files/generated/document/en/180108_Lewis_ReconsideringCybersecurity_Web.pdf>, p. 7-11

The most dangerous and damaging attacks required resources and engineering knowledge that are beyond the capabilities of nonstate actors, and those who possess such capabilities consider their use in the context of some larger strategy to achieve national goals. Precision and predictability—always desirable in offensive operations in order to provide assured effect and economy of force—suggest that the risk of collateral damage is smaller than we assume, and with this, so is the risk of indiscriminate or mass effect. State Use of Cyber Attack Is Consistent with Larger Strategic Aims Based on a review of state actions to date, cyber operations give countries a new way to implement existing policies rather than leading them to adopt new policy or strategies. State opponents use cyber techniques in ways consistent with their national strategies and objectives. But for now, cyber may be best explained as an addition to the existing portfolio of tools available to nations. Cyber operations are ideal for achieving the strategic effect our opponents seek in this new environment. How nations use cyber techniques will be determined by their larger needs and interests, by their strategies, experience, and institutions, and by their tolerance for risk. Cyber operations provide unparalleled access to targets, and the only constraint on attackers is the risk of retaliation—a risk they manage by avoiding actions that would provoke a damaging response. This is done by staying below an implicit threshold on what can be considered the use of force in cyberspace. The reality of cyber attack differs greatly from our fears. Analysts place a range of hypothetical threats, often accompanied by extreme consequences, before the public without considering the probability of occurrence or the likelihood that opponents will choose a course of action that does not advance their strategic aims and creates grave risk of damaging escalation. Our opponents' goals are not to carry out a cyber 9/11. While there have been many opponent probes of critical infrastructure facilities in numerous countries, the number of malicious cyber actions that caused physical damage can be counted on one hand. While opponents have probed critical infrastructure networks, there is no indication that they are for the purposes of the kind of crippling strategic attacks against critical infrastructure that dominated planning in the Second World War or the Cold War. Similarly, the popular idea that opponents use cyber techniques to inflict cumulative economic harm is not supported by evidence. Economic warfare has always been part of conflict, but there are no examples of a country seeking to imperceptibly harm the economy of an opponent. The United States engaged in economic warfare during the Cold War, and still uses sanctions as a tool of foreign power, but few if any other nations do the same. The intent of cyber espionage is to gain market or technological advantage. Coercive actions against government agencies or companies are intended to intimidate. Terrorists do not seek to inflict economic damage. The difficulty of wreaking real harm on large, interconnected economies is usually ignored. Economic warfare in cyberspace is ascribed to China, but China's cyber doctrine has three elements: control of cyberspace to preserve party rule and political stability, espionage (both commercial and military), and preparation for disruptive acts to damage an opponent's weapons, military information systems, and command and control. "Strategic" uses, such as striking civilian infrastructure in the opponent's homeland, appear to be a lower priority and are an adjunct to nuclear strikes as part of China's strategic deterrence. Chinese officials seem more concerned about accelerating China's growth rather than some long-term effort to undermine the American economy.6 The 2015 agreement with the United States served Chinese interests by centralizing tasking authority in Beijing and ending People's Liberation Army (PLA) "freelancing" against commercial targets. The Russians specialize in coercion, financial crime, and creating harmful cognitive effect—the ability to manipulate emotions and decisionmaking. Under their 2010 military doctrine on disruptive information operations (part of what they call "New Generation Warfare"). Russians want confusion, not physical damage. Iran and North Korea use cyber actions against American banks or entertainment companies like Sony or the Sands Casino, but their goal is political coercion, not destruction. None of these countries talk about death by 1000 cuts or attacking critical infrastructure to produce a cyber Pearl Harbor or any of the other scenarios that dominate the media. The few disruptive attacks on critical infrastructure have focused almost exclusively on the energy sector. Major financial institutions face a high degree of risk but in most cases, the attackers' intent is to extract money. There have been cases of service disruption and data erasure, but these have been limited in scope. Denial-of-service attacks against banks impede services and may be costly to the targeted bank, but do not have a major effect on the national economy. In all of these actions, there is a line that countries have been unwilling to cross. When our opponents decided to challenge American "hegemony," they developed strategies to circumvent the risks of retaliation or escalation by ensuring that their actions stayed below the use-of-force threshold—an imprecise threshold, roughly defined by international law, but usually considered to involve actions that produce destruction or casualties. Almost all cyber attacks fall below this threshold, including, crime, espionage, and politically coercive acts. This explains why the decades-long quest to rebuild Cold War deterrence in cyberspace has been fruitless. It also explains why we have not seen the dreaded cyber Pearl Harbor or other predicted catastrophes. Opponents are keenly aware that launching catastrophe brings with it immense risk of receiving catastrophe in return. States are the only actors who can carry out catastrophic cyber attacks and they are very unlikely to do so in a strategic environment that seeks to gain advantage without engaging in armed conflict. Decisions on targets and attack make sense only when embedded in their larger strategic calculations regarding how best to fight with the United States. There have been thousands of incidents of cybercrime and cyber espionage, but only a handful of true attacks, where the intent was not to extract information or money, but to disrupt and, in a few cases, destroy. From these incidents, we can extract a more accurate picture of risk. The salient incidents are the cyber operations against Iran's nuclear weapons facility (Stuxnet), Iran's actions against Aramco and leading American banks, North Korean interference with Sony and with South Korean banks and television stations, and Russian actions against Estonia, Ukrainian power facilities, Canal 5 (television network in France), and the 2016 U S. presidential elections. Cyber attacks are not random. All of these incidents have been part of larger geopolitical conflicts involving Iran, Korea, and the Ukraine, or Russia's contest with the United States and NATO. There are commonalities in each attack. All were undertaken by state actors or proxy forces to achieve the attacking state's policy objectives. Only two caused tangible damage; the rest created coercive effect, intended to create confusion and psychological pressure through fear, uncertainty, and embarrassment. In no instance were there deaths or casualties. In two decades of cyber attacks, there has never been a single casualty. This alone should give pause to the doomsayers. Nor has there been widespread collateral damage.

# 2NC

## Adv CP

#### The United States federal government should:

#### commit to sustain status quo levels of FTC funding

#### increase its funding for startup farm companies in the United States

#### 2---“Do both” is antitrust duplication---collapses resources, effectiveness, and signaling

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Disputes over clearance can have tangible adverse effects on enforcement. First, some have commented that delays caused by clearance disputes can narrow the efficacy of remedial options, particularly with mergers. As Sen. Richard Blumenthal has commented, “The Big Tech companies are not waiting for the agencies to finish their cases. They are structuring their companies so that you can’t unscramble the egg.” Structural remedies are favored by Delrahim, who has commented that alternative, behavioral remedies should be used sparingly: “The division has a strong preference for structural remedies over behavioral ones. … The Antitrust Division is a law enforcer and, even where regulation is appropriate, it is not equipped to be the ongoing regulator.”

Second, disputes over clearance and, more so, duplicative investigations waste agency resources, threaten to blunt their effectiveness, and can lead to inconsistent and confusing governmental positions. In the Sept. 17 oversight hearing, Simons and Delrahim were both criticized for requesting an increase in funding: “As you both acknowledged, both of you could use, and desperately need, more resources. That being the case, it makes no sense to me that we should have duplication of effort, when that has a tendency inevitably to undermine the effectiveness of what you’re doing.” Duplicative investigations dilute the specialization that is a principal goal of the agencies’ clearance agreement and raise the risk that one agency will take legal positions that undercut the other. No doubt the DOJ’s amicus brief in the Qualcomm case influenced the U.S. Court of Appeals for the Ninth Circuit’s decision to issue a stay pending appeal.

So how will the FTC and DOJ resolve their latest turf war? Perhaps they will revisit their clearance agreement and decide to split their authority by company or the business practice being investigated, based on prior agency experience, rather than by industry as Appendix A currently does. Or maybe Congress will decide to consolidate civil antitrust enforcement jurisdiction under one agency. That seems like a long shot considering the political implications. However, during the Senate’s antitrust oversight hearing, Sen. Josh Hawley proposed “cleaning up the overlap in jurisdiction by removing it from one agency” and “clearly designating enforcement authority to one agency.” One thing is sure—the agencies should not be duplicating civil antitrust investigations. Stay tuned.

#### 2---Antitrust laws are enforced by the DOJ and FTC

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

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

#### 3---They are alternatives not subsets.

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

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

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

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

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

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

#### Funding startups lets them survive despite competition

Ketchen & Hult 19, 4-29-2019, David Ketchen is a professor and Harbert Eminent scholar in the Raymond J. Harbert College of Business at Auburn University; Tomas Hult is a professor and Byington Endowed chair at Michigan State University and executive director of the Academy of International Business. "Government can help startups bridge the 'valley of death'," TheHill, https://thehill.com/opinion/finance/441139-government-can-help-startups-bridge-the-valley-of-death

Economic incentives offered by U.S. states to attract established companies grab headlines. The pursuit of Amazon by various cities and states, for example, captured the public interest and also created strong sentiments for and against such investment.

Amazon was on the front page, but leaders in some states are continually and quietly seeking to cultivate the next Amazon. They do this by providing early-stage funding and resources to promising startups. These forward-thinking programs set the stage for a bright entrepreneurial future but also cost public dollars.

Skeptics focus on the cost. Optimists hone in on future growth. What is clear is that blue-collar manufacturing jobs are not coming back in droves. Instead, innovation attracts global talent and creates new products and industries.

Startups play an inimitable role in innovation. They also face a unique funding pitfall known as the “valley of death.” The very early stages of a startup’s development are funded by entrepreneurs themselves and "the 3 F's" — family, friends and fools.

But soon, expenses grow beyond self-funding as a startup spends money on developing a viable product. Early-stage startups have minimal, if any, cash-flow, and they are too underdeveloped to attract investment from traditional venture capitalists. The valley of death then swallows them: Access to funds bottoms out while expenses keep mounting.

This is where investment at the state-level is such a great tool. Take Alabama and Michigan as examples. Red-state Alabama and blue-state Michigan are different in many ways, but leaders in both states see the wisdom in helping early-stage startups cross the valley of death.

Alabama Launchpad is operated by the Economic Development Partnership of Alabama (EDPA), a nonprofit that partners with government agencies to foster economic growth. This may be the best of both worlds — investing in a public good but generally not with tax dollars, albeit in concert with government agencies.

EDPA is probably best known for the recruitment of a $1.6 billion Mazda-Toyota joint venture slated to open in 2021. However, since 2009, Alabama Launchpad has invested more than $4 million to fund 84 startups whose collective current valuation exceeds $210 million.

Wyndy is one of these startups. The “Uber of babysitters” received Launchpad funding to develop its app that connects parents with thoroughly-vetted college students. This funding helped sustain Wyndy until it raised $1 million from private investors.

In Michigan, the counterpart to Alabama Launchpad is orchestrated by the Michigan Economic Development Corporation (MEDC) — a public-private funded entity. Early-stage funding for startups can be sought from MEDC’s Entrepreneurial and Innovation Initiative that also involve Invest Michigan, Invest Detroit and Small Business Development Centers.

Like Wyndy in Alabama, Fifth Eye in Michigan found success by receiving state support in 2014 to help in development. In 2019, the Ann Arbor-based medical software startup raised $11.5 million in investment capital.

Assisting startups like Wyndy and Fifth Eye is critical to the lifeblood of the American economy. It is very unlikely Fifth Eye would be here today without such funding five years ago.

Given that thriving startups create jobs and fuel economic activity, states should help these innovative entrepreneurial ventures survive the valley of death. Importantly, policymakers in Washington, D.C. need to explore how these state-level success stories can be replicated at the federal level.

The U.S. Small Business Administration’s Small Business Innovation Research Program (SBIR) has helped many startups, but significant gaps exist for early-stage startups. SBIR grants are open to companies with 500 or fewer employees, leaving small startups at a competitive disadvantage.

Most SBIR dollars go to 10 states, including the tech hotbeds of California, Texas and Massachusetts that may not need the support as much as other locations. Supporting embryonic, early-stage startups across all 50 states needs to become a core focus, or the country will lose out.

Globally, considerable centers of venture-capital investment have grown outside of the U.S. in recent years.

Yes, the United States is the world’s dominant center for startup investment in general, accounting for 68.6 percent of total global venture capital (Asia is next at 14.4 percent and then Europe at 13.5 percent), but the numbers are rapidly changing, and the support is not necessarily at the early-stage level.

In the evolving situation, economic-development leaders now face increased pressure from international locations. State and federal infrastructure can provide a bridge over the entrepreneurial valley of death before global investors opportunistically drag away the lifeblood of the American economy.

#### Ag R&D solves---it’s comparatively more effective at innovating than private investment due to risk aversity

Megan Nelson 19, 9-26-2019, AFBF economic analyst, "Investing in the Future of Farming," Farm Bureau, https://www.fb.org/market-intel/investing-in-the-future-of-farming

Over the past few decades, agricultural research and development has spurred tremendous leaps in farm and ranch productivity, efficiency and safety, as well as the decrease of costly inputs, like fertilizer and water for irrigation. According to USDA’s Economic Research Service, since 1948 these innovations have led to U.S. agriculture productivity growth of 170% while inputs have remained mostly unchanged and the use of labor has declined by 24%.

Once the global leader in agricultural R&D, the United States’ investment has been decreasing in comparison to private investment since 2010. The long-term effects of this shift have negative implications for the future of farming.

Investment in Agriculture R&D

U.S. public sector investment in agriculture R&D has historically positioned the U.S. to be a top contributor and the largest producer of cutting-edge agricultural technology in the world. Unlike other sectors of the U.S. economy, public investment, rather than private investment, in agriculture R&D, has been the main driver for the long-term development of industry-altering technology. However, since 2010, the share of U.S. public sector spending on food and agriculture R&D has decreased to less than 30% of total expenditures.

This shift in funding is the result of both a decrease in public funding and a dramatic surge in private funding in the biotechnology industry. The current funding trend in agriculture R&D may negatively impact the future of farming by focusing too heavily on short-term, consumer-driven developments. Figure 1 illustrates USDA-Economic Research Service data on trends of worldwide for-profit companies’ agricultural input R&D investments compared to U.S. public investment.

[Figure omitted]

Public Spending

Federal obligations for total U.S. R&D expenditures increased to $121.5 billion for fiscal year 2018, up nearly 3% from fiscal year 2017. In fact, the Department of Agriculture financial obligations are the lowest among all other departments, and account for only 3.3% of the total federal obligations at $2.5 billion. Research obligations totaled $2.3 billion for fiscal year 2018 and were up 5.6% from prior year levels, while development-related obligation totaled $196 million and were down 3.1% from fiscal year 2017. Agriculture R&D funding is appropriated through the agriculture appropriations bill that funds USDA and is authorized in the farm bill.

[Figure omitted]

The Senate Appropriations Committee’s fiscal year 2020 agriculture appropriations bill would provide $23.1 billion in discretionary funding, with $3.172 billion specifically for agriculture research programs. The House Appropriations Committee’s agriculture appropriations bill allocates $3.257 billion for agriculture research programs, with a total of $24.3 billion in discretionary funding. Both bills represent a decrease in agriculture research funding by over $100 million for 2020 compared to 2019 levels of $3.4 billion. Public funding for agriculture R&D is down over 30% from 10 years ago, leaving a gap in the potential for future developments.

Private Spending

One of the biggest differences between public and private funding is the target audience. While subject to regulations and application criteria, projects funded by public dollars typically focus on long-term, high-impact issues. In contrast, privately funded projects have a much narrower focus, with market value being the primary driver. The cost of trial and error, inherent with any R&D endeavor, limits companies from being able to take major risks.

However, as the market for new biotechnology in the agriculture industry has increased, so has the ability of companies to invest. Private investment in various agricultural input sectors has increased steadily over the past 20 years, reaching an estimated $11.026 billion in 2010. More than doubling since 2000 and 2010, private investment in crop seed and biotechnology inputs represents over one-third of total agricultural inputs, Figure 3.

[Figure omitted]

Global Comparison

The average rate of return for high-income countries on their investments in agriculture R&D is 35%. However, U.S. public investment in agriculture R&D has decreased steadily since 2002. Once a global leader of public agricultural R&D, with 20% to 23% of the global share between 1990 to 2006, the U.S. declined to only 13% of the global share by 2013. By 2008, China surpassed U.S. total public expenditures on agriculture R&D, and China has only upped its funding, while U.S. public investments continue to decline. Other global competitors, like Brazil, have increased public spending by over $600 million from 2008 levels to 2013 levels, while the U.S. has decreased funding by over $1 billion over the same time period. Figure 4 outlines the public expenditure on agriculture R&D measured in constant 2011 purchasing power parity dollars from 1990 to 2013.

[Figure omitted]

Summary

The U.S. still holds the top spot for the most productive agriculture research system in the world. However, if private-sector investments continue to outpace public spending, the future of U.S. agriculture innovations may look very different than the large-scale, impactful gains we enjoy today.

Research endeavors not burdened by the need to recoup expensive R&D costs provide a unique opportunity for exploration and innovations. While private-sector investment in agriculture R&D - in terms of dollar amount - has more than made up for the decline in public-sector investment, the former is not a substitute for the latter. Instead, private and public efforts should complement each other to produce agriculture innovations that will feed growing populations under all climate circumstances.

## Delegation CP

## Food Adv

#### 2---Population size

Ted **Nordhaus** **&** Dan **Blaustein**-**Rejto** **21**, Ted Nordhaus is the founder and executive director of the Breakthrough Institute and a co-author of An Ecomodernist Manifesto. Dan Blaustein-Rejto is the director of food and agriculture at the Breakthrough Institute, where he analyzes the economics and potential of sustainable agriculture policies and practices. He has conducted research with the Environmental Defense Fund, International Center for Tropical Agriculture, and Farmers Market Coalition. "Big Agriculture Is Best," *Foreign Policy*, April 18, 2021. <https://foreignpolicy.com/2021/04/18/big-agriculture-is-best/>

In the popular bourgeois imagination, the idealized farm looks something like the ones that sell produce at local farmers markets. But while small farms like these account for close to half of all U.S. farms, they produce less than 10 percent of total output. The largest farms, by contrast, account for about 50 percent of output, relying on simplified production systems and economies of scale to feed a nation of 330 million people, vanishingly few of whom live anywhere near a farm or want to work in agriculture. It is this central role of large, corporate, and industrial-style farms that critics point to as evidence that the food system needs to be transformed. But U.S. dependence on large farms is not a conspiracy by big corporations. Without question, the U.S. food system has many problems. But persistent misperceptions about it, most especially among affluent consumers, are a function of its spectacular success, not its failure. Any effort to address social and environmental problems associated with food production in the United States will need to first accommodate itself to the reality that, in a modern and affluent economy, the food system could not be anything other than large-scale, intensive, technological, and industrialized.

#### 3---Antitrust is insufficient

Emily Moon, 19. Staff writer at Pacific Standard. Previously she worked at the Chicago Sun-Times and the Herald-Times in Bloomington, Indiana. She is a graduate of Northwestern University. “WILL ELIZABETH WARREN'S PLAN TO BREAK UP AGRIBUSINESS HELP SMALL FARMERS?” March 28, 2019. https://psmag.com/news/will-elizabeth-warrens-plan-to-break-up-agribusiness-help-small-farmers

TRUSTBUSTING ANTI-COMPETITIVE MERGERS

In the first prong of her plan, Warren vows to "address consolidation in the agriculture sector." This includes weakening the largest agriculture companies, many of which have merged and expanded over the past few decades. Warren proposes appointing trustbusters to reverse some of these mergers—specifically, Bayer-Monsanto, Dow-Dupont, and Syngenta-ChemChina—and amending Department of Justice guidelines on vertical mergers. According to the United States Department of Agriculture, consolidation has shifted the majority of production—and the profits—to ever-larger farms. A 2018 Economic Research Service report found that more than half the value of U.S. farm production came from farms with at least $1 million in sales in 2015, compared to 31 percent in 1991. As Warren's plan notes, the Bayer-Monsanto merger is now expected to secure the company's monopoly on the vegetable seed market. Warren's proposal also takes aim at "abusive" contract farming in the livestock sector, which the authors of the 1990 political economy text Small Farmers, Big Business define as replacing or supplementing production by contracting some of the work to local farmers. Contract farming can protect small farmers from risk and open up new markets, but "sponsoring companies may be unreliable or exploit a monopoly position," according to a report from the United Nations' Food and Agriculture Organization. The system is widely used in developing countries, as well as in the U.S. livestock industries, where the top meat-processing and seed companies have the majority of the market share. But Daniel Sumner, professor of agricultural and resource economics at the University of California–Davis, says going after contract farming won't necessarily address this exploitation. "The last thing a grape grower wants is to harvest their grapes and then see if they can sell them," he says. "They want a contract to sell their grapes."

#### BUT It’s sustainable and keeps food prices down

Philip Watson & Jason Winfree, 21. Watson is an Associate Professor, Agriculture Economics & Rural Sociology at the University of Idaho. Winfree is an Associate Professor of Agricultural Economics and Rural Sociology at the University of Idaho. "Should we use antitrust policies on big agriculture?" Applied Economic Perspectives and Policy (2021): 1-14.

In recent years, there has been a movement to use antitrust policy to break up “big ag”. 1 The impetus behind this movement seems to stem from a desire to protect small family farms, protect the environment, and “safeguard the US food supply”. 2 However, any antitrust intervention will have effects on food prices and the availability of food. From a social welfare standpoint, food prices should be of utmost importance when thinking about these policies since cheaper food helps all consumers and alleviates food security concerns.3 Furthermore, the antitrust policy was designed to prevent higher prices from undue market power, not to protect small producers against competition. In other words, antitrust should not be used to protect producers, rather it should be used to maximize consumer surplus; and any desire to maintain small farms should be done through other policy mechanisms. Evaluating the economic arguments for and against antitrust interventions in large agricultural firms suggests that the implementation of such policies would result in protectionism. **While there has been consolidation for decades in the agricultural industry, much of this is due to changes in the cost structure and does not generally create higher prices due to market power.** Certainly there are exceptions to this in various agricultural sectors where market power needs to be curbed, but ultimately this is an empirical question that depends on the changes in food prices. We contend that recent consolidation does not seem to have caused a spike in average food prices, and the proponents of antitrust intervention are implicitly arguing for higher food prices, the exact opposite goal of historical antitrust policy.

#### 1---Not profitable

Lynne Curry, 21. Freelance food journalist based in a cattle and wheat-growing region of eastern Oregon. “Agriculture Reporter Sarah Mock Is Challenging the Narrative About Small Family Farms.” August 19, 2021. https://civileats.com/2021/08/19/agriculture-reporter-sarah-mock-is-challenging-the-narrative-about-small-family-farms/

Sarah Mock is the author of the provocative book FARM (And Other F Words): The Rise and Fall of the Small Family Farm, released in April. Although the cover depicts a colorful, storybook image of farm life, readers will not find within another chronicle of pastoral bliss achieved through sweat equity. Instead, chapter by chapter, Mock argues that the ideals of the farm-to-table movement are largely built on a fiction. Today’s small farms, she asserts, are not the ideal social, economic, or environmental model for truly sustainable agriculture. As an independent agricultural reporter critical of U.S. farming, Mock is accustomed to riling up conventional farmers on Twitter. But she’s been surprised how the ideas in her self-published book have ticked off some advocates who believe that supporting small farms is the answer to the food system’s failures. “They cannot hear that maybe the narrative is a little bit more complex than they think,” she told Civil Eats. At 28 years old, Mock is more than qualified for this work. She grew up on a farm near Cheyenne, Wyoming and raised dairy goats—her own failed small farms venture. Just out of high school in 2011, Mock got a job with the grasshopper program at the regional U.S. Department of Agriculture (USDA) office. While a student at Georgetown University, she worked on economic development projects in South Africa, India, and Burkina Faso. After graduation, Mock volunteered with Worldwide Opportunities in Organic Farms (WWOOF) in California, where she learned about farm labor abuse firsthand. Next up, she spent time in Silicon Valley hustling for two startups, OnFarm (now defunct) and the Farmers Business Network, while writing an ag policy blog on the side. In early 2017, RFD-TV, a national television network covering rural issues, recruited Mock to report on U.S. farm legislation and trade policy from within the USDA offices in Washington, D.C. She started work on the same day as Sonny Perdue, the Secretary of Agriculture for the Trump administration. Mock spent three years covering congressional agriculture committee hearings before going freelance in 2019. She weaves all of these experiences into FARM (And Other F Words) along with deep reporting and thought-provoking takeaways. Earlier this summer, Civil Eats spoke with Mock about what most people get wrong about small farms, the link between land and wealth, and the model for sustainable, equitable, and profitable farming operations she calls “Big Team Farm”—a notion that expands what makes a farm beyond the family and into something between a collective and the community. You write articles and produce other content that challenges people’s conceptions about farming, and your tagline is, “Not a cheerleader, not the enemy.” Can you tell me about that? A lot of people in agriculture are like, “We have to stick together.” It starts with kids when they join 4H, then Future Farmers of America (FFA), and no matter whether you’re a producer, in policy, or in the media, we all have to be advocates—agvocates. And that is not a healthy mindset. Criticism is not hate. Conflict is not abuse. A lot of people in ag think of themselves as cheerleaders for the industry. As soon as you start expressing skepticism, you immediately become the enemy. I’m just here to ask some hard questions and have a meaningful discourse. Can you lay out the premise of FARM (and Other F Words)? This book follows my own journey of trying to understand what farms are. I knew all these old, conventional farmers who were doing quite well. And I knew all these other farmers who were trying really, really, really hard [to do] all the things we love: They were small, community-focused, cared about environmental health, and they weren’t trying to get rich. And they were all going out of business. The original idea for the book was: what can these old, established farmers teach these young farmers—is there some way to bring these two things together? Can we have progressive, economically successful farms? I spent a year with the Mills family, a 16th-generation farmer in Virginia, and I also spent time with Chris Newman [owner of Sylvanaqua Farms] who was that young hustling farmer. And the more time I spent with [them], I was just like, “These farms look nothing alike. I don’t understand what one would teach the other because they’re not even playing the same game.” And I was like, “What if it was just not the way we thought? What if it’s not like, ‘small farmers are the best and they used to work and they just don’t anymore because industry destroyed them?’” And so, I came to a whole bunch of new conclusions. What is wrong with our beliefs about small farms? Our idea of the small family farm is very idyllic. It’s like a Dutch oil painting of a farmhouse and a beautiful landscape. It’s truly amazing to think that colonists in 1600 had the same idea of what a small family farm is in their imaginations as we do today. From an economic perspective, that whole model never worked. There’s a trade-off in agriculture between land and labor, right? You have to have X amount of labor to be able to work a certain amount of land. And for colonists in North America, land was about speculation from the very beginning. That’s why there was a lot of starvation amongst early European communities, because they weren’t growing food crops; they were growing tobacco and cotton. Today’s food system is complex. Invest in nonprofit journalism that tells the whole story. Agriculture in America was always a get-rich-quick scheme. And it was partially about producing high-value crops and partially about just holding the land until it appreciated enough in value. And that is not part of our idyllic perception of the family farm. In the book, you redefine farming as a real estate business overlaid with a food production business. Can you explain? Farmland has outperformed the S&P 500 for [most of] the last 50 years. It’s better than a stock portfolio if you can get it, hold it, and not pay taxes on it. In states like New Jersey, you only have to make $500 a year on your farm for it to be [designated as] a farm. So, it’s a very loose definition. We tend to focus, especially in the food movement, on the folks at the farmers’ market who say, “I’m renting land. I’m barely getting by.” [Only] 10 percent of farmers in the U.S. are full tenants [and the rest own at least part of their land]. Owning farmland is why 2 million farmers in the U.S. own $3 trillion. It is a tremendous asset. So that’s the real estate business. On the other side, you have the production business, which everyone thinks is the only business that farmers have. You can divide production businesses into farmers who actually grow food and farmers who grow all of the non-food grain [corn and soybeans]. Food production agriculture is one of the least lucrative things you can do on land. So, when you are 70 years old and you need to hold [on to] 5,000 acres, the easiest thing to do is to plant it all in corn because you get paid by the USDA. When you looked at the whole ag landscape, did you find that land ownership and the wealth in that land is the great differentiator between farms, or is that simplifying too much? Land wealth is a huge thing. And it’s something that no one ever wants to talk about. Of all the things that I can talk about in ag, [it’s] the one that gets me the most personal safety threats [on social media as well as occasionally in-person]. In the spring [2021], you were working on contract with Sylvanaqua Farm when there was a messy, public fallout between the owners and the BIPOC employees over critical labor and leadership problems, and you subsequently left the business. Could you talk about what happened and what lessons you learned for building the ideal farm business model? I published a letter about what happened at the end, but I’m happy to talk about it. It was really heartbreaking. In early 2020, Chris was making a transition from being a small family farm operating in a way that is very old school to setting up a [worker-owned] collective. It’s really hard to build in collective ideals after something starts. If it’s not an inherent part of the leader’s vision, it’s really hard to wedge that in afterwards. In a lot of businesses, small farms and small food businesses, the visionary tries to be the manager and also the technician. And it takes a very special kind of visionary to realize that you need a separate manager with commensurate power and authority. There needs to be systems to make sure that people have a voice and buy-in. Chris is still farming. Sylvanaqua still exists. And hopefully he gets a chance to try and build something a little different and do it from a place of wisdom. I talked to a lot of folks right after I left who were very disappointed. And in my mind a failure isn’t an indictment of the idea. Seeing what happened there and taking a step back was a good reminder that like every geography, every crop, every market, every community is going to have a solution that is unique to them so that it works just right in their situation. You don’t have to build a collective from day one with exactly the right people. There are people who find ways for their employees to participate in a meaningful way and have a voice that doesn’t involve ownership or management. They still have a traditional management style and they’re still running food and farm businesses that respect their dignity and is economically viable. That is the trinity: good jobs, good environmental outcomes, good food. There are a million ways to build a good farm and to build a good Big Team Farm. What is your jumping off point for presenting a blueprint for Big Team Farm in your next book? At the very end of [FARM and other F Words], I talk about the history of farming in North America and the Indigenous roots of a common system of collective farming. Whether it’s Asian American, African American, Indigenous, or Hispanic communities—they have all had collective farming in the commons. As a matter of fact, so did Europeans. We feel like this idea [independent, small family farms] came from the dawn of time, but we invented it 400 years ago. For much of human history, we farmed in a very different way. So, I started from the idea, what if we farmed together at a landscape level with a focus on environmentalism? It doesn’t matter how regeneratively you farm your one acre if your neighbors don’t. The landscape is the landscape, and it sure doesn’t care about your property line. Water flows, air moves, soil blows in the wind, pollen migrates. If the only way to manage in a truly environmentally friendly way is to manage whole landscapes together, that means you have to have a lot of people involved. And the only way for people to work together and appropriately compensate labor is for them to have some kind of shared collective ownership or at least [shared] decision-making. I found these examples throughout history of people who did these kinds of Big Team Farm models. If someone wanted to do this today, what would that look like? How would you start, understanding that there are few land commons in the United States? But the thing is, you don’t have to sell farmland to pay your employees. You can give away equity. You can use your farmland to leverage compensation. I talked to a farmer who sells his produce in L.A., and he was the first farmer who ever told me, “I can’t afford $15-an-hour salespeople, and I can’t not afford $25-an-hour salespeople.” You just get much better employees if you invest in them and give them buy in and let them help make decisions. And that mindset has been transformative for him. So, I think it is exciting to see people start to think differently. The most important element of a Big Team Farm is the recognition that the family is the wrong economic unit for the farm. You and your partner and your five-year-old and eight-year-old are not the full team of people to run your complex business.

#### 2---Resource mismanagement

Chris Newman, 19. Farmer in Virginia’s Northern Neck. “Small Family Farms Aren’t the Answer.” July 25, 2019. https://heated.medium.com/small-family-farms-arent-the-answer-742b6684857e

The romance of neoliberal peasant farming blinds us to our collective power Let’s get this out of the way, first: I am a small farmer, operating on 40-ish acres in Virginia’s Northern Neck. I am not paid by, in hock to, in league with, or particularly happy with Big Agriculture. I’m just a guy who’s been in the small-sustainable farming business long enough to understand that the model is fatally flawed, and mature enough to say it out loud. To my friends who run and staff farmers markets: This essay is hard on farmers markets. It’s not because I don’t love you, but because I’m describing how restorative agriculture needs to evolve in order to compete without sacrificing its values. Author, thoroughly enjoying himself at FreshFarm Crystal City. Photo: FreshFarmDC Now… I recently found myself with the free time to do some simple math. One of the larger farmers markets I participate in has about 100 vendors. I’m one of the mid-sized operations that sells there, and I’m paying about $1,000 a year in fees to participate in the market. I’m also devoting about 250 hours a year in staffing and prep time (call it $3,000), and about $650 in fuel getting to and from the market, plus another $1,200 in wear and tear on my vehicles. Altogether, then, I’m paying $5,850 to participate in a large farmers market. It’s pretty safe to assume that the costs of the other 99 vendors are similar. We’re shelling out a combined $585,000 to participate in just one market. Most of us participate in at least two markets, so let’s double the figure to $1.17 million, then round down to $1 million just to be conservative. A $1 million-plus annual operating budget could comfortably lease, service, and staff a large urban brick-and-mortar market that’s open 12 hours a day, seven days a week, year-round. Instead, we spend it on a pop-up market that’s open just half the year (in my neck of the woods), for two days a week (remember, two markets), four hours at a time. And it’s probably outdoors — where rain, excessive heat, or a cold snap will effectively ruin the day. As much as I like farmers markets, the amount of resources that small farmers pour into them is terribly misdirected if we’re serious about mounting a real challenge to the conventional food system. The cultural power of farmers markets is a symptom of what’s fundamentally wrong with sustainable/regenerative agriculture: veneration of the small family farm. It’s the sacred cow of American cultural identity dating back at least to Thomas Jefferson’s dream of a nation of yeoman farmers. America’s oldest farmers — Indigenous people — generally regarded the soil as a commons and worked it cooperatively. Many Indigenous nations, along with a number of religious and ethnic communities, continue the practice to this day. But the notion of the private farm, be it a pair of greenhouses or tens of thousands of acres, is what came to dominate American farming, and it’s taken particular hold among the farm-to-table cohort. We in that cohort trade the benefits of agrarian collectivism — living wages, retirement, a sane workload, profitability, survivability, and the capacity to make a game-changing impact in the marketplace… for rugged independence: complete autonomy in decision-making, the ability to grow what/where/how we want, set our prices as we please, sell wherever we choose, and work ourselves into the ground. In short, we’ve done the most modern-American thing possible: bartered away our quality of life for the freedom to be miserable. In short, we’ve done the most modern-American thing possible: bartered away our quality of life for the freedom to be miserable. Our freedom also costs us results in the marketplace. The zeal for “saving the world” is undercut by annual sales at farmers markets estimated at less than $2 billion in the U.S., with the growth of markets slowing even as hundreds of billions of dollars of food are sold annually in grocery stores. As the link above shows, part of this slowdown may be the result of an explosion in local food hubs, which are themselves riddled with competitive issues of their own, in addition to the general reality that they’re not farmer-owned. They’re essentially middlemen that force farmers to take prices. Note: ‘Small family farm’ does not mean they’re farm-to-table outfits like mine. Most small farms are producing for the big commodity markets just like the big guys. Chart via Farm Policy News Because of our insistence on independence and our failure to cooperate more closely, we’re being outsold at the grocery store by a factor of 400 or more. Accounting for on-farm, food hub, restaurant, and other non-market sales do little to affect the scale of this imbalance. Farmers markets and other “local” outlets punch well above their weight in terms of social and cultural value, but this is fooling us into believing we’re making more of an impact than we actually are, and that a rapidly consolidating food system backed by venture capital, entrenched interests, and the world’s wealthiest corporations will somehow be displaced by the romance of neoliberal peasant farming.

**Newest studies confirm high yield agricultural practices are net better for the environment because they require less land – the alternative is mass extinction**

Phys.org, 18. 'High-yield' farming costs the environment less than previously thought—and could help spare habitats. September 14, 2018. <https://phys.org/news/2018-09-high-yield-farming-environment-previously-thoughtand.html)>)

Agriculture that appears to be more eco-friendly but uses more land may actually have **greater environmental costs** per unit of food than "high-yield" farming that uses less land, a new study has found. There is mounting evidence that the best way to meet rising food demand while conserving biodiversity is to wring as much food as sustainably possible from the land we do farm, so that more natural habitats can be "spared the plough". However, this involves intensive farming techniques thought to create disproportionate levels of pollution, water scarcity and soil erosion. Now, a study published today in the journal Nature Sustainability shows this is not necessarily the case. Scientists have put together measures for some of the major "externalities—such as greenhouse gas emission, fertiliser and water use—generated by high- and low-yield farming systems, and compared the environmental costs of producing a given amount of food in different ways. Previous research compared these costs by land area. As high-yield farming needs less land to produce the same quantity of food, the study's authors say this approach overestimates its environmental impact. Their results from four major agricultural sectors suggest that, contrary to many people's perceptions, more intensive agriculture that uses less land may also produce **fewer pollutants, cause less soil loss and consume less water**. However, the team behind the study, led by scientists from the University of Cambridge, caution that if higher yields are simply used to increase profit or lower prices, they will only accelerate the extinction crisis we are already seeing. "Agriculture is the most significant cause of biodiversity loss on the planet," said study lead author Andrew Balmford, Professor of Conservation Science from Cambridge's Department of Zoology. "Habitats are continuing to be cleared to make way for farmland, leaving ever less space for wildlife." "Our results suggest that high-yield farming could be harnessed to meet the growing demand for food without destroying more of the natural world. However, if we are to avert **mass extinction** it is **vital** that land-efficient agriculture is linked to more wilderness being spared the plough." The Cambridge scientists conducted the study with a research team from 17 organisations across the UK and around the globe, including colleagues from Poland, Brazil, Australia, Mexico and Colombia. The study analysed information from hundreds of investigations into four vast food sectors, accounting for large percentages of the global output for each product: Asian paddy rice (90%), European wheat (33%), Latin American beef (23%), and European dairy (53%). Examples of high-yield strategies include enhanced pasture systems and livestock breeds in beef production, use of chemical fertilizer on crops, and keeping dairy cows indoors for longer. The scientists found data to be limited, and say more research is urgently needed on the environmental cost of different farming systems. Nevertheless, results suggest many high-yield systems are less ecologically damaging and, crucially, use much less land. For example, in field trials, inorganic nitrogen boosted yields with little to no greenhouse gas "penalty" and lower water use per tonne of rice. Per tonne of beef, the team found greenhouse gas emissions could be halved in some systems where yields are boosted by adding trees to provide shade and forage for cattle. The study only looked at organic farming in the European dairy sector, but found that—for the same amount of milk—organic systems caused at least one third more soil loss, and take up twice as much land, as conventional dairy farming. Co-author Professor Phil Garnsworthy from the University of Nottingham, who led the dairy team, said: "Across all dairy systems we find that higher milk yield per unit of land generally leads to greater biological and economic efficiency of production. Dairy farmers should welcome the news that more efficient systems have lower environmental impact." Conservation expert and co-author Dr. David Edwards, from the University of Sheffield, said: "Organic systems are often considered to be far more environmentally friendly than conventional farming, but our work suggested the opposite. By using more land to produce the same yield, organic may ultimately accrue larger environmental costs." The study authors say that high-yield farming must be combined with mechanisms that limit agricultural expansion if they are to have any environmental benefit. These could include strict land-use zoning and restructured rural subsidies. "These results add to the evidence that sparing natural habitats by using **high-yield farming** to produce food is the least bad way forward," added Balmford.

## Populism Adv

#### Rural resentment is inevitable

Paul A. London, 21. Ph.D., was a senior policy adviser and deputy undersecretary of Commerce for Economics and Statistics in the 1990s, a deputy assistant administrator at the Federal Energy Administration and Energy Department, and a visiting fellow at the American Enterprise Institute. A legislative assistant to Sen. Walter Mondale (D-Minn.) in the 1970s, he was a foreign service officer in Paris and Vietnam and is the author of two books. “The war against cities.” July 31, 2021.

The larger point is that rural people around the World, like the farmers outside Visby, are at least latently resentful of wealthy city-dwellers, who are often foreigners and minorities, more cosmopolitan and educated than the rural folks. These resentments can be stoked by purposeful leaders, and it happens often in disparate places. Merchants in Soc Trang in the Mekong Delta where I served with the U.S. Agency for International Development (AID) in the 1960s, were assumed by the Vietnamese and Cambodian rural population to be ethnically Chinese, and most were. They owned the businesses in town: slaughterhouses, rice mills, duck hatcheries, brick kilns and rice-wine distilleries. Ethnic Chinese, often generations removed from the mainland like those in Vietnam, also dominated urban commercial life in Indonesia and Malaysia and on occasion were attacked by native Indonesians and Malays as a result. The situation in several eastern European countries was similar. City-dwellers were often Muslims from sophisticated Constantinople or Germans brought in by conquerors, while the rural populations were Slavic and Christian -- a combustible mix that could be set aflame. In Lithuania before World Wars I and II, the market towns were overwhelmingly Jewish, with a smattering of Poles and Russian administrators. The poor rural farmers were Lithuanian. Much of the time these peoples got along, but sometimes changing circumstances and leaders enflamed the **always latent urban/rural resentments** with tragic results, as seems to be the case in the U.S. today. There is no question that Republican politicians brought to heel and tutored by Trump, are attacking cities and city people using familiar “dog whistles” to stir up and mobilize their more rural base. The question is whether Democrats and Biden can find ways to return rural resentment of cities to a **less dangerous latency**. History shows that returns to latency happen, but what it takes is less clear.

#### Rural is not key to the far right

Anya Slepyan, 21. Reporting Fellow with Pulitzer Center, graduate of Swarthmore College. “Analysis of Arrests Supports Scholars Who Say Political Extremism Is Not Rural Phenomenon.” February 3, 2021. https://dailyyonder.com/list-of-arrests-supports-scholars-who-say-political-extremism-is-not-rural-phenomenon/2021/02/03/

Geographic Analysis of Arrests

Much has been said and written about “Trump Country,” a narrative that attributes the election of Donald Trump to small-town and rural voters. Trump did win nonmetropolitan counties in 2020 by a margin of 2 to 1. But that analysis omits the broad support Trump received in all but the central counties of the nation’s largest cities. Trump got more votes on Long Island than he did in West Virginia. The Trump supporters who were arrested on charges related to invading the U.S. Capitol have similar widespread geography. Arrestees were a bit less likely to be from nonmetropolitan counties than the overall U.S. population. Fourteen percent of the U.S. population is from rural counties. Only about 10% of the people arrested so far on charges related to the insurrection are from nonmetro counties. Arrestees are also proportionately represented in the nation’s political landscape. About a quarter of the U.S. population lives in counties where Trump won by a landslide. Twenty-seven percent of people arrested for the Capitol incursion are from such counties. More than half of those arrested come from counties where Biden won the popular election. The arrestee numbers support Pitcavage’s assertion that when it comes to right-wing extremism, “it’s not a very fair perception to put all or most of the blame on rural areas,” Pitcavage said. “There are extremists who come from small-town and rural America, but there are also extremists who come from every corner of America. And of course, most of the population of the United States lives in cities and suburbs, and that suggests that extremists would come from those places as well. There’s nothing that makes people in rural areas more likely to become extremists than people living in urban and suburban areas.”

#### Soft power doesn’t translate into science coop

NRC 12- National Research Council (NRC) is the working arm of the United States National Academies, which produces reports that shape policies, inform public opinion, and advance the pursuit of science, engineering, and medicine. (“U.S. and International Perspectives on Global Science Policy and Science” [pg.26]—2012 <http://www.nap.edu/openbook.php?record_id=13300&page=33> KW)

Youssef noted that one of the international science community’s main objectives, trust building, is not compatible with the idea of soft power. According to her, even though science diplomacy promises to rise above conflict, the term raises serious ideological questions and practical challenges. Such challenges are apparent in the Middle East, where U.S. policies evoke doubts about true intentions. John Boright, executive director for international affairs for the U.S. National Academy of Sciences (NAS), cautioned against implying that potentially divisive national agendas are being pursued when using the term “science diplomacy,” in cases where the motivation is simply advancing science, addressing common problems, and building personal relationships. Scientific cooperation and exchanges between the United States and Iran were cited as an example of cases in which the label science diplomacy could affect scientific counterparts negatively.

## Modeling Adv

#### No incentive to adopt domestic antitrust policy---risks costs, delays and uncertainty.

Anu Bradford 12. Anu H. Bradford is an author, law professor, and expert in international trade law. In 2014, she was named the Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School. “Antitrust Law in Global Markets”. Columbia Law School. 2012. <https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2977&context=faculty_scholarship>

Multilateral corporations’ activities span across global markets. Yet antitrust laws regulating those activities remain national. Europeans can ban American companies from merging,1 tell American companies how to design their products,2 or determine what kind of discounts American companies are permitted to offer to their customers.3 Chinese can impose conditions on off-shore mergers.4 And Brazilians can insist on reviewing a transaction with minimal connections to the Brazilian market.5 As the global web of antitrust laws thickens, companies are forced to navigate an increasingly complex regulatory environment. The need to comply with multiple different domestic antitrust regimes exposes multinational corporations to additional transaction costs, delays, and uncertainty. Simultaneous application of many antitrust laws carries the risk of enforcement conflicts and is likely to lead to global overenforcement of antitrust laws. A lack of international antitrust regulation may also lead to antitrust protectionism if states underenforce their antitrust laws towards domestic corporations, while overenforcing those same laws towards foreign corporations.6

#### Even if they do model US antitrust law now, they won’t post-aff

Ma. Joy V. Abrenica 18. Professor, School of Economics, University of the Philippines Diliman. BALANCING CONSUMER WELFARE AND PUBLIC INTEREST IN COMPETITION LAW. 13:2 Asian J WTO & Int'l Health L & Pol'y 443. 2018. Pg 449-452

Fourth, considering the wide variation in public interest clauses across jurisdictions, their inclusion in competition laws could cause further divergence in competition enforcement. This comes at the heels of increasing alignment of competition laws with the U.S. and EC regimes, and growing number of preferential trade agreements with competition provisions. Trade and competition policies have natural nexus, hence there is significant interest in harmonizing competition enforcement. Policy divergence, and the legal uncertainty and market unpredictability that it creates, adds to the cost of businesses operating across several borders, thereby impeding global trade and investments. Additionally, the market inefficiencies produced when competition objectives are subordinated to public interest objectives, do not remain in the domestic market, but eventually diffuse to the global economy.

# 1NR

## FTC DA

#### Link turns case. Expanded antitrust enforcement of anticompetitive practices causes backlash.

Alison Jones 20. Professor of Law at King's College London, with William E. Kovacic, March, “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy.” The Antitrust Bulletin. https://journals.sagepub.com/doi/full/10.1177/0003603X20912884

One possible solution to rigidities that have developed in Sherman Act jurisprudence is for the FTC to rely more heavily on the prosecution, through its own administrative process, of cases based on Section 5 of the FTC Act and its prohibition of “unfair methods of competition.”93 This section allows the FTC94 to tackle not only anticompetitive practices prohibited by the other antitrust statutes but also conduct constituting incipient violations of those statutes or behavior that exceeds their reach. The latter is possible where the conduct does not infringe the letter of the antitrust laws but contradicts their basic spirit or public policy.95

There is no doubt therefore that Section 5 was designed as an expansion joint in the U.S. antitrust system. It seems unlikely to us, nonetheless, that a majority of FTC’s current members will be minded to use it in this way. Further, even if they were to be, the reality is that such an application may encounter difficulties. Since its creation in 1914, the FTC has never prevailed before the Supreme Court in any case challenging dominant firm misconduct, whether premised on Section 2 of the Sherman Act or purely on Section 5 of the FTC Act.96 The last FTC success in federal court in a case predicated solely on Section 5 occurred in the late 1960s.97

The FTC’s record of limited success with Section 5 has not been for want of trying. In the 1970s, the FTC undertook an ambitious program to make the enforcement of claims predicated on the distinctive reach of Section 5, a foundation to develop “competition policy in its broadest sense.”98 The agency’s Section 5 agenda yielded some successes,99 but also a large number of litigation failures involving cases to address subtle forms of coordination in oligopolies, to impose new obligations on dominant firms, and to dissolve shared monopolies.100 The agency’s program elicited powerful legislative backlash from a Congress that once supported FTC’s trailblazing initiatives but turned against it as the Commission’s efforts to obtain dramatic structural remedies unfolded.101

#### Funding doesn’t solve tradeoffs.

Cristiano Lima 9/16/21. Business reporter and author of The Washington Post's Technology 202 newsletter. “Why Democrats are rallying around creating a new FTC privacy bureau to police Big Tech.” https://www.washingtonpost.com/politics/2021/09/16/why-democrats-are-rallying-around-creating-new-ftc-privacy-bureau-police-big-tech/?outputType=amp

At the session, lawmakers lamented that, beyond lacking will, the FTC has lacked the resources and staffing to effectively oversee the conduct of the tech sector’s trillion-dollar behemoths. That’s long been a knock on the FTC’s track record policing the tech sector, from both Democrats and Republicans.

While the proposed funding boost may not even the odds entirely, Democrats are largely aligned behind the idea that any added firepower for regulators is a positive step.

#### The aff can’t topically fiat funding for enforcement---Expand the scope of antitrust refers exclusively to formal law not enforcement---means the plan is circumvented.

Sinisa Milosevic et al. 18. Commission for Protection of Competition, The Republic of Serbia. Dejan Trifunovic, Faculty of Economics, University of Belgrade, Belgrade, The Republic of Serbia. Jelena Popovic Markopoulos, Commission for Protection of Competition, The Republic of Serbia. “The Impact of the Competition Policy on Economic Development in the Case of Developing Countries”. Economic Horizons, May - August 2018, Volume 20, Number 2, 153 – 167. http://scindeks-clanci.ceon.rs/data/pdf/1450-863X/2018/1450-863X1802157M.pdf

The paper that analyzes the impact of the competition policy on the GDP growth in developing and developed countries in the Solow growth model framework is T. C. Ma’s (2011). The presence and scope of the competition policy is captured by the SCOPE variable that is defined in the paper by K. N. Hylton and F. Deng (2007). The overall effectiveness of the government’s application of policies, not only of the competition policy, is captured by the EFFICIENCY variable that is defined in the paper by D. Kaufmann, A. Kraay and M. Mastruzzi (2009). The results show that the SCOPE variable is not significant and the formal existence of the competition law cannot influence economic growth. The interacting variable of SCOPE x EFFICIENCY is named EFFLAW. For poor countries, the coefficient for this variable is 0.04 and is significant, whereas for rich countries the coefficient is 0.064 and is also significant. Therefore, the competition law must be complemented with the effective enforcement of this policy.

#### Scope measures what is illegal, not enforcement.

Keith N. Hylton and Fei Deng 06. Keith N. Hylton, Professor of Law, Boston University. Fei Deng, NERA Economic Consulting. “Antitrust Around the World: An Empirical Analysis of the Scope of Competition Laws and Their Effects.” Boston University School of Law. Working Paper Series, Law and Economics Working Paper no. 06-47. https://scholarship.law.bu.edu/cgi/viewcontent.cgi?article=1849&context=faculty\_scholarship

A. Measuring the Scope of Competition Law

1. Scope Index

The first charts we present show Scope Index scores. These scores are found by summing the total points within each country template, and then subtracting off the defense scores. To give an example, return to the template for New Zealand. The Scope Index score for New Zealand is found by summing the numerical values in the template shown in Table 1, and then subtracting off scores associated with defenses (and one point to reduce the merger subtotal). In the case of New Zealand, there are three defenses (merger public interest defense, efficiency defense for dominant firms, efficiency defense for restrictive trade practices). The sum of the points is 19 (after reducing the merger subtotal), and after subtracting 3, the Scope Index for New Zealand is 16. For each European Union member state, an alternative Scope Index was computed based on EU law.24

The point of the Scope Index is to measure the size of the competition law net in every country. As the score increases, so does the size of the net. Alternatively, one can think of the Scope Index for a particular country as a measure of the number of ways in which a firm could run afoul of the competition laws in that country. However, the Scope Index score does not indicate the degree to which a country invests resources into enforcing its competition laws. Continuing with the net metaphor, the Scope Index tells us the size of the competition law net without saying anything about the likelihood that the government will attempt to swing the net at any firm.

#### Scope and enforcement are separate components

Keith N. Hylton and Fei Deng 06. Keith N. Hylton, Professor of Law, Boston University. Fei Deng, NERA Economic Consulting. “Antitrust Around the World: An Empirical Analysis of the Scope of Competition Laws and Their Effects.” Boston University School of Law. Working Paper Series, Law and Economics Working Paper no. 06-47. https://scholarship.law.bu.edu/cgi/viewcontent.cgi?article=1849&context=faculty\_scholarship

Translating this quantitative assessment of the law’s scope into a statement about the risk of being penalized under a country’s competition law requires the additional assumption that each country is equally likely to enforce the laws on its books. In other words, if the Scope Index is a measure of a country’s competition law net, then it is a reasonable measure of antitrust risk only if enforcement authorities are equally likely to swing the net in each country. Obviously, this is incorrect. But the thought exercise is still useful as a measure of antitrust risk on the assumption of equal enforcement efficiency across regimes. In addition, it suggests that an accurate measure of antitrust risk could be determined by decomposing risk into a legal component, based on the scope of the country’s laws, and an enforcement component, based on the zeal with which local enforcers pursue violators.

#### Scope is not enforcement.

Tay-Cheng Ma 11. Professor, Department of Economics, Chinese Culture University. “The Effect of Competition Law Enforcement on Economic Growth”. Journal of Competition Law & Economics, Volume 7, Issue 2, June 2011, Pages 301–334. https://academic.oup.com/jcle/article/7/2/301/1031182?casa\_token=CYnGqjkOtzwAAAAA:uLB97jLHKYta3keLCEOLQGcwg61bFW72SokNT\_8K3J5nh9m\_Sf-KyBNgVwJ91iYxg0ewZegeWsG6qA

The data for SCOPE and EFFICIENCY are obtained from the survey-based measures of Hylton and Deng23 and Kaufmann, Kraay, and Mastruzzi,24 respectively. Hylton and Deng surveyed the competition law implemented in 102 countries during the period from 2001 to 2004. Based on this dataset, they built up a “scope index” to measure the breadth of the overall competition law. This index provides a quantitative measure of the size of the overall competition law net in a country. It is used as a proxy for SCOPE in the empirical study presented later. Table 2 shows that the strongest regimes are those of the European Union (“EU Europe”) and North America, with Oceania and non-EU Europe following. It also reports the “average country GDP per capita” in each region.25 Evidently, there exists a positive relationship between regional income and SCOPE, except for the case of South America. In general, it is observed that the higher the income level, the stricter the regulation imposed by the competition law.

[TABLE 2 OMITTED]

On the other hand, SCOPE does not indicate the extent to which a country enforces the competition law. It points out merely the size of the competition law net, but says nothing about the governmental efficiency in enforcing the law. In other words, it points out the number of ways in which a firm might get into trouble under a country's competition law without saying anything about the likelihood that the firm could get caught in a real investigation.

#### FTC’s on the right track, but already pushing as hard as they can

LEAH NYLEN 9/29/21. POLITICO's antitrust reporter. “Lina Khan’s big tech crackdown is drawing blowback. It may succeed anyway.” https://www.politico.com/news/2021/09/29/lina-khan-war-monopolies-514581

Despite all the friction, Khan’s admirers say the agency is finally back on the right track.

“The FTC is pushing as hard as they can right now, which is what we have needed for so long,” said Charlotte Slaiman, competition policy director for the advocacy group Public Knowledge, during POLITICO’s Tech Summit this month. She added: “I expect great things from the FTC.”

1. Khan knows FTC history and will avoid overstretch now.

Ben Brody 10/5/21. Senior reporter at Protocol, formerly covered tech policy at Bloomberg News. “The FTC's next privacy move is a dangerous game years in the making.” https://www.protocol.com/policy/ftc-privacy-rules?rebelltitem=1#rebelltitem1

Litigation could tie up any new rules up for years, but from the commission's perspective it may be the lesser evil as compared to drawing ire from Congress. Critics of FTC inaction trace the agency's timidity to the 1980s. At the time, many saw the FTC's attempts to regulate children's advertising as the height of nanny-state overreach, in part thanks to a campaign by advertisers. In response to "kidvid," Congress reined in the agency's regulatory powers — and in the process taught generations of FTC staff to tiptoe around lawmakers.

It's a cycle that's recurred throughout FTC's existence, and Khan, who loves the agency's history, has made clear she's well aware of it.

Her colleagues, too, seem well aware that the clock is ticking: In a speech earlier in October, Slaughter discussed online ads and pushed the idea that companies should only collect data necessary for their offerings.

#### Current enforcement is streamlined to enable focus on algorithmic bias.

Jeffrey J. Amato and Jay R. Wexler 9/28/21. “United States: FTC Ramps Up Tech Investigations, Reduces Investigators' Hurdles.” https://www.mondaq.com/unitedstates/antitrust-eu-competition-/1115450/ftc-ramps-up-tech-investigations-reduces-investigators39-hurdles

At its September 14, 2021 open meeting, the Federal Trade Commission (FTC) announced the passage of eight "omnibus" resolutions by a 3-2 party-line vote to authorize quicker investigations into prioritized issues. The resolutions allow staff attorneys to use compulsory process demands, which are usually issued as civil investigative demands or subpoenas, with approval from only one commissioner. Previously, agency staff were expected to receive approval from the full commission prior to issuing demands for information from companies. The resolutions aim to facilitate investigations into: unlawful conduct directed at veterans and service members; unlawful conduct directed at children; bias in algorithms and biometrics enabling discriminatory practices; dark patterns and deceptive online conduct that lure users into making unwanted purchases; repair restrictions that allegedly harm competitors and consumers; abuse of intellectual property; common directors and officers and common ownership; and monopolization offenses.

#### Other enforcement is all talk

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

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

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

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

#### Agency’s streamlining current enforcement in order to balance its priorities

FTC 9/14/21. Media Contact Peter Kaplan. “FTC Streamlines Consumer Protection and Competition Investigations in Eight Key Enforcement Areas to Enable Higher Caseload.” https://www.ftc.gov/news-events/press-releases/2021/09/ftc-streamlines-investigations-in-eight-enforcement-areas

At the joint recommendation from its Bureau of Consumer Protection and Bureau of Competition, the Federal Trade Commission voted to approve and make public a series of resolutions that will enable agency staff to efficiently and expeditiously investigate conduct in core FTC priority areas over the next ten years.

The Bureaus recommended that the Commission authorize eight new compulsory process resolutions in these essential areas: (1) Acts or Practices Affecting United States Armed Forces Service Members and Veterans; (2) Acts or Practices Affecting Children; (3) Bias in Algorithms and Biometrics; (4) Deceptive and Manipulative Conduct on the Internet; and (5) Repair Restrictions. (6) Abuse of Intellectual Property; (7) Common Directors and Officers and Common Ownership; and (8) Monopolization Offenses.

“These resolutions enable the FTC to take swift action against a whole host of illegal conduct in important areas of concern to the Commission,” said Holly Vedova, Acting Director of the Bureau of Competition. She noted that, “Companies engaging in conduct implicated by these resolutions should be forewarned: the FTC looks forward to aggressively using these resolutions and will not hesitate to take action against illegal conduct to the fullest extent possible under the law.”

“Harmful practices – especially those targeting children, veterans, and marginalized communities – will not be tolerated by this Commission,” said Samuel Levine, Acting Director of the Bureau of Consumer Protection. “Today’s resolutions ensure our staff can rapidly respond to allegations of abuse and fight fraud without delay.”

Specifically, the resolutions approved by a Commission vote of 3-2 will allow:

Service members and Veterans: harmful business practices directed at service members and veterans are a source of significant public concern, and, now, FTC staff will be able to expeditiously investigate any allegations in this important area.

Children under 18: harmful conduct directed at children under 18 has been a source of significant public concern, now, FTC staff will similarly be able to expeditiously investigate any allegations in this important area.

Algorithmic and Biometric Bias: allows staff to investigate allegations of bias in algorithms and biometrics. Algorithmic bias was the subject of a recent FTC blog.

Deceptive and Manipulative Conduct on the Internet: this omnibus expands a previous omnibus resolution on deceptive practices, which expired on Aug. 1. The existing resolution, has enabled the FTC to develop investigations and bring cases in a variety of areas including day trading services, tech support scams, the BOTS Act, payment processing, and the deceptive marketing of goods and services online, including pandemic-related goods like fake Clorox products and face masks. In addition to the areas covered by the existing resolution, this expanded version covers the “manipulation of user interfaces,” including but not limited to dark patterns, also the subject of a recent FTC workshop.

Repair Restrictions: enhances the FTC’s ongoing investigations into restrictions on repair and builds on the FTC’s recent Policy Statement on Right to Repair. It would cover a wide range of anti-consumer and anti-competitive abuses and facilitate staff’s impending investigation of violations of the Magnuson Moss Warranty Act’s anti-tying provisions.

Abuse of Intellectual Property: allows staff to investigate abuses of intellectual property rights. Conduct involving abuse of intellectual property rights has been a source of much anticompetitive and deceptive conduct in many different areas, including pharmaceuticals, technology and gasoline refining, and this omnibus will allow staff to expeditiously investigate allegations in this area.

Common Director and Officers and Common Ownership: facilitates investigations of both ownership stakes in competing companies that may be anticompetitive as well as interlocking directorates that may violate Section 8 of the Clayton Act, 15 U.S.C. § 19. Interlocking directorates and common ownership continue to raise significant competitive concerns.

Monopolistic Practices: Market power abuses by tech companies and other large companies are rightly a source of bipartisan concern. This omnibus will allow staff to more expeditiously investigate market power abuses by dominant firms that are precluding businesses and entrepreneurs from being able to compete, particularly in digital markets.

Compulsory process refers to the issuance of demands for documents and testimony, through the use of civil investigative demands and subpoenas. The FTC Act authorizes the Commission to use compulsory process in its investigations. Compulsory process requires the recipient to produce information, and these orders are enforceable by courts. Civil investigative demands and subpoenas are assigned to a Commissioner for review and authorization by the FTC’s Office of Secretary, typically on a rotating basis or according to availability. The Commission has routinely adopted compulsory process resolutions on a wide range of topics. The resolutions announced today will broaden the ability for FTC investigators and prosecutors to obtain evidence in critical investigations on key areas where the FTC’s work can make the most impact. Each omnibus covers investigations into competition or consumer protection conduct violations under the FTC Act.

Streamlining and improving efficiency at the agency is vitally important given the increased volume of investigatory work created by the surge in merger filings. Having already doubled between 2010 and 2020, the number of mergers filed with the antitrust authorities this year hit a record-setting pace of 2,067 acquisitions for the first seven months alone. With these resolutions in place, the FTC can better utilize its limited resources and move forward in earnest to quickly investigate potential misconduct. The Bureaus are now authorized to take steps to ensure that any compulsory process orders are enforceable.

#### Thumpers are priced in.

William C. MacLeod 7/2/21. One of the top rated Antitrust Litigation attorneys in Washington, DC. “Chopra, Khan, Slaughter Take Control of the Federal Trade Commission.” https://www.adlawaccess.com/2021/07/articles/chopra-khan-slaughter-take-control-of-the-federal-trade-commission/

With an unprecedented attack on policies the Federal Trade Commission had long embraced, the new majority of Democratic Commissioners revealed a bold enforcement agenda that would circumvent Supreme Court decisions and avoid Congressional limits.

It was a meeting like none the Federal Trade Commission has ever held. On one week’s notice, the Commission adopted new rules to impose civil penalties on substandard Made-in-USA claims, removed judges and safeguards from rulemaking proceedings, rescinded its 2015 enforcement policy statement on unfair methods of competition, and granted staff more authority to issue subpoenas and civil investigative demands. The vote on every issue followed party lines. Republican Commissioners, Noah Phillips and Christine Wilson, voted against all, and the Democratic Commissioners, Chopra, Khan, and Slaughter, rejected all amendments. Chair Khan announced that public meetings will become regular events at the FTC.

Made in USA Claims

Commissioner Chopra took the lead on the Made-in-USA (MUSA) rule, which would impose civil penalties on claims that do not meet FTC standards for domestic content, whether those claims appear on labels or in marketing. He criticized the Commission for years of allegedly allowing deceptive claims to persist and wrongdoers to escape fines. Imposing fines, he said, was one way of recovering the power the Commission was denied in the Supreme Court’s decision in AMG Capital Management v. FTC, which held that Section 13(b) of FTC Act did not authorize the Commission to obtain monetary relief.

Phillips opposed the rule, saying that Congress had not given FTC the authority to cover off-label claims; it had authorized MUSA rules only for product labels. Unless and until Congress granted authority for expedited rulemaking on advertising claims, which Congress is now considering, he insisted that the FTC was bound to use the more restrictive Magnusson-Moss procedures. Wilson objected to the short notice announcing the meeting, objected to the exclusion of staff from the meeting, and warned that it was unwise to disregard a unanimous Supreme Court that had just admonished the Commission for exceeding its authority to obtain money in consumer protection cases.

Expediting Rulemaking

Foreshadowing an ambitious regulatory agenda was a motion to streamline new rules under Section 18 of the FTC Act. The motion would remove the chief administrative law judge from the role of presiding officer in rulemakings. The FTC Chair would preside. The motion also proposed eliminating the requirement of a staff report to accompany a rule recommendation. Slaughter said these were unnecessary “self-imposed” limits. Chopra praised the proposal for helping end the era of “perceived powerlessness” at the FTC

Phillips and Wilson objected, citing concerns that removing the judge would threaten the independence of the rulemaking process – an extensive fact-finding exercise – and lend support to challengers who claim that FTC rules are politically motivated. As for staff reports, Phillips remarked that these gave the Commissioners and the public some confidence that a rule would not inflict unnecessary harm on the economy. Wilson reminded her colleagues that zealous rulemaking in the 1970s precipitated an existential crisis for the agency. It closed its doors after public resistance and widespread ridicule prompted Congress to defund the FTC. Not until the Commission promised a return to responsible enforcement was it allowed to reopen. The FTC delivered on that promise with a series of policy statements clarifying unfair acts and practices, illegal deception, and necessary substantiation for advertising claims.

Wilson proposed posting the procedural changes for comment. It failed 3-2. Phillips proposed retaining the chief judge and the staff report. It also failed to attract a Democratic vote. Rulemakings without a judge and without a staff report passed without a Republican vote.

Rescinding the Competition Policy Statement

In a sweeping departure from a bipartisan antitrust policy, the Commission rescinded its 2015 Policy Statement on Unfair Competition. Khan argued that the FTC should not have to show a likelihood of harm to competition in order to declare conduct unfair. In her view, the FTC Act was intended to circumvent the Supreme Court’s adoption of the Rule of Reason in antitrust cases – a requirement that condemned restraints of trade only when their anticompetitive effects outweighed the procompetitive benefits. The Rule of Reason made it too hard to prove violations, said Khan, and the FTC’s policy statement improperly confined the agency to an enforcement policy indistinguishable from the standards that DOJ applied.

Wilson regarded the rescission as an abandonment of the consumer welfare standard, the framework of antitrust analysis for half a century. She expressed fears that if competition policy were not designed to benefit consumers, it could be coopted by special interests. She added that when the FTC had failed to apply a standard consistent with the antitrust laws in the past, its decisions had often been reversed on appeal. (The FTC lost a string of appeals in the 1980s when it attempted to prohibit refusals to deal, price discrimination that might be competitive, supplier-distributor pricing policies, and practices that could facilitate collusion.) Phillips noted that the Supreme Court’s decision in NCAA had just applied the Rule of Reason in holding for plaintiffs, so it was hardly a bar to successful prosecution. Of concern to the Republicans was a proposal in Congress that would eliminate the FTC’s competition authority altogether.

Proposals to seek comment on the rescission were voted down on party lines. Competition policy at the FTC will depend on future Commission actions.

Targeting Sectors and Suspects

Finally the FTC identified seven areas in which it would adopt omnibus resolutions authorizing compulsory process – civil investigative demands and subpoenas enforceable in court. The Commission typically authorizes compulsory process when it identifies specific companies or conduct – like a merger or a deceptive practice – warranting intensive and urgent investigation. These resolutions covered broad sectors of the economy and authorized investigations under practices any law the FTC enforces. As explained in its press release, the Commission’s crosshairs are focused on these sectors and individuals:

Priority targets include repeat offenders; technology companies and digital platforms; and healthcare businesses such as pharmaceutical companies, pharmacy benefits managers, and hospitals. The agency is also prioritizing investigations into harms against workers and small businesses, along with harms related to the COVID-19 pandemic. Finally, at a time when merger filings are surging, the agency is ramping up enforcement against illegal mergers, both proposed and consummated.

https://www.ftc.gov/news-events/press-releases/2021/07/ftc-authorizes-investigations-key-enforcement-priorities

With these resolutions, the FTC delegated the decision to issue compulsory process to the staff and a single commissioner. In the past, an investigation into a new area could not use compulsory process until the commission voted on the resolution. These omnibus resolutions dispensed with that procedure. Khan hailed the move as cutting “red tape bureaucracy.” Wilson countered that the Commissioners were abrogating their sworn responsibilities of supervision. This last comment reveals the import of the change. If Chopra departs to the Consumer Financial Protection Bureau, which he has been nominated to direct, the Democrats will lose their majority. These resolutions will allow staff to open investigations, demand documents, and conduct depositions without the approval of the Commission. All the staff will need is the approval of a commissioner.

The Future of FTC Enforcement

In short, July 1, 2021 was an extraordinary day in the history of the FTC. It is an unmistakable harbinger of a Commission that is aiming to ramp up enforcement beyond the levels it sought to achieve in the 1970s. None of the supporters of the agenda had answers to the dissenters’ repeated questions: How will the agency overcome the obstacles that stymied its unbridled ambitions in the past? How will it respond to the resistance it will face from Congress, the courts, and the public it is supposed to serve? The public at this meeting, Phillips noted, was scheduled to comment after the Commission had made its decisions, so that their testimony would not be taken into account before the votes.

How far the Commission can take this agenda will be difficult to predict until the inevitable allegations of unauthorized investigations, arbitrary and capricious rules, unpredictable decisions, and deprivations of due process make their way to higher authorities. Safer predictions: We will see the fruits of yesterday’s decisions in the form of CIDs, subpoenas, proposed rules, and new interpretations of a century-old competition statute. Businesses and citizens will face the first engagement. Then Congress and the courts will join the fray. For a preview of potential outcomes, there is no better place to start than the rich literature of FTC history.

#### It says litigation.

2AC IS 21 - (Intelligencer Staff, writers for the Intelligencer; 1-19-2021, Intelligencer, "Policing Facebook Under a Biden Administration," 8-23-2021) url: https://nymag.com/intelligencer/2021/01/policing-facebook-under-a-biden-administration.html

The third thing is that with the new investigations, we need to make sure that our enforcement strategy focuses on effective deterrence. We just shouldn’t keep coming back to the same table with the same companies again, and again, and again, and that means maybe taking companies to court rather than settling on inadequate terms. It may mean partnering at other levels of government, as we did with the state AGs in the Facebook case. I think you were about to reference, Kara, the fact that we’re pretty dramatically under-resourced, and that’s true. That means that we need to be really smart about our enforcement strategy and make sure that each federal dollar we spend goes as far as it can.

#### FTC is cash-strapped---the plan destroys other enforcement priorities.

Nicolás Rivero 21. Technology reporter at Quartz. “Biden’s antitrust crusaders can’t crusade without Congress.” 3/11/21. https://qz.com/1982437/lina-khan-and-tim-wu-need-congress-to-push-their-antitrust-agenda/

But there are clear limits to their power. The most the FTC can do is bring more antitrust cases that ask courts for more aggressive remedies, like breakups. That would allow the agency to make a point about what it considers acceptable business behavior. But many of those lawsuits would be bound to lose in front of judges who have grown far more skeptical of antitrust cases over the past four decades and far more conservative over the past four years.

A larger caseload would also require Congress to approve more funding for the cash-strapped agency, which is already struggling to pay for its current docket. “The agencies have been asked on many occasions to do a lot with relatively little…but it’s not for free,” says former FTC chair and George Washington University law professor Bill Kovacic. If the FTC wants to pursue more large cases without a bigger budget, “they’ll have to make choices, and those choices will involve backing off of other areas of enforcement.”

#### FTC resources are finite and new priorities trade off with existing work.

David McCabe 18. Tech policy reporter for Axios, 5/7/18. “Mergers are spiking, but antitrust cop funding isn't.” https://www.axios.com/antitrust-doj-ftc-funding-2f69ed8c-b486-4a08-ab57-d3535ae43b52.html

The number of corporate mergers has jumped in recent years, but funding has stagnated for the federal agencies that are supposed to make sure the deals won’t harm consumers.

Why it matters: A wave of mega-mergers touching many facets of daily life, from T-Mobile’s merger with Sprint to CVS’s purchase of Aetna, will test the Justice Department's and Federal Trade Commission’s ability to examine smaller or more novel cases, antitrust experts say.

What they’re saying: “You have finite resources in terms of people power, so if you are spending all of your time litigating big mergers … there might be some investigations where decisions might have to be made about which investigations you can pursue,” said Caroline Holland, who was a senior staffer in DOJ’s Antitrust Division under President Obama and is now a Mozilla fellow.

What's happening:

More mergers are underway now than at any point since the recession. The total number of transactions reported to the federal government in fiscal year 2017, and not including cases given expedited approval or where the agencies couldn't legally pursue an investigation, is 82% higher than the number reported in 2010 and 55% higher than the number reported in 2012.

Funding for antitrust officials who weigh the deals hasn’t kept pace. The funding for the Department of Justice’s antitrust division has fallen 10% since 2010, when adjusted for inflation. That's in line with the broader picture: not adjusting for inflation, the Department's overall budget increased just slightly in 2016 and 2017.

Funding for the FTC has fallen 5% since 2010 (adjusted for inflation).

An FTC spokesperson declined to comment on funding levels and Antitrust Division officials didn't provide a comment.

Driving the news: Merger and acquisition activity is up 36% in the United States compared to the same time last year, according to Thomson Reuters data from April.

Several deals under government review have gotten national attention, including Sinclair’s purchase of Tribune's TV stations or T-Mobile’s deal with Sprint, which stands to reduce the number of national wireless providers from four to three.

Meanwhile, the Justice Department is awaiting the ruling on its lengthy legal effort to block AT&T’s proposed $85 billion purchase of Time Warner.

Yes, but: It’s not the attention-grabbing mega-mergers that advocates worry will get less of a close look thanks to a shortage of funds. Instead, some say budget limitations are likely to matter when officials are deciding which smaller or "borderline" deals to investigate further.

“Sometimes there’s nothing there,” said Holland of the agency's early investigations. “Other times, it might be, ‘This is kind of a close call, and we’ve got three or four close calls and we need to pick one of them.’"

"It could mean settlements get accepted that otherwise wouldn’t, or deals that should be challenged aren’t," said Michael Kades of the Washington Center for Equitable Growth, an antitrust-enforcement-friendly think tank that has done extensive research on the topic, in an email.

#### It directly undermines privacy enforcement.

David Hyman 19 – Professor at Georgetown University Law Center, with William E. Kovacic, “Implementing Privacy Policy: Who Should Do What?” 29 Fordham Intell. Prop. Media & Ent. L.J. 1117 (2019). https://ir.lawnet.fordham.edu/iplj/vol29/iss4/3

The case for making an enhanced FTC the national privacy regulator is straightforward. Of all U.S. privacy implementation institutions, the FTC has unequaled capacity in the form of expert case handling and policy teams and physical resources (including the development, over the past decade, of an internet laboratory to do high-quality forensic work, and the hiring of technology experts to assist in that effort). The agency’s capacity also is the product of extensive experience in applying its UDAP authority and enforcing statutes such as the FCRA and COPPA. The FTC has a broad portfolio of policy instruments (litigation, rulemaking, consumer and business education, data collection, the preparation of reports, the convening of conferences), and it has demonstrated its ability to use all of them to good effect in the privacy domain. The FTC’s stature as an independent agency gives it additional credibility in the eyes of foreign officials, who generally distrust the vesting of privacy powers in an executive department.

Within an enhanced FTC, privacy policy implementation also would be informed by the Commission’s larger experience with consumer protection. The FTC’s privacy unit is one part of its Bureau of Consumer Protection, rather than being a self-contained bureau. This reflected the institution’s reasonable view that the effort to safeguard consumer interests in “privacy” was one dimension of “consumer protection,” rather than a wholly distinct policy realm. Our impression is that many matters that involve privacy issues also raise problems that fit within other areas of the FTC’s consumer protection program. The analysis of the “privacy” issue often benefits from perspectives developed in the course of applying the agency’s deception and unfairness authority in other cases. The intertwining of privacy issues with other consumer protection concerns in many scenarios has important implications for how the mandate of a privacy agency should be defined. In whatever setting one ultimately might place a “privacy” mandate, we would expect that the host agency would have a mandate that incorporates powers that traditionally have been associated with the FTC’s broader consumer protection program.83

The FTC’s expertise in antitrust should also help it develop and enforce privacy policy. Enforcing antitrust law has given the FTC ongoing involvement in multiple high-tech markets—as well as an understanding of how competition can motivate companies to offer better privacy protections. The FTC’s work in both consumer protection and antitrust draws upon a Bureau of Economics with over 80 PhDs in economics.84 The Bureau of Economics has developed considerable skill in sub-disciplines (including behavioral economics) with special application to privacy issues.

Of course, inputs are not the same thing as outputs. The FTC has not always achieved the full integration of perspectives that the combination of these institutional capacities would permit. And, although there are policy complementarities across the domains of antitrust, consumer protection, and privacy, this combination of functions is not an unmixed blessing. An agency with all three functions might seek to use its position as a gatekeeper with respect to one policy domain to leverage concessions from firms over which it exercises oversight in another domain.85 Such temptations have been present when the FTC has applied its antitrust powers to review mergers involving companies in the information services sector.86

Finally, there is the possibility that any one of these functions might be diminished if all three are contained in the same agency. An agency focused solely on privacy will make privacy policy its single concern. An agency responsible for antitrust, consumer protection, and privacy is likely to find itself making tradeoffs as it sets priorities for how to use its resources.

#### FTC enforces the plan

Kristen Tam & Olivia Bielskis, 21. Tam is a writer at UCLA Undergraduate Law Journal, Bielskis is a Legal assistant at Tenants Law firm, BA from UCLA in Communications and a B.A. in Sociology "Stimulating Antitrust Enforcement to Expand the Regenerative Agriculture Movement." April 1, 2021. UCLA Library Prize for Undergraduate Research, https://escholarship.org/uc/item/0m16g2r5

Prong Two: The DOJ and FTC have significantly decreased the number of agriculture and meatpacking merger acquisitions that they block A. Power in the Hands of the Antitrust Division and Federal Trade Commission to determine Harmful Merges The second institutional aspect affecting antitrust enforcement is observed in federal agencies. The DOJ and FTC are the federal agencies that evaluate if corporate merges valued at more than $94 million can occur.8889 Since the 1980s, regulation by the FTC and DOJ has significantly decreased. Every year the FTC and DOJ review over a thousand merger filings, and it was found that between 2000 and 2005, 95 percent of merger filings presented no competitive issues.90 For mergers that “may… substantially… lessen competition, or tend to create a monopoly,”91 the FTC conducts more in-depth investigations using their Merger Best Practices guidelines.92 Oftentimes, competitive issues with these mergers are solved by consent agreement with the parties. In the few cases where the agency and parties cannot agree on a way to fix the competitive problems, the agency may bring the merger on administrative trial to federal court.93

#### And it causes massive resource tradeoff.

Kristen Tam & Olivia Bielskis, 21. Tam is a writer at UCLA Undergraduate Law Journal, Bielskis is a Legal assistant at Tenants Law firm, BA from UCLA in Communications and a B.A. in Sociology "Stimulating Antitrust Enforcement to Expand the Regenerative Agriculture Movement." April 1, 2021. UCLA Library Prize for Undergraduate Research, https://escholarship.org/uc/item/0m16g2r5

Congress created three major Federal antitrust laws to maintain competition in the marketplace: The Sherman Antitrust Act, the Clayton Antitrust Act and the Federal Trade Commission Act.50 The first of the antitrust laws, The Sherman Antitrust Act was enacted in 1890 with the purpose of protecting interstate and foreign trade by outlawing contracts, combinations, conspiracies, and anticompetitive conduct that unreasonably restrained trade.51 The Act is not violated when one firm’s vigorous competition and lower prices take sales from its less efficient competitors; in this case, the Courts state that competition is working properly.52 While the Sherman Act imposes a more onerous burden of proving actual unreasonable restraints, Congress created the Clayton Act to require proof only of potential anticompetitive effect.53 The Act intends to prevent practices that suppress competition and give large businesses undue advantages over small businesses, as well as to prohibit mergers and acquisitions that are likely to lessen competition.54

There are three key elements that help uphold United States antitrust laws and affect the level of enforcement. The first is jurisprudential doctrines that the courts develop.55 Judicial decisions may limit or expand the reach of antitrust laws by setting precedents that alter the government’s ability to challenge certain types of cases. The second is the prosecutorial discretion that enforcers, the DOJ, the FTC, and the state attorneys general, employ.56 Because these agencies determine what does and does not violate antitrust laws, a change in the enforcement discretion or philosophy of enforcers may affect the intensity of regulation. The third is the fiscal resources provided to the enforcers.57 Judicial rules that increase or decrease the cost and barrier to entry to pursue cases can affect the number of antitrust cases brought to trial.

#### FTC enforce the plan

Olivia Paschal, 21. Contributing writer with Facing South and a doctoral student in history at the University of Virginia. “Tyson has a stranglehold over Arkansas’s poultry industry.” August 23, 2021. https://thecounter.org/economist-q-and-a-tysons-stranglehold-over-arkansas-poultry-industry/

These things are all addressing the symptoms of the level of consolidation in poultry processing in Arkansas, and not addressing the underlying economic issues. The issue of the underlying economics in this industry has to be addressed federally. Biden’s executive order brings more prominence to this issue across the economy, and there were many mentions of USDA’s authority and role in that executive order. Some low-hanging fruit on the federal level: USDA has an agency called the Grain Inspection, Packers and Stockyards Administration, which is tasked with addressing and monitoring competition issues in food and agricultural markets. Their power has been stymied over the years; Congress has used the GIPSA rider in annual appropriations to basically defund them, and has been successful in doing that. The Trump administration actually consolidated GIPSA into the Agricultural Marketing Service in 2018, and some advocates claim that this allows GIPSA to be influenced more heavily by industry interests because AMS has closer ties to industry. Moving GIPSA back and letting it have its standalone authority, fully funding it, and letting it do its job without political influence is something that members of Congress from Arkansas can be supportive of. That’s not a hard thing to do. And then more generally, the Department of Justice and the Federal Trade Commission should scrutinize and regulate mergers and acquisitions in poultry processing with a more discerning eye. As our report showed, Tyson has been particularly aggressive with acquiring competitors and suppliers since the mid-1990s, which was as far back as we could go with data. Scrutinize those things to see how they will affect farmers locally in certain parts of the country where the industry is heavily concentrated. They should use the local and regional approach that we use to ensure there aren’t adverse impacts on farmers or workers.

#### Antitrust agencies are still in charge of enforcement---we read blue.

2AC BLP 19 - (Bona Law Pc, law firm specifilizing in Antitrust Law and similar law; 10-29-2019, Antitrust Attorney Blog, "The Capper-Volstead Act Gives Farm Cooperatives a Limited Exemption from Antitrust Liability," 8-22-2021) url: https://www.theantitrustattorney.com/the-capper-volstead-act-gives-farm-cooperatives-a-limited-exemption-from-antitrust-liability/

Today we’re going to talk about one important exemption for the agriculture industry: the farm cooperative exemption. Created by the Capper-Volstead Co-operative Marketing Associations Act (7 U.S.C. §§ 291–92), the farm cooperative exemption provides associations of persons or entities who produce agricultural products a limited exemption from antitrust liability relating to the production, handling, and marketing of farm products.

The farm cooperative exemption has some personal significance to me: I grew up across the street from one in my small Iowa town. And that co-op sponsored one of my little league teams.

At Bona Law, we regularly deal with antitrust exemptions. In fact, we have argued state-action exemption issues before the U.S. Supreme Court several times. As with any other exemption—and this is very important—the farm cooperative exemption is limited, disfavored, and narrowly applied. So it can easily become a trap. Like anything with antitrust, there are plenty of nuances and exceptions. We’re going to address some of those, but you should contact an antitrust lawyer if you really need to know whether the antitrust laws could apply, you’re being sued, or you want to consider suing.

The farm cooperative exemption allows a group of farmers—each of which is a competitor in the market—to come together and essentially act as one farmer. Through a cooperative, farmers pool their output together, agree on a price, and ultimately have more bargaining power in dealing with buyers—who historically were much bigger outfits than the individual farmers competing for their business.

The exemption also allows cooperatives to join together under a common marketing agency.

The exemption is overseen by the USDA, and the act gives direct oversight power to the Secretary of Agriculture. The secretary can, on his own volition, hold hearings, find facts, and issue orders to prevent cooperatives from monopolizing or restraining trade “to such an extent that the price of any agricultural product is unduly enhanced” as a result. But litigation—whether enforcement by the Department of Justice Antitrust Division or private civil lawsuits—is where a cooperative’s fate is usually decided.

#### FTC manages coops despite the act.

GAO 90. United States General Accounting Office. “Dairy Cooperatives Role and Effects of the Capper-Volstead Antitrust Exemption.” September 1990. https://www.gao.gov/assets/rced-90-186.pdf

To preserve farmers’ ability to organize cooperatives to jointly market their products, the Congress, in the Capper-Volstead Act (1922) and other legislation, granted agricultural cooperatives a limited exemption from federal antitrust laws. The Capper-Volstead act also provided that the Secretary of Agriculture would investigate cooperative activities to ensure that they did not monopolize or restrain trade to the extent that the price of any agricultural product would be unduly increased.’ In addition to the monitoring responsibility authorized by Capper-Volstead, the Federal Trade Commission has also monitored agricultural cooperatives as part of its overall responsibility.

#### Budget increase is neg uniqueness---it means the FTC can handle what it’s currently doing, not an expansion. Proves the staffing link.

Kiran Stacey 8/10/21 – Washington Correspondent for the Financial Times, 8/10/21. “Washington vs Big Tech: Lina Khan’s battle to transform US antitrust.” https://www.ft.com/content/eba8d3d7-dba7-4389-858c-5406c31b413d

Even if Khan does win some of the landmark cases she is likely to bring, some worry the FTC will not have the capacity to write new competition rules and rewrite merger guidelines at the same time. “The FTC can put together legal teams that can match the best in the bar, punch for punch, in a major case,” says Kovacic. “But the number of those teams is a couple, it is not 10.” For years the commission’s budget and staffing levels have been chipped away. It now has roughly 50 per cent of the staff it had in 1980 and is currently trying to review a record number of mergers. In the first nine months of this fiscal year, the FTC received 2,573 notifications ahead of a large merger — already 50 per cent more than were received in the whole of last year. Last week, the commission published a statement warning that it would not be able to review all mergers within 30 days of a notification being made, as required by law. Instead, the FTC said, if it had not had time to review a merger before it took place, it would reserve the right to take action even after it had been completed. “This year, the FTC has been hit by a tidal wave of merger filings that is straining the agency’s capacity to rigorously investigate deals ahead of the statutory deadlines,” the commission said in a statement. The commission is also facing an uphill battle to retain staff. Some people say they feel demoralised by the pace of change and irritated they have not yet met their new chair — something Khan’s allies say is an unfortunate result of the pandemic. “There are only so many times you can hear that your institution has failed for years before you start to doubt your place in it,” says one staff member. But a bigger problem is that companies and private law firms are gearing up for a more aggressive FTC by trying to poach its talent. “I usually have to place a couple of FTC people in any given year,” says Lauren Drake, a partner at the Washington-based recruiting firm Macrae. “So far this year I have had 10.”

#### Limited resources force tradeoffs in enforcement decisions.

Bernard (Barry) A. Nigro Jr. et al., 21 – Chair of Fried Frank's Global Antitrust and Competition Department, former Principal Deputy Assistant Attorney General at the DOJ, with Nathaniel L. Asker and Aleksandr B. Livshits, 1/5/21. “Managing Antitrust Risk in the Biden Administration.” Fried Frank Antitrust & Competition Law Alert. https://www.friedfrank.com/siteFiles/Publications/FFAntitrustAggressiveAntitrustEnforcement01052021.pdf

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

#### Link turns case. Expanded antitrust enforcement of anticompetitive practices causes backlash.

Alison Jones 20. Professor of Law at King's College London, with William E. Kovacic, March, “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy.” The Antitrust Bulletin. https://journals.sagepub.com/doi/full/10.1177/0003603X20912884

One possible solution to rigidities that have developed in Sherman Act jurisprudence is for the FTC to rely more heavily on the prosecution, through its own administrative process, of cases based on Section 5 of the FTC Act and its prohibition of “unfair methods of competition.”93 This section allows the FTC94 to tackle not only anticompetitive practices prohibited by the other antitrust statutes but also conduct constituting incipient violations of those statutes or behavior that exceeds their reach. The latter is possible where the conduct does not infringe the letter of the antitrust laws but contradicts their basic spirit or public policy.95

There is no doubt therefore that Section 5 was designed as an expansion joint in the U.S. antitrust system. It seems unlikely to us, nonetheless, that a majority of FTC’s current members will be minded to use it in this way. Further, even if they were to be, the reality is that such an application may encounter difficulties. Since its creation in 1914, the FTC has never prevailed before the Supreme Court in any case challenging dominant firm misconduct, whether premised on Section 2 of the Sherman Act or purely on Section 5 of the FTC Act.96 The last FTC success in federal court in a case predicated solely on Section 5 occurred in the late 1960s.97

The FTC’s record of limited success with Section 5 has not been for want of trying. In the 1970s, the FTC undertook an ambitious program to make the enforcement of claims predicated on the distinctive reach of Section 5, a foundation to develop “competition policy in its broadest sense.”98 The agency’s Section 5 agenda yielded some successes,99 but also a large number of litigation failures involving cases to address subtle forms of coordination in oligopolies, to impose new obligations on dominant firms, and to dissolve shared monopolies.100 The agency’s program elicited powerful legislative backlash from a Congress that once supported FTC’s trailblazing initiatives but turned against it as the Commission’s efforts to obtain dramatic structural remedies unfolded.101

#### Funding doesn’t solve tradeoffs.

Cristiano Lima 9/16/21. Business reporter and author of The Washington Post's Technology 202 newsletter. “Why Democrats are rallying around creating a new FTC privacy bureau to police Big Tech.” https://www.washingtonpost.com/politics/2021/09/16/why-democrats-are-rallying-around-creating-new-ftc-privacy-bureau-police-big-tech/?outputType=amp

At the session, lawmakers lamented that, beyond lacking will, the FTC has lacked the resources and staffing to effectively oversee the conduct of the tech sector’s trillion-dollar behemoths. That’s long been a knock on the FTC’s track record policing the tech sector, from both Democrats and Republicans.

While the proposed funding boost may not even the odds entirely, Democrats are largely aligned behind the idea that any added firepower for regulators is a positive step.

#### The aff can’t topically fiat funding for enforcement---Expand the scope of antitrust refers exclusively to formal law not enforcement---means the plan is circumvented.

Sinisa Milosevic et al. 18. Commission for Protection of Competition, The Republic of Serbia. Dejan Trifunovic, Faculty of Economics, University of Belgrade, Belgrade, The Republic of Serbia. Jelena Popovic Markopoulos, Commission for Protection of Competition, The Republic of Serbia. “The Impact of the Competition Policy on Economic Development in the Case of Developing Countries”. Economic Horizons, May - August 2018, Volume 20, Number 2, 153 – 167. http://scindeks-clanci.ceon.rs/data/pdf/1450-863X/2018/1450-863X1802157M.pdf

The paper that analyzes the impact of the competition policy on the GDP growth in developing and developed countries in the Solow growth model framework is T. C. Ma’s (2011). The presence and scope of the competition policy is captured by the SCOPE variable that is defined in the paper by K. N. Hylton and F. Deng (2007). The overall effectiveness of the government’s application of policies, not only of the competition policy, is captured by the EFFICIENCY variable that is defined in the paper by D. Kaufmann, A. Kraay and M. Mastruzzi (2009). The results show that the SCOPE variable is not significant and the formal existence of the competition law cannot influence economic growth. The interacting variable of SCOPE x EFFICIENCY is named EFFLAW. For poor countries, the coefficient for this variable is 0.04 and is significant, whereas for rich countries the coefficient is 0.064 and is also significant. Therefore, the competition law must be complemented with the effective enforcement of this policy.

#### Scope measures what is illegal, not enforcement.

Keith N. Hylton and Fei Deng 06. Keith N. Hylton, Professor of Law, Boston University. Fei Deng, NERA Economic Consulting. “Antitrust Around the World: An Empirical Analysis of the Scope of Competition Laws and Their Effects.” Boston University School of Law. Working Paper Series, Law and Economics Working Paper no. 06-47. https://scholarship.law.bu.edu/cgi/viewcontent.cgi?article=1849&context=faculty\_scholarship

A. Measuring the Scope of Competition Law

1. Scope Index

The first charts we present show Scope Index scores. These scores are found by summing the total points within each country template, and then subtracting off the defense scores. To give an example, return to the template for New Zealand. The Scope Index score for New Zealand is found by summing the numerical values in the template shown in Table 1, and then subtracting off scores associated with defenses (and one point to reduce the merger subtotal). In the case of New Zealand, there are three defenses (merger public interest defense, efficiency defense for dominant firms, efficiency defense for restrictive trade practices). The sum of the points is 19 (after reducing the merger subtotal), and after subtracting 3, the Scope Index for New Zealand is 16. For each European Union member state, an alternative Scope Index was computed based on EU law.24

The point of the Scope Index is to measure the size of the competition law net in every country. As the score increases, so does the size of the net. Alternatively, one can think of the Scope Index for a particular country as a measure of the number of ways in which a firm could run afoul of the competition laws in that country. However, the Scope Index score does not indicate the degree to which a country invests resources into enforcing its competition laws. Continuing with the net metaphor, the Scope Index tells us the size of the competition law net without saying anything about the likelihood that the government will attempt to swing the net at any firm.

#### Scope and enforcement are separate components

Keith N. Hylton and Fei Deng 06. Keith N. Hylton, Professor of Law, Boston University. Fei Deng, NERA Economic Consulting. “Antitrust Around the World: An Empirical Analysis of the Scope of Competition Laws and Their Effects.” Boston University School of Law. Working Paper Series, Law and Economics Working Paper no. 06-47. https://scholarship.law.bu.edu/cgi/viewcontent.cgi?article=1849&context=faculty\_scholarship

Translating this quantitative assessment of the law’s scope into a statement about the risk of being penalized under a country’s competition law requires the additional assumption that each country is equally likely to enforce the laws on its books. In other words, if the Scope Index is a measure of a country’s competition law net, then it is a reasonable measure of antitrust risk only if enforcement authorities are equally likely to swing the net in each country. Obviously, this is incorrect. But the thought exercise is still useful as a measure of antitrust risk on the assumption of equal enforcement efficiency across regimes. In addition, it suggests that an accurate measure of antitrust risk could be determined by decomposing risk into a legal component, based on the scope of the country’s laws, and an enforcement component, based on the zeal with which local enforcers pursue violators.

#### Scope is not enforcement.

Tay-Cheng Ma 11. Professor, Department of Economics, Chinese Culture University. “The Effect of Competition Law Enforcement on Economic Growth”. Journal of Competition Law & Economics, Volume 7, Issue 2, June 2011, Pages 301–334. https://academic.oup.com/jcle/article/7/2/301/1031182?casa\_token=CYnGqjkOtzwAAAAA:uLB97jLHKYta3keLCEOLQGcwg61bFW72SokNT\_8K3J5nh9m\_Sf-KyBNgVwJ91iYxg0ewZegeWsG6qA

The data for SCOPE and EFFICIENCY are obtained from the survey-based measures of Hylton and Deng23 and Kaufmann, Kraay, and Mastruzzi,24 respectively. Hylton and Deng surveyed the competition law implemented in 102 countries during the period from 2001 to 2004. Based on this dataset, they built up a “scope index” to measure the breadth of the overall competition law. This index provides a quantitative measure of the size of the overall competition law net in a country. It is used as a proxy for SCOPE in the empirical study presented later. Table 2 shows that the strongest regimes are those of the European Union (“EU Europe”) and North America, with Oceania and non-EU Europe following. It also reports the “average country GDP per capita” in each region.25 Evidently, there exists a positive relationship between regional income and SCOPE, except for the case of South America. In general, it is observed that the higher the income level, the stricter the regulation imposed by the competition law.

[TABLE 2 OMITTED]

On the other hand, SCOPE does not indicate the extent to which a country enforces the competition law. It points out merely the size of the competition law net, but says nothing about the governmental efficiency in enforcing the law. In other words, it points out the number of ways in which a firm might get into trouble under a country's competition law without saying anything about the likelihood that the firm could get caught in a real investigation.

#### This is our brink argument---the FTC’s managing its caseload, but only barely---the aff is a bolt from the blue, unplanned expansion of antitrust enforcement that forces tradeoff with privacy.

#### FTC’s on the right track, but already pushing as hard as they can

LEAH NYLEN 9/29/21. POLITICO's antitrust reporter. “Lina Khan’s big tech crackdown is drawing blowback. It may succeed anyway.” https://www.politico.com/news/2021/09/29/lina-khan-war-monopolies-514581

Despite all the friction, Khan’s admirers say the agency is finally back on the right track.

“The FTC is pushing as hard as they can right now, which is what we have needed for so long,” said Charlotte Slaiman, competition policy director for the advocacy group Public Knowledge, during POLITICO’s Tech Summit this month. She added: “I expect great things from the FTC.”

1. Khan knows FTC history and will avoid overstretch now.

Ben Brody 10/5/21. Senior reporter at Protocol, formerly covered tech policy at Bloomberg News. “The FTC's next privacy move is a dangerous game years in the making.” https://www.protocol.com/policy/ftc-privacy-rules?rebelltitem=1#rebelltitem1

Litigation could tie up any new rules up for years, but from the commission's perspective it may be the lesser evil as compared to drawing ire from Congress. Critics of FTC inaction trace the agency's timidity to the 1980s. At the time, many saw the FTC's attempts to regulate children's advertising as the height of nanny-state overreach, in part thanks to a campaign by advertisers. In response to "kidvid," Congress reined in the agency's regulatory powers — and in the process taught generations of FTC staff to tiptoe around lawmakers.

It's a cycle that's recurred throughout FTC's existence, and Khan, who loves the agency's history, has made clear she's well aware of it.

Her colleagues, too, seem well aware that the clock is ticking: In a speech earlier in October, Slaughter discussed online ads and pushed the idea that companies should only collect data necessary for their offerings.

#### Current enforcement is streamlined to enable focus on algorithmic bias.

Jeffrey J. Amato and Jay R. Wexler 9/28/21. “United States: FTC Ramps Up Tech Investigations, Reduces Investigators' Hurdles.” https://www.mondaq.com/unitedstates/antitrust-eu-competition-/1115450/ftc-ramps-up-tech-investigations-reduces-investigators39-hurdles

At its September 14, 2021 open meeting, the Federal Trade Commission (FTC) announced the passage of eight "omnibus" resolutions by a 3-2 party-line vote to authorize quicker investigations into prioritized issues. The resolutions allow staff attorneys to use compulsory process demands, which are usually issued as civil investigative demands or subpoenas, with approval from only one commissioner. Previously, agency staff were expected to receive approval from the full commission prior to issuing demands for information from companies. The resolutions aim to facilitate investigations into: unlawful conduct directed at veterans and service members; unlawful conduct directed at children; bias in algorithms and biometrics enabling discriminatory practices; dark patterns and deceptive online conduct that lure users into making unwanted purchases; repair restrictions that allegedly harm competitors and consumers; abuse of intellectual property; common directors and officers and common ownership; and monopolization offenses.

#### Other enforcement is all talk

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

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

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

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

#### Agency’s streamlining current enforcement in order to balance its priorities

FTC 9/14/21. Media Contact Peter Kaplan. “FTC Streamlines Consumer Protection and Competition Investigations in Eight Key Enforcement Areas to Enable Higher Caseload.” https://www.ftc.gov/news-events/press-releases/2021/09/ftc-streamlines-investigations-in-eight-enforcement-areas

At the joint recommendation from its Bureau of Consumer Protection and Bureau of Competition, the Federal Trade Commission voted to approve and make public a series of resolutions that will enable agency staff to efficiently and expeditiously investigate conduct in core FTC priority areas over the next ten years.

The Bureaus recommended that the Commission authorize eight new compulsory process resolutions in these essential areas: (1) Acts or Practices Affecting United States Armed Forces Service Members and Veterans; (2) Acts or Practices Affecting Children; (3) Bias in Algorithms and Biometrics; (4) Deceptive and Manipulative Conduct on the Internet; and (5) Repair Restrictions. (6) Abuse of Intellectual Property; (7) Common Directors and Officers and Common Ownership; and (8) Monopolization Offenses.

“These resolutions enable the FTC to take swift action against a whole host of illegal conduct in important areas of concern to the Commission,” said Holly Vedova, Acting Director of the Bureau of Competition. She noted that, “Companies engaging in conduct implicated by these resolutions should be forewarned: the FTC looks forward to aggressively using these resolutions and will not hesitate to take action against illegal conduct to the fullest extent possible under the law.”

“Harmful practices – especially those targeting children, veterans, and marginalized communities – will not be tolerated by this Commission,” said Samuel Levine, Acting Director of the Bureau of Consumer Protection. “Today’s resolutions ensure our staff can rapidly respond to allegations of abuse and fight fraud without delay.”

Specifically, the resolutions approved by a Commission vote of 3-2 will allow:

Service members and Veterans: harmful business practices directed at service members and veterans are a source of significant public concern, and, now, FTC staff will be able to expeditiously investigate any allegations in this important area.

Children under 18: harmful conduct directed at children under 18 has been a source of significant public concern, now, FTC staff will similarly be able to expeditiously investigate any allegations in this important area.

Algorithmic and Biometric Bias: allows staff to investigate allegations of bias in algorithms and biometrics. Algorithmic bias was the subject of a recent FTC blog.

Deceptive and Manipulative Conduct on the Internet: this omnibus expands a previous omnibus resolution on deceptive practices, which expired on Aug. 1. The existing resolution, has enabled the FTC to develop investigations and bring cases in a variety of areas including day trading services, tech support scams, the BOTS Act, payment processing, and the deceptive marketing of goods and services online, including pandemic-related goods like fake Clorox products and face masks. In addition to the areas covered by the existing resolution, this expanded version covers the “manipulation of user interfaces,” including but not limited to dark patterns, also the subject of a recent FTC workshop.

Repair Restrictions: enhances the FTC’s ongoing investigations into restrictions on repair and builds on the FTC’s recent Policy Statement on Right to Repair. It would cover a wide range of anti-consumer and anti-competitive abuses and facilitate staff’s impending investigation of violations of the Magnuson Moss Warranty Act’s anti-tying provisions.

Abuse of Intellectual Property: allows staff to investigate abuses of intellectual property rights. Conduct involving abuse of intellectual property rights has been a source of much anticompetitive and deceptive conduct in many different areas, including pharmaceuticals, technology and gasoline refining, and this omnibus will allow staff to expeditiously investigate allegations in this area.

Common Director and Officers and Common Ownership: facilitates investigations of both ownership stakes in competing companies that may be anticompetitive as well as interlocking directorates that may violate Section 8 of the Clayton Act, 15 U.S.C. § 19. Interlocking directorates and common ownership continue to raise significant competitive concerns.

Monopolistic Practices: Market power abuses by tech companies and other large companies are rightly a source of bipartisan concern. This omnibus will allow staff to more expeditiously investigate market power abuses by dominant firms that are precluding businesses and entrepreneurs from being able to compete, particularly in digital markets.

Compulsory process refers to the issuance of demands for documents and testimony, through the use of civil investigative demands and subpoenas. The FTC Act authorizes the Commission to use compulsory process in its investigations. Compulsory process requires the recipient to produce information, and these orders are enforceable by courts. Civil investigative demands and subpoenas are assigned to a Commissioner for review and authorization by the FTC’s Office of Secretary, typically on a rotating basis or according to availability. The Commission has routinely adopted compulsory process resolutions on a wide range of topics. The resolutions announced today will broaden the ability for FTC investigators and prosecutors to obtain evidence in critical investigations on key areas where the FTC’s work can make the most impact. Each omnibus covers investigations into competition or consumer protection conduct violations under the FTC Act.

Streamlining and improving efficiency at the agency is vitally important given the increased volume of investigatory work created by the surge in merger filings. Having already doubled between 2010 and 2020, the number of mergers filed with the antitrust authorities this year hit a record-setting pace of 2,067 acquisitions for the first seven months alone. With these resolutions in place, the FTC can better utilize its limited resources and move forward in earnest to quickly investigate potential misconduct. The Bureaus are now authorized to take steps to ensure that any compulsory process orders are enforceable.

#### Thumpers are priced in.

William C. MacLeod 7/2/21. One of the top rated Antitrust Litigation attorneys in Washington, DC. “Chopra, Khan, Slaughter Take Control of the Federal Trade Commission.” https://www.adlawaccess.com/2021/07/articles/chopra-khan-slaughter-take-control-of-the-federal-trade-commission/

With an unprecedented attack on policies the Federal Trade Commission had long embraced, the new majority of Democratic Commissioners revealed a bold enforcement agenda that would circumvent Supreme Court decisions and avoid Congressional limits.

It was a meeting like none the Federal Trade Commission has ever held. On one week’s notice, the Commission adopted new rules to impose civil penalties on substandard Made-in-USA claims, removed judges and safeguards from rulemaking proceedings, rescinded its 2015 enforcement policy statement on unfair methods of competition, and granted staff more authority to issue subpoenas and civil investigative demands. The vote on every issue followed party lines. Republican Commissioners, Noah Phillips and Christine Wilson, voted against all, and the Democratic Commissioners, Chopra, Khan, and Slaughter, rejected all amendments. Chair Khan announced that public meetings will become regular events at the FTC.

Made in USA Claims

Commissioner Chopra took the lead on the Made-in-USA (MUSA) rule, which would impose civil penalties on claims that do not meet FTC standards for domestic content, whether those claims appear on labels or in marketing. He criticized the Commission for years of allegedly allowing deceptive claims to persist and wrongdoers to escape fines. Imposing fines, he said, was one way of recovering the power the Commission was denied in the Supreme Court’s decision in AMG Capital Management v. FTC, which held that Section 13(b) of FTC Act did not authorize the Commission to obtain monetary relief.

Phillips opposed the rule, saying that Congress had not given FTC the authority to cover off-label claims; it had authorized MUSA rules only for product labels. Unless and until Congress granted authority for expedited rulemaking on advertising claims, which Congress is now considering, he insisted that the FTC was bound to use the more restrictive Magnusson-Moss procedures. Wilson objected to the short notice announcing the meeting, objected to the exclusion of staff from the meeting, and warned that it was unwise to disregard a unanimous Supreme Court that had just admonished the Commission for exceeding its authority to obtain money in consumer protection cases.

Expediting Rulemaking

Foreshadowing an ambitious regulatory agenda was a motion to streamline new rules under Section 18 of the FTC Act. The motion would remove the chief administrative law judge from the role of presiding officer in rulemakings. The FTC Chair would preside. The motion also proposed eliminating the requirement of a staff report to accompany a rule recommendation. Slaughter said these were unnecessary “self-imposed” limits. Chopra praised the proposal for helping end the era of “perceived powerlessness” at the FTC

Phillips and Wilson objected, citing concerns that removing the judge would threaten the independence of the rulemaking process – an extensive fact-finding exercise – and lend support to challengers who claim that FTC rules are politically motivated. As for staff reports, Phillips remarked that these gave the Commissioners and the public some confidence that a rule would not inflict unnecessary harm on the economy. Wilson reminded her colleagues that zealous rulemaking in the 1970s precipitated an existential crisis for the agency. It closed its doors after public resistance and widespread ridicule prompted Congress to defund the FTC. Not until the Commission promised a return to responsible enforcement was it allowed to reopen. The FTC delivered on that promise with a series of policy statements clarifying unfair acts and practices, illegal deception, and necessary substantiation for advertising claims.

Wilson proposed posting the procedural changes for comment. It failed 3-2. Phillips proposed retaining the chief judge and the staff report. It also failed to attract a Democratic vote. Rulemakings without a judge and without a staff report passed without a Republican vote.

Rescinding the Competition Policy Statement

In a sweeping departure from a bipartisan antitrust policy, the Commission rescinded its 2015 Policy Statement on Unfair Competition. Khan argued that the FTC should not have to show a likelihood of harm to competition in order to declare conduct unfair. In her view, the FTC Act was intended to circumvent the Supreme Court’s adoption of the Rule of Reason in antitrust cases – a requirement that condemned restraints of trade only when their anticompetitive effects outweighed the procompetitive benefits. The Rule of Reason made it too hard to prove violations, said Khan, and the FTC’s policy statement improperly confined the agency to an enforcement policy indistinguishable from the standards that DOJ applied.

Wilson regarded the rescission as an abandonment of the consumer welfare standard, the framework of antitrust analysis for half a century. She expressed fears that if competition policy were not designed to benefit consumers, it could be coopted by special interests. She added that when the FTC had failed to apply a standard consistent with the antitrust laws in the past, its decisions had often been reversed on appeal. (The FTC lost a string of appeals in the 1980s when it attempted to prohibit refusals to deal, price discrimination that might be competitive, supplier-distributor pricing policies, and practices that could facilitate collusion.) Phillips noted that the Supreme Court’s decision in NCAA had just applied the Rule of Reason in holding for plaintiffs, so it was hardly a bar to successful prosecution. Of concern to the Republicans was a proposal in Congress that would eliminate the FTC’s competition authority altogether.

Proposals to seek comment on the rescission were voted down on party lines. Competition policy at the FTC will depend on future Commission actions.

Targeting Sectors and Suspects

Finally the FTC identified seven areas in which it would adopt omnibus resolutions authorizing compulsory process – civil investigative demands and subpoenas enforceable in court. The Commission typically authorizes compulsory process when it identifies specific companies or conduct – like a merger or a deceptive practice – warranting intensive and urgent investigation. These resolutions covered broad sectors of the economy and authorized investigations under practices any law the FTC enforces. As explained in its press release, the Commission’s crosshairs are focused on these sectors and individuals:

Priority targets include repeat offenders; technology companies and digital platforms; and healthcare businesses such as pharmaceutical companies, pharmacy benefits managers, and hospitals. The agency is also prioritizing investigations into harms against workers and small businesses, along with harms related to the COVID-19 pandemic. Finally, at a time when merger filings are surging, the agency is ramping up enforcement against illegal mergers, both proposed and consummated.

https://www.ftc.gov/news-events/press-releases/2021/07/ftc-authorizes-investigations-key-enforcement-priorities

With these resolutions, the FTC delegated the decision to issue compulsory process to the staff and a single commissioner. In the past, an investigation into a new area could not use compulsory process until the commission voted on the resolution. These omnibus resolutions dispensed with that procedure. Khan hailed the move as cutting “red tape bureaucracy.” Wilson countered that the Commissioners were abrogating their sworn responsibilities of supervision. This last comment reveals the import of the change. If Chopra departs to the Consumer Financial Protection Bureau, which he has been nominated to direct, the Democrats will lose their majority. These resolutions will allow staff to open investigations, demand documents, and conduct depositions without the approval of the Commission. All the staff will need is the approval of a commissioner.

The Future of FTC Enforcement

In short, July 1, 2021 was an extraordinary day in the history of the FTC. It is an unmistakable harbinger of a Commission that is aiming to ramp up enforcement beyond the levels it sought to achieve in the 1970s. None of the supporters of the agenda had answers to the dissenters’ repeated questions: How will the agency overcome the obstacles that stymied its unbridled ambitions in the past? How will it respond to the resistance it will face from Congress, the courts, and the public it is supposed to serve? The public at this meeting, Phillips noted, was scheduled to comment after the Commission had made its decisions, so that their testimony would not be taken into account before the votes.

How far the Commission can take this agenda will be difficult to predict until the inevitable allegations of unauthorized investigations, arbitrary and capricious rules, unpredictable decisions, and deprivations of due process make their way to higher authorities. Safer predictions: We will see the fruits of yesterday’s decisions in the form of CIDs, subpoenas, proposed rules, and new interpretations of a century-old competition statute. Businesses and citizens will face the first engagement. Then Congress and the courts will join the fray. For a preview of potential outcomes, there is no better place to start than the rich literature of FTC history.

#### It says litigation.

2AC IS 21 - (Intelligencer Staff, writers for the Intelligencer; 1-19-2021, Intelligencer, "Policing Facebook Under a Biden Administration," 8-23-2021) url: https://nymag.com/intelligencer/2021/01/policing-facebook-under-a-biden-administration.html

The third thing is that with the new investigations, we need to make sure that our enforcement strategy focuses on effective deterrence. We just shouldn’t keep coming back to the same table with the same companies again, and again, and again, and that means maybe taking companies to court rather than settling on inadequate terms. It may mean partnering at other levels of government, as we did with the state AGs in the Facebook case. I think you were about to reference, Kara, the fact that we’re pretty dramatically under-resourced, and that’s true. That means that we need to be really smart about our enforcement strategy and make sure that each federal dollar we spend goes as far as it can.

#### FTC is cash-strapped---the plan destroys other enforcement priorities.

Nicolás Rivero 21. Technology reporter at Quartz. “Biden’s antitrust crusaders can’t crusade without Congress.” 3/11/21. https://qz.com/1982437/lina-khan-and-tim-wu-need-congress-to-push-their-antitrust-agenda/

But there are clear limits to their power. The most the FTC can do is bring more antitrust cases that ask courts for more aggressive remedies, like breakups. That would allow the agency to make a point about what it considers acceptable business behavior. But many of those lawsuits would be bound to lose in front of judges who have grown far more skeptical of antitrust cases over the past four decades and far more conservative over the past four years.

A larger caseload would also require Congress to approve more funding for the cash-strapped agency, which is already struggling to pay for its current docket. “The agencies have been asked on many occasions to do a lot with relatively little…but it’s not for free,” says former FTC chair and George Washington University law professor Bill Kovacic. If the FTC wants to pursue more large cases without a bigger budget, “they’ll have to make choices, and those choices will involve backing off of other areas of enforcement.”

#### FTC resources are finite and new priorities trade off with existing work.

David McCabe 18. Tech policy reporter for Axios, 5/7/18. “Mergers are spiking, but antitrust cop funding isn't.” https://www.axios.com/antitrust-doj-ftc-funding-2f69ed8c-b486-4a08-ab57-d3535ae43b52.html

The number of corporate mergers has jumped in recent years, but funding has stagnated for the federal agencies that are supposed to make sure the deals won’t harm consumers.

Why it matters: A wave of mega-mergers touching many facets of daily life, from T-Mobile’s merger with Sprint to CVS’s purchase of Aetna, will test the Justice Department's and Federal Trade Commission’s ability to examine smaller or more novel cases, antitrust experts say.

What they’re saying: “You have finite resources in terms of people power, so if you are spending all of your time litigating big mergers … there might be some investigations where decisions might have to be made about which investigations you can pursue,” said Caroline Holland, who was a senior staffer in DOJ’s Antitrust Division under President Obama and is now a Mozilla fellow.

What's happening:

More mergers are underway now than at any point since the recession. The total number of transactions reported to the federal government in fiscal year 2017, and not including cases given expedited approval or where the agencies couldn't legally pursue an investigation, is 82% higher than the number reported in 2010 and 55% higher than the number reported in 2012.

Funding for antitrust officials who weigh the deals hasn’t kept pace. The funding for the Department of Justice’s antitrust division has fallen 10% since 2010, when adjusted for inflation. That's in line with the broader picture: not adjusting for inflation, the Department's overall budget increased just slightly in 2016 and 2017.

Funding for the FTC has fallen 5% since 2010 (adjusted for inflation).

An FTC spokesperson declined to comment on funding levels and Antitrust Division officials didn't provide a comment.

Driving the news: Merger and acquisition activity is up 36% in the United States compared to the same time last year, according to Thomson Reuters data from April.

Several deals under government review have gotten national attention, including Sinclair’s purchase of Tribune's TV stations or T-Mobile’s deal with Sprint, which stands to reduce the number of national wireless providers from four to three.

Meanwhile, the Justice Department is awaiting the ruling on its lengthy legal effort to block AT&T’s proposed $85 billion purchase of Time Warner.

Yes, but: It’s not the attention-grabbing mega-mergers that advocates worry will get less of a close look thanks to a shortage of funds. Instead, some say budget limitations are likely to matter when officials are deciding which smaller or "borderline" deals to investigate further.

“Sometimes there’s nothing there,” said Holland of the agency's early investigations. “Other times, it might be, ‘This is kind of a close call, and we’ve got three or four close calls and we need to pick one of them.’"

"It could mean settlements get accepted that otherwise wouldn’t, or deals that should be challenged aren’t," said Michael Kades of the Washington Center for Equitable Growth, an antitrust-enforcement-friendly think tank that has done extensive research on the topic, in an email.

#### It directly undermines privacy enforcement.

David Hyman 19 – Professor at Georgetown University Law Center, with William E. Kovacic, “Implementing Privacy Policy: Who Should Do What?” 29 Fordham Intell. Prop. Media & Ent. L.J. 1117 (2019). https://ir.lawnet.fordham.edu/iplj/vol29/iss4/3

The case for making an enhanced FTC the national privacy regulator is straightforward. Of all U.S. privacy implementation institutions, the FTC has unequaled capacity in the form of expert case handling and policy teams and physical resources (including the development, over the past decade, of an internet laboratory to do high-quality forensic work, and the hiring of technology experts to assist in that effort). The agency’s capacity also is the product of extensive experience in applying its UDAP authority and enforcing statutes such as the FCRA and COPPA. The FTC has a broad portfolio of policy instruments (litigation, rulemaking, consumer and business education, data collection, the preparation of reports, the convening of conferences), and it has demonstrated its ability to use all of them to good effect in the privacy domain. The FTC’s stature as an independent agency gives it additional credibility in the eyes of foreign officials, who generally distrust the vesting of privacy powers in an executive department.

Within an enhanced FTC, privacy policy implementation also would be informed by the Commission’s larger experience with consumer protection. The FTC’s privacy unit is one part of its Bureau of Consumer Protection, rather than being a self-contained bureau. This reflected the institution’s reasonable view that the effort to safeguard consumer interests in “privacy” was one dimension of “consumer protection,” rather than a wholly distinct policy realm. Our impression is that many matters that involve privacy issues also raise problems that fit within other areas of the FTC’s consumer protection program. The analysis of the “privacy” issue often benefits from perspectives developed in the course of applying the agency’s deception and unfairness authority in other cases. The intertwining of privacy issues with other consumer protection concerns in many scenarios has important implications for how the mandate of a privacy agency should be defined. In whatever setting one ultimately might place a “privacy” mandate, we would expect that the host agency would have a mandate that incorporates powers that traditionally have been associated with the FTC’s broader consumer protection program.83

The FTC’s expertise in antitrust should also help it develop and enforce privacy policy. Enforcing antitrust law has given the FTC ongoing involvement in multiple high-tech markets—as well as an understanding of how competition can motivate companies to offer better privacy protections. The FTC’s work in both consumer protection and antitrust draws upon a Bureau of Economics with over 80 PhDs in economics.84 The Bureau of Economics has developed considerable skill in sub-disciplines (including behavioral economics) with special application to privacy issues.

Of course, inputs are not the same thing as outputs. The FTC has not always achieved the full integration of perspectives that the combination of these institutional capacities would permit. And, although there are policy complementarities across the domains of antitrust, consumer protection, and privacy, this combination of functions is not an unmixed blessing. An agency with all three functions might seek to use its position as a gatekeeper with respect to one policy domain to leverage concessions from firms over which it exercises oversight in another domain.85 Such temptations have been present when the FTC has applied its antitrust powers to review mergers involving companies in the information services sector.86

Finally, there is the possibility that any one of these functions might be diminished if all three are contained in the same agency. An agency focused solely on privacy will make privacy policy its single concern. An agency responsible for antitrust, consumer protection, and privacy is likely to find itself making tradeoffs as it sets priorities for how to use its resources.

#### FTC enforces the plan

Kristen Tam & Olivia Bielskis, 21. Tam is a writer at UCLA Undergraduate Law Journal, Bielskis is a Legal assistant at Tenants Law firm, BA from UCLA in Communications and a B.A. in Sociology "Stimulating Antitrust Enforcement to Expand the Regenerative Agriculture Movement." April 1, 2021. UCLA Library Prize for Undergraduate Research, https://escholarship.org/uc/item/0m16g2r5

Prong Two: The DOJ and FTC have significantly decreased the number of agriculture and meatpacking merger acquisitions that they block A. Power in the Hands of the Antitrust Division and Federal Trade Commission to determine Harmful Merges The second institutional aspect affecting antitrust enforcement is observed in federal agencies. The DOJ and FTC are the federal agencies that evaluate if corporate merges valued at more than $94 million can occur.8889 Since the 1980s, regulation by the FTC and DOJ has significantly decreased. Every year the FTC and DOJ review over a thousand merger filings, and it was found that between 2000 and 2005, 95 percent of merger filings presented no competitive issues.90 For mergers that “may… substantially… lessen competition, or tend to create a monopoly,”91 the FTC conducts more in-depth investigations using their Merger Best Practices guidelines.92 Oftentimes, competitive issues with these mergers are solved by consent agreement with the parties. In the few cases where the agency and parties cannot agree on a way to fix the competitive problems, the agency may bring the merger on administrative trial to federal court.93

#### And it causes massive resource tradeoff.

Kristen Tam & Olivia Bielskis, 21. Tam is a writer at UCLA Undergraduate Law Journal, Bielskis is a Legal assistant at Tenants Law firm, BA from UCLA in Communications and a B.A. in Sociology "Stimulating Antitrust Enforcement to Expand the Regenerative Agriculture Movement." April 1, 2021. UCLA Library Prize for Undergraduate Research, https://escholarship.org/uc/item/0m16g2r5

Congress created three major Federal antitrust laws to maintain competition in the marketplace: The Sherman Antitrust Act, the Clayton Antitrust Act and the Federal Trade Commission Act.50 The first of the antitrust laws, The Sherman Antitrust Act was enacted in 1890 with the purpose of protecting interstate and foreign trade by outlawing contracts, combinations, conspiracies, and anticompetitive conduct that unreasonably restrained trade.51 The Act is not violated when one firm’s vigorous competition and lower prices take sales from its less efficient competitors; in this case, the Courts state that competition is working properly.52 While the Sherman Act imposes a more onerous burden of proving actual unreasonable restraints, Congress created the Clayton Act to require proof only of potential anticompetitive effect.53 The Act intends to prevent practices that suppress competition and give large businesses undue advantages over small businesses, as well as to prohibit mergers and acquisitions that are likely to lessen competition.54

There are three key elements that help uphold United States antitrust laws and affect the level of enforcement. The first is jurisprudential doctrines that the courts develop.55 Judicial decisions may limit or expand the reach of antitrust laws by setting precedents that alter the government’s ability to challenge certain types of cases. The second is the prosecutorial discretion that enforcers, the DOJ, the FTC, and the state attorneys general, employ.56 Because these agencies determine what does and does not violate antitrust laws, a change in the enforcement discretion or philosophy of enforcers may affect the intensity of regulation. The third is the fiscal resources provided to the enforcers.57 Judicial rules that increase or decrease the cost and barrier to entry to pursue cases can affect the number of antitrust cases brought to trial.

#### FTC enforce the plan

Olivia Paschal, 21. Contributing writer with Facing South and a doctoral student in history at the University of Virginia. “Tyson has a stranglehold over Arkansas’s poultry industry.” August 23, 2021. https://thecounter.org/economist-q-and-a-tysons-stranglehold-over-arkansas-poultry-industry/

These things are all addressing the symptoms of the level of consolidation in poultry processing in Arkansas, and not addressing the underlying economic issues. The issue of the underlying economics in this industry has to be addressed federally. Biden’s executive order brings more prominence to this issue across the economy, and there were many mentions of USDA’s authority and role in that executive order. Some low-hanging fruit on the federal level: USDA has an agency called the Grain Inspection, Packers and Stockyards Administration, which is tasked with addressing and monitoring competition issues in food and agricultural markets. Their power has been stymied over the years; Congress has used the GIPSA rider in annual appropriations to basically defund them, and has been successful in doing that. The Trump administration actually consolidated GIPSA into the Agricultural Marketing Service in 2018, and some advocates claim that this allows GIPSA to be influenced more heavily by industry interests because AMS has closer ties to industry. Moving GIPSA back and letting it have its standalone authority, fully funding it, and letting it do its job without political influence is something that members of Congress from Arkansas can be supportive of. That’s not a hard thing to do. And then more generally, the Department of Justice and the Federal Trade Commission should scrutinize and regulate mergers and acquisitions in poultry processing with a more discerning eye. As our report showed, Tyson has been particularly aggressive with acquiring competitors and suppliers since the mid-1990s, which was as far back as we could go with data. Scrutinize those things to see how they will affect farmers locally in certain parts of the country where the industry is heavily concentrated. They should use the local and regional approach that we use to ensure there aren’t adverse impacts on farmers or workers.

#### Antitrust agencies are still in charge of enforcement---we read blue.

2AC BLP 19 - (Bona Law Pc, law firm specifilizing in Antitrust Law and similar law; 10-29-2019, Antitrust Attorney Blog, "The Capper-Volstead Act Gives Farm Cooperatives a Limited Exemption from Antitrust Liability," 8-22-2021) url: https://www.theantitrustattorney.com/the-capper-volstead-act-gives-farm-cooperatives-a-limited-exemption-from-antitrust-liability/

Today we’re going to talk about one important exemption for the agriculture industry: the farm cooperative exemption. Created by the Capper-Volstead Co-operative Marketing Associations Act (7 U.S.C. §§ 291–92), the farm cooperative exemption provides associations of persons or entities who produce agricultural products a limited exemption from antitrust liability relating to the production, handling, and marketing of farm products.

The farm cooperative exemption has some personal significance to me: I grew up across the street from one in my small Iowa town. And that co-op sponsored one of my little league teams.

At Bona Law, we regularly deal with antitrust exemptions. In fact, we have argued state-action exemption issues before the U.S. Supreme Court several times. As with any other exemption—and this is very important—the farm cooperative exemption is limited, disfavored, and narrowly applied. So it can easily become a trap. Like anything with antitrust, there are plenty of nuances and exceptions. We’re going to address some of those, but you should contact an antitrust lawyer if you really need to know whether the antitrust laws could apply, you’re being sued, or you want to consider suing.

The farm cooperative exemption allows a group of farmers—each of which is a competitor in the market—to come together and essentially act as one farmer. Through a cooperative, farmers pool their output together, agree on a price, and ultimately have more bargaining power in dealing with buyers—who historically were much bigger outfits than the individual farmers competing for their business.

The exemption also allows cooperatives to join together under a common marketing agency.

The exemption is overseen by the USDA, and the act gives direct oversight power to the Secretary of Agriculture. The secretary can, on his own volition, hold hearings, find facts, and issue orders to prevent cooperatives from monopolizing or restraining trade “to such an extent that the price of any agricultural product is unduly enhanced” as a result. But litigation—whether enforcement by the Department of Justice Antitrust Division or private civil lawsuits—is where a cooperative’s fate is usually decided.

#### FTC manages coops despite the act.

GAO 90. United States General Accounting Office. “Dairy Cooperatives Role and Effects of the Capper-Volstead Antitrust Exemption.” September 1990. https://www.gao.gov/assets/rced-90-186.pdf

To preserve farmers’ ability to organize cooperatives to jointly market their products, the Congress, in the Capper-Volstead Act (1922) and other legislation, granted agricultural cooperatives a limited exemption from federal antitrust laws. The Capper-Volstead act also provided that the Secretary of Agriculture would investigate cooperative activities to ensure that they did not monopolize or restrain trade to the extent that the price of any agricultural product would be unduly increased.’ In addition to the monitoring responsibility authorized by Capper-Volstead, the Federal Trade Commission has also monitored agricultural cooperatives as part of its overall responsibility.

#### Budget increase is neg uniqueness---it means the FTC can handle what it’s currently doing, not an expansion. Proves the staffing link.

Kiran Stacey 8/10/21 – Washington Correspondent for the Financial Times, 8/10/21. “Washington vs Big Tech: Lina Khan’s battle to transform US antitrust.” https://www.ft.com/content/eba8d3d7-dba7-4389-858c-5406c31b413d

Even if Khan does win some of the landmark cases she is likely to bring, some worry the FTC will not have the capacity to write new competition rules and rewrite merger guidelines at the same time. “The FTC can put together legal teams that can match the best in the bar, punch for punch, in a major case,” says Kovacic. “But the number of those teams is a couple, it is not 10.” For years the commission’s budget and staffing levels have been chipped away. It now has roughly 50 per cent of the staff it had in 1980 and is currently trying to review a record number of mergers. In the first nine months of this fiscal year, the FTC received 2,573 notifications ahead of a large merger — already 50 per cent more than were received in the whole of last year. Last week, the commission published a statement warning that it would not be able to review all mergers within 30 days of a notification being made, as required by law. Instead, the FTC said, if it had not had time to review a merger before it took place, it would reserve the right to take action even after it had been completed. “This year, the FTC has been hit by a tidal wave of merger filings that is straining the agency’s capacity to rigorously investigate deals ahead of the statutory deadlines,” the commission said in a statement. The commission is also facing an uphill battle to retain staff. Some people say they feel demoralised by the pace of change and irritated they have not yet met their new chair — something Khan’s allies say is an unfortunate result of the pandemic. “There are only so many times you can hear that your institution has failed for years before you start to doubt your place in it,” says one staff member. But a bigger problem is that companies and private law firms are gearing up for a more aggressive FTC by trying to poach its talent. “I usually have to place a couple of FTC people in any given year,” says Lauren Drake, a partner at the Washington-based recruiting firm Macrae. “So far this year I have had 10.”

#### Limited resources force tradeoffs in enforcement decisions.

Bernard (Barry) A. Nigro Jr. et al., 21 – Chair of Fried Frank's Global Antitrust and Competition Department, former Principal Deputy Assistant Attorney General at the DOJ, with Nathaniel L. Asker and Aleksandr B. Livshits, 1/5/21. “Managing Antitrust Risk in the Biden Administration.” Fried Frank Antitrust & Competition Law Alert. https://www.friedfrank.com/siteFiles/Publications/FFAntitrustAggressiveAntitrustEnforcement01052021.pdf

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