# Wiki Doc – Northwestern R1

# 1NC

## 1

### Regulations CP---1NC

#### The United States federal government should substantially increase prohibitions on anticompetitive business practices by the private sector through non-antitrust regulations in service of socialism.

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

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

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

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

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

## 2

### Notice and Comments CP---1NC

#### Text: The United States federal government should delegate antitrust rulemaking authority to a new expert agency. The agency should begin notice-and-comment rulemaking to substantially increase prohibitions on anticompetitive business practices by the private sector by expanding the scope of its core antitrust laws in service of socialism.

#### Solves the case, engages notice and comment, and avoids courts disads.

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

A. The Agency Solution

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

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

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

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

#### Key to democracy and court acquiescence---notice and comment engages participants and creates deference.

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

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

CONCLUSION

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

#### Democracy solves war

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

## 3

### Sherman Offsets CP – 1NC

#### Counterplan: The United States federal government should restrict the scope of the Sherman Act to exclude sustainability agreements and other actions designed to combat climate change.

#### Antitrust should be curtailed to make way for private warming action. Past cases prove intention to adapt without follow through.

Dailey Koga 20. J.D. Candidate, University of Washington Law School. “Teamwork or Collusion? Changing Antitrust Law to Permit Corporate Action on Climate Change,” *University of Washington Law Review* (95): 2017-2022.

The general view among antitrust scholars is that antitrust law is not the proper channel to address regulatory concerns such as environmental policy.261 Enforcement agencies have viewed agreements involving climate change in the same way as those involving other ethical and social considerations, stressing that the social benefits of the agreements cannot be taken into account as procompetitive justifications.262 Further, antitrust jurisprudence emphasizes that legislative bodies are better suited to address ethical and moral considerations—not the courts.263 The DOJ and Federal Trade Commission (FTC) may be similarly unfit to determine such matters through non-enforcement decisions.264 The Supreme Court has said itself that “we may assume that competition is not entirely conducive to ethical behavior, but that is not a reason, cognizable under the Sherman Act, for doing away with competition.”265

Other scholars argue that antitrust laws can hinder potential solutions to environmental problems.266 For example, Jonathan Adler argues that many environmental problems can be seen as tragedies of the commons— where every person behaves in a self-interested manner that ultimately creates a detriment to broader society.267 A tragedy of the commons exists when individuals’ interests are contrary to the community’s interests.268 In the fishing context, for example, each individual person would benefit from catching as many fish as possible, but broader society would benefit from limiting each person’s fishing to protect the fish population. Adler explains that restraints on fishing can solve the tragedy of the commons problem of overfishing.269 Antitrust disallows the creation of some of these community-oriented restraints. Antitrust laws may therefore exacerbate these types of environmental problems.270

D. The Auto Industry as a Case Study

Despite the environmental threat posed by lower emissions standards, the DOJ opened an antitrust investigation into four automakers who came to an agreement with California to heighten vehicle emissions standards.271 This agreement was in response to the low emissions standards set by the Trump administration—a stark reversal of those set by the Obama administration.272 The car manufacturers and California stated that an agreement on emissions standards was necessary due to the nature of the car industry.273 Namely, they argued that the automakers need the ability to predict future emissions standards to develop appropriate technology and begin to manufacture new vehicles.274 The agreement was therefore touted as one that would provide certainty and stability to industry professionals on top of improving automobile emissions.275

The Justice Department was, at least initially, unwilling to accept that argument.276 Assistant Attorney General Makan Delrahim made multiple statements, citing cases such as National Society of Professional Engineers and Superior Trial Court Lawyers to support his argument that antitrust has never allowed moral considerations to factor into its analyses of potentially anticompetitive agreements.277 Throughout the DOJ’s investigation, it remained unclear what their legal argument could rest on. If the automakers had agreed with California to increase emissions standards, state action immunity would likely protect the agreement, assuming there was ongoing state supervision.278 Alternatively, if the automakers agreed with each other to petition California for higher emissions standards and California complied, the Noerr-Pennington doctrine would likely protect the agreement.279

At the time, no evidence seemed to exist that the automakers had agreed amongst themselves at all. In fact, California repeatedly emphasized that each company entered into a separate agreement with the state—not with one another.280 Thus, many believed the investigation was improper because no agreement between the automakers ever occurred.281 The DOJ dropped the investigation five months later.282

Four months after the DOJ dropped the investigation, a whistleblower from the Justice Department’s Antitrust Division testified in front of the House Judiciary Committee to notify the committee of his concerns over some recent antitrust investigations conducted by the DOJ, including the automaker investigation.283 The whistleblower, John Elias, expressed his concern that the DOJ had opened the investigation in response to a series of tweets by President Trump284 without considering the viability of the claim—in contravention of typical DOJ practice.285 Indeed, the DOJ opened the investigation on August 22, 2019—one day after Trump’s tweets criticizing the automakers’ agreement with California.286 In response to the whistleblower’s testimony, Assistant Attorney General Delrahim wrote a letter explaining that (1) the investigation was proper and narrowly tailored, (2) the timing of Trump’s tweet was purely coincidental, and (3) political appointees are fully capable of running the Justice Department.287 He also made clear that the DOJ terminated the investigation because the department found that the automakers had never entered into an agreement.288

The automakers in this case escaped prosecution, but the DOJ’s inquiry alone may have made the agreement less effective than it otherwise would have been. It was reported that at least one car manufacturer backed out of the agreement as a result of the agency’s scrutiny.289 Additionally, California had to go out of its way to emphasize that each company reached a separate agreement with the state.290 But despite the parties’ efforts to ensure the deal would not attract antitrust scrutiny, the DOJ persisted in its investigation.291 Based on these actions, it seems that the companies felt largely constrained by antitrust laws, struggled to get around them, and still ended up the target of a probe by the DOJ.

The automobile industry is one industry that could be transformed if antitrust regulations were relaxed even slightly. Auto emissions were the largest contributor to greenhouse gas pollution in the United States in 2017.292 This is true despite efforts by lawmakers and the EPA over the last half-century to curb auto emissions.293 Further, the frequent change in administration in the US means regulatory standards are constantly shifting. This makes it difficult for industries like the automobile industry to predict future needs and invest in environmentally friendly innovations.294

In the case of the automakers in California, an antitrust exemption for agreements with positive environmental effects may have persuaded more than four automakers to join the agreement. But there is, of course, a downside to this type of agreement in the auto industry: higher emissions standards could reduce consumer choice and increase the cost of purchasing a vehicle. This may leave some consumers unable to afford their preferred car. But given the existential threat of climate change, perhaps the long-term benefits outweigh these short-term costs.

Our understanding of both economics and climate change continues to develop. The Chicago School vision of the rational person and self-correcting markets has started to give way to the study of behavioral economics.295 Even more importantly, climate change continues to worsen, and people generally agree that it poses an existential threat to our planet.296 Allowing for some cooperation among competitors could help address some of our climate change concerns.

IV. SUSTAINABILITY AGREEMENTS WITH OR WITHOUT AN EXEMPTION

Congress has the ability to codify exemptions to antitrust laws and has done so numerous times in the past.297 Congress should pass an exemption to antitrust law for sustainability agreements using the Dutch Guidelines as a model. This would allow companies to enter into agreements addressing climate change without fear of antitrust litigation. While this type of exemption may increase the risk of cartel behavior, keeping the exemption narrowly tailored and requiring quantitative evidence of sustainability benefits can mitigate those anticompetitive concerns. In the meantime, litigants should frame sustainability agreements in economic terms to survive antitrust scrutiny and can use past precedent as a model to do so.

A. Congress Should Pass a Sustainability Exemption

Congress should adopt an antitrust exemption for sustainability agreements similar to that proposed in the Netherlands.298 For agreements that have anticompetitive effects, Congress can require companies to meet the four main requirements suggested by the Dutch: (1) the agreement must have sustainability benefits, (2) the ultimate consumer must receive “a fair share of those benefits,” (3) the restraint on competition must not be greater than necessary to achieve those benefits, and (4) the agreement must not eliminate “a substantial part of the products/services in question.”299

While the broad proposal from the Netherlands represents the most ideal solution, Congress could change the exemption in two ways that would be more consistent with current precedent and also limit the risk of cartel behavior. First, the exception could require companies to always have quantitative data showing a certain threshold of environmental benefits, regardless of market share. Requiring quantitative data that shows benefits to a certain threshold could reduce arbitrary results. It could also help to partially ensure that the agreement is not a cover for a cartel in that the environmental impacts would have to be real, not just suggested or purported.

#### The impact is extinction. Efficiency from private regulation is key.

Dailey Koga 20. J.D. Candidate, University of Washington Law School. “Teamwork or Collusion? Changing Antitrust Law to Permit Corporate Action on Climate Change,” *University of Washington Law Review* (95): 2011-2015.

Governmental bodies have been particularly slow and ineffective in responding to climate change. Some government leaders have refused to address environmental concerns completely, and a few have even pointed to the private sector as a better avenue for change. 216 The private sector, on the other hand, has increasingly begun to realize its role in the climate crisis - sometimes even viewing sustainability as a profitable endeavor. The automobile industry frames the issue well, emphasizing the impact private industry could have on the climate crisis if given more freedom to address the issue. 218

A. The Need for Private Contribution to Environmental Protection

At its core, climate change refers to Earth's rising average temperature. 219The ten hottest years on record all occurred between 1998 and 2018, with nine out of ten occurring since 2005. 220The five hottest years on record occurred between 2014 and 2018. 221Scientists predict that these trends will continue at least through the next decade. 222They also estimate that humans have caused one degree Celsius of global warming from pre-industrial levels. 223That increase is expected to reach one-and-a-half degrees Celsius between 2030 and 2052.

Climate change is expected to affect every part of our lives in the coming years - and in many ways it already has. 225Climate change has caused rising sea levels, loss of various plant and animal species, increased ocean temperatures, heat-related illness and death, reduced food [\*2013] availability, reduced levels of drinking water, abnormal weather patterns, increased natural disaster risk, and many other problems. 226Scientists again predict these trends will continue well into the future.

227Moreover, climate change disproportionately affects minority groups and impoverished communities. 228 Slowing climate change remains vital to our survival as a species. 229 Some climate experts have argued that civilization could start to collapse by 2050 if humans do not take immediate action to slow global warming. 230 Two degrees Celsius of global warming poses significantly greater risks than one-and-a-half degrees Celsius. 231Though some disagreement exists about exactly how much time we have to change the trajectory of global warming or whether we have already reached the tipping point, 232 it is clear that we must take immediate action for any chance of survival. 233

Despite increased focus on climate change globally, greenhouse gas emissions rose in the United States in 2018 by 2.7%. 234Some global leaders have shown an unwillingness to address the problem of climate change. 235Likewise, the initiatives that have been launched by global [\*2014] leaders thus far have done little to address the issue.236

The Paris Agreement is a prime example of a government-led climate change initiative that is unlikely to achieve its desired climate goals. 237The agreement involved 196 parties to the United Nations Framework Convention on Climate Change who contracted in December 2015 to implement changes that would limit the global temperature rise to less than two degrees Celsius. 238The agreement requires each member country to comply with "nationally determined contributions," which are effectively individual emission-reduction plans. 239Although the United States is one of the largest emitters of CO<2>, 240the Trump Administration chose to withdraw from the Paris Agreement. 241This renders the agreement much less valuable than it would be with American participation.

Domestic efforts to curb climate change have fallen flat as well, 243 and those that have seen success have not gone far enough to address the severity of the climate crisis. 244Some states have taken steps on their own [\*2015] to enact policies to curb emissions, 245but the efforts of state governments are necessarily limited in scope. Moreover, fewer than half of states have taken the initiative to enact these kinds of policies aimed at curbing CO<2> emissions.246

Although climate change has become a global concern with potentially catastrophic consequences, governments have been slow to respond to the impending effects of climate change. Government efforts on the global, national, and state levels have thus far been ineffective at curbing the rise in global temperatures.

B. Response of Private Actors to Environmental Concerns

In contrast to governments, companies have increasingly recognized their role in the climate crisis. 247Some companies have started to look at becoming more environmentally friendly and enacting sustainability practices, recognizing that these initiatives could lead to long-term profitability. 248Shareholders and employees also put pressure on corporations to address the climate crisis. 249Further, many corporations operate on a global scale and a company policy to reduce emissions could thus have an impact beyond the borders of a single country.

At the annual World Economic Forum in January 2020, 140 business leaders vowed "to develop a core set of common metrics to track environmental and social responsibility." 250The same week, Steven Mnuchin, the U.S. Treasury Secretary, downplayed the severity of the crisis, stating bluntly: "We don't believe there should be carbon taxes ... we think that industry can deal with this issue on its own." 251 [\*2016] This contrast provides a glaring example of the different outlooks held by governments and corporations, and demonstrates that even U.S. leadership plans to rely on industry to solve the problem.

## 4

### FTC Trade Off---1NC

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

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

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

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

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

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

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

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

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

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

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

## 5

### Japan---1NC

#### New antitrust is applied globally---offends allies---regs counterplan avoids it.

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

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

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

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

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

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

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

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

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

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

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

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

IV. Extraterritorial antitrust and foreign deregulation

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

#### Ends the Japan economic alliance---they respond with diplomatic protest to new extraterritorial antitrust.

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

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

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

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

II. Extraterritorial Application of U.S. Antitrust Laws

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

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

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

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

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

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

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

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

#### Japan economic alliance is key to prevent Chinese challenges to the ILO

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

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

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

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

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

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

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

#### Preventing Chinese aggression solves great power war

Alan W. Dowd 21. Senior fellow with the Sagamore Institute, where he leads the Center for America’s Purpose. "Capstones: China’s Dream, the World’s Nightmare – Sagamore Institute". No Publication. 4-5-2021. https://sagamoreinstitute.org/capstones-chinas-dream-the-worlds-nightmare/

If China is indeed the future, if China is primed to “rule the world,” if China remakes the international order in its image, it won’t be pretty. A future dominated by the People’s Republic of China (PRC) will be demonstrably worse than the world we know. Just look at how Xi Jinping’s regime treats its own subjects—and plays its current role on the global stage.

NO RIGHTS

Those predictions aren’t outlandish. China already is the world’s top manufacturing nation, top exporting nation and second-largest economy. The PRC was the only major economy to emerge from 2020 claiming GDP growth (if we are to trust Beijing’s books). In the pandemic’s wake, China dislodged the U.S. as the world’s primary destination for foreign direct investment. PRC-backed firms are leaders in the global 5G and AI race. On the strength of a 517-percent binge in military spending since 2000, China bristles with anti-ship and anti-aircraft missiles, deploys a high-tech air force, has a growing and openly hostile presence in space, is doubling its nuclear arsenal, and boasts a 350-ship navy (now the world’s largest). Beijing’s growing cultural reach is evident in everything from its influence over Hollywood, to its puppet-master relationship with the NBA, to its 480 Confucius Institutes (designated by Washington as “part of the Chinese Communist Party’s global influence and propaganda apparatus”).

As President Joe Biden concludes, China is “the only competitor potentially capable of combining its economic, diplomatic, military, and technological power to mount a sustained challenge to a stable and open international system.”

Xi is doing exactly that. But the China challenge starts inside the PRC.

Xi is pursuing what he calls the “China Dream,” which enfolds goals such as sustained economic development, military power modeled after and matching that of the U.S., ideological conformity, “rejuvenation of the Chinese nation” and “complete unification of our country.” Making Xi’s “China Dream” come true is turning into a nightmare for his subjects.

Before leaving his State Department post, Secretary of State Mike Pompeo described what Xi is doing to Uighur Muslims as “genocide,” noting that Beijing has “forced more than a million people into internment camps in the Xinjiang region” and detailing “torture, sexual abuse…rape, forced labor…and unexplained deaths in custody.” As he took the baton from Pompeo, Secretary of State Antony Blinken agreed, affirming that “The forcing of men, women and children into concentration camps, trying to, in effect, re-educate them to be adherents to the ideology of the Chinese Communist Party—all of that speaks to an effort to commit genocide.”

The U.S. government isn’t alone. The Uighur Muslim region, according to a UN human-rights watchdog, “resembles a massive internment camp…a no-rights zone.” More accurately, all of China is a no-rights zone.

Xi’s China is a place where Christian churches are smashed and followers of Christ are sent to reeducation camps; Buddhist temples are bulldozed; Uighur men are packed into freight trains, Uighur women are forcibly sterilized and Uighur babies are forcibly aborted; and bishops and Nobel Peace Prize laureates die in prison. Under Xi, “Religious persecution has increased…with four communities in particular experiencing a downturn in conditions—Protestant Christians, Tibetan Buddhists, and both Hui and Uighur Muslims,” Freedom House reports. Amnesty International adds that “hundreds of thousands of people” are subjected to arbitrary arrest and detention in China, many of them for “peacefully exercising their rights to freedom of expression and freedom of belief.”

There’s a brutal logic to Xi’s brutal response to religious activity. The common denominator of most every religion is that there’s something above, something beyond, something bigger, more enduring and more important than the state. That notion represents a mortal threat to the legitimacy and durability of Xi’s regime, which is founded on the premise that people exist to serve the state—not to use their God-given gifts to serve others and God.

Xi’s capacity to control is growing ever more insidious. The PRC’s new “social credit system” is using mega-databases to monitor and catalogue every aspect of life of China’s 1.3 billion people—financial transactions, civil infractions, social-media postings, online activity—and then reward or sanction Xi’s subjects by feeding all that information to the National Development and Reform Commission, banking system and judicial system. PRC subjects with good social credit scores enjoy waived fees, lower utility bills, promotions and expedited overseas-travel approval, while those with poor social credit scores can be fired from their jobs, expelled from school, blocked from universities, or barred from accessing transportation.

An Orwellian surveillance state, more than a billion people denied religious freedom and other human rights, uncounted numbers tortured in reeducation camps, physicians jailed for following the Hippocratic Oath—that’s the kind of future and the kind of world Xi wants to build. As dissident leader Xu Zhangrun observed in the wake of Beijing’s criminal mishandling of COVID-19, “A polity that is blatantly incapable of treating its own people properly can hardly be expected to treat the rest of the world well.”

NO LIMITS

That idea—the notion that the PRC is incapable of treating the world any better than it treats its own—is not particularly profound. After all, this is a regime that over the decades has erased some 35 million of its subjects and tortured millions more. Regimes like this see no limits on their power. Since they believe nothing is above the state, they rationalize everything they do in the name of the state, the revolution, the Supreme Leader, the Dear Leader, the Core Leader (Xi’s new title). With no moral constraints on what they do, they believe their ends always justify their means.

That backwards worldview informs every aspect of decision-making in the PRC. This doesn’t mean Washington should refuse to talk with Beijing. But we must be ever vigilant when dealing with Xi. A regime that can justify imprisoning, torturing and killing its own people for peacefully practicing their faith can and will justify anything: seizing foreign lands, annexing international waterways, absorbing free peoples, stealing proprietary information, leveraging a pandemic to gain geopolitical advantage, breaking treaties. The godless USSR did those sorts of things, and so has the godless PRC.

“It is difficult to imagine that a government that continues to repress freedom in its own country,” President Ronald Reagan said of the USSR, “can be trusted to keep agreements with others.” And here we are yet again.

Experts in policy analysis, academia and military-security affairs conclude that Xi’s response to COVID-19 “was in breach of international law.” It pays to recall that COVID-19 was a local public-health problem that metastasized into a global pandemic due to Beijing’s incompetence or intention (either cause is reason not to entrust the future to Xi); that Xi’s regime lied about human-to-human transmission; that Xi’s regime willfully allowed millions to leave the epicenter in Wuhan for destinations around the world; that Xi’s regime carried out a premeditated plan to hoard 2.5 billion pieces of protective equipment as the virus swept the globe; that Xi’s regime blocked scientists from sharing findings about genome sequencing for weeks; that Xi’s regime continues to refuse to cooperate with international health agencies.

Xi’s intervention in Hong Kong and assertion of rule by remote-control is a brazen violation of an international treaty.

In and above the East China Sea, Beijing is constantly violating Japanese airspace and illegally loitering PRC coast guard vessels in Japanese waters. All the while, Beijing illegally claims some 90 percent of the South China Sea. Xi has backed up those claims by building 3,200 acres of illegal islands beyond PRC waters. These islands feature SAM batteries and warplanes. Xi promised the PRC wouldn’t militarize these islands. But as America and its allies learned at enormous cost last century, words don’t matter to men like Xi. Strength and the will to wield it are all that matters. Xi has both.

His goal is to control the resource-rich South and East China Seas, assert sovereignty claims in fait accompli fashion, and bring Chinese-speaking lands under his heel. Hong Kong—where only PRC-approved “patriots” are allowed to serve in government—was his first objective. Taiwan is next. Xi has made clear that democratic Taiwan “must and will be” absorbed by the communist Mainland. “We make no promise to abandon the use of force,” he warns. That explains Beijing’s ground-unit exercises, naval drills and bomber sorties around the island democracy.

Nor are Xi’s dreams and designs limited to his immediate neighborhood. Beijing is buying loyalty via development projects (see the Belt and Road Initiative), gaining a toehold in strategically located regions (see PRC control over ports in 18 countries), building an authoritarian bloc (see Russia, Serbia, North Korea, Iran, Venezuela), and fielding a power-projecting military capable of challenging the Free World across every region and every domain—land, sea, air, space and cyberspace. Xi’s relentless cybersiege of the Free World is siphoning away inventions, discoveries, technologies and wealth, penetrating defense firms, and interfering in elections.

For those with eyes to see—who know about the laogai camps and brutalization of Muslims and oppression of Tibet and assault on Christianity—none of this comes as a surprise. What’s surprising is that for 40 years, the trade über alles caucus convinced itself that such a regime could somehow be reformed by access to Buicks and Kentucky Fried Chicken.

TAKING AIM

Xi vows to build what he calls “a more just and reasonable new world order”—one that would supplant the liberal democratic order the United States and its allies began building after World War II. Importantly, the PRC not only has the intent to build a new world order; it has the resources and capabilities to do so—which helps explain why those who designed and uphold the existing world order are answering China’s challenge.

The PRC is a country of 1.3 billion people. Its GDP is already $14.1 trillion. Its economic tendrils—trade, banking, manufacturing, logistics, shipping, technology, super-computing, artificial intelligence—stretch into every part of the globe. All of this is fueling the PRC’s relentless military modernization and buildup. The PRC’s annual military expenditure is at least $261 billion. (Beijing recently announced an increase in military spending of 6.8 percent for 2021). The PRC has a 2-million-man military, the world’s largest navy and an intense focus on its neighborhood.

None of this would be a particularly worrisome if China embraced the values of liberal democracy—the rule of law, individual freedom, religious liberty, free enterprise and free trade, majority rule with minority rights. These are the foundation stones of what Churchill and FDR envisioned when they drafted the Atlantic Charter in 1941. Their vision led to what some call the “rules-based democratic order,” others the “liberal international order,” still others the “free world order.” These terms aim to describe how the peoples of the West have tried to make the world work and indeed manage the world: They embraced and encouraged democratic governance; developed rules and norms of behavior; promoted liberal (freedom-oriented) political and economic institutions; and called upon governments to live up to the responsibilities of nationhood by respecting international borders and promoting good order within those borders. The result has been an unparalleled spread of prosperity, an unprecedented expansion of free government and an unexpected remission of great-power war (which had become an increasingly-destructive feature of the centuries leading up to 1945).

To be sure, many regimes reject the values of liberal democracy. But the PRC, like the USSR before it, not only rejects those values; it possesses the military-technological-industrial-economic assets to challenge those values, erode the liberal international order built upon those values, and forge a new international order or at least bend the existing order toward its own goals. But don’t take my word for it.

“Some seek to challenge the international order—that is, the rules, values and institutions that reduce conflict and make cooperation possible among nations,” Blinken and Defense Secretary Lloyd Austin warn, pointedly adding that “China in particular is all too willing to use coercion to get its way.”

Former national security advisor Gen H.R. McMaster concludes that PRC “leaders believe they have a narrow window of strategic opportunity to…revise the international order in their favor.”

Before he retired as Indo-Pacific commander ,Adm. Phil Davidson told the Senate Armed Services Committee that Xi and his lieutenants are “accelerating their ambitions to supplant the United States and our leadership role in the rules-based international order.”

A NATO panel noted late last year that Beijing’s “approach to human rights and international law challenges the fundamental premise of a rules-based international order.”

These political, diplomatic and military leaders recognize that the liberal order has promoted the peace and prosperity of the Free World for nearly 75 years. But it doesn’t run on autopilot. If we want the benefits of a liberal order that sustains our way of life, we need to sustain the liberal order. As Robert Kagan of the Brookings Institution observes, “The present order will last only as long as those who favor it and benefit from it retain the will and capacity to defend it.” He adds, “Every international order in history has reflected the beliefs and interests of its strongest powers, and every international order has changed when power shifted to others with different beliefs and interests.”

Indeed, the liberal order and its guarantors have arrived at a turning point or breaking point: Either they will marshal the means and will to update, strengthen and preserve the existing order, or Beijing will dramatically transform it. Xi’s callous treatment of his own subjects and contempt for international norms offer a glimpse of what his “more reasonable new world order” would look like.

## 6

### States CP---1NC

#### The 50 states, DC, and all relevant territories should uniformly:

#### ---Expand the scope of state antitrust laws prohibiting anticompetitive business practices by the private sector in the service of socialism.

#### ---Grant jurisdiction to attorney generals to investigate and enforce anticompetitive business practices by the private sector.

#### ---Set aside funds to their attorney general’s office for the purpose of enforcing state antitrust laws prohibiting anticompetitive business practices by the private sector in the service of socialism.

#### States can pursue autonomous anti-trust enforcement even when conflicting with federal law.

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

## Case

### Solvency

#### Vagueness is a voting issue and decks solvency – the aff is functionally whole res and the plan is detrimentally vague on what “in the service of socialism means” – kills all neg ground and justifies aff condo since they’ll re-explain in the 2AC

#### Expand the scope of antitrust refers exclusively to formal law not enforcement---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.

### Crisis

#### Capitalism solves extinction – green tech innovation OR gets off rock

Zimet 20 (Saul, Writer for the the Foundation for Economic Education. Capitalism or the Climate? 5-17-20. [https://quillette.com/2020/05/17/capitalism-or-the-climate /](https://quillette.com/2020/05/17/capitalism-or-the-climate%20/)/shree)

Knowledge, Deutsch argues, is the variable most relevant to our potential flourishing. When Arctic populations survive in the Arctic and Amazonian populations survive in the Amazon, they do it by means of specific knowledge. If Deutsch were suddenly transported to the primeval Great Rift Valley, he would die for lack of knowledge. Without the requisite knowledge, humans will die virtually anywhere. With the requisite knowledge, encoded in brains, genes, computers, or other substrates, humans can survive virtually anywhere, on the Earth or elsewhere in space: Whether humans could live entirely outside the biosphere—say, on the moon—does not depend on the quirks of human biochemistry. Just as humans currently cause over a tonne of vitamin C to appear in Oxfordshire every week (from their farms and factories), so they could do the same on the moon—and the same goes for breathable air, water, and comfortable temperature and all their other parochial needs. Those needs can all be met, given the right knowledge, by transforming other resources. Deutsch explains that even today humans possess the technology to colonize the Moon and other stereotypically harsh environments. At this time in history, colonizing the moon would be prohibitively expensive. But right now you can buy a 4-terabyte hard-drive on Amazon for under 100 dollars. In 1980, that much storage cost about 772 million dollars. The price of technology frequently undergoes enormous reductions as science moves forward. Given that the price of digital memory was divided by millions in just a few decades, imagine the extraterrestrial societies we could conceivably build after perhaps a few centuries of compounding scientific and economic growth. However, my argument is not that we will ever colonize space, nor that we should plan to do so. As Neil deGrasse Tyson argues, it will probably be trivial to adapt to a wide range of Earth climates long before it is feasible to colonize the Moon or Mars. Rather, I am pointing out that any dependence we have on specific environmental conditions is the result of insufficient knowledge. Capitalism and the production of knowledge Throughout nearly all of human history, widespread economic growth per capita did not exist. Productivity per capita was ubiquitously stagnant; generation after generation, millennium after millennium, extreme poverty remained nearly universal and large-scale economic progress was not even imaginable. Virtually everyone lived on less than $3.50 per day in today’s dollars according to research from University of Oxford economist Max Roser, and the average person lived on much less. That’s even worse than it sounds, because (among other reasons) most of the things we can buy today had yet to be invented, and people didn’t have access to most of the information that informs our purchases in the 21st century. Then, starting in Western Europe in the 16th, 17th, and 18th centuries, an unprecedented breadth of optimism emerged and turned wealth (resources hoarded away in vaults and mattresses) into capital (resources invested in future production and discovery). Thus, capitalism was born, and with it, exponential economic growth began to spread across most of the Earth (a process that continues to this day). As a result, both the rich and the poor are consistently getting rapidly richer for the first time in human history. Whereas 94 percent of the population was in extreme poverty as recently as 1820, in 1990 the number was down to 36 percent, and in 2015 the number was less than 10 percent. And as the world gets wealthier, countless important things proliferate, such as access to nutrition, freedom from violence, improvements in life expectancy, and of course, the access to and production of scientific and technological knowledge. Knowledge is produced and spread in many ways. Education is one crucial variable, for the purpose of having both an educated population of innovators and a thriving research community. According to research from the Brookings Institute, educational opportunities and outcomes for the affluent radically exceed those for the poor—not just between countries, or within them, but everywhere. This is to be expected. Whether funded by individuals or government programs, it costs a lot of resources to build strong educational institutions and invest in educating generations of students. Poor populations who can barely afford shelter, clean water, food, and medicine don’t have much left over to invest in less immediate necessities such as education. And of course, this creates a feedback loop with causation running in both directions—if a population is uneducated, escaping poverty is much more difficult; if a population is poor, investing in education is much more difficult. Another foundational tool for knowledge production is innovation, which capital and profit motive facilitate. A large amount of innovation comes from excess capital being invested in new research and development. Poorer populations, whether subnational, national, or global, have less to invest in prospective new inventions and processes of which the details are unpredictable in advance. No system incentivizes useful investments and disincentivizes wasteful investments better than the capitalist system, in which the investor’s own capital is on the line. Incentives and wealth are two main reasons why all of the most innovative nations, such as the top 10 on the 2020 Bloomberg Innovation Index, are capitalist countries. The sociologist Susan Cozzens at the Georgia Institute of Technology offers a succinct description of the process: In the classic literature of the economics of innovation, private firms are the driving force. They seek competitive advantage in the market by introducing new products that give them a temporary monopoly. By charging high prices during the period of temporary monopoly, the firm makes profits and grows. Introducing new processes can result in competitive advantage if that step reduces costs or increases productivity. In this view, firms drive innovation in order to survive and win in the marketplace. Indeed, no serious critics of capitalism argue that any other system produces greater material wealth and innovation. Even Marxists, capitalism’s most vehement antagonists, generally acknowledge that no system has ever produced more innovation and abundance. In The Communist Manifesto in 1848, Marx and Engels wrote this: The bourgeoisie [capitalist class], during its rule of scarce one hundred years, has created more massive and more colossal productive forces than have all preceding generations together. Subjection of Nature’s forces to man, machinery, application of chemistry to industry and agriculture, steam-navigation, railways, electric telegraphs, clearing of whole continents for cultivation, canalisation of rivers, whole populations conjured out of the ground—what earlier century had even a presentiment that such productive forces slumbered in the lap of social labour? If only Marx and Engels could see how drastically the affluence of the proletariat has grown under global capitalism since then. Environmental technology In 1894, just 21 years before Einstein’s theory of general relativity, the Nobel Prize-winning physicist Albert Michelson famously proclaimed, “The more important fundamental laws and facts of physical science have all been discovered, and these are now so firmly established that the possibility of their ever being supplanted in consequence of new discoveries is exceedingly remote.” Some phenomena, like blizzards and thunderstorms, are somewhat predictable to those with the requisite equipment and training. But the future of human knowledge is no such phenomenon. Discoveries, by their very nature, are unknown until they are not. Innovations are often unimaginable until they occur because the act of imagining them is what brings them into existence. The history of failures to predict future knowledge is long and robust. In 1901, two years before they both achieved flight by aircraft, Wilbur Wright said to his brother, “Don’t think men will fly for a thousand years.” In 1932, just six years before the successful splitting of the atom, Albert Einstein said, ”There is not the slightest indication that nuclear energy will ever be obtainable.” In 1957, 12 years before Neil Armstrong set foot on the Moon, the father of radio Lee de Forest stated, “Man will never reach the Moon regardless of all future scientific advances.” Even after world-changing technologies are invented, estimates of their utility are often wildly inaccurate. The Internet, cars, and telephones were all dismissed as insignificant inventions in the years preceding their universal ascendance. So we should be skeptical when we see publications like the BBC, Bloomberg, and Forbes denying the plausibility of imminent technological advances on our climate problems. The truth is nobody has any idea what salutary innovations and discoveries do or do not exist in our imminent future. Many popular technological solutions to environmental issues have already been proposed in recent years. Carbon capture and sequestration technology is endorsed by climate scientists at the Intergovernmental Panel on Climate Change (IPCC) as well as by United States Congress members from both the Democratic and Republican parties. Inventions are being implemented to remove plastic from the oceans. Sea walls are being engineered in some coastal communities and considered at larger scales to mitigate sea level rise. In The Climate Casino, Nordhaus writes: “Current estimates are that geoengineering would cost between one tenth and one hundredth as much as reducing CO2 emissions for an equivalent amount of cooling.” But at their present level of development, such technologies are inadequate to the full scope of the problem because they don’t sufficiently address certain dangers such as ocean acidification. Therefore, many environmentalists prefer extreme reductions in carbon emissions, which would stop anthropogenic climate change at its root. But anthropogenic climate change is not just a phenomenon of the future. The Washington Post, the Los Angeles Times, CNN, and other news organizations have noted that it is already having serious effects here and now. The transition from predicted impact to experienced impact took place decades ago. So, how well are we adapting so far? Scientific American reports that global warming may already be responsible for 150,000 deaths worldwide each year due to its effects on the frequency and scale of floods and hurricanes, droughts and heat waves, spread of vector-borne diseases, and other factors. However, research from the Reason Foundation shows that deaths caused by extreme weather events have declined by more than 90 percent since 1920. University of Oxford economist Max Roser’s research shows that the burden of disease, famine, and other relevant problems have also declined in recent years and decades (the disease statistics cited above are older than the COVID-19 pandemic, but there is no evidence that COVID-19 is directly exacerbated by climate change like vector-borne diseases such as malaria and dengue are). And overall life expectancy has risen globally from about 34 years in 1900 to about 72 years in 2019. Why are climate-related death rates declining overall while climate change seems to be causing more deaths? Because as economic activity continues to drive up carbon emissions, the resulting growth rates give more communities access to strongly built and climate-controlled buildings, medical education and supplies, life-saving infrastructure such as hospitals and clean water, and many other enormous advantages. When the media and activists argue that burning fossil fuels has not been worth the climate-related damage to human life, they are counting the victims of climate catastrophe while ignoring the beneficiaries of economic growth in developing countries and elsewhere. That is a mistake because the two are inextricably linked. Choose your own extinction Of course, just because we’ve adapted extremely well so far doesn’t mean the trend will continue. Dangerous tipping points may yet accelerate the problem beyond our capacity to respond. As living organisms, we have a problem of evolutionary magnitude: we adapt gradually in an environment that can change rapidly. If we go on existing like any other animal, our niche will eventually change so quickly that we won’t be able to adapt fast enough. This has happened to 99.9 percent of all known species since the beginning of life on Earth roughly four billion years ago. These changes have ranged from asteroid impacts, to volcanic eruptions, to viral pandemics, and of course to human activity in recent millennia, and are typically unpredictable to the species they eliminate because they come from outside the limited context in which those species evolved. Some argue that humans are just another mammal like any other, and that all our claims of exceptionality have been ignorant hubris. If this is true, we are almost certainly doomed to relatively imminent extinction by forces beyond our influence. But thinking this way about the human species does not quite account for the implications of the economic growth trend of the last few centuries. In his book Scale, former Santa Fe Institute president Geoffrey West, whose renowned scientific research put him on Time Magazine’s 2006 list of the 100 most influential people in the world, discusses a profound biological fact about mammal species: they virtually all have the same average number of heartbeats per capita. An average elephant has a long lifespan but a slow heart-rate, and an average mouse has a short lifespan but a fast heart-rate. It all balances out to roughly one-and-a-half billion heartbeats over the course of a lifetime. Other classes of animals follow similar metabolic scaling laws. A few hundred years ago, before the rise of capitalism, humans were no different—they lived roughly 35 years on average and had about one-and-a-half billion heartbeats just like any other mammal. But gains in knowledge since then, such as innovations in medicine, agriculture, and government, have roughly doubled our life expectancy and with it our average number of heartbeats per lifetime (some dogs and other domesticated animals have been similarly altered by access to human innovations). This constitutes a totally unprecedented departure from the biological status quo. Technological knowledge, fueled by capital, has allowed us to do many things categorically unlike the achievements of other species as far as we know. The universal extinction paradigm, which has limited all mammal species so far to one million years or less, should be high on our list of patterns to break. We don’t know what existential threats will come or how long we have to prepare for them, but we can’t expect human ingenuity to rush us past the finish line at the last minute without a context of widespread continuous technological and scientific progress until that point—a project it seems only capitalism can hope to fund. David Deutsch observes that the word “sustain” generally refers to the absence or prevention of change. This is what environmentalists such as Naomi Klein and Alexandria Ocasio-Cortez would like to do with our environment by ending capitalism. Their solution to climate change is what all non-human animals have always done: leave the environment basically unaltered by refraining from large-scale production, and wait around to go extinct. Unfortunately, as Deutsch writes, “Static societies eventually fail because their characteristic inability to create knowledge rapidly must eventually turn some problem into a catastrophe.” Thus, it is not that capitalism is the problem and sustainability is the solution, but that sustainability is the problem and capitalism is the solution. Every year, global capitalism allows more research and development departments to be funded. Every day it gives more citizens of affluent and developing nations the material wealth required for better education and information technology. Economic growth, coupled with rising carbon emissions, might lead to a climate apocalypse—or it might continue to bring us material and technological salvation. We cannot really know in advance. But we would be crazy to choose the time-tested alternative to capitalism: extinction by stagnation.

#### Space colonization solves extinction.

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The main benefit that could be provided by colonisation of Mars would be an opportunity to save the life of humanity when it is life on Earth will be endangered. It seems that the greatest possible source of dangers is the humanity itself, but beside it, the another greatest danger is probably the asteroid impact. To provide survival of humanity, the easier and the less costly project, as Impey points out, can be an attempt to reduce threats on Earth, and taking more care for proper conditions for human survival on Earth [12]. If we treat the idea of Mars colonisation as an alternative for an opportunity of survival of humanity, the mentioned running out resources are only one of possible threats for maintaining life on Earth. If we take into account such possible threats, it is worth considering Mars as perhaps the unique solution for further survival of humanity. Among possible threats on Earth we can enumerate such of them like nuclear war, environmental catastrophes, incurable epidemic, asteroid impact, or uncontrolled development of artificial intelligence that could be deleterious for humanity [12]. Of course, the concept of the human outer space colony as a way to solve human life could be applied probably only to some small part of the entire humanity, for instance, for these ones who survived one of the mentioned catastrophes. Consequently, the current work on preparation of the manned mission to Mars can be treated as a work to provide the future further living of the human species whose further existence on Earth in the next several hundred or several thousand years can be really endangered.

### Innovation

#### Capitalism is key to innovation – solves better

Economist 13 — Economist, Has the ideas machine broken down?, 2013, [www.economist.com/news/briefing/21569381-idea-innovation-and-new-technology-have-stopped-driving-growth-getting-increasing](http://www.economist.com/news/briefing/21569381-idea-innovation-and-new-technology-have-stopped-driving-growth-getting-increasing)

The fountains of paradise

Closer analysis of recent figures, though, suggests reason for optimism. Across the economy as a whole productivity did slow in 2005 and 2006—but productivity growth in manufacturing fared better. The global financial crisis and its aftermath make more recent data hard to interpret. As for the strong productivity growth in the late 1990s, it may have been premature to see it as the effect of information technology making all sorts of sectors more productive. It now looks as though it was driven just by the industries actually making the computers, mobile phones and the like. The effects on the productivity of people and companies buying the new technology seem to have begun appearing in the 2000s, but may not yet have come into their own. Research by Susanto Basu of Boston College and John Fernald of the San Francisco Federal Reserve suggests that the lag between investments in information-and-communication technologies and improvements in productivity is between five and 15 years. The drop in productivity in 2004, on that reckoning, reflected a state of technology definitely pre-Google, and quite possibly pre-web. Full exploitation of a technology can take far longer than that. Innovation and technology, though talked of almost interchangeably, are not the same thing. Innovation is what people newly know how to do. Technology is what they are actually doing; and that is what matters to the economy. Steel boxes and diesel engines have been around since the 1900s, and their use together in containerised shipping goes back to the 1950s. But their great impact as the backbone of global trade did not come for decades after that. Roughly a century lapsed between the first commercial deployments of James Watt’s steam engine and steam’s peak contribution to British growth. Some four decades separated the critical innovations in electrical engineering of the 1880s and the broad influence of electrification on economic growth. Mr Gordon himself notes that the innovations of the late 19th century drove productivity growth until the early 1970s; it is rather uncharitable of him to assume that the post-2004 slump represents the full exhaustion of potential gains from information technology. And information innovation is still in its infancy. Ray Kurzweil, a pioneer of computer science and a devotee of exponential technological extrapolation, likes to talk of “the second half of the chess board”. There is an old fable in which a gullible king is tricked into paying an obligation in grains of rice, one on the first square of a chessboard, two on the second, four on the third, the payment doubling with every square. Along the first row, the obligation is minuscule. With half the chessboard covered, the king is out only about 100 tonnes of rice. But a square before reaching the end of the seventh row he has laid out 500m tonnes in total—the whole world’s annual rice production. He will have to put more or less the same amount again on the next square. And there will still be a row to go. Erik Brynjolfsson and Andrew McAfee of MIT make use of this image in their e-book “Race Against the Machine”. By the measure known as Moore’s law, the ability to get calculations out of a piece of silicon doubles every 18 months. That growth rate will not last for ever; but other aspects of computation, such as the capacity of algorithms to handle data, are also growing exponentially. When such a capacity is low, that doubling does not matter. As soon as it matters at all, though, it can quickly start to matter a lot. On the second half of the chessboard not only has the cumulative effect of innovations become large, but each new iteration of innovation delivers a technological jolt as powerful as all previous rounds combined.

#### Cap’s sustainable---solves resource scarcity and climate change.

Rainer Zitelmann 21. German historian and author of “The Rich in Public Opinion.” "Consumption Presumption: Are Human Beings Destroying the World?" National Interest. 2-12-2021. https://nationalinterest.org/feature/consumption-presumption-are-human-beings-destroying-world-178114

Some people claim that we need to cut our consumption or there will be no hope for the planet. Such claims are based on the thesis that continued growth increases the rate at which the earth’s finite resources are consumed and, moreover, leads to irreversible climate change. And such warnings are by no means new. In 1970, for instance, the Club of Rome attracted a great deal of attention with the publication of The Limits to Growth. A Report for the Club of Rome’s Project on the Predicament of Mankind, which has to date sold more than thirty million copies in thirty languages. The book warned people to change their ways and had a clear message: the world’s raw materials, and in particular, oil would soon be used up. In twenty years, the scientists predicted, we would have used the very last drop of oil. Of course, the Club of Rome’s models for the depletion of oil—and almost all other major raw materials—were wrong. According to the scenarios presented in The Limits to Growth, we should now be living on a planet that has been devoid of natural gas, copper, lead, aluminum and tungsten for decades. And we were supposed to have run out of silver in 1985. Despite the bleak forecasts, as of January 2020, the United States Geological Survey estimated silver reserves worldwide at 560,000 tons.

More from Less

Employing an extensive array of data, the American scientist Andrew McAfee proves in his book More from Less that economic growth is no longer coupled to the consumption of raw materials. Data for the United States, for example, show that of seventy-two resources, from aluminum to zinc, only six are not yet post-peak. Nevertheless, despite the fact that the U.S. economy has grown strongly in recent years, consumption of many commodities is actually decreasing.

Back in 2015, the American environmental scientist Jesse Ausubel wrote an essay, “The Return of Nature: How Technology Liberates the Environment,” showing that Americans are consuming fewer and fewer raw materials per capita. Total consumption of steel, copper, fertilizer, wood and paper, which had previously always risen in line with economic growth, had plateaued and was now in constant decline.

Such across-the-board reductions in natural resource consumption are only possible because of much-maligned capitalism: companies are constantly developing more efficient production methods and reducing the amount of raw materials they consume. Of course, they are not doing this primarily to protect the environment but to cut costs.

What's more, a constant stream of innovations has promoted the trend of miniaturization or dematerialization. Just think of your smartphone. How many devices has your smartphone replaced and how many raw materials did they use to consume?

Calculator

Telephone

Video camera

Alarm clock

Voice recorder

Navigation system

Camera

CD-player/radio

Compass

Nowadays, many people no longer have a fax machine or street atlas because they have everything they need on their smartphone. Some even use their phones instead of a wristwatch. You used to need four separate microphones in your telephone, cassette recorder, Dictaphone and video camera, today you just need one—in your smartphone.

Fighting climate change with nuclear energy

The finite nature of the world’s natural resources is one argument against growth, climate change is another. Let’s take China as an example: China currently emits more CO2 than any other country in the world and is building a number of new nuclear power plants in order to achieve carbon neutrality by 2060. With the new build program well underway, China’s first new-generation nuclear power plant recently went into operation.

In the very near future, China intends to start exporting power plants. The latest generation of nuclear power plants is much safer than earlier models—and can play a pivotal role in the fight against climate change. In the United States, Joe Biden is already evaluating the advantages of small modular reactor (SMR) nuclear power plants. As the name suggests, SMRs are smaller than traditional nuclear fission reactors and offer a maximum capacity of three hundred megawatts. In the United Kingdom, for example, a consortium led by Rolls-Royce has announced plans to build up to sixteen SMR power plants.

So far, two reactors of this type are in operation, both onboard the floating nuclear power plant  “\Akademik Lomonosov, which supplies heat and electricity to the Siberian city of Pevec and its one hundred thousand inhabitants.

Anticapitalists blame capitalism for resource consumption and climate change. But political decisions—such as Germany’s decision to phase out nuclear energy—frequently have a negative impact on climate change.

Telling people to cut their consumption must seem like pure mockery to the hundreds of millions of people around the world who are still living in extreme poverty. What they need is more capitalism and economic growth. Just like in China, where the number of people living in extreme poverty has fallen from 88 percent in 1981 to less than 1 percent today. Andrew McAfee’s book has an optimistic message about how we don't have to turn back the clocks and cut our consumption: capitalism and technological progress are allowing us to steward the world’s resources, rather than stripping them bare.

# 2NC

## Regs CP

#### “Do both” is antitrust duplication---the disputes collapse resources, effectiveness, and signaling.

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

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

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

#### “Expanding the scope” of “anti-trust laws” must be the DOJ and FTC.

Jarod Bona 21. Bona Law PC. "Five U.S. Antitrust Law Tips for Foreign Companies". Antitrust Attorney Blog. 1-16-2021. https://www.theantitrustattorney.com/five-u-s-antitrust-tips-foreign-companies/

1. Two federal and many state agencies enforce antitrust laws in the United States

The United States government has two separate antitrust agencies—the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ). The FTC is an independent federal agency controlled by several Commissioners, while the Antitrust Division of the DOJ is part of the Executive Branch, under the President.

Both of them enforce federal antitrust laws (among other laws). Their jurisdictions technically overlaps, but they tend to have informal agreements between each other for one or the other to handle certain industries or subjects. If you are part of a major industry, your antitrust lawyer may be able to tell you whether the DOJ or FTC is likely to oversee competition issues in your field.

#### Jurisdiction: the plan expands the DOJ and FTC role.

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

There is a crucial battle playing out in the world of Internet access provision. While the Internet is the natural home of competing business giants and warring digital avatars, the contest that will have the most sweeping ramifications for the future of the Internet is the turf war being waged between the Federal Communications Commission (FCC), on the one hand, and the Federal Trade Commission (FTC) and the Department of Justice (DOJ), on the other.1 Nothing less than jurisdiction over the development of the Internet is at stake.

Jurisdiction over Internet access provision is not the first confrontation between these particular government agencies; in fact, they have clashed many times.2 But it is the current iteration of the FCC’s “net neutrality” regulations that has generated the latest contest. Roughly defined, net neutrality encompasses principles of commercial Internet access that include equal treatment and delivery of all Internet applications and content.3 For some, net neutrality stands further for the proposition that Internet access operators should not be permitted to provide different qualities of service for certain application providers (e.g., guaranteed speeds of transmission), even if those application providers can freely choose their desired quality of service.4 Net neutrality has reinvigorated what may be described as an underlying interagency tug of war that reaches deep within, and far beyond, the communications industry.

Although the two regimes share a commonality of purpose—to protect consumers and to promote allocative efficiencies in production—the two have quite distinct, predominately opposing, means of securing social benefits. As Justice Stephen Breyer stated when serving as a judge on the U.S. Court of Appeals for the First Circuit, although regulation and the antitrust laws “typically aim at similar goals—i.e., low and economically efficient prices, innovation, and efficient production methods” —regulation looks to achieve these goals directly “through rules and regulations; [but] antitrust seeks to achieve them indirectly by promoting and preserving a process that tends to bring them about.”5 The battle between these two regimes may be broadly summarized in a single issue thusly: in the face of the industry-specific regulator, what is (or what should be) the role of antitrust law?6

Antitrust law preserves the process of competition across all industries by condemning anticompetitive conduct when it occurs. In contrast, industrial regulation by its nature is a public declaration that, in a given industry, market forces are too weak or underdeveloped to produce the consumer benefits that are realized in competitive markets— regulated industries are carved out from the rest of the economy and are subject to proactive, regulatory intervention that goes above and beyond antitrust enforcement measures.7 Not surprisingly, regulatory agencies were historically created as substitutes for market forces in the few markets that, by the nature of the product or technology, were natural monopolies or severely prone to monopoly.8 In the vast major- ity of markets, however, the antitrust law is the default government control, designed to supplement market forces to inhibit or prevent the growth of monopoly.

Again, although the goals of the two regimes may be similar, the means by which each can achieve those goals are in opposition. Therefore, the threshold determination of which industries are to be singled out for industry-specific regulation, and to what degree, is of vital importance as it simultaneously determines the predominance of the regulator versus the antitrust authority in securing the social good.

This Article sets forth a framework to identify the boundaries between FCC regulatory power and antitrust authority. The goal is to pinpoint for Congress the problematic use of regulatory discretion in defining, or redefining, those boundaries and to propose the standard by which Congress may address inappropriate use of existing FCC jurisdiction. Specifically, this Article creates a new categorization of “procedural opportunism” and “substantive opportunism” to identify problematic, regulatory assertions of jurisdiction. The central issue examined in this Article is to posit what is (or should be) the boundaries of antitrust law in relation to the FCC’s regulatory authority. This important issue has reached a point of public crises in the current net neutrality debate.9 Rather than act reflexively, this is an opportunity for Congress to act clearly to redefine the boundaries between the two regimes that have otherwise been blurred by regulatory overreach.

#### Legal code---antitrust requires Title 15 of US Code.

Sanjukta M. Paul 16. David J. Epstein Fellow, UCLA School of Law. The Enduring Ambiguities of Antitrust Liability for Worker Collective Action. Loyola University Chicago Law Journal. https://www.congress.gov/116/meeting/house/110152/witnesses/HHRG-116-JU05-Wstate-PaulS-20191029-SD002.pdf

Unlike the Clayton Act, which was the first legislative attempt at a labor exemption from antitrust,202 the Norris-La Guardia Act did not grapple directly with trade regulation in subject matter—even with how trade regulation applies to labor—although it had the effect of modifying its reach. Norris-La Guardia is not an antitrust statute. Instead, it is incorporated into Title 29 (“Labor”) of the United States Code. By contrast, the Clayton Act was conceived and written as an antitrust statute, was incorporated into Title 15, the antitrust and trade regulation section of the Code, and portions of it dealt with matters other than labor.

#### Expand is to make larger

Merriam Webster. "Definition of EXPAND". No Publication. xx-xx-xxxx. https://www.merriam-webster.com/dictionary/expand

Definition of expand

transitive verb

1: to open up : UNFOLD

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

3a: to express at length or in greater detail

b: to write out in full

expand all abbreviations

c: to subject to mathematical expansion

expand a function in a power series

#### That is distinct from replacing the law.

Anu Bradford and Adam Chilton 19. Anu Bradford, Henry L. Moses Professor of Law and International Organization, Columbia Law School. Adam S. Chilton, Assistant Professor of Law and Walter Mander Research Scholar. “Competition Law Gone Global: Introducing the Comparative Competition Law and Enforcement Datasets.” Codebook for Version 1. “Comparative Competition Law Dataset”. “CCL\_Law\_Data\_Ver1.dta”. Journal of Empirical Legal Studies 16(2): 411-443.

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| --- | --- |
| Coding competition regime or individual laws? | Pay close attention to whether the law you are coding (1) replaces previous competition laws for that jurisdiction (in which case the law at hand can just be coded on its own terms), whether it is (2) an addition to existing law(s)-- such as the Clayton Act was to the Sherman Act--or whether it (3) alters some part of the previous competition law(s). If the second or third option applies, the new law should be coded in conjunction with the previous law(s) or what remains valid of them. We want to code the prevailing competition regime at the time of the entry into force of the new law, not just the new law as if it existed in isolation. |

#### A tax and redistribution scheme, job training, and community investments solves wealth inequality. Campaign finance rules and restrictions on lobbying safeguard democracy.

Thomas A **Lambert 20**. The Wall Chair in Corporate Law and Governance and Professor of Law at the University of Missouri, formerly a John M. Olin Fellow at Northwestern University School of Law and the Center for the Study of American Business at Washington University. “The Limits of Antitrust in the 21st Century.” CATO Institute. Summer 2020. <https://www.cato.org/sites/cato.org/files/2020-06/regulation-v43n2-2.pdf>

Planks – develop tax & redistribution scheme, campaign finance rules, restrict lobbying, limit discretionary government power to avoid politically advantaged private firms , job-training programs, community investments, relocate government agencies to econ. Depressed areas

The non-consumer harms stemming from companies’ “bigness”—wealth inequality, harms to democracy, the loss of small businesses and the jobs they provide—fall into the second and third categories: they are better addressed by bodies of law other than antitrust or best left unremedied. Wealth inequality is better handled through tax and redistribution schemes; harms to democracy can be handled by campaign finance rules and restrictions on lobbying (and, most fundamentally, by limiting discretionary government power so that it cannot be used to procure private advantages for politically connected firms). Job losses and harms to communities from the failure of smaller, less efficient businesses may be somewhat mitigated by job-training programs, community investments, and the relocation of government agencies to economically depressed areas. At the end of the day, though, obsolescence is a consequence of economic development; there will always be some losses when new and better displaces old and less good. Using antitrust to protect economic laggards is sure to reduce welfare in the long run.

#### Reforming the fair labor standards act solves low pay without getting coopted by the politicization of anti-trust reform.

Edward Longe 3-19-2021. Policy Manager at American Consumer Institute. "Use and Abuse of Antitrust Law," American Consumer Institute, https://www.theamericanconsumer.org/2021/03/use-and-abuse-of-antitrust-law/

Antitrust is a unique issue in modern American politics. In an era of [deep political polarization](https://www.forbes.com/sites/kevinanderton/2020/10/27/this-is-the-reason-american-politics-are-so-polarized-infographic/?sh=6470aca5187b), there is a bipartisan consensus that Washington should act to rein in big tech’s perceived power. While conservatives argue big tech has a liberal bias and are [censoring their speech](https://www.foxnews.com/politics/big-tech-conservatives-dictatorial-republican) online, liberals contend that big tech has amassed too much market power and has [depressed wages](https://www.cnbc.com/2018/12/03/in-silicon-valley-wages-are-down-for-everyone-but-the-top-10-percent.html) for workers. While conservatives and liberals disagree about the consequences of big tech’s influence, both seek to use antitrust statute to resolve these concerns. The desire of both conservatives and liberals to use antitrust statute to resolve their political issues with big tech displays a profound misunderstanding of what antitrust regulation is, its role in protecting consumer welfare, and guaranteeing a competitive market. Political misunderstanding surrounding antitrust should concern everybody because it opens the opportunity for politicians to subvert the purpose of antitrust protections and inflict significant harm onto the people it’s designed to protect, the consumers. In October 2020, Democrats on the House Antitrust Subcommittee released their much-[anticipated report](https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=4493-519) arguing big tech companies had “captured control” of the digital marketplace. The report, opposed by Republicans who released their [recommendations](https://buck.house.gov/sites/buck.house.gov/files/wysiwyg_uploaded/Buck%20Report.pdf), [ultimately called for](https://judiciary.house.gov/news/documentsingle.aspx?DocumentID=3429) breaking up the big tech companies. Federal antitrust enforcers were also busy in 2020, with the Department of Justice (DoJ) and Federal Trade Commission (FTC) suing [Facebook](https://www.ftc.gov/news-events/press-releases/2020/12/ftc-sues-facebook-illegal-monopolization), [Google](https://www.justice.gov/opa/pr/justice-department-sues-monopolist-google-violating-antitrust-laws), and [Visa](https://www.justice.gov/opa/pr/justice-department-sues-block-visas-proposed-acquisition-plaid). Conservatives have attempted to use antitrust reform to resolve their concern about big tech censoring their opinions online. In Rep. Ken Buck’s (R-CO) [minority antitrust report](https://buck.house.gov/sites/buck.house.gov/files/wysiwyg_uploaded/Buck%20Report.pdf), he explicitly claimed that tech platforms are “exerting overt bias against conservative outlets,” and Congress needs to act. While speech on the internet is an important philosophical issue, it is well beyond the scope of antitrust legislation that is predominantly concerned with limiting monopolistic companies’ ability to dictate prices. Republican concern about speech online would be better solved through focused debate on [Section 230 of the Communications Decency Act.](https://www.law.cornell.edu/uscode/text/47/230) Democrats have been equally aggressive in attempting to correct non-related issues through antitrust reform. Progressives have sought reform to antitrust law by arguing that big tech companies depress wages and employ people on [starvation wages](https://www.cnn.com/2019/06/18/politics/fact-check-aoc-amazon-wages-bezos). In fact, Sen. Amy Kloubauchar’s [Competition and Antitrust Law Enforcement Reform Act](https://www.klobuchar.senate.gov/public/_cache/files/e/1/e171ac94-edaf-42bc-95ba-85c985a89200/375AF2AEA4F2AF97FB96DBC6A2A839F9.sil21191.pdf) claimed more stringent antitrust legislation was needed because monopolies “depress wages.” Similar to Republican critics of censorship online, concern over low pay is well beyond the scope of antitrust reform given it does not deal with the power of monopolies to control the market. This concern would be better addressed through reforming current legislation such as the [Fair Labor Standards Act](https://www.dol.gov/general/topic/wages/minimumwage). Data privacy is another issue that has become central to the contemporary antitrust debate. Critics of big tech have consistently warned about how large tech companies are [abusing consumer data](https://www.complianceweek.com/technology/doj-big-techs-data-collection-creates-avenues-for-abuse/28014.article). This debate is also peripheral to the original intent of the antitrust statutes, given it concerns how both large and small companies handle consumer information. Additionally, there are only a narrow set of circumstances in which data could be used in an anti-competitive manner or in a way that harms consumers. This is because consumers often provide their data willingly in return for a product or service. Instead of inserting data privacy into the antitrust debate, Congress should pass a comprehensive federal data privacy law that harmonizes standards across the states and ensures consumer data is not vulnerable to misuse and theft. Muddling free speech issues, workers’ pay, or data privacy into the antitrust debate misses the importance of antitrust law to facilitate a competitive economy that prioritizes consumers. Additionally, it ignores the original intent of antitrust law: to protect consumers from anti-competitive practices. America’s first Antitrust law, [the Sherman Antitrust](https://www.ourdocuments.gov/doc.php?flash=false&doc=51) Act, was signed into law in 1890 and [outlawed](https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws) “every contract, combination, or conspiracy in restraint of trade.” The Sherman Act also outlawed “monopolization, attempted monopolization, or conspiracy or combination to monopolize.” Most significantly, the [Act](https://www.ourdocuments.gov/doc.php?flash=false&doc=51) also gave the federal government the power to break up large monopolies, such as [Standard Oil in 1911](https://www.law.cornell.edu/supremecourt/text/221/1). The Sherman Act was strengthened when President Wilson signed the Clayton [Act](https://history.house.gov/HistoricalHighlight/Detail/15032424979) into law that created the FTC, prohibited anti-competitive acquisitions, collusive price fixing, and predatory pricing. The 1970s saw the last significant change to antitrust legal theory, with the adoption of the consumer welfare standard. While there is no uniform definition of the [consumer welfare standard](https://www.ftc.gov/system/files/documents/public_statements/1455663/welfare_standard_speech_-_cmr-wilson.pdf), its proponents believed “antitrust law should serve consumer interests and that it should protect competition rather than individual competitors.” The consumer welfare standard first came into antitrust jurisprudence in 1974 when the Supreme Court correctly [ruled](https://www.lexisnexis.com/community/casebrief/p/casebrief-united-states-v-gen-dynamics-corp) “statistics concerning market share and concentration, while of great significance, are not conclusive indicators of anti-competitive effects.” What unifies all three changes to antitrust law is how they prioritize consumers and a competitive marketplace. Despite this, politicians on both the left and right seek to use antitrust for alternative political purposes to place the consumer and competitive marketplace second to partisan rancor. Using the antitrust statute and reform against its original intent deprioritizes consumers and the marketplace. While both parties may have legitimate concerns about big tech’s power, any changes that are disconnected from the original purpose should be pursued by separate legislation that can better deal with perceived problems. This way, issues of market monopolization can be addressed without harming consumers or the marketplace. Any changes to antitrust law should always first and foremost prioritize consumers and consumer welfare.

#### Clash, research depth, and holistic advocacy. It’s the core controversy in alliance research which makes it predictable OR aff choice solves their offense,

Erasmus School of Economics ND. The Erasmus Center for Economic and Financial Governance is an international multidisciplinary network of leading researchers and societal stakeholders initiated by researchers from Erasmus School of Economics and Erasmus School of Law. ECEFG conducts interdisciplinary research (law, economics and political science) and contributes to current debates in public and in academia on issues relating to European and global economic and financial governance. "Competition Policy." Erasmus Center for Economic and Financial Governance. xx-xx-xxxx. https://www.eur.nl/en/ese/affiliated/ecefg/research/competition-policy

Competition Policy Research in this field consists of **two broad areas**. The first area – **Theory and Implementation of Competition Law and Policy** – refers to fundamental and applied research into topics that are traditionally seen as the core of competition policy. The second area – **Scope of Competition Law and Policy** – refers to all research on the effect and desirability of including new considerations in competition law and policy in order to address the challenges of our time, such as the increasing power of big tech firms, or global warming. **Theory and Implementation of Competition Policy** This covers for instance collusion, abuse of dominance, mergers, market regulation and state aid. Some examples of research topics are: the practices firms can use to engage in collusion and its welfare consequences; the practices firms can use to abuse a dominant position and its welfare consequences; which practices can be considered proof of such activities; how to regulate access to a market; how to properly assess the effects of a particular practice or merger; the practices, by which the state and public authorities distort competition such as subisidies and tax measures the interpretation and application of EU and national competition law by Competition Authorities and Courts and the extent to which they achieve the goals of competition policy **Scope of Competition Policy** The effectiveness of European competition law and policy in combination with rapid technological changes have raised questions about its proper scope**. Which policy objectives can and should be pursued by means of competition law and policy, and which should be delegated to other legal fields and policies**? Some examples of specific research questions include: Can and should competition law be used to protect the privacy of consumers on the internet? Information gathered by firms can be used to increase their own profits. How does this affect consumers, and what does this depend on? Can and should competition law deal with market power derived from information gathering? For instance, should the big five tech giants be forced to divest activities? Should competition policy also include considerations of economic inequality or environmental effects? Can competition law remain effective if it is used for more than safeguarding fair competition?

## States CP

#### States lead antitrust enforcement of federal anti-trust laws.

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Prior to the **enactment** of the first federal antitrust law – the Sherman Act – in 1890, state antitrust enforcement was quite robust in the United States because at least 26 states had already enacted some form of antitrust prohibition.[[2]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-126) In addition, state enforcers had often used general corporation law and common law restraint of trade principles to **regulate** anticompetitive business practices and transactions.[[3]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-125) This well-established **state antitrust enforcement infrastructure** – coupled with the fact that the Antitrust Division and FTC had only recently been created – permitted state attorneys general to continue playing a leading enforcement role for the first 30 years after the Sherman Act’s passage.[[4]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-124) Indeed, state attorneys general successfully prosecuted a number of the **most consequential antitrust** enforcement **actions** during this period.[[5]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-123) In the early 1920s, however, state antitrust enforcers began playing a less prominent role because ‘the national dimension of the most important trusts, . . . as well as their ability to restructure in order to evade problematic state laws’, made clear that the federal government needed to step forward in order to adequately protect consumers and the competitive process.[[6]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-122) As a result, the DOJ and FTC – whose national jurisdiction and greater resources enabled them to tackle the most pressing competition issues of the time – displaced state attorneys general as the primary source of government antitrust enforcement within the United States.[[7]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-121) This largely remained true until the mid-1970s when Congress, in response to the DOJ and FTC’s perceived inactivity, passed two laws that expanded the authority of state attorneys general to enforce the federal antitrust laws and provided them with financial resources to do so.[[8]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-120) In 1976, Congress passed the Hart-Scott-Rodino Antitrust Improvement Act, which, among other things, authorised state attorneys general to bring parens patriae suits (i.e., legal actions brought on behalf of natural persons residing within their states) seeking monetary (treble damages) and injunctive relief for Sherman Act violations.[[9]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-119) Congress also passed the Crime Control Act of 1976, which, among other things, provided state attorneys general with tens of millions in federal grants as ‘seed money’ for the creation of antitrust bureaus within their offices.[[10]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-118) These laws had their intended effect of **reinvigorating** state antitrust enforcement. During the 1980s, for example, state attorneys general once again emerged as vigorous antitrust enforcers, especially with respect to the prosecution of resale price maintenance practices and other vertical restraints.[[11]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-117) The rise in the level and prominence of state antitrust enforcement during this period was largely due to a perceived enforcement void at the federal level, where the DOJ and FTC had mostly limited their focus to ‘prohibiting cartels and large horizontal mergers’.[[12]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-116) No longer content with ceding antitrust enforcement to federal enforcers, state attorneys general expanded their antitrust dockets from prosecuting purely ‘local matters, such as bid-rigging on state contracts’, to actively **investigating** and **litigating** matters with multistate and national implications.[[13]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-115)

To help ensure that they had a larger seat at the antitrust enforcement table, state attorneys general also increased the coordination of their enforcement efforts and competition advocacy through organisations such as the National Association of Attorneys General (NAAG), which created a Multistate Antitrust Task Force and issued state Vertical Restraints and Horizontal Merger Guidelines during this period.[[14]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-114) Since the **reawakening** of state antitrust enforcement nearly 30 years ago, state attorneys general have continued to play an **important role** in the **enforcement** of both state and federal antitrust laws. During periods of lax federal antitrust enforcement, state attorneys general have often ramped up their enforcement activity in order to protect consumers from anticompetitive transactions and business practices.[[15]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-113) During periods of vigorous federal antitrust enforcement, they have often served as strong partners for the DOJ and FTC by, among other things, offering valuable insights about competitive dynamics in local markets, assisting with obtaining information from key market participants (including state governmental entities that are direct purchasers of goods and services), and helping **develop** and implement litigation strategies for cases being tried before federal judges presiding in their states.[[16]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-112) Since January 2017, state attorneys general have increasingly played a leading and independent antitrust enforcement role. State antitrust enforcers have significantly increased their enforcement activity and willingness to act separately from their federal counterparts because many of them believe that there has been ‘under-enforcement’ by the DOJ and FTC.[[17]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-111) State antitrust enforcers have also been able to enhance their influence over key competition policy issues and the antitrust enforcement agenda within the United States because there appears to have been a significant decline in the coordination and relationship between the DOJ and FTC.[[18]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-110) In once again **flexing** their **enforcement** muscle, state attorneys general have shown a **willingness** to publicly disagree with the DOJ and FTC on both policy and enforcement decisions, and have also sought to pressure their federal counterparts into more aggressively policing certain industries. Recent examples of the increased independence and assertiveness of state antitrust enforcers include: •The DOJ, FTC and several state attorneys general have been actively investigating and prosecuting ‘no-poach’ agreements (i.e., where competitors for employees agree not to recruit or hire each other’s employees) in recent years. However, the DOJ and state attorneys general have taken directly opposing positions in private litigation challenging the legality of ‘no-poach’ clauses in corporate franchise agreements. The DOJ has argued that courts should review these clauses under the rule of reason whereas various state attorneys general have argued that these clauses should be deemed per se unlawful.[[24]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-104) In their joint investigation into the T-Mobile/Sprint merger, nearly 20 state attorneys general sued to block the transaction in September 2019 even though the DOJ, along with seven state attorneys general, approved the deal after securing certain structural and behavioural remedies.[[19]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-109) After the DOJ announced its proposed settlement with the companies, the Attorney General for New York, who led the states’ challenge to the merger, issued a press release dismissing the adequacy of the remedies negotiated by the DOJ: ‘The promises made by [the divestiture buyer] and [the merging companies] in this deal are the kinds of promises only robust competition can guarantee. We have serious concerns that cobbling together this new fourth mobile [phone] player, with the government picking winners and losers, will not address the merger’s harm to consumers, workers, and innovation.’[[20]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-108) Thereafter, the DOJ opposed the states’ enforcement action by, among other things, moving to disqualify the private counsel hired by the states to represent them[[21]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-107) and filing submissions that argued against the states’ requested injunction.[[22]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-106) Ultimately, the state attorneys general were unsuccessful in their bid to block the deal.[[23]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-105)

#### Congress avoids federal preemption of state anti-trust law. States can bring federal and state claims.

**HLR 20**. The Harvard Law Review is a law review published by an independent student group at Harvard Law School. According to the Journal Citation Reports, the Harvard Law Review's 2015 impact factor of 4.979 placed the journal first out of 143 journals in the category "Law". "Antitrust Federalism, Preemption, and Judge-Made Law." Harvard Law Review. 6-10-2020. <https://harvardlawreview.org/2020/06/antitrust-federalism-preemption-and-judge-made-law/>

Even when it is not a constitutional hurdle, federalism is still a relevant constitutional value. The Framers embraced federalism for its policy virtues,**11**× and contemporary judges and scholars laud federalism for its modern-day policy perks.**12**× The Supreme Court often invokes federalism in the form of a presumption that Congress does not lightly intrude on state sovereignty.**13**× One example is the Court’s presumption against preemption: a party alleging federal preemption of state law faces a judicial presumption that Congress did not intend to make that choice.**14**× That presumption is validated by Congress’s choice to refrain from preempting state law in the antitrust arena: state and federal antitrust laws have coexisted since the federal government’s first steps into the arena in 1890.**15**× This congressional restraint is controversial, and likely to grow more so. Some scholars have argued powerfully that Congress should preempt state antitrust laws.**16**× These arguments may gain renewed prominence, as antitrust as a whole has recently achieved greater political salience than it has enjoyed in a century.**17**× In the state context, attorneys general have increasingly taken antitrust action in high-profile matters the federal government has declined to pursue. In 2019, states opposed the merger between Sprint and T-Mobile,18× and many began to investigate potential antitrust violations in Big Tech.19× While some recent, high-profile state antitrust actions have been brought under federal antitrust laws,20× others have been brought under state law.21× Moreover, a number of the current state antitrust actions are at the investigatory stage22× — states could potentially bring federal claims, state claims, or both. Newsworthy state involvement in antitrust policing is bringing attention to the states’ antitrust role more generally, and that attention will likely bring scrutiny to the oddity of America’s competing antitrust systems.

#### States coordinate through a de facto regulatory agency which both Congress and agencies follow on to.

Michael Greve 05. Professor of Law at George Mason University. “Government by Indictment: Attorneys General and Their False Federalism.” American Enterprise Institute for Public Policy Research. 5/24/2005. https://www.aei.org/research-products/working-paper/government-by-indictment/

The Reagan administration introduced sound economics to antitrust law, emphasizing market efficiency over hostility to big business. In addition to narrowing the scope of federal antitrust laws, the antitrust revolution had the incidental effect of diminishing the role of state AGs, who—along with federal agencies and private parties—enforce federal as well as state antitrust laws. Attorneys general responded promptly, defiantly, and in concert. In 1983, NAAG created a Multistate Antitrust Task Force, which soon published “Guidelines” on vertical restraints of trade (1985) and on mergers and horizontal restraints (1987). Both sets of Guidelines came close to enshrining pre-Reagan antitrust priorities as a national policy of the states, irrespective of the change in the federal government’s national policy. The NAAG Antitrust Task Force coordinates increasingly frequent multistate antitrust prosecutions, as well as state amicus filings in defense of state prerogatives and expansive antitrust doctrines.22 It has played a conspicuous and highly successful role in defending “indirect purchaser” antitrust suits under state law, despite a Supreme Court decision that bars such lawsuits under federal law; in extending the reach of federal antitrust statutes to purely local, in-state transactions; and in preserving the right of states to obtain antitrust remedies (such as divestitures as a condition of merger approval) regardless of federal opposition. Because antitrust law is fairly disciplined, it offers state enforcers fewer opportunities for free-lancing and in terrorem prosecutions than, say, broad prohibitions against unfair or deceptive trade practices. Still, the Microsoft case illustrates the potential for abuse. Beyond the confines of antitrust law, moreover, state enforcement in this area has taught the AGs valuable lessons: State antitrust enforcement has illustrated the possibility—and the value—of sustained, organized cooperation. The NAAG Antitrust Task Force has emerged as a de facto regulatory agency, operating alongside the Federal Trade Commission and the Department of Justice. The negotiation and distribution of multistate antitrust settlement proceeds has served as a template for settlements in other arenas. Antitrust law has shown that federal agencies and the Congress will often acquiesce in the defiant exercise of state power. The state AG’s parens patriae authority to enforce federal antitrust law, for example, was conferred by the federal Hart-Scott-Rodino Act, which Congress could easily repeal. But despite increasingly frequent state enforcement actions at variance with federal priorities, Congress has never seriously contemplated that step. Similarly, the FTC and the Department of Justice have refrained from asserting their full authority even when state actions were inimical to federal positions (as in Microsoft).25

## Solvency

#### The aff opens the floodgates to litigation which undermines enforcement

Geoffrey Manne, 18. International Center for Law & Economics president & founder, Congressional Documents and Publications, “Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights Hearing; "A Comparative Look at Competition Law Approaches to Monopoly and Abuse of Dominance in the US and EU."; Testimony by Geoffrey Manne, President and Founder, International Center for Law and Economics,” December 19, 2018. Lexis, accessed 6-1-21

II. The specious lure of excessively discretionary antitrust

Antitrust is an attractive regulatory tool for a number of reasons. As noted above, the vague, terse language of the Sherman Act readily lends itself to "interpretation" imbuing it with virtually limit-less scope. Indeed, the urge to treat antitrust as a legal Swiss Army knife capable of correcting all manner of social and economic ills is apparently difficult to resist. Conflating size with market power, and market power with political power, many recent calls for regulation of the tech indus-try are framed in antitrust terms, even though they are mostly rooted in nothing recognizable as modern, economically informed antitrust legal claims or analysis. But that attraction is precisely why we should care about the scope, process, and economics of anti-trust and the extent of its politicization. Antitrust in the US has largely resisted the relentless effort to politicize it. Despite being rooted in vague and potentially expansive statutory language, US anti-trust is economically grounded, evolutionary, and limited to a set of achievable social welfare goals. In the EU, by contrast, these sorts of constraints are far weaker. Whether or not that is suitable for the particular political and historical circumstances of the EU is a separate question. But, undoubt-edly, applying a controversial legal regime to the United States -- a markedly different jurisdiction with a unique governance structure -- and upsetting more than a century of legal, technological, and social development, is deeply problematic. This conclusion is in no way altered by the fact that US antitrust law has become the outlier of global antitrust enforcement, compared to the EU's more "consensual" approach. n26 What matters is a policy's actual results, not whether it is widely adopted; the world is full of debunked beliefs that were once widely shared. And it is far from certain that the widespread adoption of the EU model is in any way indicative of superior results. It is equally (or even more) plausible that this model has proliferated because it naturally accommodates politically useful populist narratives -- such as "big is bad," robin hood fallacies and robber baron myths -- that are constrained by the US's more evidence-based and rational antitrust decision-making. n27 America's isolation might thus be a testament to its success rather than an emblem of its failure. But even if by some chance the European approach proved to be optimal for many other countries in the world, it is still dubious that its adoption would lead to improved economic performance in the United States. As has already been alluded to, the unique features of the US legal regime make it unlikely that the best policy for the EU would also happen to be the best one for America. The EU's more aggressive pursuit of technology platforms under its antitrust laws demonstrates many of the problems with its approach in general. I urge this subcommittee to consider not just whether the EU approach seems to permit the government to reach a preconceived outcome -- i.e., placing large tech platforms under increased antitrust scrutiny -- but whether it is truly desirable at all to emulate the EU's approach and to try to reach the goals of EU competition policy under US antitrust law. Endorsing the European approach to antitrust, in a naive attempt to bring high-pro-file cases against large Internet platforms, would prioritize political expediency over the rule of law. It would open the floodgates of antitrust litigation and facilitate deleterious tendencies, such as non-economic decision-making, rent-seeking, regulatory capture, and politically motivated enforce-ment. Bringing US antitrust enforcement in line with that of the EU would thus unlock a veritable Pan-dora's box of concerns that are currently kept in check. Chief among them is the use of antitrust laws to evade democratically and judicially established rules and legal precedent. When consider-ing this question, it is important to see beyond any particular set of firms that enforcement offi-cials and politicians may currently be targeting. An antitrust law expanded to consider the full scope of soft concerns that the EU aims at will not be employed against only politically disfavored companies, companies in other jurisdictions, or in order to expediently "solve" otherwise political problems. Once antitrust is expanded beyond its economic constraints and imbued with political content, it ceases to be a uniquely valuable tool for addressing real economic harms to consumers, and becomes a tool for routing around legislative and judicial constraints**.**

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## Innovation

#### Innovation adv- The alt can’t solve warming.

John Asafu-Adjaye 15. Associate professor of economics at the University of Queensland in Brisbane, Australia. Et al. “An Ecomodernist Manifesto”. April 2015. <https://www.ecomodernism.org/manifesto-english>

Meaningful climate mitigation is fundamentally a technological challenge. By this we mean that even dramatic limits to per capita global consumption would be insufficient to achieve significant climate mitigation. Absent profound technological change there is no credible path to meaningful climate mitigation. While advocates differ in the particular mix of technologies they favor, we are aware of no quantified climate mitigation scenario in which technological change is not responsible for the vast majority of emissions cuts.

## FTC DA

#### **Algorithmic bias risks nuke war.**

Elsa B. Kania 17. Adjunct fellow with the Technology and National Security Program at the Center for a New American Security, 11/15/17. “The critical human element in the machine age of warfare.” https://thebulletin.org/2017/11/the-critical-human-element-in-the-machine-age-of-warfare/

Today, however, the human in question might be considerably less willing to question the machine. The known human tendency towards greater reliance on computer-generated or automated recommendations from intelligent decision-support systems can result in compromised decision-making. This dynamic—known as automation bias or the overreliance on automation that results in complacency—may become more pervasive, as humans accustom themselves to relying more and more upon algorithmic judgment in day-to-day life.

In some cases, the introduction of algorithms could reveal and mitigate human cognitive biases. However, the risks of algorithmic bias have become increasingly apparent. In a societal context, “biased” algorithms have resulted in discrimination; in military applications, the effects could be lethal. In this regard, the use of autonomous weapons necessarily conveys operational risk. Even greater degrees of automation—such as with the introduction of machine learning in systems not directly involved in decisions of lethal force (e.g., early warning and intelligence)—could contribute to a range of risks.

Friendly fire—and worse. As multiple militaries have begun to use AI to enhance their capabilities on the battlefield, several deadly mistakes have shown the risks of automation and semi-autonomous systems, even when human operators are notionally in the loop. In 1988, the USS Vincennes shot down an Iranian passenger jet in the Persian Gulf after the ship’s Aegis radar-and-fire-control system incorrectly identified the civilian airplane as a military fighter jet. In this case, the crew responsible for decision-making failed to recognize this inaccuracy in the system—in part because of the complexities of the user interface—and trusted the Aegis targeting system too much to challenge its determination. Similarly, in 2003, the US Army’s Patriot air defense system, which is highly automated with high levels of complexity, was involved in two incidents of fratricide. In these stances, “naïve” trust in the system and the lack of adequate preparation for its operators resulted in fatal, unintended engagements.

As the US, Chinese, and other militaries seek to leverage AI to support applications that include early warning, automatic target recognition, intelligence analysis, and command decision-making, it is critical that they learn from such prior errors, close calls, and tragedies. In Petrov’s successful intervention, his intuition and willingness to question the system averted a nuclear war. In the case of the USS Vincennes and the Patriot system, human operators placed too much trust in and relied too heavily on complex, automated systems. It is clear that the mitigation of errors associated with highly automated and autonomous systems requires a greater focus on this human dimension.

#### Algorithmic bias in AI is an existential threat.

Mara Hvistendahl 19 – correspondent with Science magazine, 3/28/19. “Can we stop AI outsmarting humanity?” <https://www.theguardian.com/technology/2019/mar/28/can-we-stop-robots-outsmarting-humanity-artificial-intelligence-singularity>

Existential risks – or X-risks, as Tallinn calls them – are threats to humanity’s survival. In addition to AI, the 20-odd researchers at CSER study climate change, nuclear war and bioweapons. But, to Tallinn, those other disciplines “are really just gateway drugs”. Concern about more widely accepted threats, such as climate change, might draw people in. The horror of superintelligent machines taking over the world, he hopes, will convince them to stay. He was visiting Cambridge for a conference because he wants the academic community to take AI safety more seriously.

At Jesus College, our dining companions were a random assortment of conference-goers, including a woman from Hong Kong who was studying robotics and a British man who graduated from Cambridge in the 1960s. The older man asked everybody at the table where they attended university. (Tallinn’s answer, Estonia’s University of Tartu, did not impress him.) He then tried to steer the conversation toward the news. Tallinn looked at him blankly. “I am not interested in near-term risks,” he said.

Tallinn changed the topic to the threat of superintelligence. When not talking to other programmers, he defaults to metaphors, and he ran through his suite of them: advanced AI can dispose of us as swiftly as humans chop down trees. Superintelligence is to us what we are to gorillas.

An AI would need a body to take over, the older man said. Without some kind of physical casing, how could it possibly gain physical control?

Tallinn had another metaphor ready: “Put me in a basement with an internet connection, and I could do a lot of damage,” he said. Then he took a bite of risotto.

Every AI, whether it’s a Roomba or one of its potential world-dominating descendants, is driven by outcomes. Programmers assign these goals, along with a series of rules on how to pursue them. Advanced AI wouldn’t necessarily need to be given the goal of world domination in order to achieve it – it could just be accidental. And the history of computer programming is rife with small errors that sparked catastrophes. In 2010, for example, when a trader with the mutual-fund company Waddell & Reed sold thousands of futures contracts, the firm’s software left out a key variable from the algorithm that helped execute the trade. The result was the trillion-dollar US “flash crash”.

The researchers Tallinn funds believe that if the reward structure of a superhuman AI is not properly programmed, even benign objectives could have insidious ends. One well-known example, laid out by the Oxford University philosopher Nick Bostrom in his book Superintelligence, is a fictional agent directed to make as many paperclips as possible. The AI might decide that the atoms in human bodies would be better put to use as raw material.

Tallinn’s views have their share of detractors, even among the community of people concerned with AI safety. Some object that it is too early to worry about restricting superintelligent AI when we don’t yet understand it. Others say that focusing on rogue technological actors diverts attention from the most urgent problems facing the field, like the fact that the majority of algorithms are designed by white men, or based on data biased toward them. “We’re in danger of building a world that we don’t want to live in if we don’t address those challenges in the near term,” said Terah Lyons, executive director of the Partnership on AI, a technology industry consortium focused on AI safety and other issues. (Several of the institutes Tallinn backs are members.) But, she added, some of the near-term challenges facing researchers, such as weeding out algorithmic bias, are precursors to ones that humanity might see with super-intelligent AI.

Tallinn isn’t so convinced. He counters that superintelligent AI brings unique threats. Ultimately, he hopes that the AI community might follow the lead of the anti-nuclear movement in the 1940s. In the wake of the bombings of Hiroshima and Nagasaki, scientists banded together to try to limit further nuclear testing. “The Manhattan Project scientists could have said: ‘Look, we are doing innovation here, and innovation is always good, so let’s just plunge ahead,’” he told me. “But they were more responsible than that.”

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

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

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

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

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

#### Plan is different.

Masuda et. al. 21. Funai, Eifert & Mitchell, Ltd. Masuda, Funai, Eifert & Mitchell, Ltd. is a U.S. law firm headquartered in Chicago, Illinois, “The Implications of President Biden's "Executive Order on Promoting Competition in the American Economy" 8.18.21. https://www.masudafunai.com/articles/the-implications-of-president-bidens-executive-order-on-promoting-competition-in-the-american-economy?utm\_source=Mondaq&utm\_medium=syndication&utm\_campaign=LinkedIn-integration

On July 9, 2021, President Joe Biden signed a sweeping executive order titled the “Executive Order on Promoting Competition in the American Economy” (the “Order”), affirming the policy of the Biden administration to “enforce the antitrust laws to combat the excessive concentration of industry, the abuses of market power, and the harmful effects of monopoly and monopsony.” To achieve this, the Order, among other things, directs regulatory agencies to assert oversight over certain business practices and encourages regulatory agencies to develop and/or strengthen rules. The Order includes 72 initiatives by more than a dozen federal agencies.

The Order specifically cites the areas of “labor markets, agricultural markets, Internet platform industries, healthcare markets (including insurance, hospital, and prescription drug markets), repair markets, and United States markets directly affected by foreign cartel activity.” The scope of this order is broad. On the other hand, the Order itself does not create new regulations or laws, leaving the specific implications of it vague.

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

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

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

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

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

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

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

#### It directly undermines privacy enforcement.

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

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

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

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

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

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

#### Companies will drag out cases and drain FTC resources.

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

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

#### Congressional backlash scares them off from overexerting themselves.

Chris Jay Hoofnagle et al 19. Adjunct Professor of Information and Law - University of California, Berkeley, and Woodrow Hartzog, Professor of Law and Computer Science - Northeastern University, and Daniel J. Solove, John Marshall Harlan Research Professor of Law - George Washington University Law School. “The FTC can rise to the privacy challenge, but not without help from Congress.” Brookings. 8/8/2019. <https://www.brookings.edu/blog/techtank/2019/08/08/the-ftc-can-rise-to-the-privacy-challenge-but-not-without-help-from-congress/>

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

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

#### FTC resources are limited – the plan shifts focus

David Balto 18. public interest antitrust attorney based in Washington, DC. He previously served as policy director at the Federal Trade Commission, as an attorney in the Justice Department's Antitrust Division, and as a senior fellow at the Center for American Progress and the New America Foundation. “New FTC commissioners should follow four critical principles.” The Hill. 5/3/2018. <https://thehill.com/opinion/finance/386108-new-ftc-commissioners-should-follow-four-critical-principles>

Antitrust enforcement is becoming front and center in our political economic debate. Some commentators question whether antitrust enforcement has become too restricted and suggest a broader regime in which antitrust, reinterpreted, should address not only anticompetitive conduct but larger societal ills, such as stagnant labor markets, lack of viewpoint diversity, and economic inequality. Others decry antitrust over-enforcement, questioning the excessive cost of investigations that permit the authorities to secure remedies that go beyond the law. Still, others wonder if antitrust enforcement is too slow to bring about meaningful relief in high technology markets where the market may evolve rapidly before any enforcement action can be brought, while others see these as examples of healthy markets with highly innovative firms making the current outcries overblown and unwarranted. That is the daunting challenge that a slate of new commissioners at the Federal Trade Commission face as they take office this week. In a world where the nature of competition is evolving rapidly, with some demanding that enforcement needs a new course, where should the commission direct its efforts? As a former FTC enforcer who participated in the transition between the Bush and Clinton administrations, here are four proposals for setting a sound course for a renewed enforcement agenda: 1. Focus on direct benefits to consumers. The ultimate lodestar for antitrust enforcement is that it must benefit consumers. The fact that competitors may not like a rival’s conduct or may be harmed and might exit the market matters only if at the end of the day consumers suffer through higher prices, lessened choice, lower quality, or decreased innovation. As Supreme Court William J. Justice Brennan explained over 50 years ago, the purpose of the antitrust laws is to protect consumers, not competitors. This focus remains vital today, as competitors would gladly sidetrack antitrust enforcement to hobble rivals and give themselves a leg up. This rent-seeking is not what we need, and antitrust should stick to focusing on the well-being of consumers. 2. Use your enforcement resources wisely. This is essential. The agencies have extremely limited resources. They must marshal those resources efficiently to focus on those matters that have the biggest bang for the buck. Before beginning any matter especially a costly and resource intensive investigation the enforcers must look in the mirror and ask “how will this affect consumers pocketbooks and is this the optimal use of our resources?” To give just one example from my time at the FTC, before we arrived the “pharmaceutical” enforcement program dallied on many cookie cutter cases prosecuting pharmacies from trying to increase reimbursement by some pocket change. That was not a prudent use of resources, so we changed the focus to prosecuting branded pharmaceutical companies for tactics delaying generic competition that cost consumers hundreds of millions. The result was focusing on cases that mattered most: a significant increase in generic substitution leading to billions in consumer savings. 3. Use all the commission’s powers. The Congress that created the commission 100 years ago recognized that enforcement was often an inept and inadequate tool to address the full range of competitive problems in a market. So Congress gave the FTC the power to conduct studies, hold hearings and provide special advice to Congress. While the FTC has robust policymaking in the consumer protection arena, there are much fewer workshop, reports, and studies to support its competition mission, which could be used to develop guidelines for pro-competition practices to improve pricing, innovation, and consumers’ ability to shop for better products. 4. Make sure remedies are worth the candle. Trying to implement remedies to change conduct is daunting, and that is why many remedies, especially merger remedies, do not succeed. While the Obama FTC rightly was proud that 75 percent of their merger remedies succeeded, more can be done to improve that record so that fewer consumers ultimately are paying higher prices and enduring poorer services. The remedies must address the identified harm and not merely be politically expedient. If a harm has no antitrust remedy, then that is probably an indication that some other policy tool is a better fit for the job and the FTC should use its non-enforcement powers to find a more appropriate solution. The problems faced by the antitrust enforcers may seem daunting. But like any explorer attempting a challenging journey — the key is to find and follow the lodestar. And for antitrust enforcers the lodestar is the impact on consumers, ensuring they benefit from a healthy marketplace that drives better products and prices for their pocketbooks.

#### Capitalism solves poverty---economic freedom increases living standards and reduces poverty

Luka Ladan 19. Luka Ladan is the President and CEO of Zenica Public Relations and a Catalyst Policy Fellow. Prior to founding Zenica, Ladan served as Communications Director at a leading public affairs firm in Washington, D.C. "Capitalism Remains the Best Way to Combat Extreme Poverty." Catalyst. 6-14-2019. <https://catalyst.independent.org/2019/06/14/capitalism-remains-the-best-way-to-combat-extreme-poverty/>

More recent research paints a much rosier picture. According to a [May 2019 study](https://www.vox.com/future-perfect/2019/6/5/18650492/2019-poverty-2-dollar-a-day-edin-shaefer-meyer) co-authored by University of Chicago professors and Census Bureau researchers, the American experiment may not be perfect, but extreme poverty remains a statistical anomaly. Specifically analyzing $2-a-day poverty—that is, the number of Americans living on $2 or less per day—the study’s co-authors found that only 0.11 percent of Americans live in extreme poverty.

That comes out to [roughly 336,000 people](https://www.vox.com/future-perfect/2019/6/5/18650492/2019-poverty-2-dollar-a-day-edin-shaefer-meyer)—still too high, but nowhere near 18 million. Moreover, the study concludes that the extreme poverty rate for parents—whether single or married—is virtually zero.

Again, America is not perfect. Poverty lingers, even here. But the status quo could be a whole lot worse: It may be difficult to become a member of the top “one percent,” but it is even harder to fall into extreme poverty.

The good fortunes of most can be traced to the free exchange of goods and services for mutual gain. While an imperfect system, **capitalism remains our most effective weapon in fighting extreme poverty. As we’ve seen across continents, the freer an economy becomes, the less likely its people are to become entrapped in extreme poverty.**

This can be corroborated by tracking the rise of “economic freedom,” which is related to the openness of a country’s markets and corresponding increases in living standards. Over the past 25 years, the global average economic freedom score—as calculated by the right-leaning Heritage Foundation—has [increased by 3.2 percentage points](https://www.heritage.org/index/book/chapter-1), with many countries joining the ranks of at least the “moderately free.”

Indeed, global economic freedom has experienced a nearly six percent increase since 1995—after the Soviet Union’s collapse. Capitalism is more commonplace now than ever before.

And how have extreme poverty rates fared in that time? Trending down—way down.

During the early 1980s, [more than 42 percent of the world’s population](https://www.economist.com/international/2017/03/30/the-world-has-made-great-progress-in-eradicating-extreme-poverty) lived in extreme poverty (earning less than $2 a day). In the Soviet Union, for example, 20 percent of the population—over 43 million people—lived on less than 75 rubles a month (roughly $120).

**Fast forward to the 21st century, and less than 10 percent of the world’s population is extremely poor—a 33 percent decrease. The left-leaning Brookings Institution**[**estimates**](https://www.brookings.edu/blog/future-development/2017/11/07/global-poverty-is-declining-but-not-fast-enough/)**that someone escapes extreme poverty every 1.2 seconds.**

Consider it this way: Even though the world’s population has increased by more than two billion people since 1990, the net number of extremely poor people has been slashed by nearly 1.2 billion. **In today’s era of globalization, about 130,000 people rise out of poverty every single day. That’s like the**[**entire city of New Haven, Connecticut**](https://www.census.gov/quickfacts/newhavencityconnecticut)**leaving extreme poverty in a day’s time.**

Or take China, which has opened many sectors of its economy in recent decades. Since 1995 alone, the Asian country’s economic freedom score [increased from 52 to 58.4 points](https://www.heritage.org/index/visualize)—outpacing the rest of the world. In roughly that same period of time, the Chinese economy [lifted 800 million people out of extreme poverty](http://www.chinadaily.com.cn/a/201903/14/WS5c89b8dea3106c65c34ee93a.html). That’s right: 800 million Chinese people—nearly three times the U.S. population.

While still far from a “free economy,” China’s newfound openness to free-market principles is correlated with the most substantial example of poverty reduction in the history of the world. Even if correlation does not always equal causation, that accomplishment is difficult to ignore.

Granting people the freedom to voluntarily make mutually beneficial exchanges of goods and services has been the most effective anti-poverty solution to date. As more of the world allows the exercise of such freedom, expect poverty to decline even further.

#### Even if the funding makes it out, doesn’t prevent tradeoffs

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

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

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

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

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

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

#### Current enforcement is all talk

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Tension leads to a tradeoff between competition and privacy enforcement.

Erika M. **Douglas 21**. Assistant Professor at Temple University Beasley School of Law. “The New Antitrust/Data Privacy Law Interface.” 1/18/21. <https://www.yalelawjournal.org/forum/the-new-antitrustdata-privacy-law-interface>

The necessary implication of tension at the new antitrust/data privacy interface is that choices will have to be made between competition and privacy interests. This Section suggests that **competition is likely to be preferred over privacy** and observes very early indications this may already be occurring—whether or not that preference is justified, or even acknowledged.

Existing theories and institutional context create a “competition first” perspective at the intersection of antitrust anddata privacy. The leading theory—the integrationist view—treats data privacy as a factor to be subsumed into existing antitrust understanding. 142 This makes sense, given that the origin of the theory is, of course, antitrust law. However, this also builds into the analysis a perspective of competition primacy. The institutions involved reinforce this primacy. It is predominantly agencies of antitrust,143 not of data privacy, that are considering the implications of this intersection of law. The mandate of antitrust agencies is to advance competition, not privacy. In fact, antitrust agencies have expressed skepticism as to whether they have jurisdiction over interests of data privacy.144 In this theory and agency context, the tendency will thus be to prefer competition when faced with a data privacy tradeoff.

#### Plan forces tough decisions that gut enforcement.

**Samuel Triginelli 21. Communications professional with experience in Account and Product Management, Campaign Strategy, UX Experience, and Graphic Design. “Former and Current FTC Commissioners Laud Efforts At Greater Resources For Antitrust Cases.” Broadband Breakfast. 3/17/2021.**[**https://broadbandbreakfast.com/2021/03/former-and-current-ftc-commissioners-laud-efforts-at-greater-resources-for-antitrust-cases/**](https://broadbandbreakfast.com/2021/03/former-and-current-ftc-commissioners-laud-efforts-at-greater-resources-for-antitrust-cases/)

March 17, 2021 – A new antitrust bill by Sen. Amy Klobuchar, D-Minn, is receiving high praise from current and former commissioners of the Federal Trade Commission for its focus on enhancing resources required to tackle competition issues. “I think we could use more money still,” Noah Phillips, commissioner on the FTC, said at the Information Technology and Innovation Foundation conference on Tuesday. “The agencies could do more with more resources, and that goes without saying. There are hard decisions that we have to make with the limited resources that we have.” William Kovacic, former FTC chairman, reacted to the bill by noting that the debate has effectively shifted from what agency should do the work to how they do it. “The neglected questions of implementation are starting to receive the attention they deserve, and one of them is resources,” Kovacic said. “When I look at competition authoritiesaround the world, there is an epidemic failure to match commitments with the means necessary to carry out the task in question.” The FTC in the last year has brought more cases than it ever has since 2001, Phillips said. “This is a bit of delusion that all of our countries engage in,” Kovacic said. “We have the highest aspirations, the boldest goals, but when it comes to paying for it, we don’t want to do that; we want to drive and take off the lot.” He related antitrust enforcement’s strength to the net amount of resources that have to be increased to perform existing functions capably. “It is not simply competition,” Kovacic added. “If you benchmark the FTC resources devoted to data protection privacy, we have a decidedly inadequate allocation,” and that is not the FTC’s doing but those are legislative choices, he said. For the FTC to be a genuinely full-fledged national data protection regulator for privacy, it would have to be double-to-three times the agency’s resources right now, he said. More resources will enable the agency to carry out its mandate in a more capable way, he said. The essence of success in so many matters is maintaining continuity of staff at a high-level with high-quality. Phillips, for his part, said part of the funding will go to hiring economists, experts and increasing salaries.

#### Resources are limited---plan triggers heightened enforcement discretion

**Laura E. Bledow 18. JD from William & Mary Law School 2018. “Worth the Click: Why Greater FTC Enforcement Is Needed to Curtail Deceptive Practices in Influencer Marketing.” William & Mary Law Review. Volume 59 (2017-2018) Issue 3. 2/5/2018.**[**https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=3739&context=wmlr**](https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=3739&context=wmlr)

Additionally, the FTC must exercise its enforcement discretion strategically to maximize its limited resources.145 This enforcement discretion includes the consideration of the number of consumers potentially deceived, the degree of physical or economic harm, the incentives for brands to employ a particular deceptive practice, and the likelihood thatmarket forces will correct that practice.146 Because the FTC addresses enforcement on a case-by-case basis,147 the FTC’s influencer endorsement enforcement actions provide insight that is critical to understanding when and how the FTC’s endorsement mechanisms can be used to prevent consumer de- ception.