# Doc---BCRR---Round 4

# 1NC

### CP---1NC

#### The 50 states and all relevant sub territories should prohibit unfair methods of competition by digital platforms that restrict interoperability.

### CP---1NC

forecasting counterplan---

#### The United States should only allow the continuation of unfair methods of competition by digital platforms that restrict interoperability under antitrust law only when a team of the Good Judgment Project’s “super-forecasters” has determined that the activity reduces the numerical probability of unfair methods of competition by digital platforms that restrict interoperability from an unacceptably high level.

\* The Good Judgment Project’s “Super-forecasters” are team members of the Good Judgement Project that have ended in the top 2% of forecasters tournaments, selected by Tetlock’s team.

#### It competes---the counterplan is a regulation not prohibition.

James Broaddus 50. February 6; Judge on the Kansas City Court of Appeals, Missouri; Westlaw, “City of Meadville v. Caselman,” 240 Mo. App. 1220. https://casetext.com/case/city-of-meadville-v-caselman-1

"Under power conferred on cities of the fourth class `to regulate and license' dramshops, there is no authority to wholly prohibit or suppress. Where there is mere power in a municipality to regulate in a state, with a general policy of conducting licensed saloons, authority to prohibit is excluded. The difference between regulation and prohibition is clear and well marked. The former contemplates the continuance of the subject-matter in existence or in activity. The latter implies its entire destruction or cessation.'" (Citing text writers and cases.)

#### ONLY the counterplan solves the case---the plan can’t keep up with market changes.

AMC 07. Antitrust Modernization Commission. Deborah A. Garza, Chair. Bobby R. Burchfield ,Commissioner. W. Stephen Cannon, Commissioner. Dennis W. Carlton, Commissioner. Makan Delrahim, Commissioner. Jonathan M. Jacobson, Commissioner. Jonathan R. Yarowsky, Vice-Chair. Donald G. Kempf, Jr., Commissioner. Sanford M. Litvack, Commissioner. John H. Shenefield, Commissioner. Debra A. Valentine, Commissioner. John L. Warden, Commissioner. “Report and Recommendations.” https://govinfo.library.unt.edu/amc/report\_recommendation/amc\_final\_report.pdf

To determine whether and when particular forms of business conduct may harm competition requires an understanding of the market circumstances in which they are undertaken. Antitrust agencies and the courts have long looked to economic learning for assistance in understanding market circumstances and the likely competitive effects of particular business conduct.23 Indeed, economics now provides the core foundation for much of antitrust law. Not surprisingly, as economic learning about competition has advanced over the decades, so have the contours of antitrust doctrine.

Antitrust law also must keep pace with developments in the business world. Business practices may change, especially as technological innovation and global economic integration alter the competitive forces at work in particular markets. To protect competition and consumer welfare, antitrust analysis must offer sufficient flexibility to take account of these changes, while maintaining clear and administrable rules of antitrust enforcement.

B. Periodic Assessments of the Antitrust Laws Are Advisable

The antitrust laws in the United States require ongoing evaluation and assessment to ensure they are keeping pace with both economic learning and the ever-changing economy.24 In past decades, various entities have empowered six different commissions to assess how well antitrust law operates to serve consumers. The Antitrust Modernization Commission is the seventh such commission in almost seventy years.25 Prior commissions have made recommendations about both the substance and procedure of antitrust law.

#### Flexibility is key to super forecasting competition policy---the aff locks in policy failure.

Michelle Baddeley 17. Institute for Choice, University of South Australia. Journal of Behavioral Economics for Policy, Vol. 1, No. 1, 27-31, 2017. “Experts in policy land - Insights from behavioral economics on improving experts’ advice for policy-makers”. https://sabeconomics.org/wordpress/wp-content/uploads/JBEP-1-1-4-F.pdf

Whichever side one takes on these political divides, if the modern fashion is to allow subjective, partisan opinions to trump expert advice, what are the likely implications? Is it wise to be so mistrustful of experts? Expert advice is irreplaceable. Scientific experts and academics play a crucial role in developing new findings and insights to help inform policy, with implications across the range of human activity – from health and environmental policy through to competition policy, consumer protection and financial regulation – to name just a few. But to what extent are experts objective and impartial? Is their advice really impartial and unbiased, based around a cool and calculating objective assessment of evidence, after the careful application of robust research methodologies? In practice - uncertainty, insufficient information, unreliable data or flawed analysis can limit the expert’s ability to untangle the truth, and make it difficult for the policy-maker to assess the extent to which expert advice is reliable. Robust statistical methods, careful experimental design and clear hypotheses can guide the expert but impartial advice is also compromised by a range of economic, behavioural and socio-psychological constraints, some of which may be beyond the expert’s conscious control. Heuristics, biases and social influences driving experts can have significant negative consequences for the public, especially if misleading research findings are used to guide public policy.

This paper will explore some of these influences on experts’ judgement. In Section 2, some of problems around information, risk and uncertainty are outlined; in Section 3, key economic and socio-psychological constraints are explored. Policy implications and solutions are suggested in Section 3, focussing on how we can ensure that expert advice is devised and applied in the most robust and objective ways possible.

Information, risk and uncertainty

Risk and uncertainty is an unavoidable problem, especially for the scientific research that backs up expert judgement because it is about investigating novel, poorly understood phenomena. When information is scarce, a situation is profoundly uncertainty, and/or we have had no prior experience of an event or phenomenon, we cannot quantify the risk of one event versus another. Frequency ratios capturing the incidence of similar events in the past are of no use when there have been no similar events in the past. Given uncertainty, it is not possible to tell before the fact whether experts are right or wrong. It is not like we have given them a difficult mathematical problem which we can double check ourselves using a computer or calculator. With scientific research and expert advice – there is no way to know what the truth might be, and that is why we need experts to find it. And we can only judge expert judgements with the benefit of hindsight, if at all. This is a Catch-22: we need expert evidence to judge expert evidence.

An example of how policy-makers confront these problems of uncertainty and poor information affecting expert advice is the work of the Hazardous Substances Advisory Committee (HSAC) – an advisory committee to the UK’s Department for Environment, Food and Rural Affairs. This committee focuses on another complication arising from uncertainty – the difference between a risk and a hazard. Hazards exist, they are there – but if we know where they are, we can avoid them and thereby minimize our risk. The problem comes in knowing what and where the hazards are. Scientific experts on HSAC – including a range of toxicologists, environmental scientists and biochemists, as well as social scientists – assess evidence to help to inform the UK’s regulatory policy with respect to chemicals harmful to the environment and human health. Often a key constraint is that they are asked to provide advice around the likely environmental impacts of hazardous substances such as endocrine disruptors, antiobiotics and nanomaterials – often we do not know too much about these substances and their long-term impacts, especially for innovative technologies such as nanomaterials. HSAC has therefore devised a structure for assessing the quality of evidence when information is scarce and uncertainty is endemic –spanning not only the usual scientific evidence around experiments and field observation, but also including computational modelling and anecdotal evidence (Collins et al. 2016). For experts used to analysing large data sets, the latter would seem like an anathema but when experts are facing fundamental uncertainty the types of evidence they might use must expand accordingly. If we are forced to rely on anecdote, we need to understand what distinguishes good anecdotal evidence from bad anecdotal evidence: anecdotes that are corroborated across a range of sources are more reliable than single anecdotes, for example.

Economic and socio-psychological constraints

The problems of poor information, risk and uncertainty are not about the fallibility of individuals or even differences between individuals – either in terms of their individual differences and characters, and/or their susceptibility to biases and social influences. Once we introduce these additional constraints – which reflect the characters of the experts not the nature of the evidence – the opportunities for mistakes and misleading guidance increase significantly.

Individual differences

Individual differences seem to play a role, including in terms of innate ability to make judgements about uncertain futures. Philip Tetlock conducted a study which showed that, in forecasting uncertain future events, most experts are only just better than an ordinary person guessing at random (Tetlock 2006). In a second study, however – a collaboration with Dan Gardner – he showed that some particular individuals – experts or not – are “super-forecasters” who have a particular aptitude for forecasting (Tetlock and Gardner 2015). What ideal characteristics might enable these super-forecasters to predict so well? In a complex world, we need experts who are able to understand and analyse a wide range of evidence. Do we need experts who can cover a broad range, or experts who know a narrow field very well? Linking to Isaiah Berlin’s distinction between the fox-types who have a wide but relatively superficial knowledge, and the hedgehog-types who have a deep but relatively narrow knowledge, Tetlock (2006) argues that we may prefer to be advised by foxes – who know many little things, can draw on an eclectic range of evidence and are able to improvise relatively easily when evidence shifts. The hedgehogs, who know one area very well and focus on one tradition may be too inclined to impose formulaic and inflexible solutions.

#### Binding forecasting is key to spillover---solves security.

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The greatest barrier to a clearer vision of the future is not philosophical but organizational: the potential of combining scenario planning with probabilistic forecasting means nothing if it is not implemented. On occasion, the intelligence community has used forecasting tournaments to inform its estimates, but that is only a first step. Policymakers and consumers of intelligence are the ones who must understand the importance of forecasts and incorporate them into their decisions. Too often, operational demands—the daily business of organizations, from weighty decisions to the mundane—fix attention on the current moment.

Overcoming the tyranny of the present requires high-level action and broad, sustained effort. Leaders across the U.S. government must cultivate the cognitive habits of top forecasters throughout their organizations, while also institutionalizing the imaginative processes of scenario planners. The country’s prosperity, its security, and, ultimately, its power all depend on policymakers’ ability to envision long-term futures, anticipate short-term developments, and use both projections to inform everything from the budget to grand strategy. Giving the future short shrift only shortchanges the United States.

### DA---1NC

#### Anti-trust law can’t be distinguished in specific industries. It’s enforced in generalist common law unlike regulation.

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I. GOING BEYOND ADJUDICATION FOR ANTITRUST ENFORCEMENT

Antitrust statutes are primarily enforced in court, usually through the adjudication of specific cases or settlement against the backdrop of court-made antitrust doctrine. Indeed, despite statutory authority for the FTC to issue competition rules, and despite the technical complexity of many antitrust cases, antitrust enforcement and policy in the United States has evolved primarily through precedent developed by generalist courts, not specialized agencies. 18To be sure, the Department of Justice and the FTC influence policy through the investigations they pursue and the consent decrees they reach with parties. The FTC itself adjudicates some cases, although it does so largely according to law developed in the federal courts, to which parties can appeal any FTC decision. 19Academics and other commentators have also affected the evolution of antitrust in the United States, from supporting an economic, notably price-focused framework for U.S. competition policy to sparking a rethinking of that framework in contemporary debates. As the courts have absorbed such learning, antitrust doctrine has evolved over the decades through the push and pull of precedent across the United States judicial circuits, with the Supreme Court periodically stepping in to correct, clarify, or resolve differences among the lower federal courts. Commentators often cite antitrust as a rare example of "federal common law" in the U.S. system. 20

The adjudicatory model for implementing antitrust enforcement has several key attributes, which in turn have both advantages and disadvantages. We put aside for now the question of who is adjudicating--whether it be an expert tribunal or a court of general jurisdiction, for example--and focus on three characteristics of antitrust adjudication itself.

A. Case-by-Case, Fact-Specific Approach

Complexity of underlying issues aside, adjudication is well suited to settings in which applicability of the law is contingent on case-specific facts. With the exception of the limited conduct that the antitrust laws prohibit per se, courts review most business activities through a rule of reason, under which some conduct that is illegal in one set of circumstances is allowable in [\*1918] another. 21The inquiry into liability goes beyond whether particular conduct in fact occurred (which is the extent of the inquiry into conduct that is illegal per se) and extends into a balancing of the conduct's likely effects on competition. 22The more that liability is contingent on such case-specific facts, the more difficult it is to determine liability in advance of the conduct's having taken place. Adjudication typically occurs when conduct either is imminent or has already occurred, at which point the relevant facts as to the effects of the conduct are, in principle, more readily measured. 23Such "ex post" mechanisms of enforcement can reduce the risk of over-enforcement when compared to alternative approaches, like some forms of regulation, that spell out more comprehensively in advance what conduct is illegal. 24Reducing false positives, however, may or may not be a virtue--that calculation depends on the extent to which particular adjudicative institutions and processes under-enforce by allowing harmful conduct or transactions to slip through the liability screen.

B. Slow, Usually Predictable Doctrinal Development

A second attribute of the American adjudicatory process for antitrust is stability. While antitrust doctrine has occasionally swerved abruptly over the past century, the common-law process through which antitrust law has developed usually provides clear notice that a change is coming. As a recent example, the Supreme Court's shift in *Leegin Creative Leather Products, Inc. v. PSKS. Inc*. 25from per se liability to a rule of reason for resale price maintenance likely caught few observers by surprise. 26

Antitrust adjudication's stability, like its suitability for fact-dependent situations, is potentially double-edged. Antitrust jurisprudence can be slow to adjust to changes in economic learning or changes in the underlying economy that alter the effects of a particular kind of business conduct. For [\*1919] example, nearly thirty years ago the Supreme Court in Brooke Group v. Brown & Williamson Tobacco Corp. 27required that plaintiffs claiming predatory pricing show not only prices below some measure of incremental cost, but also that the defendant could recoup its losses. 28No plaintiff has prevailed in a predatory pricing case in a U.S. federal court since. 29That outcome might not be of concern were it the case that the Supreme Court's test accurately captures the incidence of predatory pricing. 30Economic research demonstrates, however, that predatory conduct does occur and does not depend on either below-cost pricing or recoupment. 31Predation is just one area in which court-made doctrine appears out of step with relevant economic facts and knowledge. To be sure, other forces could accelerate the common-law process of doctrinal development. For example, Congress could legislate changes to the scope, presumptions, and other parameters of antitrust law in ways that would immediately alter precedent and bind the courts going forward. 32 In practice, however, such intervention is rare and unlikely, making significant lags in doctrine a reality of antitrust adjudication in the courts.

C. Market-Driven Case Selection

In the United States, most adjudicative bodies do not select the cases that come before them. To be sure, courts have jurisdictional limitations that prevent them from hearing certain kinds of cases, and doctrines exist that allow courts to reject weak or poorly conceived complaints. Beyond those mechanisms, however, independent parties decide when and whether to pursue litigation as method of relief. One potential virtue of this separation between decisionmaking and case selection is that the market can drive the focus of judicial attention. Assuming the most widespread and most troublesome anticompetitive conduct will receive the greatest investment of litigation resources, that conduct will in turn receive the most adjudication and doctrinal development.

[\*1920] Unfortunately, the separation between adjudication and case selection will not necessarily lead to an efficient match between judicial attention and the most pressing antitrust violations. In practice, even conduct that is clearly prohibited can persist when offenders think detection is difficult; one only has to look at the consistently high number of civil and criminal price fixing cases that wind up in court, even though that conduct has clearly been illegal per se for nearly a century. 33The most widespread anticompetitive conduct might not therefore be the conduct most in need of doctrinal development--it can be just the opposite, as the persistence of cartels demonstrates. 34Moreover, if the courts develop doctrine that needs revisiting, but that deters the government or private plaintiffs from filing cases, 35then the market for judicial attention to antitrust conduct will not work well dynamically; once doctrine is settled, there may be no mechanism outside of legislation or regulatory intervention to drive doctrinal change. We return to this issue below.

D. Generalists versus Industry Experts

Returning to an issue we put aside earlier, who is doing the adjudication can matter for substantive outcomes. In U.S. antitrust law, that adjudication has occurred, at least ultimately, in generalist federal courts. That institutional locus might well make sense given the wide variety of conduct, industries, and factual circumstances that antitrust cases present. However, as specific industries come to pose particular challenges for antitrust enforcement, the case for more specialized enforcement decisionmakers becomes stronger. Traditionally, where detailed, industry-specific knowledge is required to make sound competition policy decisions, Congress has assigned authority over those decisions, at least in part, to industry-specific regulatory agencies. Thus, the Securities and Exchange Commission has authority over competitive conduct in key financial sectors. 36The FCC has parallel authority with the Department of Justice (DOJ) over telecommunications mergers and sole authority to establish terms for competitive entry into various telecommunications markets. 37State [\*1921] regulators govern entry into hospital markets through Certifications of Public Need. 38The federal courts have increasingly safeguarded the domain of industry specific regulators over competition issues even when agency decisions might be in tension with antitrust law. 39

As antitrust enforcement focuses on distinct challenges posed by a particular industry, whether digital platforms, pharmaceuticals, or something else, expert and specialized knowledge becomes even more essential to making good enforcement decisions. Under current law and enforcement frameworks, there is no systematic way to bring such specialization into the ultimate adjudication of antitrust cases in industries not already covered by specific, competition-related, regulatory statutes. To be sure, the FTC and DOJ have divisions that specialize in various industrial sectors in which they have considerable expertise. Those divisions bring that expertise into their review of conduct and transactions, but neither the FTC nor DOJ has ultimate adjudicative authority over the cases they choose to litigate. The DOJ must go to federal court to seek enforcement. The FTC can opt for an administrative enforcement mechanism with the Commission itself sitting in appellate review of initial adjudication by an administrative law judge. The Commission's decision is, however, subject to review by federal appellate courts, which have not hesitated to reverse the agency's decisions. 40 The result is that, even when agencies have brought specific industry expertise into antitrust enforcement, doctrinal application and resolution still proceeds through the common-law process of adjudication by generalist judges.

E. Tradeoffs Inherent in the Adjudicatory Approach to Antitrust

As the foregoing discussion suggests, the ex post case-by-case approach, slow doctrinal evolution, and case selection mechanism of antitrust adjudication have potential advantages and disadvantages. The tradeoffs become particularly clear through the interaction of those three characteristics.

[\*1922] Adjudication may mitigate the rate of false positives or false negatives obtained through enforcement, as proceeding case-by-case is less likely to bring about those results than are general rules that impose limits on business conduct in advance, regardless of specific circumstances. Broad ex ante specifications could prohibit beneficial or harmless conduct, and narrow ex ante specifications could fail to prevent anticompetitive practices. As a decisionmaking process moves from strict ex ante prescription to pure case-by-case adjudication, particular facts and circumstances increasingly predominate over generic categorization of conduct. 41In principle, the movement along that spectrum enables the decisionmaker to avoid under-inclusiveness or over-inclusiveness of categorical rules. 42

The extent to which an adjudicator actually succeeds in reducing enforcement errors in either direction depends on the doctrine and precedent through which it evaluates the case-specific evidence. Doctrine and precedent will determine how a court allocates burdens, prioritizes facts, and weighs presumptions in evaluating the legality of conduct. If precedent provides mistaken guidance on those factors, case-specific adjudication might do no better a job than ex ante prohibitions in avoiding errors or bias toward either under or over-enforcement. For this reason, the evolutionary pace of doctrinal development through antitrust adjudication is very important. Where that evolution has been toward convergence with state-of-the-art analysis and evidence as to the effects of conduct, doctrinal stability is a virtue. Reasonable people disagree over the Supreme Court's movement from per se illegality to rule of reason treatment of vertical price restraints, as Justice Breyer's dissent in Leegin demonstrates. 43 The decision in that case nonetheless drew on a body of legal and economic analysis that, over decades, had continually narrowed the application of per se rules to vertical conduct and led logically (even if some might argue incorrectly) to the majority's conclusion. 44Many commentators might therefore say Leegin is a good example of where the evolution of doctrine through adjudication worked well: stakeholders had notice and the doctrine moved in an internally consistent direction. While it is debatable whether the per se rule against restraints on [\*1923] intra-brand competition has in recent years led to over-enforcement, there is a good case that it had done so in the past, 45so that the doctrine plausibly moved in an error-reducing direction.

However, where doctrine gets on the wrong track, the application of precedent will perpetuate rather than reduce enforcement errors. In the case of predation, for example, there is a good argument that, in the light of current economic knowledge, the Brooke Group decision has led to underenforcement. 46The potential case-by-case advantages of adjudication are lost where judicial precedent renders important facts and circumstances irrelevant. In such cases, the relatively slow process of doctrinal correction through common law evolution is harmful to sound antitrust enforcement.

The discussion above shows that the error-reducing potential of a case-by-case, adjudicatory approach to antitrust enforcement depends heavily on the actual doctrine courts apply and on the process by which that doctrine evolves. Similarly, whether case selection in an adjudicatory approach in fact directs judicial attention to the conduct that most warrants oversight depends on existing doctrine and precedent. It may well be that the conduct doing the most harm is also the conduct for which the courts impose the highest burdens of proof on plaintiffs. The deterrent effect of those burdens likely leads to fewer cases than the conduct's actual effects warrant. 47Similarly, doctrine that too readily imposes liability could have the opposite effect: lower barriers for plaintiffs would lead to too many cases and more devotion of judicial resources than the conduct deserves. 48Like error-reduction, the distribution of antitrust cases brought for adjudication depends heavily on the state of the doctrine and on the ability of the common law process to correct course where necessary.

The potential disadvantages of antitrust adjudication by generalist courts raise the question of whether a different approach might be preferable, specifically with regard to digital platforms. Digital platforms present relatively novel challenges. Considering the tenuous fit between some [\*1924] potential theories of harm and current antitrust doctrine, the complexity of the underlying technical issues in antitrust cases, and the interrelatedness of those issues and adjacent policy goals, a more informed, comprehensive approach coordinated by an expert regulatory agency might foster more advantages than does the exclusive resort to traditional antitrust adjudication. However, before we turn to the form such regulation might take, we briefly identify some general principles for such regulation.

#### Unpredictable legal shifts wreck business confidence.

Sarah Chaney Cambon 21, Reporter on The Wall Street Journal's Economics Team, BA in Business Journalism from the University of North Carolina-Chapel Hill, “Capital-Spending Surge Further Lifts Economic Recovery”, Wall Street Journal, 6/27/2021, https://www.wsj.com/articles/capital-spending-surge-further-lifts-economic-recovery-11624798800

Business investment is emerging as a powerful source of U.S. economic growth that will likely help sustain the recovery.

Companies are ramping up orders for computers, machinery and software as they grow more confident in the outlook.

Nonresidential fixed investment, a proxy for business spending, rose at a seasonally adjusted annual rate of 11.7% in the first quarter, led by growth in software and tech-equipment spending, according to the Commerce Department. Business investment also logged double-digit gains in the third and fourth quarters last year after falling during pandemic-related shutdowns. It is now higher than its pre-pandemic peak.

Orders for nondefense capital goods excluding aircraft, another measure for business investment, are near the highest levels for records tracing back to the 1990s, separate Commerce Department figures show.

“Business investment has really been an important engine powering the U.S. economic recovery,” said Robert Rosener, senior U.S. economist at Morgan Stanley. “In our outlook for the economy, it’s certainly one of the bright spots.”

Consumer spending, which accounts for about two-thirds of economic output, is driving the early stages of the recovery. Americans, flush with savings and government stimulus checks, are spending more on goods and services, which they shunned for much of the pandemic.

Robust capital investment will be key to ensuring that the recovery maintains strength after the spending boost from fiscal stimulus and business reopenings eventually fades, according to some economists.

Rising business investment helps fuel economic output. It also lifts worker productivity, or output per hour. That metric grew at a sluggish pace throughout the last economic expansion but is now showing signs of resurgence.

The recovery in business investment is shaping up to be much stronger than in the years following the 2007-09 recession. “The events especially in late ’08, early ’09 put a lot of businesses really close to the edge,” said Phil Suttle, founder of Suttle Economics. “I think a lot of them said, ‘We’ve just got to be really cautious for a long while.’”

Businesses appear to be less risk-averse now, he said.

After the financial crisis, businesses grew by adding workers, rather than investing in capital. Hiring was more attractive than capital spending because labor was abundant and relatively cheap. Now the supply of workers is tight. Companies are raising pay to lure employees. As a result, many firms have more incentive to grow by investing in capital.

Economists at Morgan Stanley predict that U.S. capital spending will rise to 116% of prerecession levels after three years. By comparison, investment took 10 years to reach those levels once the 2007-09 recession hit.

Company executives are increasingly confident in the economy’s trajectory. The Business Roundtable’s economic-outlook index—a composite of large companies’ plans for hiring and spending, as well as sales projections—increased by nine points in the second quarter to 116, just below 2018’s record high, according to a survey conducted between May 25 and June 9. In the second quarter, the share of companies planning to boost capital investment increased to 59% from 57% in the first.

“We’re seeing really strong reopening demand, and a lot of times capital investment follows that,” said Joe Song, senior U.S. economist at BofA Securities.

Mr. Song added that less uncertainty regarding trade tensions between the U.S. and China should further underpin business confidence and investment. “At the very least, businesses will understand the strategy that the Biden administration is trying to follow and will be able to plan around that,” he said.

#### Economic decline cascades and goes nuclear---their defense doesn’t assume post-COVID shifts.

Dr. Mathew Maavak 21, PhD in Risk Foresight from the Universiti Teknologi Malaysia, External Researcher (PLATBIDAFO) at the Kazimieras Simonavicius University, Expert and Regular Commentator on Risk-Related Geostrategic Issues at the Russian International Affairs Council, “Horizon 2030: Will Emerging Risks Unravel Our Global Systems?”, Salus Journal – The Australian Journal for Law Enforcement, Security and Intelligence Professionals, Volume 9, Number 1, p. 2-8

Various scholars and institutions regard global social instability as the greatest threat facing this decade. The catalyst has been postulated to be a Second Great Depression which, in turn, will have profound implications for global security and national integrity. This paper, written from a broad systems perspective, illustrates how emerging risks are getting more complex and intertwined; blurring boundaries between the economic, environmental, geopolitical, societal and technological taxonomy used by the World Economic Forum for its annual global risk forecasts. Tight couplings in our global systems have also enabled risks accrued in one area to snowball into a full-blown crisis elsewhere. The COVID-19 pandemic and its socioeconomic fallouts exemplify this systemic chain-reaction. Onceinexorable forces of globalization are rupturing as the current global system can no longer be sustained due to poor governance and runaway wealth fractionation. The coronavirus pandemic is also enabling Big Tech to expropriate the levers of governments and mass communications worldwide. This paper concludes by highlighting how this development poses a dilemma for security professionals.

Key Words: Global Systems, Emergence, VUCA, COVID-9, Social Instability, Big Tech, Great Reset

INTRODUCTION

The new decade is witnessing rising volatility across global systems. Pick any random “system” today and chart out its trajectory: Are our education systems becoming more robust and affordable? What about food security? Are our healthcare systems improving? Are our pension systems sound? Wherever one looks, there are dark clouds gathering on a global horizon marked by volatility, uncertainty, complexity and ambiguity (VUCA).

But what exactly is a global system? Our planet itself is an autonomous and selfsustaining mega-system, marked by periodic cycles and elemental vagaries. Human activities within however are not system isolates as our banking, utility, farming, healthcare and retail sectors etc. are increasingly entwined. Risks accrued in one system may cascade into an unforeseen crisis within and/or without (Choo, Smith & McCusker, 2007). Scholars call this phenomenon “emergence”; one where the behaviour of intersecting systems is determined by complex and largely invisible interactions at the substratum (Goldstein, 1999; Holland, 1998).

The ongoing COVID-19 pandemic is a case in point. While experts remain divided over the source and morphology of the virus, the contagion has ramified into a global health crisis and supply chain nightmare. It is also tilting the geopolitical balance. China is the largest exporter of intermediate products, and had generated nearly 20% of global imports in 2015 alone (Cousin, 2020). The pharmaceutical sector is particularly vulnerable. Nearly “85% of medicines in the U.S. strategic national stockpile” sources components from China (Owens, 2020).

An initial run on respiratory masks has now been eclipsed by rowdy queues at supermarkets and the bankruptcy of small businesses. The entire global population – save for major pockets such as Sweden, Belarus, Taiwan and Japan – have been subjected to cyclical lockdowns and quarantines. Never before in history have humans faced such a systemic, borderless calamity.

COVID-19 represents a classic emergent crisis that necessitates real-time response and adaptivity in a real-time world, particularly since the global Just-in-Time (JIT) production and delivery system serves as both an enabler and vector for transboundary risks. From a systems thinking perspective, emerging risk management should therefore address a whole spectrum of activity across the economic, environmental, geopolitical, societal and technological (EEGST) taxonomy. Every emerging threat can be slotted into this taxonomy – a reason why it is used by the World Economic Forum (WEF) for its annual global risk exercises (Maavak, 2019a). As traditional forces of globalization unravel, security professionals should take cognizance of emerging threats through a systems thinking approach.

METHODOLOGY

An EEGST sectional breakdown was adopted to illustrate a sampling of extreme risks facing the world for the 2020-2030 decade. The transcendental quality of emerging risks, as outlined on Figure 1, below, was primarily informed by the following pillars of systems thinking (Rickards, 2020):

• Diminishing diversity (or increasing homogeneity) of actors in the global system (Boli & Thomas, 1997; Meyer, 2000; Young et al, 2006);

• Interconnections in the global system (Homer-Dixon et al, 2015; Lee & Preston, 2012);

• Interactions of actors, events and components in the global system (Buldyrev et al, 2010; Bashan et al, 2013; Homer-Dixon et al, 2015); and

• Adaptive qualities in particular systems (Bodin & Norberg, 2005; Scheffer et al, 2012) Since scholastic material on this topic remains somewhat inchoate, this paper buttresses many of its contentions through secondary (i.e. news/institutional) sources.

ECONOMY

According to Professor Stanislaw Drozdz (2018) of the Polish Academy of Sciences, “a global financial crash of a previously unprecedented scale is highly probable” by the mid- 2020s. This will lead to a trickle-down meltdown, impacting all areas of human activity.

The economist John Mauldin (2018) similarly warns that the “2020s might be the worst decade in US history” and may lead to a Second Great Depression. Other forecasts are equally alarming. According to the International Institute of Finance, global debt may have surpassed $255 trillion by 2020 (IIF, 2019). Yet another study revealed that global debts and liabilities amounted to a staggering $2.5 quadrillion (Ausman, 2018). The reader should note that these figures were tabulated before the COVID-19 outbreak.

The IMF singles out widening income inequality as the trigger for the next Great Depression (Georgieva, 2020). The wealthiest 1% now own more than twice as much wealth as 6.9 billion people (Coffey et al, 2020) and this chasm is widening with each passing month. COVID-19 had, in fact, boosted global billionaire wealth to an unprecedented $10.2 trillion by July 2020 (UBS-PWC, 2020). Global GDP, worth $88 trillion in 2019, may have contracted by 5.2% in 2020 (World Bank, 2020).

As the Greek historian Plutarch warned in the 1st century AD: “An imbalance between rich and poor is the oldest and most fatal ailment of all republics” (Mauldin, 2014). The stability of a society, as Aristotle argued even earlier, depends on a robust middle element or middle class. At the rate the global middle class is facing catastrophic debt and unemployment levels, widespread social disaffection may morph into outright anarchy (Maavak, 2012; DCDC, 2007).

Economic stressors, in transcendent VUCA fashion, may also induce radical geopolitical realignments. Bullions now carry more weight than NATO’s security guarantees in Eastern Europe. After Poland repatriated 100 tons of gold from the Bank of England in 2019, Slovakia, Serbia and Hungary quickly followed suit.

According to former Slovak Premier Robert Fico, this erosion in regional trust was based on historical precedents – in particular the 1938 Munich Agreement which ceded Czechoslovakia’s Sudetenland to Nazi Germany. As Fico reiterated (Dudik & Tomek, 2019):

“You can hardly trust even the closest allies after the Munich Agreement… I guarantee that if something happens, we won’t see a single gram of this (offshore-held) gold. Let’s do it (repatriation) as quickly as possible.” (Parenthesis added by author).

President Aleksandar Vucic of Serbia (a non-NATO nation) justified his central bank’s gold-repatriation program by hinting at economic headwinds ahead: “We see in which direction the crisis in the world is moving” (Dudik & Tomek, 2019). Indeed, with two global Titanics – the United States and China – set on a collision course with a quadrillions-denominated iceberg in the middle, and a viral outbreak on its tip, the seismic ripples will be felt far, wide and for a considerable period.

A reality check is nonetheless needed here: Can additional bullions realistically circumvallate the economies of 80 million plus peoples in these Eastern European nations, worth a collective $1.8 trillion by purchasing power parity? Gold however is a potent psychological symbol as it represents national sovereignty and economic reassurance in a potentially hyperinflationary world. The portents are clear: The current global economic system will be weakened by rising nationalism and autarkic demands. Much uncertainty remains ahead. Mauldin (2018) proposes the introduction of Old Testament-style debt jubilees to facilitate gradual national recoveries. The World Economic Forum, on the other hand, has long proposed a “Great Reset” by 2030; a socialist utopia where “you’ll own nothing and you’ll be happy” (WEF, 2016).

In the final analysis, COVID-19 is not the root cause of the current global economic turmoil; it is merely an accelerant to a burning house of cards that was left smouldering since the 2008 Great Recession (Maavak, 2020a). We also see how the four main pillars of systems thinking (diversity, interconnectivity, interactivity and “adaptivity”) form the mise en scene in a VUCA decade.

ENVIRONMENTAL

What happens to the environment when our economies implode? Think of a debt-laden workforce at sensitive nuclear and chemical plants, along with a concomitant surge in industrial accidents? Economic stressors, workforce demoralization and rampant profiteering – rather than manmade climate change – arguably pose the biggest threats to the environment. In a WEF report, Buehler et al (2017) made the following pre-COVID-19 observation:

The ILO estimates that the annual cost to the global economy from accidents and work-related diseases alone is a staggering $3 trillion. Moreover, a recent report suggests the world’s 3.2 billion workers are increasingly unwell, with the vast majority facing significant economic insecurity: 77% work in part-time, temporary, “vulnerable” or unpaid jobs.

Shouldn’t this phenomenon be better categorized as a societal or economic risk rather than an environmental one? In line with the systems thinking approach, however, global risks can no longer be boxed into a taxonomical silo. Frazzled workforces may precipitate another Bhopal (1984), Chernobyl (1986), Deepwater Horizon (2010) or Flint water crisis (2014). These disasters were notably not the result of manmade climate change. Neither was the Fukushima nuclear disaster (2011) nor the Indian Ocean tsunami (2004). Indeed, the combustion of a long-overlooked cargo of 2,750 tonnes of ammonium nitrate had nearly levelled the city of Beirut, Lebanon, on Aug 4 2020. The explosion left 204 dead; 7,500 injured; US$15 billion in property damages; and an estimated 300,000 people homeless (Urbina, 2020). The environmental costs have yet to be adequately tabulated.

Environmental disasters are more attributable to Black Swan events, systems breakdowns and corporate greed rather than to mundane human activity.

Our JIT world aggravates the cascading potential of risks (Korowicz, 2012). Production and delivery delays, caused by the COVID-19 outbreak, will eventually require industrial overcompensation. This will further stress senior executives, workers, machines and a variety of computerized systems. The trickle-down effects will likely include substandard products, contaminated food and a general lowering in health and safety standards (Maavak, 2019a). Unpaid or demoralized sanitation workers may also resort to indiscriminate waste dumping. Many cities across the United States (and elsewhere in the world) are no longer recycling wastes due to prohibitive costs in the global corona-economy (Liacko, 2021).

Even in good times, strict protocols on waste disposals were routinely ignored. While Sweden championed the global climate change narrative, its clothing flagship H&M was busy covering up toxic effluences disgorged by vendors along the Citarum River in Java, Indonesia. As a result, countless children among 14 million Indonesians straddling the “world’s most polluted river” began to suffer from dermatitis, intestinal problems, developmental disorders, renal failure, chronic bronchitis and cancer (DW, 2020). It is also in cauldrons like the Citarum River where pathogens may mutate with emergent ramifications.

On an equally alarming note, depressed economic conditions have traditionally provided a waste disposal boon for organized crime elements. Throughout 1980s, the Calabriabased ‘Ndrangheta mafia – in collusion with governments in Europe and North America – began to dump radioactive wastes along the coast of Somalia. Reeling from pollution and revenue loss, Somali fisherman eventually resorted to mass piracy (Knaup, 2008).

The coast of Somalia is now a maritime hotspot, and exemplifies an entwined form of economic-environmental-geopolitical-societal emergence. In a VUCA world, indiscriminate waste dumping can unexpectedly morph into a Black Hawk Down incident. The laws of unintended consequences are governed by actors, interconnections, interactions and adaptations in a system under study – as outlined in the methodology section.

Environmentally-devastating industrial sabotages – whether by disgruntled workers, industrial competitors, ideological maniacs or terrorist groups – cannot be discounted in a VUCA world. Immiserated societies, in stark defiance of climate change diktats, may resort to dirty coal plants and wood stoves for survival. Interlinked ecosystems, particularly water resources, may be hijacked by nationalist sentiments. The environmental fallouts of critical infrastructure (CI) breakdowns loom like a Sword of Damocles over this decade.

GEOPOLITICAL

The primary catalyst behind WWII was the Great Depression. Since history often repeats itself, expect familiar bogeymen to reappear in societies roiling with impoverishment and ideological clefts. Anti-Semitism – a societal risk on its own – may reach alarming proportions in the West (Reuters, 2019), possibly forcing Israel to undertake reprisal operations inside allied nations. If that happens, how will affected nations react? Will security resources be reallocated to protect certain minorities (or the Top 1%) while larger segments of society are exposed to restive forces? Balloon effects like these present a classic VUCA problematic.

Contemporary geopolitical risks include a possible Iran-Israel war; US-China military confrontation over Taiwan or the South China Sea; North Korean proliferation of nuclear and missile technologies; an India-Pakistan nuclear war; an Iranian closure of the Straits of Hormuz; fundamentalist-driven implosion in the Islamic world; or a nuclear confrontation between NATO and Russia. Fears that the Jan 3 2020 assassination of Iranian Maj. Gen. Qasem Soleimani might lead to WWIII were grossly overblown. From a systems perspective, the killing of Soleimani did not fundamentally change the actor-interconnection-interaction adaptivity equation in the Middle East. Soleimani was simply a cog who got replaced.

### T---1NC

Prohibitions

#### Prohibitions are distinct from remedies that only block the anticompetitive elements of a practice, rather than the practice itself.

Jo Seldeslachts et al. ‘7. Professor of Industrial Organization at KU Leuven and a Senior Research Fellow at DIW Berlin, with Joseph A. Clougherty and Pedro Pita Barros. “Remedy for now but prohibit for tomorrow: the deterrence effects of merger policy tools.” https://www.ssoar.info/ssoar/bitstream/handle/document/25862/ssoar-2007-seldeslachts\_et\_al-remedy\_for\_now\_but\_prohibit.pdf;jsessionid=A244005110FDB5816E0347D9F1B75436?sequence=1

Let us now think about the differences between the two antitrust actions of prohibitions and remedies.7 In the case of a prohibition, the penalty for proposing a merger with significant anti-competitive problems involves the full prohibition of the merger: both the pro-competitive and the anti-competitive profits for merging firms are negated by the prohibition. The throwing out of the pro-competitive profits along with the anti-competitive profits is important, as this brings about the punitive measure that Posner (1970) acknowledges as being crucial for deterrence. The big difference between remedies and prohibitions is that remedies attempt to identify and eliminate the anti-competitive elements of a merger. In essence, the merging firms are able to hold on to the pro-competitive elements of the merger—so they keep (ΠPC), but the anti-competitive elements of the merger (ΠAC) are negated by the remedial action. If an antitrust authority imposes remedies, then the disincentive for firms to propose anti-competitive mergers is clearly lower. In short, prohibitions seemingly involve more deterrence than do remedies, as prohibitions represent larger punishments.

#### Business practices are ongoing conduct defined by the behaviors of many market participants

Kerry Lynn Macintosh 97. Associate Professor of Law, Santa Clara University School of Law. B.A. 1978, Pomona College; J.D. 1982, Stanford University, “Liberty, Trade, and the Uniform Commercial Code: When Should Default Rules Be Based On Business Practices?,” 38 Wm. & Mary L. Rev. 1465, Lexis.

These new and revised articles reflect a strong trend toward choosing default rules 4 that codify existing business practices. 5 [FOOTNOTE 5 BEGINS] In this Article, the term "business practices" is used to refer to practices that emerge over time as countless market participants exercise their freedom to engage in profitable transactions. For an account of the evolution of business practices, see infra Part II. As used here, "business practices" is broader and less technical than "trade usage," which the Code narrowly defines as "any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question." U.C.C. 1-205(2). [FOOTNOTE 5 ENDS] This is particularly true of the recent revisions to Articles 3 (Negotiable Instruments), 4 (Bank Deposits and Collections) and 5 (Letters of Credit).

#### Violation: The plan only increases behavioral remedies that target anticompetitive aspects of the practice---topical affs must increase prohibitions on the practices themselves.

#### Vote neg for limits and ground---infinite behavioral remedies and no link uniqueness for offense.

### DA---1NC

FTC

#### FTC focused on supply chain investigation now---key to solve the crisis.

The Strategic Sourceror 12/14/21. Leading industry blog that focuses on providing news, tips, and best practices for a variety of procurement, supply chain, and strategic sourcing categories. “FTC Seeks Supply Chain Data From Major Retailers, Suppliers.” https://www.strategicsourceror.com/2021/12/ftc-seeks-supply-chain-data-from-major.html

Just as the supply chain is made up of many players and contributors, the bottlenecks that currently exist are a product of many factors. In an attempt to identify the root causes of the congestion, the Federal Trade Commission is getting involved.

As the agency announced in a prepared statement, the FTC has formally called upon several household-name retailers and suppliers to turn over all their internal documents and data that relate to supply chain management. These companies include Walmart — the world's largest employer — Proctor & Gamble, Amazon and Associated Wholesale Grocers Incorporated, among others. In a 4-0 vote, the commission that comprises the FTC was unanimous in its decision to issue the order to the aforementioned companies.

Lina Khan, chairperson for the FTC, noted the inquiry is designed to get a better understanding of where the supply chain bottlenecks exist and how to best resolve them.

"The FTC has a long history of pursuing market studies to deepen our understanding of economic conditions and business conduct, and we should continue to make nimble and timely use of these information-gathering tools and authorities," Khan said.

The order is designed to inform a study that the FTC is currently putting together related to the ongoing supply chain challenges affecting the global economy. Khan noted that the 6(b) study — the title deriving from Section 6(b) of the FTC Act, which authorizes the agency to conduct such investigations — is meant to "shed light on market conditions and business practices" that may have exacerbated the disruptions or contributed to added instability.

#### 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.

#### Supply chain shortage wrecks ag.

Deann Gayman 21. News & Public Relations Writer/Editor Office of University Communication University of Nebraska–Lincoln, 10/25/21. “Supply chain crunches affecting agriculture — from farm to table.” https://news.unl.edu/newsrooms/today/article/supply-chain-crunches-affecting-agriculture-from-farm-to-table/

Just as consumers are feeling the supply chain headaches, so too are farmers, food processors and shelf stockers. Nearly everything from fertilizer for fields, feed ingredients for livestock to harvesting fresh produce has been impacted by shortages that have slowed the supply chain to a crawl.

Erkut Sönmez, associate professor of supply chain management and analytics at the University of Nebraska–Lincoln, said these issues are not going to go away anytime soon, due to a number of factors. Supply chains are complex and even just one issue going wrong can impact the rest of the process.

“What we are experiencing currently is a perfect storm, as we are having both supply shocks and demand shocks simultaneously in several different industries,” Sönmez said. “The disruptions to the agricultural supply chains are more apparent and important compared to other supply chains. On one side, we have a shortage of food supply while people are looking for food, and on the other, we have food actually rotting or going bad in containers in some parts of the world.”

Sönmez has been following the ag supply chain closely. He said capacity limitations exist from the beginning of the supply chain to the end.

“For example, in terms of farmers, they have been seeing significant labor shortages, especially in fresh produce,” he said. “Millions of pounds of fresh produce are not being harvested. This was a significant problem even before the pandemic, and with the current labor shortages (it has gotten worse).”

Producers are also experiencing shortages of raw materials, such as amino acids for livestock feed and glyphosate for herbicide, making their inputs more expensive. In addition, farmers have increasing concerns of not being able to repair their equipment in the middle of the harvest season due to a substantial spare parts shortage that has been intensified by ongoing labor strikes.

At the end of the supply chain, grocers are experiencing product stockouts frequently.

Sönmez said the biggest problems are in transportation. Consumers are likely to see more price increases in food, due to rising freight prices and other issues. Moving raw materials, as well as fresh produce, has become significantly more expensive. Rail and truck deliveries have slowed also because of the labor shortage that is hitting nearly every economic sector.

Another major problem, amplified by the pandemic, has been the inflexibility of plants that process some of the food consumers buy. Sönmez explained that most plants are designed to handle specific types of food and can’t switch when demand changes.

**Food insecurity causes conflict and war---continued US leadership is key and no one fills the vacuum**

**Flowers**, director of the Global Food Security Project and the Humanitarian Agenda at the Center for Strategic and International Studies (CSIS), **‘18**

(Kimberly, “Keeping it Stable: The Connection Between Hunger and Conflict,” January 31, <https://www.georgetownjournalofinternationalaffairs.org/online-edition/2018/1/31/keeping-it-stable-the-connection-between-hunger-and-conflict)>

Although achieving this SDG’s targets in totality is unlikely, a global focus on reducing poverty, malnutrition, and hunger around the world **remains essential** both as a universal moral value in a world of inequalities, and as an important contributor to economic growth and **national security**. The United States has been a **global leader** in **addressing the root causes** of hunger and poverty through **agricultural development**, including President Obama’s leadership role in creating the L’Aquila Initiative at the 2009 G8 summit in Italy. The initiative emerged in **response to a food price crisis** and resulted in a promise by donors to provide $22 billion in agricultural development assistance over three years.

It is **more critical now than ever** for leaders within the Trump administration to continue to leverage that progress, starting with gaining a better understanding of the complexity of global food insecurity and its inherent connection with conflict. As food insecurity is both a cause and a consequence of conflict, addressing food insecurity goes well beyond a moral obligation; **it is a national security imperative.**

A lack of access to food can **spark unrest** among civilian populations, particularly when triggered by food **price spikes**. Hungry populations are more likely to express their discontent with unresponsive or corrupt leadership, perpetuating a **cycle of political instability** and further undermining long-term economic development. In addition, governments and non-state actors alike can **use food as a strategic instrument of war**, as witnessed in instances spanning from Sudan’s civil conflict in the 1990s to President Bashar al-Assad’s war-torn Syria today. In Syria, all sides have used food as a tool to **control** and **expel** populations. ISIS has used food resources as both a source of **funding** and a lure for **recruitment**. Food **weaponization** further **underscores the importance of United States** action to protect food security abroad and recognize strategies employed to transform a basic necessity into a military tool.

Today, between 1.2 and 1.5 billion people live in fragile, conflict-ridden states. These conflicts have pushed over 56 million people into crisis and emergency levels of food insecurity. The U.N. estimates that 65 million people are internally displaced within their own countries or are refugees in other countries. These numbers continue to rise as conflicts and violence **escalate across the world,** in countries like **Yemen**, South **Sudan**, and **Syria**, causing social and economic devastation. Meanwhile, the number of people dependent on humanitarian assistance has mushroomed. Projections indicate that by 2030, more than two-thirds of the world’s poor could be living in fragile countries.

The international community is increasingly recognizing the **linkages** between **food insecurity** and **political instability.** Sharp rises in global food prices in 2007 and 2008 sparked riots and street demonstrations in more than 40 countries across the world. Since political leaders started paying attention to this connection, there has been notable progress in increasing international attention and funding to address the root causes of hunger and poverty. The United States has dedicated roughly $1 billion to agricultural development since 2010 through its global food security programs. Thanks to the bipartisan Global Food Security Act that passed in July 2016, multiple U.S. agencies are implementing a global food security strategy that reduces poverty, bolsters resilience, and improves nutrition.

Even the U.S. intelligence community has noticed food security challenges. In November 2015, the National Intelligence Council released an assessment that linked food insecurity to political instability and conflict. The report states that the overall risk of food insecurity in many countries, **compounded** by demographic shifts and constraints on key resources such as land and water, **will increase** during the next decade. The assessment concludes that in some countries, declining food security will contribute to social disruptions and **large-scale political instability** or conflict. The intelligence community’s highlighting of the importance of food security as a diplomacy tool and security strategy broadens the number of stakeholders who are tracking, responding to, and mitigating food insecurity. It is no longer solely a focus for policymakers in the development space.

After nearly a decade of progress, global hunger is again on the rise. A U.N. report on food security and nutrition released last year estimates that 815 million people, or 11 percent of the global population, are chronically malnourished, an increase of nearly 40 million people over the previous year. Conflict and climate change are the two primary causes of this reversed trend. More than half of those experiencing extreme hunger live in countries affected by protracted conflict. Droughts and natural disasters also pose a serious threat to food security, particularly to smallholder farmers vulnerable to a volatile climate.

The 2017 State of Food and Agriculture report explains that conflict and climate change are responsible for rising global hunger levels. Smallholder farmers around the world will be forced to adjust to changing rainfall patterns and severe droughts and floods, which will directly impact their crops and incomes. Many weeds, pests, and pathogens are influenced by climate and thrive in warm conditions. Severe floods can wipe out fields and block market transportation routes, reducing smallholders’ abilities to maintain a sustainable income. Researchers, including those at the National Academies of Science, conclude that human-induced climate change and drought is one of the root causes of Syria’s conflict. Climate change thus places an added burden on countries with limited resources already struggling to feed their populations, as declining agricultural growth and incomes can create displacement and heighten hunger.

Food insecurity and climate change are not the sole cause of the conflict in Syria, but their contribution to the country’s instability cannot be ignored. Investing in international development programs and humanitarian **assistance** that fosters agricultural-led growth and **strengthens the resilience** of vulnerable people can **create peace**, improve lives, and **reduce conflict.** U.S. foreign policy priorities should include strengthening the health and prosperity of those less fortunate before a crisis occurs because our investments can help prevent a crisis in the first place. As Former Secretary of Defense Robert M. Gates said, “Development is a lot cheaper than sending soldiers.”

### CP---1NC

#### Text: The United States federal government should:

#### define unfair methods of competition by digital platforms that restrict interoperability as a threat to national security

#### Substantially increase investment in internet infrastructure in low-income areas, and skills and capital financing

#### Establish free public Wi-Fi

#### Invest in global efforts to increase internet access, increase broadband service, and promote managerial technology training

#### create and invest in an artificial intelligence-based counter-disinformation framework

#### develop an offensive and defensive strategy to address digital authoritarianism.

#### Solves the aff---avoids FTC

Richard M. Steuer 17. Member of the New York Bar. "The Horizons of Antitrust." St. John's Law Review, vol. 91, no. 1, Spring 2017, p. 177-210. HeinOnline.

As described earlier, some countries assign their competition agencies responsibility for assessing and weighing not only consumer welfare, but other goals as well. This can be daunting, but every town council and zoning board routinely faces the challenge of weighing competing goals, usually with far less analytical support.8 ' Nevertheless, the arguments against assigning competition agencies authority for applying other goals are that these agencies are ill equipped to perform non-economic analysis, and that such an approach would concentrate too much discretion within the competition authorities. If, for instance, the Federal Trade Commission were tasked with conducting a "net benefit" analysis, considering all the goals discussed earlier, it would require greater resources. It also would need the political strength to withstand the criticism it would inevitably attract year in and year out from disappointed parties and their supporters. Some countries, such as Canada and Australia, have established authorities separate from competition authorities to oversee foreign investment, applying a wide variety of goals either apart from consumer welfare or, as in Australia, including consumer welfare. 82 A model like that adopted in Australia would contemplate the creation of a foreign investment review board to advise a cabinet member or the president, who in turn would have authority to disapprove foreign investments, applying a "national interest" or "net benefit" test. If such an arm of government were assigned responsibility in the United States for balancing all these goals in the context of foreign investment, who has the breadth of experience, depth of wisdom, and political respect to make such judgments? The National Economic Council, as has been suggested by the Center for American Progress?" Would its determination be subject to judicial review, and under what standard? What about expanding the responsibilities of CFIUS, as proposed under the Foreign Investment and Economic Security bill,' to apply a "net benefit" test to foreign acquisitions of control regardless of whether those acquisitions pose a threat to national security? Under that proposal, the Committee's determination would be subject to review by the President, but otherwise would be nonreviewable. What about creating a new body, modeled on Australia's Foreign Investment Review Board? How would it be composed and who would appoint its members? Would it be modeled on the Federal Trade Commission, with members from more than one political party serving fixed terms or would it be reconstituted by each administration, like the Council of Economic Advisors? Who would have the ultimate responsibility-the Treasury Secretary? The Commerce Secretary? The President? What would be the threshold for review? Would judicial review be possible and, if so, under what standard? The simplest approach might be to expand the mission of CFIUS by defining "national security" to include economic security, or "national interest," and to create a new advisory board, with adequate staffing, to provide the support that CFIUS would need to fulfill a broader mission with respect to acquisitions of foreign control that do not raise issues of national defense or homeland security. Depending upon the scope of this new authority, there might be calls to add provisions to allow judicial review in those instances where neither national defense nor homeland security is involved." It would be easiest to leave well enough alone, of course, but if the American economy truly is being threatened by the current approach, a new assignment of responsibility should be considered. There are several viable alternatives, as just described, each of which has pros and cons. What is clear is that if the present structure in the United States no longer is working satisfactorily, a new structure needs to be considered.

#### Internet access solves

Thembalethu Buthelezi & James Hodge 21. Thembalethu Buthelezi is Principal Economist at the Economic Research Bureau of the Competition Commission of South Africa. James Hodge is Chief Economist at the Economic Research Bureau of the Competition Commission of South Africa. “Chapter IV: Competition Policy in the Digital Economy: the South African Perspective” in Competition and Consumer Protection Policies for Inclusive Development in the Digital Era. <https://unctad.org/system/files/official-document/ditccplp2021d2_en_0.pdf>

In developing countries, reducing market concentration, whether in the old economy or new digital economy is directly linked to economic inclusion.41 This applies to individual, firm and national inclusion. In a developing country context, poor households lacking Internet access may be excluded from the benefits of a digital world and local firms may lack the skills and finance to compete in the digital markets and create back-end jobs domestically. In South Africa this would limit the ability of SMEs and firms owned by historically disadvantaged persons to participate in the economy.

One of the ways to foster inclusion in South Africa is universal access to broadband. While mobile broadband coverage may be pervasive in a country like South Africa, there is a demand gap as low-income individuals are unable to afford devices and data costs to access digital services. This lack of access is highly problematic as economic, social and political life shifts online, threatening to exclude even those currently included. For instance, many job or university applications are made online. Participation in democracy requires accessing the political debates, which have increasingly shifted from print to online media. There is thus a real threat of not just economic exclusion, but also exclusion from full participation in society.

Responding to these challenges requires a domestic focus on the development of broadband infrastructure and a reduction in data costs. South Africa has a highly concentrated mobile sector and the CCSA’s completed market inquiry covered this and the high data costs.42 Unfortunately, even if data costs are reduced, it is apparent that there will always be those who are too poor to participate extensively in the digital age if private paid access is the only means of access. Therefore, part of the recommendations in the data market inquiry is the development of free public Wi-Fi in lower-income areas to ensure greater inclusion. However, as free WiFi is not something that can easily be provided, given the inevitable budget constraints of national and local governments in developing economies, a range of funding models are being explored.

#### Solves disinformation---AI works

Linda Slapakova 21. Analyst with RAND Europe in the area of defence and security, specializing in emerging technologies, emerging security and information threats, and defense workforce and personnel issues. "Towards an AI-Based Counter-Disinformation Framework." RAND Corporation. 03-29-2021. https://www.rand.org/blog/2021/03/towards-an-ai-based-counter-disinformation-framework.html

Priorities for Creating an AI-Based Counter-Disinformation Framework

The myriad opportunities for leveraging AI to counter disinformation may require stakeholders to consider actions for addressing the above-described challenges and barriers through regulatory, technology-oriented, and capacity-building measures. There are three key priorities towards which these measures could be oriented:

Government stakeholders could engage with platforms and technology developers to prioritise technology development towards strengthening the ability of AI models to recognise contextual nuance in social media discourse and adapt more rapidly to recognise novel pieces of disinformation. As RAND Europe's previous research highlighted, linguistic stance technologies can provide significant opportunities in this context through enhancing AI-based detection models by analysing potential false or misleading information in the context of the wider rhetorical battlefields of social media discourse.

The development of new technical, AI-based approaches for countering disinformation could be sufficiently 'future proof' in considering the potential impacts of an AI-based counter-disinformation framework on digital human rights such as freedom of expression online. It could also regard the adoption of AI as an enabler of a more comprehensive response to disinformation, rather than an isolated, overly technology-centric solution. Future efforts could therefore also focus on fostering societal resilience to information threats through digital literacy. This could include strengthening the understanding of social media users of the potential impacts of technologies such as AI on social media content and strengthening their ability to recognise malign information while engaging in informed discourse with others.

The integration of AI in counter-disinformation frameworks could go hand in hand with comprehensive organisational capacity-building. The adoption of more shallow but interpretable models can, for example, foster institutional capacity for using AI-based disinformation detection models. Beyond detection, institutions particularly in the public sector might explore specialised AI training for technical personnel to be able to leverage innovative AI-based solutions for countering disinformation.

#### Solves democracy---creates a strategic framework and gets allies on board

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It is important for any coalition of democratic allies to play defense and offense at the same time: to promote resilience to digital authoritarian threats while building an affirmative alternative that diminishes the influence of authoritarian actors over time. U.S. executive-branch and congressional policymakers should view digital authoritarianism as a real threat to democratic and human rights principles at home and abroad. Tactical reactions to individual threats will not be enough; a more strategic and coordinated approach was urgently needed a decade ago, and now such an approach is long overdue. A strategic approach to digital authoritarianism should reflect the four challenges presented above, marrying tactical solutions with strategic framing. Much as the challenges themselves are overlapping, the components of a strategy should be seen as mutually reinforcing, not mutually exclusive. Promote resilience to digital authoritarianism by strengthening democracy and human rights at home Promote resilience at home. Regardless of who wins the 2020 presidential election, democratic and human rights principles promoted globally are equally relevant at home. In addition to building resilience to offensive digital tools deployed against the United States, as presented above, U.S. political leaders must focus on strengthening trust in domestic institutions. This should involve rejecting and criticizing all foreign intervention in U.S. elections, strongly supporting the right to vote in free and fair elections, resisting the urge to create or promulgate conspiracies and misinformation, committing to peaceful transitions of power, avoiding praise of authoritarians, rebuilding trust in core democratic institutions (such as a free press), and much more. For U.S. efforts to have any effect in countering digital authoritarianism abroad, it must lead by example. It is hard to imagine a successful strategic response to digital authoritarianism abroad if the United States fails to strengthen its own democracy at home. Promote democratic and human rights principles in and around authoritarian-led states via free and secure communication over a free and secure internet Promote free online expression and secure communication. Incorporate democracy, human rights, and governance experts into cybersecurity-focused efforts to counter digital authoritarianism, primarily to ensure that these responses maintain Internet freedom and do not infringe upon human rights. Strengthen policies around encryption to focus on protection of rights and safety everywhere, but especially in countries (such as Belarus) at risk of sliding further into authoritarian rule. Fund and utilize the U.S. Agency for International Development (USAID) Digital Ecosystem Fund, which is designed “to make targeted investments to achieve a vision of open, inclusive, and secure digital ecosystems that can also withstand aggressively pursued authoritarian interference.” Expand the Digital Connectivity and Cybersecurity Partnership (DCCP) a­­nd affiliated DCCP Interagency Working Group—co-chaired by USAID and the Department of State, launched in 2018, and intended to build capacity to address digital authoritarianism—beyond just the Indo-Pacific region to everywhere digital authoritarian threats exist, also incorporating advice and expertise from outside government. Promote a free and secure internet. Support the execution of USAID’s 2020–2024 Digital Strategy, using its “guiding practices” as the baseline for developing an affirmative, strategic, and principles-based approach to digital authoritarianism. Support the call in the 2018 National Cyber Strategy for the United States to “stand firm on its principles to protect and promote an open, interoperable, reliable, and secure Internet.” Be mindful and wary of efforts to create a bifurcated Internet with strong state control over censorship and access, supporting organizations such as the Freedom Online Coalition and other efforts to advance Internet openness and freedom. Avoid erecting expansive digital walls. While banning individual corporations (such as Huawei) and applications (such as TikTok and WeChat) may be deemed necessary for national security reasons, this power should be reserved for use based on specific national security threats rather than to over-extend censorship, which could be used as examples and excuses by China and other advocates of a more fragmented—and centrally controlled—Internet. Overall, the effort should be to advance principles or norms, not specific companies or nationalities. Counter digital authoritarianism at home and abroad not only with tactical defenses, but with resilience rooted in affirmative alternative visions, norms, and principles Build tactical resilience. Invest in tactical public and private countermeasures to digital tools of repression and disruption, including explainable algorithms, AI, and privacy-preserving machine learning. Facilitate greater cooperation and transparency by social media platforms and streamline information sharing between social media platforms, government, and outside researchers.

### T---1NC

#### Private sector is limited to the country’s economy

Collins Dictionary, no date. Definition of 'private sector'. https://www.collinsdictionary.com/us/dictionary/english/private-sector

The private sector is the part of a country's economy that consists of industries and commercial companies that are not owned or controlled by the government.

#### Topical affs can only prohibit entities in the US

U.S. Code, 6 Edition. 2 U.S.C. Title 2 - The Congress. Chapter 17A - Congressional Budget and Fiscal Operations. Subchapter II - Fiscal Procedures. Part B - Federal Mandates. Sec. 658 – Definitions. https://www.govinfo.gov/content/pkg/USCODE-2006-title2/html/USCODE-2006-title2-chap17A-subchapII-partB-sec658.htm

The term “private sector” means all persons or entities in the United States, including individuals, partnerships, associations, corporations, and educational and nonprofit institutions, but shall not include State, local, or tribal governments.

#### Vote neg for predictable limits and ground---extraterritoriality provides unique link shield arguments by diminishing the signal of domestic anti-trust

## Platforms Adv

### AT: Internet---1NC

#### Internet fragmentation is overhyped but inevitable.

Bey 19 Matthew Bey, energy and technology analyst for Stratfor. [The Age of Splinternet: The Inevitable Fracturing of the Internet, 4-25-2019, https://worldview.stratfor.com/article/age-splinternet-inevitable-fracturing-internet-data-privacy-tech]

The end result is that the next 25 years of internet regulation and changing guidelines about how information flows across boundaries will be far more complicated than the previous 25. The extreme version of the splinternet, in which every country creates its own internet with limited connections to the global internet, is unlikely to come to pass. The requirements of a modern economy simply won't allow that eventuality. Instead, companies will be required to jump through increasingly more hoops, and domestic demands for local ownership or data regulation will grow steadily. Corporate America will still demand an open internet for all — even making massive investments in satellite technology to try to do so — but it will not be able to prevent the inevitable.

#### They can’t target foreign data localization---other countries can still be protectionist---that was 1AC CX.

### AT: Smart Cities---1NC

**Smart cities are fake---no model for ecological sustainability**

**Gonella 19** (F. Gonella, Dept of Molecular Sciences and Nanosystems, Ca’ Foscari University of Venice; C.M.V.B. Almeida, Paulista University. Post-graduation Program on Production Engineering; G. Fiorentino, Department of Science and Technology, Parthenope University of Naples; K. Handayani, Department of Governance and Technology for Sustainability, University of Twente; F. Spanò, Department of Physics, Royal Holloway University of London; R. Testoni, Dipartimento Energia, Politecnico di Torino; A. Zucaro; Department of Science and Technology, Parthenope University of Naples; “Is technology optimism justified? A discussion towards a comprehensive narrative”, Journal of Cleaner Production, 2019, doi: 10.1016/j.jclepro.2019.03.126) \*edited for language

Several sustainability-related issues based on the development of new technologies have become popular in the public and scientific debate. Among these, a quite actual issue is that of the Smart Cities, cities that use Information and Communication Technology (ICT) to enhance their livability, workability and sustainability (Smart Cities Council, 2013). Internet of Things and Big Data should allow to increase smart operational efficiency (see for example CCCM, 2018), making it possible for citizens to have access to a “culturally vibrant and happy life”. Generally speaking, the effects of innovative technologies – in particular ICT-based ones – in making a city more sustainable seem to be **largely overestimated**, in as much the very meaning of “**sustainable city” is not addressed whatsoever**. For the European Union, sustainability of a smart city is based actually on the presence of more competitive industry and Small-Medium Enterprises (SMEs), as well as on smart energy, smart transportation, and ICT (European Commission, 2012 and 2013). Based on the literature on smart cities, it seems that the main problems of an urban community are traffic congestion and slow internet connectivity, supposedly a major obstacle to the business. As recommended by Industrial Internet of Things (IIoT) global digital publication, “Smart city management models must integrate a new ecosystem of value creators and innovators”, with “innovative spaces” where they are supported in “monetizing new business models” (IIoT, 2018). It is interesting to note how the word “ecosystem” is often rhetorically used to describe a smart city to emphasize its highly interconnected nature, at the same time neglecting most of the components that make a system an “ecosystem”, the living creatures (Odum, 1996). In the smart cities narrative, vegetation is relegated to the role of parks and green areas, without considering the importance of plants for the well-being of all animal species in the city, nor the ecosystemic services in terms of evapotranspiration and temperature regulation (Almeida et al., 2018). Animals presence is never addressed, in spite of their important role in the city overall sustainability: insects guarantee the health of green areas as well as that of birds and migratory species, bats eat mosquitoes, while the communities of dogs and cats provide an enormous service in term of the (human) citizens well-being, in particular that of aged people and children, and so they should be regarded as part of the citizenry for biophysical, systemic and ethical reasons. To neglect this important part of the city system in a policy-planning activity means to be ~~blind~~ [ignorant] of the interconnection network of all social, environmental and economic aspects and problems which the smart city narrative advocates. Interestingly, as a matter of fact, children, animals, and plants do not drive, do not use the internet, do not produce business, and do not participate in the electoral choice game, neither by voting nor by being voted. The narrative on smart cities is very often characterized by a surprisingly high cognitive dissonance. From a systemic point of view, the problem is that the current city smartness is the change, innovation and optimization of processes inside, but without taking into account the necessary change in local stocks and the inflows from the supporting area (Brown and Ulgiati, 2011). In this respect, a quantitative estimation of the resources required from supporting areas to make a city smart is **hardly addressed**, **nor a rigorous systemic approach is proposed** (Ascione et al., 2011). In this conceptual framework, technology is assigned of a power that it has not, that to address and solve the problems of the city community. Under this discourse, the city would survive and operate independently of its surroundings. Besides traffic management, data access and ease of doing business, much more serious problems occur **outside the technological realm**: **poverty**, **unemployment**, **forced immigration**, **pollution**, **marginalization** and **violence** are all aspects of a city life that seem to be **ignored** or **absent from the description** given by the enthusiastic smart city narrative focused on the problem of the traffic congestion, talking about communities that **simply do not exist**. The role of technology in the smart cities issues is therefore highly biased, and the FWFW questions assume a crucial relevance. The Smart City model talked about at the EU level, for example, is clearly a Western World Smart City. In the 256 pages of the report “The making of a smart city: best practices across Europe” by the EU Smart Cities Information System (EU, 2017), the word “mobility” appears 114 times, and the word “business” 67. None of the words “child/children”, “welfare”, “poverty”, “violence”, “disability”, “inequality”, “gender”, “happiness”, “vegetation”, “animal(s)”, are present. Interestingly, the word “green” appears 31 times, but only five of them are related to green spaces or areas. Along with green economy and green growth, these best practices contemplate green energy, green jobs, green power, green buildings, green roofs, green cooling and green heating, green electricity, green research, green contributions (?) and – of course – green mobility and green parking. As a matter of fact, the model is just **not exportable to most world cities**, where most part of [hu]mankind lives. The number of slum dwellers worldwide is **constantly increasing**, forming about one billion people excluded from any participatory political and economic issue of the city they live in. Indeed, it is hard to address “smart interconnectedness” where there is no electricity, or fast-ICT access to sanitary data where there are **no sanitary infrastructures**, or talking of a “culturally vibrant and happy” smart living where the problem is just that of living, or surviving. But this cognitive dissonance when talking about technology and smart cities **might go even farther**: **the plausible failure of the policies addressed by the Paris Accord to keep temperature increase below 2 °C** will make much of the smartness we are discussing about **senseless** even for Western European cities, for example, London, as far as electric public transportation infrastructures are unlikely to be operated in a partially flooded town (Strauss, 2015).

### AT: Rulemaking---1NC

#### Rulemaking fails:

#### The FTC lacks any ability to issue sanctions for non-compliance, and courts gut the plan.

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Two years after National Petroleum Refiners Ass’n was decided, Congress granted the FTC specific consumer-protection rulemaking authority through section 202 of the M-M Warranty Act. This act added section 18 to the Federal Trade Commission Act, imposing strict, adjudicatory hearings and other formal procedures on the FTC. Though the section 18 process is stricter than the informal process under section 6(g), the FTC may seek civil penalties for violation of M-M rules. This remedy is notably absent from section 6(g) rulemaking authority.

There are, however, concerns over the statutory basis for section 6(g) rulemaking. According to the Antitrust Law Section of the American Bar Association,

[T]he Commission’s [section 6(g)] rulemaking authority is buried within an enumerated list of investigative powers, such as the power to require reports from corporations and partnerships, for example. Furthermore, the [Federal Trade Commission] Act fails to provide any sanctions for violating any rule adopted pursuant to Section 6(g). These two features strongly suggest that Congress did not intend to give the agency substantive rulemaking powers when it passed the Federal Trade Commission Act.

In other words, the structure of the Federal Trade Commission Act indicates that section 6(g) rulemaking is best understood as a tool to aid the FTC’s investigative and procedural authority, not standalone substantive rulemaking authority in and of itself. Though it is true that National Petroleum Refiners Ass'n defended the substantive rulemaking interpretation, the decision came at a time of substantial deference to agency activism from the courts, and such an interpretation may no longer hold.

Evidence pointing in this direction comes from a recent Supreme Court decision in AMG Capital Management, where the court unanimously held that the FTC’s authority to seek a permanent injunction under section 13(b) of the Federal Trade Commission Act does not authorize the FTC to seek monetary damages. The FTC argued that the historical understanding of a permanent injunction includes monetary relief, but the Supreme Court rejected such a reading on the basis of the statutory language of section 13(b). The court noted that the permanent injunction language was “buried” within a provision that discusses injunctive, not monetary, relief. Section 6(g) rulemaking authority is similarly buried in a section discussing other topics.

Moreover, as previously noted, just two years after National Petroleum Refiners Ass’n, Congress added section 18 to the Federal Trade Commission Act, enumerating detailed, substantive rulemaking provisions, and leaving section 6(g) unchanged. This preservation of section 6(g), in the face of significant additions to the FTC’s substantive rulemaking authority under section 18, leaves informal rulemaking on shaky ground. Informal rulemaking under section 6(g) is anything but settled law, and the FTC may face significant legal challenges by choosing to use this authority.

Furthermore, even if there are no challenges to the FTC’s authority to undertake wholesale rulemaking under section 6(g), there still may be challenges to any specific rule that the FTC proposes. First, “unfair methods of competition” rulemaking may prove particularly difficult to survive legal scrutiny because of the nondelegation doctrine. Under that doctrine, if a court determines that the Federal Trade Commission Act’s general—and arguably vague—reference to “unfair methods of competition” does not include an “intelligible principle” guiding the FTC’s discretion in making competition rules, then that court may not uphold competition rulemaking.

Second, a court may strike down an individual proposed rule as “arbitrary and capricious,” should the court find that the FTC did not sufficiently consider procompetitive justifications for the condemned practice.

#### No trade war impact

Joel Einstein 17. Australian National University. 01-17-17. “Economic Interdependence and Conflict – The Case of the US and China.” E-International Relations. <http://www.e-ir.info/2017/01/17/economic-interdependence-and-conflict-the-case-of-the-us-and-china/>

In 1913, Norman Angell declared that the use of military force was now economically futile as international finance and trade had become so interconnected that harming the enemy’s property would equate to harming your own.[1] A year later Europe’s economically interconnected states were embroiled in what would later become known as the First World War. Almost a century later Steven Pinker made a similar claim. Pinker argues, “Though the relationship between America and China is far from warm, we are unlikely to declare war on them or vice versa. Morality aside, they make too much of our stuff and we owe them too much money.”[2] His argument rests upon the liberal assumption that high levels of trade and investment between two states, in this case the US and China, will make war unlikely, if not impossible. It is this assumption that this essay seeks to evaluate. This essay is divided into three sections. The first briefly outlines the theory that economic interdependence results in a reduced likelihood of conflict, breaking the theory down into smaller components that can be examined. In the second section, this essay suggests that the premise ‘more trade equals less conflict’ is simplistic. It does not take into account many of the variables that can influence the strength of economic interdependence’s conflict reducing attributes. Within this section, the essay considers: the extent to which conflict cuts off trade, theories arguing that how and what a state trades matters, Copeland’s theory of trade expectations and the differences between status quo and revisionist states. The final section deals with the realist perspective, concentrating on arguments pertaining to the primacy of strategic interests and arguments that economic interdependence will increase the likelihood of conflict owing to a reduction of deterrence credibility. Each section will be related back to the US-China relationship with a view to assessing Pinker’s claim. The essay will conclude that economic interdependence does reduce the likelihood of conflict but is insufficient on its own to completely prevent it. To calculate the likelihood of conflict correctly one would need to factor in the nature of the economic interdependence alongside the strength of the strategic interests at stake. Economic Interdependence and Conflict The theory that increased economic interdependence reduces conflict rests on three observations: trade benefits states in a manner that decision-makers value; conflict will reduce or completely cut-off trade; and that decision-makers will take the previous two observations into account before choosing to go to war. Based on these observations, one should expect that the higher the benefit of trade, the higher the cost of a potential conflict. After a certain point, the value of trade may become so high that the state in question has become economically dependent on another. Proponents of this theory argue that if two states have reached this point of mutual dependence (interdependence), their decision-makers will value the continuation of trade relations higher than any potential gains to be made through war.[3] It is on this argument that Pinker rests his statement that the economic relationship between the US and China precludes war. One can see evidence of this when analysing US views on China as trade rises. A 2014 Chicago Council on Global Affairs survey indicates that only a minority of Americans see China as a critical threat, compared to a majority in the mid-1990s. This number is even higher when analysing Americans who directly benefit from trade with China.[4] As compelling as this argument may be, high levels of economic interdependence have not always resulted in peace. The decades preceding WW1 saw an unprecedented growth in international trade, communication, and interconnectivity but needless to say, war broke out.[5] This instance alone is not enough to disprove Pinker’s logic. War may become very unlikely but began nonetheless.[6] Let us take two hypothetical scenarios, one in which the chances of war is 80% and the other in which trade has reduced the likelihood of war to 10%. Just knowing that war did indeed take place does not tell us which scenario was in play. Similarly, the fact that WW1 took place gives us no information about whether economic interdependence made war unlikely or not. In fact, evidence even exists to suggest that economic linkages prevented a war from breaking out during the sequence of crises that led up to WW1.[7] However, the fact that a war as detrimental as WW1 could break out despite a supposed reduction of the likelihood of conflict gives us an impetus to examine whether this reduction does take place. Additionally, if this is the case, what variables can weaken this pacifying effect? Does Conflict Cut off Trade? Economic interdependence theory makes the assumption that conflict will reduce or cut-off trade. This assumption appears to be logical, as one would expect that the moment two states are officially adversaries, fear of relative gains would ensure that policy makers want to completely cut-off trade. However, there are many historical examples of trade between warring states carrying on during wartime, including strategic goods that directly affect the ability of the enemy to carry out the war.[8] For example, in the Anglo-Dutch Wars, British insurance companies continued to insure enemy ships and paid to replace ships that were being destroyed by their own army.[9] Even during WW2, there are numerous examples of American firms continuing to trade strategic goods with Nazi Germany.[10] Barbieri and Levy argue that these examples and their own statistical analysis suggest that the outbreak of war does not radically reduce trade between enemies, and when it does, it often quickly returns to pre-war levels after the war has concluded.[11] In response to this result, Anderton and Carter conducted an interrupted time-series study on the effect war has on trade in which they analysed 14 major power wars and 13 non-major power wars. Seven of the non-major power wars negatively impacted trade (although only four of these reductions were significant), but in the major war category, all results bar one showed a reduction of trade during wartime and a quick return to pre-war levels at its conclusion.[12] Accompanying this contradictory finding one must take into account that even if war does not radically reduce trade, if a state believes that it does then potential opportunity cost would still figure in their calculations. Variables that Impact the Pacifying Effect of Economic Interdependence The purpose of this section is to demonstrate that the pacifying effect of economic interdependence is not constant. It achieves this via a discussion of the effect of changes in a number of variables pertaining to how and what a state trades. Once it is established that changes in such variables may alter the effect of economic interdependence on the likelihood of conflict, Pinker’s statement (that the level of trade between the US and China makes conflict unlikely) can be considered to be an over-simplification. One variable is the relative levels of economic dependence. Some argue that asymmetry of trade can increase the chances of conflict if the trade is more important to one state than it is to the other; their resolve would not be reduced by the same degree. The less dependent state would be far more willing than its adversary to initiate a conflict.[13] An example is the possibility of the prevalent idea in China that ‘Japan needs China more than China needs Japan’ leading to China becoming more assertive in Senkaku/Diaoyu islands dispute.[14] It is important to recognize that all trade is asymmetric in one fashion or another. It is radical asymmetry that one has to fear, which at the moment does not appear to be the case in the China-Japan or US-China case. Another variable is the specifics of what is being traded. A study by Dorussen suggests that the pacifying effect of trade is less evident if the trade consists of raw materials and agriculture but stronger if the trade consists of manufactured goods. Even within the category of manufactured goods there are differences in effect. Mass consumer goods yield the strongest pacifying results whilst high-technology sectors such as electronics and highly capital-intensive sectors such as transport and metal industries tend to have a relatively weak effect.[15] If it is a sector with alternative trade avenues then embargos and boycotts as a result of conflict will have far less effect.[16] The rule is that the more inelastic the import demand, the higher the opportunity cost and the smaller the probability of conflict.[17] According to these studies, trade still generally reduces the likelihood of conflict however it is by no means homogeneous in its effects. Additionally, the opportunity costs are not the same for importers and exporters. Dorussen’s study suggests that increased trade in oil tends to make the exporters more hostile and the importers friendlier in relations to their foreign policy.[18] Taking this framework into account, in 2014 China’s top five exports to the US (computers, broadcasting equipment, telephones and office machine parts) all fell under the category of electronics,[19] whilst the US’s top five exports to China (air and/or spacecraft, soybeans, cars, integrated circuits and scrap copper) were all either high-capital intensive sectors or raw materials and agriculture.[20] According to Dorussen’s study, these exports should not yield the strongest possible conflict reducing results, which could impact the validity of Pinker’s statement. Copeland presents another variable, namely expectations of trade. Copeland argues that if a highly dependent state expects future trade to be high, decision makers will behave as many liberals predict and treat war as a less appealing option. However if there are low expectations of future trade, then a highly dependent state will attach a low or even negative value to continued peaceful relations and war would become more likely.[21] As an example, he points out that despite high levels of trade in 1914 German leaders believed that rival great powers would attempt to undermine this trade in the future, so a war to secure control over raw materials was in the interests of German long-term security.[22] Via this framework, if the US began to believe that in future years they would be less dependent on China’s economy, or if it became apparent that a US-China trade war was about to take place, there would be a sharp rise in the probability of conflict. The final variable this essay will discuss relates to the differences between status quo and revisionist states. Most empirical analyses of economic interdependence tend to group together states as different as the United States, Pakistan, Australia, Germany and China and assume that variations in their behaviour would be the same.[23] Papayoanou on the other hand, argues that when analysing the effects of economic interdependence it is useful to differentiate the effects on great power states and states with revisionist aspirations.[24] If a status quo power has strong economic ties with revisionist state there will be interest groups who advocate engagement and who believe that confrontational stances will threaten the political foundation of economic links. This will constrain the response of the status quo state.[25] One can see evidence of such an interest group in the US, a group Friedberg describes as the Shanghai coalition, who he argues advocate engagement with China at the expense of balancing.[26] A study by Fordham and Kleinberg backs up this argument as they find that US business elites who benefit from trade with China tend to see little benefit in limiting the growth of Chinese power.[27] A 21st Century revisionist power is far less likely to be a democracy, and therefore, interest groups will influence the leadership far less. This means an authoritarian revisionist power will be working under fewer constraints and will be able to take a more aggressive stance.[28] This appears to be the case in China where rather than having domestic constraints on taking an aggressive stance against Japan, one of their biggest trading partners, grassroots nationalism has made explicit cooperation a domestically risky option.[29] There are many indicators to suggest that China is a revisionist power willing to wage war. Lemke and Werner argue that an extraordinary growth of military expenditures’ reveals when a state is dissatisfied with the status quo.[30] Data provided by the Stockholm International Peace Research Institute certainly indicates that China qualifies as its military expenditure has nominally increased by 1270% between 1995 and 2015.[31] Additionally, the military modernization appears to be aimed at capabilities to contest US primacy in East Asia.[32] Much like German strategists recognized that Britain was operating under significant domestic constraints, China could realize the same of the US.[33] This is not to say that Chinese decision-makers would be cavalier about making a decision that would be to the detriment its economy. A crash in the Chinese economy due to the loss of exports to the US could potentially undermine the legitimacy of the Chinese Communist party and endanger the regime. However, the view that China is a revisionist power indicates that good trade relations alone will not result in a low probability of conflict. Realist Arguments Pertaining to Dominance of Strategic Interests Having established that if the pacifying effect of trade does exist, it can rise or fall depending on changes in a series of variables this essay proceeds to deal with realist theories arguing that trade has a negligible or even negative effect on the likelihood of conflict. Buzan argues that noneconomic factors contribute far more to major phenomena than liberal theorists usually cite to support their theory.[34] There is evidence of the primacy of strategic interests in Masterson’s 2012 study on the relationship between China’s economic interdependence and political relations with its neighbours. The study concluded that as economic interdependence with neighbouring states increased the likelihood of conflict did indeed decrease, but that the impact was minimal when compared to the impact of relative power capabilities. In other words, political and military issues dominated interstate relations. Growth in power disparities were associated with decreases in dyadic political relations that were greater than the increase caused by economic interdependence.[35] If the pacifying effect of trade can rise and fall so can the provocative effect of strategic interests. It is important to distinguish between the existence of a strategic interest and a situation of unbearable strategic vulnerability. China and the US have many opposing strategic interests, but neither is in a strategically vulnerable position. For example, China shares many borders, but none present the same threat of invasion that Tsarist Russia did to Imperial Germany as none of the current maritime tensions between China, Japan, and the US equate to a matter of national survival.[36] This is crucial as some believe that for a crisis to escalate to a major war an actor who is isolated and believes that history is conspiring against them is needed. Only this actor would take an existential risk to try and offset their strategic vulnerability.[37] Imperial Germany fit this description, but neither China nor the US does. This is largely due to the geography of the region. The tension between the US, China and Japan are over maritime regions. Maritime issues still relate to national interests but, as Krause points out, “Land armies are still the only forces that can conquer and hold territory.”[38] Taking this into account one can argue that the benefits of US-China trade are, for each state, currently greater than the benefits of pursing strategic benefits via force, but this situation will only remain as long as the situation does not become one of unbearable strategic vulnerability. Realist Arguments Pertaining to the Undermining of Deterrence Having established that scenarios exist where strategic interests and vulnerabilities have a greater effect on the likelihood of war than economic interdependence, this essay will now evaluate arguments that economic interdependence can increase the likelihood of conflict through the undermining of deterrence. The argument proceeds as follows: if economic interdependence constrains the ability or willingness of a state to use its military, security is lowered as the state now has a weakened ability to engage in deterrence and defensive alliances. Deterrence relies on the ability of a state to make credible threats and defensive alliances rely on credible promises to protect one’s allies.[39] Credibility is defined as the product of the operational capability to follow through with a threat and the communication of resolve to use force.[40] What is at risk here is that if economic interconnectivity interferes with the communication of resolve to use force then states may end up with a way that neither side expected or wanted. Some argue that it was such a failure to communicate resolve that resulted in the beginning of WW1. Indeed, Jolly claims that: “The Austrians had believed that vigorous actions against Serbia and a promise of German support would deter Russia: the Russians had believed that a show of strength against Austria would both check the Austrians and deter Germany. In both cases, the bluff had been called and the three countries were faced with the military consequences of their actions.”[41] The risk in the US-China case would be that the interest groups described earlier would prevent the US from effectively communicating its resolve to use force if China were to cross a redline. The flaw in this argument lies in the fact that whilst interest groups might push back against public statements outlining redlines; the US has many less overt options available to it to communicate resolve. Modern technology and the forms of interconnectivity have resulted in many more lines of communication between China and the US than adversaries had access to in 1914. Private meetings, electronic communication and numerous other methods of communication have the capability to be candid without being visible to interest groups. It is for this reason that this essay discounts the theory that Sino-American economic interdependence results in a reduction of deterrence and therefore increases the likelihood of conflict. Conclusion This essay has shown that the strength of the pacifying effect of economic interdependence is subject to change depending on a series of dynamic variables. It has also demonstrated that the strength of the conflict provoking effects of strategic interests can change depending on whether the strategic interest amounts to a situation of unbearable strategic vulnerability. It has discounted the theory that interdependence leads to a higher chance of conflict through an erosion of credibility. To sum up, trade does seem to reduce the likelihood of conflict but should not be seen as a deterministic factor as strategic interests, and vulnerabilities also have a large effect. There is no hard rule as to what will be the driving factor as the nature of economic interdependence and of strategic factors impact their relative values. Accordingly, Pinker’s statement that the trade between the US and China makes war exceptionally unlikely is simplistic and misleading because it fails to account for a wide array of variables that can radically change the likelihood of a Sino-American war. An intellectually honest thesis would insist upon a comprehensive approach in which the level of economic activity is simply one of many variables that is required.

## Middleware Adv

### Solvency---1NC

#### Aff doesn’t solve platforms’ power over information – their author says the solution is to use antitrust law to break up Facebook and Google. The plan doesn’t do that.

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Remedies

How can we reduce the underlying power of today’s internet platforms? I believe that a potential solution to this problem lies in using both technology and regulation to outsource content curation from the dominant platforms to a competitive layer of “middleware companies.” I advance this proposal not because I am certain that it will work, but because the alternative approaches that have been suggested are likely to be less effective. The first and most obvious of these approaches is to use antitrust law to break up Facebook and Google, much as the telephone giant AT&T was broken up in the 1970s. After a prolonged period of lax enforcement of antitrust laws, there is a growing consensus that they need to be applied to the big tech companies, and suits have been brought against these platforms by the European Commission, the Justice Department, the Federal Trade Commission, and a coalition of state attorneys-general. Breaking up these companies would indeed reduce their power over politics. But under current U.S. and EU laws, reaching a decision in the courts could take over a decade, as past antitrust cases against IBM and Microsoft did. More important, network externalities suggest that a baby Facebook emerging out of such a breakup could grow much faster than AT&T did when it was divided, and quickly reach the size of its parent. Antitrust law in any case is designed primarily to remedy the familiar harms stemming from concentrations of economic power, not the novel political risks produced by social media. **What might realistically come out of current antitrust initiatives will be constraints on the platforms**’ acquisition of startups, or on their recourse to vertical-tying agreements (policies that compel users of a product offered by one of the tech giants to procure a related service from that same company). **Yet outcomes of this kind will not address the political problems posed by platform scale.**

### AT: Democracy---1NC

#### Global democracy’s dead---backlash and technology destroy the foundations of order

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This task was complicated by the Cold War, but “the free world” (as Americans then called the noncommunist countries) continued to develop along Wilsonian lines. Inevitable compromises, such as U.S. support for ruthless dictators and military rulers in many parts of the world, were seen as regrettable necessities imposed by the need to fight the much greater evil of Soviet communism. When the Berlin Wall fell, in 1989, it seemed that the opportunity for a Wilsonian world order had finally come. The former Soviet empire could be reconstructed along Wilsonian lines, and the West could embrace Wilsonian principles more consistently now that the Soviet threat had disappeared. Self-determination, the rule of law between and within countries, liberal economics, and the protection of human rights: the “new world order” that both the George H. W. Bush and the Clinton administrations worked to create was very much in the Wilsonian mold. Today, however, the most important fact in world politics is that this noble effort has failed. The next stage in world history will not unfold along Wilsonian lines. The nations of the earth will continue to seek some kind of political order, because they must. And human rights activists and others will continue to work toward their goals. But the dream of a universal order, grounded in law, that secures peace between countries and democracy inside them will figure less and less in the work of world leaders. To state this truth is not to welcome it. There are many advantages to a Wilsonian world order, even when that order is partial and incomplete. Many analysts, some associated with the presidential campaign of former U.S. Vice President Joe Biden, think they can put Humpty Dumpty together again. One wishes them every success. But the centrifugal forces tearing at the Wilsonian order are so deeply rooted in the nature of the contemporary world that not even the end of the Trump era can revive the Wilsonian project in its most ambitious form. Although Wilsonian ideals will not disappear and there will be a continuing influence of Wilsonian thought on U.S. foreign policies, the halcyon days of the post–Cold War era, when American presidents organized their foreign policies around the principles of liberal internationalism, are unlikely to return anytime soon. THE ORDER OF THINGS Wilsonianism is only one version of a rules-based world order among many. The Westphalian system, which emerged in Europe after the Thirty Years’ War ended in 1648, and the Congress system, which arose in the wake of the Napoleonic Wars of the early nineteenth century, were both rules-based and even law-based; some of the foundational ideas of international law date from those eras. And the Holy Roman Empire—a transnational collection of territories that stretched from France into modern-day Poland and from Hamburg to Milan—was an international system that foreshadowed the European Union, with highly complex rules governing everything from trade to sovereign inheritance among princely houses. As for human rights, by the early twentieth century, the pre-Wilsonian European system had been moving for a century in the direction of putting egregious violations of human rights onto the international agenda. Then, as now, it was chiefly weak countries whose oppressive behavior attracted the most attention. The genocidal murder of Ottoman Christian minorities at the hands of Ottoman troops and irregular forces in the late nineteenth and early twentieth centuries received substantially more attention than atrocities carried out around the same time by Russian forces against rebellious Muslim peoples in the Caucasus. No delegation of European powers came to Washington to discuss the treatment of Native Americans or to make representations concerning the status of African Americans. Nevertheless, the pre-Wilsonian European order had moved significantly in the direction of elevating human rights to the level of diplomacy. Wilson, therefore, was not introducing the ideas of world order and human rights to a collection of previously anarchic states and unenlightened polities. Rather, his quest was to reform an existing international order whose defects had been conclusively demonstrated by the horrors of World War I. In the pre-Wilsonian order, established dynastic rulers were generally regarded as legitimate, and interventions such as the 1849 Russian invasion of Hungary, which restored Habsburg rule, were considered lawful. Except in the most glaring instances, states were more or less free to treat their citizens or subjects as they wished, and although governments were expected to observe the accepted principles of public international law, no supranational body was charged with the enforcement of these standards. The preservation of the balance of power was invoked as a goal to guide states; war, although regrettable, was seen as a legitimate element of the system. From Wilson’s standpoint, these were fatal flaws that made future conflagrations inevitable. To redress them, he sought to build an order in which states would accept enforceable legal restrictions on their behavior at home and their international conduct. That never quite materialized, but until recent years, the U.S.-led postwar order resembled Wilson’s vision in important respects. And, it should be noted, that vision is not equally dead everywhere. Although Wilson was an American, his view of world order was first and foremost developed as a method for managing international politics in Europe, and it is in Europe where Wilson’s ideas have had their greatest success and where their prospects continue to look strongest. His ideas were treated with bitter and cynical contempt by most European statesmen when he first proposed them, but they later became the fundamental basis of the European order, enshrined in the laws and practices of the EU. Arguably, no ruler since Charlemagne has made as deep an impression on the European political order as the much-mocked Presbyterian from the Shenandoah Valley. THE ARC OF HISTORY Beyond Europe, the prospects for the Wilsonian order are bleak. The reasons behind its demise, however, are different from what many assume. Critics of the Wilsonian approach to foreign affairs often decry what they see as its idealism. In fact, as Wilson demonstrated during the negotiations over the Treaty of Versailles, he was perfectly capable of the most cynical realpolitik when it suited him. The real problem of Wilsonianism is not a naive faith in good intentions but a simplistic view of the historical process, especially when it comes to the impact of technological progress on human social order. Wilson’s problem was not that he was a prig but that he was a Whig. Like early-twentieth-century progressives generally and many American intellectuals to this day, Wilson was a liberal determinist of the Anglo-Saxon school; he shared the optimism of what the scholar Herbert Butterfield called “the Whig historians,” the Victorian-era British thinkers who saw human history as a narrative of inexorable progress and betterment. Wilson believed that the so-called ordered liberty that characterized the Anglo-American countries had opened a path to permanent prosperity and peace. This belief represents a sort of Anglo-Saxon Hegelianism and holds that the mix of free markets, free government, and the rule of law that developed in the United Kingdom and the United States is inevitably transforming the rest of the world—and that as this process continues, the world will slowly and for the most part voluntarily converge on the values that made the Anglo-Saxon world as wealthy, attractive, and free as it has become. Wilson was the devout son of a minister, deeply steeped in Calvinist teachings about predestination and the utter sovereignty of God, and he believed that the arc of progress was fated. The future would fulfill biblical prophecies of a coming millennium: a thousand-year reign of peace and prosperity before the final consummation of human existence, when a returning Christ would unite heaven and earth. (Today’s Wilsonians have given this determinism a secular twist: in their eyes, liberalism will rule the future and bring humanity to “the end of history” as a result of human nature rather than divine purpose.) Wilson believed that the defeat of imperial Germany in World War I and the collapse of the Austro-Hungarian, Russian, and Ottoman empires meant that the hour of a universal League of Nations had finally arrived. In 1945, American leaders ranging from Eleanor Roosevelt and Henry Wallace on the left to Wendell Willkie and Thomas Dewey on the right would interpret the fall of Germany and Japan in much the same way. In the early 1990s, leading U.S. foreign policymakers and commentators saw the fall of the Soviet Union through the same deterministic prism: as a signal that the time had come for a truly global and truly liberal world order. On all three occasions, Wilsonian order builders seemed to be in sight of their goal. But each time, like Ulysses, they were blown off course by contrary winds. TECHNICAL DIFFICULTIES Today, those winds are gaining strength. Anyone hoping to reinvigorate the flagging Wilsonian project must contend with a number of obstacles. The most obvious is the return of ideology-fueled geopolitics. China, Russia, and a number of smaller powers aligned with them—Iran, for example—correctly see Wilsonian ideals as a deadly threat to their domestic arrangements. Earlier in the post–Cold War period, U.S. primacy was so thorough that those countries attempted to downplay or disguise their opposition to the prevailing pro-democracy consensus. Beginning in U.S. President Barack Obama’s second term, however, and continuing through the Trump era, they have become less inhibited. Seeing Wilsonianism as a cover for American and, to some degree, EU ambitions, Beijing and Moscow have grown increasingly bold about contesting Wilsonian ideas and initiatives inside international institutions such as the UN and on the ground in places from Syria to the South China Sea. These powers’ opposition to the Wilsonian order is corrosive in several ways. It raises the risks and costs for Wilsonian powers to intervene in conflicts beyond their own borders. Consider, for example, how Iranian and Russian support for the Assad regime in Syria has helped prevent the United States and European countries from getting more directly involved in that country’s civil war. The presence of great powers in the anti-Wilsonian coalition also provides shelter and assistance to smaller powers that otherwise might not choose to resist the status quo. Finally, the membership of countries such as China and Russia in international institutions makes it more difficult for those institutions to operate in support of Wilsonian norms: take, for example, Chinese and Russian vetoes in the UN Security Council, the election of anti-Wilsonian representatives to various UN bodies, and the opposition by countries such as Hungary and Poland to EU measures intended to promote the rule of law. Meanwhile, the torrent of technological innovation and change known as “the information revolution” creates obstacles for Wilsonian goals within countries and in the international system. The irony is that Wilsonians often believe that technological progress will make the world more governable and politics more rational—even if it also adds to the danger of war by making it so much more destructive. Wilson himself believed just that, as did the postwar order builders and the liberals who sought to extend the U.S.-led order after the Cold War. Each time, however, this faith in technological change was misplaced. As seen most recently with the rise of the Internet, although new technologies often contribute to the spread of liberal ideas and practices, they can also undermine democratic systems and aid authoritarian regimes. Today, as new technologies disrupt entire industries, and as social media upends the news media and election campaigning, politics is

becoming more turbulent and polarized in many countries. That makes the victory of populist and antiestablishment candidates from both the left and the right more likely in many places. It also makes it harder for national leaders to pursue the compromises that international cooperation inevitably requires and increases the chances that incoming governments will refuse to be bound by the acts of their predecessors. The information revolution is destabilizing international life in other ways that make it harder for rules-based international institutions to cope. Take, for example, the issue of arms control, a central concern of Wilsonian foreign policy since World War I and one that grew even more important following the development of nuclear weapons. Wilsonians prioritize arms control not just because nuclear warfare could destroy the human race but also because, even if unused, nuclear weapons or their equivalent put the Wilsonian dream of a completely rules-based, law-bound international order out of reach. Weapons of mass destruction guarantee exactly the kind of state sovereignty that Wilsonians think is incompatible with humanity’s long-term security. One cannot easily stage a humanitarian intervention against a nuclear power. The fight against proliferation has had its successes, and the spread of nuclear weapons has been delayed—but it has not stopped, and the fight is getting harder over time. In the 1940s, it took the world’s richest nation and a consortium of leading scientists to assemble the first nuclear weapon. Today, second- and third-rate scientific establishments in low-income countries can manage the feat. That does not mean that the fight against proliferation should be abandoned. It is merely a reminder that not all diseases have cures. What is more, the technological progress that underlies the information revolution significantly exacerbates the problem of arms control. The development of cyberweapons and the potential of biological agents to inflict strategic damage on adversaries—graphically demonstrated by the COVID-19 pandemic—serve as warnings that new tools of warfare will be significantly more difficult to monitor or control than nuclear technology. Effective arms control in these fields may well not be possible. The science is changing too quickly, the research behind them is too hard to detect, and too many of the key technologies cannot be banned outright because they also have beneficial civilian applications. In addition, economic incentives that did not exist in the Cold War are now pushing arms races in new fields. Nuclear weapons and long-range missile technology were extremely expensive and brought few benefits to the civilian economy. Biological and technological research, by contrast, are critical for any country or company that hopes to remain competitive in the twenty-first century. An uncontrollable, multipolar arms race across a range of cutting-edge technologies is on the horizon, and it will undercut hopes for a revived Wilsonian order. IT’S NOT FOR EVERYBODY One of the central assumptions behind the quest for a Wilsonian order is the belief that as countries develop, they become more similar to already developed countries and will eventually converge on the liberal capitalist model that shapes North America and western Europe. The Wilsonian project requires a high degree of convergence to succeed; the member states of a Wilsonian order must be democratic, and they must be willing and able to conduct their international relations within liberal multilateral institutions. At least for the medium term, the belief in convergence can no longer be sustained. Today, China, India, Russia, and Turkey all seem less likely to converge on liberal democracy than they did in 1990. These countries and many others have developed economically and technologically not in order to become more like the West but rather to achieve a deeper independence from the West and to pursue civilizational and political goals of their own. In truth, Wilsonianism is a particularly European solution to a particularly European set of problems. Since the fall of the Roman Empire, Europe has been divided into peer and near-peer competitors. War was the constant condition of Europe for much of its history, and Europe’s global dominance in the nineteenth century and early twentieth century can be attributed in no small part to the long contest for supremacy between France and the United Kingdom, which promoted developments in finance, state organization, industrial techniques, and the art of war that made European states fierce and ferocious competitors. With the specter of great-power war constantly hanging over them, European states developed a more intricate system of diplomacy and international politics than did countries in other parts of the world. Well-developed international institutions and doctrines of legitimacy existed in Europe well before Wilson sailed across the Atlantic to pitch the League of Nations, which was in essence an upgraded version of preexisting European forms of international governance. Although it would take another devastating world war to ensure that Germany, as well as its Western neighbors, would adhere to the rules of a new system, Europe was already prepared for the establishment of a Wilsonian order. But Europe’s experience has not been the global norm. Although China has been periodically invaded by nomads, and there were periods in its history when several independent Chinese states struggled for power, China has been a single entity for most of its history. The idea of a single legitimate state with no true international peers is as deeply embedded in the political culture of China as the idea of a multistate system grounded in mutual recognition is embedded in that of Europe. There have been clashes among Chinese, Japanese, and Koreans, but until the late nineteenth century, interstate conflict was rare. In human history as a whole, enduring civilizational states seem more typical than the European pattern of rivalry among peer states. Early modern India was dominated by the Mughal Empire. Between the sixteenth century and the nineteenth century, the Ottoman and Persian Empires dominated what is now known as the Middle East. And the Incas and the Aztecs knew no true rivals in their regions. War seems universal or nearly so among human cultures, but the European pattern, in which an escalating cycle of war forced a mobilization and the development of technological, political, and bureaucratic resources to ensure the survival of the state, does not seem to have characterized international life in the rest of the world. For states and peoples in much of the world, the problem of modern history that needed to be solved was not the recurrence of great-power conflict. The problem, instead, was figuring out how to drive European powers away, which involved a wrenching cultural and economic adjustment in order to harness natural and industrial resources. Europe’s internecine quarrels struck non-Europeans not as an existential civilizational challenge to be solved but as a welcome opportunity to achieve independence. Postcolonial and non-Western states often joined international institutions as a way to recover and enhance their sovereignty, not to surrender it, and their chief interest in international law was to protect weak states from strong ones, not to limit the power of national leaders to consolidate their authority. Unlike their European counterparts, these states did not have formative political experiences of tyrannical regimes suppressing dissent and drafting helpless populations into the service of colonial conquest. Their experiences, instead, involved a humiliating consciousness of the inability of local authorities and elites to protect their subjects and citizens from the arrogant actions and decrees of foreign powers. After colonialism formally ended and nascent countries began to assert control over their new territories, the classic problems of governance in the postcolonial world remained weak states and compromised sovereignty. Even within Europe, differences in historical experiences help explain varying levels of commitment to Wilsonian ideals. Countries such as France, Germany, Italy, and the Netherlands came to the EU understanding that they could meet their basic national goals only by pooling their sovereignty. For many former Warsaw Pact members, however, the motive for joining Western clubs such as the EU and NATO was to regain their lost sovereignty. They did not share the feelings of guilt and remorse over the colonial past—and, in Germany, over the Holocaust—that led many in western Europe to embrace the idea of a new approach to international affairs, and they felt no qualms about taking full advantage of the privileges of EU and NATO membership without feeling in any way bound by those organizations’ stated tenets, which many regarded as hypocritical boilerplate. EXPERT TEXPERT The recent rise of populist movements across the West has revealed another danger to the Wilsonian project. If the United States could elect Donald Trump as president in 2016, what might it do in the future? What might the electorates in other important countries do? And if the Wilsonian order has become so controversial in the West, what are its prospects in the rest of the world? Wilson lived in an era when democratic governance faced problems that many feared were insurmountable. The Industrial Revolution had divided American society, creating unprecedented levels of inequality. Titanic corporations and trusts had acquired immense political power and were quite selfishly exploiting that power to resist all challenges to their economic interests. At that time, the richest man in the United States, John D. Rockefeller, had a fortune greater than the annual budget of the federal government. By contrast, in 2020, the wealthiest American, Jeff Bezos, had a net worth equal to about three percent of budgeted federal expenditures. Yet from the standpoint of Wilson and his fellow progressives, the solution to these problems could not be simply to vest power in the voters. At the time, most Americans still had an eighth-grade education or less, and a wave of migration from Europe had filled the country’s burgeoning cities with millions of voters who could not speak English, were often illiterate, and routinely voted for corrupt urban machine politicians. The progressives’ answer to this problem was to support the creation of an apolitical expert class of managers and administrators. The progressives sought to build an administrative state that would curb the excessive power of the rich and redress the moral and political deficiencies of the poor. (Prohibition was an important part of Wilson’s electoral program, and during World War I and afterward, he moved aggressively to arrest and in some cases deport socialists and other radicals.) Through measures such as improved education, strict limits on immigration, and eugenic birth-control policies, the progressives hoped to create better-educated and more responsible voters who would reliably support the technocratic state. A century later, elements of this progressive thinking remain critical to Wilsonian governance in the United States and elsewhere, but public support is less readily forthcoming than in the past. The Internet and social media have undermined respect for all forms of expertise. Ordinary citizens today are significantly better educated and feel less need to rely on expert guidance. And events including the U.S. invasion of Iraq in 2003, the 2008 financial crisis, and the inept government responses during the 2020 pandemic have seriously reduced confidence in experts and technocrats, whom many people have come to see as forming a nefarious “deep state.” International institutions face an even greater crisis of confidence. Voters skeptical of the value of technocratic rule by fellow citizens are even more skeptical of foreign technocrats with suspiciously cosmopolitan views. Just as the inhabitants of European colonial territories preferred home rule (even when badly administered) to rule by colonial civil servants (even when competent), many people in the West and in the postcolonial world are likely to reject even the best-intentioned plans of global institutions. Meanwhile, in developed countries, problems such as the loss of manufacturing jobs, the stagnation or decline of wages, persistent poverty among minority groups, and the opioid epidemic have resisted technocratic solutions. And when it comes to international challenges such as climate change and mass migration, there is little evidence that the cumbersome institutions of global governance and the quarrelsome countries that run them will produce the kind of cheap, elegant solutions that could inspire public trust. WHAT IT MEANS FOR BIDEN For all these reasons, the movement away from the Wilsonian order is likely to continue, and world politics will increasingly be carried out along non-Wilsonian and in some cases even anti-Wilsonian lines. Institutions such as NATO, the UN, and the World Trade Organization may well survive (bureaucratic tenacity should never be discounted), but they will be less able and perhaps less willing to fulfill even their original purposes, much less take on new challenges. Meanwhile, the international order will increasingly be shaped by states that are on diverging paths. This does not mean an inevitable future of civilizational clashes, but it does mean that global institutions will have to accommodate a much wider range of views and values than they have in the past. There is hope that many of the gains of the Wilsonian order can be preserved and perhaps in a few areas even extended. But fixating on past glories will not help develop the ideas and policies needed in an increasingly dangerous time. Non-Wilsonian orders have existed both in Europe and in other parts of the world in the past, and the nations of the world will likely need to draw on these examples as they seek to cobble together some kind of framework for stability and, if possible, peace under contemporary conditions. For U.S. policymakers, the developing crisis of the Wilsonian order worldwide presents vexing problems that are likely to preoccupy presidential administrations for decades to come. One problem is that many career officials and powerful voices in Congress, civil society organizations, and the press deeply believe not only that a Wilsonian foreign policy is a good and useful thing for the United States but also that it is the only path to peace and security and even to the survival of civilization and humanity. They will continue to fight for their cause, conducting trench warfare inside the bureaucracy and employing congressional oversight powers and steady leaks to sympathetic press outlets to keep the flame alive. Those factions will be hemmed in by the fact that any internationalist coalition in American foreign policy must rely to a significant degree on Wilsonian voters. But a generation of overreach and poor political judgment has significantly reduced the credibility of Wilsonian ideas among the American electorate. Neither President George W. Bush’s nation-building disaster in Iraq nor Obama’s humanitarian-intervention fiasco in Libya struck most Americans as successful, and there is little public enthusiasm for democracy building abroad.

### AT: CCBN---1NC

#### Zero chance of CBRN attacks

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Various theories have attempted to explain why terrorists have not successfully mounted a major CBRN attack. One explanation is that state policies to thwart such attacks have so far been successful. Individual states and the international community have made strenuous efforts to impede terrorists’ abilities to communicate, fundraise, and coordinate activities, thus diminishing their opportunities for success.

Another argument is that terrorist groups are satisfied with the impact they can achieve through conventional means and tactics, such as firearms, knives, automobiles, or improvised explosive devices (IEDs), and therefore have little interest in pursuing weaponized CBRN. During 2018, the media reported 1,329 IED incidents. As a result, 3,159 security force personnel and 2,833 civilians were killed. Total casualties numbered 12,525.59 While conventional weapons remain effective, there is arguably little incentive for terrorists groups to tackle the significant challenges required to acquire, weaponize, and deliver CBRN.

Certain terrorist groups may be unwilling to commit mass casualty attacks. The LTTE’s use of chemical weapons was constrained by the negative response from their constituents. Terrorists may be concerned that the use of CBRN weapons could actually deter fundraising and recruitment rather than encourage it. These factors may indicate that only a limited number of terrorist groups would be willing to use CBRN, even if they had the capability.60

Terrorists thus far appear to lack the ability to develop and deploy CBRN weapons of truly mass impact. Certainly, there are numerous hurdles that terrorist groups have to overcome to carry out a large-scale attack using CBRN weapons. Regardless of weapon category, the development of CBRN weapons of mass effect requires significant expertise and resources. Diverse knowledge and skill sets are needed to acquire the necessary agent, to produce an agent of sufficient quantity and quality, and to store, transport, and disseminate it. Along with technical expertise, a CBRN weapons program needs significant funding as well as a secure manufacturing location. Some terrorist organizations, including al Qaeda, Aum Shinrikyo, and IS, have demonstrated the ability to obtain the necessary funding and security to develop limited CBRN capabilities. However, it is a challenge for groups to maintain security for an extended period without interference or detection. Due to fears of a government raid, Aum Shinrikyo had to dismantle its CBRN programs several times, thus hindering progress in weapons production.61

There are also weapon-specific constraints. For example, chemicals such as hydrogen cyanide, sarin, and their precursors are highly corrosive and require storage in highly controlled environments. Due to their corrosive nature, the agents will immediately begin to eat away at rubber seals and the container itself, making leaks inevitable.62 Because of these constraints, if terrorist groups developed chemical agents, they would likely have to deploy them immediately and most probably within close geographic proximity to the location of their manufacture.

There are also a number of complications for terrorists seeking to manufacture biological agents. These include but are not limited to obtaining the correct microorganism, procuring the right equipment, avoiding contamination, and ensuring virulence during weaponization.63 To achieve mass casualties by using biological agents, a terrorist also needs to transport or smuggle an agent to the target without compromising the pathogenicity and virulence of the microbe.64

In the case of radiological materials, a terrorist will need to overcome challenges related to safe handling and have the knowledge to identify the correct amounts and types of explosives for dispersal over a targeted area. A terrorist would also need to have the skills to fabricate the required physical form of the radioactive source to ensure effective dispersal of the material.65

# 2NC

## Forecasting CP

#### Extinction

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Conclusion

Uncertainty surrounds every major foreign policy debate. As of this writing, for example, the US public is sharply divided in assessing the extent to which restricting immigration from Muslim-majority countries could reduce (or potentially exacerbate) the risk of terrorism. One of the foremost controversies facing the United Nations Security Council concerns the extent to which economic sanctions can reduce the probability that North Korea will continue expanding its nuclear arsenal. Debates over policy responses to climate change revolve around different perceptions of the risks that climate change poses and of the extent to which regulations could feasibly reduce those risks. At the broadest level, it is logically impossible to support a high-stakes decision without believing that its probability of success is large enough to make expected benefits outweigh expected costs. For that reason, it makes little sense to ask whether foreign policy analysts should assess probability. The question is rather how they can assess probability in the most meaningful way possible.

We have seen throughout this article how many scholars and practitioners are deeply skeptical of probability assessment. It is easy to understand why this is the case. Many of the events that have shaped world politics over the past two decades—such as the September 11, 2001 terrorist attacks, mistaken judgments of Iraq's presumed weapons of mass destruction programs, the 2008 financial crisis, the Arab Spring, the rise of ISIS, Brexit, and the election of Donald Trump—were outcomes that most political analysts failed to see coming or cases in which experts confidently stated that the opposite would be true. Our ability to predict world politics is clearly less accurate than we would like it to be.

This article nevertheless shows that it is a mistake to believe that probabilistic reasoning is meaningless in world politics or to think there is no cost to leaving these judgments vague. By examining nearly one million geopolitical forecasts, we find that foreign policy analysts could consistently assess probability with numeric precision. We find that rounding off these forecasts into qualitative expressions—including qualitative expressions currently recommended for use by US intelligence analysts—systematically sacrifices predictive accuracy. We see no evidence that these returns to precision hinged on extreme forecasts, short time horizons, particular scoring rules, or question content. We also see little indication that the ability to parse probabilities belonged primarily to respondents who possess special educational backgrounds or strong quantitative skills.

These findings speak to both academic and practical concerns. Great scholars such as Popper, Keynes, and Mill have all expressed doubts about the value of assessing subjective probability. Aristotle himself argued that justifiable precision declines as questions become more complex. Yet, even if that is true, it does not tell us where the frontier of justifiable precision lies in foreign policy analysis or in any other discipline. That is ultimately an empirical question, and to our knowledge, this article represents the first attempt to address that question directly. The results of our analysis are relevant not only for intelligence analysts and military planners, but also for scholars, pundits, and any other participants in the broader marketplace of ideas. In short, our data indicate that it is possible to improve the quality of foreign policy discourse on a widespread and immediate basis, simply by raising standards of clarity and rigor for assessing uncertainty.

#### Adding durability is bad---revision is key to policy accuracy.

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We also find that respondents’ experience making forecasts and their willingness to revise those forecasts consistently predict higher returns to precision (though the latter finding fell short of the p < 0.05 threshold in some models). These findings provide additional grounds for optimism that professional forecasters could replicate and potentially exceed the returns to precision shown in GJP's data. Many national security professionals assess uncertainty on a daily basis over many years. Professional foreign policy analysts also have much more opportunity and incentive to refine and revise their forecasts in light of new information than did GJP respondents, who revised their forecasts less than twice per question, on average.

#### Reversion key to superforecasting.

Brad Keywell 17. Uptake Technologies, Founder & CEO. "What Makes a Good Forecaster? ". 7-12-2017. https://www.linkedin.com/pulse/what-makes-good-forecaster-brad-keywell

They admit when they’re wrong: When accused of being inconsistent, the legendary British economist John Maynard Keynes is said to have once quipped back: “When the facts change, I change my mind. What do you do, Sir?” Many people (who are not superforecasters) do not change their mind when the facts change. Instead, they fall into a downward spiral of defensiveness and stubbornness. This is dangerous! Opinions in any organization or business must be open to discussion, distillment, disagreement, and, dissent and discard. Opinions may be ours, but they are not us, and they do not define us. Facts are meant to be discovered. They are not screaming out at us. Rather, we must be diligent explorers and searchers to find those relevant facts that matter most. And if we find a fact that makes our opinion wrong, embrace it! Be wrong – being disproven by a new fact is excellent. It’s normal, and it’s valued in a fact-driven drama-free environment. Doing this serves us well as forecasters.

I believe that intellectual curiosity is at the core of a purpose-driven life. The authors of Superforecasting illustrate intellectual curiosity with a simple example: Do you take the question “Who will win the presidential election in Ghana?” as pointless, or as an opportunity to learn something about Ghana?

This may sound corny, but I constantly try to remind the people who work at Uptake, the company I run—as well as, myself—to “be super”: super in our efforts to tenaciously learn and discover the unarguable facts; super in our refusal to rush to judgement about the quality of our opinions or the quality of the opinions of others; super in seeing both the outside and the inside; super in our refusal to allow the easy big ideas to define our actions in how we pursue the complicated small steps; and super in seeing when we’re right, or super in admitting when we’re wrong, and then gracefully transitioning to the more probable path of success.

#### It’s most predictable---we have the common and precise definition.

Dictionary.com “Inhibit vs. Prohibit”. https://www.dictionary.com/e/inhibit-vs-prohibit/

Prohibit is a transitive verb that means to forbid or prevent. Unlike inhibit, the word prohibit means that an action is being completely prevented. For example: “Angie’s coat was so tight, it prohibited any arm movement.” In this case, Angie isn’t able to move her arms at all. Prohibit is often used to describe the actions of authority figures. It can explain a rule or law. For example, “School rules prohibit cellphone use during class.” A street sign may say “Parking prohibited,” while a sign in a building lobby might say “Smoking prohibited by law.” All of these cases mean that cell phone use, parking in a certain area, or smoking are completely forbidden by their given authority figures, and can’t be done at all.

#### Prohibitions are absolute bans without exemption.

PEDIAA 15. “Difference Between Prohibited and Restricted”. https://pediaa.com/difference-between-prohibited-and-restricted/

Main Difference – Prohibited vs. Restricted

Prohibited and Restricted are used in reference to limitations and prevention. However, they cannot be used interchangeably as there is a distinct difference between them. Prohibited is used when we are talking about an impossibility. Restricted is used when we are talking about something that has specific conditions. The main difference between prohibited and restricted is that prohibited means something is formally forbidden by law or authority whereas restricted means something is put under control or limits.

What Does Prohibited Mean

Prohibited is a variant of the verb prohibit. Prohibited can be taken as the past tense and past participle of prohibiting as well as an adjective. Prohibited means that something is formally forbidden by law or authority. When we say ‘smoking is prohibited’, it means that smoking is not allowed at all, there are no exceptions. Prohibit indicates an impossibility. This gives out the idea that it is not at all possible under any condition or circumstance. The term Prohibited goods is used to refer to items that are not allowed to enter or exit certain countries. For example, the government of South America lists Narcotic and habit-forming drugs in any form, Poison and other toxic substances, Fully automatic, military and unnumbered weapons, explosives and fireworks as prohibited goods. The following sentences will further explain the use of prohibited.

Inter-racial marriages were not prohibited by the government.

He was proved guilty of using prohibited substances.

No one was allowed to enter the grounds; entry was prohibited.

Prohibited imports are the items that are not allowed to enter a country.Difference Between Prohibited and Restricted

What Does Restricted Mean

Restrict means to put under limits or control. Restricted can be either used as the past tense of restrict or as an adjective meaning limited. When we say something is restricted, it means that limits or conditions have been added to it. It does not mean that it is completely impossible. For example, Restricted goods are allowed to enter or exit a country under certain circumstances. A written permission can help you to import or export that item. Likewise, a restricted area does not mean that people are not allowed to enter; it means that a special permission is required to enter the place. Restricted information refers to information that are not disclosed to the general public for security purposes.

The new regulations restricted the free movement of people.

The club was restricted to its members and their family members.

Only the highest military personnel had access to the restricted area.

American scientists had only restricted access to the area.Main difference - Prohibited vs Restricted

Difference Between Prohibited and Restricted

Meaning

Prohibited means banned or forbidden.

Restricted means limited in extent, number, scope, or action

Possibility

Prohibited means that there is no possibility of doing something.

Restricted means that something can be done under certain conditions.

Adjective

Prohibited functions as an adjective derived from prohibit.

Restricted functions as an adjective derived from restrict.

Past tense

Prohibited is the past tense and past participle of prohibit.

Restricted is the past tense and past participle of restrict.

#### That means the counterplan is plan minus---it could find the activity procompetitive.

AMC 07. Antitrust Modernization Commission. Deborah A. Garza, Chair. Bobby R. Burchfield ,Commissioner. W. Stephen Cannon, Commissioner. Dennis W. Carlton, Commissioner. Makan Delrahim, Commissioner. Jonathan M. Jacobson, Commissioner. Jonathan R. Yarowsky, Vice-Chair. Donald G. Kempf, Jr., Commissioner. Sanford M. Litvack, Commissioner. John H. Shenefield, Commissioner. Debra A. Valentine, Commissioner. John L. Warden, Commissioner. “Report and Recommendations.” https://govinfo.library.unt.edu/amc/report\_recommendation/amc\_final\_report.pdf

Economic learning has provided the foundation for updated antitrust analysis in part by revealing the potential procompetitive benefits of some business conduct previously assumed to be anticompetitive. The accommodation of such advances in economic learning has increased the flexibility of antitrust law, with courts and the antitrust agencies now considering a wide variety of economic factors in their analyses. Improved economic understanding and greater analytical flexibility have increased the potential for a sound competitive assessment of business conduct in all industries, including those characterized by innovation, intellectual property, and technological change.

#### Absolute certainty is bad---always revise.

Walter Frick 15. Harvard Business Review. “What Research Tells Us About Making Accurate Predictions”. https://hbr.org/2015/02/what-research-tells-us-about-making-accurate-predictions

Revision leads to better results. This isn’t quite the same thing as open-mindedness, though it’s probably related. Forecasters had the option to go back later on and revise their predictions, in response to new information. Participants who revised their predictions frequently outperformed those who did so less often.

Together these findings represent a major step forward in understanding forecasting. Certainty is the enemy of accurate prediction, and so the unstated prerequisite to forecasting may be admitting that we’re usually bad at it. From there, it’s possible to use a mix of practice and process to improve.

## Adv CP

#### 1. “Do both” means FTC resources---antitrust blockage means CFIUS won’t interfere.

Jayden R. Barrington 19. J.D. Candidate 2020, University of San Diego School of Law; B.B.A. 2017, University of San Diego. “CFIUS Reform: Fear and FIRRMA, an Inefficient and Insufficient Expansion of Foreign Direct Investment Oversight”. 21 Transactions: TENN. J. Bus. L. 77 (2019).

This structure gave the President fifteen days to make a final determination in the form of a Presidential Order .8 FINSA added criteria for the President to take into consideration and ensured that the President "is under no obligation to follow the recommendation of the Committee to suspend or prohibit an investment." 9 Nevertheless, before blocking a transaction, the President still needed to determine that (1) other laws did not sufficiently protect the country, and (2) that there existed "credible evidence" that if the transaction were to be executed, it would impair national security.80 For example, if the deal would otherwise be blocked by the Department of Justice (DOJ) Antitrust Division and Federal Trade Commission (FTC) due to antitrust concerns, then there is no reason CFIUS must intervene and the first requirement would not be met. The second requirement of credible evidence that national security would suffer is more subjective. An example of a deal that may not meet this criteria is the foreign sale of a company like Coca-Cola or Levi's; though loved American brands, their foreign ownership would not likely create realistically foreseeable threats to matters of national security.

#### 2. “Antitrust” and “national security” are distinct agents.

Commissioner Noah Joshua Phillips 20. “Championing Competition: The Role of National Security in Antitrust Enforcement”. The Hudson Institute (Virtual) <https://www.ftc.gov/system/files/documents/public_statements/1584378/championing_competition_final_12-8-20_for_posting.pdf>

So should we use antitrust to pursue national security goals, or forbear in enforcing it because of them? As the U.S. Constitution itself makes clear, there is no responsibility more essential for a government than the protection of its citizens. My humble premise is that, like other non-competition considerations, antitrust is an imperfect tool. And, when it comes to national security, the U.S. government has other tools. We have, for example, separate and distinct systems requiring mergers to be notified to one set of enforcers who monitor antitrust concerns and to another set of government officials responsible for national security review. This is not a bug, but a feature, of our government and economic policies more generally.

The Committee on Foreign Investment in the United Stated (CFIUS) is authorized to review national security implications of certain cross-border transactions.23 Note that CFIUS is not an antitrust tool, but a national security one. And a very effective one at that. Look no further than Broadcom’s recent (unsuccessful) bid for Qualcomm.

#### 3. National security means the counterplan is CFIUS not the FTC.

Elizabeth Balboa 17. Benzinga Staff Writer. "4 M&A Deals Blocked By US Presidents For The Sake Of National Security". . 9-14-2017. https://www.benzinga.com/news/17/09/10059329/4-m-a-deals-blocked-by-us-presidents-for-the-sake-of-national-security

The Federal Trade and Communications Commissions are known buzzkills when it comes to blocking corporate mergers.

But sometimes, in the face of extreme consequences, the role falls on a higher power.

On recommendation from the Committee on Foreign Investment in the United States, the U.S. president has blocked acquisitions four times in the last three decades, each on the grounds of national security.

#### 2. We PIC out of “antitrust” and “anticompetitive”---it is the topic debate.

Reuters 15. "Pentagon Eyes Bill to Block Mergers and Acquistions for National Security Reasons". Newsweek. 12-22-2015. https://www.newsweek.com/pentagon-bill-mergers-and-acquisitions-weapons-national-security-ash-carter-408412

WASHINGTON (Reuters) - The Pentagon and other U.S. government agencies should complete a legislative proposal in coming weeks to let regulators block proposed mergers for national security reasons, instead of just antitrust concerns, a top official said on Tuesday. Defense Undersecretary Frank Kendall, who oversees arms weapons acquisitions and industrial base issues for the Pentagon, made the comments in an interview, after first mentioning the legislative push in September. In September he raised concerns about further consolidation among the biggest players in the U.S. weapons industry, warning that big weapons makers were not hesitant to use the power that came with increased size for their own corporate advantage. The comments came days after the U.S. Justice Department approved Lockheed Martin Corp's $9 billion takeover of Sikorsky Aircraft from United Technologies Corp, one of the biggest acquisitions in the weapons industry in years. At the time, Kendall said the U.S. Justice Department cleared Lockheed's acquisition of the helicopter maker because there was no direct anti-competitive issue, but the Pentagon did not want to see its industrial base whittled down to two or three very large suppliers. On Tuesday, Kendall said the Pentagon was working with the Justice Department and other agencies on a proposal that would add a national security provision to current law, much as mergers in other industrial sectors are subject to a "public interest" provision since they serve the nation. He said the proposal should be wrapped up soon and sent to lawmakers for their consideration. Kendall said the prospects for getting the legislation passed in a presidential election year were unclear, but it was important to address the issue. "It's a debate we should have," he said.

#### Infrastructure outweighs, it’s a larger internal link than platforms.

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

C. Does Competition Law Matter for Innovation in Developing Countries?

There are many factors that might lead one to be skeptical about whether competition law provides much value added when it comes to increasing innovation in developing countries. Infrastructure support for innovation generally, and for digital products and services specifically, may be more of a hurdle for innovation than weak competition law enforcement. Competition law enforcement agencies have had difficulty incorporating innovation into antitrust policy even in major developed economies; how much more so for resource‐starved agencies in developing countries? Perhaps it would be better to let the major enforcement agencies take the lead, particularly when the major digital platforms are involved, on the assumption that changes in structure or business practices will likely spill over to developing countries in any event.

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

II. Digital Platform Use in Developing Countries

A. An Overview

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

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

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

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

B. Mapping Platform Use in Africa: Four Areas

1. Online retail sales

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

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

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

2. Value chains

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

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

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

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

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

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

3. FinTech

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

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

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

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

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

4. Sharing platforms

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

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

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

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

C. Conclusion

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

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

III. Lessons For Competition Policy For Digital Platforms

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

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

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

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

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

The second lesson is that competition law enforcement may not be the most critical driver of platform innovation in developing countries. Many commentators have pointed out that basic physical infrastructure is primary—better Internet access, more broadband service, less expensive smartphones—as is better managerial training and even better ability to use English. Competition law enforcement is a good tool to keep things from getting worse, but not necessarily the best tool to make things better.92

The third lesson is that the hope that digital platforms will allow local small and medium sized businesses more access to global value chains remains just that, a hope. Local marketplace platforms don’t yet have a global reach and key international platforms have proven difficult to access, but not because of any anticompetitive conduct. Developing country competition law enforcers should still be alert to anticompetitive practices, like self‐preferencing, but not for the purpose of driving exports. Impact on local markets and local business should be reason enough to act.

#### CFIUS can update regs

Jayden R. Barrington 19. J.D. Candidate 2020, University of San Diego School of Law; B.B.A. 2017, University of San Diego. “CFIUS Reform: Fear and FIRRMA, an Inefficient and Insufficient Expansion of Foreign Direct Investment Oversight”. 21 Transactions: TENN. J. Bus. L. 77 (2019).

A. Increased Scope of CFIUS Jurisdiction

FIRRMA expands the scope of CFIUS in five key ways. First, the criteria triggering FDI is shifted from enabling foreign "control" of the business to allowing foreign "influence" over business activities, and accordingly, joint ventures are now a covered transaction form. Second, the legislation adds foreign access to sensitive personal data of U.S. citizens as a triggering element for CFIUS review. Third, the undefined sector of "critical technologies" is added to the existing sector of critical infrastructure as an area of the economy in which foreign involvement would pose risks to national security. Fourth, real estate transactions of both developed and undeveloped land involving foreign entities now fall under CFIUS jurisdiction. Lastly, FIRRMA provides a potential carve-out for some financial institutions with foreign limited partners benefiting from passive investments in the United States.

1. Change from Control to Influence

In the past, CFIUS interpreted "control" very broadly.128 FIRRMA recalibrates this benchmark to the lower standard of "influence."129 FIRRMA states that CFIUS covers any direct or indirect investment in a U.S. business that gives a foreign person access to "any material nonpublic technical information," access to the board of directors, or access to decision-making beyond basic shareholder voting rights that could influence company involvement in sensitive personal data; critical technologies; or critical infrastructure.13 0 This provision "is designed to capture small investments that might not otherwise fall within CFIUS jurisdiction because they lack the previously-required threshold of 'control."' 13 It is reasonable to predict that this term too will be construed to include the smallest interests feasible. 132

Additionally, transactions involving foreign entities are covered if a foreign government possesses a substantial interest in a U.S. company either directly or indirectly.133 The code's instructions to the Committee indicate that the definition of "substantial interest" includes a situation where the government retains "influence on the actions of a foreign person."' 134 This is significant because any corporation doing business in an authoritarian country, like China, could potentially meet this expanded criteria. The Chinese government is notorious for controlling its private sector enterprises and establishing government owned businesses, including financial firms like venture capital funds.135 Specifically, China's 2017 National Intelligence Law requires the support and cooperation of Chinese organizations and citizens in the government's intelligence operations. 1 36

In alliance with concerns over foreign "influence," FIRRMA expands CFIUS to cover an additional type of transaction. 13 CFIUS now covers joint ventures despite heavy protest by large American technology firms. 138 Previously, FINSA did not categorize joint ventures as a covered transaction type and thus FINSA permitted foreign entities to collaborate with corporations without exposure to CFIUS review because the technical agreement structure was not a merger, acquisition, or takeover. This difference in strategic corporate structuring no longer permits the unchecked transfer of information and resources.139

Though lowering the standard from "control" to "influence" adequately encompasses concerns associated with the uncertain impact of authoritarian government on private entities, this shift also creates the possibility that the Committee could choose to embark down an inefficient slippery-slope that could result in excess filings for transactions that do not pose significant national security threats. 14 For example, if the Committee were to interpret its authority and the "influence" standard to the broadest extent, it could mean that American companies-including big household names like Walmart, Apple, Boeing, and Starbucks-with operations in China could be burdened to file for CFIUS review for every merger, acquisition, and joint venture they undertake so long as they remain active in Chinese markets where the Chinese government has authoritarian control. 141 Excessive filing would hinder CFIUS' goal of protecting the United States economically and would increase the risk that the regulatory mechanism will be overburdened, causing the potential for deterioration in review quality where it is needed to protect national security.

#### 1. Can’t adapt to market dynamics---that undermines competition.

Alden Abbott 21. Senior Research Fellow at the Mercatus Center at George Mason University. “FTC Competition Regulation: A Cost-Benefit Appraisal.” 6/28/2021. https://www.mercatus.org/publications/antitrust-and-competition/ftc-competition-regulation-cost-benefit-appraisal

Competition rules, however, inherently would be overbroad and would suffer from a very high rate of false positives. By characterizing certain practices as inherently anticompetitive without allowing for consideration of case-specific facts bearing on actual competitive effects, findings of rule violations inevitably would condemn some (perhaps many) efficient arrangements. Furthermore, because rules by their nature are fixed in stone (at least until they are amended or repealed), they “frequently fail to account for market dynamic, new sources of competition, and consumer preferences.” Thus, they lack case law adjudication’s feature of analytic improvement (reflected in periodically updated federal antitrust guidelines) based on changing market conditions and improved economic analysis.

In sum, competition rules are a far more blunt and inflexible tool than adjudication and, as such, are less conducive to welfare-enhancing competition policy outcomes.

#### 2. Creates separate standards---locks in uncertainty.

Maureen K. Ohlhausen & James Rill 21. \*\*Former Commissioner of the Federal Trade Commission, Chair of Baker Botts LLC’s Global Antitrust and Competition practice. \*\*Served as Assistant Attorney General in charge of the U.S. Department of Justice’s Antitrust Division, issued the first joint FTC and DOJ Horizontal Merger Guidelines, and Senior Counsel at Baker Botts LLC. “Pushing the Limits? A primer on FTC Competition Rulemaking.” 8/12/2021. https://www.uschamber.com/sites/default/files/ftc\_rulemaking\_white\_paper\_aug12.pdf

In addition to these substantive concerns, UMC rulemaking by FTC would also create institutional conflicts between the FTC and DOJ and lead to divergence between the legal standards applicable to the FTC Act on the one hand and the Sherman and Clayton Acts on the other. At present, courts have interpreted the FTC Act to be generally coextensive with the prohibitions on unlawful mergers and anticompetitive conduct under the Sherman and Clayton Act, with the limited exception of invitations to collude. But because the FTC alone has the authority to enforce the FTC Act, and rulemaking by FTC would be limited to interpretations of that Act (and could not directly affect or repeal caselaw interpreting the Sherman and Clayton Acts), it would create two separate standards of liability. Given that the FTC and DOJ historically have divided enforcement between the agencies based on the industry at issue, this could result in different rules of conduct depending on the industry involved.77 Types of conduct that have the potential for anticompetitive effects under certain circumstances but generally pass a rule-of-reason analysis could nonetheless be banned outright if the industry is subject to FTC oversight. Dissonance between the two federal enforcement agencies would be even more difficult for companies not falling firmly within either agency’s purview; those entities would lack certainty as to which guidelines to follow: rule-of-reason precedent or FTC rules. In a further whipsaw, the agencies have of late opened competing investigations of the same conduct by the same company, which leads to additional legal dissonance and burden on the subject of the investigation. It could also create an uneven playing field between competitors who are overseen by different agencies, such as common carriers or banks (overseen solely by DOJ due to exemptions in the FTC Act) and non-common carrier communication providers or non-bank financial institutions, who may be subject to FTC oversight.

#### CFIUS has intl jurisdiction

Larry G. Franceski et al. 16. Larry G. Franceski, Of Counsel, Norton Rose Fullbright. Stephen M. McNabb, Chief Legal Officer. Kim Caine, Partner. "President Obama Blocks Proposed Chinese Acquisition of Controlling Interest in German Chip Maker". No Publication. 12-2-2016. https://www.nortonrosefulbright.com/en-us/knowledge/publications/4a3ee7bd/president-obama-blocks-proposed-chinese-acquisition-of-controlling-interest-in-german-chip-maker

CFIUS is a multi-agency U.S. governmental committee established in 1975 to review transactions that could result in control of a U.S. business by a foreign person ("covered transactions") in order to determine the effect of such transactions on U.S. national security.2 Companies involved in a potentially covered transaction may voluntarily submit a notice with CFIUS, or a review may be initiated by CFIUS or by the President. Once a filing is submitted, CFIUS conducts a 30-day review. At that point, the Committee may issue a determination that no threat to national security is presented, and the transaction can proceed, or the Committee may determine that an additional 45-day investigation is warranted. At the end of the 45-day investigation, the Committee may offer no recommendation or make an adverse recommendation to the President, who then has 15 days to make a decision. In some circumstances, the parties agree to mitigation measures with CFIUS to address CFIUS concerns so that an adverse recommendation can be avoided. The President has almost unlimited authority to take "such action for such time as the President considers appropriate to suspend or prohibit any covered transaction that threatens to impair the national security of the United States."3 However, before invoking such authority, the President must conclude that other U.S. laws are inadequate or inappropriate to protect the national security, and must have "credible evidence" that the foreign investment will impair the national security. The President must consider a variety of factors in deciding to block a foreign acquisition, including, for example, the potential national security-related effects on U.S. critical infrastructure and whether the transaction is a foreign government-controlled transaction.4

#### National security supersedes competition law.

Spencer Weber Waller 19. John Paul Stevens Chair in Competition Law and Director, Institute for Consumer Antitrust Studies, Loyola University Chicago School of Law. “Antitrust and Democracy”, 46 FLA. St. U. L. REV. 807 (2019).

A statute which gives the executive branch, or a ministry, the explicit power to sacrifice competition for national security or some other significant national interest is equally defensible in terms of democratic values, regardless of the wisdom of any particular decision under those powers. For example, numerous jurisdictions have public interest standards in their merger laws allowing the approval or rejection of transactions on grounds other than their competitive effects. 145

While the United States does not have public interest standards in its merger regime, it does have three statutes allowing noncompetition factors to supersede competitive analysis in order to achieve national security objectives. First, mergers may be blocked on national security grounds, even if cleared by the competition agencies. 1 4 6 Second, the United States enacted Section 232 of the Trade Act of 1962, which allows the Secretary of Commerce to conduct investigations to determine the effect of imports on any article of the national security of the United States. 147 Finally, the Defense Production Act of 1950 (DPA) allows the President to exempt agreements between private parties from the application of the antitrust laws where such action was taken for the national defense. 1 4 8

## Platforms Adv

#### 3. Their impact ev concedes it’s inevitable [Emory = Blue]

Michael 1AC Oppenheimer 20. Clinical Professor at the Center for Global Affairs at New York University, Senior Consulting Fellow for Scenario Planning at the International Institute for Strategic Studies, Former Executive Vice President at The Futures Group, Member of the Council on Foreign Relations, The Foreign Policy Roundtable at the Carnegie Council on Ethics and International Affairs, and The American Council on Germany; 10-2-2020, The Future of Global Affairs: Managing Discontinuity, Disruption and Destruction, "The Turbulent Future of International Relations," doa: 10-23-2021. url: <https://link.springer.com/chapter/10.1007/978-3-030-56470-4_2>

The rise of nationalism/populism is both cause and effect of this economic outlook. Lower growth will make every aspect of the liberal order more difficult to resuscitate post-Trump. Domestic politics will become more polarized and dysfunctional, as competition for diminishing resources intensifies. International collaboration, ad hoc or through institutions, will become politically toxic. Protectionism, in its multiple forms, will make economic recovery from “secular stagnation” a heavy lift, and the liberal hegemonic leadership and strong institutions that limited the damage of previous downturns, will be unavailable. A clear demonstration of this negative feedback loop is the economic damage being inflicted on the world by Trump’s trade war with China, which— despite the so-called phase one agreement—has predictably escalated from negotiating tactic to imbedded reality, with no end in sight. In a world already suffering from inadequate investment, the uncertainties generated by this confrontation will further curb the investments essential for future growth. Another demonstration of the intersection of structural forces is how populist-motivated controls on immigration (always a weakness in the hyper-globalization narrative) deprives developed countries of Summers’ recommended policy response to secular stagnation, which in a more open world would be a win-win for rich and poor countries alike, increasing wage rates and remittance revenues for the developing countries, replenishing the labor supply for rich countries experiencing low birth rates.

## Middleware Adv

#### 2. Doesn’t solve misinformation or far right groups

Francis 1AC F**ukuyama 21**. Mosbacher Director of Stanford’s Center on Democracy, Development and the Rule of Law. Director of the Ford Dorsey Master's in International Policy at Stanford. PhD, political science, Harvard. “Making the Internet Safe for Democracy”. Journal of Democracy, Volume 32, Number 2, April 2021, pp. 37-44. https://muse.jhu.edu/article/787834/pdf?casa\_token=VdaYtO26fNMAAAAA:aM5-x7m0oZADeR-FmoDEVkwwyKzCw2-uzMpN3dxf92QDv6FDYmwObGP6bze5Rmd\_lsg5XiFkN3t\_

One of the likely objections to the middleware concept is that it will simply reinforce the “filter bubbles” that already exist on the platforms. Alt-right ideologues and conspiracy theorists could construct filters of their own that would keep out contrary views, leading to a further fragmentation of the political space. But as noted above, the objective of policy should not be to suppress harmful content. The latter, if it falls short of calling for violence, is constitutionally protected. In any event, it will be technologically very hard to eliminate such content. After the January 6 attack on the U.S. Capitol, extremists began to move to the new platform Parler (which prided itself on a minimalist approach to moderation), and then, when Parler was temporarily offline after being dropped by Amazon’s web-hosting service, to encrypted messaging services such as Telegram or Signal. Much as we may regret this fact, **hate speech and conspiracy theories are embedded in the broader society, and middleware will do little to stamp them out**. But that is not a proper policy objective in a society that values free speech. What middleware might do instead is dramatically dilute the power of the platforms to amplify fringe views and take them mainstream. We might think of this in terms of an infectious-disease analogy: Instead of encouraging infected people to mingle in the broader society, we should seek to isolate them in spaces they share with the already infected.

#### 5. Far right groups can’t pull off a nuclear or bioweapon terror attack – don’t have the know how or materials

Rebecca L. Earnhardt et al, 21. Becca Earnhardt is a Research Associate with the Nuclear Security program at the Stimson Center. Also Brendan Hyatt, Nickolas Roth. “A threat to confront: far-right extremists and nuclear terrorism.” January 14, 2021. https://thebulletin.org/2021/01/a-threat-to-confront-far-right-extremists-and-nuclear-terrorism/

**Could they really pull it off?**While some violent far-right extremists are clearly motivated to carry out catastrophic terrorist attacks, a question remains: Do they possess the means and opportunity to conduct an act of nuclear terrorism? **There is no public evidence** violent far-right extremist groups have obtained the resources or exhibited the requisite operational sophistication to carry out an act of nuclear terrorism. Many of the plots involving far-right extremists and nuclear terrorism have been poorly conceived and were unlikely to succeed. These incidents, however, likely do not provide a complete picture of the threat, because publicly accessible information on the capability of these groups is limited, creating ambiguity about their general capabilities.

#### 6. Technical barriers prevent synthetic pathogens.

Eckard **Wimmer 18**. Professor at Stony Brook University. 2018. “Synthetic Biology, Dual Use Research, and Possibilities for Control.” Defence Against Bioterrorism, Springer, Dordrecht, pp. 7–11. link.springer.com, doi:10.1007/978-94-024-1263-5\_2.

Listed below are some constraints that show how in the US the development of dangerous infectious agents, referred to as “select agents”, is controlled – perhaps misuse even prevented – through technical and administrative hurdles: I. Re-creating an already existing dangerous virus for malicious intent is a complex scientific endeavor. (i) It requires considerable scientific knowledge and experience and, more importantly, considerable financial support. That support usually comes from government and private agencies (NIH, NAF, etc.), organizations that carefully screen at multiple levels all applications for funding of ALL biological research. (ii) It requires an environment suitable for experimenting with dangerous infectious agents (containment facilities). Any work in containment facilities is also carefully regulated. II. Genetic engineering to synthesize or modify organisms relies on chemical synthesis of DNA. Synthesizing DNA is automated and carried out with sophisticated, expensive instruments. The major problem of DNA synthesis, however, is that the product is not error-free

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. Any single mistake in the sequence of small DNA segments (30–60 nucleotides) or large segments (>500 nucleotides) can ruin the experiment. Companies have developed strategies to produce and deliver error free, synthetic DNA, which investigators can order electronically from vendors, such as Integrated DNA Technologies (US), GenScript (US) or GeneArt (Germany). This offers a superb and easy way to control experimental procedures carried out in any laboratory: the companies will automatically scan ordered sequences in extensive data banks to monitor relationship to sequences of a select agent. If so, the order will be stalled until sufficient evidence has been provided by the investigator that she/he is carrying out experiments approved by the authorities. The entire complex issue of protecting society from the misuse of select agents has been discussed in two outstanding studies [11, 12]. III. Engineering a virus such that it will be more harmful (more contagious, more pathogenic) is generally difficult because, in principle, viruses have evolved to proliferating maximally in their natural environment. That is, genetic manipulations of a virus often lead to loss of fitness that, in turn, is unwanted in the bioterrorist agent.

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## FTC DA

#### High food prices cause instability in every region of the world

Fiona Harvey 11 **–** environmental correspondent for the Guardian, February 2011, “Failure to act on crop shortages fuelling political instability, experts warn,” http://www.guardian.co.uk/environment/2011/feb/07/crop-shortages-political-instability)

World leaders are ignoring potentially disastrous shortages of key crops, and their failures are fuelling political instability in key regions, food experts have warned.

Food prices have hit record levels in recent weeks, according to the United Nations, and soaring prices for staples such as grains over the past few months are thought to have been one of the factors contributing to an explosive mix of popular unrest in Egypt and Tunisia.

The crises in those countries have served as a stark example of what can happen when food prices spiral out of control and add to existing political problems, said Lester Brown, founder of the Earth Policy Institute. "It's easy to see how the food supply can translate directly into political unrest," he said.

Richard Ferguson, global head of agriculture at Renaissance Capital, an investment bank specialising in emerging markets, said the problems were likely to spread. "Food prices are absolutely core to a lot of these disturbances. If you are 25 years old, with no access to education, no income and live in a politically repressed environment, you are going to be pretty angry when the price of food goes up the way it is."

He said sharply rising food prices acted "as a catalyst" to foment political unrest, when added to other concerns such as a lack of democracy.

While food was not the biggest cause of the Middle East protests, there has been widespread discontent over rampant food price inflation that has left millions of poor families struggling to find enough to eat. Egypt is the world's biggest importer of wheat.

The UN's Food and Agriculture Organisation said this week that world food prices hit a record high in January, for the seventh consecutive month. Its food price index was up 3.4% from December to the highest level since the organisation started measuring food prices in 1990.

Cereal prices are still about 10% below the peak they hit in April 2008, but have risen about 3% in the past month, after problems with last year's harvests caused by fires in Russia and bad weather.

A poor harvest this year would be catastrophic, said Brown, as global grain reserves are unusually low at present.

Brown warned that the longer term outlook was also bleak. Many arid countries have managed to boost their agricultural production by using underground water sources, but these are rapidly drying up. He cited Saudi Arabia, which has been self-sufficient in wheat for decades but whose wheat production is collapsing as the aquifer that fed the farms is depleted.

Water scarcity, combined with soil erosion, climate change, the diversion of food crops to make biofuels, and a growing population, were all putting unprecedented pressure on the world's ability to feed itself, according to Brown. This would fuel political instability and could lead to unrest or conflicts, h

e said. "We have an entirely new situation in the world. We need to recognise this."

Richer countries such as China and Middle Eastern oil producers have reacted by buying up vast tracts of land in poorer parts of the world, such as sub-Saharan Africa and parts of south-east Asia.

Rising food prices in the next few months could trigger a wave of reactions from governments that would exacerbate the current problem, argued Maximo Torero, of the International Food Policy Research Institute. "The big danger is that you get political pressure on countries to put in place restrictions on food, such as export bans on grains. We need to be very careful, as the situation is very tight and any additional pressure could take us to a very similar position to the one we had in 2007 and 2008."

There were widespread food riots in 2008 in Africa, Latin America and some Asian countries, as soaring grain prices put staple foods out of reach of millions of poor people.

Camilla Toulmin, director of the International Institute for Environment and Development, urged politicians to begin to tackle some of the root causes of food insecurity. "It's not surprising that you are seeing people coming out on to the street to protest, given the price rises. You are going to see a lot more of this unless governments start addressing the fundamentals, such as climate change, water scarcity and dependence on oil. We need to create more resilient systems of agriculture for the future."

#### Aff enforcement is still resource intensive---the FTC has to examine the facts of each case.

Maureen K. Ohlhausen 15. Commissioner, U.S. Federal Trade Commission, 9/12/15. “Antitrust Oversight of Standard-Essential Patents: The Role of Injunctions.” https://www.ftc.gov/system/files/documents/public\_statements/800951/150912antitrustoversight-1.pdf

Lessons drawn from the U.S. experience and from case law governing per se or by-object prohibition counsel a flexible standard rather than a firm rule. It is not easy to craft a rule that will appropriately resolve future cases, least of all in a setting as complex and dynamic as the standard-setting space. With those principles in mind, I worry that antitrust analysis governing SEP owners is being reduced to a simplistic principle. I say this with full respect for antitrust authorities’ efforts to address perceived hold-up. And while I recognize that much intervention to date has challenged efforts to enjoin those deemed to be “willing licensees,” that label has at times been applied too broadly to include parties that did not seem to be willing to pay a RAND rate.21 In any event, policymakers should not presume that seeking an injunction is always problematic, even against firms that agree to respect a third party’s determined royalty. Competition agencies should examine the facts of each case before reaching a conclusion.

#### Court jurisprudence incentivizes risk-taking, which means deterrence fails.

Even if they change this, it takes a long time

Rebecca Kelly Slaughter 21. Acting FTC Chairwoman, 3/18/21. “Reviving Competition, Part 3: Strengthening the Laws to Address Monopoly Power.” Prepared Statement of Federal Trade Commission Acting Chairwoman Rebecca Kelly Slaughter Before the Subcommittee on Antitrust, Commercial and Administrative Law Of the Judiciary Committee, United States House of Representatives. https://docs.house.gov/meetings/JU/JU05/20210318/111350/HHRG-117-JU05-Wstate-SlaughterR-20210318.pdf

Second, I think the FTC’s win rate in court reflects aggressive risk taking by defendants as a result of jurisprudence that is so permissive that it incentivizes companies to take a chance by proposing anticompetitive mergers or engaging in anticompetitive conduct. The Commission has spent far too many of our enforcement dollars and limited staff hours preparing to challenge, or actually litigating, mergers that are clearly illegal and should never have gotten out of the boardroom. For example, this past summer, our staff litigated and won a preliminary injunction blocking a clear merger-to-monopoly of coal producers in the Southern Powder River Basin.7 In 2019, the FTC challenged the acquisition by Illumina, a monopolist, of PacBio, one of the only other firms capable of competing to make next-generation DNA sequencing systems.8 At the end of 2020, the Commission filed to block four significant mergers. Three of those challenges resulted in the parties abandoning the transactions, including a healthcare merger in Tennessee that would have left the Memphis area with only two hospital systems.9 Several years ago we had to litigate all the way through trial and appeal a clear merger to monopoly of two healthcare providers in North Dakota.10 These mergers are only a few of the many data points that suggest a breakdown in the deterrent effect of antitrust enforcement.

#### Thumpers---

#### The FTC’s effectively prioritizing now

Chris Mills Rodrigo 1/19/22. Staff Writer @ The Hill. “FTC chair says agency won't back down because Big Tech is 'flexing some muscle'.” https://thehill.com/policy/technology/590484-ftc-chair-says-agency-wont-back-down-because-big-tech-is-flexing-some?rl=1

Khan stressed during Wednesday’s appearance that while the agency is chugging away at these changes, it remains ill-equipped to tackle all the issue before it, especially amid a surge in merger applications.

“We are severely under resourced,” she said. “We have the same number of people responsible for investigating these transactions, the number of transactions has dramatically increased, that creates significant strain.”

That lack of resources has led the agency to prioritize action that could act as a deterrent to other potentially anti-competitive deals, Khan said, like in the case of the FTC’s antitrust lawsuit against Facebook.

#### FTC’s not moving fast against Big Tech---the time horizon is long for those actions

Ashley Gold 1/13/22. Tech and policy reporter at Axios, covering regulators and Big Tech. “While Big Tech zips, regulators slog.” https://www.axios.com/meta-facebook-ftc-antitrust-tech-regulators-time-scales-e0db6df5-1e4e-4d3d-a5d7-9cc7f34ff089.html

In the year it took the Federal Trade Commission to get a judge to green-light its antitrust suit against Facebook this week, Facebook has already changed its name and shifted its focus.

Why it matters: Tech firms and Beltway regulators not only see issues differently but also operate on wildly different scales of time — with DC's glacial pace often leaving it at a deep disadvantage in its quest to limit tech giants' power.

Driving the news: Facebook, now Meta, Tuesday lost a bid to dismiss the FTC's antitrust case, which alleges the firm pursued a scheme to "buy or bury" competitors by purchasing Instagram and WhatsApp.

The timeline: The FTC's suit will now move to a trial that could stretch out for many years, like similar previous government litigation against Microsoft in the '90s and IBM in the '70s.

#### No impending action based on merger review guidelines---it’s just a public comment period

Mack DeGeurin 1/18/22. Writer for Gizmodo. “Following Record Year for Mergers, the FTC Wants to Know How You'd Fix Antitrust.” https://gizmodo.com/following-record-year-for-mergers-the-ftc-wants-to-kno-1848378299

Despite an apparent appetite for more aggressive anti-monopolistic enforcement mechanisms, federal agencies have found themselves subject to restrictive rules and lengthy court battles that limit their efficacy. A review process could alter the former, but representatives declined to comment on what, if any, effect those revamped guidelines would have on the seemingly inevitable tussle with courts.

The FTC and DOJ’s initial comment period is open for 60 days. After that, the agencies said they will release a draft with updated guidelines and seek more comments before finalizing them. The agencies said they are optimistically looking to finish this by the end of the year.

#### FTC’s focused on the supply chain inquiry now

Sara John 1/3/22. Senior Policy Scientist at the Center for Science in the Public Interest. “New Federal Investigation Looks into Grocery Industry Marketing Practices.” https://www.cspinet.org/news/blog/new-federal-investigation-looks-into-grocery-industry-marketing-practices

Recently, the federal government requested that companies hand over confidential, multi-million-dollar contracts to assess potential harms to American consumers. This is not the ending to the newest spy movie. This is the beginning of the newest investigation into the grocery industry.

You see, food and beverage manufacturers pay food retailers a lot of money to control what products are placed where in your grocery store. These terms are set forth in cooperative marketing agreements, or CMAs, contracts between manufacturers and grocery retailers that specify product price, placement, and promotion. Through these CMAs, Big Food and Big Soda place ultra-processed, sugar-laden products in multiple, prominent places throughout stores like ends of aisles, checkout lanes, and displays at the front of the store, tempting customers to purchase unhealthy products.

Americans’ health is not the only thing CMAs put at risk. CMAs can threaten fair competition by creating high entry costs. For example, exorbitant ‘slotting fees,’ which charge manufacturers to place new products on grocery shelves, disadvantage smaller manufacturers and producers who are then unable to introduce or expand product offerings. ‘Category captain arrangements’ are another anticompetitive grocery marketing practice in which retailers cede marketing decisions to the dominant manufacturer in a given food category, allowing them to make placement and promotion decisions for their products and even their competitors’ products.

Luckily, the Federal Trade Commission (FTC) is charged with protecting consumers and a competitive marketplace. Earlier this year, CSPI asked the FTC to investigate grocery industry trade promotion practices and category captain arrangements under Section 6(b) of the FTC Act. Following our request, the FTC included these asks in a broader investigation into supply chain disruptions. The investigation calls on nine retailers, wholesalers, and suppliers to provide internal documents related to supply chains, pricing, marketing, profits, and market shares to aid the FTC in determining if consumers or competition are being harmed.

#### 3- Unpopularity of overly broad FTC authority and use of UMC definitions turns the whole case---causes Congress to strip funding and authority from the FTC.

J. Howard Beales 03. Former Director, Bureau of Consumer Protection. “The FTC's Use of Unfairness Authority: Its Rise, Fall, and Resurrection.” https://www.ftc.gov/public-statements/2003/05/ftcs-use-unfairness-authority-its-rise-fall-and-resurrection

The breadth, overreaching, and lack of focus in the FTC's ambitious rulemaking agenda outraged many in business, Congress, and the media . Even the Washington Post editorialized that the FTC had become the "National Nanny."(16) Most significantly, these concerns reverberated in Congress. At one point, Congress refused to provide the necessary funding, and simply shut down the FTC for several days. Entire industries sought exemption from FTC jurisdiction, fortunately without success. Eventually, Congress acted to restrict the FTC's authority, including legislation preventing the FTC from using unfairness in new rulemakings to restrict advertising.(17) So great were the concerns that Congress did not reauthorize the FTC for fourteen years. Thus chastened, the Commission abandoned most of its rulemaking initiatives, and began to re-examine unfairness to develop a focused, injury-based test to evaluate practices that were allegedly unfair.

#### Backlash kills other areas of FTC enforcement.

Adam Speegle 12. J.D. Candidate, May 2012. “Antitrust Rulemaking as a Solution to Abuse of the Standard-Setting Process”. Michigan Law Review. March 2012, Vol. 110, No. 5 (March 2012), pp. 847-873. https://www.jstor.org/stable/23216802

Another major concern with bringing cases under an independent Section 5 is that, as the application of the provision expands and the bounds of its flexibility are tested, the FTC risks eventual backlash from the courts or Congress similar to the backlash it experienced in the 1980s.129 The FTC relies on Section 5 in both antitrust and consumer protection actions. A negative holding on Section 5's use in the standard-setting context may not only bear on future patent holdup enforcement efforts but may also severely impede the FTC's efforts in other areas. If the FTC fails to limit the application of Section 5, it risks subjecting Section 5 to the same or more severe judicial and congressional treatment than it experienced in the past.130 Additionally, many states have their own statutes that are modeled after the FTCA. These state statutes are interdependent with the federal FTCA, and state courts interpret them using federal FTCA precedent.131 Because holdings related to the FTCA at the federal level can, for better or for worse, impact these state statutes, unfavorable Section 5 precedent could also undermine actions at the state level.

#### Section 5 adjudication requires immense time and resources .

Christopher A. Cole et al. 21. Partner @ Crowell Moring, with Jacob Canter, Raija Horstman, and Helen Osun, 4/27/21. “The Supreme Court Limits FTC’s §13(b) Powers.” https://www.crowell.com/NewsEvents/AlertsNewsletters/all/The-Supreme-Court-Limits-FTCs-13b-Powers

In the meantime, one immediate change we may see is an uptick in FTC rulemaking in an effort to allow it to speed the administrative litigation process and expand the scope of monetary relief in both consumer protection and competition cases. However, that will not be a quick or easy process. While the FTC has well-articulated UDAP rulemaking authority, it is a time-consuming process, with meaningful procedural hurdles, and any final rules can be challenged in federal court. The FTC’s authority to promulgate competition rules is more controversial. The agency has used that authority only once in its history and has not tested that authority again for decades. We will also be watching to see how courts apply this decision to existing consent judgments, contested judgments, and ongoing proceedings. It seems unlikely that there would be any challenge to a prior settlement with the FTC, as those settlements usually involve reciprocal waivers of claims and defenses. However, prior judgments may be open to reconsideration.

#### That still costs the FTC.

William C. MacLeod 20. Chairs Kelly, Drye’s antitrust and competition practice, served as a director of the FTC’s Bureau of Consumer Protection and as the Chair of the ABA Antitrust Law Section, 7/13/20. Podcast interview, “Deep Dive Episode 120 – FTC Rulemaking: Underutilized Tool or National Nanny Renewed?” https://regproject.org/podcast/deep-dive-ep-120/

I see some of the same potential in the rule that Commissioner Phillips talked about, the Made in America Rule that the Commission is now proposing. However, in each one of these, we need to remember that there is a cost. As a matter of fact, the Commission recently reported to Congress that if Congress wants the Commission to be adopting a bunch of rules, the Commission had better receive the resources to write those rules, let alone to enforce them.

#### And gets challenged in court.

Julie O’Neill 21. Partner @ Morrison Foerster, 5/13/21. “FTC & Privacy: Will the FTC’s Rulemaking Push Result in New Privacy Rules?” <https://www.mofo.com/resources/insights/210512-ftc-privacy-rulemaking.html>

The FTC’s foray into rulemaking could lead to a period of uncertainty and legal challenges in those areas touched by a new agency rule. There is likely to be significant debate over the scope of the FTC’s authority, t

he particulars of the rulemaking process, the substance of any proposed rules, and, when tested in court, the extent of Chevron deference to which the agency is entitled.

#### That independently drains resources.

FTC 21. Peter Kaplan, Office of Public Affairs, 4/27/21. “FTC Asks Congress to Pass Legislation Reviving the Agency’s Authority to Return Money to Consumers Harmed by Law Violations and Keep Illegal Conduct from Reoccurring.” https://www.ftc.gov/news-events/press-releases/2021/04/ftc-asks-congress-pass-legislation-reviving-agencys-authority

Testifying on behalf of the Commission, Acting FTC Chairwoman Rebecca Kelly Slaughter told the Subcommittee that legislation such as H.R. 2668, introduced last week, is urgently needed in light of an April 22 ruling by the U.S. Supreme Court that eliminated the FTC’s longstanding authority under Section 13(b) of the FTC Act to recover money for harmed consumers, as well as other recent court rulings that have jeopardized the FTC’s ability to enjoin illegal conduct in federal court.

“These recent decisions have significantly limited the Commission’s primary and most effective tool for providing refunds to harmed consumers, and, if Congress does not act promptly, the FTC will be far less effective in its ability to protect consumers and execute its law enforcement mission,” the testimony states.

Over the past four decades, the Commission has relied on Section 13(b) to secure billions of dollars in relief for consumers in a wide variety of cases, including telemarketing fraud, anticompetitive pharmaceutical practices, data security and privacy, scams that target seniors and veterans, and deceptive business practices, among many others, according to the testimony.

More recently, in the wake of the pandemic, the FTC has used Section 13(b) to take action against entities operating COVID-related scams, the testimony notes. Section 13(b) enforcement cases have resulted in the return of billions of dollars to consumers targeted by a wide variety of illegal scams and anticompetitive practices, including $11.2 billion in refunds to consumers during just the past five years.

Beginning in the 1980s, seven of the twelve courts of appeals, relying on longstanding Supreme Court precedent, interpreted the language in Section 13(b) to authorize district courts to award the full panoply of equitable remedies necessary to provide complete relief for consumers, including disgorgement and restitution of money, according to the testimony. For decades, no court held to the contrary. In 1994, Congress ratified its intent to enable the FTC to obtain monetary remedies when it expanded the venues available for FTC enforcement cases, strengthening the Commission’s ability to bring redress cases. Nevertheless, a drastic shift in judicial decisions over recent years culminated in last week’s Supreme Court ruling that section 13(b) does not authorize returning money to harmed consumers.

The testimony also notes two other recent decisions in Third Circuit that have hampered the Commission’s longstanding ability to protect consumers by enjoining defendants from resuming their unlawful activities when the conduct has stopped but there is a reasonable likelihood that the defendants will resume their unlawful activities in the future. In one case, the Third Circuit held that the FTC can bring enforcement actions under Section 13(b) only when a violation is either ongoing or “impending” at the time the suit is filed. In another ruling, the court held that the FTC cannot sue under Section 13(b) unless conduct is imminent or ongoing.

The testimony notes that Facebook, Inc. has cited these decisions in its motion to dismiss the FTC’s current antitrust complaint against the company, arguing that Section 13(b) bars the federal court suit.

These decisions also limit the FTC’s ability to settle cases efficiently, the testimony states. Targets of FTC investigations now routinely argue that they are immune from suit in federal court because they are no longer violating the law, despite a likelihood of re-occurrence, and they make these arguments even when they stopped violating the law only after learning that the FTC was investigating them.

#### The aff can’t topically fiat funding for enforcement---"expand the scope of antitrust” refers exclusively to formal law and 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.

#### This is our argument---antitrust action is focused on supply chain disruptions.

Jim Tankersley 12/25/21. White House correspondent for The New York Times, with Alan Rappeport. “As Prices Rise, Biden Turns to Antitrust Enforcers.” https://www.nytimes.com/2021/12/25/business/biden-inflation.html

As rising inflation threatens his presidency, President Biden is turning to the federal government’s antitrust authorities to try to tame red-hot price increases that his administration believes are partly driven by a lack of corporate competition.

Mr. Biden has prodded the Agriculture Department to investigate large meatpackers that control a significant share of poultry and pork markets, accusing them of raising prices, underpaying farmers — and tripling their profit margins during the pandemic. As gas prices surged, he publicly encouraged the Federal Trade Commission to investigate accusations that large oil companies had artificially inflated prices, behavior that the administration says continued even after global oil prices began to fall in recent weeks.

The push has extended to little-known agencies, like the Federal Maritime Commission, which the president has urged to search for price gouging by large shipping companies at the heart of the supply chain.

The turn to antitrust levers stems from Mr. Biden’s belief that rising levels of corporate concentration in the U.S. economy have empowered a few large players in each industry to raise prices higher than a more competitive market would allow.

Corporate culpability for rising prices remains unclear. Inflation is at a 40-year high because of pandemic-related factors such as broken supply chains and high demand for goods from consumers still flush with government-provided cash. But as the price increases have spread across sectors, including food and gasoline, the administration has come under increasing pressure to find ways to respond.

White House officials concede that their antitrust moves are unlikely to reduce costs for U.S. businesses or consumers immediately. The efforts, they say, will be more effective down the road. But the rise of inflation has given the White House an opportunity to take action that Democrats have long encouraged, and that Mr. Biden made an early focus of his tenure: using the power of government to break up monopolies and promote economic competition.

#### Last arg---FTC investigation roots out the problems and shapes enforcement strategy---it’s worked in the past

David J. Lynch 21. Financial writer covering trade and globalization at the Washington Post, 11/29/21. “FTC demands information from top companies, such as Amazon and Walmart, in sweeping supply chain probe.” https://www.washingtonpost.com/us-policy/2021/11/29/ftc-supply-chain-inquiry/

The White House and some independent analysts have blamed a lack of competition throughout the supply chain for many of the current problems, which are fueling inflation and depressing the president’s public approval ratings. Biden this summer issued an executive order calling for regulators to crack down on consolidation in the ocean shipping and freight rail industries as part of a broader competition initiative.

“We’ve had an incredible amount of consolidation in the supply chain. ... That’s why it’s been unable to withstand the kind of shock we’ve seen with the pandemic,” said Diana Moss, president of the American Antitrust Institute. “We are now learning the hard way what 40 years of unbridled consolidation and lax merger enforcement mean.”

FTC Chair Lina Khan said the goal of the commission study is to “shed light on market conditions and business practices that may have worsened” the supply jams that were the focus of Monday’s White House event.

In recent weeks, top administration officials have worked to hammer out agreements among ocean carriers, port executives, terminal operators and trucking companies to smooth tangled supply lines. At the neighboring ports of Los Angeles and Long Beach, longshore workers have made headway clearing out some of the tens of thousands of shipping containers that have been crowding the docks.

Yet other problems, including stacks of empty containers bound for Asia, continue to hobble operations.

The FTC launched the supply chain probe using its authority to conduct wide-ranging studies without a specific law enforcement purpose. Such efforts can uncover information that would lead officials to open an investigation or could reshape their enforcement strategy.

In the early 2000s, after repeatedly failing in efforts to block proposed hospital mergers, the FTC launched a Section 6b study, which enabled the commission to thwart future combinations.

The commission is an independent agency that shares responsibility for antitrust enforcement with the Department of Justice and can crack down on deceptive business practices that harm consumers.

A commission spokeswoman did not respond to a request for comment.

With its supply chain probe, the commission will need to distinguish between price increases that reflect the workings of supply and demand and those that result from improper business links, said a former FTC official, who spoke on the condition of anonymity to discuss the commission’s work.

FTC lawyers will review information gathered from the individual companies, looking for indications that producers and wholesalers may have contractual arrangements that favor large retailers over their smaller rivals, the former official said.

“They’re trying to see if there are things gumming up the works,” the former official added.

Along with Walmart, Amazon and P&G, commission orders for information are being sent to Kroger Co., C&S Wholesale Grocers Inc., Associated Wholesale Grocers Inc., McLane Co., Tyson Foods Inc. and Kraft Heinz Co.

The CEOs of Kroger and Walmart participated in the White House session with the president a few hours before the FTC sent them its order.

The commission is seeking information from consumer product makers, wholesalers and retailers. Under the Nov. 29 action, the nine companies have 45 days to provide internal documents, including details of their supply-chain strategies; pricing; marketing and promotions; costs; profit margins; selection of suppliers and brands; and their market shares.

“In addition to better understanding the reasons behind the disruptions, the study will examine whether supply chain disruptions are leading to specific bottlenecks, shortages, anti-competitive practices, or contributing to rising consumer prices,” the FTC said in a statement.

#### FTC probe identifies the weak links causing supply-chain disruption and enables proactive measures to correct it.

Allison F. Sheedy 12/6/21. Lawyer at Constantine Cannon LLP. “The FTC is Searching for Weak Links in its Investigation of the Retail Supply Chain.” https://www.lexology.com/library/detail.aspx?g=1a7816fa-73f3-4e97-9579-21b23957f50e

Last week the Federal Trade Commission began an investigation searching for the weak links causing supply chain disruptions in the U.S. economy.

The FTC issued orders under Section 6(b) of the FTC Act—administrative subpoenas seeking detailed information—to nine of the country’s largest retailers, wholesalers, and consumer goods suppliers, including Amazon, Walmart, Proctor & Gamble, and Kraft Heinz Co. The FTC’s stated goals are understanding current supply chain disruptions and how these disruptions may be affecting competition. This broad ranging investigation follows on the heels of recent media reports about supply chain disruptions and ongoing consumer goods shortages. The investigation is not focused on enforcement, at least not yet.

While many business lawyers and executives are familiar with Section 5 of the Federal Trade Commission Act (the FTC Act), which outlaws unfair or deceptive trade practices, one of the lesser-known powers of the Federal Trade Commission (FTC) comes under Section 6 of that same Act.

Section 6(b) empowers the Agency to conduct broad-based industry studies and seek any relevant information. The statutory provision authorizes the FTC to conduct these studies without a specific law enforcement purpose. As part of this process, the FTC issues Section 6(b) “orders” that are typically wide-ranging requests for documents and data (similar to Civil Investigative Demands under Section 5).

This statutory provision, arguably, is a relic of a different age, when the FTC, as an administrative agency, was tasked with becoming an expert in particular industries. It enables the agency, without going on a war footing (i.e., opening an investigation where they allege a violation of the law), to engage in broad discovery related to a particular industry practice and its potential effects on competition and consumer welfare.

These investigations typically, but not always, result in a public study summarizing the findings and sometimes recommending further actions by the FTC or industry participants. These studies are classified as policy and research work product rather than serving a specific law enforcement purpose.

During the past decade, the FTC has spearheaded approximately 12 other 6(b) investigations in a wide swath of industries. A list of these investigations and formal outcomes is included in the table at the end of this article.

While some 6(b) investigation seem to have ended with a thud, others arguably have informed the FTC’s competition and consumer protection enforcement programs going forward. For example, it is unlikely that the FTC’s 6(b) investigation on the effects of unreportable transactions by large technology firms that it started in February 2020 had no relationship to the FTC’s decision in February 2021 to decrease the size of reportable transactions.

One noteworthy aspect of the FTC’s current supply chain investigation is its focus on firms at the back end of the chain. Many of the news reports on the supply chain have explored issues having to do with ocean shippers, congestion at ports, and container transport as underlying the disruptions. One might question why the FTC has issued 6(b) orders to retailers and suppliers of consumer products (e.g., the purported victims) rather than those involved in the transportation of goods.

One answer is that ocean shippers enjoy a limited exemption from the antitrust laws, including specifically from the FTC Act, by virtue of the Shipping Act. While the FTC may not have the jurisdiction – today—to investigate many transportation issues that underlie supply chain disruptions, the antitrust immunity conveyed by the Shipping Act has recently come under criticism by the Biden administration.

An integral part of the Section 6(b) process is an opportunity for entities with legitimate grievances to put their best foot forward, factually, and present evidence to the Commission as to why there are problems in the industry that go beyond normal business practices. The Commission may well be intent on creating a record, with this investigation, of why shipping immunity is no longer warranted.

#### FTC inquiry tackles the root causes of supply chain disruption.

GC 21. Groundwork Collaborative, 11/30/21. “Groundwork Collaborative on FTC Supply Chain Announcement: Strong Step Toward Tackling Corporate-Caused Inflation.” https://groundworkcollaborative.org/news/groundwork-collaborative-on-ftc-supply-chain-announcement-strong-step-toward-tackling-corporate-caused-inflation/

Today, the Federal Trade Commission (FTC)’s announced that it is conducting an inquiry into how nine large retailers, wholesalers, and consumer good suppliers have contributed to ongoing supply chain disruptions. The FTC will also investigate the impact of empty shelves and skyrocketing prices on consumers and the overall economy. Groundwork released the following statement:

“This is a strong step by President Biden’s FTC to support millions around the country struggling to make ends meet by tackling the real culprit behind rising prices: corporate greed,” said Rakeen Mabud, managing director of policy and research and chief economist at Groundwork. “These orders will shine a critical spotlight on how deeply-entrenched concentrated corporate power has exacerbated supply chain issues and allowed greedy corporations like Amazon, Walmart, and Kroger to extract from consumers – all in service of padding their record profits.”

On November 23, Mabud was quoted saying: “We need federal policies that will help tackle the root causes of inflation: shortages that are the direct result of decades of disinvestment in our supply chains and the corporate extraction that has weakened our economy’s responsiveness to crises.”